

# HUMAN RIGHTS COMMUNIQUE

*Your Quarterly Dose of Human Rights*

## CENTER FOR ADVANCED STUDIES IN HUMAN RIGHTS

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## Constitutional Challenges to 10% Reservation to Economically Weaker Sections

Recently, Government introduced some amendments in the Constitution providing 10 per cent reservation in educational institutions (other than the minority educational institutions) and government jobs to the economically backward sections of the society not already covered under the existing reservations for Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs). Though political rivals have dubbed this move as a political gimmick ahead of elections, they showed solidarity for the move through their votes in the Parliament.

Many commentators have suggested that this effort of the Government was premature and was not based on sound empirical findings. Unlike other decisions on reservations, this was not based on recommendations by any committee formed for looking into the need of reservation on economic grounds. The fact that caste census data of 2011 Census has yet not been made public only makes the matter worse. It has further been argued that the proposed threshold of Rs. 8 lakh is too high and would potentially cover majority of the population (more than 80 per cent), thereby making the provision practically insignificant. They also say that this reservation would burden the existing infrastructure and potential of educational institutions and would consequently lead to reduction in scholarships due to necessary increase in education budget to address the need of new infrastructure. It should further be noted that the government jobs are declining as the state is following the policy of disinvestment and privatization. More recently, the government has been heavily encouraging private sectors for creation of more jobs. So, this reservation appears to be giving little help.

### Constitutional Challenges

The 104<sup>th</sup> Constitution (Amendment) Bill was introduced in Lok Sabha by Union Minister Thaawarchand Gehlot, in charge of the Ministry of Social Justice and Empowerment, on 8<sup>th</sup> January 2019. It was passed in Lok Sabha the same day. On the following day, the Bill was passed in the Rajya Sabha, and it became an Act with Presidential Assent on 12<sup>th</sup> January, 2019. While the haste with which the Bill was passed in both the Houses has stirred controversy in the political circles, there are much bigger challenges that the Act faces owing to inherent flaws in its provisions.

Within hours of being assented to by the President, the 103<sup>rd</sup> Constitution (Amendment) Act was challenged in the Supreme Court by an NGO called Youth for Equality for various reasons. There are two main grounds on which the now 103<sup>rd</sup> Constitution Amendment Act has been challenged. Firstly, the proposed 10% reservation for economically weaker sections is over and above the already existing 49.5% and this goes against the previous rulings of the Supreme Court which have established that the reservation of seats cannot go beyond 50% of the total seats. Secondly, it clearly goes against the mandate of Supreme Court in cases like *Indra Sawhney v. Union of India*, where it has been observed that economic condition cannot be taken as the sole criteria for determining backwardness for the purposes of reservation. This segment of the article pertains to the possible areas in which the Act goes against the Constitution of India.

### Inherent Unconstitutionality

The first challenge comes from the Statement of Objects and Reasons of the Act. It provides that:

*“at present, the economically weaker sections of citizens have largely remained excluded from attending the higher educational institutions and public employment on account of their financial incapacity to compete with the persons who are economically more privileged. The benefits of existing reservations under clauses (4) and (5) of Article 15 and clause (4) of Article 16 are generally unavailable to them unless they meet the specific criteria of social and educational backwardness.”*

This is primarily where the Act falters. The very objective of providing reservation to certain socially and educationally backward classes was to give them adequate representation in government services and educational institutions, which they lacked, keeping in mind the history of oppression and suffering that scarred these communities. Reservation was seen as a tool by Dr. Ambedkar to bring the marginalised communities back into the mainstream. However, the idea behind providing reservation on economic basis in the present Act seems to be alleviation of poverty and upliftment of the poorer sections of the society. This makes for a significant shift from the central theme around which the idea of reservation in the Indian Constitution circles.

Secondly, it is provided that the Act is in pursuance of the Directive contained in Article 46 of the Constitution which prescribes the State the duty to “promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.” This duty does not seem to be the same as the one Constitution Amendment Act purports to follow: promote with special care the educational and economic interests *economically weaker sections of citizens*.

More importantly, a nine-judge bench of the Supreme Court, in no uncertain terms observed in the *Indra Sawhney* case that reservation on economic basis cannot be done under the Constitution of India. The provisions pertaining to reservation have a specific constitutional purpose and are to operate only so long the goal is not achieved. Economic backwardness does not qualify for such protective measure.

