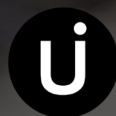




Indian Perspectives on Human Rights and the Implications for Sweden and the EU

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Introduction

Human rights and democracy are important to Sweden and to the European Union, both domestically and in foreign relations. In 2019, the Swedish government launched the “Drive for Democracy” as its strategic vision for foreign policy. It is also pursuing a feminist foreign policy to promote the rights of women and girls.

In April 2018, India and Sweden agreed on a Joint Action Plan to further promote their bilateral cooperation in a number of areas. During the most recent interaction between prime ministers Narendra Modi and Stefan Löfven, which took place as a virtual summit in March 2021, the two leaders reiterated that: “the longstanding close relations between India and Sweden are based on shared values of democracy, rule of law, pluralism, equality, freedom of speech, and respect for human rights”.¹

The EU’s Action Plan on Human rights and Democracy for 2020–2024 contains specific priorities on promoting human rights and democracy around the world. Following the EU-India summit in July 2020, India and the EU: “reiterated their commitment to human rights, including gender equality and women’s empowerment in all spheres of life, and the importance they attach to their cooperation”.²

The Summit endorsed the *EU-India Strategic Partnership: A Roadmap to 2025* as

a guide to joint action and strengthening the partnership between the EU and India. The two sides acknowledged in particular the importance of the EU-India Human Rights Dialogue as “a key tool to promote shared values of human rights and fundamental freedoms”.³ The most recent dialogue took place in April 2021, when both sides expressed a need to foster greater engagement on human rights issues. In both the Human Rights Dialogue and the most recent leaders’ meeting in May 2021, the EU and India expressed an intention to enhance cooperation on human rights in international forums. Furthermore, India suggested that the respective permanent missions to the UN in Geneva should hold regular exchanges and explore cooperation in the Human Rights Council.⁴

The above-mentioned roadmap for the EU and India refers to cooperation in several areas, such as security, trade and investment, climate action and clean energy. However, even though both sides regularly stress that the strategic partnership is underpinned by *shared* values of democracy, freedom, the rule of law and respect for human rights, the roadmap contains only a relatively short passage on these subjects.

There are also areas of disagreement and situations where perspectives on human rights diverge. Among the recent issues that have created tensions in the partnership are India’s legislative changes to the status of the erstwhile state of Jammu and Kashmir,⁵

¹ India-Sweden Virtual Summit, Joint Statement, March 2021

² Council of the European Union, Joint Statement: 15th EU-India Summit, 15 July 2020

³ EU-India Strategic Partnership: A Roadmap to 2025

⁴ Government of India, Ministry of External Affairs, 9th India-Eu Human Rights Dialogue, 15 April 2021

⁵ The former state of Jammu and Kashmir has since October 2019 been divided into the Union Territories of Jammu and Kashmir, and Ladakh.



and changes to India's citizenship laws through the adoption of the Citizenship (Amendment) Act of 2019. A number of resolutions that were introduced in the European Parliament have been critical of the Indian government for violating its international human rights obligations.⁶ The Indian government, on the other hand, has emphasized that these actions were taken in order to strengthen human rights, especially those of persecuted minorities. If our human rights values are indeed shared, how can our interpretations be so different?

This brief does not claim to present a complete account of the perspectives on human rights of either side. The subject is complex and can be approached from several different angles. Nor is the aim to evaluate the human rights record of India, Sweden or the EU. Instead, in search of shared values, and focused on the period since 2014, the author seeks to explore the Indian view on human rights in three specific areas:

- *Ideological underpinnings*: What are the main ideological sources of human rights in India and how does the current Indian political leadership think about the concept of human rights?
- *Human rights as legal obligations*: What relative weight is given to human rights treaties and India's national legislation?

- *Cooperation in multilateral institutions*: In what areas of human rights do Sweden's and India's priorities converge, and where are they furthest apart?

