

**RESEARCH PAPER****Chinese Facet: A Culturally Sensitive Account of Human Rights****<sup>1</sup>Sehar Atbar, <sup>2</sup>Muhammad Dawood Umar\* and <sup>3</sup>Sibghat Ullah Bajwa**

1. BS International Relations, National Defence University, Islamabad, Pakistan
2. BS International Relations, National Defence University, Islamabad, Pakistan
3. M. Phil, Department of International Relations, National University of Modern Languages, Islamabad, Pakistan

**\*Corresponding Author**      dawoodumarawan@gmail.com**ABSTRACT**

This paper aims to accentuate Chinese attributes of human rights that are fairly unexplored both within and outside China. The paper uses qualitative methodology and endeavors to distinguish Chinese version of human rights from universal “one size fit all model” by tracing the basis of human rights in distinct Chinese history, and theoretical and ideological underpinnings of Marxism and Maoism. Moreover, as an exclusive contribution to the existing literature, this paper used 3 dimensions of Hofstede’s Cultural Dimensions Theory to understand culture bound conception of human rights in China that is based primarily based on Confucianism. After having related Hofstede’s dimensions of Power Distance Index, Uncertainty Avoidance Index and Individualism vs Collectivism to human rights tradition of Confucianism in China, the relevance of these dimensions is traced in Modern Chinese constitution. The findings reveal that China has distinct genesis of human rights based on its cultural traditions and historical emergence which is distinct from western predominantly U.S dictated version of human rights based on notions of universalism, individuality, inalienability and indivisibility.

**Keywords:** Chinese Culture, Collectivism, Confucianism, Cultural Sensitivities, Hierarchy, Human Rights**Introduction**

Universal Declaration of Human rights (UDHR) is the core document proclaimed by UN General Assembly as a common standard of human rights for all the people and all the nations. UDHR is not legally binding, embodies 30 rights and forms basis for international human rights law claiming that all human beings are born free and equal. The universal conception of human rights suggests that human rights are inalienable, universal, indivisible and interdependent. 1993 Vienna Conference on Human Rights affirms that all states have obligation to protect all human rights irrespective of their political, cultural and economic systems. Universality of human rights connotes that every human is born with and possesses same set of rights regardless of their geographic location, culture, ethnicity, gender etc. Moreover, human rights are inherent and are not granted by any authority or personality. They are inalienable as they are inherent in all the human beings and they cannot be taken away. Human Rights are indivisible hence have equal status and cannot be differentiated into hierarchies.

In addition to UDHR, international human rights regime is composed of number of declarations, regional and bilateral treaties and international legal institutions. International covenants such as covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights provide a detailed view of human rights and are legally binding treaties and signatories are obliged to realize these rights in domestic legislations. UN charter is legally binding treaty and obliges signatories to respect, promote and protect human rights without any discrimination. The Charter does not deny or specify the rights it advocates to promote and protect. China is a signatory to UN Charter however not ratified any of these covenants.

When China refers to human rights law, it is different from western concept of human rights or the one advocated by United Nations. When the concept was first introduced in China in the middle of 19th century, human rights were viewed as imported goods from the west (Shao 2013). The concept was revolutionary if not outrageous and China took almost a century to accept the idea. Chinese scholars had a hard time in providing translation of rights since they had no equivalent words in classical Chinese texts to explain the concept. Primarily, the word “rights” was translated to “reason”, “power”, and “case” and later in 1900s, the translation finally found its current form which means “power” and “interests”. Ancient Chinese only had the concept of duties and no concept of rights. (Tao 1990). The human rights which exist in China are inspired by Confucianism that does not believe in the existence of a Transcendental other (Godly being), the Chinese place great value on culture and human experience, hence viewed culture as a source of meaning in life. The norms, principles, laws, and rules of the Chinese have their sources in the social and human contexts in which they serve.

