

# POLITICAL FREEDOM IN CHINA: GOVERNMENT'S APPROACH VS. PUBLIC REACTION TOWARDS POSITIVE AND NEGATIVE RIGHTS

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## ABSTRACT

*China is often criticized for its action of banning websites and controlling the content in the allowed websites. Not only banning websites, there is also control over the media, freedom of thought and expression, freedom of association, religious freedom, lack of enforcement mechanism of the fundamental rights recognized in its constitution. Most of these rights are considered as the civil and political rights which are popularly known as negative rights whereas economic, social and cultural rights are known as positive rights in human rights law regime. China has always found prioritising positive rights over the negative rights. In terms of such priority, there has been a major debate as to whether these two canons of human rights are interactive or sequential. Even though China accepted the sequential approach, no initiative is found from the government till date to revoke the existing restrictions, rather the human right situation of so called negative rights are found getting deteriorated. On the other hand, the people are found silent regarding such stand of the government. The reason behind such strategy of the government and the silence of the people lie in the Confucianism which actually constituted the base of the state ideology, personal belief and thought of the people which also supported from the long history of China.*

## I. INTRODUCTION

Human rights situation on exercising individual freedoms in China has been a long argued topic in international level. China is always found in news coverage because of its actions of blocking the largest number of websites or strict control over online and media content, non-disclosure of actual number of execution of death penalties.<sup>1</sup> Such governmental actions are deemed as a threat toward the civil and political rights of its people. However public reaction is found to be less responsive toward such action of the government.<sup>2</sup> Despite pressure from international forums for improvement of human rights, China has maintained its strategy of putting restrictions on civil and political

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<sup>1</sup> Griffiths, J., "China is the world's top executioner but it does not want you to know that", *CNN*, April 07, 2016, at <<http://edition.cnn.com/2016/04/06/asia/china-death-penalty/>>. (Last visited on June 14, 2016).

<sup>2</sup> See MacKinnon, R., "Flatter World and Thicker Walls? Blogs, Censorship and Civic Discourse in China", 134 (2008) *Public Choice*.

rights of people, especially on freedom of expression. Why Chinese people are less responsive to such restrictions is the core question of this paper.

Human rights are broadly categorized into two groups as civil and political rights and social, economic and cultural rights in international human rights law. Such division was not made initially when the mother instrument of international human rights law i.e. the Universal Declaration of Human Rights (UDHR) was adopted in 1948. Subsequently, two international instruments were adopted in 1966 by the United Nations, namely, International Covenant on Civil and Political Rights (ICCPR)<sup>3</sup> and International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>4</sup> which were entered into force in 1976. These two instruments define two different sets of rights, though all of them are deemed as Human Rights and two canons of UDHR. These two sets of rights are also classified positive rights and negative rights.<sup>5</sup> Positive rights include the basic needs of people; for instances right to food, shelter, medical treatment, education, employment and negative rights include freedom of thought, expression, association, movement.<sup>6</sup>

China as a socialist country has always emphasized on the positive rights and the present growth of its economy shows its success in achieving these

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<sup>3</sup> Rights which have been codified in the International Covenant on Cultural and political Rights (ICCPR) are right to self-determination (Article 1) having the difference no from the provision adopted in ICESCR. In addition to this, there are right to life (Art 6), freedom from cruel or inhuman treatment and punishment (Art 7), freedom from compulsory labor or slavery (Art 8), right to liberty and security of person (Art 9), right not to get imprisoned merely on the ground of breach of contractual obligations (Art 11), freedom of movement (Art 12), right to equality before law and fair trial (Art 26 & 14), prohibition on ex-post facto law (Art 15), right to privacy (Art 17), freedom of thought, conscience and religion (Art 18), right to opinion without interference and freedom of expression (Art 19), right to assembly (Art 21), freedom of association (Art 22), right to vote (Art 25), entitlement of minority groups for these rights stated in ICCPR (Art 27).

<sup>4</sup> Rights adopted in the International Covenant on Economic, Social and Cultural Rights (ICESCR) are inter alia rights of self-determination (Article 1), right to non-discrimination on the ground of race, color, language, sex, religion and other political opinion, national or social origin, property, birth or other status (Article 2), equal right of men and women (Article 3), right to work and favorable work environment (Article 6 & 7), right to join trade union (Article 8), right to social security (Article 9), right to adequate standard of living (Article 10), right to standard physical and mental health (Article 12), right to education (Article 13), right to take part in cultural life and enjoy benefits of scientific progress and its applications (Article 15).

<sup>5</sup> Chan, S., "Human Rights in China and the United States: Competing Visions and Discrepant Performances", 24 (2002) *Human Rights Quarterly*, pp. 1035-1053, at p. 1039.

<sup>6</sup> *ibid.*

rights for the people.<sup>7</sup> While emphasizing on economic development, China has put several restrictions on the civil and political rights with the excuse that recognition and enforcement of civil and political rights would affect economic growth.<sup>8</sup> Even though these rights are recognized as fundamental rights in the Chinese Constitution as well<sup>9</sup> there is no enforcement mechanism of these rights. China also signed the ICCPR on October 05, 1998. However it has not ratified the ICCPR yet.

On the contrary, western countries have always been found advocating for negative rights<sup>10</sup>. Reason behind the advocacy for so called negative rights by the western countries can be identified as that these negative rights are Eurocentric.<sup>11</sup> Despite such advocacy, China has maintained its strategy to restrain the individual freedoms giving its priority for economic development.

This paper questions the reasons behind the Chinese government's strategy to prioritise positive rights over the negative rights despite its incorporation of civil and political rights (as stated in ICCPR) in its constitution as fundamental rights, the reaction of mass people toward such restriction and the philosophy behind such reaction. In examining these questions, this paper is divided into four major parts. It starts with the theoretical analysis of positive rights and negative rights under the international human rights law followed by the Chinese government's notion towards these positive and negative rights. Subsequent to these, reaction of the Chinese people toward such restrictions and the reasons behind such reaction are analyzed in subsequent parts.

## II. POSITIVE AND NEGATIVE RIGHTS

Even though the universal declaration of human rights was adopted in 1948, pursuant to the cold war followed by the division of the world in two ideology, these rights were divided into two sets as well namely civil and political rights and economic, social and cultural rights.<sup>12</sup> Such division ultimately resulted on adoption of two different conventions of International Covenant on Civil and Political

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<sup>7</sup> Nanlai, L., "Fazhanzhong Guojiayu Renquan" (The Developing Countries and Human Rights) (1996), *Dangdai, Renquan Lilunyu Shijian* (Contemporary Theories and Practice in Human Rights), Li Lin ed., pp. 298-319, at p.310.

<sup>8</sup> *supra* note 5.

<sup>9</sup> Chapter II of the Constitution of People's Republic of China, 2004.

<sup>10</sup> *supra* note 5.

<sup>11</sup> Legesse, A., "Human Rights in African Political Culture", in Kenneth, W. T. (ed.), *The Moral Imperatives of Human Rights: A World Survey*, Washington DC, 1980, pp. 123-137.

<sup>12</sup> Sengupta, A., "Right to Development as a Human Right", 36 (2001) *Economic and Political Weekly*, pp. 2527-2536.