

CHINA AND THE UNITED NATIONS HUMAN RIGHTS COUNCIL

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DECLARATION

I declare that the dissertation entitled "**CHINA AND THE UNITED NATIONS HUMAN RIGHTS COUNCIL**", submitted by me in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** of Jawaharlal Nehru University is my own work. The dissertation has not been submitted for any other degree of this university or any other university.

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To my father, and MOTHER

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ABBREVIATIONS

AITPN	Asian Indigenous and Tribal Peoples Network
ASEAN	Association of Southeast Asian Nations
CAT	Committee Against Torture
CCP	Chinese Communist Party
CDPF	China Disabled Person's Federation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECOSOC	United Nations Economic and Social Council
GONGO	Government-organized Non-governmental Organization
HR	Human Rights
HRD	Human Rights Defenders
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IOs	International Organizations
LGBT	Lesbian, Gay, Bisexual, and Transgender
MIA	Medium-term Implementation Assessment

MRAP	Mouvement Contre Le Racisme Et Pour L'amitie Entre Les Peuples
NGO	Non-Governmental Organization
NHRAP	National Human Rights Action Plan
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PRC	People's Republic of China
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAT	United Nations Convention against Torture
UNCHR	United Nations Commission on Human Rights
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council
UPR	Universal Periodic Review
US	United States
VDPA	Vienna Declaration and Programme of Action

Chapter 1

Introduction

With nearly a quarter of the world's humanity residing in China, it would be inconceivable not to have enough scholarly attention devoted to its human rights record. Noting that, the goal of this study is to take the existing literature a step forward by inquiring into the peculiarity of Chinese discourses on Human Rights (HR) in light of its participation in United Nations Human Rights Council (UNHRC). In doing so, it probes the extent of the impact of UNHRC on China's HR record as well as China's impact on the deliberations and outcomes of the organization.

Background

After the Second World War, HR emerged as a policy area in which the United Nations (UN) had seen an exponential expansion, both bureaucratically and ideationally. The Charter of UN adopted in 1945, explicitly mentioned in its Preamble that “we the peoples of the United Nations [are] determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small” (Mihir and Gibney 2014: 556). It was followed by the establishment of United Nations Commission on Human Rights by United Nations Economic and Social Council (ECOSOC) in 1946 as the main body dealing with HR, and in that capacity, it framed the Universal Declaration of Human Rights (UDHR) (Mihir and Gibney 2014: 556). In the initial years, the HR work in UN used to be concentrated in fewer departments, but over the years, it has taken over almost every UN body and even spilled over to other international organizations (IOs) like World Bank and International Monetary Fund (Mertus 2005: 3-4). As time progressed, the Commission on Human Rights was provided with a think tank, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, later to be re-christened as the Sub-Commission on the Promotion and Protection of Human Rights (Mihir and Gibney 2014: 556-557). The Sub-Commission which comprised of independent experts, dissolved with the dismantling of the United Nations Commission on Human Rights (UNCHR) and was re-established as United

Nations Human Rights Council's Advisory Committee under the newly formed United Nations Human Rights Council (UNHRC) (Mihir and Gibney 2014: 557).

The Commission on Human Rights – a subsidiary body of the Economic and Social Council meeting six weeks in a year in Geneva - fell victim to politicization. On the other hand, UNHRC, formed through the General Assembly Resolution 60/251, was to be a subsidiary body under the United Nations General Assembly (UNGA), with the increased number of meetings and sessions (Mihir and Gibney 2014: 560). Unlike the earlier organization, UNHRC decided to arrange regular meetings throughout the year, with at least three sessions per year (Mihir and Gibney 2014: 561). UNHRC was quick to respond to the latest HR crisis compared to the UNCHR for it needed the approval of only one-third of the members to convene a special session (Mihir and Gibney 2014: 561). A further improvement in UNHRC, Universal Periodic Review (UPR) was of particular significance to a single party ruled state like China, for it could no longer escape from criticism for not being a party to a specific treaty.

It is impossible to talk about HR in China, without referring to Tiananmen Massacre, which resulted into a whole new economy of HR studies in China and the generation of a gamut of literature on Tiananmen Massacre and the aftermath. As a result, the approach of the Chinese establishment to HR issues at the international forums since 1971, when it was granted the representation in the UN, has primarily been realist instead of ideological. The Massacre was also nested in the context of the collapse of Soviet Union in Eastern Europe that the Chinese Communist Party (CCP) interpreted as the failure of the democratization process in Eastern Europe because of the uncritical acceptance of Western political ideas (Chen and Chen 2016: 1). It made the Chinese establishment wary of replicating any such mistake in its territory, thus, consolidating further control on dissent. So, whatever reforms took place regarding HR within China were mainly an offshoot of its socio-economic transformations, instead of any paradigm shift in CCP's approach to HR. Still, to completely underestimate any cooperative behaviour on the part of China at UNHRC may not be fair to the purpose of this study.

NGOs are the most critical dimension of the interaction between UNHRC and China. The evolution of HR NGOs is representative of ingenious improvisation of techniques in influencing deliberations and outcomes at UN. Naming and shaming is gradually being replaced by “private meetings and cooperative information sharing, offers of concrete policy proposals, and technical assistance” (Mertus 2005: 5). The very field of HR has diversified into many specialized areas. Advocates of HR no longer target only the states, but also monopolistic transnational entities and financial institutions (Mertus 2005: 5), usually supported by the respective states. Hence, there is an equal diversity of literature available on the penetration of NGOs in state-led IOs.

The in-depth theoretical literature generated by the long existence of the UN HR mechanism makes “human rights” an ideal subject for a conclusive study. While the initial years of the discipline, particularly within the framework of UN, were dominated by the western actors, the last three decades have been largely disruptive for the changes it brought were not anticipated by the traditional actors of the world politics. Within this time and space, China has emerged as a prospective superpower of very different character than the earlier Cold War powers, the US and USSR, and even more poles apart to the colonial powers like Britain, France or Japan of the initial decades of 20th century. Unlike the US, China did not invest a heavy intellectual and financial capital, in setting up the institutions of HR; rather it received those institutions. And even when China did participate in the setting of UN HR institutions, specifically UNHRC, it is not comparable to the unilateral power exercised by US post the Second World War. Given the relative newness of the phenomenon of China’s “rise”, a significant part of literature in the concerned area is concentrated on the hegemonic influence of US in shaping the international HR discourse, that too in a unipolar world. The identity of US is very well settled in these studies, more so in an atmosphere of Cold War, when politics and identity were clearly laid out in a binary. China, on the other hand, is a special case for the fact that it has the capacity of a developed country but identifies itself with the developing world (Kent 1999, 2009). And this provides it the ability to cross over to either side with relative flexibility.

Besides that, the literature on HR in China is spread across two dimensions, that is, political science theory and Area Studies (Chen and Chen 2016: 2). While the political science theory, specifically IO theory, in this case, is based mainly on neutral conceptual understanding, Sinology, on the other hand, places concepts in a particular context and then evaluates their relevance. The ability to bring these two aspects together in this study imparts it an inter-disciplinary character and tries to hold a common ground between abstract logic and culturally subjective interpretation. What gives IO theory an edge over other theoretical tools, is the ability to derive information from the very act of communication, even if the outcome is mostly confrontation.

Literature Review

This study to understand the role of China in the UNHRC, first of all, surveys the various discourses existing in China's political and philosophical intellectual history. In that respect, Robert Weatherley, in his book *The Discourse of Human Rights in China: Historical and Ideological Perspectives* (1999), has done the most extensive study on the unique historical trajectory of HR discourse in China from Late Qing to early 1990s. Since he mainly focuses on the mainstream narrative, Stephen C. Angle's *Human Rights and Chinese Thought* (2002) comes handy in providing insights into the heterodox thoughts that challenged Confucian orthodoxy and reiterated during the Democracy Wall Movement. John King Fairbank and Merle Goldman's *China: A New History* (2006) is a comprehensive account of Chinese civilization over four millennia, with sections dedicated to the Republican period discussing the emergence of a new kind of civil society during this time that introduced western ideas in the Chinese political discourse. Exploring it in greater depth, Marina Svensson's *Debating Human Rights in China: A Conceptual and Political History* (2002) dwells on the challenges faced by Confucian orthodoxy on individual expression, and the monopoly of power exercised by Mao in systematically undermining HR in pursuit of communist ideology. Svensson (2002, 2017) has also written detailed accounts of cyber dissidence and the ongoing development of a repressive internet policy in China. Andrew Nathan (1994), in his assessment of HR in Chinese foreign policy, talks about the impact of Deng Xiaoping's liberalization policy and China's attempt to

influence international HR institutions, which Chen Dingding (2009) explores from a constructivist perspective of identity transformation of China. Rosemary Foot, in her book *Rights Beyond Borders* (2000), goes on to focus on China's accelerated entanglement with IOs, both intergovernmental and non-governmental, on the issue of HR in the background of Tiananmen Massacre and the changing response of western states towards China. Merle Goldman, in addition, surveys the response of various sections of Chinese society to state repression in the book *From Comrade to Citizen: The Struggle for Political Rights in China* (2005).

On the official HR discourse, China's White Paper titled "China's Human Rights Situation" (1991) is the kernel of China's stand on cultural relativism. Another official Chinese document used is "Human Rights in Xinjiang: Developments and Progress" (2013). Other than that, Peter Van Ness (1999) looks into the new discourses that have emerged in China because of the interaction of communist and capitalist ideas. A professor in Fudan University, Zhongqi Pan, in his book *Conceptual Gaps in China-EU Relations: Global Governance, Human Rights and Strategic Partnerships* (2012) sheds light on China's indigenous brand of democracy and sovereignty. At the other end, Blackburn (2011), Adaora Osondu-Oti (2016) and Ian Taylor (2007) talk about the contradictions inherent in China's stand on cultural relativism, sovereignty and, non-interference.

As far as China's engagement with UN HR regime is concerned, Ann Kent's most relevant work *China, the United Nations, and Human rights: The Limits of Compliance* (1999) examines the defensive diplomacy practiced by China at UN post-Tiananmen and the instrumental engagement with various UN bodies dealing with HR. Since UNHRC is a relatively new organization, a number of opinion pieces have been sourced online. Andrea Worden (2017, 2018), an HR activist and lawyer, for instance, has written on a news and commentary website, China Change, on China's attempt to change the language and character of UNHRC by intervening through resolutions and other processes. Rosa Freedman (2013), Meghna Abraham (2007) and Paul Gordon Lauren (2007) have further provided detailed accounts of the debates during the formative years of UNHRC, its practices, politicization and theoretical aspects. Particularly on the influence of China on

Asian countries at UNHRC, Rana Siu Inbodan (2014) offers useful insights in a journal article. Angela Stanzel, Jérôme Doyon, Heike Holbig, Jean Christopher Mittelstaedt and Yevgen Sautin (2017), on the other hand, have taken a deeper look at President Xi Jinping's personal political philosophy and its integration with the Chinese diplomacy at international forums.

Moving on, Erik Voeten (2011) and Thomas Risse (1999) specifically examine the process of socialization of oppressive states in an IO. In respect of which, Alan Michael Wachman (2001) makes insightful comments on the diplomacy of shame practiced against violent state behaviour at international forums, especially by NGOs. Again, primary documents such as Aide Memoir (2006, 2013) are used to extract information on the pledges and commitments undertaken by China during the proceedings of UNHRC. As far as comments on resolutions introduced by China are concerned, all the primary information is available on the official website of the Office of the United Nations High Commissioner for Human Rights. The text of the Vienna Declaration and Programme of Action is also accessible there. Press Release on the formation of UNHRC has been retrieved from the UN's official website. Official statements by US representatives at UN can be accessed at the website of Permanent Mission of the USA to the UN. China's state media agency Xinhua has also been repeatedly referred to.

On the theme of China's HR performance during the Universal Periodic Review, Hilary Charlesworth and Emma Larking (2014), and Anja Mihr and Mark Gibney (2014) provide detailed information about the underlying mechanism of UPR, including a commentary on the precepts and practices of the process. Rhona K.M. Smith has most comprehensively critiqued on the first round of UPR. However, not many secondary sources are available on the second UPR cycle. Using China as a case study, Smith (2011) examines whether UPR is an improvement on the earlier discredited process of evaluation of HR record; and then goes on to discuss the impact of a large state on the outcomes of UPR compared to a small state (Smith 2011a). In continuation, Smith (2013) deconstructs the perspective of member states of the UN towards the HR record of Permanent Five in the first cycle of the UPR and the particular contributions of China to the process (2014). All the primary

material on UPR has been sourced through the official UPR website, which includes the National Report, a compilation of UN information, a Summary of Stakeholders, Review of the Working Group, Outcome Report, Oral Statements to the Outcome Report by various stakeholders and finally the Follow-up reports submitted by the NGOs. The website also makes available quantitative data on UPR.

With regards to the analysis of the two UPR cycles, Walter Kälin (2014) dives into the possibility of UPR merely ending into a ritualistic exercise. At the same time, Reis (2016) investigates the extent of the influence of China during the UPR rounds and China being a negative player on the forum. Paul Chaney (2018), in the context of the debate on religious freedom in China, surveys the state of China's local NGOs. The quantitative study on the two cycles of UPR, done by Juxiang Mao and Xi Sheng (2016), comments on the informal procedural modification in UPR indicative of the dilution of UPR mechanism. In the concluding section, IO theory as discussed by constructivist scholar Martha Finnemore (1993) is applied to investigate the norm educating role of UNHRC. Ramchandra Guha's (2018) article on the website of The Wire, about China's lack of soft power deterring its progress towards the superpower status, has also been incorporated in the study. Kenneth W. Abbott and Duncan Snidal's (2001) arguments on the motivation behind a state's desire to act through an IO are revelatory in understanding the nuances of the functioning of an IO. In his article on the relevance of intergovernmental organizations, Joel E. Oestreich (2011) has discussed various theoretical perspectives on it. Richard T. Cupitt, Rodney L. Whitlock and Lynn William Whitlock (1996) have further explained the characteristics of IGOs, its durability, and stickiness. And, Sonia Cardenas (2004) makes interesting comments on the flaws in the current methodology for assessing compliance and the possible alternatives.

Throughout the study, opinions have been taken from prominent international NGOs, such as Human Rights Watch and Amnesty International, mostly in contradiction to the state's narrative. In general, there is a lack of online access to indigenous Chinese literature on the issue, for not so good relations between India and China. Language is another important barrier as most of the native scholars prefer to write in Chinese.

Literature Gap

As seen above, there is enough literature available on China in respect to UN HR regime, however, the same has not been contextualized within the IO theoretical perspective, which is important for the fact that this study, in an attempt to examine the role of China in UNHRC tries to investigate the nature of UNHRC as a forum and its performance in socializing China into international HR norms. Considering that, IO literature regarding the same provides a focused framework for analysis.

Purpose, Scope and Rationale of the Study

This study as well the UNHRC considers Articles 1-30 enshrined under Universal Declaration of Human Rights (1948) as the source of ‘human rights’ definition and claims. Given that, all the debates and discussions on human rights record have been critically analyzed under the same framework. In addition, clauses under UN Charter and UN Treaty Conventions have been considered.

As far as the scope of this study is concerned, it is limited to UNHRC in its attempt to understand the processing of Chinese discourse on human rights at a specific forum, thereby excluding any other UN human rights monitoring mechanism unless relevant for the analysis. The timeline of the study starts from the inception of UNHRC in 2006 up to the latest developments that can be incorporated.

The rationale of the study lies in the fact that China’s rise is operating in a multipolar world, so deriving inferences from the experiences of earlier superpowers is at best partially helpful or not at all. A concentrated study of China’s influence on world politics in general and institutions in particular, can be done by studying its behaviour in UNHRC. Considering that the strongest criticism China has received from the international community is on its human rights record, it is enlightening to understand how proactive and successful China has been in countering that narrative. Moreover, the fact that human rights is the most well-established area of international law and institutional arrangement, it is interesting to see that to what extent China has been able to influence this narrative which has grown only stronger with time.

Research Questions, Hypothesis and Methodology

As per the themes identified in this study, following research questions have emerged as central; a) How unique is Chinese discourse on human rights; b) What has been the response of China to the establishment and functioning of UNHRC; c) How has China's human rights performance come across under the UPR process, and d) What has been the impact of UNHRC on China's human rights policy?

In an attempt to answer the given research questions, the hypothesis formulated is that Human rights consensus in UNHRC has not been able to overwhelm the nature of the political regime in China. Plus, China has built convergences with Asian and developing countries to make outcomes less embarrassing. The research method used for the present study is qualitative, incorporating analytical tools and critical explanation. The in-text citations are adhered to in conformity with the requirements of the Research Manual of the School of International Studies.

Chapter Scheme

Based on the literature mentioned above, the study is divided into five chapters, including the Introduction. Chapter 2, titled "Chinese Discourses on Human Rights" enquires into the dynamics and peculiarities of human rights discourse in China over the years; scrutinizing both the official and the non-official discourse, including domestic dissent and the role of transnational civil society. Further, Chapter 3, "China and the United Nations Human Rights Regime: The Commission and the Council" analyses China's relationship with UN's human rights regime since it became a member; its role during the formation of UNHRC and the influence it exercised on other nations; election politics as well as its overall institutional preferences. This chapter also deals with the thematic debates introduced by China at UNHRC. Chapter 4, titled "China at the Universal Periodic Review", first lays down the precepts and practices of UPR, and then examines in detail the two cycles of UPR of 2009 and 2013; followed by summary observations on the same. Lastly, Chapter 5, that is, Conclusion, ruminates on the main findings of all the preceding

chapters and tests the hypothesis mentioned in the introductory chapter. At the end of the dissertation, references are provided.

CHAPTER 2

Chinese Discourses on Human Rights

The chapter intends to examine the historical evolution of human rights (HR) discourse in China, thereby, scrutinizing the presence of HR concept in traditional Confucianism to the period spanning till the institutionalization of the indefinite rule of President Xi Jinping. Based on the above observations, cleavages between the official and the non-official HR discourse are identified. Further, a comparison is drawn between the western and non-western discourse, hence, underlining conceptual differences or similarities. This is followed by a survey of various perspectives on HR violations in China. And finally, in light of the findings of the Chinese discourse on HR, the chapter highlights the issues and interests China aims to address at the UN.

Historical Evolution of Chinese Human Rights Discourse

Status of Human Rights in the Confucian Philosophy

The Confucian intellectual tradition assessed human worth on the basis of a system of moral inequality in-built in the social and familial status (Weatherley 1999: 37), which has led scholars to concur on the incompatibility of the HR concept with the classical Chinese thought (Chan 1999: 215). Even linguistically, it is a settled fact that there existed no word for ‘rights’ in the Chinese language prior to the 19th century (Angle 2002: 74). Like in many other societies, different systems of thought existed alongside Confucianism, however, what made Confucianism more consequential than any other was the official state support it enjoyed for more than two thousand years (Weatherley 1999: 38). This Confucian scheme of social order was effectively reinforced by the imperial legal system (Weatherley 1999: 37). The maintenance of the Five Relationships (*wulun*) was foremost for sustaining the social and moral hierarchy systematized as Confucian Rules of Propriety (*li*) (Weatherley 1999: 38). One way of maintaining social harmony within the Confucian order was the strict adherence to the “social and familial roles” through the process of

Rectification of Name (*zhengming*), which made sure that people adhered to accurately defined designations and relationships (Weatherley 1999: 42).

Nonetheless, this does not mean that there was no scope for moving up the social hierarchy. The distinction between the Gentleman (*junzi*) and the Common Man (*xiaoren*) could be passed over by nurturing one's intellect, following the correct moral path that made *junzi* "morally qualified" to work as a government officer (Weatherley 1999: 38). Even with the inherited differences, every individual was considered capable of achieving merit so as to enter the elitist social circle and be treated with equality there. The long-sustained political tradition of conducting imperial civil service examination was the most practical manifestation of this idea. Nowhere in the world, had meritocracy been so formally institutionalized. At the same time, this notion of equality demands greater scrutiny for the fact that material impediments could have always nullified such theoretical social rules. What is more, the equality achieved through such merit was rather a "privilege" than a "right-without-condition" that could be claimed in the imperial court. Moreover, in trying to be *junzi*, Confucian ethics dictated overcoming one's own selfishness and cultivate the higher virtue of benevolence for building an ideal society (Chan 1999: 219).

Despite the emphasis on obligations to the state and the society in a Confucian moral system, scholars have pointed out the embedded character of rights in such an obligatory system; wherein, the father has the right to expect filial piety from the sons; similarly masses have the right to expect benevolence from the King in return for their loyalty (Weatherley 1999: 43). The Book of History (*Shujing*), an ancient text, defends the idea of people's right to rebel to remove a corrupt ruler under the concept of Mandate of the Heaven (Perry 2008). Inspired by the above idea, Mencius formulated the doctrine of Benevolent Ruler (Perry 2008). Such a reciprocal harmony of collective rights against the state made the need for individual rights redundant (Weatherley 1999: 49). Though the Confucian idea of embedded rights is similar to the western idea of "rights are correlative to duties", obligations in Confucian order are primary nonetheless (Weatherley 1999: 43). For instance, in such a system, a deviant would have no rights as a human being considering that he/she has failed in performing his or her moral duties. On the other hand, in the

modern HR system, even criminals have a claim to HR as a principle, if not practice. Moreover, the Confucian system encouraged compromise and mediation in a case of conflict to the extent that dragging the issue to the imperial court was considered as disrupting the social order (Weatherley 1999: 46). In line with the same principle, Liang Qichao, a highly reputed scholar of the late Qing period, “saw the collective (principally society) as an “organism” of which each individual represented a single “cell”” (Weatherley 1999: 105).

Neo-Confucianism, which arrived on the scene during the Song era (960-1279), led to the further revival of Confucian philosophy. This new strand of thought advocated the “no-desires” (*wuyu*) way of life (Angle 2002: 75). One of the most influential philosophers of this era, Zhou Dunyi (1017–73) suggested that the sages should not entertain desires in order to achieve a sense of calm and self-sufficiency (Angle 2002: 78). Neo-Confucian teachings about eliminating one’s desires favoured the motives of the emperors throughout the Ming and Qing dynasties (Angle 2002: 83). Zhou’s principle of no-desire was, in fact, a prominent part of the Qing imperial compilation and in addition, the civil service examination quite frequently asked questions regarding “controlling the self” (Angle 2002: 83). On the whole, Confucian philosophy, despite occasional reforms, could not grant the individual the autonomy required to exercise HR as a claim.

From Late Qing to Republican China

Late Imperial China saw the maturing of civil society institutions and individual activism, which fell outside its control (Fairbank and Goldman 2006: 257). This is in great many ways a result of the expansion of the activities of the gentry elite in the public sphere, supplemented by the growth in the Chinese press, education, and business (Fairbank and Goldman 2006: 257). A section of scholars of these times tried to shape western concept in ways to fit into the Chinese model of political philosophy. For instance, the then famous reformer and the translator of western classics Yan Fu, appreciated the penetration of individualism in Chinese society, however, qualified it by stating that it should make the state strong rather than work against it (Fairbank and Goldman 2006: 259). Liang Qichao published his work “On Rights Consciousness” (*Lun Quanli Sixiang*) in 1902 as the part

of his manifesto “On the New People”. It was one of the earliest texts dealing specifically and systematically with the idea of rights (Angle 2002: 141). He emphasized nurturing one’s capabilities to the full extent, but selflessly in the service of the state (Fairbank and Goldman 2006: 259). As a result, as much as rights are considered a limitation on the arbitrary power of the state in the western conception; in contrast, the Chinese version of liberalism that has evolved during this time advocated that the ruler was still to be autocratic, with extensive control on the constitution, parliament and citizens’ rights in order to maintain state’s stability (Fairbank and Goldman 2006: 259).