The translation of rights in Chinese language is *quanli* which was used by missionaries and eventually imported by Chinese. They started its theoretical explorations and these rights started penetrating into the constitution. 20 years of war and communist regime that was unwelcoming towards rights talk led to fewer writings on the topic of rights after 1930s. The 6 months long Democracy Wall Movement from 1978 to 1979 was a major turning event when activists advocated importance of human rights followed by 1989 Tiananmen Square Movement as another hallmark event advocating importance of human rights and democracy. This made China issue its first white paper marked by new beginnings in the discussion of human rights. The rights have been conceptualized in multiple ways with range of Chinese Perspectives. In 1993, Chinese delegate Liu Huaqiu proclaimed at United Nations World Conference on Human Rights in Vienna that human rights are the product of historical process based on culture, values and differ for countries that are at different stages of development. Countries with different historical traditions and cultural backgrounds have distinguished conception of human rights. Hence, there should not be one model that demands all the countries to comply in terms of human rights standards. However, the Chinese discourse of human rights is acknowledged scarcely both within and outside China. (Svensson, 2012)

## **Material and Methods**

The paper uses qualitative methodology to deeply analyze the historical “tradition based” conception of human rights in China. Primary sources consulted were websites to extract information about laws and 1982 Constitution of China. The argumentation was further built by relying on secondary sources of information such as books and research papers. Hofstede’s Cultural Dimensions Theory is used to understand culture bound conception of human rights in China that is based primarily on Confucianism.

## **Hofstede’s Cultural Dimensions Theory**

Hofstede’s Cultural Dimension Theory is developed by Geert Hofstede in 1980 and acts as a framework to understand cultural differences among countries. It describes the effect culture has on values of people and these values in turn effect their behavior. Hofstede’s cultural dimensions protrude from his large survey conducted from 1960s to 1970s which initially identified 4 dimensions and later a fifth dimension of long term vs short term orientation was added by Chinese sociologist. Later a sixth dimension was also added making them total of 6 of Hofstede’s Cultural Dimensions. This framework is significant in highlighting cultural differences and their importance.

## **Universality vs cultural relativism**

### **Chinese conception of Human Rights**

There is a difference between how rights emerged, are recognized and enforced in various societies. China has its distinct understanding of human rights. UDHR is primarily concerned with individual rights (political and socioeconomic being equally important) whereas there is absence of individual particularly political rights in Chinese constitution and society. Social ideals such as societal norms and values vary between American and Chinese society. American rights emerge out of natural law and emphasize private autonomy, whereas Chinese characteristics of society value the primacy of state as compared to individual political rights. West justifies social equality on the premises of natural law, however, they are not completely accepted by Chinese political culture. In terms of legal approach, Chinese legal system gives priority to substantive over procedural justice. Rights in China are derived from state imposed duties on citizens and there is more emphasis on economic rights of a community as compared to political rights of an individual (Potter 1987).

### **Plurality of morality**

The universality of human rights is propagated widely based on European idea of Natural Rights. The grounding of human rights on natural law is problematic because it leaves no room for cultural sensitivities. There cannot be single morality for all based on rationality and human nature. The standards of reasoning and moral values vary from culture to culture. Human values and needs are largely influenced by the type of culture that matures them and the claim of origin of human rights from west is somehow an exaggeration. The documents embodying human rights in international law seem to provide a legal and moral shared understanding about the universality of human rights. However, UDHR is not a legally binding document. Owing to the benefits in the sphere of trade and economy, the states sign these agreements without actually agreeing to them. Globalization has increased interconnectedness as well as have exacerbated differences among people, making one size fit all theory of universal values difficult to implement. (Svensson 2003).

Chinese version of human rights does not refer to inalienable rights of individual by the virtue of him being a human. Instead, Chinese concept of human rights emphasizes social and political duties that an individual owes to the community. China proposes objections to the provision of Right Covenants because it considers international standards of human rights and their regulation is a curb on sovereignty of a state. Secondly, the universal conception of human rights is west centric and cannot be directly applied to political, cultural and legal context of china. It can be argued that the rights promoted under rights declarations are not west centric and are the product of joint efforts of member states of Human Rights Commission from diverse backgrounds including China. However, United Nations has always interpreted the Universal Declaration and Covenants from a western and particularly United States' emphasis on civil, political and economic rights. The preamble of UDHR in contrast with Chinese constitution declares individual rights to be supreme and article 29 limits them only when they are in direct clash with group interest. There is a sharp difference between debate over civil and political rights vs group rights. Western historical tradition suggested maintenance of rule of the sovereign at the expense of common people, based upon culture of **us vs them**.

