Chapter 2

Group Right – Whose Right?

The first chapter discussed the particular strands of the key terms – Culture, Community and Identity as discussed in the thesis. While culture is a group good it plays a significant role in the constitution of identity at the level of each member of the community. Though culture as a group good entails that cultural right cannot be reduced to an individual right, one needs to question the term Group Right as a right held exclusively by a group qua group.

This chapter unpacks the two terms Group and Right. It tries to put across the idea for a group right to be held not just by the group as a single unit but also by each member by virtue of being a member in an individual capacity. This is done by examining the pre-requisites for being a right holder, object of the right grounding the interests of members and nature of recognition of the right depending on who the holder is and the way how that impacts the identity of the right holder. The chapter also briefly discusses selected works in contemporary literature on culture and cultural identity. It examines the opinion of these authors on the conception of cultural community as a collective unit and the scope they accord to the mediation of identity by the members through the language of rights.

Role of Group Right in the thesis

Why should a group demand rights as a group right? When a certain difference trait is shared by a group of people and that trait is a crucial element of the personality of the members of the group, a holistic development of the members of the group depends on the protection of the distinct traits of the group. When the concept of right is invoked to protect and preserve the distinct traits of the group and to ensure that the
members of the group are not discriminated against because of their membership in the group, it is termed as a group right.

The nature of Group Right depends on the nature of group. Such groups can be broadly classified into two types:
(a) The first kind of groups are those that have evolved over a period of time, that share a common historical legacy, and are bound by ascriptive ties. Such groups share a certain culture, religion and way of life. Cultural and religious communities are prominent examples of such groups. At times, persecution in the past or a sense of marginalization in the present also binds its members.
(b) The second kind of groups are those where the members of the group voluntarily and consciously come together bound together by a common interest or a common stake in society. Music lovers group, occupational associations are examples of such groups.

It is important to acknowledge that the boundaries between the two kinds of groups are very porous. The group that falls in the first kind may raise issues and concerns that can be categorized as interests of the second kind of group. For example, a group of women from the Jewish community demanding better work conditions for female teachers would fall under both kinds of groups. Their identity as Jews would constitute a cultural given, and while their identity as females would be a biological given (though the decision to foreground this aspect is a matter of voluntary deliberation) and their identity as teachers would be the result of a deliberate decision.

A common concern with both kinds of groups is that their members should not be discriminated against because of their membership to that particular group. Discrimination is not just explicit denial of basic necessities, but also non-recognition
of their group membership or devaluing the group and thus affecting the dignity of the members.

Groups under category (a) can invoke the concept of right to protect and preserve their culture. When characterized by persecution in the past, groups in this category can also seek redressal in the shape of ameliorative and affirmative measures. Affirmative action is generally perceived as economic redressal. However, to the extent that past discrimination was not just economic but also entailed harm of a non-economic nature to the status of the group by equating its culture with ‘low cultures’, affirmative action requires valuing their culture and thereby according the group a sense of dignity. While this by itself is a crucial issue, the focus of the thesis is on the cultural rights sought by cultural community without a necessary causal connection with past economic discrimination. This does not mean a simplistic understanding of the group having no economic issues by virtue of belonging to a certain cultural community. For example, Muslims as a cultural community may seek group right to protect their culture. It is also true that the economic backwardness of a large number of Muslims does seem to overlap with their identity as Muslims. However, the demand for a group right by Muslims clearly fore grounds the cultural aspect without any causal relation with the economic aspect. Contrast this with the Ezhava community that also has its own set of distinct cultural traits and have suffered caste discrimination in the past which had not just labeled their culture as ‘low culture’ but also been instrumental in keeping them economically in a weak position. The demand for a group right by the Ezhava community is to enable them to overcome their economic backwardness that has been inflicted by the discriminatory attitude towards their culture in the past. The agenda of the Ezhava community then would have economic redressal as a significant part of their group right.
The focus of the thesis is on group rights that predominantly cater to the cultural aspect where the demand is for recognition of culture, acknowledging its historical legacy and assurance of autonomy to maintain the historically shared way of life. The stress is on the collective goods that people share only because they are members of a group. The value of group membership is part of the ground of the right. The collective production and enjoyment of the goods is what partly constitutes their value. They are supplied jointly to those who participate: yet the fact of being in it together is part of their value. In other words, the focus of the thesis is on cultural right held as a group right exercised by cultural community and its members. The intention is to make a case for the exercise of cultural right by members and to stress on the recognition of the members as right holders of group right by the community as well as the state. Henceforth, the thesis uses the terms cultural right and group right interchangeably.

To examine the possibility of right to cultural identity as held by members in an individual capacity it is necessary to explore the scope of their agency in mediating cultural identity. The extent of scope is examined via the concept of rights, particularly cultural rights. Since culture is a group good, cultural rights come under the rubric of group rights. As the thesis intends to make a case for the cultural right to be held by each member in an individual capacity, this chapter examines the possibility and desirability of cultural right exercised by the member in an individual capacity. This however need not imply taking away the group aspect of cultural rights. This is not possible as without the label of group right a cultural right cannot be a 'cultural' right. This chapter makes a case for the exercise of cultural right as a group right by the member in an individual capacity to exercise agency in the mediation of cultural identity.
Meaning of Group Right and its Limitations

How does one recognize a group right? If the holder of the right is a group and the right is sought to be exercised by the group for the group rather than any particular individual, the right is a group right. Also, if the object of a right is a good that has emerged through a collective unit or that is sought to be attained for a collective unit, the right is a group right.

A group right properly so called is a right that is held by a group as a group. It is not to be confused with a right which is common to a group of individuals but which each individual possesses as an individual. For example, the right to life and personal liberty may be a common right of the citizens of India, individuals who are citizens constituting a group. But though common it is not a group right as each individual possesses it as an individual.

Since the good to be attained from a cultural right can be apprehended only at the level of the group as a holistic unit, cultural right is viewed as a group right. A cultural group or religious community can have a group right only in so far as we conceive of those rights as held, in each case, by a unit that is a whole in itself, not reducible to its parts and whose parts are integrally linked to each other and the whole.

Some of the common fallacies in the understanding of group rights are – equating group rights to minority rights, viewing it as a collective right opposed to the individual rights of its members, conflating the members’ identity with that of the group and viewing rights as constitutive instruments that may give rise to the phenomenon of stereotypes.
Group Rights and Minority Rights

A minority right can be a group right in certain situations but every group right cannot be equated to a minority right. A group right cannot be equated to a minority right as a minority right can even be a right held by individuals. They may be referred to as minority rights only because they are countered by a majority. The phrase ‘minority rights’ may be no more than a short hand expression for rights which are actually held by all individuals and which each individual continues to hold even when that individual finds himself or herself in a numerical minority.²

Minority rights can be rights by a minority qua group. So if a cultural right is demanded by a group that is in a numerical minority, it is a right demanded by a minority as a group right. In this case the category of a minority right overlaps with the category of a group right.

