

HUMAN RIGHTS: COMPARATIVE STUDY OF INDIA & CHINA

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Abstract

Living in a civilized society, it is important to guarantee each and every citizen a sensibly noble life. From life, the concept of freedom, equality, respect, dignity, justice pops up in the mind. Freedom and equality are the essence of human rights which is the subject matter of present article. Human rights are the essential rights that are required for existence of human life. Mere life with no right is useless. The article explores the various topics related to human rights. It also tries to explain status of human rights and in China and India and the contradictory picture between writing and practical implementation of the rights given to the citizen in two nations. The first part of the article addresses the brief introduction of human rights followed with the history and development in it particularly with respect to India. It also compares human rights of India to that of China. The article also provides various reports given by NGOs and other committees. Since all aspects have loopholes too, the article also addresses the loopholes of human rights in India and China. It includes the landmark cases to give a clear picture of implementation of human rights in India. Human Rights are basic rights which every individual enjoys from the time of birth till death, these are inseparable natural rights, human rights unequivocally proclaim the inherent and inalienable rights of human. These rights are difficult to define but impossible to ignore, it is the basic rudimentary right which every human being possess and exercises to enjoy a smooth life, human rights are prevalent since the time of emergence of civilization, these aspire to protect all people everywhere from several political, religious and cultural abuses.

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The main principle behind these entitlements is respect for every individual. The fundamental assumption is that each person is moral and rational being who deserves to be treated with dignity. The present article mainly focuses on history and development of Human Rights in India and its comparison with another nation state. The paper concludes by highlighting challenges faced by India with respect to laws related to human rights.

Keywords: *Human Rights, Freedom, Equality, Dignity, Nationality, Absolute Leadership, Democracy, Communist.*

INTRODUCTION

Human rights are the rights that are available to all humans simply because they are human beings. It starts from the birth and ends on the death. The article 1 of Universal Declaration of Human Rights states that “*All human beings are born free and equal in dignity and rights*”.¹ From this line we can confer that no two persons shall be discriminated in any manner with respect to caste, creed, race, sex etc. Every human being is autonomous, free and equal in each aspect. Human Rights give basic standard without which a human cannot live. The basic features of human rights are that these are:

- ***Interrelated and interdependent:*** This means that all human rights are complementary to each other.
- ***Universal:*** This means that it applies to all in equal manner.
- ***Indivisible:*** This means that rights cannot be differentiated on the basis of importance i.e. it cannot be treated as ‘less important’ or ‘more important’.
- ***Inalienable:*** It means that it cannot be lost under any circumstances because of the fact that they are pre-requisite for human existence.

The human rights are just like armour which protects us. They are the rules that tell an individual how to behave. They are like the judge because we can appeal to them. Human rights are just like emotions that belong to everyone. When an individual accepts human rights, he directly accepts that everyone is entitled to the rights.

The key values of human rights are human dignity and equality. These ideas make human rights less controversial and this is the reason why human rights receive support from every

¹ United Nation, *Universal Declaration of Human Rights*, Available at: <https://www.un.org/en/universal-declaration-human-rights/> (Accessed on: 28.07.2020)

culture in the world. Out of these two values other values derived from human rights are freedom, respect, no discrimination, justice, responsibility. The human rights under no circumstances can be eliminated it can only be restricted to a certain limit.

HISTORY OF HUMAN RIGHTS IN INDIA

Human rights continued from ancient civilization. Its history is about thousand years back which is based upon religious, cultural, philosophical and legal development. In almost every stages of mankind there always existed. Even the religious texts contained varieties of concept that are related to the human rights. Almost every religious text consist of human rights but the only change that took place were related to its development particularly the protection of human rights. Before the World War human rights were not codified neither national nor international level. From the beginning itself man struggled for his existence to achieve basic freedom. This struggle was a roadway for the emergence of the concept of human rights. The most defining feature of human rights is that these rights are difficult to define but cannot be ignored at all. The Indian perspective of human rights is divided in three stages namely ancient, medieval and modern. Concept of human rights is not a flower of European garden rather we can trace back the idea of human rights from Vedic period in India. In Vedas human rights are signified by equality and liberty. The charter of equality from Vedic period is defined in following words, "No one is superior or inferior all shall strive for the interest of all and progress collectively."² Kautilya always advocated for the welfare state and he said that the happiness of state lies in the happiness of its subject.³ From the facts and story it is revealed that society under Vedic age was organized and committed towards human rights. No discussion on Human Rights can end without referring to Ashoka. Ashoka inscribes 'All