### **Historical Overview in China**

For more than 2000 years, Imperial china rejected legal system based on external rules because positive law was viewed too rigid, insufficient to serve goals and artificial to serve the complexities of social relationships. The rule of law or positive law was considered dangerous for the people and was considered to be a tool of the despot.

## Theoretical and Ideological basis

Marxism serves as important component in Chinese understanding of human rights advocating the freedoms and rights that depend on one's role in the economic and social order and the rights of a person are tied to his contributions to society. Marxism emphasized fair social relations that can be achieved when rights and duties are tied to each other and everyone will benefit from it. Human rights perception in china was furthered by ideology when Chinese style communism was introduced by Mao who replaced Confucianism with communist thought and abolished legal codes. The period was marked by ideology based law of Marxism Leninism "Mao's thought". There was superiority of ideology over rule of law and Mao's thought acted as a guiding force in legal disputes.

## People's understanding of Human Rights in China

Chinese find it hard to understand that a person is born with rights due to the absence of a "rights" tradition (Shao 2013). Western scholars distinguish human well-being from human rights. The people of China equate human rights to a better quality of life rather than political and civil rights such as freedom. The Confucian and Marxist principles also put emphasis on collective material wellbeing of people. This has led the common Chinese to interpret human rights from a solely economic dimension. A better life is equal to good human rights. Another interesting fact is that the term "human rights" is rarely used in China, and it has been replaced by citizen's or people's rights to make it more compatible with socialism (A.V. Tsvyk 2019).

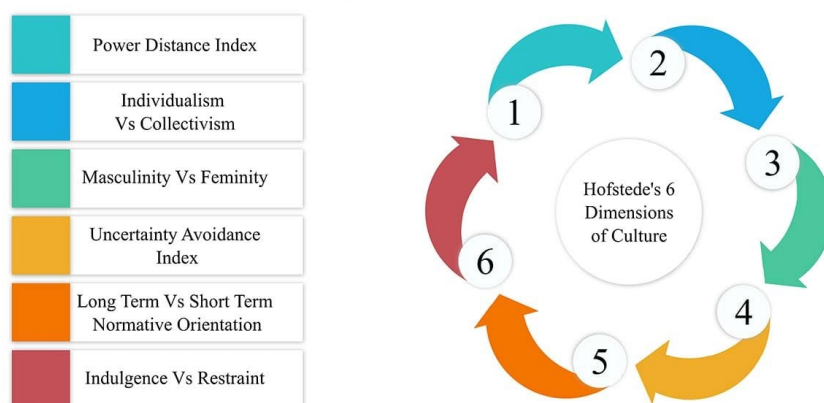


Fig. 1 Application of Hofstede's Cultural Dimensions Theory to Chinese Tradition:

## Confucian socio, political and ethical system:

Chinese culture is dependent upon both geographical differences in the form of ethnic regions and temporal differences in different historical periods. Confucianism does not form whole of Chinese tradition but definitely indicates of majority of it. The roots of customs can be traced back to 500 years of dramatic change prior to establishment of Qin Dynasty. Confucianism expresses dominant culture of Chinese people of Han ethnicity. Non Confucian strands of Chinese tradition like Taoism and Legalism also form basis for human rights, however, in Chinese discussion of human rights, Confucian tradition always mattered the most. Liu Huaqieu claimed that China has distinct concept of human rights as compared to other countries. Early Confucian traditions advocate human rights and became the method by which rules were applied in society. It is even argued that each and every provision of UDHR is promoted by Confucianism or complements its teachings.

## **Chinese Culture based on 3 Hofstede's Cultural Dimensions**

### **Uncertainty Avoidance Index**

Uncertainty Avoidance Index throws light on a society's tolerance for uncertainty and ambiguity. A high uncertainty avoidance Index shows low tolerance for risk taking and uncertainty. Societies avoid uncertainty by relying on strict rules and maximum regulations. They are not comfortable in unstructured situations and there is intolerance for deviant ideas. Confucianism teaches *role dependent ethics* for maintaining social harmony in the society.