Another flaw in the Act is that in the same judgement, the Supreme Court also observed that maximum reservation cannot exceed 50% of the total seats available. The existing reservation of seats has already touched 49.5% and the proposed 10% reservation is to be over and above this limit. Providing the rationale behind this 50% cap, the Supreme Court emphasised on the need for harmonious construction of Article 16(1), 16(4) and Article 335. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being “confined to a minority of seats” in his address to the Constituent Assembly.

Another important consideration in this regard is that the criterion for determining economically weaker sections is to be determined by the Government from time to time. Various ministers speaking in the Parliament have mentioned the criteria that total family income of Rs 8 lakh or land ownership above

five acres as cut-off figures for excluding the wealthier among the general category of citizens. Now the problem here is that the Government has not provided any demographic study, statistical analysis or any other like information which seems to support this cut off criteria.

In addition to this, the Right to Education Act, 2009 also provides for 25% reservation in both government and private schools for children of “weaker sections or disadvantaged group”, where child of weaker section is defined as “a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government.” The cut-off limits specified by governments under this provision are very low. Even for urban areas where the per capita income is much higher such as the Union Territory of Delhi, the limit is just Rs 1 lakh. In the light of this, the limit of Rs 8 lakh not only appears to be very high but also smacks of arbitrariness and unreasonableness and thus this may attract violation of Article 14 if not duly justified by the government. This is also true for the government’s arrival at the magical figure of 10 per cent for reservation as it is also not based on any sound study or research.

Another constitutional absurdity in the Act is that the Act has seemingly failed to overrule the Supreme Court’s judgements placing 50 per cent as limit on reservation. The Amendment Act has just provided for 10 per cent reservation for economically backward sections without conferring on itself authority to go beyond existing 50 per cent limit as prescribed by the Apex Court. However, the obstruction to the economic reservation per se seems to have been taken care of by the Amendment Act. One notable aspect of the Act which has seldom been appreciated is that the Act has rightly not provided for carry forward rule, promotion and consequential seniority.

## Conclusion

However, the policy question of efficacy of reservations continues to linger on the side-lines of the constitutional debate on reservation. Government should ideally, instead of giving reservation, focus more on other alternatives like provision of more accessible and better public libraries; greater penetration of internet; disbursement of scholarships and financial aids to the needy students; and development of learning platforms like SWAYAM (Study Webs of Active-Learning for Young Aspiring Minds). We need to have a long-term sustainable solution to the problem of economic handicap to education and consequentially to employment, and reservation is definitely not such a solution rather it is now the cause of the problem of lack of efficiency and social discord.





Section 79(3) stipulates the conditions when section 79(1) is not applicable (i.e., when the intermediaries are liable):

- a. The intermediary has conspired, abetted, aided, or induced, whether by threats or promise or otherwise in the commission of the unlawful act;
- b. Upon receiving actual knowledge, or on being notified by the appropriate government agency, that any information, data, or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner

In **Super Cassette Industries Ltd. v. MySpace inc.**, Super Cassette Industries filed a case against MySpace (a website where users upload and share audio and video files) alleging infringement of its copyrights. Super Cassette Industries alleged that Super Cassette's copyrighted materials were uploaded onto My- Space. My Space argued that

(a) My Space only provides a platform to its users to upload content,

(b) MySpace is not aware of the content being uploaded and has no role in the selection of the content, and

(c) MySpace's role is of an intermediary and, as such, is protected under section 79 of the IT Act. The Delhi High Court, however, negated this argument by stating that MySpace has deployed various measures to screen the data.

Therefore, MySpace has knowledge and reasonable belief that infringing data may be posted on its web- site. Further, MySpace has a limited license to amend the materials posted pursuant to which it adds advertisements that are uploaded prior to posting. Therefore, from the time of uploading to the time when the material is made available to other users, there are a sufficient number of steps, including modification, which suggests that MySpace is aware of the content its users provide.

Section 85 of the Act authorizes the government to lay down the rules under the Act. The government exercised its powers under section 85, read with section 79 of the Act, and promulgated the Information Technology Act Rules (Intermediary Guidelines) in 2011 (the "Rules"). The Rules stipulate the duties of the intermediaries, including prohibiting intermediaries from up- loading objectionable information or data or knowingly hosting or publishing objectionable information. The Rules have been made in consonance with section 79(2)(c) of the Act, stipulating that the intermediary is not liable if it ob- serves due diligence and complies with the guidelines issued by the government. One of the key defenses is taking down of the information posted on a website.