Ideological sources of human rights

The international codification of human rights, which resulted in the Universal Declaration of Human Rights and subsequent legally binding treaties, evolved in stages and from different points of view. While the Western world initially stressed the importance of civil rights and political freedom, developing countries emphasized the need for economic, social and cultural well-being. Over time, circumstances have changed and become more complex in Europe as well as in India, and the initial distinction has become less clear.

The discourse on rights in India is inspired by thinkers such as Mahatma Gandhi and B.R. Ambedkar, as well as religious ideals and cultural traditions.⁷ The focus below is on exploring the ideological underpinnings of the current political party in power, and how its ideals might influence views on human rights issues.

While the Indian state is formally secular,⁸ religion has influenced political action since before Independence. Hindus make up almost 80 per cent of the population, and

⁶ In the end, the resolutions were not adopted.

⁷ There is also a tradition of liberal ideas in Indian political thought, see e.g. C. A. Bayly, *Recovering Liberties: Indian Thought in the Age of Liberalism and Empire*, New York: Cambridge University Press, 2012.

⁸ The Indian form of secularism does not mean total indifference to religion, but instead that the state should maintain a "principled distance" from religion and allow people of all faiths equal rights.



the current ruling party, the *Bharatiya Janata Party* (BJP), finds inspiration from many of Hinduism's religious traditions. The BJP, which came to power in 2014 and gained in popularity in the subsequent national election of 2019, draws support from a broad segment of the Indian population, as well as from Hindu nationalist⁹ organizations under the collective name of *Sangh Parivar* – the best known and most influential of which is the *Rashtriya Swayamsevak Sangh* (RSS). While the party does not openly associate itself with these organizations, many BJP representatives, such as Prime Minister Narendra Modi and Home Minister Amit Shah, began their political careers within these organizations and their ideals continue to inspire political strategies.

The individualistic approach to human rights that is often emphasized by the West is sometimes contrasted with other parts of the world where the collective is a more important unit in society. In a setting where group identities matter and the individual is considered part of a larger collective, rights go hand in hand with duties to the community. In Indian political thought, duties have a central role in the context of rights. Fundamental duties, *kartavya* (कर्तव्य), as well as fundamental rights, *adhikaar* (अधिकार), are enshrined in the Indian Constitution. Article 51A of the constitution stipulates that “[i]t shall be the duty of every citizen of India” to, inter alia,

“[...] abide by the Constitution [...], uphold and protect the sovereignty, unity and integrity of India [...], promote harmony and the spirit of common brotherhood amongst all the people of India [...], to protect and improve the national environment [...]”, among other things. While these duties may not be legally enforceable, the fact that *they are there* is significant.

When India celebrated its 70th Constitution Day in November 2019, Prime Minister Modi spoke at length about this part of the constitution. Among other things, he said that “the Constitution itself talks about rights and the Constitution itself includes the expectation of following the duties. [...] [T]oday, the need of the hour is that we as citizens should follow our duties and responsibilities besides enjoying our rights; because without fulfilling our obligations, we cannot protect our rights”.¹⁰ He made a similar statement in the following month: “We have seen that in the years that followed after Independence, we have laid the greatest emphasis on rights, but now [...]we should give equal emphasis to our duties and our obligations. [...] We have to always remember our rights and duties simultaneously. [...] There is a boundary to these rights. But the sense of duty and obligation is very broad”.¹¹ A similar concept to duties is that of *seva*, or selfless service, which is deep-rooted in Indian culture. Modi

⁹ A broad definition of Hindu nationalism, or *Hindutva*, is the idea that Hinduism has a special status in India and therefore should therefore be given priority over other religions in the public sphere.