² Nidhi Madan, *History and Development of Human Rights in Indian*, IOSR Journal of Humanities and Social Science, 01 (2017), p. 28

³ S S Ali, *Kautilya and the Concept of Good Governance*, Indian Journal of Political Science, 04(2006), p. 67

men are my children and just desire for my children that they may enjoy every kind of prosperity within this world and in next also as also as I desire the same for all men.’⁴ King Ashoka worked day and night for the protection of Human Rights. The decline of Human rights was witnessed by the decline of Mauryan Empire. In the Mughal era with the entry of Akbar human rights were restored, great regard was given to social, religious and cultural rights. In his religious policy (Din-e-Elahi) he tried to preach secularism and religious tolerance. Various religious movements like Bhakti and Sufi made great contribution in the area of human rights.

Human Rights in Ancient Times:

The subject matter of human rights are not only restricted to the western region but it is a set of rules that epitomizes human values which is mutual for all. The rights mentioned in Universal Declaration of Human Rights 1948 did not come into being all of a sudden but was a milestone that traveled for centuries. The language of Human Rights may be product of European countries but the concept of Human Rights is as old as the human culture. Since vedic age the humans were concerned about freedom which was fundamental in nature. In the vedas, the concept of equality is signified in human rights.

*The charter of equality says that “No One is superior or inferior all should strive for interest of all and should progress collectively”*⁵

The importance of rights were also financed by Jainism , Buddhism and other minority religions.

Human Rights in Medieval Times:

⁴ Akhilesh Shivkumar, *The meaning of life according to Hinduism*, The Ohio State University, Available at: <https://www.ywam.org/get-involved-2/all-nations-verse-list/> (Accessed on: 02.09.2020)

⁵ Ram Madhav, *What Dalit wants?*, The Indian Express, July 22 2020

The medieval era is mainly signified by the Muslims like the Mughal rulers. At that period the human rights existed but with the advent of the Muslims. Then the Hindus were stressed due to this inequality. The essence of human rights seemed to have vanished. Later when Akbar's rule started he restored back the rights for all. In Akbar's religious policy more emphasis was given on secularism.

Human Rights in Modern India:

It was the colonial era in which Indians were suppressed in all spheres by the Britishers. The Indians were not given basic rights like right to life, freedom, equality. The Indian leaders and the people felt that their right to life is being violated so they thought of diverting back for their rights. This was the first demand for the fundamental rights that appeared in the constitution of India bill 1895 which gave Indians their rights. Several sessions were held to discuss the matter of fundamental rights in a more detailed way.

Finally human rights were enshrined in the constitution. The Part III of the Indian Constitution is related to fundamental rights. There are 6 rights given under the constitution of India which is referred to as Fundamental Rights.

HUMAN RIGHTS DEVELOPMENT IN INDIA

Human rights and its development reflects a separate evolution. This section deals with the interface of human rights and its development. The main focus of the head is on the integration of human rights into its development. It shows that even though human rights are overlooked but is potentially worthwhile in exploring its development. One of the parts in human rights is related to the concept of development that was regarded as human aspiration. The 30 articles mentioned in Universal Declaration of Human Rights is the sum total of all

social ,economic and cultural rights which incorporates the depth of the worlds developmental efforts.

The right to development was explained in the General Assembly declaration in 1986 that focuses on all rights and held that achieving these rights is both individual and collective responsibility. State has foremost responsibility to create favourable condition for the same.

Human Rights Enhanced In Article 21 Of The Indian Constitution

Article 21 reads: “No person shall be deprived of his life or personal Liberty except according to procedure established by law.”