Rule 3(4) of the Rules stipulates that an intermediary, upon being aware of or informed about objectionable content on its website, is required to remove such content from its

## **INTERNATIONAL NEWS**

### **"All We Want is Equality": Religious Exemptions and Discrimination against LGBT People in the United States**

The rash of new "religious exemption" laws passed by state legislatures around the United States represent a thinly-veiled assault against the rights of LGBT people, failing to balance moral and religious objections to LGBT relationships and identities with the rights of LGBT people themselves.

### **Australia's first year on the UN Human Rights Council**

Australia took its place on the UN Human Rights Council this year for a three-year term. Australia delivered a strong statement about Myanmar's atrocities against ethnic Rohingya Muslims, but was criticised for holding refugees and asylum seekers offshore. While Australia supported important country resolutions, it failed to take a leadership role on any key issues.

### **US-India Agreement**

During Modi's visit to the United States in June, a US India Joint statement reiterated cooperation on increasing trade and combating terrorism, including calling upon Pakistan to ensure that its territory is not used to launch terrorist attacks on other countries. There was not even a token mention of pressing human rights issue in India, including the limits on free speech and attacks on religious minorities.

website within a period of thirty-six hours from the time it became aware of the existence of such material. The Department of Electronics and Information Technology issued a clarifying notification that specified that the websites are required to acknowledge the complaint within thirty-six hours. However, the intermediary shall be required to redress the complaint no later than thirty days from the date when the complaint was made.

### **Infringement of the right to privacy and freedom of speech and expression**

Section 66A of the Act continues to be used by the police and other agencies in spite of the Supreme Court declaring it unconstitutional. The court held that there were three concepts fundamental in understanding the freedom of speech; discussion, advocacy and incitement. The Court further held that the government can make laws only when it comes to incitement. Also, the law can pass only if they proximately relate to the restrictions in Article 19 (2) of the Indian Constitution. Therefore, the Court struck down this section as it violated the freedom of speech and expression amongst other things.

Sections 69 and 69 B of the Act violates the fundamental right to privacy. They empower the government to encroach upon the privacy of the individuals by surveillance. While section 69 is able to provide the pretext of protection of national security and sovereignty it lacks transparency in its affairs. On the other hand, section 69 B empowers the government to have uncontrolled access to private information sufficient enough for the identification of such individual. These sections equip the government with tools more than capable of infringing the right to privacy of citizens.

### **Conclusion**

The Information Technology has produced new legitimate issues that do not have a precedent in the common law system, which has been advanced also, settled in a physical world with political limits and in unmistakable medium. The standards of Common Law, much of the time, are inapplicable to the lawful issues that have risen in the internet that knows no limits and physical condition. These issues do not have express arrangement in the current legitimate routine. The lawful position concerning electronic transactions and common obligation for the acts executed in the internet is as yet cloudy. Hence courts will be, on numerous occasions, called to determine amorphous issues and simultaneously, it is trusted that digital statute will be advanced and eventually settled.

## **NATIONAL NEWS**

### **India elected to Human Rights Council at UN with highest number of votes**

India has won the seat to Human Rights Council at United Nations with the highest votes among all candidates receiving 188 votes. Thirteen other countries representing other four regions were also elected to Council. India showcased its position as "the world's largest democracy". India's presence will be important because the previous UN High Commissioner for Human Rights Zeid Raad Al Hussein asked the body to facilitate an international commission of enquiry into allegations of Human Rights Violation in Kashmir

### **Treatment of Dalits, Tribal Groups and Religious Minorities**

Mob attack by extremist Hindu groups affiliated with the ruling BJP against minority communities, especially Muslims, continued throughout the year and amid rumors that they sold, bought, or killed cows for beef. Instead of taking prompt legal action against the attacker, police frequently filed complaints against the victims under laws banning cow slaughter. As of November, there had been 38 such attacks, and 10 people killed during the year.



## The War On Truth: Violence against journalists

### Introduction

*"When the story can't be killed, the storyteller is silenced"*

Language is a human construct without which life would be difficult to fathom. It is an invention which revolves around dissemination of information. However, the nature of this information decides the fate of the words of the language waiting to meet the public eye. More importantly, it also decides the fate of the disseminator of the information.

Journalists, for time immemorial, have accepted the highly dangerous public service of airing information. It is a dangerous job because while the information might seem harmless to some and an essential tool of freedom of speech to some other, it can unravel a plethora of secrets that few parties might find against their favour. If these parties are the ones with fists full of power, the information can be subjected to censorship and the providers of this information might face the guillotine.

