



# A Comparison of the Chinese and Western Systems of Judicial Protection of Human Rights

Jingwei Xu

Boston University, Massachusetts, 02215, United States  
jwx@bu.edu

**Abstract.** The concept of human rights has a rich and extensive historical lineage in both Western and Chinese societies [1]. Following the release of the Universal Declaration of Human Rights in 1948, the international human rights movement has experienced significant growth and convergence. The notion of "judicial safeguarding of human rights" was initially introduced during the Third Plenary Session of the 18th Central Committee in 2013. This paper aims to provide a brief overview of the human rights judicial guarantee system, comparing the development and practical implementation of such systems in China and the West. Additionally, it seeks to examine the potential for new avenues of human rights development based on China's unique national conditions in contrast to those of the West.

**Keywords:** human rights, judicial system, human rights judicial guarantee system

## 1 Introduction

### 1.1 The concept of human rights

"Human rights are the birthright of all human beings [2] regardless of race, gender, sexual orientation, nationality, ethnicity, language, religion or any other status. The concept of human rights encompasses a range of entitlements, such as the right to life and personal freedom, the right to be protected from forced labor and cruel treatment, the right to express one's beliefs and opinions without fear of persecution, and the right to access education and employment opportunities, among other rights. All individuals possess the entitlement to partake in these rights without any form of prejudice. The following is a concise overview and explication of the concept of human rights as articulated in the United Nations Declaration of Human Rights.

The subject matter of human rights pertains to all individuals, encompassing both citizens and non-citizens, as a fundamental entitlement [3]. The fundamental components of individuals' entitlements can be broadly comprehended as encompassing political liberties and socio-economic privileges, which serve as the foundation for all other rights. In contemporary times, the term "human rights" has become a ubiquitous phrase, with individuals frequently invoking claims of rights violations. This trend not

only highlights the growing legal consciousness of society, but also signifies advancements in judicial civilization. Consequently, the examination of judicial safeguarding of human rights holds significant import.

## **1.2 The significance of the human rights judicial guarantee system**

During ancient times, the concept of justice was commonly associated with the punishment and eradication of wrongdoing, as well as the preservation of the ruler's authority and stability. The contemporary concept of justice entails the protection of human rights and the pursuit of justice. The evolution of modern justice is characterized by the endeavor to uphold justice and human rights [4].

The concept of "judicial guarantee for human rights" was initially introduced in the Decision of the Central Committee of the Communist Party of China on Several Major Issues of Comprehensively Deepening Reform, which was adopted during the Third Plenary Session of the 18th Central Committee of the Communist Party of China on November 12, 2013. The term "Judicial Guarantee for Human Rights" is a compound phrase that has two translations in English literature. One translation emphasizes the affiliation of the term with the concept of human rights guarantee in judicial activities. This translation underscores the importance of ensuring human rights are fully protected throughout all aspects of criminal proceedings, including investigation, prosecution, trial, and execution [5]. The concept of the Judicial Guarantee of Human Rights posits that the provision of judicial guarantees serves as a means of safeguarding human rights. It underscores the importance of ensuring full justice and protection of human rights in the event of their violation. The Judicial Guarantee of Human Rights is a legal term that is exclusive to China. It encompasses various aspects such as legislative guarantee, judicial guarantee, and administrative guarantee [6]. The Western human rights guarantee system is primarily focused on the judicial redress of human rights violations and the judicialization of human rights. In contrast, the human rights guarantee system in China emphasizes a unified system to enhance the protection of human rights through judicial means.

## **2 The Evolution of the Western System of Judicial Guarantees of Human Rights**

### **2.1 Human Rights Thought in the Ancient West**

The concept of human rights originated during the Greco-Roman era spanning from the 6th to the 5th century BC [7], serving as a foundation for the development of the natural law prototype. During that era, the notion of rights was not yet established; however, individuals contemplated a philosophical essence regarding humanity that derived from the natural world. Sophocles, a prominent Athenian tragedian among the trio of greats, exalted the indomitable and autonomous human spirit in its confrontation with the natural world through his literary compositions. Plato and Aristotle engaged in further discourse regarding the responsibilities and entitlements of individuals to engage in travel,

encompassing notions of equity and autonomy. During the Roman era, a set of rights and responsibilities were consolidated under the term "citizenship". Individuals who were considered citizens, as opposed to slaves, non-citizens, and Roman rulers, were entitled to certain exclusive rights pertaining to personal liberty, property ownership, and legal proceedings. These rights were explicitly outlined in the Dodecalogue.

During the 13th century, King John of England was compelled by certain lower and middle nobles and territorial lords to issue the renowned Magna Carta of Liberty. This constitutional instrument aimed to curtail royal authority and enhance the judiciary's influence, ultimately resulting in the consolidation of monarchical power and the decline of human rights. Medieval Europe experienced a newfound enlightenment[10].

