

Module name/ title: Marginals and Human Rights

Paper: Media and Margins

Component I: Personal Details

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Component II: Description of the Module

Items	Description of Module
Subject Name	Media and Communication Studies
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Pre-requisites	
Objectives	
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Marginals and Human Rights

Quadrant I - e-Text

Key Concepts: Marginal and Human Rights

1. Introduction

In the previous modules, you have been introduced to different facets of political and cultural citizenship vis-à-vis media representation, social exclusion. In this module, we will elaborate marginal's and human rights, different facets of human rights, its origin and present-day understanding.

2. Learning Outcome

After doing this module you will be familiarized with the key concepts of marginal and human rights. You will also have an idea on how the everyday issues of human rights are being addressed by the state.

3. Marginal and Human Rights

Let us begin with de-constructing the basic concepts of marginal and human rights. Who are the marginals? The dictionary would define marginal as the minority. As people who did not have a voice or view of their own. Can we call them marginal, the subaltern (who for long could not raise their voice and could not make it to the canonicals of history)? Now, if one has to define the word marginal, one must include within it an array of categories like women, people who are differently able, lower castes, tribes and other social and political minorities. Thus, we can also use the term subaltern for the marginals. Both the terms subaltern and marginal refer to the group of people who fall outside the hegemonic power structures and who could not voice their opinions. Although, it is argued that these two terms cannot be used as synonyms since they carry different meanings but for the understanding of this module we will use the terms as synonyms.

Secondly, what are human rights? Simply put human rights refer to the elementary fundamental rights of the individuals which shields them legally and politically by virtue of being born as a human. The trajectory of human rights dates antiquity. The National Human Rights Commission defines human rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and Enforceable by courts in India” (www.nhrc.nic.in).

In most civilizations across the world, value for life and right over death were important. These were inherent in the traditional social order. Basic human rights

were ascertained by giving individuals freedom and respect. But, the present day understanding of human rights is a product of a different discourse. French Revolution and Renaissance can be considered as the torch bearers of the contemporary discourse globally. The ideas of liberty, equality, fraternity were products of the modern world. Fight for democratic rights marked its way for the suffragette movement which was followed by the two world wars (which reinterpreted history) and followed by United Nations' Universal Declaration of Human Rights. On 10th December 1948, the United Nations' general assembly declared the Universal Declaration of Human Rights in Paris, France. This was the beginning of modern day human rights.

You must be now wondering, what is the correlation between Human rights and the Marginals? While human rights are fundamental to all, it turns out to be more essential for those who could not make themselves visible and manage space for themselves in the canonicals of history. We can cite the instances of development, displacement and its impact on human rights. The massive hydroelectric power projects in the northeastern state of Arunachal Pradesh and its massive impact on the people living in the downstream areas is nothing but an example of gross human rights violations. In the pretext of development, there is large scale displacement and migration of people. We can also cite examples of POSCO. We all are aware of the effects of POSCO in the tribal pockets of Orissa. Mostly, such moves affect marginals and more so the women. Another area where we can see gross violation of human rights is the issue of disability in India. The debate on disability bill and its consequences on the state policies is a clear indication of how margins are often being ignored in the process of inclusive development. Disability friendly public conveyance, toilets and the presence of ramps in public spaces are a rare sight in India. A recent piece on Economic and Political Weekly "Right to a Life of Dignity", the National Platform for the Rights of the Disabled brings up the issue of G. Saibaba and the absence of disable friendly facilities at Nagpur Central Jail. However, there has been a conscious effort to include them in the process of good governance. At this juncture, it becomes extremely important to have the human rights which will act as a cover.

In such a context, what role do human rights play? Here human rights act as an external shield and protects and exerts a kind of coercion on behalf individuals and groups who cannot raise their voice against any such act. But how do we determine that the victims of human rights identify an act as a violation of their human rights? In most cases the civil society organizations take the initiative, pledge a process for human development.

Hence, we can summarize that human rights are essential for all but the marginal's (subalterns) are the ones who needs them the most. As they have been out of the hegemonic quarters of power they have had the difficulty in asserting their rights.

What is more difficult is the fact that in most cases the individuals are often caught unaware that there have been cases of human rights violations.

4. Human Rights and Indian History

Human rights have been a part of Indian history. In the Indian context, Arthashastra and Dharmashastras did not only act as mere guide books of conduct but also acted as essential texts which helped to regulate the lives of every citizen. The king, his citizens both men and women, were to abide by the principles of human rights which were independent from the executive and were under the judiciary. Such a distinction made the Indian system unique.

"The State was not sacerdotal, nor even paternalistic; even the King was subject to the law, as any other citizen and the 'Divine Right' of Kings known to western political science was unknown to India. On the whole, the aim of the ancient Indian State may be said to have been less to introduce an improved social order, than to act in conformity with the established moral" (Gajendra Gadak).

In Arthashastra, Kautilya not only emphasized on the civil and legal rights of the citizens as formulated by Manu. But he also ensured that the king should take care of the orphan, the aged, the infirm and the helpless, mother and their children and further provide them with maintenance. Thus, in Ancient India one can say that human rights were essentially a part of the state and law.

Post-Vedic age, genesis of Buddhism and Jainism were a clear indication of the deterioration of moral order against the privileged classes. This was followed by Ashoka who protected and secured rights for all human beings and finally had established a welfare state.

The reign of the Islamic era in India also saw the expansion of intolerance and separate laws for both Hindus and Muslims. The Ancient Indian philosophies of tolerance were gradually withering away. With the Mughal rule like Akbar, India saw the birth of a new philosophy of tolerance '*Universal Reconciliation and Tolerance*'. This philosophy of Akbar was not only accepted by the Indians but was, at the same time, also appreciated worldwide.