The reasons for this pervasive assumption of a group right being a minority right is that more often than not, cultural traits of a community that need protection are in a vulnerable position vis-à-vis other groups that may subsume the concerned group, or delegate it to the fringes of society. This may happen as the concerned group that needs protection may be in a position of vulnerability – either numerically or otherwise. Many a time groups that need protection because they are vulnerable lack numerical strength. This leads to the presumption of group right being a minority right. As Green states, there is nothing about minority status as such that generates rights. It is just that the most vulnerable are those with the least powers and resources, and they are often, though not invariably, in the minority. Minority status is one imperfect correlate of social marginality.³
Group rights have been understood in different ways by liberals and communitarians. Both however, endorse the juxtaposition between individuals who constitute the group and the group as a single unit. The difference in their approaches to group rights is based on the distinction between the right and the good and their emphasis on the right vis-à-vis the good. Rights that focus on the process of exercise of the right are what are termed as right based rights. Rights that are teleologically based, prioritize the good over the right. A liberal conception of rights generally rest on right based rights, while a theory of rights that prioritises the good over the right is generally identified with a communitarian conception.

Two basic conditions for the practice of right within the liberal conception are equality (anyone who meets the criterion of right holder would be entitled to exercise the right and enjoy its benefit) and capacity to rationally exercise the right (the right holder needs to be equipped with a capacity to think in an autonomous manner and make an informed choice between alternate conceptions of good).

Along with the idea of equality anyone who claims to take rights seriously has to accept the idea of human dignity. Invasion of a right then means treating a person as less than a person or less worthy of concern. In fact, the premise of equality in the exercise of right is based on the assumption of equal respect for persons. Respect for persons comprises three ideas. The first is that persons have goals and purposes in their lives that are meaningful for them. The second is that persons are capable of reflecting upon their circumstances and act on reasons that derive from these reflections. The third is that the goals that give meaning to people’s lives are the product of their reflection, so that their goals are in part self-chosen, and derive a portion of their value from that fact. Respect for persons therefore involves the claim
that persons should be allowed to act on their own conception of what is good and valuable for them, and that in so far as they are doing this they are expressing their notions as rational and reflective beings.\(^4\)

Also, as Dworkin states, genuine liberalism, rests on the concept of rights it endorses. It must be 'neutral on what might be called the question of the good life'. This is accompanied by what he terms as a 'subsequent theory of right and wrong'. The possession of such a right entails a concept of right and wrong acts relative to it. At the heart of the liberal conception of the purposes of rights in all its formulations is a pluralist account of the good. Also under liberalism, the range of claimable rights is limited by the rights of others. If you have a duty not to interfere with someone else's enjoyment of \(x\), then a fortiori you cannot have a right to \(x\), and it is wrong to advance or pursue it.\(^5\)

The dilemma in liberalism is the same as in Dworkin's position. Such a position is not very clear when there is a conflict between rights as indefeasible instruments and rights as a concept that is conditional. There is an element of indefeasibility inherent in the concept of right that resists trade-off with any other concept. Rights are indefeasible in the way in which truth may be the said to be indefeasible. If a proposition is true when we believed it to be false, we say that it was always true, and when we discover a proposition to be false which we had believed to be true, we hold that it was always false. The same drive towards objectivity through indefeasibility seems to be present in the concept of rights.\(^6\) It is the element of indefeasibility of right that is almost always in conflict with the element of relativity regarding the absoluteness of rights. It is particularly evident when two rights come into conflict and both cannot be served in a particular situation.
There is one way in which the indefeasibility of rights can be reconciled with their conditionality. That way is to qualify the general description of the right so that the circumstances when the right does not exist do not fall within the parameters of the description of the right. One method of qualifying the general description would be to define the right in such a way so that all the circumstances when the right does not exist are listed. These circumstances, however, are so varied and numerous that they often would not be thought of until they happen, so one could never get workable and complete definitions. If, however, one could describe what Coval and Smith term 'the exception-generating mechanism', a catalogue of exceptions would not be necessary. An adequate theory of rights therefore, requires an exception-generating mechanism which will allow us to reconcile the fact that rights are not absolute with the fact that they are not defeasible.

However, rights assigned on the basis of equality will in practice come into conflict with one another. One person's choice of how to live will constantly be interfering with the choice of others. These compromises will have to be worked out in practice, but will be morally defensible only in so far as they reflect the equality of the prima facie rights. This will not allow the vital interests of any to be sacrificed for the advantage of others, to be outweighed by an aggregate of less vital interests. Mackie explains it in terms of a model in which each person is represented by a point-center of force, and the forces (representing prima facie rights) obey an inverse square law, so that a right decreases in weight with the remoteness of the matter so close to each person that, with respect to them, his rights will nearly always outweigh any aggregate of other rights, though admittedly it will sometimes happen that issues arise in which the equally vital interests of two or more people clash.
On the other hand, for the communitarian the self is not prior to the constitutive attachment of the community. For the communitarian living in a community is understanding ourselves as the particular persons we are. It is the enduring attachments and commitments within a community that define a person that one is. The identity of a person is embedded in the common historical legacy and shared practices of the cultural community. As Sandel states, 'to have character is to know that I move in history I neither summon nor command, which carries consequences nonetheless for my choices and conduct ... As a self-interpreting being, I am able to reflect on my history and in this sense to distance myself from it, but the distance is always precarious and provisional, the point of reflection never finally secured outside the history itself.' The idea of an autonomous choice is seen as a false idea since one is defined by the ascriptive ties that constitute one's personality. While the community provides the person context to reflect, the reflection can never transcend the constitutive tie itself. The idea of unconditional worth that the concept of right bestows is in a communitarian conception attributed to the ties of the community.

Communitarians also criticize the Liberal's position of neutrality with regard to conceptions of good life. For communitarians, as Parekh states, 'Far from being purely formal and culturally neutral, ... capacity for autonomy is structured in a particular way, functions within flexible but determinate limits, and defines and assesses options in certain ways.'

The communitarian school also differs with the Liberals in its conception of equal respect for persons. As expressed by Parekh, 'We can hardly be said to respect a person, if we treat with contempt or abstract away all that gives meaning to his life and makes him the kind of person he is. Respect for a person therefore involves
locating him against his cultural background, sympathetically entering into his world of thought, and interpreting his conduct in terms of its system of meaning.12

While an extreme communitarian position insists on group rights to emphasize on solidarity even at the cost of the members’ autonomy and choice, an extreme liberal position prioratizes autonomy and choice at the cost of ignoring the embeddedness of the individual’s identity in the community. On one hand, going by the liberal critique of the communitarian, the group right tends to protect cultural identity of the group at the cost of individual rights of members in not allowing them to reflect on culture in an autonomous manner. It may even involve forcing members to conform to a certain conception of cultural identity that they may not identify with. On the other hand, going by the communitarian critique of liberals, the priority to individual rights over the group right may jeopardize the very identity of the group as whole by catering to the needs of individuals who comprise it at the cost of the needs of the community.