The May Fourth Movement in 1919 brought in a visible convergence between the Chinese and the Western discourse. Mao, who was himself a May Fourth and idealized the movement as a bourgeois-democratic revolution against imperialism and feudalism. During this phase in history, scholars like Liang Qichao revisited his conception of rights and in later years, believed that one of the major reasons for the weakness of China was the insistence on “giving way” or compromising so as enable social harmony, one of the main credo of traditional Confucianism, which eventually encouraged oppressive conformity (Weatherley 1999: 69). What made the movement more impactful was the fact that it was majorly driven by the intelligentsia who introduced new ideas of science and democracy in favour of their stand against imperialism (Fairbank and Goldman 2006: 268). Being one of the pivotal points in Chinese history when there was a massive student participation directly influencing the direction of the movement, it led to a popular impact on the larger intellectual culture of the Chinese society. Also known as New Culture Movement, May Fourth Movement was an attack on the traditional Confucian values. Constantly emphasizing the new ideas of science and democracy, the participants propounded new ideas of critical, independent thinking (Svensson 2002: 149). As far as the individual was concerned, they believed in releasing him/her from the strict bounds of the family system and filial piety practiced under traditional Confucianism (Svensson 2002: 130). Through individual liberation and academic independence, intellectual liberation was sought to be achieved (Svensson 2002: 130). Interestingly, the movement was also a time of vigorous advocacy of women’s rights, manifested in the huge

appreciation for Henrik Ibsen's play "A Doll House" in various journals of that time (Svensson 2002: 130).

The family remained the main target of intellectual criticism as May Fourthers like Hu Shi, believed that there is a greater linkage between family and society at large (Svensson 2002: 131). Given the anti-imperialist nature of the movement and grievances against the Versailles Treaty, the movement was undoubtedly cosmopolitan in nature and hugely inspired from western knowledge, as many of the participants were educated abroad and had better language skills (Svensson 2002: 131). Foreign intellectuals like Dewey and Laski were, in particular, attractive to the Chinese intelligentsia for their emphasis on social liberalism which emphasized community values, thus, not resting on extreme laissez-faire individualism of the West (Svensson 2002: 132). Dewey, in fact, lectured frequently in Peking as well as provinces (Svensson 2002: 132). Gao Yihan, in his explanation of HR, acknowledged the enabling nature of such a concept. He asserted that people now saw rights as a necessary pre-condition for individual development and advancement of social welfare (Svensson 2002: 136).

During the Republican period (1912-1949) which followed the fall of Qing Imperial rule, Sun Yat-Sen emerged as the most prominent leader whose views even Mao paid respect to. In a context of crumbling democratic experience in the 1920s with instances of "election-fixing, bribery, and intra-party factionalism"; and the Japanese threat at the north-eastern border, Sun Yat-Sen extolled that authoritarianism was the most appropriate response (Weatherley 1999: 71). As the experiment of democracy and individual rights failed to establish a strong nation-state, Sun-Yat-Sen attributed it to people enjoying too many rights and liberties to be disciplined enough to act collectively against the foreign imperialist forces (Weatherley 1999: 71-72). Even scholars like Liang Qichao and Yan Fu, who supported individual rights and democracy till then shifted their preference to a "single-party dictatorship and the restriction of rights" (Weatherley 1999: 73).

Mao's Era

CCP fought against the dictatorship of the Kuomintang accusing it of annihilating people's basic rights. Though Mao Zedong did not believe in the idea of HR, if at all any semblance of the same existed, it was purely defined on the basis of the Marxist principle of "class struggle". The proletariat class enjoyed a greater degree of rights than the bourgeoisie. Furthermore, China followed an isolationist foreign policy which prevented any kind of influence regarding HR by the international community. China's success in the Korean War (1950) was hailed by CCP as a measure of protecting people's rights against imperialist powers. Mao constantly worked towards the Sinification of Marxist ideology by providing a revolutionary role to the peasantry not envisaged in the Soviet-style Marxism. Given the fact that a major populace of Chinese society consisted of the peasantry and industrialization was only minimal, the organization of the proletariat in the Marxist sense of the term was not feasible. So, peasantry came across as a better option than the industrial workers. Mao's rhetoric, most of the times, excessively focused on the resistance against the foreign intervention and ending the internal anarchy persistent since the early years of 20th century (Pan 2012: 114). He further predicted a dictatorship of the "united front of all revolutionary classes", to be manifested in a "strong one party system" (Pan 2012: 114-115).

In the early years of his rule, Mao showed openness to different ideas. Accordingly, he launched a liberal policy in 1956 called Hundred Flowers Campaign. The idea behind it was to encourage non-party people and members of the democratic parties to be able to express their opinions on three evils, bureaucratism, subjectivism, and sectarianism; so as to rectify the party (Svensson 2002: 222). Such an idea occurred to Mao for he believed that the greater threat to the party did not come from the counterrevolutionaries, but from the leftists and dogmatists within the party (Svensson 2002: 222). To the surprise of Mao, huge criticism from intellectuals, minorities and workers poured in; criticism in official media called for the strengthening of the inner party democracy, though not deflecting from the official ideology and also, avoided using HR terminology (Svensson 2002: 222). Unable to digest the criticism, Mao labeled the critics as 'rightists'; eventually, unleashing

a whole new campaign for systematic political repression, the Anti-Rightist Movement of 1957. Around 500,000 people were labeled rightist during this campaign leading to expulsion from work and for some, eventuating rehabilitation in labour camps for more than twenty years (Svensson 2002: 223). The whole exercise brought rightist critique into open, which talked about a range of issues like lack of democracy and rule of law, party's monopoly of power, lack of credibility of the legal institutions, the heavy-handedness of political cadres, privileged position of cadres, and so on (Svensson 2002: 224). Though sparse, there were enough references to the HR vocabulary to be considered an important political argument (Svensson 2002: 224).

Despite Mao's disdain towards traditional Confucianism, many of the socialist principles he espoused comfortably continued the Confucian legacy. For instance, by "social nature of man", he meant that individual rights can be properly realized only within a collective social arrangement (Weatherley 1999: 104). He, in fact, went on to suggest that the "individual is essentially a product of his/her society since he/she does not possess sentiments, goals, interests, skills, and knowledge prior to or independently of membership in a social organization" (Svensson 2002: 104). In order to rapidly transform Chinese society into a socialist one, Mao introduced his economic policy of Great Leap Forward (1958-60), which also failed, causing the mass starvation of more than 30 million people. Despite knowing the tragic impact of the policy, Mao continued the operations and purged those who dared to disagree (Ness 2003: 17). Further, the distrust of the bourgeoisie class, inherent in Maoist doctrine, culminated into attacks and political repression of the intellectual class during the Cultural Revolution. All these disasters created a very negative public opinion by the end of the Mao's regime.

Mao attacked the persistent racism plaguing society in US, when he met the African-American radical, Robert Williams in 1963, thus calling upon "the people of the world to unite against racial discrimination by U.S. imperialism and support the American Negroes in their struggle against racial discrimination" (Nathan 1994). Being a staunch nationalist and anti-imperialist, he vigorously supported Third World countries at international forums in their struggle against the same. He advocated the right of "self-determination" and

“national sovereignty” in Third World countries like Vietnam, Palestine and Cuba (Ness 2003: 127).

Deng Xiaoping’s Era

In the Third Plenum of the Eleventh Central Committee of the CCP, held on December 1978, Deng Xiaoping introduced his reform agenda. As a result, China began to transform its “banking, communications and other institutions to comply with the world standards” (Nathan 1994). It also adopted “a criminal procedure code, an administrative litigation law, and other laws with provisions relating to human rights” (Nathan 1994). The whole codification process integrated China with the international HR architecture, thus partially instigating it into recognizing universal HR (Nathan, 1994). China under Deng Xiaoping made a deliberate choice and consistent efforts in that direction to transform its identity from “class struggle” to “modernization construction” (Dingding 2009). Keeping socio-economic reforms as the utmost priority ahead of civil and political reforms, Deng Xiaoping sharply diverged from the approach taken by Gorbachev in his failed attempt of liberalization, therefore, preferring ideas like *xiaokang* (economic comfort) instead of *glasnost* (political openness) or *perestroika* (restructuring) (Perry 2008). Post-Mao era also saw a humbling of CCP in its willingness to admit the errors its leadership made in recent past for depriving people of their basic rights, and in such a move, an official example regarding respect for HR was set up in November 1979, when Mao's designated successor, Lin Biao, and the Gang of Four were criticized in public for compromising with the legal system and overstepping the rights of Chinese citizens (Foot 2000: 102).

The international HR regime had undergone a discernible change in the 1970s as manifested in the activities of the UN HR institutions, the growth in numbers of NGOs, and the rhetorical focus on HR in the administration of US President Jimmy Carter (Foot 2000: 84). Despite deeper engagement with the UN, China had not received much scrutiny regarding HR until the Tiananmen Square student protest. US being pre-occupied with USSR during this time of the Cold War and its business interests being more aligned to a newly opened Chinese economy were the prominent determining factors of such a lenient reaction to China’s HR record prior to Tiananmen Massacre. Acknowledging the lack of

international scrutiny in 1970s and 80s, Foot (2000: 84) is of the view that “the socio-economic changes inside China seemed so striking and potentially so promising that many global actors who under other circumstances might well have been expected to take a lead remained watchful and passive”. Beijing took a more cooperative stance on many policy-based issues in the UN, the international financial institutions, and disarmament negotiations (Foot 2000: 84). Beijing's participation in HR bodies and signing of some of the international conventions, for instance against torture, was representative of its growing acceptance of the global HR norms and a recognition to adhere to some of the basic HR principles to enable its full participation in the international community (Foot 2000: 84). The situation, on the other hand, was different on the human rights NGOs front in China. The opening up of Chinese economy unintentionally led to the influx of transnational NGOs who not only exposed the HR violations so far ignored but also collaborated with local activists. The Amnesty International, in particular, announced a specific research programme on PRC in 1976 (Foot 2000: 86). It started asking for information from the Chinese government on various HR violations; such as enquiring about the fate of those arrested after the April 1976 demonstrations (Foot 2000: 86). In a further intensification of its efforts, Amnesty International assembled information about the dissidents in China and then, adopted some of them as prisoners of conscience (Foot 2000: 86). The 1978 Amnesty report drew attention to issues like arbitrary arrest, the use of torture to secure confessions, and unfair detention without trial (Foot 2000: 86). At the same time, it started an evaluation of the civil and political rights specified in the then new 1978 constitution and in the wake of introduction of modernization policies (Foot 2000: 86-87).

Tiananmen Massacre and the Aftermath

The aftermath of Tiananmen Massacre entailed the flight of a huge number of Chinese dissidents to other countries, especially the US, who took active policy measures to ease the process of granting US citizenship to them. This led to an unprecedented awareness of the HR violations within China among the general public. Outside China, there was a greater scope for the dissidents to organize and mobilize support in favour of HR. Further actions on the part of US entailed “military sanctions” and the Congress tried to link the

advancements in China's HR practices with the granting of its Most Favoured Nation status (Weatherley 1999: 117). As much as China did not show much aggression in the 1990s in defending its decision during Tiananmen protests, it exercised active power at international forums when it entered the 21st century as a more powerful nation. On most occasions, China attempted to shape the international HR discourse in ways that were favourable to its own state interests (Inboden and Chen 2012).

Regarding the civil society in China post-Tiananmen Massacre, Merle Goldman (2005: 67) acknowledges the adaptation of civil society groups into apolitical formation so as to escape the state repression, especially in the closing years of the 20th century; given the fact that strong protective laws were absent and a broad social base was not available. Also, she emphasizes the fragmented nature of Chinese middle class in the late 20th century to be resulting in a tangible progress towards democracy (Goldman 2005: 14-15). And as far as business class is concerned, again the lack of protection of property made it highly impossible for them to join hands with the dissenting section (Goldman 2005: 228). Independent HR organizations are still not allowed to exist or take part in any international activity (Svensson 2002: 266). Even at the official level, very rarely opinion is sought from other stakeholders.

Despite all the impediments, in the new century dissent has only increased in China, thanks to the phenomenon of internet. The Chinese government has reacted fiercely by blocking social media platforms like Facebook, Google, YouTube, Twitter, Instagram, and many other news organizations' websites. Under President Xi Jinping, there has been an increasing control of the Internet through new regulations and laws, latest being the adoption of a Cybersecurity Law in November 2016 that further restrains online access and intensifies surveillance, crackdowns on bloggers and HR activists, and most importantly, the establishment of a new body, the Central Leading Group for Cybersecurity and Informatization to monitor the developments in this field (Svensson 2017). With time, Xi Jinping has strengthened his hold on the party, for instance, in an apparent move to wipe out criticism within the party, President Xi Jinping conducted Cultural Revolution era's 'self-criticism' campaign, wherein the party officials scrutinize their behaviour and admit

discrepancies. This has implications for the inner-party democracy. In the garb of the anti-corruption campaign, many of Xi's critics have been purged. Orthodox Confucian values have seen resurgence in China under Xi Jinping which can further stifle dissent under the garb of espousing the cause of social stability.

Official Discourse

Collective Rights over Individual Rights

After the setting up of PRC, a major source of HR discourse in China was Mao whose single-party rule disseminated a highly centralized narrative. The Marxist-Leninist state ideology delineated the rights enjoyed by an individual based on his/her class status. The Confucian idea of placing the 'self' lowest in instances of conflict that threaten social harmony and Marx's absolute dismissal of the idea of rights juxtaposed well enough to facilitate an effortless continuity from late Qing to Mao's China. Marx's main contention against the idea of rights was its tendency to encourage pre-occupation with the self, atomistic behaviour that evokes no concern for the larger welfare of the society (Weatherley 1999: 84). Also, this Marxist concern for a larger collective good aptly relates to the primacy of socio-economic rights that can be traced throughout the Chinese history and is not simply an innovation of Maoist China. The economic welfare of the masses has been considered an appropriate parameter for judging the legitimacy of the imperial authority, an idea going back to Confucius of 600-500 BC and passed on to Mencius in 400-300 BC (Perry 2008). Basing his ideas on Marxist ideology, Mao envisioned China as a "people's democratic dictatorship" wherein the locus of sovereignty existed within the four concentric circles (Goldman and Lee 2002: 401). The hard and heavy center consisted of the working class, which was to exercise hegemony through the party representing it (Goldman and Lee 2002: 401). Next to the center, were the peasants considered to be the most reliable ally of the proletariat (Goldman and Lee 2002: 401). Then came the "petty bourgeoisie" who were principally seen as exploiters, therefore, largely supposed to act as followers (Goldman and Lee 2002: 401). Lastly, the "non-people" who were believed to be hostile to the revolution (Goldman and Lee 2002: 401).

By the end of the Maoist regime, China had taken first few steps for integration with the international community. And there as well, it constantly prioritized rights pertaining to a larger collectivity, such as national self-determination, genocide, development, racial discrimination and so on. With Deng Xiaoping's reform initiative, a whole new Reform-Leninist discourse grew in the conservative Chinese intellectual circle, which accepted the distinction between Marxist and capitalist HR concepts (Ness 1999: 122). The Marxists drew attention to certain "social relations" that have given rise to the idea of HR at a particular "historical stage of economic development" (Ness 1999: 122). Capitalists, on the other hand, consider HR as "abstract" and "naturally innate" to humans so as to protect "private property" (Ness 1999: 122). So, in the Chinese political ideology, capitalist ideas stand in contradiction with its "socialist" system, even when it has accepted the developing market economy model (Ness 1999: 122).

The Developmentalist discourse, which figures prominently in the Chinese government's rhetoric, focused on economic progress as the benchmark of emancipation, at the cost of environment degradation, democratic values and civil and political rights (Ness 1999: 122). It tended to rely on non-socialist texts (Ness 1999: 122). Marketization was to be carried out without "destabilizing" political structure of China (Ness 1999: 122). Such ideas were also inspired from the economic wonders achieved by Taiwan, South Korea and Singapore under the conditions of "political stability" (Ness 1999: 122). Furthermore, the government tried to deflect criticism on China's HR record and call for democratic rights at international fora by actively rallying for development-enabling-rights narrative in UN with the support of Third World nations.

Apart from that, the White Paper on Human Rights released in 1991 in an attempt of image makeover after the June Fourth Incident. It was the first serious instance of official recognition of the concept of HR by China. It introduced a whole new branch in the Chinese legal practice. The vocabulary used in 1991 White Paper undoubtedly reflected a great deal of continuity from the Mao's counter-discourse to US HR discourse; but at the same time, it was placed in a post-Cold War set up. In a background of "end of history" debate by Francis Fukuyama, it was not possible to dismiss HR simply as a "bourgeoisies

construction”. Other than the recognition of HR concept, the document focused on the development discourse as a concern of utmost importance; thus, sidelining the ideological connotations, which in many ways intersected with the “end of history” debate. Moreover, the “right to subsistence” (*shengcunquan*) was conspicuously placed in the 1991 document reinforcing the implicit idea of a hierarchy of rights and the ability to provide it as the primary yardstick of the legitimacy of party-state. The same was restated in the State Council White Paper of 2000, entitled “Fifty Years of Progress in China's Human Rights” (Perry 2008).

Collective rights are pre-eminent in the opinion of many pro-establishment Chinese scholars as they see rights as a form of interests fulfilled within an intricate web of social relations. For example, Li Buyun, a legal scholar who was the associate director of the Chinese Academy of Social Sciences’ Human Rights Research Center, famously wrote in 1992, “The foundation of rights are interests. In essence, the relationship of rights and duties between people is a kind of interest- relationship” (Angle 2002: 216). However, interests cannot be completely isolated from the “social and productive relations” and these relations evolve with the corresponding changes in “social forms” (Angle 2002: 216). “Social relationships” are in fact co-incident to the “need for rights” (Angle 2002: 216). Again close to deep-rooted traditional Chinese understanding, the scholar locates the existence of rights within the social structure and also asserts the changing nature of rights as the structure changes, the latter part clearly having Marxist influence. Zhang Wenxian, a law professor at Jilin University, is of the view that “rights are a means by which the state, through passing legal regulations . . . allows people to choose and acquire interests that are within the scope of a state’s interests” (Angle 2002: 217). In this case as well, there is a re-assertion of the principle that rights are to be enjoyed by the individual in the service of the state and the state does not owe rights to individuals that fall beyond the scope of its own interests.

Official Idea of Democracy

Call for democracy by protestors has been uncompromisingly resisted by CCP justifying the impracticability of democracy in the context of Chinese society arguing that after the

Xinhai Revolution in 1911, attempts to establish a system of parliament and multiple parties did not succeed; pushing the nation into a state of political and social crisis (Pan 2012: 121). At the same time, the official Chinese brand of democracy has been promoted as a composite of many aspects, such as “socialist political democracy, grassroots democracy, inner-party democracy, deliberation” and so on (Pan 2012: 119-120). CCP aims to strengthen the party institutions through inner-party democracy before it goes on to consider the idea of introducing state democracy (Pan 2012: 120). Furthermore, a serious application of intra-party democracy will allow the party to establish “political harmony within inner-party bipartisanship through negotiations” (Pan 2012: 120). As far as state democracy is concerned, the party strongly holds the opinion that Chinese citizens are still not in the position to engage effectively with the national level voting procedures (Pan 2012: 120). But that has not prevented CCP from evolving its own version of democracy that would associate “deliberative democracy” with China’s “political consultative system” by allowing citizens to participate in grassroots democracy (Pan 2012: 120). It would include three areas of participation, which are, villagers’ committees as the vehicle of “self-governance” of rural inhabitants, urban residents’ committees for urban settings, and lastly, a “representative conference of workers and staff” in “economic and social service units” (Pan 2012: 120). In addition to all these steps, in 2000, CCP has further widened the scope of citizens’ engagement with the system by introducing “public hearings” conducted through “people’s congresses” (Pan 2012: 120).

Furthermore, in a potentially positive development, the National Human Rights Action Plan passed in 2010 has facilitated state-society collaboration (Guo and Li 2011: 117). Along with the government agencies, the contributors include leading Chinese universities, research institutions, NGOs and private think tanks (Guo and Li 2011: 117). The Plan lays out the arrangement for protecting 22 HRs under three categories: social guarantees, education and environmental rights of the people (Guo and Li 2011: 119). On the particular issue of religion, the document asserts that China is willing to further the freedom of religious belief so that “religious circles” can contribute in enabling social cohesion and economic development (Guo and Li 2011: 120). The Plan has been widely considered a response to UN’s call for pursuing a national HR action plan (Guo and Li 2011: 121).

Cultural Relativism vs. Universalism

The 1991 White Paper on Human Rights has been primarily understood as a Chinese foreign policy statement as it purely represents the official party line given that only the party officials participated in the drafting process, hence, omitting any public consultation. Associating the standards of HR with the specific historical trajectory of nations, the Chinese government in the 1991 document clearly highlights a “culturally relativist” template to assess HR record of any country. Interestingly, the document blames three historical processes, which are, imperialism, feudalism, and capitalism, for the violation of HR in China (Government of People’s Republic of China 1991). Even later in 1993 at the United Nations World Conference on Human Rights in Vienna, Liu Huaqui as the head of Chinese delegation categorically restated the cultural relativism argument asserting that “the concept of HR is a product of historical development...one should not and cannot think of the HR standard and model of certain countries as the only proper ones and demand all countries to comply with them” (Angle 2002: 1). Pursuing the same political discourse, the Chinese government in its 2000 White Paper has maintained that rights had existed in China before foreign imperialism and as a matter of fact, it was the foreign aggression that caused the collapse of the then existing rights structure (Perry 2008). Inferences clearly indicate that Chinese rights discourse is chiefly directed towards foreign intrusion instead of taking stock of the internal contradictions, an approach that is not uncommon in post-colonial states. For a major part of the existence of international HR diplomacy, such states have found themselves in a defensive posture given the incentives enjoyed by the West for being the first one to institutionalize and invest in intellectual capital regarding HR diplomacy. Consequently, national independence and commitment to an orthodox notion of state sovereignty have been argued by the Chinese government to be the prerequisites for improving HR standards.

Despite its continuous rhetoric on the cultural relativity of HR standards, China has simultaneously tried to placate the international political community by expressing its unwavering allegiance to the principles of UDHR in the 1991 White Paper on HR (Government of People’s Republic of China 1991). Even the four constitutions (1954,

1975, 1978, and 1982) of China promulgated successively conform to most of the provisions of the UDHR and the covenants China signed by then, in the special chapter on the rights of the citizens (Nathan 1994). Some of the important exceptions that still need attention include “the absence of a presumption of innocence in the criminal process, the absence of a freedom of legal residence, and the absence in all but one Chinese constitution of the right to strike” (Nathan 1994). However, the apparent presence of HR in Chinese constitution should not blind one to the question whether citizen’s rights and HR can be justly equated to each other.

Sovereignty and Chinese Minorities

As far as Chinese understanding of sovereignty goes, they perceive it as “entitled rights” (Pan 2012: 20). “Territorial integrity, non-interference, independence, and equality” have found frequent mention in discourse forwarded by Chinese establishment (Pan 2012: 20-21). The Five Principles of Peaceful Coexistence, propounded by Mao Zedong and taken forward by Zhou Enlai, rests, defines sovereignty as “mutual respect for territorial integrity and sovereignty, non-aggression, non-interference in internal affairs, equality and mutual benefit, and peaceful coexistence” (Pan 2012: 21). Chinese government prefers to see sovereignty as inseparable and nontransferable; CCP is apprehensive that once it parts with the governing power, then it will ensue an irreversible process (Pan 2012: 21). Building on the above understanding, the notion of HR is a very paternalistic state concern and driven mainly against foreign annihilation. Furthermore, the 1991 document lauded the Chinese government for its achievements in the last decades in respect to HR, but failed to acknowledge some of the major shortcomings.