The major landmark case, *Maneka Gandhi v. Union of India*⁶ led to widening the concept of article 21 ultimately leading to the broad interpretation of the same. In this, case several propositions were made to make article 21 more expandable and meaningful. An expanded and detailed meaning was given to read the ambit of fundamental right. Justice Ayer remarked “The spirit of man is at group of article 21. Personal liberties makes the worth of human and travel makes Liberty worthwhile.”⁷

In another case, *Parmanad Katara v. Union of India*⁸ the petitioner who was a human rights activist filed a writ petition. In the case it was held that every injured citizen must be given immediate help to preserve his life. To this an incident was reported that a scooter rider was knocked down by a speedy car. The petitioner saw the scooter driver bleeding heavily so he took him to the nearest hospital but the medical staff refused to attend the injured person. They asked the petitioner to take the injured to another hospital that handles medico-legal

⁶ AIR 1978 SC 597

⁷ Abhishek Saxena , *The ambit of art 21 of the Indian Constitution*, Ipleaders Intelligent legal solution, , Available at: <http://www.google.com/amp/s/blog.ipleader.in/rights-article-indian-constitution> (Accessed on: 13.09.2020)

⁸ AIR 1989 SC 2039

cases. On his way to the hospital the injured was the succumbed to death .The Supreme Court to this held that there is no second opinion in the fact that saving a human life is paramount. This is because once a life is lost the *status quo* cannot be restore. The Supreme Court further laid that article 21 post obligation on state to preserve the life of an injured.

India was a certifier to the Universal Declaration of Human Rights. Several fundamental rights given to Indians are similar to UDHR like Article 14 of the Indian constitution and Article 7 of the UDHR is related to *Equality before law*. In *Kesavanda Bharti v. Union of India*⁹ the Supreme Court observed that UDHR might not be legally binding but the rights which were adopted in India shows that India understands the basic nature of human rights.

In another landmark case, *Vishakha v. State of Rajasthan*¹⁰ where a women was raped by a group of five men and this incident was sexual harassment of woman at workplace. The offenders were liable for raping a woman . There was a clear violation of human rights with respect to equality and also the violation of article 19¹¹ and 21¹² of the Indian constitution.

FUNDAMENTAL RIGHTS IN CHINA

Chapter II of the Constituion of People's Republic of China contains the fundamental rights and duties of the citizens from article 33 to 56. In writing, the rights given to the chinese are non-discriminatory ,just and fair. It gives importace to all the social, educational and cultural rights of the subject. But it is the pseudo picture of the reality because in true sense the country is devoid of these egalitarian principles. The Constitution of 1982 provides various social, educational and cultural rights to the citizens for allowing them to become fully

⁹ AIR 1973 SC 1461

¹⁰ AIR 1997 SC 3011

¹¹ Article 19, Constitution of India

¹² Article 21, Ibid

developed, educated and learned individual. Right to education and freedom to enroll in scientific research is provided at all the citizen irrespective of their natinality, sex, occupation.

Elementary level education is mandatory for all citizens. It is said that “No one is denied education and no one can refuse education.”¹³ The state bolsters overall moral, intellectual and physical development of the youth and children. Citizens also enjoy the freedom to engage themselves in various pursuit. The state encourages new mind and intellectual ideas which helps in the development of the state and are fruitful towards the interest of people.

The Constitution envisages the fundamental rights of every citizen, inclusive of the right to vote and stand for election, the freedoms of press, of the speech of demonstration and of religious belief. Freedom of the citizans cannot be violated , as is their right to protection from unwarranted intrusions into their personal dignity and the sanctity of their homes. Freedom and privacy of individual are protected by law. Citizens are free to criticize or give suggestions to any state organ or functionary, and possess the right to supervise them..The Constitution is the paramount law of the state, with the supreme legal effect. The people of all ethnicity in China must observe it as the legal framework of their activities.

COMPARISON OF HUMAN RIGHTS IN CHINA AND INDIA

India and China are among the oldest civilization . For the Europeans the people residing in these countries are source of immense wealth and wisdom. This section of the article compares the human rights of India to that of China. The Human Rights situation in China is marked by a systematic crackdown . Due to the prevalence of unfair trials, torture and other malfeasance act the justice system of China remains to be plagued. While both the countries

¹³ Article 33, Constitution of the People’s Republic of China

have their own extended history their individual histories are very much different. China on one hand is a centrally run country that has limited power on the other hand India is governed by a set of rules in which the centre and the state have equal role to play. China is unitary in nature while India follows a quasi-federal system. In february , President Xi Jinping said that the legal system of China should be under the absolute leadership of Chinese communist party.