Both the liberals and communitarians assume group rights to be a collective right exercised by the group as a single, collective unit. It is acknowledged that whenever the object of the group right comes into conflict with the views of the individuals who comprise the group, the group right prevails. Liberals with their goal of preventing the trade-off of individual autonomy for a good in which the individual cannot ground her/his interests in, are wary of the language of group rights. While committed to the ideals of diversity and tolerance, liberals attempt to work out a catalogue of individual rights that the group right will be subservient to.

For the communitarians, the overarching purpose of group right is to facilitate the protection of cultural identity. It is this purpose that justifies the exercise of group right rather than the ways in which it serves or does not serve the interests on the
individuals who comprise the group. This is not to imply that communitarians do not care for the individuals who comprise the community. For the communitarian, the individual does not have an identity thick enough to have interests prior to the constitutive attachment of the community. So the liberals' charge that the group right may violate the interests of the individuals is viewed as baseless. Also, the communitarian believes that the group right cannot violate the interests of individuals as in protecting cultural identity it is protecting the larger good in which the interests of the individuals are grounded.

Both Liberals and Communitarians believe that a group right is exercised by the group as an irreducible unit not just against other groups and individuals outside the group but also over the members of the group. The object of the cultural right is preservation of cultural identity and protecting members of the cultural community against discrimination on the basis of their cultural identity. Now, a group right is viewed as a right that can be exercised over the members of the group. This may entail suppression of alternate interpretations, especially those that do not conform with the prevailing dominant interpretations. This amounts to violation of cultural identity at the level of the members. Such an understanding and application of group right implies that the object of protecting the cultural identity of the group is attained at the cost of violating cultural identity of the members of the group.

*Rights as constitutive of stereotypes*

The group right also tends to give rise to the phenomenon of stereotypes. This is because rights turn on the way we look at ourselves and at the world. Rights influence identities in significant ways. The influence of rights on identity may even contribute to the constitution of identity. Rights constitute perceptions of identity by informing the social profile of the self. The self is generally recognized through the network of
goals, entitlements, obligations and duties. This matrix precipitates a certain profile of
the right holder. Rights when recognized by society and enforced by law often
becomes the prism through which the right holder is viewed by the society and law.
Such social perceptions can be strong enough not just to influence other’s perception
of one’s identity but also dominate one’s own self-understanding. It is in this sense
that rights not only have a strong influence on identity, such influence may even be
strong enough to constitute identity. \(^\text{13}\)

When group rights work as constitutive of identity, the tendency is for identity
to be constituted at the level of the group as an irreducible unit. The group is taken as
a person and individuals who constitute the group derive their personality from the
group. This is because a group right is viewed as a right held by the group as not just
a holistic unit but also as a single, unified, homogenous, collective unit. Since the
members are not recognized distinct from the group, the manner in which rights
constitute the identity of the group is also imposed on the individuals who constitute
the group.

This leads to the phenomenon of stereotypes. Stereotypes are important as
instruments of social classification. They are also useful as identifying characteristics
based on facts. The problem arises when stereotypes are used to define or ascribe
characteristics. With rights as constitutive instruments, the agent may find
herself/himself saddled with an identity that she/he does not identify with. (See
discussion on Identity in Chapter 1). The resulting sense of anomie or lack of sense of
belonging may ironically be what the member is supposed to lose if she/he refuse
to identify with the group.

It is therefore crucial not to lose sight of the fact that a right is not prior to the
interests that it serves. Since a certain amount of defining of interests (and in the
process identity) is inevitable in the process of execution of right, it is necessary to ensure that all those whose interests are at stake have a voice in the right.

Three things that the chapter wants to state as a background to the understanding of group rights in the thesis as drawn from the above discussion are as follows – Firstly, a cultural right for the thesis is a group right that need not be a right of a cultural group that is in a numerical minority. Groups that are in a majority could also be holders of cultural right. The dynamics between the members within the group as well as between the members and the group could take place as much in a group that is in a majority as in a minority. Secondly, group right need not be opposed to the interests of individuals in the group. There may be instances where concerns of individuals who constitute the group may conflict with the concerns of the group. But from that it does not follow that a group right is essentially opposed to the interests of individuals within the group. Thirdly, the good of cultural identity that the cultural right protects is prior to the right. The right can recognize the need and existence of the good, articulate the good, and validate its articulation. However, since the right is not prior to the good, it cannot constitute the good. If at all the right in its application cannot help articulating the good, all those who have participated in the good ought to have their views represented in the articulation.

The terms Group and Right unpacked

Group – Since the thesis is focusing on cultural identity, the notion of group that the thesis works with is the cultural community. A cultural community can be viewed in various ways. In terms of its constituents, it can be viewed as a single irreducible unit. It can be viewed as the sum of individuals who constitute the group. Exclusively viewed both these views do not completely capture the notion of cultural community that the thesis is working with. The community as a single irreducible unit does not
accommodate the distinct cultural traits of individuals who constitute the community. The community viewed as the sum of individuals who constitute it is also inaccurate as that would mean that an aggregate of individuals together constitute the community. A community is a whole that derives its completeness from its parts and is extremely sensitive to the relations between its parts. (See chapter1) A cultural community is at one level a group of individuals taken not aggregatively but as several individuals with (fairly) thick relations to each other.¹⁴

At another level it is a subjective construction that acts as a reservoir for the pool of meanings accumulated during its years of existence. It is the medium against which additions, permutations and changes in cultural interpretations are understood. As a connected whole that gives coherence to its parts, it is the context for the actor as well as the act. As a medium against which permutations and changes in cultural interpretations take place, the boundaries of the community are also not fixed but subject to the changes in interpretations. To the extent the changes are reflected by the community as a whole, the fuzziness in boundaries do not threaten the existence of the community.

Right – The closest term for right as dealt with in the thesis is entitlement. It is entitlement to certain interests and benefits.

The elements of the concept of right – The right holder, the object of right, and recognition of the right holder, and the object.

Right holder – Distinction has to be made between being a holder of a right and having a right. A right is an entitlement to whoever has a right, regardless of whether the person is a holder or not. While having a right can mean being benefited by the right as a matter of entitlement, or justifying the entitlement as a matter of need, being the holder of the right is being the person in whom the right is vested. Any one who
has a right can exercise, enforce, assert, surrender, and even waive the right. A right holder is a right bearer. Being a right holder for the thesis is closer to Waldron’s idea of rights – an individual leading one’s life on one’s own terms. It is not simply the idea of an individual being alive. It is of a life being led. This connotes agency, choice, and a sense of individual responsibility. Elsewhere he states, “it is impossible … to think of a person as a right-bearer and not think of him as someone who has the sort of capacity that is required to figure out what rights he has.” In short, if one thinks that people are autonomous and responsible and if one confers rights on them for those reasons, one must confer on them the right to participate in political decision-making, including in decisions concerning rights themselves.