A strong challenge to China’s sovereign boundaries comes from certain minorities that claim a political history different from that of China. Two important minorities that have attracted international attention are the Tibetans and the Uighur Muslims of Xinjiang. As per the official reports, Old Tibet was extremely feudal and mired in stagnation and it was the Chinese government that facilitated the transition towards the modern economy (Government of People’s Republic of China 2013). The democratic rights and regional autonomy provided by CCP ushered in social reforms, providing protection to its unique

folk culture (Government of People's Republic of China 2013). As far as Xinjiang is concerned, the locals have termed China's presence there imperialistic which caused the separatist movement called East Turkestan Islamic Movement in the 1990s. However, China claims that Xinjiang is an "inseparable part of the unitary multi-ethnic Chinese nation" since the rule of Western Han Dynasty (206 BC - 24 AD) (Bhattacharji 2008). In order to check the separatist tendencies, Chinese government has enhanced economic engagement with the region and assured that sources of support from outside, especially the neighboring regions that are ethnically and linguistically similar to Uighurs, are inaccessible to the locals (Bhattacharji 2008). Officially, Chinese government maintains that PRC rescued Xinjiang from an oppressive feudal class and religious hierarchy, introduced modern agriculture and manufacturing industries that promote development, expanded employment and allowed equal employment opportunities and also, provided protection to the spoken and written languages of minorities (Government of People's Republic of China 2017).

Freedoms in the Cyber Space

The biggest source of dissent in China in the 21st century has been the internet, causing unprecedented disruption because of the increasing penetration of technology in society. Same became a contested issue in Sino-American relations after former Secretary of State Hilary Clinton in 2010 put the issue of Internet freedoms on the top of her international political agenda (Svenssson 2017). China's 2010 White Paper on the Internet reaffirms the importance of the Internet for economic development, but also defends the fact that Internet is under Chinese sovereignty and the concern for national security legitimizes regulating its use (Svenssson 2017). This means that China intends to heavily censor the Internet, prevent its citizens from accessing the so-called harmful content available on foreign websites, and most importantly, blocking social media platforms such as Facebook and Twitter (Svenssson 2017). However, this does not prevent the government from using such technologies for propaganda or making governance more efficient (Svenssson 2017). President Xi Jinping has expressed his vision of a "strong Internet nation (*wangluoqianguo*)" where Internet sovereignty is the main contention (Svenssson 2017).

Therefore, in the view of the Chinese government, Internet does not exist as a borderless and free space where individuals are free to create and connect, or exercise anonymous speech and maintain privacy using encryption tools (Svensson 2017).

Non-Official Discourse

Individual Rights

The non-official discourse has mainly been a result of the dissenting voices, putting across alternative models or reiterating principles that have long gone out of practice. Mao's ideas went relatively unchallenged during the first decade of his rule because of the successful legacy of his work during the preceding turbulent times. However, the failure of collectivization schemes like Great Leap Forward made liberal intellectuals openly criticize Mao's blunder. Following the Cultural Revolution, an onslaught on individual rights, made the situation even worse giving rise to intra-party factionalism. Even somebody with the reputation of Deng Xiaoping could not escape political purges, and when the time came to redeem himself, he was not able to openly reject Mao's legacy but adjust his disguised criticism as a misinterpretation of Mao's thought. All in all, Mao's legacy became the linchpin of the legitimacy of CCP, criticism against which by scholars has not been tolerated by the government, thus greatly muffling individual's right of freedom of speech. Such as, in an act of revisiting Mao's legacy, prominent liberal economist Mao Yushi who was himself a victim of Cultural Revolution, published an article "Returning Mao Zedong to Human Form" in 2011, which attacked the God-like stature of Mao and how he has yet not been brought to account for the Great Starvation of the Great Leap Forward, excesses of Cultural Revolution and personal power consideration that trumped over national welfare (Bandurski 2011). However, in spite of the government repression, the reformers in China have been using the failures of Mao's legacy as a case in favour of a more pluralist government (Hornby and Hancock 2017). Those who have dared to speak against Mao's legacy have faced severe crackdown and official condemnation as "nihilistic" interpretations of Mao's legacy (Hornby and Hancock 2017). Top judges like Zhou Qiang have denounced western institutional arrangement of an

independent judiciary while defending the legacy of heroic historic figures (Hornby and Hancock 2017). Thus, the individual right of freedom is under constant threat in China.

On the death penalty, Amnesty says that there are “more executions in China than the rest of the world combined” (Amnesty International 2017). However, there is also a certain degree of public support in favour of government’s handling of HR violations. Having achieved visible economic growth in the last few decades, CCP, according to Ming Wan, is substantially popular among the politically consequential sections of society and therefore, “dissident movements” are not always entertained by this group (Qi 2005). As far as treatment of minorities is concerned, Liu Xiaobo, the Chinese activist who won the Nobel Peace Prize in 2010, opined that the lack of freedom to Tibetans has been deliberately cast into a conflict between Han and Tibetan population by the Chinese government (Xiaobo, Link and Martian-Lio 2012: 264).

Following the “Reforms and Opening Up” campaign, Democracy Wall Movement (1978-79) activists, still unimpressed, raised a call for Fifth Modernization, that is, democracy. Wei Jingsheng, one of the most famous radical activists of the movement; also the editor of the magazine Explorations, drew a link between the idea of rights and equality in the sense that HR are those assurances or protections that are equally provided to everyone by the state (Angle 2002: 215). Against the government’s claim that it has the sole preserve of providing rights to its citizens, Wei argued that HR are not simply subjects of legislation and government’s will, but have objective standards which go beyond these controls (Angle 2002: 215). Despite defining HR as natural and instinctive, Wei nonetheless maintained that HR are grounded in primary-level social relations; by which he meant the social relations that are a product of man’s basic relations instead of those constructed artificially by men (Angle 2002: 215). Thus, as much as Wei prioritized individual rights against the official discourse of collective rights, these rights, without doubt, emanated from the society. Moreover, he considered rights as opportunities required to lead a normal life, by which he meant that rights are not guarantees of anything (Angle 2002: 215). Eventually, the whole point of such a scheme of HR is to achieve a unity of interests (Angle 2002: 215). Interestingly, seeing rights as interests instead of guarantees, which adds a

utilitarian dimension to the discourse, can be considered a uniquely Chinese contribution to the understanding of the concept of HR. It is worth noting that Confucian value of prioritizing the society before the individual has been held sacred even by the dissenters and not just the officialdom. Though its form differs in the case of non-official discourse and the mode of its realization has been comparatively open to a larger debate.

Advocacy of Democracy

By the mid-1970s, dissident groups, such as, Li Yizhe from Guangzhou openly attacked CCP for forging a new elite class that actively suppressed calls for democratic rights and gravely abused its power (Foot 2000: 85). Later, during the Democracy Wall Movement, Wei Jingsheng in his essay “The Fifth Modernization” opines that democracy in China is possible only when people are free to choose their representatives and replace them whenever power is abused (Bary, Theodore and Lufrano 2010: 498). He further maintains that modernization and democracy are inter-relations as one enables the other (Bary, Theodore and Lufrano 2010: 499). Most importantly, in his essay, Wei Jingsheng presents a critique against the primacy of Marxist-Leninist doctrine, arguing that, “democracy is not merely an inevitable stage of social development, as Lenin claimed. In addition to being the result of productive forces and productive relations that have developed to a certain stage, democracy is also the very condition that allows for such development to reach beyond this stage. Without this condition, society will become stagnant and economic growth will face insurmountable obstacles” (Bary, Theodore and Lufrano 2010: 499).

Another pro-democracy movement of consequence is the Umbrella Movement of 2014 which witnessed a large scale collective dissidence for maintaining the comparatively democratic character of Hong Kong; an autonomous region that has experienced a more globalized and open political culture since it was only in 1997 that it became a part of China under “one country, two systems” agreement . Also known as Occupy Central Movement, it demanded “universal suffrage” for the election of Hong Kong’s leader by terminating the practice of pre-screening of the candidates. The protest was based on the principles of non-violence and rule of law. Despite being a largely peaceful movement, it witnessed the excessive use of force by the police, at times without warning (HRW 2015). In response to

the outstanding response to the movement, which brought a new generation of activists to the forefront, most notably Joshua Wong, Alex Chow and Nathan Law, the government in Beijing has been trying to propel stringent reforms in the national security law (Au 2017). Following that, China introduced the clause of “responsibilities” in the State Security Law, which puts the onus on the citizens of Hong Kong to assist in national security; a move that has faced considerable resistance from the locals (HRW 2015). Moreover, the ambiguity in the definition of national security arms the government to curb legitimate scrutiny (Au 2017).

In Defense of Universalism

The reformist liberal right in China has time and again called for more universal values like democracy and freedom, also further deepening of political reforms (Bandurski 2011). Marina Svensson (2002: 299) has specifically noted how local NGOs in China have embraced a universalist approach and provided a very different account of HR struggle compared to the official discourse. This casts a shadow on the cultural relativist discourse of the CCP; which practically means how erroneous the belief in homogenous “Asian values” espoused by China can be. And in this process of conflict, there has been an effective rewriting of history by the local NGOs (Svensson 2002: 299). Such internal developments have aided the widespread acceptance and domestication of the idea of HR in China (Svensson 2002: 7).

Despite the lack of equivalent ideas on HR in Chinese history, it has not impeded the penetration of HR currency in the current socio-political context (Svensson 2002: 11). Instead, Svensson (2002: 70) believes that it is the Asian leaders who are the new orientalists as they monopolize the ‘rights’ discourse in their respective countries. Their primary logic that Asia is characteristically different from West and therefore, their concept of HR is unsuitable in their peculiar politico-cultural environment is as misguided as the old orientalism (Svensson 2002: 70). It absolutely undermines the enormous heterogeneity within the Asian continent (Svensson 2002: 70). Professor Buyun Li, a well-known Chinese scholar, believes that HR does not have to be divided in a binary, as some rights fall somewhere in between and the effort should be at reconciliation of the two (Zhao

2015). He argues in favour of the validity of universal HR on account of three reasons: first, HR are based on “human nature” and “dignity” (Zhao 2015). Second, there are some interests that are basic to all of humanity, such as “right to live, security and personal freedom” (Zhao 2015). And there is a common moral foundation to all of us which does not grant exclusivity (Zhao 2015). Despite having differences with the government, many Chinese scholars agree with the government over the “precedence of right of subsistence” given the current circumstances in the country (Zhao 2015). Further, Dunhua, Xiaohua and Dunhua (2009) opine that the excitement brought about by the economic rise in China has given rise to cultural particularism and sense of superiority which is not only “harmful in practice, but impotent in theory”. Since China can no longer assert superiority based on the ancient memory of Sinocentrism (Dunhua, Xiaohua and Dunhua 2009), it has now turned to particularism which feeds on identifying the opposite and building its identity around it.

The neo-Maoists have generally countered criticism based on universal values by branding liberal scholars as stooges of the West. This discourse emphasizes that the promotion of universal HR is an attempt to destabilize the CCP rule by the ‘capitalist’ states, especially the US in union with the domestic “bourgeois-liberal” section through the strategy of “peaceful evolution” (Ness 1999: 122). At the official level, the Research Institute for Resisting Peaceful Evolution, established in the early 1990s, by then director of the CCP Propaganda Department Wang Renzhi, published articles in support of the above view (Ness 1999: 122). Reacting to the same, liberal intellectuals have time and again pointed towards the apathy of the Chinese state against the HR concept. Liberal scholars of the 1980s like Xu Bing and Yu Keping acknowledged the taboo surrounding discussion on HR in China and how it is not just a bourgeoisie idea unfit in the Chinese context, rather it is very relevant on the ground of common human nature (Svenssson 2002: 262). They further underlined the differentiation between HR and citizen’s right, thus not conflating one for the other; emphasizing the superclass character of HR and rescuing it from the class terminology used in Chinese political rhetoric (Svenssson 2002: 263). As citizen’s right can be legitimately a state preserve, the universal nature of HR widens the scope of citizen’s rights making it a fitting concern for the international community.

Contradictions to China's cultural relativism argument has been raised in other parts of the world, especially regarding its role in the African continent where it has been expanding its economic footprints since last few decades, more so in recent times. There it has been seen as having imperialist tendencies, thus, challenging the legitimacy of its own victimhood. Beijing's economic assistance has expedited the consolidation of totalitarian regimes in African countries and as per its non-interference policy it is the states' prerogative how to use that assistance; but if sovereignty is the essential variable for enabling HR as per the Chinese position, and sovereignty is being effectively used to undermine developmentalism, then there is undoubtedly an inherent contradiction at the heart of Chinese discourse on HR (Osondu-Oti 2016; Taylor 2007).

Chinese Minorities and Human Rights

HR violations in Tibet have received decades of attention given Dalai Lama's strong appeal. Beijing, on the other hand, has attacked the very institution of Dalai Lama and the suggestion of "middle way approach" put forward by current Dalai Lama, as per which he means "the policy and means to achieve a genuine autonomy for all Tibetans living in the three traditional provinces of Tibet within the framework of the People's Republic of China. It will safeguard the primary interests of Tibetans, which are, the protection and preservation of their culture, religion and national identity; for the Chinese: the security and territorial integrity of the motherland; and for neighbors and other third parties: peaceful borders and international relations" (Tiezzi 2015). In a White Paper on Tibet, the government argues that Dalai Lama aims to seize power in the region using the cover-up of the "middle way" (Tiezzi 2015). In an act of defiance against the Chinese authority on Tibet, monks have resorted to self-immolation. Disregarding such incidents, the Chinese government asserts that the investigations by security authorities have revealed that these monks are being manipulated and instigated by the Dalai group itself (Tiezzi 2015).

Measures have been taken by the government to undermine Dalai Lama's influence in Tibet such as the campaign of "patriotic education" (HRW 2000). Meanwhile, Tibetan prisoners continue to be victims of torture and custodial deaths (HRW 2000). Human Rights Watch (2000) estimated that "there are approximately 600 known political prisoners in Tibet, most

of them monks and nuns”. Moreover, the US in its reports has accused “the Chinese government of destroying Tibet's cultural heritage, intentionally moving immigrants to the region, encouraging abortion and sterilization of Tibetan women, restricting Tibetan population growth, and suppressing Tibetan freedom of speech and freedom of association” (Qi 2005). International media organizations complain of access to Tibet being “worse than North Korea” (Shonu 2015). Several organizations, like, US State Department, the Congressional-Executive Commission on China, Human Rights Watch, Amnesty International, Reporters without Border and other NGOs have repeatedly voiced out their concern against the “political repression, economic marginalization, social exclusion and cultural assimilation of the Tibetan people” (Shonu 2015). In the wake of China’s desire to play a leading in climate change negotiations, it is disturbing to know that its government is responsible for the severe environmental destruction in Tibet (Shonu 2015). Again, on the issue of Tibet, the tactics that the regime used against Dalai Lama are the same that it has used against Falun Gong and other popular religions in China, that is, forcing the Tibetans to denounce Dalai Lama, like Falun Gong believers were forced to denounce Li Hongzhi (Xiaobo, Link and Martian-Lio 2012: 265).

After the downfall of Qing Dynasty in 1912, Xinjiang enjoyed “varying levels of regional autonomy” (Bhattacharji 2008). With PRC’s assertion of control of the region in 1949, Uighurs have accused it of colonization (Bhattacharji 2008). The Han Chinese population in the region saw an increase from 6 to 40 percent since the 1950s when the government sent the soldiers of People’s Liberation Army to colonize the region after fighting against the East Turkestan Republic (Bequelin 2009). Xinjiang as a region has a great geopolitical importance for China as it possesses vast unexplored mineral and oil deposits (Bhattacharji 2008). Keeping that in mind, Chinese authorities re-initiated in the 1990s the population transfer drive, also prompted by the instability caused in the region due to the fall of Soviet Union in 1991 (Bequelin 2009). US’s Congressional-Executive Commission on China, in its 2007 annual report, states that China has forced a demographic change in Xinjiang by incentivizing workers from other regions to settle in Xinjiang in the guise of “recruiting talent and promoting stability” (Bhattacharji 2008). This has aggravated resentment among

the Uighurs who complain of job discrimination and undermining their land rights (Bequelin 2009).

Also, the Chinese government has on occasions tried to stifle religious and cultural expression by Uighur Muslim minority (Bequelin 2009). International NGOs in their reports have documented the severe religious repression conducted under “anti-separatism” or “counterterrorism” campaigns (Amnesty International 2017: 118). Moreover, the punishment for these crimes is the death penalty (Bequelin 2009). Plus, the region has on the whole become a police state, thus a fertile ground for exercising arbitrary power (Bequelin 2009). Brutal repression is prevalent in remote areas, far from the scrutiny of international media, dissident Chinese activists and international HR organizations (Ness 1999: 121).

Cyber-Dissidence

The Tiananmen Massacre brought the cleavage on HR discourse in Chinese politics into open, with a symbolic Declaration of Human Rights published in Beijing during Tiananmen protests, which stated that all people are born free and equal and enjoy inalienable rights, such as, right to belief, speech, publication, assembly, association and so on (Svensson 2002: 264). The declaration was made by the activists keeping in their view the passiveness towards HR in Chinese society and widespread ignorance (Svensson 2002: 264). At the same time, it is important to note that the Tiananmen Massacre and globalization coincided and so did the limelight received by the incident. The images of the rebellious ‘Tank Man’ and the urban legends surrounding the protests sparked a chain reaction on the internet.

The deeper penetration of internet in the 21st century has led to a more creative form of dissent, for instance, whenever Chinese government bans the use certain words, it results into a whole new cryptic vocabulary of online dissent. The increased connectivity and availability of online public space brought in by internet gave rise to increased transnational cooperation at the individual level. On the opposite end, one can see a balancing act by the government to infuse orthodox patriotism in order to thwart outside influence in the

domestic political sphere. Both at the individual and collective level, new political ideas were being disseminated not just with greater ease but speed. The New Youth Study Group (*Xin QingnianXuehui*), a group launched in 2000, circulated articles on political reforms to a large audience, highlighting issues of poverty and inequality (Goldman 2005: 188). The group built a website that was able to run circles around the government's electronic firewalls by using overseas proxy servers (Goldman 2005: 189). These cyber-dissidents were eventually arrested and awarded heavy sentences on the pretext that they conducted group discussion without registering with the Ministry of Civil Affairs, which is representative of the high-handedness of the Chinese government on free speech and intellectual freedom (Goldman 2005: 191). While coming to the defence of these cyber-dissidents, public intellectuals like Yue Jie extolled them using terms of Confucian virtues of a strong character, clarity of values and the willingness to sacrifice themselves for a better society (Goldman 2005: 191).

As the access to internet grew, so did the Chinese government's constant suppression of public intellectuals culminating into the circulation of the Declaration of Citizens' Rights on Internet in 2002 (Goldman 2005: 192). The declaration garnered a huge support from intellectuals in the establishment as well as those in the outside sphere (Goldman 2005: 192).

Comparing the Western and Non-western Thoughts on Human Rights

A comparison between the western and the Asian thoughts on HR can be done only at a risk of generalization. Heterodox thoughts have existed in both the parts of the world, however, this work specifically focusses on the mainstream trends. The collective has always been prioritized over the individual in Chinese society, whether it is traditional Confucianism or Marxism. As per the Chinese scholar You Xiling, the concept of ““collective nature or communality” (*gonggongxing*), integral to socialism, is consistent with the orthodox concept “public world” (*gongtianxia*) upheld by the Chinese since the Shang and Western Zhou Dynasties (1600-770 B.C.)”. Weatherley (1999: 102) is also of the view that Marxism came to reinforce an already existing discourse in a new form. On the other hand, most of the western liberal philosophers see the individual as autonomous.

Locke, one of the most influential philosophers on the subject, suggested that individuals have the right to freely pursue their interests in the “state of nature” (Weatherley 1999: 19). Natural rights, therefore, guarantee fundamental freedoms of “life, liberty, and property” (Weatherley 1999: 19). Contrary to that, in Chinese society, it is upheld as virtuous to sacrifice the “self” or keep the interest of the self as last priority in the service of the state or maintaining the social harmony.

The 18th century Enlightenment scholars espoused the autonomous nature of the individual to resist the “arbitrary authority of the Church or the State” (Weatherley 1999: 19). In pursuance of the same, the American and French Revolution of 18th century incorporated the idea of HR in their newly established political system (Forsythe 2006: 3). In the classical liberal view, a just political system based on the equality and autonomy of individuals translated into the fundamental legal rights of an individual (Forsythe 2006: 3). Such a conflict between the state and the religion did not exist in Chinese history for the fact that religion did not exist in China as a separate authority; secondly, imperial China itself made sure that Confucian order was followed. Moreover, under the western liberal theory, human beings possess rights that cannot be violated by the state and these claims are asserted by the individuals against the state or other individuals (Qi 2005). In China, the traditional view of the Mandate of the Heaven and the Benevolent Ruler makes it incumbent on the state to ensure the welfare of its people (Qi 2005). And if the state fails in doing so, people also have the right to rebel.

Another point of contradiction is the universality of HR, which is grounded in the idea of the commonality of human nature and species being. This is contested by the Chinese official discourse on HR, reiterated in 1991 White Paper, that rights evolved in a historical context and considering the fact that China has been a victim of western imperialism which it calls “Century of Humiliation”, Chinese people have been deprived of their rights which the Chinese state now resolves to rectify (Government of People’s Republic of China 1991). Thus, the Chinese official discourse puts forward a cultural relativist account of HR, as per which, same standards cannot be applied to every nation. Through this discourse, China also aims to lay bare the double standards of the West, in particular the US, in

applying the concept of HR. Rooting the HR discourse within the anti-imperialist narrative, it is logical that China attaches too much value with the orthodox notion of sovereignty and within such a notion, HR becomes a domestic concern, causing the reiteration of the principle of non-interference time and again. As a result, Chinese judicial authority considers rights as something granted by the state and not “natural”; goals to be achieved through law (Nathan 1994). These rights are to be defined in ways that they do not pose any limitation on the legal authority itself (Nathan 1994). As this is the case, the individual cases of HR violations being raised in international organizations against China are repudiated by the Chinese officials as they believe it is the state which is subject to international organizations, not its citizens.

The Chinese government has always prioritized socio-economic rights over civil and political rights. After Mao’s death, Deng Xiaoping tried to re-build the legitimacy of CCP by espousing these rights which have questioned its legitimacy during the Great Leap Forward disaster. However, the concept is not new to Chinese society; Perry (2008) asserts that concepts of subsistence and development have real resonance and deep historical connection amongst the masses; and not just a rhetorical tool, driving real political action amongst the masses. In fact, the idea of socioeconomic rights has existed even in West in writing of T.H. Marshall on the “rise of citizenship in Western Europe”, which elaborates on the “idea of social citizenship or the collective right to economic welfare and social security as the highest expression of citizenship” (Perry 2008). As much as there is an acknowledgment of these rights in the international community, there is no hierarchy of rights assumed in the realization of the same. China, on the other, believes that only when socio-economic rights are fulfilled, civil and political rights will be meaningful.

A consensus seems to appear amongst the HR theorist in China, both official and non-official, which roots HR within the social context. In the official discourse, HRs are required for the citizens to strengthen the state. On the other hand, activists like Wei Jingsheng believe that only an individual empowered with HR can contribute to the progress of society. All in all, the Chinese discourse does not acknowledge the ‘state of nature’ argument and sees HR deeply driven towards the welfare of the society or the state.

HRs are seen as a means to the ends, for instance, strengthening the party-state (Weatherley 1999: 102). This idea also has its underpinnings in the ancient Mencian belief that “people are a vital resource of the state” and the Qing theory that “that individual rights were a means to state ends” (Weatherley 1999: 102).

While China continues to adhere to an uncompromised, orthodox notion of sovereignty for conducting international relations, many western nations have seen substantial pooling and loosening of sovereignty at a certain point in history. Europeans, in particular, do not dismiss the idea of sovereignty and the rights it entails, but adds to it the responsibility to explain the legitimate possession of such power under international scrutiny and “make sovereign rights contingent on sovereign responsibility” (Pan 2012: 23). Chinese leadership, on the other hand, is repulsive to such constrained idea of sovereignty as in words of former Chinese President Jiang Zemin “so long as there are boundaries between states, and people live in their respective countries, to maintain national independence and safeguard sovereignty will be the supreme interests of each government and people” (Pan 2012: 21). However, China’s resolute stand on sovereignty has not stopped it from actively participating in international organizations. Rather, the contemporary China is seeking to influence international organizations to serve its interests, more so in the area of HR.