Silencing of journalists mainly revolves around two things, the opinions they have or the reports they excavate. When their opinions are not aligned with that of the ones in power, they often find a noose around their necks. Similarly, when journalists take up investigative journalism, the pitfalls and loopholes in the system, created by the same people who create the system, are fished out to their dislike.

Whether it's a dissenting opinion or an investigation, journalists take up a lot of risk while doing their jobs. But, their persistence is commendable. While some journalists like Anna Politkovskaya and Daphne Caruana Galizia are celebrated like martyrs for their relentless reporting on the horrors wars and corruption, some journalists are liquidated rather silently that with them dies everything they lived for. The danger that these journalists put themselves in has now sensitized the public to question the lack of action from the side of the authorities and demand their safety. But the major problem lies in whom to ask for their safety.

### The case of the slain 'Guardian', Jamal Khashoggi.

For the latter part of 2018, various platforms of social media were covered in the news of the assassination of Jamal Khashoggi, the Saudi Arabian journalist who was brutally murdered and dismembered in the Saudi consulate in Istanbul, Turkey, on 2<sup>nd</sup> October 2018. A columnist for The Washington Post, he was a very bold and vocal critic of the regime of Mohammed bin Salaman, the crown prince of the kingdom of Saudi Arabia.

In his columns, he had very articulately made use of the freedom of speech and opinion that his American stay had granted him to voice his dissent against the authoritarian rule of the crown prince. He wrote about how, the arrest of the high profiles of Saudi Arabia was an attempt to 'centralize all power within his position as crown prince', the decline of the petro- wealth of the kingdom because of rampant corruption and Saudi Arabian involvement in the sudden resignation of Saad Hariri as the Prime Minister of Lebanon.

The articles that he wrote was a luxury that he could not afford in the intolerant regime of Mohammed bin Salaman. But the distance of hundreds of miles from his home country could not stop the unjust murder of which he became a victim.

The cascading effect of the murder of the liberal journalist had several dimensions. Not only did it create a blot in the diplomatic ties of Saudi Arabia with the United States and Turkey, it also created ripples in the world of freedom of speech.



Khashoggi's murder brings into limelight the irony of the crown prince's vision of a reformed Saudi Arabia. Reform in an orthodox system would have called for a more liberal environment, where the people could have participated to improve the regime's governance; however, the crown prince went on a crusade to create a safe space for his throne, unchallenged by dissent. In the larger picture, the murder represents how the government considers its opinions sacrosanct and any challenge to it is suppressed with the use of muscle.

Moreover, while this incident has given a chance for people across the globe to come together to fight for freedom of speech, it has possibly also set a fear in some people to not speak up.

The lack of a legal solution for Khashoggi's murder addresses another situation. Murders of journalists might be committed by ordinary men, but the will and order behind them is of powerful elites who often go unpunished. Identifying these powerful people is a task in itself, and bringing them to justice a proposition too farfetched. But this should not dissuade the global public from searching for platforms to seek justice for the slain journalists.

The relentless effort of social media by denying to let this matter die down seemed like a tribute that they paid to their fellow journalist. Added to this was the declaration of the Time magazine's Person of the Year, a group of journalists with history of threats collectively called the Guardians.

Jamal Khashoggi's last article was on the need of free expression in the Arab world. This stands a witness to his life-long passion for freedom of speech and this passion should not be allowed to die down.

This is not only the case in foreign countries; closer home, in India, many valiant journalists have met the same end as Khashoggi.

### **Protection of journalists in India**

According to Committee to Protect Journalists' 2018 Global Impunity Index, impunity is entrenched in 14 nations of the world, one of which is India. A similar result was presented in the Annual Report of 'Reporters Sans Frontieres', the World Press Freedom Index. In 2018, India fell two ranks to 138 in the index, in a ranking of 180 countries.

The low ranking can be attributed to the prevalence of physical violence, sometimes leading to death, against journalists in the country. Often journalists working on controversial issues are silenced through either threats of force or the use of actual force or in severe cases, death. While the death of prominent journalists like Gauri Lankesh create ripples in the country, many deaths and incidents go unnoticed. In the first six months of 2018 itself, four journalists were killed. The emergence of social media has contributed to the aggravation of this problem, since it provides a platform for abuse, severe trolling and intense campaigns of online hate. Rana Ayyub, an investigative journalist and author of 'Gujarat Files: Anatomy of a Cover Up' was the target of an online hate campaign which included fake

If physical violence or the threat of it is not resorted to, other means of intimidation like defamation suits, both civil and criminal, are used to create a burden on the journalists. The defamation case by Jay Shah against The Wire, for an article about sudden rise in revenues and a \$1 billion case by Reliance Group against NDTV for reporting on the Rafale deal are recent examples of this obstacle. In the recent past, state machinery has also been abused to create a sense of fear for media houses that do not subscribe to the government viewpoints. Income Tax raids have been conducted at offices and houses of well known critics of the government, such as at the home of journalist Raghav Bahl and the offices of the Quint.

