

# HUMAN RIGHTS AT JEOPARDY THE CENTRAL ASIAN CONTEXT

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## **Abstract**

*Problems related to violation of human rights are common in the present world. The efforts of the state governments in the direction of protection of human rights vary from state to state. The factors playing key role in safeguarding and protecting human rights are: constitutional provisions, acts and statutes. Endeavors of world organizations such as UNO, Amnesty International, UNHRC, US Aid etc. are mightier than those of states. States seem to cut a sorry figure in providing some essential mechanism, and at the same time, due to proper implementation of the provisions and lack of protection of human rights, citizens suffer in the region. The Central Asian countries, more often than not fail to provide the space to citizens for their rights. Since 1991, the citizens of this region seem to have developed an apprehension for their rights. Authorities are reluctant to provide safeguard to the rights of the citizens. The region seems to be infested with problems of freedom of expressions, censorship on media and on formation of the political parties and associations, ethnic conflicts, rights for the workers, cotton picking by the students during vacation, are common phenomena in the region. The objective of this article is to focus on the problems faced by the republics in the path of the protection and effective implementation of human rights. At the same time, it would try to throw some light on the solutions available to promote and protect Human Rights in the region. Structurally, the research paper in three parts argues that the state of affairs in the Central Asian countries is not commendable as far as the protection of human rights is concerned. The first part pertains to the understanding of concepts of Right and Human rights, the second part is about the depiction of historical development and current state of affair of human rights in Central Asian countries, the third part dwells upon national and international efforts directed towards the protection of the human rights.*

## **Keywords**

Human Rights, Universal Declaration of Human Rights, Central Asia, Constitution, Constitutionalism, Civil Society, World Organization, Freedom of Expression, Natural Rights.

## **Introduction**

To begin with, human rights besides being a national issue does possess an immensely pertinent relevance in the debates across the length and breadth of the world. It could justifiably be argued that the development of human

rights as the next step of natural rights is the byproduct of the twentieth century vocabulary. The rights of an individual provided by the state are the conditions and circumstances for a thorough development of a nation and its populace. The concept of rights, it can be safely assumed, emanated from various sources such as Magna Carta of 1215 A.D, The Bill of Rights of 1687, the American Revolution of 1776, French Revolution of 1789, provisions of various constitutions in different nations that strove towards implementation of rights and human rights. In 1948, United Nations' "Universal Declaration of Human Rights" also made a special effort which is included in the Preamble of the Declaration as well as in all the thirty articles of the same.<sup>1</sup> Today, various international agencies and civil society institutions have contributed largely in the protection of the human rights.

Kazakhstan, Kirgizstan, Tajikistan, Turkmenistan and Uzbekistan are the countries which came into existence as independent nations after disintegration of Soviet Union. Prior to 1991, these nations were ruled by Socialist – Communist System for seventy years. The Central Asian states, rampant in violation of human rights also pose a serious threat in the protection and promotion of human rights. These states are going through the phase of transition after having been ruled by single party dominance and human rights based on Marxist-Leninist ideology. Despite multi-party system (except single party system in Turkmenistan) and westernized Liberal (open market economy) - Democratic Government models, they have not been able to solve the problems in these states for human rights almost for the past twenty five years.

Regarding the conceptual aspects of human rights, Ernest Barker rightly pointed out that rights are the byproducts of just system which is based on that state and its laws. Rights of the individual in the state are meant to determine the dignity of a person and ensure its recognition. A state that does not accept the dignity of the person, the individual in that state is deprived of rights. However, in some states individuals and some classes are deprived of these rights. For example, in the ancient Greek city-states only 'free men' had civil rights, while the slaves, women and other aliens were denied the same. There is no doubt that these structures were not based on a sense of justice and order.