¹⁰ Address by Prime Minister Modi during the Joint Session of Parliament on the 70th Constitution Day, 26 November 2019

¹¹ Speech by Prime Minister Modi at Foundation Ceremony of AB Vajpayee Medical University, 25 December 2019



has even referred to himself as India's *Pradhan sevak* (Prime servant).¹²

Another reoccurring concept, especially in India's foreign policy, is that of *Vasudhaiva kutumbakam* (वसुधैव कुटुम्बकम्), a Sanskrit phrase which translates as "the world is one family". This phrase has been regularly used by Indian leaders and is said to be part of India's culture, character and thinking.¹³ According to External Affairs Minister Subrahmaniyam Jaishankar, *Vasudhaiva kutumbakam* is "the civilizational ethos on which India's constitutional and legal framework on human rights is built".¹⁴ Amit Shah refers to the concept as a guiding principle for the protection of human rights, which also encompasses a broader definition of human rights as a sacred ethical *duty*. Shah elaborated on the concept during a speech at India's National Human Rights Commission in 2019. He emphasized that there are many dimensions to human rights, and that the concept of human rights in India is different from its global application. Human rights in the Indian context do not require any special laws, since such rights are already protected at many levels of society, within families and in villages. The protection and promotion of human rights is therefore an integral part of Indian culture.¹⁵

¹² See e.g. speech by Prime Minister Modi, 2 June 2015

¹³ Address by Prime Minister Modi to the UN General Assembly, 26 September 2020

¹⁴ Government of India, Ministry of External Affairs, External Affairs Minister's Statement at the High Level Segment of the 46th Session of Human Rights Council, 23 February 2021

¹⁵ Shah, Amit, Salient Points of Speech of HM Shri Amit Shah Presides as Chief Guest over the 26th

Human rights as legal obligations

India is a signatory to most of the core international human rights conventions,¹⁶ and is, either by ratification or accession, bound by the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). In addition, India has ratified the optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the sale of children, child prostitution and child pornography. India has not ratified the Convention on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) but has made a voluntary pledge that it is committed to do so.¹⁷

In its reservations on the ICCPR and ICESCR, India has declared that provisions of certain articles in the convention should be applied in conformity with the Indian Constitution. India does not accept individual complaints

Foundation Day Celebration of the National Human Rights Commission

¹⁶ India has submitted reservations on a number of articles in these conventions.

¹⁷ UN General Assembly, Note verbale dated 29 August 2018 from the Permanent Mission of India to the United Nations addressed to the President of the General Assembly, 4 October 2018



procedures pertaining to any of the conventions and has regularly expressed the view that human rights are essentially a matter of national concern, the implementation of which should be in conformity with national legislation.

When India's human rights record is examined under the Universal Periodic Review process, its comments ahead of the review echo this perspective. On freedom of speech, for example, India recognizes the centrality of free speech and expression to its constitutional order but emphasizes that laws prohibiting speech with harmful consequences are in place to protect India's pluralistic character and promote social harmony. With regard to human rights defenders, India has committed to ensure a safe working environment and set up a platform for reporting rights violations and providing compensation, but it affirms that the activities of human rights defenders should be in conformity with India's legal framework and constitution. With regard to freedom of religion, India states that it is committed to protecting its secular, multi-ethnic, multi-religious and pluralistic character, and to combating instances of religious intolerance, violence and discrimination. Its anti-conversion laws are presented as important safeguards against coercion and inducement to convert or reconvert from one religion to another in a multi-religious society.¹⁸

¹⁸ United Nations General Assembly, Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, India, A/HRC/WG.6/27/IND/1, 23 February 2017

¹⁹ Government of India, Ministry of External Affairs, Statement by Mr. Rajiv Kumar Chander at 37th Session of the Human Rights Council, 8 March 2018

India's foreign policy has traditionally been characterized by non-alignment and non-interference in national issues, and the same goes for human rights. International concern or criticism regarding human rights has not always been welcomed by India. For example, in response to observations made by the UN High Commissioner for Human Rights in 2018, the Indian government stated that these did not "[...]reflect the situation in India adequately" and that "selective and tendentious statements on human rights issues only serve to undermine the credibility of this approach".¹⁹ In 2019, a report by the High Commissioner on Jammu and Kashmir was met with the response that "[...]the release of such an update has not only called into question the seriousness of the OHCHR [Office of the High Commissioner on Human Rights] but also its alignment with the larger approach of the United Nations".²⁰ When the UN High Commissioner for Human Rights filed an intervention application to India's Supreme Court following the adoption of the Citizenship (Amendment) Act, the government replied that no foreign party has *locus standi* on issues pertaining to India's sovereignty.²¹

