Preface

This study stems from an attempt to understand the traditional role that groups have played in Indian society. It arises from a concern to understand the factors behind over-privileging of the group in the rights discourse in India. The study is conscious of the pitfalls that an excessive concern with groups can give rise to. It also arrives at a very cautious, qualified affirmation of the continuing role and importance that groups have in Indian society. It tries to arrive at an understanding of the importance accorded to groups by looking at the intellectual influences on India and the rights discourse that was shaped by these 18th and 19th century British intellectual influences.

The most distinctive feature of this study is the adoption of a triangular theoretical framework that facilitates an understanding of the issue of group rights and their theoretical underpinnings. The first two vertices of this triangular framework are constituted by the writings of Edmund Burke and Benthamite utilitarianism. There are a number of commonalities that explain why these two thinkers have been taken as constituting the first two vertices. However, the differences between these two thinkers are more important, as it is argued, that these differences give rise to a dialectic of 'legal pluralism' and 'legal universalism'. 'Legal pluralism' is inspired by the Burkean perspective and 'legal universalism' is inspired by Benthamite utilitarianism. It is out of the differences between these two vertices that the institutionalisation of the rights discourse took place.

To simplify the argument contained here considerably, and to state it in the sketchiest and broadest manner, this study argues that the Burkean emphasis on difference, the preservation of these differences and the 'legal pluralism' that this perspective gave rise to, found a haven in the private domain of religious and family law. On the other hand, Benthamite utilitarianism, which gave rise to 'legal universalism' dominated the public domain. The third vertex of the triangular theoretical framework is constituted by contractarianism. The triangular structure of the study might give someone the impression that the dialectic of 'legal pluralism' (Burkean perspective) and 'legal universalism' (Benthamite utilitarianism) is resolved in the synthesis of contractarianism. That however, is not the case.
Contractarianism is constituted as the third vertex on account of two reasons. The first is to take note of the movement away from utilitarianism and towards contractarianism that has been happening in contemporary liberal political theory since the decade of the 1970s. Secondly, by studying the Indian rights discourse in India in this manner, it is hoped to find ways of correcting the imbalance found in the rights discourse in favour of the group and thereby giving a certain importance to the dignity and separateness of the individual. However, as the study moves to the third contractarian vertex, the argument made by this study is that there is a need to move beyond contractarianism. One could argue that the dialectic of the first two vertices of the triangular framework is resolved not at the level of the third contractarian vertex, but by moving beyond it. Chapter 4 of this study contains a detailed argument in favour of the reasons for moving beyond contractarianism.

The first chapter is in the nature of an introduction and raises the conceptual issues that are sought to be resolved in the rest of the study. Chapters 2 and 3 deal with Edmund Burke and Jeremy Bentham respectively. Chapter 2 looks at the reinforcement of Conservatism and the attempt to uphold a Whig order in the writings of Edmund Burke. It looks at the Burkean arguments for preserving the ancient communities of India and also looks at the ways in which the very same Burkean arguments were deployed in a transformation of Indian society according to Whig principles. Chapter 3 looks at the Benthamite utilitarian legacy in India in the form of legislation and codification of laws. Chapter 4 it has already been stated argues for the need to move beyond contractarianism. The last chapter in the study, chapter 5 takes a look at the beleaguered concept of secularism in India, and argues that in order to take some of the burden off this concept, there is a need for it to share the traditional role that it has played as guarantor of minority rights with multiculturalism. In line with the qualified affirmation of the group, a further argument is made for a group sensitive secularism and a multiculturalism that emphases diversity and inclusion in a secularised public domain.

This study has taken a full five years to complete. The writing of this study has been punctuated by my teaching responsibilities, first at the Centre for Political Studies, Jawaharlal Nehru University, where I had the privilege of beginning my teaching career, and subsequently at the Department of Political Science, Jamia Millia Islamia. There are
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A very special acknowledgment to my parents, who encouraged and supported my decision to opt for a career in the social sciences, which unfortunately is not the favoured choice for many people in this country.

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