Chapter 3

China and the United Nations Human Rights Regime:

The Commission and the Council

This chapter seeks to offer a bird's view of China's engagement with the UN HR regime, beginning from its participation in the UN Commission on Human Rights (UNCHR) to its membership in UN Human Rights Council (UNHRC) in 2006. The chapter will devote attention to China's role during the establishment of UNHRC as well as its performance in the Council since 2006 particularly with reference to the thematic debates it has initiated. In sum, the discussion could yield a general assessment of China's overall influence on the working of UNHRC.

China's Relationship with the UN HR Regime prior to UNHRC

PRC's official relationship with UN began in 1971 when it gained the status of a permanent member replacing the Republic of China (ROC). The rationale for China's inclusion in United Nations Security Council (UNSC) was the idea that only when China is a member, its socialization can be promoted into the international norms (Kent, 1999: 2). This move did enhance China's involvement in the HR issues in UN, but only to a limited extent. Until 1980, China's support to HR issues in UN General Assembly (UNGA) was limited to the demand for independence of colonized nations, action against racial injustice including apartheid, rights of women and self-determination (Kent 1995). These were in line with China's traditional political concern with collective rights. But in 1977, China chose to modify its stand in favour of civil and political rights of Soviet dissidents when the establishment arbitrarily imprisoned and exiled them (Kent 1995). This change in attitude was, no doubt, happening in the context of the Sino-Soviet split. Later in 1979, China secured a seat in UNCHR as an observer, followed by its full membership in 1982.

In 1984, China's active interest in HR helped inclusion of Chinese diplomat Gu Yijie in the Human Rights Sub-Commission (Kent 1995). In the same year, in spite of the opposition by the Soviet Union and East European countries against interference in internal matters, China extended support for the appointment of the rapporteur to investigate HR

violations in Afghanistan (Kent 1995). To the surprise of all, in 1985, it was followed by its support for a similar examination in Chile (Kent 1995). China's participation in UN HR regime, though limited, only continued to grow with its membership of the various UN Treaty Bodies, such as, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), United Nations Convention against Torture (UNCAT), Convention on the Rights of the Child (CRC), International Covenant on Economic, Social, and Cultural Rights (ICESCR) and Convention on the Rights of Persons with Disabilities (CRPD) . These treaty bodies consisted of committees of independent experts, elected by the member nations, who were supposed to oversee the implementation of the treaty provisions in the state parties.

Nonetheless, there were issues with which China was unenthusiastic. One of the early instances of China's unease with the working of UNCHR came to the fore in 1985 when it was given the responsibility to draft the Declaration on Human Rights Defenders (Worden 2018). As per the definition mentioned on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR), 'human rights defenders' (HRD) is a term used to "describe people who, individually or with others, act to promote or protect HR"¹. HRD must act peacefully and in compliance with the Declaration on Human Rights Defenders. Still, the Declaration faced objections from China along with Cuba and Syria (Worden 2018). They delayed the finalization of the provisions of the draft. As reported by Amnesty International, China and Cuba were initially adamant on removing a clause from the draft Declaration that granted the HRD the right to solicit and obtain resources for their operations (Worden 2018). Later, they attempted to incorporate wordings in the draft that limited the role of HRD to the peaceful opposition of violations of only their own rights to the exclusion of HR abuses suffered by others (Worden 2018). China further supported Cuba in its proposal, aiming to diminish the activities of HRD to its 'humanitarian essence' by creating several limitations on the scope of their work (Worden 2018). Such instances made Amnesty International conclude that the "root problem is that a small group of

¹ <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx>.

governments seem determined to prevent the creation of a useful instrument for the defence of HR” (Worden 2018). Nevertheless, UNGA eventually adopted the Declaration on Human Rights Defenders on 9th December 1998, through consensus (Worden 2018).

China during most of the 1980s focused on honing its negotiating skills at UNCHR through observation, which Ann Kent referred to as “tactical” and “strategic”. It tended to abstain from resolutions regarding HR in particular states (Kent 1995). Crackdown on Tiananmen student protestors in 1989 resulted in intense criticism by NGOs who pressurized even the reluctant parties to acknowledge the deplorable state of HR in China. Despite being a subsidiary body to ECOSOC, the level of NGO participation in UNCHR had been higher than any other UN body (Kent 1999: 53). And by then, these NGOs had also penetrated Chinese borders, thanks to the opening up of the Chinese economy. The spiraling effect of the protests on other multilateral forums, like the European Community and World Bank (Kent 1999: 49) created enough pressure on China to come clean on the horrific incidence. No more was it in a position to deny the applicability of UN norms to its domestic matters, with multiple institutional mechanisms like Secretary-General, UNGA, the Sub-commission for Prevention of Discrimination and Protection of Minorities, treaty bodies and the thematic special rapporteurs or working groups continually reporting on the HR situation in China (Kent 1999: 50).

Early 1990s witnessed UN HR bodies confidently taking cognizance of poor HR record of China for it was not constrained by China’s objections based on prerogatives of sovereignty and national interest (Kent 1999: 51-52). The angry mood against the Tiananmen Massacre manifested in August 1989 when UN Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a resolution through secret ballot denouncing state violence (Nathan 1994). It may be pertinent to note here that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, described as “among the finest institutions of the UN in the field of HR” (Kent 1995: 5), not only works as a mechanism for identifying and responding to gross violations of internationally recognized HR but also as a think tank on the issues of HR (Alston 1992: 126). True, the independent experts serve on the Sub-Commission in their individual, not the official capacity, admittedly

become vulnerable to political considerations which have often influenced their selection (Kent 1995). Despite such vulnerabilities, the relatively sturdy character of the Sub-Commission allowed China to be brought to account.

It cannot be lost sight of that this was the first time a permanent member of UNSC was censured openly for its HR violations (Nathan 1994). Given the fact that these Charter based monitoring bodies were politically oriented, they resorted to naming and shaming strategy to bring China in line with the standards of UN (Kent 1999: 52). Stigmatization, as per Andrew Nathan, “helped human rights organizations in mobilizing psychological and political pressure against violators” (Wachman 2001: 261). By publicizing the HR violations, HR activists sought to make the governments accountable as they try to escape shame and scrutiny by monitoring bodies (Wachman 2001). Risse and Sikkink believe that the “moral consciousness raising” is, in fact, a crucial part of the shaming process (Wachman 2001: 264). Chinese governments’ actions had brought it so much of embarrassment that it could no longer resist the international pressure for reform. The feeling was aggravated when in 1990, UNCHR deliberated on a resolution against China based on investigations of Amnesty International and other HR groups, though it was ultimately defeated (Nathan 1994). In 1991, the news of HR violations of Tibetan people again transpired into a secret ballot vote taken by the Sub-Commission (Nathan 1994). Later in 1992, the Secretary-General himself submitted a report on the state of HR in Tibet (Nathan 1994). The status of HR violations in China had also been discussed in the “meetings of the UN's Special Rapporteur on Religious Intolerance, Working Group on Arbitrary Detentions, Special Rapporteur on Summary and Arbitrary Executions, Committee against Torture with inputs from Special Rapporteur on Torture, and Working Group on Enforced or Involuntary Disappearances” (Nathan 1994), ultimately compelling China to be on a defensive all the time.

As regards to the Tiananmen issue, the 41st Session of the UN Sub-Commission stood out for pressure being exerted on China both by the developed as well as the developing countries (Kent 1999: 56). The forum itself devised protective procedural mechanisms to be able to censure large states in future (Kent 1999: 56). Moreover, the session highlighted

the importance of the participation of NGOs and the expanded scope of individual agency on the forum (Kent 1999: 56). China used its political maneuvers to prevent embarrassing outcomes, but could not stop the inclusion of an item in the Agenda that asked for specific country issues, primarily targeting China (Kent 1999: 57). This was, interestingly, an NGO initiative. Also, representatives from China protested against allowing a ‘criminal’, a person on the most wanted list of China’s police, to address the Sub-Commission (Kent 1999: 57). In response to this, the French expert reminded China that it has no right to impose its domestic laws on people outside its territory (Kent 1999: 57). China, nevertheless, went on criticizing Western countries and Japan for the confrontationalist approach taken in the draft resolution introduced in the UNCHR, as opposed to dialogue and cooperation (Kent 1999: 49).

With China’s growing economic profile in the 21st century, it was much more able to mobilize support and shape outcomes at the UNCHR. No more was it vulnerable or defensive. Even the US mellowed down to garner implicit support from China for the preemptive war against Saddam Hussein in 2003 (Lauren 2007). China, on the other hand, rescued Russia on multiple occasions, for example, when it successfully proposed a no-action motion on a draft resolution condemning Russia’s HR violations (Freedman 2013: 27). Using the Rule 65(2) of the Rules of Procedure of the Functional Commission of ECOSOC, China managed to avoid the “country-specific resolutions by proposing a no-action motion” (Freedman 2013: 27). Passage of the no-action motion forestalled the discussion on the resolution (Freedman 2013: 27). Nonetheless, the leading HR NGOs continued critical evaluation of China’s HR performance. Human Rights Watch’s Executive Director rued that the Commission never mustered enough votes to condemn China as other countries with abusive record kept supporting it (Freedman 2013: 28). Many NGOs were of the opinion that China’s successful manipulation of a majority in its favour in the UNCHR undermined the very legitimacy and credibility of the body (Kent 1995). This reflected the broader trend of politicization of UNCHR whereby states (especially the powerful ones and their allies) became both the judges and the defendants, escaped from disapprobation against them, whereas the smaller states with little influence or power became the easy target (Lauren 2007).

As the discontent over the working of UNCHR grew, so did the calls for its replacement. However, China and a few other non-Western countries were not so enthusiastic about it because of the uncertainties it would entail (Foot and Inbodan 2014). In June 2005, when the members of UNCHR met informally to discuss the proposal on the replacement of the Commission with a Council, as directed in the ‘In Larger Freedom’ Report by UN Secretary-General, Kofi Annan, China officially stated that “it was not yet convinced of the need to replace the Commission” (Foot and Inbodan 2014: 854). Since it had been largely successful in avoiding socialization into the international HR norms, the idea of a new organization made China apprehensive of even more stringent methods of scrutiny and accountability detrimental to its political interests. Regardless, the discussions began at the UN World Summit in September 2005, the largest-ever gathering of world leaders to date (Foot and Inbodan 2014).

China at the Inception of UNHRC

On March 15, 2006, a new body named United Nations Human Rights Council was formed replacing the highly criticized institution, the UNCHR. Adoption of the resolution for the same garnered 170 yes votes and 4 against (Israel, Marshall Islands, Palau, the United States), plus 3 abstentions (Belarus, Iran, Venezuela) (United Nations 2006). As the primary intergovernmental HR body, the organization was responsible for promoting and protecting HR by mainstreaming the HR discourse in all member nations and bringing to account those responsible for systemic violations. China, Ahl (2015) argues, was not very active in the initial phase of the setting up of the UNHRC and instead, opposed its establishment given that it was satisfied with the institutional failure of UNCHR in asserting action-oriented pressure. At the same time, the process of establishing a new organization provided China the opportunity to shape it as per its own preferences, a chance it did not have during the formation of UNCHR. Contentious issues arose over membership criteria, size, composition, election processes, functions, and organizational status, notably whether the Council should be upgraded to a principal UN body (Foot and Inbodan 2014). Since the differences could not be resolved within the limited time frame, many questions were left unanswered; such as, the frequency and duration of Council meetings, procedures

for holding special sessions, details of the peer review process, and the level of involvement of NGOs (Foot and Inbodan 2014). On the part of US, failure to impose its will during the inception of the UNHRC caused friction right from the beginning (Freedman 2013: 150). It was only in 2009 that Barak Obama sought membership in the Council (Freedman 2013: 150). As far as the discussions on the organizational structure of UNHRC are concerned, it entailed the following debates:

Elections

On the question of elections, developed countries like US, activists, and media wanted higher standards for membership compared to the previous organization (Foot and Inbodan 2014). There were still doubts about the scope for politicization in the new organization. So, Kofi Annan initially aimed to have only 15 members in UNHRC in contrast to 53 members of UNCHR (Freedman 2013: 48). Chinese officials were not very positive about the proposal that Council members should be required to meet particular HR standards because China, and many countries with similar record, might have found themselves disqualified to join the Council (Foot and Inbodan 2014). Beijing also opposed a smaller HR body and election to the Council by a two-third majority of UNGA as it would have thwarted the entry of countries with similar views to China into the Council (Foot and Inbodan 2014). On this issue, China was joined by Russia, Pakistan, and Egypt, whose delegations weighed in heavily in support of a more substantial body, no membership criteria, and election by a simple majority (Foot and Inbodan 2014). Moreover, China exercised well enough a policy influence on developing Asian nations without much coercion or inducement, in spite of having considerable differences (Foot and Inbodan 2014). Finally, the criteria for membership rested on the voluntary pledges and commitments made by a country for the protection of HR; which again had a lot of scope for open interpretation. And the election in the UNHRC was to be governed by the majority vote of the Assembly (Foot and Inbodan 2014).

China was also in consensus with other states regarding the geographical redistribution of seats, one consequence of which was the greater representation of the African and Asian countries (Foot and Indoban 2014). There was substantial support from the members of the

Non-Aligned Movement and other developing countries (Foot and Inbodan 2014). This was again in keeping with China's interests, given its strong economic presence in the African continent and cultural bonds with many Asian states, especially Southeast Asia. Eventually, the Council that was created had 47 members as opposed to Annan's wish for fifteen, making it only marginally smaller than the Commission (Freedman 2013: 48). This meant that the susceptibility of the organization to the bloc politics was to stay.

Country Specific Resolution

Country-specific HR violations are mainly dealt by UN Special Procedures, the independent HR experts working under the UNHRC. Such resolutions are usually targeted at particular instances of HR violations in a country (Freedman 2013: 28). Having considered itself a victim of country-specific resolutions, most prominently after the Tiananmen Massacre, China was strongly opposed to its reintroduction. It was suggested during the discussion on the new body that except the country mandates on Cuba and Belarus, all other mandates shall be continued and even reviewed (Abraham 2007: 10). China had opposed the move and insisted that such resolutions should be sponsored by one-third majority and passed by two thirds majority (Abraham 2007: 10). Surprisingly, the majority of non-Western nations did not support China's demand (Foot and Inbodan 2014). Despite the matter being highly controversial, China went on to take a lonely stand on the issue (Foot and Inbodan 2014). It was highly apprehensive of political orientations guiding the adoption of country-specific resolutions. Polarization on the issue was so strong that the EU countries threatened to drop out of the organization if the provision was not accepted (Foot and Inbodan 2014). Beijing eventually failed to raise the bar for the passage of a country-specific resolution from a majority to two-thirds of the UNHRC members (Foot and Inbodan 2014).

Rules of Procedure

Regarding working methods and rules of procedure of the UNHRC, China proposed the support of one-third members of UNHRC for the introduction of any resolution on HR conditions and the adoption shall require backing from two-third of the members (Abraham

2007: 14). Admission of China's proposal would have incapacitated UNHRC from any active decision on HR violations (Abraham 2007: 14). Thankfully, it was finally decided that those who propose a country resolution shall gather support from the maximum number of countries possible and it was framed only as a "guideline under the methods of work section" (Abraham 2007: 14). Moreover, unlike the Commission, UNHRC was empowered to call for emergency sessions in case of grave instances of HR violations (Freedman 2013: 290).

Participation of NGOs

China had a very bitter experience with NGOs post the Tiananmen Massacre. And this continued in 1992 when one report from an NGO denounced the Chinese establishment for attacking the independence of the judiciary as well as the lawyers through its policies (Nathan 1994). Amnesty International criticized China as having a "long-term pattern of serious human rights violations" (Nathan 1994). Others, such as International Fellowship of Reconciliation raised the issue of exploitation of prisoners and Human Rights Advocates was particularly concerned with governments' policies in Tibet, mirroring "genocide" (Nathan 1994). The non-stop criticism made China rally for restricting NGO participation to UPR mechanism only (Foot and Inbodan 2014).

In the end, China gained quite a lot from its engagement with the UNHRC in its inception phase. The outcomes on membership criteria, election processes, size, organizational status of the Council, together with the geographical redistribution of seats, precisely aligned with PRC's preferences (Foot and Inbodan 2014). In its explanation of the vote in favour of the establishment of the new body, the Chinese official, lauded UNHRC for the just representation of Asian countries, unlike in the UNCHR (United Nations 2006). But he also criticized UNHRC for not addressing the core concerns of the developing countries, one of which pertained to the political confrontations due to country-specific resolutions (United Nations 2006). Other than that, concerns were raised about the addition in the administrative load of the developing countries as UPR had overlapping functions with the special procedures and HR treaty bodies (United Nations 2006). The US, on the other hand,

was disapproving of UNHRC for not having enough safeguards against the membership of countries with extremely poor HR record (United Nations 2006).

China's Conduct in UNHRC

Once UNHRC was established, China continued to assert its economic weight in diplomatic relations and made sure to maintain its goodwill among the Third World nations. Its influence was not limited to just poor Asian countries, but also extended to western nations. Greece, for example, blocked a statement by EU criticizing China's crackdown on dissent at the Council in 2007, a decision that EU diplomats deeply resented (Shepherd 2017). China has, on many occasions, refused to permit visits by UN-appointed envoys, thus continuously hampering the work of UN representatives (Shepherd 2017). In another instance of Chinese diplomacy at UN, it consistently opposed sanctions against Sudan in UNSC even though UNHRC received a report from the investigators in Sudan confirming the ongoing massacre of civilians, inadequate efforts to disarm Janjaweed and the absolute impunity that prevails there (Wuthnow 2013: 99). Given such disregard for the compliance mechanisms of UN, many NGOs and advocacy groups provided a platform to individual Chinese dissidents to approach the UNHRC. But Chinese officials were quick to disrupt those who questioned CCP's legitimacy at a forum like UNHRC (Lauren 2007). One such person being Yang Jianli, a Chinese dissident exiled in the US who approached the UNHRC forum through a UN-accredited advocacy group, UN Watch (Lauren 2007). There, he narrated decades of repression from Great Leap Forward to Cultural Revolution (Lauren 2007). More recently in 2017, Chinese President Xi Jinping sent back around 3,000 UN employees on the pretext of 'logistical' needs as he attended the meeting in Geneva (Richardson 2017). On the top of that, he made sure that NGOs do not enter the premises of the UN (Richardson 2017). In general, the elements of Chinese HR diplomacy in UNHRC have included allegiance to the Like-Minded Group, economic and diplomatic maneuvers, threats as well as inducements.

A primary source of China's assertion of influence on UNHRC is the elections. While presenting its candidature to UNHRC for the election on the 60th Session of the UNGA on 9th May 2006, China proclaimed in its pledge that it had lifted 250 million people above

the poverty line and adopted around 300 laws and regulations for the protection of civil and political rights, acceded to 22 international HR instruments and allowed Mrs. Mary Robinson, the former High Commissioner, seven visits in China for inspection (United Nations 2006a). Eventually, China was elected to the UNHRC for a period of three years from 2006 to 2009. In 2009, China again presented its candidature and was successful in winning the UNHRC seat for a period for a period of three years from 2009 to 2012. After taking a break for a year, China was once again elected on 12 November 2013 with 176 votes in favour out of 193 votes. In its fulfilment of the pledges for the same, it mentioned advancing the reform of the judicial system; disclosing court-trial information; improving rehabilitation services for disabled; instituting “a socialist system of laws with Chinese characteristics”; providing a system of assured payment for migrant workers from rural areas; revision in the minimum wage and many more (United Nations 2013).

Despite the big claims on reforms China made in its pledges, its continuous election to the UNHRC has been derided by activists and NGOs who think it does not fulfill the criteria for membership, that is, “members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, fully cooperate with the Council, and be reviewed under the universal periodic review mechanism, during their term of membership” (United Nations 2006). Amnesty International accused China of not fulfilling the majority of its 2009 UPR recommendations, and therefore, it should be ineligible for re-election. The Human Rights Watch (2017), in its report contends that Chinese government weakened the UN HR regime, including UNHRC, using its political clout and bureaucratic maneuvers. It prevented NGOs from participating in UNHRC and even challenged any engagement of local activists with the UN regime (for instance, the case of Cao Shunli) (HRW 2017). Moreover, China has been accused of a long record of refusing inspections by international HR monitors (Kaiman 2013). Its election is troubling as the government detained a huge number of HR activists, tightened internet censorship and directed intense security crackdown in Tibet since it decided to present itself as a candidate in 2013 (Kaiman 2013). Amnesty International lamented the use of UNHRC forum by oppressive states for protecting its allies from any form of intense HR scrutiny (Lauren 2007). It must be noted that China’s engagement with the international HR regime has been

driven by not only external pressures from Western countries but also by the domestic considerations related to the politics of reform (Zhao 2015). Election to UNHRC aids in further cementing CCP's leadership at home by buttressing its claim for international legitimacy. And just recently, the UNGA re-elected China to the UNHRC by 180 votes, for a three-year term of office starting from January 2017 (Huaxia 2016). This is despite the fact that many NGOs, especially those working on issues related to Tibet, have accused China of hindering UN special procedures' access to Tibet. The re-election in a way showcases the diplomatic hold China has acquired among a cross-section of the UN member states, mainly by expanding trade with the advanced countries and extending financial assistance to developing countries.

Though there has been massive criticism of China being granted a seat in UNHRC, there are scholars like Voeten (2011) at the other end of the spectrum who observed that governments experienced increased "entanglement" with the IOs once their nationals served in the position of authority, thereby aligning themselves with the purpose of the organization. Especially in case of UNHRC, he examined whether participation made countries more likely to ratify HR treaties and found that the elected states were more compliant with their pledges than the ones narrowly defeated in their quest for membership (Voeten 2011). It suggests that membership of non-deserving candidates in UNHRC may not always have negative outcomes. Oppressive states like China in such a position and in the process of justifying themselves against the accusations of HR violations for purely instrumental and immediate reasons may actually end up in a long-term dialogue with the critics, thus facilitating norm internalization (Risse 1999).

Thematic Debates in UNHRC and China

A resolution introduced in UNHRC is more of an expression of political views of the member nations than a legal instrument (Worden 2017). Response to it is an appropriate barometer for judging the commitment of states to specific HR issues (Worden 2017). Tabling a resolution in UNHRC is one way of introducing various thematic debates and invite viewpoints from other states. If the resolution is adopted, it is representative of the influence wielded by a particular state and also, the contribution in terms of intellectual

capital. On the other hand, if the resolution is rejected, it exposes the cleavages among the member nations, underlines internationally legitimate standards and the incompatibility between the domestic and the international. So far, China has tabled only two resolutions and that too very recently. These resolutions include; The Contribution of Development to the Enjoyment of All Human Rights in 2017 and Promoting Mutually Beneficial Cooperation in the Field of Human Rights in 2018.

The Contribution of Development to the Enjoyment of All Human Rights

Right to Development has always been the central idea of China's HR diplomacy, and it has time and again claimed a successful HR record when seen in terms of the vast section of its population that it has lifted above the poverty line in the 1990s and 2000s. China, while introducing draft resolution L.33, asserted that the right to development was the only way to guarantee the other rights of all people (OHCHR 2017). Underlining the urgency of realizing sustainable development, Chinese officials pointed out that they had worked openly to elaborate the resolution, bearing in mind that its content should not be altered (OHCHR 2017). This was the first time that a resolution on development had been adopted (Xin 2017). As per the Chinese officials, the resolution recognized "the common aspirations of the international community for building a community of shared future and affirmed that development contributes significantly to the enjoyment of all Human Rights" (Xin 2017). It proposed a "people-centered development; development that was of the people, by the people, and for the people", and asked "all states to enhance international cooperation and promote sustainable development, particularly the implementation of the 2030 Agenda for Sustainable Development" (Xin 2017). The text also underlined the "interdependent" and "mutually reinforcing" nature of HR (OHCHR 2017). More efforts on the part of countries were requested "to promote development initiatives with the aim of promoting partnerships, win-win outcomes and common development" (Xin 2017).