Similarly, India has always been reluctant to interfere in other countries' internal

²⁰ Government of India, Ministry of External Affairs, Official Spokesperson's Response to Media Queries on an Update of the Report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the Situation in Jammu and Kashmir, 8 July 2019

²¹ Government of India, Ministry of External Affairs, Press Note, 3 March 2020



matters,²² and has preferred an approach based on deliberation and consensus among states. India has, for example, contributed significantly to several peacekeeping operations where there is consent from the host state, but been reluctant to accept the idea of humanitarian intervention due to its belief in the centrality of state sovereignty.²³ When the Human Rights Council deliberated on the situation in Syria in 2011, India issued a statement that encapsulates the Indian view:

India's traditional position on country specific resolutions is well known. We do not regard spotlighting and finger-pointing at a country for human rights violations as helpful. We believe that engaging the country concerned in collaborative and constructive dialogue and partnership is a more pragmatic and productive way forward. [...] We believe that it is imperative for every society to have the means of addressing human rights violations through robust mechanisms within themselves. International scrutiny should be resorted to only when such mechanisms are non-existent or have consistently failed.²⁴

External Affairs Minister Jaishankar recently told the Human Rights Council that "[...] gaps in the implementation of human rights should be addressed in a fair and just manner, with objectivity, non-selectivity, transparency and with due respect to the

principles of non-interference in internal affairs and national sovereignty".²⁵ For India, one such example is Kashmir, which India considers a bilateral issue between India and Pakistan that should not be internationalized. India has consistently held that all matters related to Kashmir are internal to India. While India may be reluctant to internationalize the situation, it has expressed a desire that the connection between terrorism and human rights should be recognized and deliberated on in international forums.²⁶ The Indian view is that cross-border terrorism is the primary threat to human rights, as the most fundamental human right is the right to life.

Positions on human rights issues

In the most recent Human Rights Dialogue between the EU and India, both sides expressed an interest in closer cooperation in the Human Rights Council (HRC) and the UN General Assembly. India has been a member of the HRC since 2019 and its membership expires at the end of 2021, in accordance with the rules of the Council. As a member of the group of Asia-Pacific states, India declared that it was committed to bringing a "pluralistic, moderate, balanced and consensual spirit to the

²² With some exceptions, such as the Indian contribution to the UN intervention in the Congo in the 1960s and, above all, the intervention in the then East Pakistan in the early 1970s.

²³ India has come to endorse the concept of the Responsibility to Protect (R2P) but remains cautious about the concept's "third pillar", which deals with intervention by the international community. For example, India abstained on the 2011 resolution to the UN Security Council on military intervention in Libya.

²⁴ Government of India, Ministry of External Affairs, India's Explanation of Vote in the Human Rights Council on the Resolution on Syria, 23 August 2011

²⁵ Government of India, Ministry of External Affairs, External Affairs Minister's Statement at the High Level Segment of the 46th Session of Human Rights Council, 23 February 2021

²⁶ Government of India, Ministry of External Affairs, Statement on Comments by the UN High Commissioner for Human Rights, 13 September 2016



Human Rights Council".²⁷ Sweden has not been a member during this time but belongs to the group of Western European & Other states, from which Austria, Denmark and Italy have served as members in the same period as India.

During India's membership of the Council, 80 human rights resolutions have been adopted by a recorded vote.²⁸ Of these, India and the countries in the Western European group voted the same way on just eight occasions. The Western European vote was divided nine times, which means that some countries in the group voted the same way as India, while others did not. This means that India's vote was the same as at least one Western European country on 17 occasions. Most of the time, however, India and the countries in the Western European group did not vote in the same way (see figure 1).