Three things that qualify as pre-requisites to be right-holder are –

1. the capacity to deliberate, make a choice and exercise the choice.
2. to have an interest in the goods that are the object of the right, i.e. the right is grounded in those interests.
3. to have control over the benefit of the right.

(I would like to clarify that the capacity to make and exercise choice as a pre-requisite to be a right holder does not mean that one who does not exhibit such capacity cannot be a right holder. However, in the light of the issue that the thesis is focusing on – recognition of alternate interpretations by members as against the prevailing dominant interpretations, to be recognized as a right holder, the member has to exhibit an ability to deliberate and choose the strand of culture that she/he wants to identify with).

Object of Right – The object of the right is the goal of the right that it seeks to attain. The object of the right could be procedural as well as end-based. Rights can be procedural to the extent it is the mode of attaining a goal that one has a right to. For example, the right to freedom of speech and expression can be attained in the process
of exercising the right. The concept of rights can also be used as a right to a certain object beyond the process of exercising the right. The right to clean drinking water, the right to nutritious food, the right to basic education are objects that one has a right to in a substantive sense. It is the attainment of these goals as a matter of entitlement that justifies the use of the word 'right'.

Recognition – The idea of obligation and accountability that gives rights their distinctive cutting edge is not possible without recognition of rights. It is recognition of rights by the society and the state that enable them to be enforced. Recognition of rights is also endorsing the status of the holder of the right as well as the validity of the object of the right. To the extent rights acknowledge, recognize and validate claims to identity, non-recognition as a right-holder invalidates the identity claimed by the rights’ claimant.

As discussed in chapter one, identity has two aspects – identifying with something external to oneself and projecting one’s identity in a manner that is distinct from others. Both these aspects are acknowledged only when recognized. It is this element of recognition that the concept of right ensures. As a concept that can entail legal enforceability, in endorsing identity by protecting the way it is expressed, it recognizes identity.

With regard to the elements being understood in the context of cultural rights, the question that comes up is who is the holder of cultural right? That cultural right is a group right is something that the thesis does not dispute. A group right is a right that grounds the interests of the group and is held by a group.

That leaves the contenders of group right to be the group as a single, irreducible unit and the individuals who comprise the group. Neither the group as a single, irreducible unit nor the members who comprise the group can exercise the
group to the exclusion of each other. This is because as discussed earlier the very conception of community derives its identity as a whole based on and sensitive to the relations between its parts. Drawing from this conception of a cultural community the thesis holds the view that a cultural right as a group right is held by the group as a whole as well as by each member in an individual capacity. This does not however mean that the group right is exercised jointly on all issues by the group as a single unit as well as by each member of the group. That would lead to a chaotic situation. What this means is that the group right ought to be exercised by the group as a whole in certain capacities and by the individuals who comprise the group by virtue of their status as members in certain capacities. For example, it is the group as a single unit that can decide the group’s image figure in the symbolic repertoire of the state’s public ceremonies. For example, a tableau representing the Bhils may have certain images that are decided by the group as a whole. Imagine the chaos if each member of the group would put forward a different image figure to represent the community. But group qua group cannot be holder of group right for all purposes, especially those cultural concerns that affect the personal lives of the members. To view the group as a single, irreducible unit even on issues that affect members in a personal capacity raises the issue of representation of diversity within the group.

The problem with this view is that while certain interests of members and concerns regarding cultural resources can be represented by the community, the way in which these concerns impact on the personal life of the members given their specific world-view as well influence their profile in other spheres of life cannot be catered to by the community. This is so because the community at best can represent the cultural component of its members. Even then, representation, even in its ideal
form, can only be re-presentation. It cannot be a reflection of the personal concerns of the members.

It cannot represent in a total manner the various influences from several other spheres and the ways they impinge on the cultural identity of each member. Also, the sheer scope of mind-boggling variety of the possible permutations makes it impossible for the community as a whole to undertake the task of representation.

The other contender of group right is the individual who constitutes the group. This contention can be viewed in two ways. The individual can exercise cultural rights as an individual right. To view cultural right as an individual right is a misnomer for the kind of right it is – a group right. The other way is to view cultural rights exercised by members in an individual capacity for those aspects of personal life of members that culture impacts. So while a member in an individual capacity cannot decide on the image figure that represents the community, the cultural right ought to enable the member to relate to the cultural symbol or practice in a way that the member is in sync with. *More importantly, the member should be able to exercise control over the benefit of the right that grounds the cultural interests of the member in an individual capacity. This is particularly significant in light of the constitutive nature of rights.*

The object of cultural right has a procedural aspect as well as a substantive goal to attain. The substantive goal of a cultural right is the protection of culture. The good that the cultural right has to protect is given. The procedural aspect of cultural rights is to enable members to express their cultural identity and to protect them from discrimination on the basis of their cultural identity. It is the procedural aspect that facilitates the attainment of the substantive goal. The procedural aspect helps the attainment of substantive goal in at least three ways. One, the process of expressing
cultural identity rejuvenates culture. Expression takes place at the level of members. The expression is particular to the member depending on her/his specific interaction with culture. With a variety of expressions, the cultural identity has a vast pool of meanings to fall back on. Two, the substantive aspect of protection and survival of culture depends on the commitment of members. The strength of commitment of members is directly proportional to the extent the community accommodates and reflects the views and interests of members. This, in turn entails facilitating and recognizing the cultural expressions of members. It is the procedural aspect of the object that the thesis focuses on. It is the exercise of agency of members in mediating their cultural identity that the thesis is interested in.

Recognition is sought both by the community as well as the state. The recognition of the community is crucial as it is the community as a medium that has to reflect the status of the members in an individual capacity to mediate cultural identity and in the process exercise cultural right. Recognition by the community is also crucial as it is through the recognition of the community that recognition by the state can be sought. This is because as the right sought is a group right, the state will acknowledge only the group as an actor rather than the individual in the group. Going by the same logic, non-recognition by the community may also result in non-recognition by the state. Once such non-recognition is legalized, the law ends up constituting identity of each member whether the member identifies with it or not.

Contemporary literature – the way it views cultural identity and group rights.

The chapter briefly looks at some of the contemporary work on group rights and the way it has handled the issue of cultural rights vis-à-vis the cultural identity of members in an individual capacity. It examines the opinion of these authors on the
conception of cultural community as a collective unit and the scope they accord to the individual members' right to pursue the good of cultural identity.

A pioneering work of the twentieth century on the identity of the self is by Charles Taylor in his Sources of the Self and the Politics of Recognition.

