Conclusion

The thesis has demonstrated the theoretical possibility for the member to be recognized as the holder of the right to cultural identity in an individual capacity, without detracting from the status of cultural right as a group right. Apart from the theoretical possibility, the examples in Chapter 4 and the cases discussed in Chapter 5 also indicate why the member needs to be recognized as the holder of the right to cultural identity. A question that might be asked is that if each member in the community is to be recognized as the holder of cultural identity in an individual capacity, what will happen to the boundaries of the community? The thesis would suggest that the boundaries of the community may be redrawn but would not be done away with. The right that is sought for the members is a group right; also it will be exercised by the individual only in her/his capacity as the member of the community.

The basic conclusions drawn are –

The notion of Culture as understood in the thesis is not immutable or fixed. The content of culture is shaped by the interpretation that is attributed to it. Since it is interpretation that decides the content of culture, the understanding of culture is firmly placed in the human realm.

The principle of cultural identity is expressed in different ways at the level of the community as an ideational unit and at the level of members that impacts their personal lives.

While the community cannot be reduced to the individuals who constitute it, it can neither be conceived nor survive without its members. Similarly, cultural right as a group right cannot be reduced to rights held by individuals who constitute
community, but can be held by members in an individual capacity. Thereby, it is possible to make a case for members as holders of cultural right without detracting the group status of cultural right.

The first chapter discussed culture as understood in studies of ethno-culture. It stressed on the interpretive aspect that confers meanings on culture thus locating culture in the human realm. The concept of community in terms of its constituents is explained as a whole that is the sum of its parts, while not excluding the concept of a community as a whole that is prior to its parts. It points out that the concept of community viewed exclusively as a whole that is prior to its parts not just violates the agency and freedom of expression of the parts, but is also detrimental to the survival of the whole. This is because the survival of the whole depends on the parts as units of regeneration. Identity is understood through two aspects – as identification with the context, as the distinct form of presentation that is a result of the member’s interaction with the cultural symbols, the form of presentation being particular the member. The first chapter basically distinguishes between three strands in the phrase – cultural identity of the individual. They are – (a) Culture; (b) Cultural community; (c) Cultural identity of individual distinct from cultural identity of the community.

The second chapter highlights the concept of group distinct from an aggregate or cluster, but also cautions against viewing it as an irreducible unit. It makes a case for the member to be acknowledged as a right holder of the cultural right, viewed under the rubric of group rights. This is done by evaluating the member against the concept of a right holder, object of group right, and the nature of recognition accorded to the right holder. The chapter also briefly discusses some of the contemporary work in
political theory that deal with intra-group concerns and issues and discusses via such work the scope accorded to members in the mediation of cultural identity.

The third chapter makes a case for the member as a holder of the right to cultural identity vis-à-vis those very reasons that are used for viewing cultural right as a group right. It unravels the two conflations – between the group and parts of the group, and the parts of the group and people who inhabit the parts. It is emphasized that the role of human agency ought to be recognized as the site of regeneration. This chapter makes a case for members as right holders on the basis of being the units of regeneration. The chapter also makes a case for the member to be recognized as right holder against the contention that a group right cannot be held by an individual since the interests that ground such a right is a participatory good. The chapter states that while it is convincing that a right grounded in participatory good cannot be held by an individual, the member is qualified to be a right holder, by virtue of being a participant in a participatory good.

The fourth chapter focuses on the Indian scenario against the theoretical positions in the first three chapters. It discusses the concept of secularism as a potentially versatile doctrine that not just facilitates its application in India but also is apt in dealing with differences between cultural communities as well as over cultural identity within the community. A careful reading of Article 25 accords scope to members to express their religious opinions. It also states that categorization of communities is from a legal perspective. The examination of select aspects of Personal Law however waver between the legal and the religious. While codification is supposed to reform Personal Law, a brief look at the Hindu Law (the only Personal Law to be codified so far)
betrays inegalitarian traits. And with codification, the inegalitarianism stands legalized.

The fifth chapter discusses cases dealt by the judiciary in India. Through the Courts’ pronouncements it has attempted to show the judiciary’s stand with regard to the member’s autonomy in expressing cultural identity. The cases clearly show a shift in perspective from Personal Laws as a legal category to Personal Laws as a religious category. At the same time the Courts have been applying Section 125 Cr.PC post Muslim Women Act in creative ways to ensure justice to Muslim women. Even the Muslim Women Act, widely perceived as detrimental to the Muslim women, has been applied in very constructive ways by the Courts.

The Courts in India oscillate between applying the law as worded by the legislature regardless of its relevance in the concerned case, to an insensitive dismissal of the laws and an unqualified invocation of the Uniform Civil Code, while occasionally applying laws in a context-sensitive constructive manner.

In India while the constitutional provisions can be interpreted to allow the member to exercise her/his agency in the mediation of one’s cultural identity, the same cannot be said in an unqualified way about the legislature and the judiciary. At best, they are inconsistent. Since the member’s right to cultural identity cannot be dependent on either the legislature’s political opportunism or the inconsistency of the Courts, the only way out is to acknowledge each member as the holder of the group right to cultural identity in an individual capacity.