A major criticism of the resolution came from the US, as usual. It asked for a vote on the resolution, which again went in favour of China with 30 in favour, 13 against and 3 abstentions (Worden 2017). US went on to argue that any form of development should be in agreement with the ideals of HR (Permanent Mission of the United States of America to

the United Nations 2017). Based on the above principle, it turned down any resolution that used development as an excuse to undermine HR commitments (Permanent Mission of the United States of America to the United Nations 2017). Though the resolution recognized the important HR documents, such as the Vienna Declaration and Programme of Action (VDPA), US still believed that the resolution “omitted the key language that fully explained the relationship between human rights and development” and “changed consensus language to materially alter its meaning” (Permanent Mission of the United States of America to the United Nations 2017). As for example, it mentioned “the preambular paragraph 5 of the resolution that drew from VDPA paragraph 8, but omitted the crucial term “democracy” and also changed “respect for human rights” to “realization of human rights”” (Permanent Mission of the United States of America to the United Nations 2017). The paragraph in the resolution stated, “Recognizing that development and the realization of human rights and fundamental freedoms are interdependent and mutually reinforcing” (UN General Assembly 2017). On the other hand, the VDPA paragraph 8 defined democracy as “development and respect for HR and fundamental freedoms that are interdependent and mutually reinforcing” (OHCHR 1993). “Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives” (OHCHR 1993). In the context of the above, “the promotion and protection of HR and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached” (OHCHR 1993).

In continuation of the above, the US raised related issue regarding operative paragraph 1 of the resolution which it thought was selectively taken from paragraph 10 of VDPA without mentioning the key idea that development is no justification for the subversion of HR (Permanent Mission of the United States of America to the United Nations 2017). The paragraph in the resolution “affirms that development contributes significantly to the enjoyment of all human rights by all” (UNHRC 2017b). Compared to that, VDPA paragraph 10 stated that “the World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights” (OHCHR 1993). It

placed the individual at the center of development agenda as per the provisions of Declaration on the Right to Development (OHCHR 1993). Though development facilitates all other HR, the absence of it cannot be used to justify the abridgement of internationally recognized HR (OHCHR 1993).

Though the US acknowledged that preambular paragraph 6 stating “Welcoming the adoption of the 2030 Agenda, including the pledge therein to leave no one behind, and reaffirming that the realization of sustainable development in all its three dimensions contributes to the promotion and protection of human rights for all” (UNHRC 2017b), was inserted in the resolution to accommodate the above concern, it was done only after several rejections suggesting “to use consensus language and keep the operative paragraph unchanged” (Permanent Mission of the United States of America to the United Nations 2017). Such distortions of the consensus language go against the commitments of the states mentioned in the VDPA, as it reinforces the false idea that development is a precondition to fulfillment of HR obligations (Permanent Mission of the United States of America to the United Nations 2017). Eventually, with the adoption of the resolution, UNHRC “requested the Advisory Committee of the HRC to operationalize paragraph 6” and submit a report enquiring into the relationship of development to HR, with as focus on the best practices (Worden 2017).

Voicing similar concerns, Germany, while clarifying its voting decision on the behalf of European Union, stressed that development and HR were “interlinked” and “mutually reinforcing” (OHCHR 2017). Again, Vienna Declaration and the Agenda 2030 was central to this relation (OHCHR 2017). European Union firmly believed in that universal HR enhance development-related cooperation (OHCHR 2017). As far as voices in support of China’s resolution were concerned, Venezuela expressed full support for the draft resolution for it thought it was fully in line with the United Nations Declaration on the Right to Development (OHCHR 2017). The adoption of the 2030 Agenda, its officials asserted, meant that the international community must step up international cooperation and remove barriers to the development of countries (OHCHR 2017). Egypt regretted that countries still did not recognize development as a HR (OHCHR 2017). Its official said that

in the current scenario, the realization of the right to development was more important than ever as this right was in fact at the core of the 2030 Agenda (OHCHR 2017). Cuba commented that those unwilling to recognize the importance of development for the enjoyment of all HR, were usually those who denied the right to development, the right to international solidarity and the right to peace (OHCHR 2017). Eventually, the adoption of the resolution was hailed by the Chinese media as a big victory against the Western domination in the UN (Shepherd 2017). Beijing has rebutted to western criticism arguing that their definition of rights is very limited, neglecting all progress China has achieved regarding poverty, education and hunger (Shepherd 2017).

In spite of China hailing the adoption as a victory and justifying that the language of the resolution was couched in a people-centric approach, it cannot be ignored that in a country like China the idea of development had always been rooted in the state ideology and limited to a socio-economic understanding. Regarding the same, many scholars have argued that Chinese authorities are predominantly “realist” in their approach to international politics (Deng 1998) and that is why state-centrism and national interest are paramount concerns against relatively idealistic as well as liberal positions, like civil and political rights. Despite China’s acceptance of an interdependent and multilateral international political system, the Chinese establishment is primarily concerned with its ability to take advantage of this “external environment” to maximize its state interests (Deng 1998). Chinese scholars as well as officials consider pursuit of national interest, as a manifestation of citizens’ aspirations, innate and un-compromisable (Deng 1998). Given the above evolution of the Chinese thinking on national interest, it is natural for it to advance the same agenda on development through the resolution “The Contribution of Development to the Enjoyment of All Human Rights”.

Such strong state-centrism and the muzzling of alternative voices within the party or outside the establishment have given rise to personality cult in the state ideology, for example, Mao Zedong’s Thought, Deng Xiaoping’s Four Modernizations, Jiang Zemin’s Three Represents, Hu Jintao’s Scientific Outlook on Development etc. Even in the case of this resolution, the personal influence of Chinese top leadership is amply evident as it

contains the main concepts of Xi Jinping's 'New Era' (Worden 2018). Officially known as "Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era", the ideology is to become a part of China's Constitution. Considering Xi's tightening control on the Chinese citizens, concentration of power that has not been witnessed since Mao and Deng's period, exhorting Right to Development at international forums becomes even more relevant for the current establishment in order to take the attention away from civil and political rights. Xi's report to the 19th party congress laid out an ambitious plan, which aimed at building a "community with a shared destiny for mankind" and ensuring that "China will continue to play its part as a major and responsible country, take an active part in reforming and developing the global governance system, and keep contributing Chinese wisdom and strength to global governance" (Stanzel, Holbig, Mittelstaedt, Sautin and Doyon 2017). In a typical terminology of Sinified Marxism, Xi identified the principle contradiction of present times which is "between unbalanced and inadequate development and the people's ever-growing needs for a better life", such as "demands for democracy, the rule of law, fairness and justice, security, and a better environment" (Stanzel, Holbig, Mittelstaedt, Sautin and Doyon 2017). This meant that economic growth alone is no longer a guarantor of a better society, rather a "well-rounded human development and all-round social progress" incubated under the supervision of the party leadership can resolve the contradiction (Stanzel, Holbig, Mittelstaedt, Sautin and Doyon 2017). Though the formulation paid a lip service to rights other than socio-economic, nonetheless, the hierarchy of rights was maintained.

If one thinks of the "capability approach" of Amartya Sen as the measure of development, even if the citizenry of China, in the spirit of the resolution, acquires basic socio-economic development, but lacks the agency in making a choice for a good life, which comes with the complementary political rights, the idea of development in such a scenario falls flat as the economic well-being is not translated into intellectual and political well-being. At the same time, there is also a substantial degree of consensus amongst the academia that once the citizenry enjoys unhindered socio-economic well-being, it naturally starts making a call for a stronger civil and political rights structure. Moreover, all over the world, including China, the unsustainable consumption-led strategy of development, compromising the

environment and other indicators of individual well-being, has led politicians and academia to re-conceptualize the idea of development. In such a scenario, China's emphasis on development as HR can simply become an excuse for funding big infrastructural projects that may bring wealth to the state as well businessmen, but only after annihilating the rights of the labour class in absence of compliance with international labour rights. Other than that, development as a right has been seen comparatively more universal in character by China than other rights and thus, suitable for addition in UN's normative structure. It saved China from resorting to cultural-relativism stand and couch the language of its resolution in universalism.

Promoting Mutually Beneficial Cooperation in the Field of Human Rights

In a very short span of time after the introduction of its first resolution, China sponsored another resolution in UNHRC on March 23, 2018. It reflected China's growing proactivity in its desire to influence the character of UNHRC. Though the resolution was criticized for deliberately misinterpreting the HR norms, it was eventually adopted with 28 voting in favour, 17 abstentions, and only the US voting against the resolution (OHCHR 2018). Broadly, the resolution asked all countries to come together for promoting mutually beneficial cooperation within in a multilateral framework. While introducing the resolution in the Council, the Chinese representative noted that the achievement of universal HR requires all countries to develop an agreement on the concept of "win-win cooperation" (Mengqi 2018). To legitimize its concerns, Chinese officials claimed the adherence of the resolution to the principles enshrined in all the UN documents, especially the Vienna Declaration and Programme for Action which also prioritized 'dialogue' and 'cooperation' among state (OHCHR 2018).

Reiteration of "principles of universality, impartiality, objectivity, non-selectivity, constructive international dialogue and cooperation" has defined China's approach to UNHRC (Mengqi 2018). All HR are "universal, indivisible, interrelated, interdependent and mutually reinforcing, and must be treated in a fair and equal manner" (Mengqi 2018). Such remarks were clearly in line with China's oft repeated concern that the universal HR norms are most often implemented on western assumptions, thus, eventuating into a biased

interpretation of HR records, causing selectivity. Further, Chinese officials hoped that countries would not oppose the sponsored text just because it has been tabled by China and should vote regardless, refraining from the “zero-sum” game (OHCHR 2018). US’s confrontationist approach to international political issues has been seen by China as counter-productive and deepening the conflict between dissimilar worlds. In the context of the same, Zhang Wei, the co-director of the Institute for Human Rights at China University of Political Science and Law, said China has always advocated that HR be protected through cooperation and communication rather than criticism and accusation (Mengqi 2018). A major criticism of the resolution came from the US, who blamed China of attempting to weaken the UN HR system through this resolution (OHCHR 2018). The “feel good” language of the “mutually beneficial cooperation” was aimed at benefitting the autocratic states at the cost of the interests of the people whose HR are at stake (OHCHR 2018). Echoing similar issues, Australia complained that its concerns regarding the draft had not been addressed by the Chinese authorities (OHCHR 2018). The document, as per the Australian diplomats, prioritized state relations in dealing with HR to the detriment of the individual rights, thereby lacking in a balanced approach contrary to Vienna Declaration and Programme of Action (OHCHR 2018). Use of words, such as, “mutually beneficial cooperation” and “community of shared future”, that are undefined, make the provisions of the resolution sound vague and ambiguous (OHCHR 2018). The draft resolution failed to take in consideration a strong transparency and monitoring mechanism to overlook the development of technical assistance and capacity building as advocated by China (OHCHR 2018). On the top of that, the involvement domestic HR institutions in the process has been completely skipped (OHCHR 2018). There was also a concern that the resolution might seek to reform the Council and its mandate (OHCHR 2018). Japan reiterated that certain terms, such as, “building a community” and “mutually beneficial cooperation” were not frequent in international cooperation vocabulary (OHCHR 2018). So, it considered itself justified in submitting a proposal to High Commissioner to dispense it with a study on these terms (OHCHR 2018). Finally, Japan abstained on the draft resolution, though it promised to support any effort on towards cooperation (OHCHR 2018). Mexico was in favour of open negotiations on the issue, as also preferred by China

(OHCHR 2018). Though it appreciated China for acknowledging its concerns, but questions relating to HRD and NGOs were nonetheless disregarded (OHCHR 2018). And like others noted, the content of the resolution was full of perplexing concepts, such as “the call to build a community for a shared future” (OHCHR 2018). Republic of Korea decided to abstain noting that the phrase “mutually beneficial cooperation” was incomprehensible in the context of promotion of HR (OHCHR 2018). Switzerland abstained for it believed that the use of such ambiguous principles was detrimental to the core values of HR (OHCHR 2018). Manipulation of UN mandate must be avoided for it functions in full allegiance to the international law and civil society must be allowed to function freely without the threat of reprisals (OHCHR 2018).

“Human person” as the subject of HR has been dealt with only briefly in just one paragraph in the whole resolution (Worden 2018). Through “dialogue” and “cooperation”, states seemed to evade criticism on their HR record, thereby facilitating “mutually beneficial cooperation” to benefit the states only (Worden 2018). The introductory paragraph, reaffirming that “the human person is the central subject of HR and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms”, was but added only after aggressive negotiations (Worden 2018). Important terms like, the “individual”, “human right defender” and “civil society” did not appear even once in the resolution (Worden 2018). However, the word “cooperation” appeared 19 times, “mutually” or “mutual” 13 times, “dialogue” 6 times, and “constructive” 5 times (Worden 2018).

Pakistan was supportive of the draft resolution for it considered “the importance of technical cooperation and the principles of universality, impartiality, and non-selectivity, based on dialogue and political independence” (OHCHR 2018). South Africa agreed with the content of the resolution as the issues mentioned appealed to a major section of the globally deprived people (OHCHR 2018). It reiterated that “all programmes of cooperation, capacity building and technical assistance” should strengthen the principles of UDHR (OHCHR 2018). Venezuela added technical assistance and capacity building should be furthered through “genuine dialogue, guided by the principles of objectivity,

respect for national sovereignty and non-politicization as well as non-interference in the area of human rights” (OHCHR 2018). As far as Cuba was concerned, it considered the resolution an opportunity for building common understanding and respect through capacity building and technical assistance (OHCHR 2018).

Overall, the resolution, like earlier attempts by China, tried to place the sovereign state above the individual in matters concerning HR, emphasizing intergovernmental dialogue and cooperation as preferred mode of engagement on such issues (Kothari 2018). A vital pillar of the HR framework and UNHRC’s mandate, that is, accountability for violations and justice for victims, has been effectively downplayed and discredited in the resolution (Kothari 2018). Accountability, indirectly invites the civil society in monitoring the HR situation in a country, whereas Chinese authorities have tried to limit NGO participation from the very inception of UNHRC. Moreover, the resolution advocated the importance of ”mutually beneficial cooperation” in the protection of promotion of HR, but at the same time failed to define cooperation, thereby asking the Council’s Advisory Committee to conduct research on the matter (Kothari 2018). This could also be seen as a tactic to forcefully introduce a certain vocabulary on the forum and impose an agenda on the experts, stifling their independence (Kothari 2018). Interestingly, the resolution also attempted to redefine the role of key UNHRC mechanism, that is, Universal Periodic Review (Kothari 2018). All this is representative of China’s proactiveness in influencing the UNHRC that came from the weight it acquired through its participation in a range of UN activities related to peace and security, and development (Kothari 2018).

Like the earlier resolution, even this resolution was heavily laid with the personal vocabulary of the ruler, instead of being representative of the general consciousness of the Chinese people. The influence of Xi Jinping’s concept of New Era reappeared as “Recognizing the importance of fostering international relations based on mutual respect, fairness, justice and mutually beneficial cooperation, with the aim of building a community of shared future for human beings, in which human rights are enjoyed by all” (Worden 2018). US, in the explanation of its negative vote, raised alarm over the use of ‘slogans’ in a UN resolution (Worden 2018). The language targeted the domestic political audience

through a multilateral setting (Worden 2018). The lack of definite meaning of the terms used made it vulnerable to open interpretation for fulfilling political agendas of a country (Worden 2018).

China's Influence and Preferences in UNHRC

In consonance with Chinese establishment's long held beliefs, Chinese representatives in UNHRC have constantly reiterated that the unit of HR is the state and it is only through states, international HR norms are to be disseminated further to the individual. However, the states might not always agree with universal ideas of HR which are sometimes seen as a proxy to western ideals by China. In such circumstances, states have the right to hold on to their sovereign rights, which in the case of China is non-negotiable orthodox idea of sovereignty and non-interference. The only way to overcome this deadlock is the cooperation among states based on socio-economic HR diplomacy, driven by development agenda. Thus, HR is something that China provides to its individual as per what it thinks is conducive to state interests, leaving the individual with no claim to demand HR from the state. Especially, individuals whose conscience is aligned with international standards and demand political reforms in the same vein are not acknowledged. Hong Kong Umbrella Movement is a point in case.

Also, putting individual at the center of HR norms makes states like China, who have traditionally taken anti-US stand, more vulnerable to criticism at the UNHRC. Given the nature of regime, a Chinese citizen has incentive to approach an IO for justice compared to a US citizen, where the opportunities for demanding justice are available, both formal as well informal. Most importantly, the relatively unrestricted civil society activity in the US puts non-democratic states like China under close scrutiny and raises the stakes for other nations for acting in favour of the accused nations for they might lose their own reputation. The language of consensus and cooperation that China reiterates on every opportune occasion is an attempt to dilute critical scrutiny and couch the language of criticism against HR violator nations in broad and collectivist terms. In a collectivized criticism, it is difficult to point out a particular perpetrator and bring the accused to justice. For instance, if a country is criticized for poor record in fulfilling basic necessities as part

of HR, it is then difficult to pinpoint particular government machinery for the failure as poverty alleviation programmes are distributed across various state mechanisms in a diffused manner. Moreover, the variables causing poverty can be myriad, ranging from historical reasons to repercussions of climate change, and hence, beyond government control. And reaching a 100 percent success ratio on development issues is almost impossible given the random variables that come into play. UNHRC mechanism, on the other hand, aims at targeted outcomes.

The diplomacy of shame that often becomes a tool in UNHRC or even earlier in UNCHR, mostly by the NGOs and rival nations, such as the US and European countries, the rationale is that such views will percolate down to the domestic audience in China and that would indirectly exert pressure on Chinese authorities for executing change. As much it is difficult to ascertain how much reform by the government is a result of agency and how much is due to international response, the general reaction in China has been extolling the feeling of patriotism among the citizens and further hard lining of its position on sovereignty. Such patriotism is further strengthened when Chinese slogan, “building a community of shared future” found a mention in the preambular clauses of the two resolutions adopted during the 34th session of UNHRC in March 2017: one on the “Question of the realization in all countries of economic social and cultural rights” (A/HRC/34/L.4/Rev.1) and another on “The right to food” (A/HRC/34/L.21) (Worden 2017). The Chinese officials hailed it as a victorious moment for it is first time the phrase “community of shared future for human beings” has been incorporated in a UNHRC resolution, thus having a definitive influence on the international HR discourse (Worden 2017). Adoption of a specifically Chinese concept, as per the authorities, is demonstrative of its potential agency in driving the international narrative on HR governance (Worden 2017).

China has actively deployed instruments of threat and inducements to influence the outcomes and mechanism of UNHRC. The economic leap taken by China after the “Reforms and Opening Up” has been the biggest source of such power. For instance, the period following the Tiananmen crackdown saw China lobbying vigorously in the meetings of the U.N. Sub-Commission on the Prevention of Discrimination and the Protection of

Minorities to prevent adoption of condemnatory texts. This influence occurred even at informal spaces, as one report noted that an African diplomat in Geneva for the 1990 U.N. Commission meeting had been visited by ten Chinese officials in his hotel room who explained to him how best to vote and what could be the economic consequences for his country if he rejected the Chinese script (Foot and Inbodan 2014). Other diplomatic representatives were summoned to the Foreign Ministry in Beijing to receive a similar message (Foot and Inbodan 2014). In 1997, when Denmark sponsored a resolution on China in the UNCHR, PRC officials threatened them with adverse impact on bilateral relations, having direct implication for market access (Foot and Inbodan 2014). Other than these instances, China also boycotted and imposed political sanctions on some Norwegian goods, especially the Norwegian salmon which was commodity of importance, after the Nobel Committee in 2010 nominated jailed democracy and rights activist Liu Xiaobo for the Peace Prize (Foot and Inbodan 2014).

China's huge population, uncaptured market spaces and increase in the purchasing power parity in years following economic reforms prevented countries from taking any strong condemnatory action. It included especially the developing Asian countries which saw China as an important source of development finance investment (Foot and Inbodan 2014). Now that China is establishing its own financial and regional institutions, such as Asian Infrastructure Investment Bank, Belt and Road Initiative and Shanghai Cooperation Organization, the influence is going to grow. Moreover, to borrow the term from Foot and Inbodan (2014), these forums can act as "preference multipliers" for China, by revealing its preferences on these forums before the precipitation of similar issues at the UNHRC. Or put in in other term, it can also cause a cascading effect on the region by concentration as well as expansion of similar preferences in a region interconnected in a deep web of history, race or social circumstances. Beth Simmons (2000, 2002) speaks of this process as "regional contagion" while explaining the motivation of states for committing to international norms. Geographical proximity not only creates "common identity" but also facilitates diffusion of international norms regionally through regular diplomatic and people-to-people communication (Lutz and Sikkink 2000). This is reflected in China's participation in Asia-Pacific regional institutions (e.g., the East Asian Summit, the ASEAN

Regional Forum, and the ASEAN Plus Three arrangement), which provides the possibility for spill-over or log-rolling from one set of policy issues into other issue areas (Foot and Inbodan 2014). Further, in some cases, such as Myanmar, Sri Lanka, and Pakistan, Beijing may also act as a source of protection against mainly Western governmental and U.N. criticism of their HR records (Foot and Inbodan 2014).

Moreover, the cultivation of soft power and an increasingly comprehensive Chinese military presence in Asia are implicitly or explicitly reflected in the decisions Asian governments make in global institutions on matters of consequence to China (Foot and Inbodan 2014). Those states in developing Asia that may have been especially subject to Chinese influence were those that served as members alongside China during the first session of UNHRC in June 2006–07, namely Pakistan, Bangladesh, Malaysia, Sri Lanka, India, Indonesia, the Philippines, and Thailand (Foot and Inbodan 2014). Also, there is general congruence in the interest of the Third World countries with China which was incidental in China being able to assert indirect and implicit influence on these countries during the formation of UNHRC (Foot and Inbodan 2014). Many of these countries wanted to remove what they perceived as unfair practices associated with the UN's HR mechanisms, especially the focus on the HR records of developing countries to the neglect of those in the developed world (Foot and Inbodan 2014). This advantage made Chinese officials constantly reiterate on the behalf of Third World nations at the UNHRC forum, that there is no one-size-fit-all to HR practices (Yi 2017).

CHAPTER 4

China at the Universal Periodic Review

This chapter specifically dwells on the process of peer review on China's human rights track record under the Universal Periodic Review procedure in the Human Rights Council since its inception in 2006. For a starter, the concept and process of UPR is explained before examining the two rounds of review- in 2009 and then in 2013 - on China's official reports and the feedback it received from member governments, the Secretariat as well as the civil society. An attempt is made based on this discussion, as to the impact of its socialization into global HR standards.

Universal Periodic Review: Precept and Practice

UPR is the most innovative and unique mechanism that came out of the process of the foundation of UNHRC. What makes it more relevant than ever, is the participation of all the states, which is 193, thus not having to restrict the compliance with HR standards only to states who have ratified a particular treaty (Charlesworth and Larking 2014: 128). The underlying principle of UPR is the equal treatment of all countries, and its scope is all encompassing from civil, political, economic, social to cultural rights, based on the provisions of UN Charter, UDHR, voluntary pledges and commitments made, various HR treaties and other humanitarian laws (Charlesworth and Larking 2014: 129). Continuity in the review process is maintained through regular, periodic sessions, keeping the participating countries on their toes (Charlesworth and Larking 2014: 129). A group of three states serving as rapporteurs, called Troika, guides and supports the State under review through the process. Every four years, the UN member states, regardless of their membership in the Council, are reviewed (Mihir and Gibney 2014: 561); a process administered by the UPR Working Group, having 47 members of the UNHRC and meets three times in a year.

During the process, all states inform the panel of all the steps they have taken to improve HR standards. The basis of the ensuing peer review consists of three reports: a National Report prepared by the State under review; a compilation of decisions, investigations and

recommendations made by independent experts of the UN Special Procedures, HR treaty bodies and other entities; and lastly, a compilation of NGO reports prepared by OHCHR (Mihir and Gibney 2014: 561). The duration of the interactive dialogue was three hours for each country during the first cycle, which in the second cycle went on for three hours and thirty minutes, showing an upward trend in the overall engagement. Since the process is to be completed within the stipulated time, the duration of the review is strictly adhered to (Smith 2011a). In general, each state is allowed to comment for two minutes; to which the State under review is to respond within the permitted time (Smith 2011a).