The persons who are not subjected to any restrictions on their activities by the state, are often placed under the category of negative rights. A positive approach towards the implementation of rights acts as a strong booster for the development of an individual whereby the state supports and takes care of his Right to Health, Right to Education, Right to Employment, Legal Rights etc. Negative rights are seen at work in a liberal democratic set up, whereas positive rights are the parts of mainstream Socialist state. One can trace the history of Human Rights to a distant past. Intellectual notions started getting divided into the following two discourses with regard to the requirement and implementation of Human Rights, and the appropriateness of the same.<sup>2</sup>

Emmanuel Kant, a German philosopher founded trigonometric structure to understand human rights: Citizens rights, International rights, and homogeneous rights. According to Kant, people have rights because they live together on earth. It clearly reflects Kant's idea of integration of the human race.<sup>3</sup> While defining the term "Rights", Harold J. Laski (1940) said that "Rights are those conditions of social life without which no man can seek, in general, to be himself at his best<sup>4</sup>." There are three below principles explaining the different types of rights, namely, Liberal individualist principle; Laski's principle and The Marxist theory.

The first principle could be elaborated in terms of the theories propounded by three major scholars in this area - 1. Locke's natural rights theory, 2. Hobs-Austin's legal theory and 3. Greene's moral theory.

Laski's theory is a combination of historical, social-welfare and democratic-socialist views. The interpretations on the Marxist theory of Rights are based on dialectical, historical- materialistic, revolutionary and homogenous entity. Marx believes that Rights have gradually evolved through the class-struggle. These rights were limited to the elite, slave-owners and only to select people in places like Greek city-states, Roman empire, medieval European states etc. Thereafter, the sixteenth century witnessed the rise of merchants and industrial bourgeoisie in the European society. Gradually, after the Civil War of England and the French-American Republican revolution, bourgeoisie class attained its economic domination along with an attainment of social and political hegemony. As the masses contributed in a remarkable manner to the bourgeois revolution, especially with the help of peasants and urbanites, it hammered the voice of "Human Rights" to its peak.

Kautilya, an Indian thinker, too, talks in detail about the economic rights as well as the legal and civil rights of humans. Kautilya emphasises that a king should provide economic assistance to orphans, impoverished people and old people and that it should also support helpless mothers and their children for their survival. This is a part of duties of the state and king for some philosophers, but one could see a glimpse of human rights enveloped in the form of duties.

The conceptual aspect of human rights is only a reflection of forging the ground for citizens to enjoy their rights but its practical aspect is completely dependent on the nations as to how they implement it effectively.

### **Present State of Affairs of Human Rights in the Central Asian Republics**

Central Asian States were members of the Soviet Union in different phases starting from 1917 to 1991. The history of these nations clearly shows how these nations were governed by the socialist and communist ideas. It was focused on Social rights, worker class welfare, against the capitalist and profit making class and concentrated on the interests of the proletariat. Through the various constitutions of 1918, 1924 and 1936, Rights were declared for these

nations. However, Joseph J. Stalin, the ruler of USSR denied these rights to the citizens all through his reign from 1932 to 1952. Civil liberties and human rights were subjected to major threats from the ruling system. In 1985, Mikhail Gorbachev of the communist party became the general secretary of the Soviet Union and he implemented the policies of *Glasnost* and *Perestroika* in an effort to reconstruct liberal order and increased openness and views.<sup>5</sup> This effort initiated the multi-candidate system which gradually developed into multi-party system. Later, it paved the way for political and economic rights which were in tune with the struggle of independence of the member nations which resulted in the formation of 15 new states including five Central Asian states. These nations made their constitutions and started striding towards the strengthening of human rights.

Kazakhstan adopted its Constitution on September 5, 1995. Chapter 2 of this Constitution provides with provision for individual rights and freedom as enshrined in a fairly good number of Articles (Articles 10 to 39) of the constitution.<sup>6</sup> Kazakhstan has very less human rights problems vis-a-vis Central Asian countries. The strike in may 2011, by oil workers repressed by the government machinery is not only related to their livelihood but also a gross violation of human rights.<sup>7</sup> These workers wanted to have negotiations on minimum wages with the oil company management. But government registered a case of criminal conspiracy against the agitating workers and imprisoned them for 6 years. It is convenient to allude to Natalia Shokoliva and a union advocate who were imprisoned, but later on they were released. The group of 2000 workers expelled by the oil company was against the rules and policies of international labour organization.<sup>8</sup> The story does not end here. However, what seem more threatening and hazardous is Kazakhstan government's action against opposition leaders. Valadmir Kozlon was thrown behind the bar which is against the individual freedom of expression. However, Kazakhstan moved towards progressive paths in respect of restoration and preservation of human rights by agreeing in 2008 to establish an annual human rights dialogue with the European Union.<sup>9</sup>