ANALYSIS OF FEW RIGHTS

Rights	India	China
<i>Freedom of expression</i>	In India Article 19(1)(a), of the constitution provides freedom of expression that enables an individual to express freely but with reasonable restrictions.	The Article 35, of the Constitution of People's republic of China says that people can be vocal about their views publically.
<i>Comment:</i> In reality the authorities in China have censored all the media despite being mentioned in the article that people can freely express themselves. The people of China have also reported that they have been threatened for being vocal on the other hand in India people have a rights to express their views , crticise or appriciate government policies and judicial orders but in recent time we cam see that this rights is supressed in the name of nationality by the people in power.		
<i>Freedom of Religion</i>	<i>This rights allows all citizens to propagate any religion.</i>	<i>This right allows individual to follow or practice any religion.</i>
<i>Comment:</i> The grim reality is that in recent months, the religious groups have been prosecuted which shows that China as a state interferes in the affairs of religion too. The Chinese government have tightened their grip on the Christians and Muslims. The discrimination		

among various religion is quite intensified, to such a level that it cannot be ignored.¹⁴

India being a secular nation still is trapped in the tug of war of religion and is not devoid of religious prosecution. There have been many episodes where religion is used as a tool for prosper the peace in the society.

<i>Rights of LGBTQ & LBGTI</i>	Revocation of sec 377 of Indian Penal Code	Laws are made but not but not empowered
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Comment: In China the LBGTI still face discrimination at their homes workplaces, school, institution and public. The authorities claim that they have implemented laws related to gender and sexual orientation but they did not make laws for the protection of interest of LBGTI. But the recent developments were made and the laws were framed with this respect. However China legally recognised same gender marriage but does not empower them.¹⁵ Also being a gay was considered as an act of ‘hooliganism’.

India has decriminalised sec 377 of IPC and now treats the third gender of the community treated equally and now enjoys equal protection but still their equality is a long road in India.¹⁶

REPORT OF NGOs AND COMMITTEES ON HUMAN RIGHTS

India: There are various reports and facts which clearly potrays the violation of human rights in India. There are end number of cases of human rights violation which is unheard. The few which are noted are highlighted by some of the NGOs, committee and organisation.

¹⁴ Ewelina U Ochab, *Is China conducting a crackdown on religion?*, Forbes; Available at: <http://www.google.com/amp/s/www.forbes.com/sites/ewelinaochab/2019/04/20/is-china-conducting-a-crackdown-on-religion/amp/> (Accessed on: 12.09.2020)

¹⁵ Xu Chen and Wilferd Yang Wang , *How China is legally recognising same-sex couples, but not empowering them* , The Conversation. , October 02, 2019, 12:21pm

¹⁶ Zainab Patel, *The long road to LGBT equality in India*, UNDP, Available at: <https://www.in.undp.org/content/india/en/home/blog/lgbtequalityindia.html> (Accessed on: 22.06.2020)

Report of Jammu and Kashmir coalition civil society(JKCCS)

The resident of Jammu and Kashmir in 2019 witnessed the bleakest days of their lives with no internet and lockdown of almost five months which was like a nightmare for them. However, the step is justified in the name of national interest and security. There was complete denial of digital rights. Even though this action was for the sake of nation but the people who were only dependent of the online activity faced sudden upheaval which was a source of livelihood. The report observes that this denial of digital rights is a form of discrimination and digital repression. This shutdown was previously an unknown fact but this ended in January 2020 when supreme court opined in *Anuradha Bhasin v. Union of India*¹⁷ and endorsed the “principle of proportionality for internet shutdown.”

NCRB report on rape

In a report by NCRB, one woman in every 15 minutes is raped.¹⁸ The highly publicised gang rapes and murder of a woman in a moving bus in 2012 brought a tenth of a thousand people on the street and spurred demand for this heinous act from the renowned filmstars and politician leading to more brutal punishment and new fast track court. But the violation is persistent and awaited. Rape is the foremost common crime against women in India.

China: China’s government sees human rights as exponential threat. Its consequence would impose an existential threat to the rights of people worldwide. China, ‘league of its own’ when it comes to the human rights violations, official repression of the freedoms of religion,

¹⁷ *Anuradha Bhasin v. Union of India*, WP no. (civil) 1031 / 2019

¹⁸ Anonymous, *National Crime Record : One woman rape every 15 minutes in India*, CNBC tv, October 23, 2019

speech, movement, association is in threat. China has arbitrarily detained people of minorities and forced them to convert their religion.¹⁹