One important aspect of UPR process is the participation of the NGOs, owing to the fact that UPR is the only time when NGOs are allowed to raise their concerns. They are allowed to attend the Working Group sessions. Their views and information are included in the “other stakeholders” report which is taken into consideration by the reviewing states during the interactive dialogue at the Working Group meeting. It is then followed by the adoption of a report of the dialogue, called the Outcome Report, summarizing the questions, comments, and recommendations made to the country that is being reviewed as well as its responses to the same. This is the moment when NGOs can formally make an oral contribution on the outcome. Engagement of NGOs at this stage brings in a lot of media attention with it and also highlights the omissions made on the critical issues during the interactive dialogue (Charlesworth and Larking 2014: 132).

Pressure on states is even more effective when NGOs work in coalition to prepare reports of the UPR and follow up on the commitments the states make (Mihir and Gibney 2014: 562). Human rights defenders (HRD) have an immense role to play in bringing the government to account for the implementation of recommendations (Charlesworth and Larking 2014: 119). UPR has been rather successful in mobilizing civil society for the number of NGOs engaging in UPR outnumber those engaging with the Treaty Bodies (Charlesworth and Larking 2014: 96). As much as the peer-review has created the scope for a group led biased assessment, the engagement of NGOs in the process balances such trends to an extent, thus retaining the credibility of the forum even when questions are raised. Other than the assessment of the HR situation in a state, UPR also aims to facilitate

technical assistance for states to equip them sufficiently to handle HR challenges. "Sharing of best practices" is another essential motive. When it comes to loopholes in the UPR process, the model of self-reporting on the implementation of the recommendations made in the previous review is problematic (Charlesworth and Larking 2014: 96). There is an ample opportunity for states to exaggerate and manipulate.

The scrutiny of HR situation in all UN member nations during UPR made some hope that it will solve the problem of selectivity that has plagued UN HR regime since ever, thus making it more successful than its predecessor (Mihr and Gibney 2014: 561). However, much depends on the response of the states, many of whom with poor HR record have little willingness to cooperate (Mihr and Gibney 2014: 562). Politicization of UPR is apparent when states make sure to fill the list of speakers with allies before critical states make a statement (Mihr and Gibney 2014: 562). Similar allegations have come to fore against China. China is uniquely positioned in the UPR process for the fact that Hong Kong and Macao were transferred to China in 1997 and 1999 respectively (Smith 2011). So, it is subjected to disparate treaty obligations resulting from the separate ratification of certain HR treaties by the Special Administrative Regions of Hong Kong and Macao and the Mainland China (Smith 2011). As some treaties are applicable on only one or two regions and not the other, UPR provides a forum for the review of all the regions at one point (Smith 2011). In the case of China, usually more states have been desirous to comment (Smith 2011a), owing to its status of permanent member and the weight it commands in the international political economy. Considering such a scenario, UNHRC limits the number of statements to make sure that each state has equal time while commenting (Smith 2011a). The third round of UPR for China is scheduled for late in 2018.

2009 Universal Periodic Review

The first UPR cycle that started in 2009 saw China's adherence to HR standards being reviewed in the fourth session held in February, while it was one of the members of the UNHRC (Smith 2011a).

National Report

The 2009 National Report claimed that China had been quite successful in reducing extreme poverty in the rural area, with a decline in numbers from 250 million to 15 million in around 30 years (UNHRC 2009: 8). To add to this achievement was the distinction of being the first country in the world to have achieved its poverty reduction goals as directed by the United Nations Millennium Development Goals (UNHRC 2009: 8-9). The shift in the consumption pattern from securing basic necessities to that of the pursuit of a modern lifestyle was reflective of the improvements in the overall standard of living (UNHRC 2009: 9). More precisely, the Engel coefficient, which is the percentage of food expenditure in the total household spending, dropped from 57.5% for urban areas and 67.7% for rural areas to 36.3% and 43.1% respectively within 30 years. On the future course of action, what particularly stood out, considering the contradiction between environment and development in most of the developing countries, was China's decision to implement the National Environmental Protection Programme under the Eleventh Five-Year Plan (2006-2010), which intended to reduce the total pollutant emissions by 10% of 2005 levels by bringing down the sulphur dioxide emissions and chemical oxygen demand by 2010 (UNHRC 2009: 20).

In the initial pages, the report outlined the legal and institutional framework, followed by the accomplishments of the government in respect of economic, social and cultural rights; with sections devoted to "civil and political rights" and "rights of the vulnerable groups" (Smith 2011). Part of the report dealt separately with Hong Kong and Macao Special Administrative Regions (Smith 2011). On the question of the legal and institutional framework for ensuring HR, the report cited the provision in Chapter II of the Chinese Constitution which stipulated that "the State respects and safeguards human rights" (UNHRC 2009: 6). Further, the report defensively noted that around 30 national legislative, judiciary and administrative departments were involved in the preparation of the National Report; not to mention the oral and written consultations with close to 20 NGOs and academic institutions (UNHRC 2009: 5). All-China Federation of Trade Unions, the All-China Women's Federation, the China Society for Human Rights Studies and the Institute

of Law of the Chinese Academy of Social Sciences were some of the organizations who participated in the broad public consultations that took place before the preparation of the report (UNHRC 2009: 5).

Rebutting the criticism on the state of civil society in China, the National Report stated that 387,000 NGOs were, in fact, registered in China by the end of 2007 (UNHRC 2009: 8). Even though the report professed utmost importance to the treaty bodies, it subjected the acceptance and implementation of their recommendations to the “national realities” of China (UNHRC 2009: 7), which reminds of China’s stand on cultural relativism. On the issue of the status of minorities, the report maintained that the government established organs of self-government in the minority-populated autonomous areas so that they can exercise their right of independent administration in domains of economy, culture, science, education, and health (UNHRC 2009: 7).

Interactive Dialogue

China saw one of the highest numbers of states, i.e., 115, wanting to participate in its interactive dialogue (Smith 2013). Out of these, only sixty states could finally comment on the documents prepared on the HR situation in China (UNHRC 2009a: 6). The remaining fifty-five states had to satisfy themselves by contributing questions and comments through extranet due to constraints of time (Smith 2013). Of the neighboring states which could make a statement included the Russian Federation, Bhutan, Pakistan and Myanmar (Smith 2011). And from among the permanent members, France, the UK and the Russian Federation made the statements (Smith 2011). Surprisingly, the US refrained from participating (Smith 2011). Rather it resorted to publishing its own annual evaluation of Chinese HR in February 2009, which interestingly coincided with China’s UPR (Smith 2011).

The issues that were raised during the interactive dialogue, particularly by the Western group of countries, pertained to “death penalty”, “freedom of religion”, “freedom of expression” and the state of minorities (Smith 2013). France questioned the various confinement practices in China, besides recommending measures on media practices and

the death penalty (Smith 2013). The United Kingdom expressed dissatisfaction with the continuation of the death penalty, HR violations in the Tibetan Autonomous Region and restrictions on the freedom of the press (Smith 2013). Australia lauded the improvements in China in the last three decades but also offered criticism on the continuing restrictions on any form of religious association that fell outside the state controlled religious systems (UNHRC 2009a: 6). Canada expressed grave concern about the reports of arbitrary detention of ethnic minorities' members, such as Tibetans, Uighurs, and Mongols as well as religious believers like Falun Gong practitioners, without information about their charges, their location and wellbeing (UNHRC 2009a: 7). Germany enquired about the steps taken by the Chinese government to stop torture and abuse in detention centers; and prevent the use of evidence obtained through torture against defendants on trial (UNHRC 2009a: 11).

In contrast, Asian countries that took part in the Interaction struck a different note. Pakistan noted that "China does not require external advice on securing the rights of its people as it has taken concrete steps to build the future of its people" (Smith 2011). Myanmar, in support, narrated accounts of China's political endeavours in pursuit of improved HR of Chinese citizens and also acknowledged challenges that may derail the progress made (Smith 2011). Both Pakistan and Myanmar, responding to the criticism on China's HR situation, warned against the politicization of the review process (Smith 2011). Russia praised China's contribution in UNHRC, its engagement with the civil society, progressive outcomes on socioeconomic rights, investment in Tibet, and improvements made in the judiciary and penitentiary systems (Smith 2013). Sri Lanka, while emphasizing the political history of China, urged its officials to provide an account of its "experience in combining a strong State with ethnic regional autonomy" (Smith 2013). It further asked China to provide "to the rest of the world its experience in the economic revolution, modernization and in satisfying the material needs of an enormous rural population" (Smith 2013). Bhutan appreciated China's "pursuit of an approach that places people first and seeks to ensure comprehensive, coordinated and sustainable development to build a harmonious society characterized by democracy, the rule of law, equity and justice" (Smith 2011). Philippines enumerated best practices of China in the field of poverty reduction programs and strategies

(Smith 2013). Another aspect on which the Chinese government received a cheer was the Action Plan on Human Rights that it was about to introduce in the country (Smith 2013). In general, for most permanent members, action plans have been an easier way out for displaying their commitment to HR instead of going through the process of ratification of HR treaties (Smith 2013). So, China too launched its second Human Rights Action Plan from 2012 to 2015 (Smith 2013).

Overall, two trends emerged during the 2009 review process: firstly the Western states made several specific recommendations which were in most cases rejected by China or argued as already enforced (Blackburn 2011: 16-17). Others – large in number - commended China's progress and desired sharing of best practices of China (Blackburn 2011: 16). The difference in the Western and Asian group in their comments was very much the reflection of debate between the civil and political rights and the socio-economic rights. Chinese delegation chose to discuss the developmental issues while reviewing other states in over ninety periodic reviews (Smith 2011b). This was an area where China could lead by example, at least amongst the smaller states and thus, not so prone to contradictions in its statements. In the end, forty-two recommendations made in the Working Group were accepted by China (UNHRC 2009a: 27-31). These included “publishing the 2009-2010 National Human Rights Action Plan”, “human rights training for judges, lawyers, and prison staff” and “ensuring the cultural rights of the minorities” (Smith 2011a). Additional recommendations by Germany, Finland, Australia, and Austria were merely “noted” as those pertained to measures already under implementation (UNHRC 2009a: 31). The recommendations that were not favoured by China included the “abolition of the death penalty”, “establishing a national human rights institution” and the “freedom of expression and information” (Smith 2011a). Specifically, on the death penalty, China had not ratified any HR treaty which expressly prohibited its continued use and therefore, technically it was not required in law to stop the practice (Smith 2011b). Other than that, China signaled towards reforming its national laws in line with the International Covenant on Civil and Political Rights which it was then hoping to ratify (Smith 2011a).

Response of NGOs on the Outcome Report

The participation of NGOs in UPR is principally a source of counter-narrative to the government's discourse (Charlesworth and Larking 2014: 71). In response to the Outcome Report of China, Human Rights Watch and Amnesty International raised doubts over the effectiveness of the UPR asserting that China's behaviour in UNHRC was "a test of the credibility" of the institution, for the reason that China as an elected member of UNHRC accepted the obligation to "uphold the highest standards in the promotion and protection of human rights" (UNHRC 2009b). HRW alleged that the government of China rejected every recommendation on "freedom of expression and freedom of association, independence of the judiciary, guarantees for the legal profession, protection of human rights defenders, rights of ethnic minorities, reduction of the death penalty, abolition of reeducation-through-labour, prohibition of torture, media freedom and effective remedies for discrimination" (UNHRC 2009b). Whatever it accepted as per the Outcome Report, reflected only vague intentions on the part of China to implement those recommendations with an absolute denial of the prevailing violations or any assurance to undertake remedial measures (UNHRC 2009b). Hindrances actively created by the Chinese government against the contribution of NGOs to UPR once again discredited the UPR process (UNHRC 2009c). No mention of Macao's draconian National Security Law during the UPR, said HRW, was highly disappointing as it could be used against the freedom of speech and association (UNHRC 2009c).

Helsinki Foundation for Human Rights believed that the UPR mechanism was deeply vulnerable to politicization due to the infiltration of Government-organized Non-governmental Organization (GONGO) (UNHRC 2009d). Focusing most of its attention on Tibet, it stated that as many as 50 recommendations about HR violations in Tibet had been conveniently rejected by the Chinese authorities (UNHRC 2009d). Asian Indigenous and Tribal Peoples Association expressed regret on Chinese establishment's refusal to resume a dialogue with His Holiness Dalai Lama (UNHRC 2009e). With China's rejection of "Memorandum on Genuine Autonomy for Tibetan People", presented by representatives of Dalai Lama, China's commitment to resolving the impasse should be called into question (UNHRC 2009e). Fervent calls have been made both from inside and outside

China, including former Secretary-General Ban-Ki Moon, for substantive dialogue with the representatives of Dalai Lama (UNHRC 2009e). The Society for Threatened Peoples and Reporters Without Borders condemned China's rejection of the recommendation on granting "access to Tibetan areas for OHCHR and other United Nations bodies, as well as diplomats and the international media" (UNHRC 2009f). It demanded full access to the Tibetan Plateau to rightly assess the ground situation (UNHRC 2009f).

On the other hand, a few NGOs like China NGO Network for International Exchanges, United Nations Association of China and China Society For Human Rights Studies appreciated China's efforts to engage with the civil society at a broader level during the UPR process and the implementation of the recommendations (UNHRC 2009g; UNHRC 2009h; UNHRC 2009i). It is important to note here that international NGOs outnumbered local NGOs in making an oral statement on the Outcome Report.

Follow up of the 2009 Universal Periodic Review Recommendations

China implemented three out of four recommendations concerning the death penalty that were not accepted in the first review (Mao and Sheng 2016). Moreover, the overwhelming majority of partially implemented recommendations were those that had been rejected by China in the first review cycle, including recommendations relating to the death penalty, strengthening cooperation with special procedures, and extending standing invitations (Mao and Sheng 2016). Analyses of the data indicated that the rejected recommendations were not necessarily more difficult to implement than the accepted ones (Mao and Sheng 2016).

Observations

The first UPR ensured the viability of the project by re-assuring the willingness of states to comment, at least in relation to powerful states. This participation exhibited both collusion and confrontation. While an excess of one or the other may be detrimental to the relevance of the organization, it has nonetheless, filtered down the issues in terms of priority, allowing civil society and dissidents at home to put pressure on the Chinese government in a focused manner. Also, the platform provided a space for the official and

the non-official discourse to interact and result in an outcome that is an amalgamation of the two in varying percentages. This interaction between the state and the NGOs happens not only at the forum but also before the process starts, depending on the nature of the regime in a country. Even when NGOs deny such participation, at least ritualistically, China claims to have engaged with NGOs in the preparation of UPR reports, many of which could have been deliberately planted. And when Chinese government lauds itself in the state-owned media for having a large number of commending states at the UPR, it also unintentionally authorizes UPR process to be a yardstick of its legitimate behaviour; an opportunity grabbed by the civil society groups by choosing issues of their choice from the outcome of the UPR process.

Most interestingly, the 2009 UPR brought up the question of the credibility of an NGO, with reference to the questions it raised both to endorse and berate a government's record. While some organizations China derided as terrorist organizations in its domestic jurisdiction, others, as per some NGOs, were carefully planted to direct the narrative in favour of the State under review. Despite the trend wherein authoritarian states like China castigate NGOs that stand against them, it remains a task for the UNHRC to build a framework that would establish the trustworthiness of an NGO. Though China stated the criteria for the acceptance of recommendations, no clear pattern has emerged in this regard. Adverse decisions on the implementation of recommendations may have been driven by the uncompromising, absolutist stand at the forum because of group rivalry or identity considerations, but later relented in an afterthought. Changing political considerations might be another factor. It is easy to infer that the acceptance of recommendation does not necessarily entail implementation. For this reason, civil society plays an important role even after the acceptance of recommendations and maintaining pressure until the next Medium-term Implementation Assessment (MIA) or even later. Hence, explicitly or implicitly, civil society is involved in the UPR process right from the drafting of the National Report to the next cycle. How satisfactory is this participation in terms of outcomes is still a question to be assessed.

2013 Universal Periodic Review

National Report

The second UPR cycle which took place in October 2013 witnessed China presenting a firmer case of cultural relativism. The National Report asserted that, though China upholds the universality of HR, it also believes that international community must make efforts to have a coordinated development of individual and collective HR (UNHRC 2013: 3). More conspicuously, the report asserted that “the Chinese Government is working to explore paths for HR development, establishing a robust system of HR safeguards, and continuously enriching the theory of HR, all within the framework of socialism with Chinese characteristics” (UNHRC 2013: 3). Such a perspective, as per the government, is in line with the “scientific outlook on development”, which allows “putting people first” by viewing protection of subsistence right and right to development as a matter of first principle (UNHRC 2013: 3). This point was made even in the interactive dialogue during the last UPR in 2009. The report goes on emphasizing that China “coordinates and promotes the safeguarding of civil, political, social, and cultural rights as well as the rights of special groups, develops a broader, fuller and sounder people’s democracy, and comprehensively promotes the coordinated development of rights of all kinds” (UNHRC 2013: 3). Thus, the government’s goal remained to make available to people a fairer and more harmonious society that promised a dignified life (UNHRC 2013: 3). It is interesting to note that terms like “harmonious society” or “scientific outlook on development” are very much Chinese in their usage.

As a departure from the previous National Report in 2009 which talked of the general legislative processes and constitutional provisions that ensured HR, the 2013 report framed the same from a culturally relativist standpoint, stating that “a legal system for socialism with Chinese characteristics finally took shape by the end of 2010” (UNHRC 2013: 3). The recurrence of the term “Chinese characteristics” might represent a strategic placement in China’s approach to UPR as the same had not been used even once in the 2009 report. Apart from this, most of the provisions and achievements enumerated in the report were general in the sense that not much was done by the government regarding institutional

reform that could be considered a paradigm shift. Of the 26 international treaties that the Chinese government had signed, the most critical was the International Convention on Civil and Political Rights (ICCPR). The report informed that administrative and legislative steps were on the anvil to facilitate its ratification (UNHRC 2013: 3) in deference to the suggestions from numerous states and NGOs. In line with the introduction of the National Human Rights Action Plan for 2009–2010 and going by the suggestion from the Committee on the Elimination of Racial Discrimination (CERD) to extend the Action Plan beyond 2010 (UNHRC 2013a: 5), the Chinese Government came up with a new National Human Rights Action Plan for 2012–2015 (UNHRC 2013: 4). The reasons for extension were explained. The National Report summarized the results achieved by the first Action Plan in implementing “35% of the binding indicators and more than 50% of the livelihood indicators ahead of schedule or in excess of their quotas” (UNHRC 2013: 4). Further, it was reported that NGOs actively participated in the preparation of National Human Rights Action Plan (UNHRC 2013: 6). China sought to derive satisfaction by quoting official records of the increase in the number of registered NGOs to 492,000 as of 2012 to work in the areas of “education, technology, culture, health, social administration, charity and welfare, and safeguarding human rights” (UNHRC 2013: 6).

The approach of China to civil and political rights is naturally loaded with emphasis on rights to development and subsistence, an area in which, China claimed in the report it has made striking progress (UNHRC 2013: 7). Also, it cited its efforts to implement Outline for Development-oriented Poverty Reduction for China’s Rural Areas (2011–2020) (UNHRC 2013: 7). With the result, compared to the situation reported in 2009, the Engel coefficient for urban and rural families dropped to 36.2 percent and 39.3 percent respectively, by 2012 (UNHRC 2013: 7). People in both urban and rural areas enjoyed a guaranteed right to food considering the improvements in the dietary patterns overall and rise in the nutritional standards (UNHRC 2013: 7). This had been supplemented by a universal minimum wage adjustment mechanism (UNHRC 2013: 7). Referring to the criticism made in the earlier UPR round about high rate of death penalty awarded, the report submitted that the use of the death penalty had further been curbed in the last few years by introducing reforms in the “evidence system” in cases of capital punishment,

reduction in the number of capital crimes and also the codification of “standards and procedures” for carrying out the death penalty (UNHRC 2013: 10). More specifically, through an amendment in the Criminal Law in 2011, China was able to abolish the death penalty for 13 “non-violent economic crimes”, which actually would fall into 19.1% of the crimes inviting capital punishment (UNHRC 2013: 10). The amendment also provided relaxation from the death penalty to a 75 years old person or more at the time of trial (UNHRC 2013: 10).

China refuted the earlier observation made by the Committee on the Elimination of Racial Discrimination (CERD) about the conditions of ethnic minorities who were disproportionately victimized through administrative detention (UNHRC 2013a: 9), by noting that “better remedies were now available to persons placed in administrative detention, and a judicial control mechanism with Chinese characteristics had been established” (UNHRC 2013a: 9). Again, it is hard to miss the Chinese claim about improvement in HR situation due to a justice system based on “Chinese characteristics”, thus implying that as the roots of such a judicial or administrative system become more entrenched over a system that existed prior to 1949 or the remnants of which still plague the current system, the HR situation keeps heading towards a positive trajectory. In defense of the “re-education through labour” system, the National Report justified it as an “educational and correctional measure commensurate with China’s national conditions; it has examination and approval procedures, oversight mechanisms and relief channels that are set by statute” (UNHRC National Report 2013: 11). The distinctiveness of this process in comparison with universal practices buttressed China’s case for relying on “China’s national conditions”, which is reflective of China’s communist history and consequent cultural relativism in HR standards. Apart from that, an open judicial information system had also been made available to ensure a fair judicial system (UNHRC 2013: 12). The Supreme People’s Court itself drafted six provisions on judicial openness (UNHRC 2013: 12). Added to that, effective safeguards had been put in place to ensure the right of lawyers to freely practice their profession (UNHRC 2013: 13). All these measures China enumerates in its National Report in defense of the robustness of its judicial system.

Compilation of the UN Information

Once the National Report is submitted, a compilation of the reports of the treaty bodies and special procedures, along with comments and observations made by the State concerned, prepared by the OHCHR is also submitted in the 2013 review process (UNHRC 2013a: 1). Torture, which figured as a major issue in the 2009 UPR has been noted by the Special Rapporteur, who urged the Chinese government to make sure that torture was defined as a serious crime in accordance with the provisions of Committee Against Torture (CAT) and penalties must be imposed commensurate with the gravity of torture (UNHRC 2013a: 5). Plus, statements or confessions extracted through torture should be prevented from being used as an evidence during a trial (UNHRC 2013a: 5). The Special Rapporteur further elaborated on the same by listing a number of issues, such as, “the reports of excessive use and length of pretrial detention, the lack of guarantees to challenge the lawfulness of detention and the continuing allegations about the use of forced labour as a corrective measure, ill-treatment of suspects in police custody, and harassment of lawyers and human rights defenders” (UNHRC 2013a: 10).

Other than torture, on the issue of freedom of lawyers, CERD called upon China to ensure that lawyers are in a position to practice their profession freely, not just on paper but also in practice (UNHRC 2013a: 10). This would entail a prompt action on the part of government to “investigate all allegations of harassment, intimidation, or other acts impeding the work of lawyers; and revise all laws and regulations that were inconsistent with the Lawyers’ Law and international standards” (UNHRC 2013a: 10). The HR Committee, as per the compilation, shed light on instances of curbing the activities of Falun Gong practitioners in Hong Kong, violation of freedom of religion and culture of the Tibetan Buddhist community (UNHRC 2013a: 11).The compilation added in this connection that eight special procedures sent a joint communication in 2012 alleging a systemic undermining of the autonomous functions of Tibetan Buddhists (UNHRC 2013a: 11).

