Introduction

The thesis titled 'Group Rights and Cultural Identity of the Individual – A Theoretical Study' is an attempt to highlight the necessity of acknowledging the agency of members within a cultural community. Let me begin with a couple of disclaimers. One, this thesis is not stating that the cultural component of identity is an indispensable aspect of one's identity. In fact, since a right to be or to have something also implies the right not to be or have, right to cultural identity would also carry with it the right not to have a cultural identity. Two, the thesis does not challenge the status of cultural right as a group right. Those to whom their cultural identity is a crucial, even a defining element of their identity, the thesis attempts to make a case for their acknowledgement as the holder of the right to cultural identity. Also, whether or not a person considers her/his cultural identity as a defining feature of one's personality, the person is recognized vis-à-vis the cultural prism of the community that she/he belongs to, both within and outside the community.

Why should the individual in a community want to be the holder of cultural right? By being the holder of right, the individual can resist stereotypical ascribed attributes that people within and outside the community identify with her/him and which the individual does not relate to or identify with. But one can be a holder of a right only when one has a distinct identity from that which is perceived as the holder of the right – the community. For, x (community) and y (individual) both can't be different holders of rights if y has no separate existence from x. Therefore, it is necessary to acknowledge that whiles individuals who constitute the community as members are an integral part of the community, they are not assimilated to the community. Individuals even as members have a separate irreducible existence distinct from the identity of the community. This is not to say that individuals have to
be viewed as detached from the community. For the very term – cultural identity of individual – that the thesis is concerned with can be attained by individuals only in their capacity as members. The term ‘member’ clearly denotes their affiliation to the cultural community.

So what is the nature of right that is sought by the member? Let me state a couple of disclaimers again. One, the right to cultural identity sought by the member in an individual capacity is not an individual right. Two, the right to cultural identity is not sought by the member in an individual capacity to be exercised jointly with the community as a single, irreducible unit. The thesis fully acknowledges that cultural identity is a group good. An individual right to cultural identity therefore is an anachronism. On the joint exercise of cultural right by the individual with the community, the thesis is of the opinion that the conception of culture internalized and projected at the level of the members is distinct from the conception of culture internalized and projected at the level of the community as a whole. To the extent of the difference between the two levels, cultural right would serve the two levels in different ways. A joint exercise of cultural right may not be a feasible option. The way suggested by the thesis is to acknowledge the members of the cultural community as right holders along with the perception of community as a whole as the right holder. Since acknowledgement is sought for individuals within the community in their capacity as members, the character of the cultural right need not change from being a group right.

To enjoy the effects of being a right holder, it is important to be recognized as a right holder not just by the community but also by the State. The State in making and applying laws for cultural communities legalizes and in a way freezes identities. For the acknowledgement of the individual’s cultural identity, especially when it is at variance with the dominant interpretations within the community, the individual needs
a locus standi to put across her/his interpretation. The status of right holder enables
the individual to make a case for the way she/he relates to culture. The question then
arises as to why should the individual seek the status of the holder of cultural right?
Why cannot the right of the individual as a citizen suffice? There are two reasons for
this. One, the charter of rights of an individual as citizen, at least in India, are neither
absolute nor indefeasible vis-à-vis cultural rights. Two, individuals who seek cultural
rights as members will not always find the charter of rights that they can access as
citizens a viable option. Also any cultural right in the charter of rights of citizens
resorts to the identity of the community as understood at the level of the group as a
single, irreducible unit bringing back the tussle between dominant interpretations and
interpretations of the members. Hence the need of the member to be acknowledged as
a right holder of cultural right in an individual capacity, without detracting the group
status of cultural rights.

The thesis is divided into five chapters. The first three chapters intend to work
out a theoretical argument to make a plausible case for the need and possibility of the
member to be a right holder of the cultural right in an individual capacity.

The first chapter deals with the key terms used in the thesis. The terms are
dealt with are – Culture, Community and Identity. Each of these terms has several
connotations and amenable to varied meanings when read with the other two. This
chapter intends to delinate the particular strand in each term that is relevant for the
thesis and attempts to link the delineated strands with each other. It sets out to explain
the phrase Cultural Identity as used in the thesis and attempts to make a case for the
member as a source of cultural identity.

The second chapter focuses on the compound term – Group Right and unpacks
the meaning of the terms ‘Group’ and ‘Right’ to facilitate their understanding in the
context of the issue dealt with in the thesis. It seeks to make a case for the members to
be recognized as right holders in an individual capacity as distinct from Group Right exercised by the community as an irreducible unit or an individual right held by individuals who constitute the community. The emphasis is on (1) the group aspect of right and (2) acknowledgement of member as holder of the Group Right in an individual capacity distinct from the group qua group.

As an extension of the second chapter, the third chapter focuses on certain specific reasons for the pervasive impression that cultural identity is a group good. It discusses vis-à-vis those very reasons as to why the member should be recognized as the holder of the right to cultural identity.

The fourth chapter focuses on the Indian scenario. It discusses the concept of secularism and the meaning of freedom of religion in the Constitution. It examines the role of the Legislature as against the framework of the Constitution through select aspects of Personal Laws. It also looks at some contemporary examples to illustrate the hold of the community over its members irrespective of the scope given to members to exercise their agency by the legislature. The examples also exhibit the assertion and grit of the members who find creative ways of relating to their culture so that they can identify with it.

The fifth chapter discusses case law through the judgments of the courts in India. It examines the judiciary's stand on issues of cultural rights and the scope accorded by the judgments to the agency of the member in an individual capacity. It evaluates these judgments as against the Constitution and the legislated law. The manner in which the courts in India have dealt with the cases exhibit their extent of sensitivity and creativity (or the absence of it) to the context in which the issue emerges.