The two principles of *Li* meaning rituals and *Ren* meaning Benevolence form cornerstone of Confucianism. The institutional arrangements with the system of clan rules or *Li* that defined the role individual has to play in the society. The rules in the idea of *Li* regulated personal and social conduct and were needed to maintain a hierarchy in the society. The rules were basic ethical principles and applied to all spheres of political and social life. Clan rules were rigid ranging from fixed ways of greetings, funeral wears, and succession of throne. Confucius warned his disciplines not to listen, look, talk or touch anything not permitted by *Li*. The rules and standards governed every saying, every move of an individual ranging from how should one talk, walk, drink, smile, cry or even have sexual intercourse. *Li* regulated who should enter door first, sit in a given seat or how should people get married. Political rules were considered divinely, according to standards of *Li* and provided structural principles for the administrative system of dynasties. In addition to *Li*, *Ren* meant the internalization of rules as a psychological fit between one's needs and desires at one hand and ethical demands of society on the other. Like *Li*, *Ren* also guided personal and political conduct.

### **Power distance index**

Power distribution index indicates extent to which less powerful members of institutions such as family accept the unequal distribution of power. Societies that have higher degree of power distance accept hierarchies and everyone is placed in rankings without the need for justification. In countries with higher power distance, parents expect children to obey without questioning their authority. There is display of subordination and respect for subordinates, parents do not accept if children talk back to authority. Superiors and subordinates are unlikely to see each other as equals in the work place. Assigned roles and duties constitute individuals and differentiate between good and a bad person based on how well he fulfills his duties.

### **Taoism and Legalism in unison with Confucianism**

Human rights are embedded in Confucianism and worked in unison with Taoism and Legalism. Non action principle of Taoism advocates the presence of ontological being guides human action and exists independently of human understanding. Legalism advocates the supremacy and superiority of the sovereign's distinguished position from his subjects. The sovereign and his subjects do not follow the same principle. Legalists argue accumulation of power in one hand to achieve stability and prosperity.

### **Rights and social hierarchy**

Confucian ethics dictate that human beings are not equal and there are inequalities among members in the society. Historical tradition of Confucianism places basis of society on hierarchical rules defining scope of authority, social classes and individual roles. Chinese society inspired from Confucianism places great emphasis on hierarchy of elders and strict social relations. Chinese families emphasize superiority and inferiority between elders and the young. It is impossible to call elders by their name directly, tone of conversation is to be

kept humble and youngsters cannot question elders. At the top of social and political hierarchy was the sovereign ruler or the son of heaven who possessed land and was the one responsible for its division as well. **It was the duty of ruler to rule and duty of ruled to obey.** The fundamental aim is to fulfill one's duties prescribed to him due to his role in a hierarchical and clan based society. There was no impetus for check on political power.

### **Ancestral Worship**

China is very much inclined towards balance and order (Shao 2013). A strictly hierarchical society has been created by Confucianism to achieve order and limit personal freedoms. The people have been educated to accept and obey these hierarchies and it forms the core life creeds of Chinese. Zhou was the ruler of Zhou kingdom who defined characteristics of a clan society. The ideas of Li demanded to be filial and obedient to those in old age. Ancestor worship forms basis of family life and was quasi-religious phenomenon that reminded of hierarchical relations in the society and duties of each individual in that setup.

### **Virtue of Filial Piety**

The virtue of Filial piety under the category of Li and is the most influential concept in Chinese family life emphasizing unconditional and total submission to authority whether parental, kinship or imperial. The most basic filial behavior is son's submission to the father, wife's submission to the husband, young people's submission to the elderly and inferior's submission to the superior. Disregard for filial piety is considered biggest crime and punished severely. This emphasis on order by Confucianism gives explanation as to why much political and civil freedoms are not given in China.

### **Collectivism vs individualism**

Collectivism vs individualism refers to the collection of people into groups. Collectivist societies place greater emphasis on groups with "**we**" image of a person as compared to "**I**". These type of societies emphasize loyalty and relationships. People are identified more due to their belonging to a group.

This debate can help understand why Chinese society and culture places more emphasis on collectivism. Individualistic concept of liberal rights is missing in China and has always had great regard for collectivism and sacrifice of individual interests for the benefits of community. Individuals have responsibilities towards organizations therefore the collective interests of state, group, institution, family are higher than individual interest. In Confucianism, every individual has clearly defined set of duties and the idea of collective rights triumph over individual rights i.e. everyone has duties to the group. There are no such individual rights in Confucianism because the concept of individual rights is inconsistent with it (Tsvyk & Tsvyk, 2019).