## **2.2 Human Rights Theory in the Post-Renaissance West**

The Renaissance was primarily characterized by the concept of humanism, which was a prominent social movement in the Western world. The Renaissance's emphasis on human rights was unparalleled, making it one of the most significant social movements in history. Grotius and Hobbes, renowned scholars in philosophy and jurisprudence, posited the notion that the state ought to be structured with the welfare of its citizens in mind. They contended that the primary function of a state system should be to generate benefits for individuals, thereby enhancing their quality of life. Locke introduced the concept of "natural human rights" in his renowned *Treatise on Government*, positing that every individual should possess and be free from infringement upon their rights to life, health, and liberty[8].

During the Enlightenment era, Montesquieu proposed a theory regarding the judicial protection of human rights in his work, *The Spirit of the Laws*. He asserted that in a state that practices political tolerance, the life of every individual, regardless of their social status, should be valued and safeguarded. The individual in question is entitled to a thorough investigation before being stripped of their dignity and assets. Furthermore, the state may only take the individual's life if it has filed a formal complaint. In such a scenario, the state is obligated to provide the individual with all necessary resources. Simultaneously, the emergence of a nascent nation such as the United States provided an opportunity for the implementation of the concept of safeguarding human rights, which was enshrined in the form of a constitutional mandate in both the Declaration of Independence and the Bill of Rights, promulgated subsequent to the establishment of the United States. These documents stipulated that "the inhabitants of the United States shall possess the entitlement to resist apprehension, confiscation, scrutiny, and other penal procedures." This event marked the inception of contemporary legal frameworks for safeguarding human rights through judicial means[14].

## **2.3 Modern Western Human Rights Protection System**

The significance of safeguarding human rights was underscored in the aftermath of World War II, as the fascist regime's disregard for human rights resulted in a catastrophic outcome. The UN Charter, a globally recognized document, initially intro-

duced the concept of human rights protection, categorizing human rights into two distinct groups: political and economic rights, and social and cultural rights. The Charter also outlined the various types and contents of human rights, which were subsequently elaborated upon in the adoption of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights[13]. The Covenant attained the status of an international legal instrument. Following this, certain regional and local documents about human rights protection have included explicit provisions regarding the legal recourse available for safeguarding human rights. The human rights review and protection mechanism of the common law system, which is centered around judges, has been bolstered by a range of institutions established by civil law countries, such as the European Court of Human Rights. This has been done under the guidance of Western constitutionalism, resulting in enhanced judicial protection and remedy mechanisms for human rights. The emergence of novel human rights, including the right to development, the right to the environment, and the right to peace, has extended the global scope of safeguarding human rights in the context of Western universality[9].

### **3 The Development of China's Judicial Protection System for Human Rights**

#### **3.1 Ancient Chinese Human Rights Thought**

The Chinese civilization is widely recognized as an ancient civilization of global significance. The establishment of the slave dynasty in China during the 21st century B.C. marked the conclusion of a primitive society lacking a distinct hierarchy. Subsequently, China has transitioned into a state of "home rule", whereby the adage "no one is the sovereign of the land under the heavens; no one is the subject of the sovereign on the shores of the land" encapsulates the dynamics of the relationship between the monarch and the rights of the populace in China throughout the extensive periods of slavery and feudalism. During the Spring and Autumn Period in China, which coincided with the ancient Greek civilization, numerous intellectuals contemplated the matter of human rights. Mencius' proposition that "the people are the noble and the ruler is of lesser importance" marked a significant advancement in ancient feudal ideology[12], highlighting the crucial role of the common populace in ensuring regime stability. However, it must be noted that this proposition primarily pertains to the initial approach of the monarch's governing methodology, and thus, it is subject to certain limitations. Xunzi posits the notion that water serves as both a means of support for a boat's movement, while simultaneously possessing the potential to cause its overturning. The discourse on the association between the governing authority and the governed is further expounded. The human rights ideology of ancient China differs significantly from the modern Western perspective, exhibiting a lesser degree of humanism.

### **3.2 Progress in human rights protection during the democratic revolution**

The "Outline of the Qin Dynasty Constitution" was promulgated by the Qing government in 1908, marking the first modern constitutional document in China. This document established clear definitions of the rights of the Qing people, including the right to due process of law, protection against arbitrary arrest, imprisonment, or punishment, access to judicial review, and protection of property and residence from unwarranted interference. These rights align with modern conceptions of human rights, including the right to freedom, the right to litigation, the right to personhood, and the property right. The Provisional Treaty Law of the Republic of China, enacted in 1911 during the establishment of the Republic of China, included provisions for the criminal proceedings of individuals. Specifically, the law granted citizens the right to present their cases before administrative authorities. Individuals possess the legal entitlement to initiate legal proceedings and have their cases adjudicated by a court of law. Citizens are entitled to appeal to the Pingzheng Court in the event of any breach of the law or infringement of their rights by a government official. The aforementioned is a paradigm of China's contemporary judicial safeguarding mechanism for human rights, which is considered to be one of the most sophisticated human rights protection legislations globally[1].