Kyrgyzstan enacted its Constitution on the 5<sup>th</sup> of May 1993. In part 2 of the constitution article 16 to 20 provides for Human Rights and freedom. Articles 21 to 49 of the constitution deal with full elaboration of Human Rights.<sup>10</sup> Kyrgyzstan, an important Central Asian country, is known for its proclivity towards protection of Human Rights compared to other nations of the region. The first President of Kyrgyzstan named Asker Akayev is popular as "An Island of Democracy" but Tulip Revolution took place during his reign which shows the reality of conserving democratic values and protection of Human Rights after change of regime in Kyrgyzstan in June 2010. A close observation reveals that the report on the much debated ethnic conflict that surfaced at Osh and Jalalabad and presented by Bnund Taphij Zabi, around 300 people were people of Kyrgyzstan origin and Kyrgyz police over ran the

Uzbek Republic.<sup>11</sup> However, the Uzbek ethnic groups presented a list of 19 demands from businessman, students and local administration in April-May 2010. The struggle from 10 to 14 June 2010, is a reactionary movement.<sup>12</sup> Many national and international human rights organizations believe that such incidences have happened in the past 20 years. Freedom of expression has been a problem for many years.<sup>13</sup> Umida Andamdava, who is documentary photographer was arrested in June 2010 and imprisoned. Her crime was that she covered the issue of inequality, labor unrest and poverty in her photography. Freedom to profess and propagate the religion is also restricted. For example in 2010, 114 people were imprisoned for 6 to 12 years.

The Constitution of Tajikistan was enacted on the 6<sup>th</sup> of November 1994 and it contains 10 sections and 98 articles. Chapter two of the Constitution from Article 14 to 47 deals with fundamental duties and fundamental rights of the citizens<sup>14</sup>. There is no denying the fact that Tajikistan is a home to gross human rights violation as evidenced by various reports, records and documents. Post independence Tajikistan witnessed the killing/ missing of dozens of journalists. The Government of Tajikistan during the 2005 parliamentary elections closed down independent and opposition newspapers and encouraged attacks on journalists. Even use of Internet and YouTube was brought under government censorship in 2003 and 2014 respectively. Religious activities were subjected to restriction and registration with the government. For instance, Committee on Religious Affairs, Islamic pilgrimages were restricted, and proselytizing groups such as the Jehovah's Witness suffered occasional persecution. On 24<sup>th</sup> October 2012, the courts of Tajikistan passed a judgment to prohibit the human rights organizations in Khuzak Vadar, in which an estimated 40 activists were working. They were spreading awareness regarding human rights among youths. But government considered that this organization was abating anti-national sentiments. According to Global Voices Online (June 2014) the practice of systematic violence against military conscripts (referred to as *dovshina*) increased following a recent increase in incidences of manslaughter and suicides. Akmal Davlatova was beaten to death by his lance sergeant, Farrukh Davlatov. Incidences of Kidnapping were also rampant in Tajikistan.

Turkmenistan adopted its Constitution on the 18<sup>th</sup> of May 1992. It enshrines 8 chapters and 116 articles. Chapter 2 of this Constitution and precisely Articles 16 to 44 deal with various rights.<sup>15</sup> Turkmenistan, known for single party rule<sup>16</sup> is also experiencing human rights problems. Only single party is ruling and other opposition parties are not allowed to rise which has an implication on the fact that citizens are denied political rights. Ethnic minorities face discrimination in Turkmenistan. Abrogation of dual-citizenship agreement with Russia in 2003 led to the fleeing of many citizens from the country. Foreign travels were restricted, As the Soviet era diplomas were set aside by the government, the job opportunities got drastically curtailed, even