### **Confucian familism and collectivism**

Chinese cultural tradition is non individualistic and family is the embodiment of that doctrine. Being an ethical doctrine, Confucianism pays emphasis on clan based society and institution of family with strong relationships between individuals and family, individuals and society and between individuals themselves. The concept of Ren emphasized *humanism* that is to love man and humanity. Filial piety and fraternal affection form important component of Li. Chinese politico cultural tradition considers individual to be a part of a larger and hierarchically structured entity such as family, village or nation. Every person is born in a web of social relations and is expected to perform certain duties. Individual is not considered alone but a part of huge lineage and are placed in complex traditions and dependent on them for survival and meaning. Family plays pivotal role in Chinese cultural

tradition based on Confucianism and extends from household to include the entire clan. Chinese individual is duty sensitive agent rather than the moral agent who is bearer of rights and has a submissive personality and incapable to deal with public life beyond family. It is considered most natural and basic form of human association providing moral, emotional, educational and material support, its peace and stability directly influences peace of the nation. *Ancestral worship* helped create bond with the community and maintain unity of family by educating young people about importance of filial piety and fraternal affection. Individuals are not considered autonomous but born as a son, father, wife, husband or a subject obliged to fulfill their responsibilities. No one should have privacy, opinion, will or even life independent of family.

### **Relational Identity**

Collectivism does not mean that individual does not exist in China (Shao 2013). Contrary to western individualism where a person's identity is formed independent of the group, people in China are aware of the presence of other human beings or society and how it affects them. This type of collectivist identity is called "**relational identity**". When a person has such an identity, he or she sees collective interest as a significant aspect of personal interest. Individuals believe that the interest of community will serve their personal interests the best. (Zhang and Liu, n.d.)

### **Rights in Modern China: Confucianism and Chinese Constitution**

Yang Xiyu was China's delegate to the World Conference expressed his views against universality of human rights by advocating that *no one can decide what the best is. We should allow people to think about human rights in different ways and appreciate uniqueness*. China is still persistent on the fact that all rights individual draws are from the state. Chinese leaders favor economic and group rights over political freedoms. Director of human rights China Xiao Qiang emphasized that cultural differences between countries cannot imply that citizens cannot enjoy human rights standards. It requires government's own practical solution to achieve these rights. (Civic, Mélanne Andromecca. 1996). There are two major sources of laws in China, the constitution of PRC and Basic laws formulated by National Party Congress, which serves as the supreme legislative body.

### **Chinese constitution**

Constitution acts as a primary document to analyze the relationship between state and society. Peoples Republic of China had four constitutions issued by the National Party Congress (1954, 1975, 1978, and 1982). The 1982 constitution has been modified four times by CCP to refine it to serve the purpose of modernization. The word "Human Rights" was added for the first time in chapter 2 "The Fundamental Rights and Duties of Citizens" of the 1982 constitution. After this amendment in 2004, several laws were passed by National Party Congress which were consistent with Chinese values and relevant articles of constitution. Article 33 of the constitution states that the citizens are entitled to their rights, and they must perform their duties according to the constitution.

### **Human Rights are not inherent and inalienable**

The claims of protection of rights under Chinese constitution are linked to Confucian style tradition of self-imposing on people. The rights guaranteed under 1982 constitution are granted by the state to the citizens, are linked to an individual's duties to the community and are open to restriction and repression. They are only awarded to those who fulfill their duties as a member of the society. The importance is mostly attached to citizen's rights and there is not a single reference of human rights in Chinese laws, this indirectly means that "rights" are only given by the state. This runs in contrast to universal version that declares

human rights inherent because they are not granted by any authority and hence inalienable (no one can take them away).

### **Human Rights and hierarchies**

There's a unique social contract between Chinese state and society which diverges from the western thought of social contract. The constitution's provisions relating loyalty to state are derived from Confucian perspective on loyalty to authority. The article prohibits the Chinese citizens and organizations from damaging socialist system. However, when we relate this article with three other articles of Constitution, it makes an understanding of this prioritization of socio economic rights over political rights. China's prioritization of social and collective rights based on the influential Confucian doctrine. Deng Xiaoping, who is considered a reformist figure, defended this prioritization when Japanese Prime Minister criticized the Four Modernizations. Deng said, what we seek is an economically comfortable family.