The coming of the British rule in India can be considered as the era of the making of human rights. The colonial regime was known for its atrocities against the Indians. Indians were debarred from entering the public spaces on various grounds. They were denied of the civil, economical, legal and political rights as citizens of the nation. This was the era, when leaders like Mahatma Gandhi called for participation of people and began his non-violent struggle against the British Raj. It was a result of the honest efforts of leaders and the masses that colonial regime had passed many resolutions

including 'The Indian Charter Act 1813', 'Government of India Act 1833', etc. However, the concrete demand for human rights came with India's independence movement. The Nehru committee was constituted to draft the bill adopting 'declaration of rights' under the chairmanship of Moti Lal Nehru. However, in 1927 the Simon commission completely rejected the draft which was put forth by Motilal Nehru. This was followed by the declaration of 'Purna Swaraj' by congress working committee in 1930. In 1931, the Karachi Session of the Indian National Congress adopted a detailed programme of fundamental rights.

With the adoption of the Indian Constitution in 1950, the Indian citizens were guaranteed fundamental rights, as the preamble of the Indian constitution declares India to be a sovereign, socialist and democratic republic. The preamble ensures equality for all irrespective of race, ethnicity, and gender. Thus, even though human rights were enmeshed in the very foundation of Indian civilization it took a long time to enter the legal framework.

5. State and Human Rights

By now you must be clear that the state plays a crucial role in upholding the human rights. The directive principles and the fundamental rights guarantee its citizens the elementary rights of citizenship. But is it enough? Here we can pose another question, does the state support human rights? Yes, on principle the state acts as custodian of the human rights. On 28th September 1993, the Protection of Human Rights Act was introduced for the protection of all citizens across India. The National Human Rights Commission, which was subsequently established under the aegis of the Act, was an indication of the state concern for human rights. Thus, the commission was initiated to help people to have a legitimate say in the state policies vis-à-vis human rights. The main objective of the NHRC is to have an inclusive goal and agenda. It focuses on the issues of good governance which includes concerns over health, civil and political rights of the citizens and many more. The NHRC in terms of its organizational structure includes, apart from the Chairperson and other members the organizational pyramid, the chairperson of National Commission for Minorities (the National Commission for Scheduled Caste, Scheduled Tribes) and National Commission for Women. Thus the state, through its different mechanisms as these, tried to keep an eye on the protection of their fundamental human rights. The NHRC also has its branches across states in India followed by human right courts.

While the organization and functioning of NHRC appear inclusive, does it mean that human rights are inclusive? You must be wondering if the state has such an organized mechanism of regulating human rights then where is the problem? There should not be any question on the functioning of human rights.

But reality is somewhat different. The issue of human rights even though seems all-encompassing, however, is not inclusive. Here we can bring up instances of human

rights and development. For example, in parts of Kashmir valley the citizens are denied access to internet in the pretext of national security. In certain sense, having access to internet can be considered as an indicator of development and freedom. On the contrary, no access to internet can be considered as bad indicators of development and freedom. In the same country, we see few states having access to latest internet services comparatively.

Thus, it turns out to be very difficult to draw a line between human rights violations and the state vigil. The very nature of human rights is fragile. The process of inclusion of few and exclusion of the rest in the process poses questions on infringement of human rights. If one is to ask where do we limit such infringement? It becomes difficult to comprehend its outer limits and answer.

6. Human Rights Today:

It becomes extremely interesting to take cognizance of the challenges that human rights face today. 21st century has witnessed many violations of human rights globally. India too is not an exception to the same. Amartya Sen in *Human rights and human development report, 2000* tries to delineate the relationship between human rights and human development. He further articulates that while the nature and compatibility of the two seems obvious. The human rights literature covers within its range the political and civil liberties whereas the human development indicators are focused around socio-economic concerns. Thus, one might conceptualize human development without giving a large picture of civil and political rights that have been the significant features of the international human rights movement. Amita Baviskar in her work *In the Belly of the River*, brings in the crisis of development (as interpreted by the people) and state's idea of development for the people at the margins. She brings in the crisis of the Narmada Bachao Andolan and criticizes state's agenda of industrialization based 'destructive' development.

For our understanding, we can divide the instances of human rights violations into different categories: development and human rights violations, child rights violations, atrocities on dalits/ members of minority community/ disabled, caste based violations, communal and ethnic violation, abuses by armed forces and extra-judicial killings, custodial rape are to name a few.

Although the Indian Constitution approves and supports human rights in the court of law, we need to understand the influence of human rights on the margins. What are human rights and what promises do these rights hold becomes indefinite. The state often tries to bring up a discourse of human rights which many a times is not supported by the individuals at stake. Such discourses affect the ones at the margins the most. We cannot deny the role of state in initiating the framework for human rights and engaging in a dialogue. There is yet a long way to incorporate human rights in every sense of the term.

7. Summary:

In this module, you have been introduced to the fundamentals of human rights, the need for human rights and the role of various agencies in ascertaining such rights to individuals. History of Indian civilization suggests that human rights or rather the right to life has been cardinal to the Indian philosophy. The ancient Indian state also took care of the people who were at the margins. But often in understanding the human rights, the state misses the margins and infringes on individual rights. Hence, the interpretations of human rights vary. For a few, AFSPA may be a violation of human rights but at the same time one may interpret it as essential for maintaining human peace and tranquility. We have also seen that the nature of human rights has changed over the years. The nature of human rights today is more dynamic. It has become assertive as individuals have become cautious and put forward their rights. At the same time, the state has also stretched beyond the mundane and have incorporated the margins into the discourse of human rights. But there is yet a long way to interlink the state policies with human rights.