According to Taylor, the question of identity cannot necessarily be answered by giving name and genealogy. What does answer this question for us is an understanding of what is of crucial importance to us. For Taylor, identity 'is the horizon within which I am capable of taking a stand.' 'What this brings to light is the essential link between identity and a kind of orientation. To know who you are is to be oriented in moral space, a space in which questions arise about what is good or bad, what is worth doing and what not, what has meaning and importance for you and what is trivial and secondary.'

The position where a self stands is the orientation of the self. It is the perspective from where the self can decide what is worth doing and what is not, what has meaning and importance for the agent and what is trivial and secondary. '... And this orientation, once attained, defines where you answer from, hence your identity.'

For Taylor, the self has a reflexive element. The self has an understanding of one self as an agent and can make plans for his/her own life. As he goes on to state, 'what seems important about a person's conception of self is that it incorporates a range of significances which have no analogue with non-person agents. For it is not just that we are aware of ourselves as agents that distinguishes us from dogs, say, it is more that we have a sense of standards which apply to us as self-aware agents.'

If, for Taylor, the self plays such an important role in the conceptualization and projection of cultural identity, what are the parameters through which self is understood in Taylor's work? Taylor states that the notion of self cannot be
understood as 'we have or are "a self".' He is of the opinion that the identity of the self is actually derived from the location of the self in the larger whole, i.e. the community. In Taylor's words, a 'basic condition of making sense of ourselves' is to 'grasp our lives in a narrative'.

To the extent the self can make plans for her/his own life, Taylor's idea that cultural identity is not just projected at the level of the community as a monolithic unit, but is also projected at the level of the several selves who constitute the community is a logical inference. He is sensitive to the possibility that cultural identity is to be recognized not only at the level of the community as a whole but also at the level of each self who is a member of the community.

Cultural identity of the members for Taylor is defined by the orientation of the members ('points of viewing'). It is the point of viewing (the point/place from which member view) that defines the 'viewpoint' of the member from that position. This implies an acknowledgement of the diversity of views from the various points within a community. Failure to recognize this diversity is seen as misrecognition and a violation of the identity of the self.

By exclusively stating that it is orientation that defines the self, he seems to close the possibility of the idea that the self in mediating identity from that point may leave her/his imprint on the orientation point that changes the character of the orientation point for the next inhabitant. The constant impact of successive selves on the orientation point implies imparting a dynamic nature to the orientation point. While Taylor's point still holds true that the orientation defines the self, what is conspicuous is the acknowledgement of the consecutive selves in giving a dynamic character to the orientation point. So, while the suggestion that parts influence the identity of a whole is something that Taylor is very open to, indeed so advocates,
these parts are viewed more as organizational parts rather than parts influenced if not defined by the interaction of human agency with the part.

Taylor suggests 'a connection between not just (a) our notions of the good and (b) our understandings of self, but also (c) the kinds of narrative in which we make sense of our lives, and (d) conceptions of society, i.e., conceptions of what it is to be a human agent among human agents.'

For Taylor, human agency seems to be premised on a teleological conception of society thereby implying that conceptions of society are logically prior to the creative initiatives of human agency. An acknowledgement of a reciprocal relation of the creative human agency constituting conceptions of society is conspicuous by its absence.

As Calhoun points out, to see identities only as reflections of ‘objective’ social positions or circumstances does not make sense of the dynamic potential implicit in the tensions between persons and among the contending cultural discourses that locate persons. Identities are often personal and political projects in which we participate, empowered to greater or lesser extents by resources of experience and ability, culture and social organization. But the puzzles lie not just in invocations of strong collective identity claims. They lie also in the extent to which people are not moved by any strong claims of identity – or communality – with others and respond instead to individualistic appeals to self-realization. These two are not altogether mutually exclusive in practice. The politics of cultural identity is woven between the realms of the group right establishing objectives for the community considered as a collectivity and of protecting the cultural concerns of individuals considered separately that impinge on their identity as members of the community,
within (interaction with other members of the community) and outside the community (social profile).

Also, even to the extent that Taylor recognizes the self as a unit that impacts the community (self though defined by her/his orientation), as Blum states, a different principle ought to be played out in recognizing individual in cultural distinctness and in recognizing a culturally defined group that Taylor seems to conflate. Recognizing an individual in cultural distinctness requires an account of how the individual perceives and internalizes culture vis-à-vis his orientation not just in the moral space of the chronicle trajectory of the community but also her/his orientation in the community vis-à-vis the other spheres of modern life that impinge on her/his personality.

Taylor's work gives one an insight into his view of the constitution of the self and the need to recognize the self in her/his distinct orientation. What is brought to the fore in Taylor's work is a politics of recognition, the need to recognize not just the community as an irreducible unit, but each self in her/his cultural distinctness.

What happens once the creative agency of the self is acknowledged? It is with the acknowledgement of the creative agency of the members that a politics of group right comes into play. The creative agency of members need not always be in conformity with the dominant interpretation. This inevitably leads to clashes. One way of understanding such clashes is to view them as conflicts between individual rights of members and group right exercised by the group as a single unit. For Kymlicka, the actual conflict is not between individual rights of individuals who constitute the group and group rights of the group per se. The conflict is actually between rights of individuals as citizens and rights of individuals as members.
Kymlicka’s way out is to allow enough space in the group right for individuals who constitute the group to choose among the various conceptions of good and revise their circumstances. It is noteworthy that Kymlicka’s understanding of the people who constitute the community is as individuals rather than as members. This is further highlighted in Kymlicka’s reduction of group right to individual rights of members.

However, the choice among alternate conceptions of the good and the autonomy to revise their circumstances can be fruitfully exercised by the individuals only as members who belong to the group and not merely as individuals. Each one is bound to another member and to the cultural community at least in great part by virtue of some unaccountable absolute import attributed to the very tie itself that binds them. While as an individual the self may be capable of rationally exercising choice between alternate conceptions of good, it is only as a member that the self will value the goods in a way one whose identity is reflected in it would value it.

Every cultural right can be exercised at two levels – at the level of group as a collective unit, and at the level of members in an individual capacity. Kymlicka’s work assimilates the exercise of cultural rights by the collective (what Levy calls corporate cultural rights) to cultural rights exercised by members who constitute the community. (what Levy calls personal cultural rights). The failure to distinguish between these threatens the status of cultural right as a group right. Since a significant reason to value the good in a cultural right is that it is a group good that provides the members with a sense of belonging and protects them from anomie, depriving cultural right its status as a group right amounts to depriving the value assigned to the good of cultural right.
The view of group right being reduced to rights of individuals also does not take into account the fact that a group right can only be held by someone who has invested one’s personality in the group. Culture being a participatory good (discussed in detail in the chapter 3) the demand for individual right in the framework of group right to choose and revise one’s conception of the good cannot be made by someone who has not invested her/his personality in the participatory venture. And one can invest one’s personality only in one’s capacity as member. (Discussed in Chapter 1) As Benn states, ‘… mutual support, sympathy and understanding flow to those who are known not merely to value the common enterprise (an outsider might do that) but to have invested their personalities in the same venture.’