CONDITION OF HUMAN RIGHTS DEFENDERS IN CHINA AND INDIA

The human rights defenders carry out to shrink continuously .In China anyone who subvert state's power are charged heavily.The defenders of the crime are taken to unknown locations and are bitterly tortured there. The individuals who give independent voice to an issue receives crackdown. Many human rights lawyer in China who speak up over an issue suddenly disappeared and are tortured and treated savagely also there whereabouts still remained unheard by their families not only the human rights activist or lawyers or defenders but their families too are subjected to police harassment whereas in India a separate bill has been enacted namely ,The protection of human rights defender bills 2018 is an international law that extends to the whole of India. It applies to all human rights defenders in India. The National Human Rights Commission (NHRC) accept the laws for promotion and protection of human rights even though we have acts but it still requires the overall strengthening of all the aspects. The National Human Rights Commission chairman mentions about the changes to be taken place with this respect.²⁰

LOOPHOLES IN INDIAN LAWS WITH RESPECT TO HUMAN RIGHTS

This head reflects the position of Indian laws vis-a-vis the human rights. Loopholes in any country with respect to laws is due to absence the strong base.In India's constitution all the citizen of the country are privy to a set of six fundamental rights which are enforceable by law. These rights are deep seated in our constitution so that no one can challenge the rights of

¹⁹ Anonymous, *China Global Threat to human rights*, Human Rights Watch, Available at: <https://www.hrw.org/world-report/2020/country-chapters/global> (Accessed on: 26.06.2020)

²⁰ Justice H L Dattu, *NHRC Chairperson's message on 'Human Rights Defenders*, Available at: <https://nhrc.nic.in/press-release/nhrc-chairpersons-message-human-rights-defenders> (Accessed on: 22.07.2020)

anyone. However the amendment in constitution itself shows how human rights are largely confined to paper. It is a bitter reality dropping in every corner of the world and India stands among top countries where there are multiple cases related to human right violation. This is the reason India stands at 129th position out of 189 countries.²¹ Human rights laws made are more subjective rather than being applicable in the reality. Everyday one person or the other faces violation of these rights and these cases go unreported. One of the case that has plagued democracy is:

Rohith Vemula case: A student who died for the rights of dalits.

The deceased was a PhD student in Hyderabad University who was from dalit community. He along with four other people were suspended on a day. This suicide was an outcome of inhumane treatment to the members of the dalit community. A report of NHRC shows that the dalits were even prevented from being entered into police station in 28% villages.²² They were even allowed to sit separately and were given another seat for consuming food. This discrimination continued from colonial rule and exists even today. Even after 73 years of independence there are a number of cases related to inequality.

The recent case of encounter of Vikas Dubey has been a controversy. He was not the first person to die in police custody and is definitely not going to be the last of its kind. Police brutality in all the parts of its investigation is an accepted part of Indian consciousness. Many people have also contended that it was a perfect step by the police. This case needs to be analysed from a different sight that the cases of police brutality is increasing day by day and custodial killing is becoming acceptable. The killing of an accused in the name of encounter is a serious violation of human rights.

²¹ Jagriti Chandra, *India up one rank in UN development index*, The Hindu, December 10, 2019 at 01

²² Omar Farooq, *Rohith Vemula: The student who died for Dalit rights*, BBC, January 19, 2016 at 01

CONCLUSION

This article has tried to explain the importance and relevance of human rights, it can be concluded that the history of human rights can be traced back from vedic age , passed with medivial , modern periods and reduced its importance in the form of fundamental rights and duties in our constitution. Human rights applies to all individual irrespective of race , nationality ,language, ethnicity or status. The rights given to the humans are protected by duties. These duties are given to the state that is state whose duty to protect the right of an individual. The humans are not only endowed with basic human rights but also economic, social, political, cultural and civil rights. The various articles in the constitution of India and the Universal Declaration of Human Rights gives us a clear picture of human rights laws and the punishment given to the violators or the defenders. From the colonial period the violation of human rights came into being is still prevalent till now what needs to be done is that more stringent laws are required for human rights and the government has to be strict in all the sense to the violators of the laws. China must give up its dream of empire bulding all of earth is now aware that the one road one be initiative is a sham. To gurantee rights in paper but the security and enforceabilty is hardly seen. Chinese society has been affected by economic changes the state is forced to rethink its role in national affair and its relation with citizens. Corruption rates in China is a mirror to the human rights violation and images created much be tarnished in order to protect the interest of it citizen.