the ethnic Russians were disallowed university admissions. It deserves mention that with the passage of time and in an effort to fall in line with countries promoting human rights, Turkmenistan is also trying to espouse positivity about the rights of its citizens. The U.S. Department of State's 2005 Annual Report on International Religious Freedom (released November 8, 2005) states "significant improvements in the promotion of religious freedom." But Chris Smith opposes the report and states that there has not been much improvement in the state of affairs in the country with respect to human rights. Journalism and media does not enjoy the required freedom. Journalist Sona Chuli Kuli was interrogated and compelled to sign a statement agreeing not to collaborate with the international media.<sup>17</sup> The Government stands supreme and it cannot be opposed in any form. Quite a good number of Opposition Leaders such as Batyr Berdiýev, Ýazgeldi, Gündogdyýev, and Boris Şyhmyradow had to end up as political prisoners. More than 1600 students are waiting for further studies in the neighboring countries. But the government is not giving them permission to leave the country. Some of media people and political leaders are put in jail without any reason or allegation. For instance, a reporter of Radio Free Europe is in jail for five years.

The constitution of Uzbekistan was enacted on the 8th of December 1992. There are 22 chapters and 128 articles in the Constitution where Article 24 to article 42 of Chapters Seven to Nine are about the various rights. Chapter ten, which deals with the rights and freedoms guaranteed to its citizens find their manifestation in Articles 43, 44,45 and 46.<sup>18</sup> Andijjan massacre of 13th May 2005 perpetrated by the government machinery resulted in the casualty of 1500 protesters. This is vociferous of the serious violation of human rights in the country. This heinous act of brutal killing of people amounts to strangling of human rights in the history of Uzbekistan. In 2008, one of the activists of the Protection of Human Rights in Uzbekistan, Mr. Turugnov was arrested from his own house by the local police. Later, he was tortured and harassed by throwing boiling water. There were many other instances of leaders and intellectuals being detained on false charges. For example Abdualev Ishaq, Ajmat Ajimov, Mohammed Bakjanov, Bkrtyarbak Iskixav, Maluba Krimova, Rustam Usmanauv and many other people are still behind the bar. Moreover, the Uzbek government have imprisoned thousands of boys who believe in religion on the ground that they are spreading religious fanatics and encouraging illegal religious texts. In 2011, the Uzbek government commanded Bnund Taphij Zabi to close the office in Tashkent and put stay on the registration of independent human rights groups.

Every year on 8<sup>th</sup> December i.e. the Constitution Day, some old people who are above 60 years, some women and small children with lower criminal charges, are released. However, on December 8, 2012, while re-replicating such a program, the Uzbek government tried to get praise from the Western media. In July 2012, two human rights activists were arrested by the Uzbek

government and announced seven year jail term. Yuldasna, who is just 26 years is accused of human trafficking which is completely wrong. Uzbekistan's notoriety as a nation indulging in practices of child labour and forced adult labour attracted international attention. For instance, Cotton Campaign, a coalition of NGOs and human rights activists in Uzbekistan, as many as 11 people died during cotton picking season in 2013. They were between the age group of 6 years to 63 years. Mansur Mirovalev and Andrew E. Kramer reported that, the government established its monopoly on the industry, paying remarkably low wages to the labourers, but reaping extraordinary profits from cotton which helped them balance the budget.<sup>19</sup>

However, there seem to be a faint improvement in the debacle of human rights as registered by Carey L. Biron on the use of school children in harvesting crops. Biron maintains that even minors of seven years of age were forced to work in the cotton fields during the annual sowing, weeding and harvest cycles. This was done primarily to fulfill the harvest quotas fixed by the government enforced on farmers and local administrators. In the year 2013, coinciding with an observation mission from the United Nations, the number of children in the fields was drastically reduced. That progress now appears to have extended to this fall.

The Central Asian countries are on the throes of poverty, shockingly low per capita income and unemployment problem (except Kazakhstan) which point to the region's deplorable state of affairs. The tables 1 to 3 indicate details of unemployment, poverty and per capita income. In the report of United Nation on Human Development Index 2014, Uzbekistan stands at 114<sup>th</sup> position among 169 nations. Kazakhstan is on 56<sup>th</sup>, Turkmenistan is on 109<sup>th</sup>, Kyrgyzstan on 120<sup>th</sup> and Tajikistan is on 129<sup>th</sup> place.<sup>20</sup> Except Kazakhstan, all other Central-Asian countries are placed on medium level which is not a good indicator reflecting promotion of human rights. The judiciary is not independent, remains dominated by the executive branch and is vulnerable to political pressure.<sup>21</sup> This negatively affects on all parts of society, including the fairness of election and the business environment.