Interactive Dialogue

In the Interactive dialogue, 137 delegations made statements (UNHRC 2013b: 5). Some of the notable comments came from the Western group. Belgium, which pointed out the non-ratification of ICCPR by China (UNHRC 2013b: 6). Denmark was anxious about the “legalization of enforced detention” (UNHRC 2013b: 7). The additional concern entailed state censorship of media, notwithstanding the increased access to the internet in China (UNHRC 2013b: 7). Germany advised improving legal provisions for the protection of individual rights (UNHRC 2013b: 7). Greece highlighted the areas of potential improvement, such as, “provision of human rights education to government agencies, chiefly the rights of women, children and person with disabilities” (UNHRC 2013b: 7).

Poland was little critical of restrictions on the exercise of “media and academic freedom and impingement of freedom of religion, culture and expression of the Tibetan Buddhist Community”² (UNHRC 2013b: 10). Holding the same views, the United Kingdom spoke against the violation of freedom of expression and association and the opaque process of death penalty (UNHRC 2013b: 12). US, like most of the times, was concerned about the “suppression of freedoms of assembly, association, religion and expression and continued harassment, detention and punishment of activists and undermining of the HR of ethnic minorities” (UNHRC 2013b: 13). In response to such criticism, China retorted that there are some countries that are trying to frame its crackdown on terrorism for security reasons in terms of cleansing of specific ethnic group or religion and honored criminals as “human rights defenders” (UNHRC 2013b: 13). At the same time, it expressed the desire to take the HR standards in China to a higher level (UNHRC 2013b: 13).

A large number of interventions focused on the urgent ratification of the ICCPR. The reference here is to the statements made by Albania, Chile, Belgium, Hungary, Japan, Maldives, Spain, France, Brazil, Estonia, Bulgaria, Ghana, Benin, Egypt, Guatemala, Sierra Leone and many more (UNHRC 2013b: 13-14). National Human Rights Action Plans (NHRAP) also figured repeatedly in the recommendations. Azerbaijan recommended

² Interestingly, Netherlands were relatively mild in their comments encouraging China to keep working on civil and political rights (UNHRC 2013b: 10).

continuing the successful implementation of the new NHRAP for 2012-2015 (UNHRC 2013b: 15). Mexico suggested taking the help of civil society in evaluating the impact of NHRAP and in the preparation of the National Report (UNHRC 2013b: 15). Sierra Leone, interestingly, recommended implementation of NHRAP and its 12th Five-Year Plan for Economic and Social Development in minority areas and poor neighbourhoods (UNHRC 2013b: 15). Cyprus stressed the need to include HR education in the training of “law enforcement agencies, public servants and youth” (UNHRC 2013b: 15). Regarding HR education, Iran, Bahrain, Democratic Republic of Congo and Seychelles made recommendations, mostly requesting to make it a part of different administrative organs of the government and share the practices with other countries (UNHRC 2013b: 15).

Practice of torture which was a matter of scrutiny for a considerable length of time in the discussions invited many recommendations. Mexico recommended “harmonizing of the definition of torture contained in the national legislation with the requirements of the CAT” and to ensure that “statements obtained through torture are not accepted in the court” (UNHRC 2013b: 16). Denmark urged to establish institutions that would “ensure enforcement of existing laws prohibiting torture and dismiss illegally obtained evidence” (UNHRC 2013b: 16). Switzerland urged Chinese authorities to “ensure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subjected to reprisals” (UNHRC 2013b: 16).

Related to the same is the question of death penalty which has been equally central in discussions. Algeria suggested strict adherence to standards on use of evidence in awarding death penalty and in addition, adopt stricter standards (UNHRC 2013b: 20). Slovenia and Chile asked for a “moratorium on the death penalty” (UNHRC 2013b: 20). Namibia, in very clear terms, asked to abolish the death penalty (UNHRC 2013b: 20). Hungary, France and Albania, on the other hand, recommended China to enhance its cooperation with special procedures (UNHRC 2013b: 17). Hungary in particular recommended issuing a “standing invitation to UN Human Rights special procedures” and permit to “all requested visits by mandate holders” (UNHRC 2013b: 17). Other important issues on which recommendations were made included re-education through labour, judicial reforms,

freedom of lawyers, religious freedom, freedom of expression, measures regarding internet, poverty, social security system and education (UNHRC 2013b: 20-26).

Outcome of the Universal Periodic Review

On 20 March 2014, at the 41st meeting, the Council adopted a decision 25/111 on the outcome of the review of China, without a vote (UNHRC 2014: 153). The outcome of the review comprised “the report of the Working Group on the UPR, the views of China concerning the recommendations and/or conclusions; also its voluntary commitments and replies presented before the adoption of the outcome by the plenary to questions or issues that were not adequately addressed during the interactive dialogue in the Working Group” (UNHRC 2014: 125). While expressing its views on recommendations, conclusion, voluntary commitments and the outcome, Chinese authorities reiterated that it would entertain recommendations that take into consideration the “national conditions” of China (UNHRC 2014: 125). The recommendations that it has not accepted were made by a “small number” of countries, for the reason that these “were not practicable at the current stage” (UNHRC 2014: 126). For example, on demand for setting a timetable for the ratification of ICCPR, the delegation explained that it would depend on the decision taken by China’s legislative bodies considering the maturity of domestic conditions (UNHRC 2014: 126). Secondly, the delegation was of the view that these recommendations were not in sync with China’s realities and for that reason, could not be implemented; one example of which is the “abolition of the death penalty for all crimes” (UNHRC 2014: 126).

Eventually, China decided to accept 204 recommendations out of 252, covering over 20 areas, including poverty reduction, education and judicial reforms (UNHRC 2014: 125). The delegation prided itself on having drawn two HR Action Plans, which is not common (UNHRC 2014: 126). China also referred to the decision taken by National People’s Congress in 2013 to “abolish the system of re-education through labour” (UNHRC 2014: 126). During the adoption of the outcome of the review of China, 13 delegations made statements (UNHRC 2014: 127). While expressing its views on the review outcome, US welcomed acceptance of recommendations on ICCPR, but also expressed serious concern on policies in ethnic Uighur, Tibetan and Mongolian areas that had contributed to a state of

turmoil and also mentioned the on-going detention of three activists (UNHRC 2014: 127). Especially, US mentioned the detention of Xu Zhiyong, Liu Xiaobo, and the house arrest of the Nobel laureate's wife (UNHRC 2014: 127). The US was displeased that China did not accept UPR recommendations on “freedom of peaceful assembly, freedom of association, freedom of expression and internet censorship” (UNHRC 2014: 127). The death of Cao Shunli during detention, an activist who sought to engage with the Chinese government on the UPR issues, was repeatedly mentioned not just by the US, but many other countries and NGO representatives. Germany stated that “participation of civil society was part and parcel of the UPR process and that Ms. Cao Shunli had paid with her life for taking this engagement seriously” (UNHRC 2014: 127). It urged China to investigate into the circumstances that led to the death of Cao Shunli and bring perpetrators to justice; and also fulfil its commitment on unhampered participation of civil society not just in UPR process, but public life in general as well (UNHRC 2014: 127). Ireland voiced similar concerns (UNHRC 2014: 127).

The Amnesty International, like others, deplored the death of the Chinese activist who actively campaigned for greater transparency in the UPR process (UNHRC 2014: 131). Human Rights Watch, while pinpointing misleading claims in China's outcome report questioned the circumstances that caused Cao Shunli's death. International Service for Human Rights (ISHR) characterized it as a “flagrant case of deadly reprisal of human rights defender” (UNHRC 2014: 129).

Germany hoped that the abolition of re-education through labour would be effectively followed and not transformed into some other form of detention (UNHRC 2014: 127). On the contrary, Eritrea, Egypt, Gabon, Iran, Lao PDR, Lebanon and Sudan largely showered appreciation for the steps taken by China in ensuring HR (UNHRC 2014: 127-128). Cuba, a long term ally of China, applauded the implementation of the second National Human Rights Action Plan and especially, “the progress on the rights to work and social security, education, health, development of cultural rights, rights of children and women, and freedom of religion” (UNHRC 2014: 127). Further, it showed appreciation for China's acceptance of its recommendations in which Cuba asked to “investigate activities of

fabrication and dissemination of false information and taking measures regarding persons engaged in unlawful Internet activities; and giving special treatment to ethnic minorities in politics, economy, culture and education” (UNHRC 2014: 127).

General comments on the outcome of the review came from NGOs. Amnesty International elaborated on the continued use of arbitrary detention, forced evictions, discrimination against ethnic minorities including Tibetans, Uighurs and Mongolians, criminalization of legitimate and peaceful public participation, specifically, the trials of members of the “New Citizens Movement” (UNHRC 2014: 131). Hence it questioned the claims made by China in the outcome report. The Human Rights Watch, on the other hand, asked China to explain the allegations of “separatism” against a Uighur economist who only criticized Governmental policies in Xinjiang and very clearly denied any demand for independence for the region (UNHRC 2014: 131). This kind of government attitude, the HRW stressed, would not go well with its claims of respect for ethnic minorities region (UNHRC 2014: 131). The HRW went to the extent of accusing China of hurting the integrity of UPR process because of the lack of compliance with the standards of promotion and protection of HR (UNHRC 2014: 130). World Organization against Torture (OMCT) showed disappointment with China’s decision to not ratify OP-CAT (Optional Protocol to the UN Convention against Torture) while it made claims of having no instances of arbitrary detentions and reprisals of human rights defenders. Torture, as per OMCT, was still rampant, more so if the victims were Tibetan monks and nuns (UNHRC 2014: 129).

The Federatie van Nederlandse Verenigingen tot Integratie Van Homoseksualiteit (COC Nederland) and the International Lesbian and Gay Association (ILGA) referred to the persistent stigma against the LGBT individuals with no law addressing discrimination arising from sexual orientation and gender identity (UNHRC 2014: 130). They urged China to develop a comprehensive legal structure in this regard, promote diversity and health of LGBT persons and allow LGBT NGOs to register officially (UNHRC 2014: 130). International Federation for Human Rights Leagues (FIDH), in their reference to the recent trial of HRD, called upon China to end such prosecution and free those detained arbitrarily (UNHRC 2014: 130). Further, talking about self-immolation in the Tibetan

region, FIDH, urged to reform the coercive laws implemented in the minority populated areas (UNHRC 2014: 130). Lawyers' Rights Watch Canada (LRWC) accused China of hindering lawyers from defending Falun Gong followers and that the outcome report failed to address China's offensive on HR lawyers adequately (UNHRC 2014: 131). It sought an end to China's alleged "slaughter of prisoners of conscience for organ procurement", especially "organ harvesting" of Falun Gong prisoners (UNHRC 2014: 131). LRWC supported its demand with a "1.5 million signature petitions" referred to the United Nations High Commissioner for Human Rights regarding the same (UNHRC 2014: 130-31).

Not all NGOs were critical of the outcome report. Some like China Disabled Person's Federation (CDPF) and Action Canada for Population and Development (ACPD) spoke positively of the Chinese government. The former acknowledged that Government solicited the opinions of the NGOs in preparing the national report for the UPR (UNHRC 2014: 130). Referring to Chinese governments' achievements, CDPF noted that "China amended and enacted a series of laws and regulations on disability in line with the non-discrimination principles of the UN Convention, integrated work on disability in programmes on development and adopted new action plans on disability" (UNHRC 2014: 130). The ACPD also welcomed the steps taken by the government in recognition of the HR of lesbian, gay, bisexual, transgender and intersex (LGBTI) people in China, them being considered equal before the law (UNHRC 2014: 131).

In its concluding remarks, the Chinese delegation urged the international community to respect the independent path chosen by China in protecting HR, based on customs and traditions followed by different localities and the state of country's economic and social development (UNHRC 2014: 131). It observed that many countries are of the opinion that some countries and NGOs follow selective approach in evaluating HR, which apparently "violated the rules of procedure of the Council" (UNHRC 2014: 132). In the end, despite the discrepancies in the process, the Chinese delegation maintained that "UPR was an important United Nations procedure for member States to review HR on an equal footing and through cooperation and dialogue" (UNHRC 2014: 131). The word "cooperation" and "dialogue", though general in nature, repeatedly appear in Chinese HR vocabulary.

Follow up of the 2013 Universal Periodic Review Recommendations

Tibet Advocacy Coalition in its mid-term report complained that China did not comply with the pledges it made in regard to economic, cultural and social rights of Tibetans, evidential of its discriminatory policy against Tibetans and resistance against their demand for self-determination (UNHRC 2016). International Service for Human Rights (ISHR) reported that China, since the October 2013 review, has intensified its crackdown on the defenders of HR, especially lawyers (UNHRC 2016a). China has defaulted on the recommendations asking to “improve the regulatory framework for lawyers”, “guarantee access to prompt and effective investigation by an independent and impartial body for defence lawyers” and “actively create conditions for lawyers to get involved in a lawsuit from the stage of criminal investigation” (UNHRC 2016a). On the contrary, new regulations have been passed in China that prevent lawyers from disclosing information, thus making it easier for the government to hide the truth (UNHRC 2016a). International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) in its mid-term report questioned China’s implementation of two recommendations, “establishment of effective anti-discrimination laws and regulations for LGBT” and “to specifically address the need to prohibit discrimination on the basis of Sexual Orientation and Gender Identity (SOGI)” (UNHRC 2017). On the top of that, it accused Chinese government of being a complicit partner in tolerating such discrimination through public school and government officials (UNHRC 2017).

Inadequacy of action taken on recommendations pertaining to discrimination against women in employment, domestic violence and trafficking were dealt by Human Rights in China in its mid-term report (UNHRC 2016b). It said that measures taken for realizing equal pay for women are not comprehensive enough (UNHRC 2016b). Changes done in the Criminal Law to prevent trafficking of women do not fully comply with the international standards (UNHRC 2016b). And against China’s claim, there is not sufficient evidence available in favour of provision of physical and psychological rehabilitation services for victims of trafficking (UNHRC 2016b). Draft amendments made to the Regulations on Religious Affairs (RRA) curb the autonomy of local religious group by

authorizing national religious organizations to make decisions for them (UNHRC 2017a). Officially, attempts have been made for the sinicisation of Christianity, apparently making it compatible with Chinese socialism, national conditions and culture (UNHRC 2017a). Even at Tibetan Buddhist institutes, demolitions and evictions have regularly happened (UNHRC 2017a). School curriculum still does not comprehensively cover information about universal HR principles (UNHRC 2016c). Journalists and bloggers continue to be harassed through draconian cyber policies and the representation of women is still highly inadequate at all levels of government (UNHRC 2016c).

Observations

From the above survey of the second cycle of UPR, an increase in the numbers in every sphere, whether the commenting states, range of issues, NGOs making oral statements or the media coverage, can be gauged. Most importantly, there has been a significant expansion in the scrutiny of the follow-up by China. Though it will be a folly to be overly optimistic about the UPR process, its procedural success cannot be denied. Again, procedural compliance may not necessarily lead to ideational compliance. Yes, China has been uncooperative on the forum, but so far it has refrained from questioning the very existence of the organization. It has taken a more gradualist approach and applied subtle diplomatic maneuvers. In the second UPR, China has shown greater clarity of its reform agenda, like contributing to the HR theory taking a very Chinese approach and the great renewal of China in international politics. That some western countries like Greece have been comparatively more appreciative of China's record shows China's growing influence even in the West. During the interactive session, arguments between China others regarding the mismatch of data and information on particular issues arose many a times. It will be desirable if there could be a fact checking mechanism within the UNHRC for at least some of the basic information. Also, some of China's statements implied that China is yet not mature enough for the HR standards UNHRC desires, thus deserving an exception.

Summary Observations on the Two Cycles of Universal Periodic Review

The importance Chinese government attached to the UPR process can be judged through the size of its delegation in the 2009 UPR, which comprised of forty-two members, many of which were from the Permanent Mission to the UN offices in Geneva (Smith 2011a). Given the vastness of Chinese delegation, it was comfortably placed in countering comments by numerous states as the greater number translated into greater range of experience and knowledge mobilized in answering questions (Smith 2011a). China's participation in UPR was also complemented by a permanent mission in Geneva which allowed prompt bureaucratic response (Smith 2011a) and of course, its strong economic capacity played a part too. Importance of UPR for China may be further rationalized by the fact that right from beginning, China was against country-specific resolutions and preferred UPR for engaging states on their HR records (Sceats and Breslin 2012: 18). As a result of which China is very "active" during the review process, especially for the UPRs of its neighboring states, ally states and developing countries (Sceats and Breslin 2012: 17). It has on most occasions commended states for social and economic progress and supported the adoption of action plans (Sceats and Breslin 2012: 17).

Rights of disadvantaged groups, such as "the disabled, women, children, migrants and ethnic minorities", is a recurring theme in China's statements during the UPR (Sceats and Breslin 2012: 17). Although HR lawyers in China are skeptical of such behaviour, rights of these groups are promoted by China as a political move to enhance its credentials and ward off the likely criticisms from Western states and NGOs (Sceats and Breslin 2012: 17).

The two UPR cycles of China show adoption of a convenient mix of defense and offence in China's strategy, as manifested in reacting to norms or in shaping norms, mainly by invoking vocabulary of its own. And it received support from Asian and African states in the pursuit of the strategy. In both the UPR cycles in 2009 and 2013, China has received both critical and appreciative comments. One cannot rule out political motives on either side here: the Western criticism owes much to ideological reasons whereas the flurry of positive comments may have come despite instances of China having not achieved its proclaimed voluntary goals because of trade, diplomatic, political and ideological

considerations (Smith 2013). This led to expression of disappointment with the lack of credibility in UPR (Kälin 2014). The ritualistic nature of the process is evident when the states participate without intending to accept any of the recommendations or even if they do, the implementation is rare (Kälin 2014). China's response to queries at UPR has many times comes across as very ritualistic when it only reiterates the existing law and intuitions that are committed to preventing HR violations. But, it does not report on the on-ground practices of those institutions, the awareness of people about the institutions or the accessibility of those institutions. Existence of institutions is no guarantee for the realization of rights. Even in the case of law, China limits itself to a mundane re-reading of broad laws, such as, as per the Constitution, everybody is equal before the law, including people of all sexual orientation. Despite instances of such ritualism, as Karolina and Goodin (2016) argue that "deliberative processes" during the UPR can inspire "cooperative response" even from the supposedly oppressive countries. Also, the divergence in the credibility of the UPR process is also reflective of "cultural relativism" perspective on HR. In the case of China and countries with similar political trajectory such as Viet Nam, Myanmar and Cuba, UPR revealed that the cultural relativism is derived from political factors as well as revolutionary discourses, which is different from the one presented by Islamic countries like Yemen, Iran and Pakistan (Blackburn 2011: 32). China's variety of cultural relativism is associated with a regime having revolutionary origin, resulting in conflicted relationship with the international HR standards on denial of political plurality (Blackburn 2011: 32). This causes the practice of torture and repression of those who sympathize with the other, more so of any form of public expression culminating into the censorship of the media or the denouncement of the "foreign domination religions" (Blackburn 2011: 32). And such issues have figured often in the Reviews and submissions of China (Blackburn 2011: 32). Moreover, as illustrated in the National Report, the dignity of life enjoyed by people is often mixed with the survival of the regime and this has been a feature in many of the authoritarian regimes, including North Korea. But as per the liberal argument, human dignity cannot be seen as an extension of the political regime. As regimes installed by a revolution presumably for all the right reasons, may deteriorate overtime and might become orthodoxies because of the lack of credible opposition and therefore, no

longer be considered revolutionary (Blackburn 2011: 35). Thus, any concession by UNHRC on the recognition of ‘Chinese characteristics’ for assessing HR might inspire other states in future to come up with their own indigenous standards that have the capacity to erode the underlying tenet of UNHRC. A strong architecture of UNHRC must be maintained keeping in mind that the forum has not progressed much beyond naming and shaming in the two cycles of UPR in case of China. While the strategy works in inspiring justification from the target nation, it still does not lead to the public acknowledgement of the HR violations. Nearly three decades gone by, China has yet not issued any public apology for Tiananmen Massacre. Rather, naming and shaming has inspired it to devise opposing conceptual rhetoric and institutional innovations in UNHRC, which may at times be absolutely artificial.

Self-evaluation as an important element of UPR is a source of identity construction for China. Although China exaggerates its achievements, the National Reports bring to fore the vocabulary particular to the State under review. In case of China, it has been “Chinese characteristic”, “dialogue and cooperation” and “socio-economic development”. While lately US has chosen a more inward-looking vocabulary in relation to UNHRC, China, ignoring all the criticism and charges of hypocrisy, chooses a vocabulary of “responsible” “Third World leadership” and minimizing confrontation. Still, this positive identity has not percolated beyond the forum, among the masses. The images and discourses of HR violations by Chinese communist regime are too widespread to be displaced by a more technical and academic outputs of UPR. This further increases the possibility of the forum being used only instrumentally by the Chinese establishment if it does not lead to a substantial change in China’s negative identity among the masses.

In the 2013 UPR, the accusation of China being an extremely negative player manifested itself in the case of highly controversial issue of the death of Chinese activist, Cao Shunli, in detention; brought to attention by many NGOs, including International Service for Human Rights, which announced that it wants to use a part of its time meant for general comments for a minute of silence in the memory of Cao Shunli, and other human rights defenders who had lost their lives (Reis 2016). China then raised a point of order, asking

the UNHRC President to prevent the NGOs from violating the rules of procedure, which only allows civil society organizations to make general comments and not observe a moment of silence (Reis 2016). With 20 votes against the President's decision, China's objection was upheld (Reis 2016). This episode raises the question about China's role in using the rules and norms of the UNHRC to safeguard its interests (Reis 2016). However, as much as China tries to reshape the character of the UPR process, it also understands the need to stand in favour of normative behaviour in order to maintain a minimum threshold beyond which a state might be in danger of being considered rogue or irresponsible.

As noted above, China's has majorly received positive recommendations. Some commentators believe that the "politicization of the process" has made China the most positively rated Asian country (Smith 2011b). Even with regards to the recommendations China has accepted or implemented, it is doubtful that mere implementation can be considered a benchmark of China's commitment to UPR for these recommendations made by the commending states of Asia and Africa have many a times not been too demanding. Though there is a visible reciprocity between China and the Like Minded Group, this may not always be true. For instance, during the 2009 UPR, China was not reviewed in the first session and therefore, it commented on others' HR record before knowing their response to its own (Smith 2011b). Moreover, the issues raised by China during their review were not necessarily similar to those raised during its own review (Smith 2011b). And compared to the number of states that commented on China, that was 115, China commented on almost every state, which could have been a strategic move in order to receive support instead of condemnation (Smith 2011b).

Procedurally, China has shown active involvement in UPR, focusing to a great length on its new and indigenous ideas, and vocabulary during the sessions. This approach, also known as instrumentalism, based on the philosophy of John Dewey, emphasizes pragmatism and adjustment (Chaney 2018). China's discourse is "instrumental" for it artificially constructs a coherence between HR practices within its borders and its obligations under the UN's HR regime, solely for the administrative aspects of the UPR (Chaney 2018); which maybe a pure linguistic construction rather than actually being the

case. Even Kent (1999: 249) is of the opinion that even though the processes in UN HR regime have made China more compliant than before, it has not made China internalize these norms; instead it has developed enhanced skills of negotiation in order to bypass the international pressure. This results in a discourse symptomatic of “institutional decoupling”; when a state espouses one thing and does another (Chaney 2018). This is when the civil society steps in to play a major role by shedding light on commitments made on paper and actual compliance on ground (Chaney 2018). Signing treaties may be just an act of appeasement of the domestic as well as international constituencies (Chaney 2018).

Therefore, China has repeatedly sought to limit the participation of NGOs within the Council. For example, it recommended barring NGOs from engaging in the interactive dialogue with the special procedures during the 2009 cycle and to set aside separate sessions for them to express their concerns (Sceats and Breslin 2012: 21). An interesting aspect of the nature of NGO participation is the nexus between the international NGOs and the local NGOs. Certain international NGOs in their assessment of the implementation of recommendations consult the local NGOs as they might not be in the position to enter the Chinese border. Instances of such collaboration are present in of mid-term reports on the implementation of recommendations. This collaboration also provides indigenous Chinese civil society organizations, an opportunity of enhanced engagement as their direct input to the UPR is limited; either they are muted or forced to toe the line of the government (Chaney 2018).