These threats to the freedom of speech and journalists emerge from three key sources: the state, corporate interests and religious or nationalist extremist forces. These threats eventually harm the freedom of speech and press, as they lead to self censorship and minimal reporting on controversial issues in order to avoid the ire of the high and mighty.

### **UN Plan of Action on the Safety of Journalists And the Issue of Impunity, 2012**

The United Nations Plan of Action on the Security of Journalists opens up with the following words:

*Every journalist killed or neutralized by terror is an observer less of the human condition. Every attack distorts reality by creating a climate of fear and self-censorship.*

This Plan recognises journalism as a major protector of Article 19, related to freedom of speech, of the Universal Declaration of Human Rights. It is a comprehensive plan that aims to sensitise various levels of governments, non-governmental organisations and individuals about the need of freedom of speech and its protection. It acknowledges how freedom of press is a major milestone in achieving a well-informed citizenry. Freedom of press is also an investment that ought to be made in order to make democratic governance possible and smooth.

Furthermore, the plan also considers this freedom a medium through which gender equality can be achieved. Women journalists are more vulnerable to threats, and hence more measures should be taken to protect them so that they can pursue their profession fearlessly. Protection however should not be in the form of curtailment of women's freedom, but rather an active step towards eliminating threats of sexual assault and other forms of violence, so that in the future cases like that of Zahra Kazemi, an Iranian-Canadian photojournalist who was raped and tortured and ultimately killed in Iranian custody after taking photographs of the worried parents of students arrested for taking part in demonstrations by Iranian reformists, are reduced to nil.

The plan also covers the preservation of culture and human rights through a free press. This can be understood



in the light of recent arrest of two young Reuters' journalists, Wa Lone and Kyaw Soe Oo, arrested for covering the Rohingya crisis in Myanmar; their journalistic contribution has united the global sentiment of empathy towards the ethnic persecution of the minority.

The plan lays a heavy emphasis on the impunity issue when it comes to safeguarding journalists from threats. The plan suggests that 'fighting impunity should not be constrained to after the act action.' This means that the threats looming over the heads of journalists should not be acknowledged after harm has been done to them, instead the possible harm should be recognised before and proactive measures like self-defence training for journalists, a proper communication system for journalists covering stories in tense, conflict laden areas and effective prosecution of the perpetrators, should be taken.

The plan also contains principles on which action should be based. Like agencies that specialise in communications should be given the task of creating a safe network through which journalists can seek help and communicate their problems. Moreover, the action has to be gender-sensitive and disability sensitive, and should use human-rights and result- based approaches.

### **Suggestions**

Presently, 39 member states provide information to the UNESCO Director General for the bi-annual report on the safety of journalists and the danger of impunity. It is recommended that all countries should submit data for this report in order to gauge the international situation on the issue. The UN Action Plan was first implemented in Iraq, Nepal, Pakistan and South Sudan. However, it should not be limited to these countries. The actions proposed should be moulded in accordance to the needs of the area in which they are being implemented, keeping in mind the tension in the area and prevailing social norms. Most importantly, the plan should recognize how dissent is thwarted to the extent of murder of journalists. Countries should take the example of Mexico, which has a federal prosecutor's office to investigate attacks on the press and Colombia, which has a national protection mechanism and adopt similar measures to protect journalists. A concerted effort by all states is necessary to protect journalism and the freedom of speech, in the world.

For India, The Committee to Protect Journalists recommended that the Central Government prepare a 'national-level journalist safety and protection mechanism' to recognise the risks faced by journalists and recommend solutions for the same. Impunity in violence against journalists is a major issue which can be rectified only through legal and institutional means such as the strengthening of the Press Council of India and recognising the shortcomings of the justice system to end impunity. Reform of defamation and sedition laws is also

required in order to protect journalists from threats, other than those of physical violence.

### **Conclusion**

The sacrifices made by journalists should not go unnoticed, rather they should be noted, celebrated and prevented in the future. Freedom of speech and in turn, freedom of the press are vital for any democracy and hence, it is essential to ensure the safety and security of the messengers, that is journalists, the ones who bring us the unvarnished truth.