While Kymlicka does acknowledge that human beings are ineluctably social and that an individual’s revision of his or her projects necessarily occurs within a communal field, his approach makes two fallacious assumptions – (a) that the group is the sum of its parts; (b) cultural rights are prior to cultural communities.

With regard to (a), Kymlicka’s equation of group rights as nothing more than rights of individuals as members does not take into consideration the conception of community as a whole that is not just a sum of its parts but is also more than the sum of its parts. By equating group rights to rights of individuals, Kymlicka is reducing the cultural community to just an aggregate or cluster.

As far as (b) is concerned while a certain conception of ‘culture’ comes to exist through social and political processes and ‘culture’ itself may be articulated as the product of legal categories and institutional practices, cultural rights are not prior to cultural communities. Cultural communities are empirically and logically prior to the question of rights.
Yet another way out is suggested by Kukathas. Kukathas endorses Horowitz's position that ethnic identity is not static. It has an interactive quality and shifts with political context. From this, there is a somewhat unexplainable jump to the position that individual identity takes prominence over group identity. According to Kukathas, group interests matter only to the extent they affect actual individuals.

For Kukathas, it is important that members have the choice to be a part of the community. This is necessary if the members are to recognize the terms of association and the authority that upholds them as legitimate. If choice of the member to be a part of the community is to have any meaning, the member has to have the right to be free to leave, i.e. the right to exit. Any other right is seen as derivative of this right.

Kukathas is right in stating that commitment of members plays a crucial role in sustaining cultural communities. Without commitment of members, communities would wither away. What is problematic is his stand that the right to exit implies that individuals can reconstitute the community under modified terms of association. Since cultural communities are prior to cultural rights (even if rights reshape them), rights cannot invent a cultural community. In fact the very distinguishing feature of cultural communities is that they are groups that have evolved over a period of time, with a historically shared way of life. They are unlike other groups that are voluntary organizations, the members of which make a deliberate effort to form a group. What is not addressed is that the group interests in a cultural context acquire meaning only when understood in the context of a larger whole and through interaction with interests of individuals who comprise the group. The individuals can enrich their lives with these meanings only when they interact as members. Also, the central point is to be in sync with one's identity. It is possible that in evading the trap of conforming to
the dominant interpretation of the group by exiting from the group the member may end up with an atomistic identity that she/he is not able to identify with at all.

There are two major problems with Kukathas’s position. One, the conception that a group’s identity is exclusively dependent on the individuals who constitute it is inconsiderate of the aspects of group’s identity as a whole that transcends the identity of the parts. The group is a whole that is composed of its parts, but as a whole it is also more than its parts. This is (as discussed in Chapter 1) because a group is not merely an aggregate that comes into being with a set of individuals coming together.

The other problem in Kukathas’s position of advocating the right to exit is that it does not address the problem of the right to be a part of the community. As Green states, ‘The mere existence of an exit does not suffice to make it a reasonable option. It is risky, wrenching, and disorienting to have to tear oneself from one’s religion or culture; the fact that it is possible to do so does not prove that those who do not manage to achieve the task have stayed voluntarily, at least not in any sense strong enough to undercut any rights they might otherwise have. Justice cannot be secured merely by providing for exit. If a certain social structure is unjust, it cannot become just merely by becoming avoidable. True, when exit is unavailable things are even worse, but that does not prove that when exit is available things are all right.’

The Indian scene has witnessed a proliferation of work on multiculturalism, especially in the last decade and a half. Considering the focus of this thesis is broadly on intra-group rights, particularly intra-group cultural rights, the works that have been examined are chosen with the criteria that each of them in their own way is sensitive to intra-group issues and highlight the crucial role culture plays in identity formations in the Indian context. This thesis examines the work of Gurpreet Mahajan, Asghar Ali Engineer, Neera Chandhoke and Rajeev Bhargava.
According to Gurpreet Mahajan, rights which are granted to communities to protect their culture from threats that come from the larger society invariably empower the community against its own members. One cannot give the right to sustain a culture against external pressures without simultaneously empowering the community against dissenting voices that exist within on that issue. This undeniable facet is substantiated by pointing out that in India cultural rights demanded by communities have the tendency to perpetuate the continued subordination of women as a group.

This formulation however implicitly juxtaposes the ‘individual’ and ‘collective’ against each other rather than the individual constituting the collective. While the collective is not reducible to each member, and the sum of members do not constitute a collective, the collective is not opposed to the individuals who constitute it.

In Rethinking Multiculturalism she further states that ‘In a democracy the concern for inter-group equality must be in tandem with the demand for intra-group equality.’ This concern for intra-group equality tends to move towards the implication of equality of members as citizens rather than the equal right of members as cultural agents of the community. With the demand for equality for members as citizens is that the members can seek redressal in cases where their rights as citizens are violated by the cultural community they belong to. Equality as citizens however may not address the absence of agency of members as cultural agents, especially if cultural rights supersede rights of members as citizens. (This is the case in India where there are several instances when the law has held that Personal Laws cannot be violated by invoking Fundamental Rights).
Mahajan in her book Identities and Rights points out that in West the issue of individual autonomy is raised in the context of collective community rights rather than group discrimination. Stressing on the existence of a uniform code as a pre-requisite to collective community rights she states that, 'The existence of a uniform code is important because it has, to some extent, prescribed the limits of permissible cultural diversity.' She highlights the crucial point that while cultural community rights aim to provide autonomy to different religious communities, the question of equality within the group was neglected as a consequence. According to Mahajan, 'In addition to hindering the realization of gender equality, community rights have left the issue of intra-group equality completely unattended. To some extent, the principle of non-discrimination itself raised the issue of group equality; minority rights reaffirmed this priority. What was neglected as a consequence of this was the question of equality within the group.'

While Mahajan's work does recognize the issue of intra-group rights as the need of equality within the group, intra-group concerns for individuals who constitute the group tend to be limited by the conception of members as citizens. The cultural concerns of members are not issues tackled under intra-group concerns. Mahajan's work also has the tendency to equate cultural rights with minority rights. The thesis has earlier discussed in this chapter that while minority rights need not be group rights, a cultural right is a group right. A minority right is a cultural right only when the cultural group is in a numerical minority. From this one cannot infer that all cultural rights are minority rights as cultural rights and intra-group issues do exist even in communities that are numerically in a majority.

The uniform code as a pre-requisite to collective cultural rights is suggested by Mahajan to prescribe limits on permissible cultural diversity to facilitate the doing
away of certain inequalities that the collective cultural rights may impose on the individuals who constitute the community. This however may just be throwing the baby with the bath water. While the uniform code may facilitate doing away with inequalities within the community, it may also decimate the distinctness of the cultural community. In limiting interpretations (so as to prescribe limits on permissible cultural diversity), the code might end up drawing a charter of citizen’s rights for members of the community. While this may take care of inequality within the community, it does take back the conflict to a conflict between rights of citizens and rights of the community, thus allowing for misrecognition by not taking the cultural factor into consideration.