- Article 1; Talks about Loyalty to State, and loyalty to socialist system.
- Article 24; Talks about promotion of core socialist values, collectivism and to combat capitalist and other forms of decadent thought.
- Article 28; Criminalize activities aimed at damaging socialist economy.

### **Power Distance index**

#### **Loyalty and Submission**

Confucianism provide institutional arrangements on hierarchy of social and political relations and people are educated to accept them. Confucian emphasis on loyalty and submission is not only limited to Chinese Constitution, and can be seen in even new laws of the country. March 10, 2023 marks the date when Xi Jinping took oath as President of PRC, Chairman CCP and Chairman of Chinese Military Commission. Xi is the first Chairman CCP in Chinese history to be named as Xi Da Da, which means Uncle Xi. This explains how nation feels about Xi and his role as Chairman and further explains the loyalty and submission to the authority of Xi. China in recent years passed two laws to cement loyalty to Xi Jinping, granting him a role as a father figure. When Xi was elected as President for third term, CCP amended its constitution making it mandatory for CCP members to remain loyal to Xi Jinping. Similarly rules of People's Liberation Army were amended it making it mandatory to remain loyal to Xi and making a framework to ensure that this actually happens. In 20th Party Congress, laws of PLA were amended to make it mandatory for officers to remain loyal to Xi and CCP both.

#### **High Uncertainty Avoidance:**

Unlike liberal states, where the constitution is mostly unwritten and serves as a norm, Chinese Constitution considers laws as a means for discipline within the party as well as in public.

#### **Maintaining Social Harmony and Cohesion**

Article 36 of PRC constitution which states that no actions of individuals shall undermine the state, society and people and violate the freedom of other Chinese. Article 36 serves as a means of maintaining social harmony by binding citizens to respect the rights of other Chinese. It is also a mean to control excessive individualism, a western idea which is in conflict with Confucianism and Chinese values. Laws relating to social harmony are taken seriously in China due to historically faced social unrest and instability. Maintaining social cohesion helps maintaining Chinese identity and international standing. Law on promotion



of traditional Chinese culture 2017 was passed to promote traditional Chinese values, which serve as a source for maintaining social cohesion.

### **Collectivism over Individualism:**

Confucianism emphasizes collective wellbeing and prohibits excessive individualism. Political rights in China are guaranteed under the constitution as well as the laws formulated by national party congress and are complementary to the duties of the citizens in order to preserve social harmony and general wellbeing of people. Article 51 of the Chinese Constitution asserts priority of group rights over individual rights, the prioritization of collective wellbeing, social harmony and stability; values which make the core of the constitution

*The exercise of citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.*

### **Conclusion**

Chinese version is distinct from UDHR's claim of human rights being individualistic, universal, inherent, inalienable and indivisible. The historical evolution, ideological basis, and politico cultural roots of human rights in China are different from universal west centric ideals. Universal rights emerged out of natural law and emphasize private autonomy, whereas Chinese characteristics of society value the primacy of state as compared to an individual political rights. In China, there is more emphasis on economic rights of a community as compared to political rights of an individual and collective interests are given more importance than individual's interest because people think that the interest of community will serve their personal interests the best. Chinese version of human rights does not refer to inalienable rights of individual by the virtue of him being human instead emphasizes social and political duties that an individual owe to the community. 3 dimensions of Hofstede's Cultural Dimensions Theory when applied to Chinese tradition based on Confucianism reveal that China has high uncertainty Avoidance Index, high degree of power distance and prefers collectivism over individualism. Confucian traditions shape the mind and behavior of average Chinese and political culture remains non individualist, duty based, hierarchical and strict rules based. There is significant emphasis on collectivism, relational as compared to individual identity, clan based society, love for humanity, filial piety, and fraternal affection in Chinese cultural traditions. Confucianism provide institutional arrangements based upon clan based rules of Li and Ren that define role individual has to play in the society and people are educated to accept them. Overview of Chinese Communist Constitution of 1982 suggest relevance of Confucianism in modern China. Confucianism forms unofficial preamble of Chinese constitution that prohibits excessive individualism, promotes social harmony, maintenance of hierarchy of social and political relations and the rights of individuals are considered complementary to their duties towards state. Hence Universal conception of human rights is west centric and cannot be directly applied to political, cultural and legal context of china where human rights emerged, are recognized and enforced differently based on traditions and cultural backgrounds.

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