## Crackdown on Turkic Muslims in Xinjiang

### Introduction

China has faced sharp criticism for its massive detention of people belonging to Muslim Uighur community in Xinjiang. United Nations Human Rights Council (“**U.N. Panel**”) prepared a report in a summit on racial discrimination on August 10, 2018 where it highlighted the excessive persecution of Uighur Muslims for a prolonged period of time and their human rights repression by the government.

Such tyranny has left the western region of Xinjiang showcasing “a massive internment camp that is shrouded in secrecy,” a U.N. human-rights expert said at the summit. The U.N. panel at the summit cited “credible reports” and quoted statistics indicating that Chinese authorities have placed more than 1 million Uighurs in internment camps and subjected 2 million more to “re-education” programs which the authorities claim are mere training and vocational programs. However, the reality is that in such camps people are forced to undertake psychological indoctrination programs which is nothing but brainwashing. They are also compelled to study communist propaganda and express gratitude towards the Chinese President Xi Jinping for his great deeds.

China justifies its actions by claiming that it is attempting to wash out “religious extremism” and “sectarianism” in Xinjiang.

China’s extreme moves to wipe out the minority or change their ethnicity and culture has been reprimanded worldwide has faced a wave of severe castigation from the Western Nations.

However, China’s Vice Foreign Minister, Le Yucheng disdained such confrontations and called such arguments as “politically driven accusations from a few countries that are fraught with biases.”

### Xinjiang Region and the History of Uighurs

Xinjiang (officially the Xinjiang Uighur Autonomous Region, XUAR) is a provincial-level autonomous region in North-West China. The population of the region consists 45% the people belonging to Uighur community and 40% belonging to Han community. Uighurs speak their own innate language, “an Asian Turkic language similar to Uzbek” and most of them practice, propagate and profess Sunni Islam.

There is a conflict on the issue that who has a superior claim over the region, while the members of Uighur community believe that their ancestors were natives of the area, members of Han community as well as the Chinese government policy considers Xinjiang belonged to China and its people since around 200 BC.

In accordance to the policy, Uighurs are classified as ‘National Minority’ and not an aboriginal group—in other words, they are not contemplated to be indigenous to Xinjiang and therefore they have no special claim on the land under the present-day law.

Conversely, it is said that during the era of Mao, with the establishment of the People's Republic, Xinjiang region, owing to its richness in oil and other resources, witnessed the migration of millions of Han into Xinjiang, which was also encouraged by the Chinese government. Hans now overshadow the entire region economically as well as politically.

Some terrorist attacks that occurred across different regions of China in the subsequent years were also attributed to the separatists, including the attack in Beijing in 2013, in spite of there being no concrete proof that these attacks were performed by separatists. The incidents surfaced the way for China to implement its so-called "Strike Hard Campaign against Violent Terrorism" in Xinjiang in May 2014. In 2016, to make the matters worse, Chen Quanguo was appointed Communist Party leader of Xinjiang. Chen was convinced that the policy adopted for managing the ethnic crackdown in Tibet, and engaged similar policies against Xinjiang's Muslims.

What's happening in Xinjiang; analysis of "Crackdown of Uighur Muslims"

In order to bring the community in control, the Chinese government has adopted extreme measures.

People are arrested for practicing Islam openly, or having any such religious content on their phones. China started oppressing their religious practices and under the garb of peace, harmony, prevention of violence, uncovering the religious extremism and separatism. It banned all the practices specific to Muslims like long beards, veils, even the Islamic names. Devoted Muslims were even encouraged to drink alcohol, smoke and eat pork, considered unholy as per their religious texts and practices. Security checkpoints have been established in different corners of town and roads where residents should scan identification cards. Police confiscates phones and scans them and download all the details and information available on them.

"Reeducation camps" — or the so-called training camps that Chinese authorities in Xinjiang claim are established "to carry out the educational transformation of those affected by extremism." However, the truth is that in these vocational programs people are given obligatory psychosomatic instructions and they are persuaded to follow communist regimes and praise the working of Chinese government. Reportedly there has been use of waterboarding and other forms of torture on the community.

Statistics say that around 2 million people have disappeared from these camps, and about 1 million currently are held captive. Chinese officials have continuously claimed that these schemes are crucial to counter religious radicalization and extremism, however, critics say they are meant to cut down Islamic traditions and practices.