The thesis differs from Mahajan’s work on two aspects. To begin with Mahajan, even while she addresses intra-group equality and highlights the vulnerable position of the rights of individuals within the community, does not focus on the cultural rights of members vis-à-vis the cultural rights of the community. Also, there is a tendency to deal with the issue of cultural rights as an issue that is viewed as a correlative of minority rights. The thesis takes the view that conflict with regard to cultural rights pervades all cultural communities – those in a majority as well as in a minority.

Asghar Ali Engineer is as concerned about the cultural rights of members as well as about the issue of equality within the community as the authority of the Quran. He views the Quranic verses as divided into two categories namely (1) contextual and (2) normative. The normative pronouncements are eternal and will have precedence over the contextual. When contextual formulations become widely acceptable in society, the laws that emanate from them take on the status of normative
pronouncements by striking deep roots in society and take on an immutable character with the passage of time.\textsuperscript{42}

In his book, the Islam, Women And Modern Society in explaining aspects of Muslim family law states that the commentators of the Qur’an have divided the Qur’anic verses into two categories (apart from other categories): (1) Mudallilah, i.e., the ones in which reasons for divine injunctions have been spelled out, and (2) Ghair Mudallilah (the ones in which no reasons have been spelled out).\textsuperscript{43} Regarding the first category (Mudallilah) once the reason for a particular tenet ceases to be valid with the change in the social and temporal context, the particular tenet (inferior status of women, polygamy etcetera) do not hold.

He also states that the metaphysical aspects of religion that come under Ghair Mudallilah are not subjected to any change. It is only in those aspects that come under Mudallilah that are open to change, that a case is made for the accommodation of meanings that have been generated at the level of members.

It is not clear how one is to distinguish between the contextual and normative and between Mudallilah and Ghair Mudallilah. According to Engineer the scriptural Quranic pronouncements that are purely transcendental in nature indicate the normative aspect. Logically then any applied rule is a matter of interpretation. Engineer blames the vested interest for using religion as a tool to suppress women and deny them their rights. The vested interests develop a theology that serves their own interests by converting religion into an establishment around which a power structure develops. The way out for Engineer is to continuously challenge theological formulations by scriptural pronouncements.

What Engineer is not taking into account is that by his own explanation scriptural pronouncements are transcendental in nature. The challenge meted out to
the interpretation of the vested interests then has to be interpretation that represents another set of values. The interpretation that challenges the vested interests should be acknowledged according to Engineer as it is required in light of the changed social and temporal context.

There are two kinds of problems with Engineer’s view. The first problem concerns the criterion for declaring a certain tenet valid or invalid as dependent on the change in the social and temporal context. While this gives enough space for cultural tenets to change with time, it also gives the impression that changes that are not required by the social and temporal context are not necessary thus minimizing if not eliminating the role of the individual in willing change. The change willed by an individual would be acknowledged by Engineer only because society was in need of such a change. The social context then becomes a cause that the change is dependent on regardless of the content and nature of change and the need of change by individuals in the community. The need for change seems to be motivated primarily by the need for the survival of culture in changing times.

According to Neera Chandhoke cultures have to be valued and therefore cultural rights are significant. If minority cultures are either devalued in the public sphere, or marginalized, they suffer from a denial of self-respect. She goes on to state that with an expansion of our understanding of what is meant by the term human, has grown the realization that the existence of viable and flourishing cultural communities is a precondition for intelligible understanding and action. Our cultural community provides us with the evaluative resources which enable us to both make sense of the world and to appraise phenomenon as valuable and valueless ... In this sense culture gives us the wherewithal or the cultural capital to think with. Culture then becomes a resource in enhancing or deepening our personal faculties of
reflection and judgment as we appropriate the world in the sense of making it comprehensible.' ‘Therefore, communities ... are important, because they provide their members with structures of meaning, or what I call *evaluative resources* to render the world intelligible.’

Chandhoke in her book *Beyond Secularism* states that in a democracy all individuals must be accorded equal dignity and respect. (P. 128) She goes on to state that the right of an individual can be overruled when the weight allowed to some other good is more than the weight allotted to rights (P. 205). According to Chandhoke, ‘... when we say that democracy bestows a status upon individuals, we indicate that it treats them in a certain way, inasmuch as it respects and honours their moral claims equally. We further indicate that if individuals in this system are not treated with *equal* dignity and respect, there must be very good reasons for the deviation from the norm.’ She also significantly points out that communities define individual identities. To that extent, if community is devalued, self-respect of the individual is also devalued (P242-243). According to Chandhoke, ‘... involuntary communities ... are typically characterized by two features. One, the identity of the community cannot be reduced to some aggregate or sum of the identity of its members. Communities possess an overarching identity that is largely independent of, and that in fact defines individual identities. Secondly, the well-being and self-respect of the members is intimately and closely tied to the well-being and self-respect of the community. Therefore, if the community is devalued, degraded, or subjected to perverse stereotypes, the self-image of the member will be simultaneously devalued.’ She continues by endorsing that members must experience deep and intense feeling of belonging, which arise when members are integral part of the community (P. 243).
While Chandhoke does attribute critical faculty to members, in Beyond Secularism (P.245-246) she does not empower this critical faculty through the language of rights. In India’s Living Constitution, Chandhoke acknowledges that the individual rights address the capacity to be a thinking, reflective being, and community rights address the need to belong. What Chandhoke does not do is work out a causal link between the capacity to be a reflective being and the need to belong. For only with recognition of the capacity to reflect can one move towards an acknowledgement of the capacity to mediate cultural identity. Chandhoke’s position in India’s Living Constitution can be summed in the following propositions:

(1) The right of the individual to life, dignity, and culture rests upon the antecedent right of the cultural community to exist, to reproduce its practices, and to be respected;

(2) Group rights are viewed as conditional rights that enable and actualize individual rights.40

While Chandhoke is not reducing group rights to individual rights of members, she does reduce group rights to an instrumental purpose for individual rights of members. This runs counter to her own position in (Beyond Secularism P. 242) where she states that the identity of the community cannot be reduced to some aggregate or sum of the identity of its members. Communities possess an overarching identity that is largely independent of, and that in fact defines individual identities.

Chandhoke seems to work on two presumptions - that cultural rights that protect cultural resources are needed only by those communities that are in a minority in a political system. cultural resources are to be protected mainly (if not only) because, it is cultural capital, a resource to enhance one’s personal faculties.
To the extent cultural rights are needed to enhance personal faculties of all, why restrict it to minority communities. And if it is the logic of numbers that works, the individual member who seeks rights at the level of an individual is also in a numerical minority at the unit of one, even if belonging to a community that is numerically in a majority. While cultural resources do help in enhancing personal faculties of members, rights that protect cultural resources are needed for instrumental as well innate and intrinsic reasons. Chandhoke’s model seems to view cultural rights only as a passage to the better fulfillment of individual rights.