### **3.3 Construction of Human Rights Legislative Protection since the Founding of New China**

Following the establishment of the People's Republic of China, the implementation of the People's Congress system has effectively empowered the populace as the ultimate governing authority of the nation. The inaugural Constitution was drafted in the year 1954 [8]. According to a publication in *Legal Science (Journal of Northwest University of Political Science and Law)* in 2019, China has undergone a comprehensive overhaul of its judicial system, including the restructuring of personnel and the implementation of training programs. This has resulted in a shift towards a more community-oriented approach to judicial work, as well as the simplification of legal procedures and provisions. These changes have ultimately led to improved access to justice for ordinary citizens. Nevertheless, certain reforms were excessively extreme, resulting in the elimination of certain human rights protection regulations in the former legal system. The assault on "judicial independence" had a detrimental effect on the subsequent process of judicial protection of human rights, as the abolition of judicial procedures, the principle of the criminal trial, and the principle of equality before the law were compromised[11].

Following the conclusion of the Cultural Revolution, there was a pressing need to establish the socialist rule of law. In response, the National People's Congress ratified the revised Criminal Procedure Law in 1979, which brought about a comprehensive overhaul of China's judicial framework [9]. In 1991, Jiang Zemin put forth the proposition that the safeguarding of human rights is not a prerogative solely attributed to capitalism. The issuance of the inaugural White Paper on the Situation of Human Rights

in China by the State Council Information Office serves to underscore the significance of human rights within the framework of the socialist system's advancement. The amendment made to the Criminal Procedure Law in 1996 marked a significant turning point in the evolution of China's human rights judicial protection system. This amendment introduced the presumption of innocence into China's criminal justice system, enhanced the principle of independent court trials and the defense system, and integrated several human rights concepts from the United Nations Human Rights Conventions. The aforementioned initiative integrates several concepts of safeguarding human rights as outlined in the United Nations Convention on Human Rights. This convergence of China's judicial protection of human rights with global standards is a significant development. Additionally, it serves as a robust rebuttal to the ideological conflict propagated by certain Western nations[12].

The year 2004 saw the inclusion of a provision in the Constitution (Amendment) that mandated the state to uphold and safeguard human rights. Subsequently, in 2009, the Chinese government formulated the Human Rights Action Plan, and in 2012, the 18th National Congress of the Communist Party of China (CPC) prioritized the objective of ensuring the efficacious respect and protection of human rights in the pursuit of building a moderately prosperous society[15]. The year 2013 saw the formulation of a fresh roadmap for the extensive advancement of China's reform by the Third Plenary Session of the 18th CPC Central Committee. As part of this initiative, a significant reform objective was introduced, which aimed at enhancing the judicial protection system for human rights. The plenary session of the CPC introduced the concept of "judicial protection of human rights" for the first time. The decision included comprehensive plans for the abolition of the re-education through labor system, enhancement of the community correction system, improvement of the national judicial assistance system, enhancement of the legal aid system, and improvement of the mechanism for guaranteeing lawyers' rights to practice and the disciplinary system for practice in violation of the law. The development of human rights protection in China is rapidly progressing and has emerged as a significant objective and value proposition for the advancement of socialism with distinct Chinese characteristics.

#### **4 The new path of development of China's human rights judicial guarantee system**

The historical evolution of human rights protection in China and the West reveals that China, being a country that underwent late development, has comparatively less comprehensive judicial protection mechanisms for human rights when compared to the West. During the initial three decades of China's reform and opening up, the emphasis was primarily on procedural safeguards for justice. Consequently, some individuals may have erroneously assumed that the evolution of China's judicial human rights protection framework involves a continual refinement and enhancement of the Criminal Procedure Law[14].

The evolution of human rights in Western societies has been shaped by a gradual refinement of a cultural framework centered on individual liberalism, which has been

influenced by unique historical processes. In contrast, the development of human rights in China has a relatively brief history and is characterized by procedural laws that are more statist. These laws have not been as rapidly or extensively integrated into society and specific judicial practices. The evolution of human rights in Western societies has been characterized by a persistent struggle between the individual and the state, with the concept of "human rights" as an inherent entitlement at the heart of this conflict. By contrast, the longstanding tradition of familism in China has resulted in a closer association between the individual and the state, akin to that between the nation and the state. Consequently, the concept of "human rights" in China and the West differ significantly across various contexts. The proposal for "judicial protection of human rights" within the framework of a comprehensive rule of law represents a strategic consolidation and advancement of China's existing human rights judicial system[13].