### Accounts of witnesses

While many conjectures are being made about the severity of the brutalities that the inmates of the internment camps might be facing, the real picture behind the 're-education camps' for the Uighurs is not before the eyes of the world yet, due to the heavily restricted press and state-controlled information.

As much as the Chinese government tries to glorify the purpose of the camps, i.e, to impart vocational training to the inmates, the accounts of witnesses and various reports paint a completely contradictory picture. A report published by the

French news service Agence France-Presse described the camps as dreadful places, full with guards carrying spiked clubs, tear gas and stun guns.

In early August 2018, the United Nations Committee on the Elimination of Racial Discrimination reviewed reports of discrimination against Uighurs in Xinjiang.<sup>1</sup> The disappearance of a whole lot of Uighur students who had returned from abroad was questioned. The final observations were released by the Committee in August, 2018, criticizing the "broad definition of terrorism and vague references to extremism and unclear definition of separatism in Chinese legislation."

### What does China have to say?

China never shies away from justifying its Orwellian` surveillance over its citizens. The limited political freedom enjoyed by the citizens is explained as measures necessary for order, tranquility, and preservation of culture. Last year, Xinjiang's deputy foreign publicity director, Ailiti Saliyev, went so far as to suggest that "the happiest Muslims in the world live in Xinjiang."

China, on all occasions, has brusquely rebuffed all accusations against its policy against ethnic minorities on the pretext of prevention of terrorism and making people fit into the society. It is treating Islam like a mental malady, which needs to be cured, and the believers' loyalty be aligned to the political ideology of the ruling party.

In wake of mounting international criticism, China passed some amendments to its counterterrorism law in order to legitimize its crackdown on the ethnic minority, and validate its internment camps. The changed law allows the local governments to counter extremism by setting up "vocational education centres" for the "educational transformation" of those influenced by extremism.<sup>1</sup> It also empowers authorities to engage in "educational transformation" of people, which, according to critics, is a euphemism for brainwashing.

The Chinese government has asserted that Uighur groups are guilty of promulgating what it labels the 'three evils': terrorism, separatism and religious extremism.

### Document 19

Document 19 was a directive issued by the Chinese government on March 31, 1982. It enumerates the official stand of the Chinese Communist Party on religion and religious organizations. It has not been superseded by any other document and remains the most authoritative document on the religious policy of the country.

The document manifests the subordinate position given to religion in the country than the party leadership. It envisages the withering away of the institution of religion in an ideal state, where atheism would prevail.<sup>1</sup>

This very document plays seminal role in the justification for the party's attempt to run forced labour camps under the euphemism of 'education institutes' and 'vocational training centres.'

## Conduct in gross violation of International Law

China has ratified around 20 human rights conventions and agreements. Interestingly, the State's arbitrary actions in XUAR is in stark contrast to the rules of conduct laid down in the treaties.

The attitude of the government is clearly violative of International Convention on All Forms of Racial Discrimination (ICERD), particularly Article 5 of the Convention, which enumerates the various rights that the signatory parties ought to provide to their citizens. Time and again, ICERD has voiced its concerns over the discriminatory policy of China in the regions of Tibet and XUAR, which were repeatedly brushed away by the top officials, who rather created a rosy picture of the care and attention the minorities enjoyed in the country.

China signed the International Covenant on Civil and Political Rights (ICCPR) in 1998, though it is yet to ratify it. However, China's National Human Rights Action Plan (NHRAP) specifically lists the ICCPR as one of the plan's "fundamental principles." The plan includes a list of commitments to advance and enforce the rights recognized by the ICCPR.<sup>1</sup> Moreover, China's Constitution recognizes the basic civil rights for citizens, particularly enshrined in Articles 4, 22, 35 and 36. All these rights are being jeopardized and threatened in the Xinjiang province.

China is violating the very first Article of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that "all peoples have the right of self-determination" and that "by virtue of that right can freely determine their political status and freely pursue their economic, social and cultural development," by banning the Muslims from growing beards and taking up Muslim names.

## Conclusion

Despite harsh criticism by international organizations and foreign governments, China has stood firm on its stand on its policies in XUAR. Time and again, it has tried to cover up its mess in XUAR under the façade of terrorism, separatism, political re-education and de-radicalization. The NGO, Human Rights Watch, after assessing the UNHRD report on China's HR violations, prepared a paper, enumerating suggestions to deal with the turmoil in XUAR. It's high time the international community, taking a cue from the report, stiffen its stand against the country over the issue. Imposing sanctions should also be considered.