The thesis accords as much intrinsic value to the group as it does to the right of individual members. What the thesis is attempting to state is that any possible trade-off between group rights and individual rights cannot be resolved by making any one set of rights subservient to the other. One way in which the trade-off can be worked out is by acknowledging members, along with the group, as holders of group right.

Rajeev Bhargava in his article ‘Should We Abandon the Majority-Minority Framework?’ makes the pertinent point that while the parts should not be conflated with the whole, a community as a group is not reducible to the individuals who constitute it. He further states that wholes are not anti-thetical to changes. A group as a whole tolerates identity-preserving changes. Also, extending the logic of groups as wholes, for Bhargava, groups are irreducible units. With regard to his conception of identity, Bhargava comes up with three characteristic traits (1) identification, (2) endurance, and (3) criterion of relevance built into the statement of identity.

He also states that a constitutive dimension of a secular state is tied to the value of religious liberty. Since most religious communities are dominated by one or two interpretations, it is important that members and groups within the group be given
the right to criticize, revise, or challenge these dominant interpretations. For Bhargava, a secular state is distinguished by religious liberty combined with free equal citizenship. This opinion is accompanied by his defense of what he terms as a policy of principled distance with regard to the issue of intervention by a secular state that he feels has been adopted by the Indian Constitution.

The thesis is largely in agreement with most of the above formulations. It is, however, not very clear as to what is meant by ‘criterion of relevance.’ Bhargava does not specify if such a criterion of relevance is to be used by the community or the state as a qualification to recognize members as agents of cultural identity or as an interpretive tool by the members to define their cultural identity. In the absence of any specification, the term may well be misused by the dominant sections of the community by equating it to the dominant interpretations, a tendency that Bhargava is aware of.

Also the ideal of free equal citizenship along with religious liberty, while enshrined in the Indian constitution, is not evident in legislative acts as well as judicial pronouncements. Largely inconsistent, the legislature and judiciary tend to privilege and supersede cultural identity (generally as articulated by the dominant interpretations) over the criterion of citizenship. In such a state of affairs, free equal citizenship is a necessary but not a sufficient condition. The right of individuals as citizens to criticize, revise, or challenge dominant interpretations within the community may not make a difference when the legislature as well as judiciary privilege cultural identity (viewed vis-à-vis the dominant interpretations) over the identity and rights of individuals as citizens.

While the four scholars mentioned above by no means exhaust the plethora of work that has spawned the arena of cultural studies in India, in themselves they
represent some of the major trends of the work in India. While Mahajan and Chandhoke seem to be working within the paradigm set by Kymlicka, Engineer aspires towards a model that is somewhat traditional in its conception of the cultural tenets. For Engineer, what has gone wrong is in the realm of (mis)interpretation of meanings by the vested interests within the community. The tenet when not tainted with the misinterpretations and made amenable to changes in time and location, is exhibitive of the ideal interpretation. This restricts the scope for the generation of meanings with the intent of working a relation of causal integrity between the member and the culture. Bhargava’s defence of the Indian state as sensitive to groups is based on his approval of secularism in the constitution. That seems to be an insufficient criterion to declare the sensitivity of the Indian state as the legislature in India has been inconsistent and even deviated from the ideals enshrined in the Constitution.

Two points emerge from the literature survey – Firstly, that there is a clear tendency to equate sensitivity to cultural rights with the notion of a group as an irreducible unit. The suppression of members within the group in the exercise of cultural rights is sought to be solved by resorting to the language of individual rights, citizenship rights, social and temporal context and constitutional guarantees. While each of these are useful in the relevant circumstances, the thesis would suggest a way out by working out an argument for group rights held by the group as a single integral unit in certain capacities, as well as by each member without diluting the group aspect of group rights in certain other capacities.

Secondly, the arguments for citizenship rights and constitutional rights as solutions for broadening the scope for cultural rights need to include legal categories and their influences on cultural rights as well.
Why should a cultural community that is threatened by individual autonomy recognize the agency of members to mediate their cultural identity in an autonomous manner? Every cultural community is apprehensive of the rights given to its members as a threat to its group status. Cultural rights that acknowledge members as right holder at least in certain capacities also acknowledge the exercise of autonomy of the members. This enables the members to identify with the cultural symbols and practices in a manner that helps them to acquire that for which they precisely cherish group membership – a sense of belongingness. But what reasons would the community have for acknowledging the member as a right holder of the cultural right in an individual capacity? The idea of recognizing members as right-holders of the group right by virtue of they being members is not only to take into account the concerns of members as individuals but also to acknowledge the reciprocity of relation between the concerns of members and the survival of the community as a whole. To survive in changing times, a community is crucially dependent on the sense of commitment and the sense of self of its members. Justification for granting members exercise of the group right to cultural identity could then normatively rest on the recognition and respect of the commitment of the members to the community. Commitment of members here can be defined as both active and passive. Active commitment is when members assume a set of special responsibilities and obligations towards the community. Passive commitment is made when a commitment draws on the notion of a person’s perception of his own self, and the belief that the community expresses a fundamental part of it. Having these beliefs, the member is committed in the passive sense to perceiving membership of the community as the way to go and to giving the community the support required of her/him by her/his membership to it. Committing oneself to it thus is the carrying out the action commitment of his beliefs.
about himself and the nature of the community to which he belongs. Stronger the member’s sense of identification with the cultural identity, stronger is the sense of commitment the member has towards the cultural community. The strength and extent of identification with the cultural depends on the extent of the member’s personal concerns, interests, dignity and self-respect are catered to.

Also, the very fact that members seek right to cultural identity as a part of the group is indicative of the value accorded by the members to the group. The argument generally put forward is that the reasons that a cultural right subsists on are all reasons that enable the right to be exercised by the group as a single, irreducible unit. The thesis fully agrees with that and accepts that a group right cannot be exercised by individuals as an individual right. What it does not agree with is the conception of the group viewed exclusively as a single irreducible unit. While the reasons for a cultural right are reasons for the right to be held by the group, the reasons do not forbid the holding and exercise of the right as a group right by the individuals who constitute the group in their capacity as members.
END NOTES


(11) Parekh, Bhiku – ‘Contemporary Liberal Responses To Diversity’

(12) Parekh, Bhiku – ‘Contemporary Liberal Responses To Diversity’


(22) Taylor, Charles (1989) Sources of the Self. Cambridge University Press. USA.
(30) See Bhargav, Rajeev’s discussion on groups, aggregates and clusters in ‘Should We Abandon the Majority-Minority Framework?’