Votes in the Human Rights Council

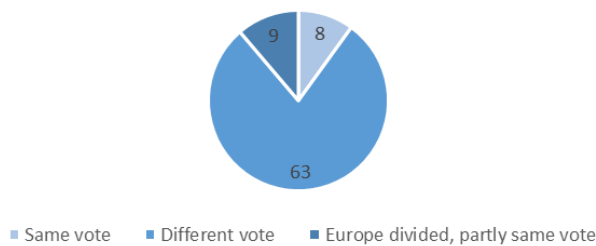


Figure 1.

India and the countries in the Western European group voted differently on 63 resolutions. This is a significant majority of all the times resolutions were passed by a vote in the Council: But how far apart were they really? India and the Western European

²⁷ Government of India, Ministry of External Affairs, National Statement of India by Secretary (West) at the High Level Segment during the 43rd Session of the Human Rights Council, 26 February 2020

group voted in opposite ways to each other, that is, where one voted yes and the other voted no, 29 times. On the remaining votes the results were mixed – either the Western European vote was split or India or at least one other country abstained (see figure 2). Thus, they disagree on these 63 occasions, but there were mixed opinions roughly half the time.

Human Rights Council - Difference in votes

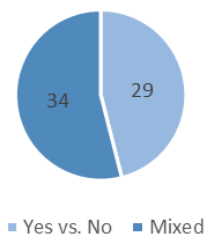


Figure 2.

To sum up, not only did we disagree with each other 63 times out of 80 (nearly 80 percent) – out of these we had opposite opinions nearly half the times.

However, there were eight votes on which we agreed. One resolution concerned "Strengthening cooperation and technical assistance in the field of human rights in the Bolivarian Republic of Venezuela", where both abstained. India and the countries in the Western European group supported resolutions on: (a) "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights"; (b) "the Human rights situation in the Occupied Palestinian Territory, including East Jerusalem"; (c) "the Right of the Palestinian people to self-determination"; and (d) "the contribution of respect for all

²⁸ At the time of writing, the results from the 47th session of the HRC were yet to be released. Therefore, the results include resolutions adopted in sessions 40 – 46.



human rights and fundamental freedoms to achieving the purposes and upholding the principles of the Charter of the United Nations".²⁹ These resolutions were adopted by a large majority and there were very few votes against and only a few abstentions.

When it comes to resolutions adopted by a vote in the General Assembly, in the past five years (from session 70 in 2015 to session 75 in 2020) there have been 50 resolutions on various topics related to human rights. The voting records show that India and Sweden voted the same way on 15 of these resolutions (see figure 3).

Votes in the UN General Assembly

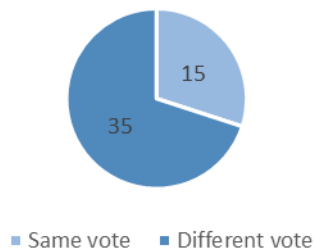


Figure 3.

Both Sweden and India supported resolutions on: extrajudicial, summary or arbitrary executions; the right to food; the human right to safe drinking water and sanitation; the promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association; and strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization. Of the times that Sweden and India voted differently, which again is on most of the resolutions passed, they

²⁹ Some of these resolutions were introduced in the Council more than one time.

voted one yes and the other no on 32 occasions (see figure 4).

UN General Assembly - Difference in votes

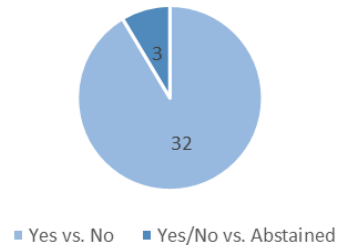


Figure 4.

Sweden and India were furthest apart on resolutions regarding human rights and cultural diversity; the right to development; promotion of a democratic and equitable international order; and globalization and its impact on the full enjoyment of all human rights. It is worth noting that India supported nearly all resolutions in the Assembly and voted no on only three occasions (Sweden voted no 29 times), all concerning resolutions on a moratorium on the use of the death penalty. In contrast to its votes in the HRC, where India chose to abstain from voting on 32 resolutions, India did not abstain on any resolutions in the General Assembly.