On the other hand, international NGOs do not mind pressing their home governments to convey their concerns in bilateral meetings with China. They are freer in voicing their concerns against China’s failure to uphold HR. So, understanding the strategic relations of international NGOs with UNHRC bureaucracy, local NGOs and states can be instrumental in developing more effective pressure tactics. No other element in UPR is as centrally placed as international NGOs in terms of network. In the absence of active NGO participation, CCP will be successful in monopolistically defining the “Chinese characteristics” driving the assessment of HR, thus legitimizing its rule and performance in UPR. However, though the participation of NGOs is of utmost importance, it is difficult

to ascertain precisely whether a recommendation has been implemented purely because of the mobilization by NGOs, other states' pressure or simply because of the change in the political environment. At the same time, considering the continuity of a stable political leadership in China and underlying communist philosophy, change in leadership may not be the biggest reason affecting such decisions. So, change in the character of decisions, to a greater extent, may be attributable to external pressure than internal, especially in case of authoritarian countries. An extreme manifestation of this idea is North Korea's decision to engage with South Korea is more driven by external political circumstances than a reticent domestic population.

If UPR performance in case of China is to be assessed in terms of outcome, it may first be asked what has been the dominant form of interaction between the NGOs and China, cooperation or confrontation? As far as major international NGOs such as, Amnesty International and Human Rights Watch are concerned, the interaction has been majorly adversarial; these organizations just seen as agents of western powers by China. Also, these organization are big forces in international politics, with a huge number of manpower, both in terms of bureaucracy and grassroots level activists, therefore in a position to evade indirect pressure or intimidation from Chinese authorities. Unless there is a possibility of big diplomatic impasse, these international NGOs, such as Amnesty International and Human Rights Watch, are comfortably placed in their host nation, thus not insecure regarding daily institutional existence. Such institutional security makes them even more threatening to Chinese authorities. However, even in a situation of such adversarial communication, the socialization of China is only going to increase through constant interrogation by the international NGOs. For instance, international NGOs played an important role in highlighting the inhumanity of Tiananmen Massacre, and since then China has been continuously confronting NGOs on the issue. In fact, 'entanglement' is an even better term to explain this process.

Other than that, there have been inconsistencies in the acceptance or refutation of recommendations. For example, in the 2009 review, China rejected two out of three recommendations by Netherlands, despite the fact that those were not so controversial

(Smith 2011). These pertained to extending a standing invitation to rapporteurs (Smith 2011). Contrary to that, China welcomed recommendations by Sudan “to invite Special Rapporteurs dealing with economic and social rights”, and also the Latvian and New Zealand’s advice to “enhance cooperation with the special procedures” (Smith 2011). Even the National Report submitted by China affirmed that the Chinese government is optimistic of its “cooperation with the United Nations special procedures” (Smith 2011). Such inconsistencies indicate the lack of a standard and predictive behaviour by states in the UPR (Smith 2011). Other issues relate to the use of “undefined” terms in China’s National Report (Chaney 2018). The language is sometimes very vague and general, for instance, China’s discourse on “religious freedoms” is mainly descriptive during the UPR cycles, hardly offering anything more than the routine recitation of legal and constitutional provisions (Chaney 2018).

Further dilution of the UPR process can be gauged through the accelerated increase in the general category and continuing category recommendations, and an accompanying decline in the specific category recommendations, especially during the second UPR cycle (Mao and Sheng 2016). There has been a decline from 34.4% in the first cycle to 32.5% in the second cycle in this category (Mao and Sheng 2016). The high percentage of general recommendations reflects the diplomatic constraints states face in making precise recommendations (Mao and Sheng 2016). In March, 2014, nineteen civil society organizations denounced recommendations in the second cycle for being less specific, noting the overall number of recommendations made has increased, but the quality has decreased (Mao and Sheng 2016). The 2014 UPR annual report set the annual goals to ensure stronger recommendations at the UPR and to draw the attention of the UNHRC to the lack of specific recommendations (Mao and Sheng 2016). It notably called on states to improve the quality and specificity of UPR recommendations (Mao and Sheng 2016). These problems are even more aggravated in case of the UPR of a powerful country like China (Mao and Sheng 2016). Scope for improvement in UPR is highlight in the “low action levels” on 70% of the recommendations (Mao and Sheng 2016).

Overall, one can see a gradual clarity in Chinese establishment in dealing with the UPR process from the first UPR cycle to the second. Even the quality of discussions have increased overtime. Specifically on the part of civil society, the research on various issues is more comprehensive and so is China subjected to even harder questions from the detractors. This will have the effect of the increase in bureaucracy and expertise in China on the issues raised at the forum. However, it is hard to predict whether there is going to be upward shift in the implementation of recommendation, for a lot depends on the political environment outside the forum. And to believe that Asian and African countries' are always going to be on the side of China is misplaced, for on particular issues, the mid-level powers among these might chose to bargain their support. One example of such unexpected behaviour was the lack of support for China by the same countries for excluding the provision of country specific resolutions in the successor organization, UNHRC, despite these countries being the target of the same. In that context, as per the principle of falsification by Karl Popper, there is more to learn from one instance of divergent behaviour than a series of expected behaviour. So far, the behaviour by Asian and African nations has been more on the expected lines during the UPR of China.

Among the P5, after US, China has received one of the highest number of recommendations. Nonetheless, it has emerged more confident about its ability to deflect criticism. At the same time, the expectations from the institution of UPR have increased. Despite China constantly howling of victimhood at the forum and NGOs feeling a lack of satisfaction on the action taken by the states, none of the participants would agree on dismantling the institution and this is what the strength of UPR is. With the latest development of US opting out of UNHRC, China may show up even more assertive in its leadership. The personal influence of President Xi Jinping along with China's resurgent sino-centrism will probably be manifested with a greater assertiveness in the next UPR in 2018.

CHAPTER 5

Conclusion

As this chapter revisits the main findings of the previous chapters and discusses some of the crucial questions on the role of China in UNHRC, it tests the hypothesis whether HR consensus in UNHRC has not been able to overwhelm the nature of the political regime in China. Also, China has built convergences with Asian and developing countries to make outcomes less embarrassing.

Nature of Chinese Discourse on Human Rights

The study sources the patterns of China's conduct in the United Nations Human Rights Council to the historical and contemporary strands of the Chinese human rights discourses. The Chinese discourses on HR intrinsically involve the comparison between the official and non-official discourses which demonstrate a mixed bag of continuity and change. While the continuity has been mainly favoured by the establishment for traditions are the basis of legitimacy, it seems like it has been lagging behind the Chinese society which is demanding change. Ideas deeply embedded in Chinese official discourse include state-centrism, primacy of the collective rights over the individual rights, full realization of socio-economic rights before civil and political rights, preference for social harmony and stability over democratic chaos, cultural relativism of the colonized past, orthodox notion of sovereignty and non-interference and most recently, internet sovereignty. Some of these ideas, such as state-centrism, collective rights and preference for stability are deeply rooted in Chinese political traditions, while others are the innovations of modern times in response to the onslaught of the West. The non-official discourse, on the other hand, gives primacy to the individual rights but in the sense of facilitating collective rights. Call for democracy has seen an upswing since the Democracy Wall Movement, yet again, not in terms of whole scale replacement of the existing system, but reformation and transformation. Defense of universal HR values is apparent particularly among the vulnerable groups, including women and minorities. Imperialistic indulgence of China in African countries has been criticized by the local intelligentsia as a contradiction in China's brand of "sovereignty".

Cyberspace has enabled greater freedom of speech for Chinese dissidents and accelerated activism against censorship. As far as Confucian values are concerned, it has been a vehicle of legitimacy for both the ends. Just that both sides tend to interpret Confucian virtues in ways that propel their own objectives.

While the official discourse has been presented repeatedly at the UNHRC in the form of “Chinese characteristics”, there is also an equally intense opposition to this discourse by the local as well as the international civil society. As much as there are elements of Chinese discourse that are truly unique to its historical trajectory, it would be wrong to assume that what has always existed should always exist. The relativist argument forwarded by Chinese authorities is used as a “means” to quell voices that raise uncomfortable questions. Even the unique elements of Chinese HR discourse, such as the primacy of collectivist rights, has been redefined at major historical moments, as for instance, the May Fourth Movement or Democracy Wall Movement. Therefore, what is unique today may not remain so in future as ideas do not change swiftly but transform gradually. Most of the arguments on cultural relativism that China espouses are common with many post-colonial societies who also share similar victimization and believe that western standards cannot be applied to them. At the same time, many of these countries face a severe challenge to their cultural relativist discourse, chiefly from feminist groups and minority groups. And often, these groups have tried approaching the very western countries or international civil society which their native establishment despises. This negates the idea of the unacceptability of universal HR standards. In western states, especially the powerful and the developed, even if the minority or women groups are dissatisfied with the HR situation, the strength of the civil society there allows them to exert direct pressure on their government or related international organizations (IOs). Without doubt, even among the permanent members, one can clearly see more dissidents migrating out of China or Russia than the US, UK or France.

In the context of foreign policy, the latest addition to the official discourse is being a “responsible” superpower. However, currently China lacks the psychological hold in terms of HR that earlier superpowers like US and UK had because of their “soft power”, which is why Guha (2018) calls China “a superpower without a soul”. The technological

advances in information dissemination such as the internet itself and later Facebook, Twitter, Whatsapp, Apple, Amazon or Google which mainly operate from the United States have turned the world into a more open and easier place. China, on the contrary, comes out as a major practitioner of online censorship. Since human rights have been a narrative mainly in the realm of soft power, it is not just what the US does that matters, but how the international community envisions the “life of the individual” in the US, which has been largely positive. This is why, despite the horrors of the Vietnam War, Iraq War, Syrian War or what not, the US narrative on HR appears legitimate compared to China.

Last few decades, especially since the Tiananmen Massacre, have seen an accelerated revision of the HR discourses in light of globalization. Against that, the government has deliberately attempted the revival of traditional Confucianism. So, it will be short-sighted to settle down on the current mix of the relativist and the universal HR in China. Having said that, there are unique elements to Chinese discourse, but these do not exist unchallenged, and their legitimacy in UNHRC should be upheld based on the purpose they serve, emancipatory or repressive.

China’s Response to United Nations Human Rights Council

China’s association with the UN HR regime first started with China’s induction in the UN, which the organization itself thought was indispensable. From then on, China has incrementally evolved from maintaining a passive posture to a defensive mode because of the Tiananmen Massacre and finally in the UNHRC, a big influence. When the UNHRC was being designed in 2005, China preferred larger membership, an absolute majority for election, no strict criteria for membership, geographical redistribution of seats, stricter criteria for passing country-specific resolution, adoption of resolution to have the support of two-third of the membership and participation of NGOs to be restricted to the UPR mechanism. It had, however, to yield ground on some key issues. It garnered support for a representative body and stricter criteria for adoption of country-specific resolutions, but it had to give into the dominant opinion on the requirement of the two-third majority for election to the new Council based on track record.

As the work at UNHRC progressed, China was able to build alliances with the Like-Minded Nations on issues of importance, including censure on HR situation as well as its own election in the body. Further, China's consecutive introduction of two resolutions in last few years, "The Contribution of Development to the Enjoyment of All Human Rights" and "Promoting Mutually Beneficial Cooperation in the Field of Human Rights", were a vigorous attempt at wielding influence. At the core of the first resolution was the idea that development should be the pre-condition for the realization of civil and political rights, which was in contradiction with the founding principles of UNHRC, UDHR, and VDP. The latter resolution reflected the idea of all states working through cooperation, rather than confrontation to realize HR. Cooperation, as interpreted by this resolution, would make UNHRC an agent of repression by marginalizing dissent and privileging states in dealing with HR. Especially, criticism from most of the NGOs participating in UNHRC has been that of China strategically diluting the UNHRC mechanism. Despite the political clout China has managed at UNHRC, it still suffers from the "legitimacy deficit", for which one of the co-related factors can be the spillover from its hegemonic behaviour outside the organization. China's behaviour in the South China Sea, a threat to many Southeast Asian nations has the potential to affect the decisions of the member countries at UNHRC, who might choose to balance China against the United States and its allies. Thus, to believe that China fully exerts power over the small countries and considering them as absolutely devoid of agency can be misleading. Rather, acting as balancing powers can enhance their autonomy.

As noted earlier, the response of China to the setting up and functioning of UNHRC has been largely towards diminishing its role, but at the same time, maintaining caution that the organization does not lose its functionality in absolute terms, because then it would not serve the purpose China aims to fulfill. Moreover, even powerful states, on occasions, choose to demonstrate neutral behaviour to aid the efficiency and the legitimacy of collective actions (Abbott and Snidal 2001). As a result, the forces of centralization and independence work simultaneously in an IO (Abbott and Snidal 2001). And to reduce UNHRC to functions only related to conflict management is myopic for there is a diversity of functions an IO performs, including technical assistance and other bureaucratic

paraphernalia; which is why China would not mind ensuring "partial" independence to UNHRC. While participating at UNHRC, China was able to judge the approach of individual countries towards universal HR, thus reducing the transaction cost (Abott and Snidal 2001) that would have gone into bilaterally approaching these nations. After understanding their preferences, China gained a foothold at UNHRC by acting on common ground with small nations. As per Martha Finnemore (1993), the inter-subjective process within an IO educates its members into norms on a particular policy area. China's policy on HR was immensely catalyzed by the scrutiny it faced in UNCHR. It not only educated itself about the existing norms but presented a Sino-specific view on HR as a member of UNHRC. A further step was to influence the interpretation and language of the tenets of UNHRC, by introducing concepts such as "mutual cooperation", "Chinese characteristics", "social harmony" and "development".

At the level of bureaucracy that is by nature sticky and suffers from inertia, it is difficult for China to make substantial changes in the near future. As much as China may be in a position to shape the discourse in UNHRC, it seems limited in its capacity to constrain the existing bureaucratic inertia within the UNHRC; for which it not only needs to increase the number of Chinese officials working in the organization but also increase the contribution in the budget. UNHRC is funded from the regular UN budget, in which China lags behind the US, the largest funder contributing up to 22% of the total budget. Still, it is unlikely that China, like the US, would opt out of UNHRC. As realists would like to believe that intergovernmental organizations are a means for a status quo-ist power to maintain a certain form of order (Cupitt, Whitlock and Whitlock 1995), but it is simultaneously a route for a dissenting power, such as China, or sub-organization within an intergovernmental organization to challenge the status quo as non-participation is not a viable option if a country wants to assert influence. Realist say that the pursuit of relative gains among countries undermines lasting cooperation (Cupitt, Whitlock and Whitlock 1995: 390), which can be belied by the fact that both the status-quoist power as well as the dissenting power need each other to compete at a common forum so as to realize their own objectives. With the exception of US, most countries have chosen to stay as member of UNHRC. This adds to the durability and the stickiness of UNHRC.

A major constituent of China's response to UNHRC is its domestic politics. Since the formation of UNHRC, the Chinese government has demonstrated an evolutionary, calculative and proactive policy. One contributing factor to this is the continuity in the political ideology and the predictability of its regime, unlike the US which is driven by confusion and polarization in the political stand with changing ideological orientation of elected administrations. China has presented itself as an introverted and gradualist power. It has also used threat and inducement to influence the narrative at the forum but in a subtle fashion. Using the support of its allies for expanding influence on Europe, it has, to a large extent, overcome the susceptibility to shame since the times of the Tiananmen Massacre. Not only China has exercised soft power at UNHRC but also earned soft power when the resolutions introduced by it garnered greater support and the same is disseminated for political consumption. This has even more critical impact on UNHRC that is driven more by reputation than hard law. For an authoritarian country like China, the acceptance or even the use of the personal vocabulary of the ruler at the forum, in this case, President Xi Jinping, can aid the legitimacy of an undemocratic leader and his personal politics to the detriment of the larger party politics in the country.

UNHRC's success can be seen more in terms of soft institutionalization. The bulk of the non-Western countries are not in favour of excessive legalization of the process. However, the same countries, whether willingly or not, follow the hard legal structure of WTO. What explains that? Probably, the nature or the character of power that these nations are in the capacity to exert at different forums explains. And also the design of the institution for what pressures it allows to form. The regional membership criteria and decisions by majority allow China to exert its weight in terms of numbers, thus disempowering US. At the same time, EU countries do not act impulsively like US at UNHRC, probably because they do not see themselves as hegemonic powers, and also waning in power in relation to China. Secondly, in terms of identity, EU countries are seen as successful in instituting a strong organizational structure and standards on HR, and this propels them to assert a sense of credibility and responsibility for exporting these ideas to UNHRC. So, identity in relation to HR plays an important role in decisions taken by states at UNHRC. China presents a "victim" identity and thus, also a "reformer" of a major set of ideas that it did

not help take root in the organization. And, this is how the rational design of the organization interacts with the constructivist elements of the institutional politics.

China at the Universal Periodic Review

The UPR process of UNHRC, discussed in Chapter 4, has been most revelatory of China's stand on various issues. Though two UPR cycles are too less a time to judge the consistency of China's political motives, nonetheless, it gave a clear picture of its self-identity and the contestations to the same, most importantly by the NGOs. While China clarified that it allowed participation of NGOs in the preparation of the National Report, this stands widely challenged. High possibility of proxy, state motivated NGOs is there. Death penalty, torture, extra-legal detention and re-education through labour remained high points of the critical review in both cycles. Issues of freedom of Tibetan and Uyghurs minorities were raised by the majority of NGOs. Like in the earlier organization, UNCHR, most Asian and African countries were commendatory of China, causing disappointment to the Western countries. This disparity, eventually, affected the quality of recommendations made. Thus, it is not clear how the Council is going to address such pathological behaviour, or how international standards will be applied effectively with so many satisfied nations (Blackburn 2011: 35). Most of the reviews did not comply with UNHRC's principle of "non-politicization" (Blackburn 2011: 35). Despite that, Smith (2011a) is of the view that though the process is prone to politicization, there is a degree of balance that has been achieved in state comments even when the larger number of states were appreciative of China's HR record. The downside of the peer review compared to expert review is that it hinders an informed and accurate research approach to state comments (Smith 2011a). There were times when China disproved the statements made by some states, which sometimes were also a result of the differing diplomatic and political goals (Smith 2011a).

Through UPR, International NGOs got a passage into the Chinese politics, which is why China has always tried to minimize their role in UNHRC. Within its borders, the Chinese government has crudely suppressed the activities of international NGOs; however, when the same organizations enter through the legitimate UNHRC route, China has to be little more cautious. In this respect, if UNHRC is considered a whole entity, like the "black box"

of organizational theory, it has the ability to rise above the interests of the constituent states and thus, contest the realist argument that intergovernmental organizations do not wield effective power as actors in international politics and simply reflect state interests (Oestreich 2011).

Moreover, a major challenge during the UPR process is to prevent ritualism. UPR's procedural success has yet not translated into China's effective socialization into HR norms. Though, on such instrumentalism, Risse (1999) believes that even states that are supposedly oppressive, like China, can end up in long-term dialogue with the critics while justifying themselves against accusations of HR violations for immediate gains, thereby facilitating norm internalization. So, even a relatively failed institution is better than no institution at all. Ritualism in UPR facilitated a momentum in observing institutional practices during the initial phase of the organization that ensured viability. Once that is done, that inertia needs to be broken in order to enter the next phase of focusing on practices. While states are the supporting force in ritualism, NGOs are the opposing force. So, one way to make the forum more relevant is to expand the role of NGOs. However, that again is subject to the collective pressure of the states. The western states are more welcoming of the participation of NGOs because some of the biggest international NGOs are headquartered in the Northern Hemisphere, which China feels suspicious about. Their financial capacity and network with indigenous Chinese NGOs have immensely bothered Chinese authorities.

Overall, China's HR diplomacy during the UPR mechanism has transformed from a "reactive, defensive, sovereignty-based, and inward-looking approach to an ever active, expansive, system-focused, revisionist agenda" (Mao and Sheng 2016).

Impact of UNHRC on China's Human Rights Policy

While China acts as an actor at UNHRC, UNHRC also acts as an actor in Chinese politics, especially when the government chooses to advertise its positive reviews in the state media. More significantly, it forced China into considering the HR assessment of non-state actors, both organizations, and individuals. China's inclination towards re-election in the body,

though driven by strategic motives, is suggestive of the institution's capability to lure China into engaging in a dialogue on HR. Importance of China for UNHRC is rooted in the fundamental that IOs in the process of establishing their relevance in international politics must secure the participation of big and powerful nations. Second, China brought in its own, specific network of state relationships at the forum, which may be detrimental for UNHRC but also provides the forum the opportunity to transform these networks by introducing new criteria on which these relationships are to operate. For instance, UNHRC has disseminated specific ideas of HR in the political domain based on which China is to engage in developmental activities in African countries or face criticism.

Given the sticky nature of UNHRC, the socialization of HR norms despite violations is only going to increase (though painfully slow), unless a "black swan" event gives rise to political ideas that can effectively reverse the wave of globalization. Even in the current scenario, when the world is witnessing a rightward shift in both polity and economy, especially among the earlier staunch advocates of globalization, US, and the UK, it is highly doubtful that such trends can dent the existence of IOs. Dysfunctional they may get, but dead, probably not, as the capacity for regeneration in one form or the other is immense; in this case, exemplified by the replacement of UNCHR by UNHRC. Even those countries, such as the US, who think they are powerful enough and are winning the game in the IOs, may, in the long run, feel victimized. China, on the other hand, who started as a victim in UNHRC is today, as per the opinion of HRW, is in the capacity to damage UNHRC's legitimacy. Especially, when UNHRC fails to put pressure on China against rogue states like Sudan and North Korea. Na (2016), therefore, believes that China's socialization should be carried out through a "result-oriented" dialogue which is representative of its will for compliance. For UNHRC to make a concrete impact on China, it needs to understand why states fail to comply with international HR norms even in favourable conditions (Cardenas 2004). Simply focusing on norm compliance and not norm violation to understand the socialization of state into the HR norms is a flawed methodology (Cardenas 2004).

Concluding Remarks

Though UNHRC has been successful in highlighting the HR violations in China, it is hard to say that it has led to any paradigm shift in the core politics of Chinese establishment. The lack of reforms in China's institutional structure, most importantly the CCP itself, omit any possibility of substantial change in the near future. On the contrary, there has been a concentration of power under President Xi Jinping, now that he is the President for life. And looking back at Mao's political fall, the future looks bleak. The only outlet for unexpected, sudden change in Chinese politics is the internet, for online dissent has the reputation of causing unpredictable disruptions in other parts of the world. And no doubt, dealing with this is on the top of CCP's agenda. So, as the hypothesis suggested, Chinese domestic politics is still out of the reach of UNHRC. And further insulation to China's official HR discourse by majority developing countries at UNHRC and China's reciprocal behaviour brings down the quality of decisions UNHRC is capable of taking. So, to deal with this, a better approach for UNHRC shall be promoting diversity and localization, and work for the rebalancing of HR models, instead of preferring either western or non-western (Yi 2017).

Considering the record of last two UPRs and the contemporary political scenario, China's next review in November 2018, in terms of group dynamics is going to be the same; in fact, it is more likely to have larger European supporters because of acceleration of China's grand Belt and Road initiative. Minority rights, torture, and the death penalty are going to stay relevant for many years to come. A more interesting response can be on the freedom of the internet as the impact of developments in technology is more immediate, visible and estimable than anything else. With US having opted out of UNHRC, there is a possibility of China making references to US's unilateralism and defending itself for maintaining propriety in the organization. Defense of "Chinese characteristics" is going to be even more robust and elaborate going by the past trends, with greater influence of President Xi Jinping's personal political philosophy. At the same time, an ever more empowered international civil society is going to be China's biggest challenge. Despite the susceptibility of China to face criticism at UNHRC, it has continually shown interest in

engaging with UNHRC as it implicitly confirms being a part of the community of civilized nations. Most importantly, the elected nations get access to the norm constructing architecture. All these aspects play a significant role in respect of China's aspiration for a "responsible power".

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