To intricately examine the actual extent of the problem, the United States Senate recently passed a bill, which allows the FBI to investigate whether Uighurs living in the US have been intimidated by Chinese state security in its globe-spanning efforts over the last two years to repatriate them for indoctrination.

While China is known for its stubborn and unyielding approach in matters of international law violation by the country, it remains to be seen what further course the country would take on this pressing issue, midst such mounting international pressure.

Contributions are invited for the next issue of the CASIHR Newsletter. The last day is 30<sup>th</sup> April 2019 which can be mailed on [casihhr@rgnul.ac.in](mailto:casihhr@rgnul.ac.in)



## **-CASIHR Journal on Human Rights Practice- VOL III Issue I & II**

The Centre for Advanced Studies in Human Rights (CASIHR), Rajiv Gandhi National University of Law, Punjab invites submission for Vol III Issue I & II of the CASIHR Journal on Human Rights Practice (CASIHR JHRP).

To provide a platform for more pointed, specialized and diverse inputs and analyses, the adherence to a rigid thematic issue has been dispensed with. Therefore, this particular volume is **not thematic specific** in nature and authors are free to write on any topic relevant to the field of Human Rights.

The last date for submission by the contributor is 20<sup>th</sup> May 2019 and the contributions have to be mailed to [casihr@rgnul.ac.in](mailto:casihr@rgnul.ac.in).

All the submissions must be mailed only to [casihr@rgnul.ac.in](mailto:casihr@rgnul.ac.in) with a cover letter specifying the following:

1. Name of Author(s)
2. Designation
3. Name and Address of Institution
4. Contact Details – Address and Mobile No.

### **Submission Guidelines**

Submissions can be made under the following heads:

Long Articles– Word limit of 6000 words.

Short Articles– Word Limit of 4000-4500 words.

Case Comments– Word Limit of 1500-2000 words.

Book Reviews-Word limit of 2000-2500 words.

**Deadline for Submission: 20th May 2019,  
by 11:59 PM.**



## Human Rights Month

The Centre for Advanced Studies in Human Rights (CASIHR), the premier human rights think tank of Rajiv Gandhi National University of Law, Punjab recently organised October 2018 as 'Human Rights Month'. In a one of a kind move, the aim of the Centre was to raise awareness on human rights issues and expand the contours of such discourse on campus. The student members with the active support and leadership of Dr. Shilpa Jain, faculty coordinator, decided that devoting an entire month to the cause was the best way to sufficiently address the problem of Human Rights.

Several events were organised and they ran smoothly throughout the course of the month. Some were aimed to be thought-provoking and academic while others were more inclined to raise awareness through fun and games. The underlying purpose, however, was to facilitate an active and impassioned exchange of ideas between students. The flagship event of Human Rights Month – October 2018 was 'Conversations: A Human Rights Dialogue'. Envisaged as but a means to provide a platform for senior students to share their ideas on human rights with others, this two-part lecture series/academic discussion proved to be a great success. Headlined by two fifth-year speakers Mr. K.S.Roshan Menon and Mr. Raghav Mendiratta, the event drew a sizable audience and ended up creating quite a buzz around campus. These no-holds-barred discussions threw open the floor to all manner of questions from the audience and the resulting exchanges were equally entertaining and enlightening.

Perhaps the most popular of all the events held during Human Rights Month was 'InQUIZitions: A Human Rights Quiz'. A first of its kind quiz focusing solely on world events relating to human rights, the event saw active participation from many interested students. The competition was fierce and the cash prizes up for grabs made things more compelling. The Quiz was of 3 rounds went on for about 2 hours. In the end, the event was concluded in a cordial manner with the prize winners undisputed and accepted by all. Also noteworthy were the quizmasters taking great pains to ensure that every participant left a little bit wiser than before.

Another major event organised by CASIHR was the Research Paper Writing Competition. With the objective of encouraging the research and writing skills of the students, this competition was announced with cash prizes and the opportunity of being published in the CASIHR Journal of Human Rights Practise (CASIHR JHRP), the flagship human rights journal of RGNUL, Punjab.

## -WINNERS-

### InQUIZitions - A Human Rights Quiz

1. Naaz Singh and Anjuri Saxena
2. Tathagat Tiwari and Arnav Shrivastava
3. Adwiteya Grover and Arvind Kumar

### Research Paper Writing Competition

1. Srishti yadav and Meghna Mittal
2. Priya Aggarwal





## **-CENTER FOR ADVANCED STUDIES IN HUMAN RIGHTS (CASIHR)-**

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#### **VOL V ISSUE II**

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