(i) Establishing the priority of human rights in the administration of justice

The paramount imperative in safeguarding human rights is the protection of the fundamental rights of individuals. The current primary approach in China is the implementation of the rule of law, with the safeguarding of human rights at its core. The protection of fundamental human rights, such as citizens' freedom, human dignity, and rights to life and property, is considered sacred and should not be violated in any specific judicial practice. However, the lack of adherence to this principle by judicial institutions and personnel indicates a deficiency in the spirit of the rule of law. Historically, the judicial process has frequently exhibited behaviors that have compromised the maintenance of stability, resulting in a series of inquiries both domestically and internationally regarding China's judicial system. Given China's vast population of 1.4 billion individuals, ensuring stability is a significant undertaking. However, it is imperative to adopt a different perspective and appropriately balance the preservation of rights and stability, prioritizing the fundamental interests of the people and refraining from sacrificing human rights under any circumstances[11].

(ii) Pursuing Human Rights Guarantees for a Community of Human Destiny

As a longstanding member state of the United Nations, China is expected to take an active role in the formulation and enforcement of international human rights law. This entails the development of a comprehensive approach to judicial protection of both domestic and international human rights law, as well as a concerted effort to implement the international conventions ratified by China. Moreover, China is encouraged to contribute to the localization of international justice by infusing it with Chinese perspectives and insights. It is imperative to enhance the global impact of the judicial safeguarding of human rights that aligns with the unique characteristics of China. This will effectively showcase China's judicial civilization and its commitment to protecting human rights. Despite the divergence between Chinese and Western perspectives on the notion of "human rights," increased interactions and progress will serve as the impetus for the ongoing enhancement of legal safeguards for human rights in China.

## 5 Conclusion

In conclusion, the concept of human rights is a universal and fundamental birthright, transcending boundaries of nationality, ethnicity, and other distinctions. The evolution of human rights has taken distinct paths in both Western and Chinese history. In the West, it has grown from ancient philosophical musings to become deeply ingrained in legal systems and constitutions, emphasizing individual liberties. In contrast, China's approach to human rights has developed in the context of its unique historical and cultural background, emphasizing collective well-being alongside individual rights.

China's recent efforts to enhance its judicial protection of human rights reflect its commitment to a more comprehensive rule of law. The prioritization of human rights in the administration of justice and the alignment with international conventions demonstrate China's willingness to engage with the global community on this important issue[12].

While there are differences in perspective between China and the West regarding human rights, increased dialogue and collaboration can lead to a broader and more inclusive understanding of human rights principles. The ongoing evolution of China's human rights judicial guarantee system represents a significant step towards harmonizing these differences and contributing to the global protection of human rights.

## Reference

1. Yang Yuguan. On Judicial Guarantees of Human Rights. Research on the rule of law. 2016:46-56
2. Liu Xiaomei. Features and initiatives of China's judicial safeguard system for human rights [J]. Legal Application. 2014(12):39-43
3. Zhang Wenxian. Human rights protection and judicial civilization [J]. China Law Review. 2014(02):1-4
4. Yang Kexue. A comparison of the evolution of judicial protection of human rights in China and the West [J]. Journal of Guangzhou University (Social Science Edition).2018(11):20-27
5. Jiang Bixin. Some thoughts on improving judicial protection of human rights [J]. China Law Review. 2014(02):11-14
6. Du Shiju. The Source of Human Rights: The Historical Evolution of Natural Law Thought in the Greco-Roman Period[J].
7. Zhejiang Journal, 2006(04):137-140. [French] Montesquieu, The Spirit of the Law, Commercial Press, 1963
8. Zhang Zetao. Review, reflection and its improvement of the judicial guarantee system of human rights in 70 years of New China [J]. Legal Science (Journal of Northwest University of Political Science and Law).2019(05):40-52
9. Wang Fakun. A Trial Discussion on Human Rights Protection in China's Judiciary--A Review of the Human Rights Situation in Western Countries[J]. Law Forum, 1996(03):27-31.
10. Teng Hongqing, Duan Ying. The jurisprudence and practice of China's human rights judicial guarantee system[J]. Human Rights,2013(06):14-17.
11. Zhang Wenxian. The rule of law and the modernization of national governance[J]. China Jurisprudence,2014(04):5-27.



12. Wang Fakun. A Trial Discussion on Human Rights Protection in China's Judiciary--A Review of the Human Rights Situation in Western Countries[J]. Law Forum, 1996(03):27-31.
13. Teng Hongqing,Duan Ying. The jurisprudence and practice of China's human rights judicial guarantee system[J]. Human Rights,2013(06):14-17.
14. Zhang Wenxian. The rule of law and the modernization of national governance[J]. China Jurisprudence,2014(04):5-27.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