Conclusions and recommendations for the path ahead

In accordance with its traditional foreign policy of non-alignment, India today is looking to build strategic alliances while maintaining its own autonomy. It is striving to become more active on the global stage by engaging with other global powers, but



on its own terms. India is part of several cooperative settings, most notably Russia-India-China (RIC), the Association of Southeast Asian Nations (ASEAN) and Brazil, Russia, India, China and South Africa (BRICS), but is also developing closer ties with the US, not least in the Indo-Pacific. The partnership between the EU and India is also steadily growing stronger.

Sweden, the EU and India regularly refer to *shared* values of human rights but beyond this conceptual support for human rights, seem to have different perspectives. Although Europe and India have expressed an interest in cooperating more in multilateral institutions on human rights issues, they rarely support the same resolutions. On the contrary, most of the time they disagree. While both Europe and India have ratified international human rights treaties, the approach to their legal implementation differs. In India, there is a view that human rights can be realized within the framework of national legislation. Human rights issues are considered internal matters rather than something to be deliberated on in international forums, unless specifically requested by the state concerned.

This contrasts with the European view, where the European Convention on Human Rights (ECHR) and the European Court of Human Rights uphold the human rights framework. In Sweden, both the European Convention and the International Convention on the Rights of the Child have been incorporated into Swedish law. One of

the main arguments in favour of incorporating the ECHR into national law is to create legal equality and highlight the shared values of European states. It was also believed that it would increase the importance of and interest in basic rights and freedoms and European progress on human rights issues.³⁰ Sweden therefore views human rights as an international concern and sees international cooperation as critical to improving human rights.

Having identified some of the differences in our shared values, the following recommendations should be considered to help facilitate the mutually expressed desire to cooperate more closely on human rights issues:

- A first step might be to identify our shared values in specific terms. The concept of human rights might be too abstract to produce any tangible results with regard to policy outcomes. By engaging in a constructive dialogue on human rights and identifying specific areas where our views converge, we may find some possible starting points for future cooperation.
- To facilitate the above-mentioned dialogue, one suggestion might be to involve academics, professionals and think tanks on both sides. Collaborations on the topic of human rights should be encouraged between European and Indian think tanks. The EU-India Think Tanks

³⁰ Regeringens proposition 1993/94:117 om Inkorporering av Europakonventionen och andra fri- och rättighetsfrågor, 9 december 1993, Stockholm.



Twinning Initiative is an excellent resource from which policy recommendations could be shared with a wider community of policymakers.

- Connect work on the implementation of Agenda 2030 and other EU strategies (such as the EU Strategy for Cooperation in the Indo-Pacific and the EU Strategy on Connectivity) to human rights efforts. For example, India's climate efforts have had a positive impact on the EU-India relationship and present opportunities for increased cooperation. The EU is an important partner for India with regard to climate diplomacy,³¹ and setting up common aims on the Sustainable Development Goals could be a joint effort where the EU and India work together on sustainable development, which touches on the human rights framework.

- A regular interaction between India and the Nordic states, with a particular forum on rights issues similar to the EU-India Human Rights Dialogue, could complement bilateral cooperation and the EU track. The first and thus far only India-Nordic Summit took place in Stockholm during Prime Minister Modi's visit to Sweden in April 2018. The next Summit is scheduled to take place in 2022 and could provide an opportunity for a more regular dialogue in a smaller format.

The differences between Sweden and India should be interpreted not as a weakness, but rather as an opportunity to initiate dialogue and explore areas for cooperation. India's engagement with both Sweden and the EU has intensified in recent years and remained strong despite the ongoing pandemic. If Europe and India are sincere in their commitment to cooperate more closely on human rights issues, we should build on this momentum and explore a more profound dialogue on human rights. In order to build a strong relationship – a *sambandh* – there needs to be a mutual commitment to this end.³²

³¹ Nordenstam, Axel, A Shared Understanding of India's Climate Policy? Insights from a Survey of Indian Climate Experts, UI Paper No. 5, May 2021

³² Sambandh/samband means connection and relationship respectively in Hindi and Swedish.



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