**Table-1**  
**Unemployment in Central Asian Countries**

<b>S. No.</b>	<b>Name of Country</b>	<b>Total Unemployment</b>
1	Kazakhstan	5.17%
2	Kyrgyzstan	8.07%
3	Tajikistan	10.71%
4	Turkmenistan	10.59%
5	Uzbekistan	10.67%
	<b>World</b>	<b>5.8%</b>

*Source: Global Employment Trends 2014: the Risk of Jobless Recovery <http://www.ilo.org/global/research/global-reports/global-employment-trends/2014/lang-en/index.htm>*

This alarming problem of unemployment stems from paucity of job opportunities, restriction on foreign investment and discouraging attitude towards receiving liberal education abroad etc.

**Table- 2**  
**Poverty in Central Asian Countries (2013)**

<b>S. No.</b>	<b>Name of Country</b>	<b>Total Poor people</b>	<b>Source</b>
1	Kazakhstan	2.9%	UNDP
2	Kyrgyzstan	37.0%	UNDP
3	Tajikistan	38.3%	UNDP
4	Turkmenistan	24.8%	ADB
5	Uzbekistan	16 %	UNDP

Transition from socialist system to open market economy, brought in problems such as inadequate market for the products, want of skilled professionals, gradual depletion of industries , minimal foreign aid, lack of resources, improper utilization of available resources, economic crisis, nepotism, and above all rampant corruption contribute to existing poverty in the region.

Some of the most momentous factors responsible for drastically low per capita income in the region (barring Kazakhstan and Turkmenistan ) are: Unemployment, low production, export – import imbalances, minimums foreign investment, declining trend of skill generating institutes. Overall economic depression, corruption, negligible attention to raise the region’s, climatic condition making it conducive to fertility and productivity.

**Table- 3**  
**Per Capita Income in Central Asian Countries (2014)**

<b>S. No.</b>	<b>Name of Country</b>	<b>Income Per Capita (\$)</b>
1	Kazakhstan	24228
2	Kyrgyzstan	3262
3	Tajikistan	2698
4	Turkmenistan	14217
5	Uzbekistan	5630

*Source: International Monetary Fund, 2015.*

The factors stated above for the alarming unemployment, poverty, low per capita income, poor HDI index in the region point to lacuna in policy formations and administrative inefficiency which in turn leave an impact on human rights. All central Asian Countries are violating human rights in the case of health care facilities, free trail, less number of hospitals and per capita beds. Treatment of small diseases are too expensive, therefore the Central Asian patients are looking towards India for their treatment. Violation of human rights, as it becomes evident can be seen on almost all fronts including

child labor,<sup>22</sup> old age labour, low wages, restriction on religious activities, curtailed freedom of media, status of women, ethnic and minorities issues, governmental brutality, restriction imposed upon opposition leaders and so on and so forth. Besides these issues the Central Asian countries are infested with varied socio-political stumbling blocks—corruption, continuation of old practices, lack of infrastructure, fundamentalism, unwarranted political interventions, biased bureaucracy, authoritarian regimes, want of awareness, economic exploitation, lack of international exposure etc.

On the basis of above analysis it can be concluded that the Central Asian countries are going through a phase of transition. Absence of democratic culture and dearth of respect for human rights paralyse the region. No nation can follow the idea of absolute liberal democracy and Declaration of Human Rights by United Nation whether it is USA, Russia, Great Britain or China. Therefore, it can be said that Central-Asian countries have to achieve political stability, economic development, public awareness, education etc. At the same time they have to implement the constitutional provisions in letter and spirit which will promote protection of human rights. The international agencies like Amnesty International Human rights watch, US Aid, UNDP and other civil society institutions and NGO's should be allowed to work to protect and safeguard the human rights. This is a gradual process. Nearly 25 years of existence of the Central Asian countries after independence calls for a constant effort to strive towards the realization of the aims of the UN Declaration of Human Rights. It is indeed quite premature to assert that the region is likely to continue in the same vein, because international pressure and the region's own observation of changes taking place in the world with regard to human rights would certainly leave an impact on the states.

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