Chapter 3

Cultural Identity: Members as Right Holders

The first chapter attempted to delineate strands of culture, community and identity as focused on in the thesis. It sought to highlight that (a) the essence of Culture rests upon the creative generation and attribution of meanings by members in the process of mediating their identity vis-à-vis cultural symbols; (b) the conception of community as an entity constituted by its members is as crucial as the conception of community as a single, collective unit; (c) identity is as much about evolving in a distinct manner as about identifying with a certain given context.

The second chapter discussed the logic of group right as ought to be exercised by both the members who comprise the community, and the community as a collective unit. This however need not be understood as the group right being jointly held by the members who constitute the community and the community as a single unit. What this means is that the group right ought to be exercised by the community as a single unit as well as the members who constitute the community in different capacities. The capacity in which members exercise the group right is to be acknowledged by recognizing their ability to choose among alternate conceptions of culture. What is crucial is the right of the members to have control over the benefit of the chosen conception of cultural good.

This chapter looks at the reasons for cultural right being viewed as a group right held by the group as an irreducible unit and discusses vis-à-vis those very reasons the need of the members to exercise cultural rights in an individual capacity. One of the reasons is that the good that a cultural right protects is given. Being a given, it largely reduces if not decimates the role of human agency to decide the content of good that
the cultural right protects. Other reasons include conflation between the group and its units, the concept of culture as constitutive rules, and interests that grounds a group right being a participatory good.

*Cultural identity as a given*

The widespread impression of a group right is that it is a right that is held by the group as an irreducible unit. (This has been challenged by many in contemporary political theory. The reference here however is to the constitutional, legislative, judicial and societal perceptions, particularly in India. The Indian scenario has been dealt with in the next two chapters). One of the reasons why cultural right is viewed as a right held by a group is the perception of cultural right as a teleologically based right. One of the goals of cultural right is protection of cultural identity. An element of immutability is attributed to cultural identity. It is felt that members acquire it as a matter of destiny and fulfill it as attainment of a pre-ordained telos.

Since the good is pre-ordained, human agency to shape the good is restricted. It is the attainment of the good rather than the right to shape the good that becomes the focus of cultural right. Cultural identity is then viewed as something that one fulfills as a matter of destiny. The role of the individual is reduced to that of being the instrument of culture or the vehicle of patterning. This view of culture is in its very essence non-individual.¹

Since group right is primarily seen as a right with a certain telos, the criteria for the effectiveness of the right becomes the attainment of the telos rather than its mode of exercise. The irony lies in the fact that if the mode of exercise fails to ensure participation of members in a manner that is democratic and egalitarian, it may fail to build the very solidarity and commitment that are so crucial for the attainment of the telos of the group right.
As discussed in chapter 2, one of the pre-requisites of a right holder is to be capable of exercising choice. With the good as pre-ordained the scope for exercising choice to decide the good dissipates. It may be felt that the member who is but an instrument to project the good, and is merely fulfilling her/his telos in projecting the good cannot be bestowed upon the status of a right holder. Hence, it may be argued that it is the group qua group that ought to be the holder of cultural right rather than the members as well.

The central concern is the dissipation of agency of the member in shaping the object of cultural right as the good that the cultural right seeks to attain is pre-ordained. While the thesis does not challenge that cultural right is a right with a telos, it also believes that there is a procedural as well as substantive aspect to it. While the substantive aspect has an element of the given, the procedural aspect provides scope for the exercise of human agency.

To the extent that cultural rights have a certain telos, the element of choice does not translate into inventing goals. However, the thesis believes that there is enough space to exercise the agency of the member. For while the good in a cultural right is given, there is nothing immutable about the ways of pursuing and expressing that good. The creative expression of cultural identity is left to the agency of the members. The procedural aspect of cultural right ought to facilitate growing into it and fulfilling it. It ought to ensure the element of choice and facilitate autonomy of the agent in choosing and projecting the expression of cultural identity that she/he is in sync with.

The procedural aspect of cultural identity refers to the process of identification by the agents with culture and the manner in which such identification is articulated. In other words, if cultural identity is the form of presentation of culture, then it is strongly influenced by the process of identification and the way in which the process
is articulated. Articulation depends on the interpretation by the agent of one’s interaction with the elements that one identifies with. This would mean that there could be as many interpretations as members.

This can be countered by pointing out that as a teleologically defined right, cultural right would expect members to move towards a common telos. However, from this it need not follow that that the process of attaining the telos be common to all the members. The concept of identity refers to something deeper than the unmistakable location of an object in an analytical space so that it can be 'identified' in the sense of 'located' in a unique manner. The trajectory of the members towards the telos is unique to each member depending on the location of the member. As Galston points out, teleologically defined rights necessarily vary with such changes, because the best means to a fixed end are variable.

However, the existence of multiple interpretations does not mean that all interpretations end up being acknowledged. An interpretation to be recognized as a valid interpretation has to be recognized by the community as well as by the state. If the interpretation of each member ought to be recognized by the state, they have to present themselves not just as distinct from the community’s vantage point (since the community’s vantage point interpretation would not include the interpretation of each member taken individually) but also as the interpretation of each member in an individual capacity. Now the only ground on which members can demand recognition by the state of their interpretation as distinct from the community’s interpretation is by being right holders of the group right in an individual capacity.

Also, among the three units that give shape to cultural identity – community as the site, culture as the context, and the individual as the agent through whom cultural identity is projected, it is culture that is pre-determined. The process of identification
with culture by members and the dynamics of recognition by the community and the state are entirely in the realm of human interpretation and deliberation. Any interpretation that is recognized and thus validated by the community and the state has a direct impact on the cultural identity as well as other spheres of the members’ lives. To enable the members to fulfill the telos, cultural right ought to be tailored to each members’ unique location and orientation. Since a right when exclusively held by a group cannot cater to the specific orientation of each member, the best way to attain the telos of cultural identity is to view each member (along with the group as a single unit) as the holder of cultural right in an individual capacity.

The thesis would like to reiterate that even when the argument is for the member in an individual capacity to be the holder of cultural right, cultural right is still viewed as a group right. The insistence is on greater visibility and agency to the members who constitute the group especially with regard to the procedural aspects of cultural right not just to facilitate their expression but also to enable the cultural right to attain its telos in an integral manner.

*Group as a whole that is more than the sum of its parts*

A reason for cultural right to be held by the group is the notion of the group as a whole that is more than the sum of its parts. The concept of group as more than the sum of its parts is indicative of the understanding of the group beyond the coming together of individuals who constitute it. The identity of each member of the community is seen as derived from the identity of the community as an ideational unit. With the member having no cultural identity distinct from the group, it is felt that the group qua group is the holder of the cultural right.

To understand the member as holder of right to cultural identity, one has to unravel two kinds of conflations – conflation between the parts and the whole and
conflation between parts and people who inhabit the parts. The first kind of conflation
between the parts that constitute the community and the conception of the community
as a single collective unit arises because of not recognizing (or even being aware of)
the distinction between the viewpoint of the community as a monolithic unit and the
viewing point of the parts. Cultural right held by the group as a single unit then tends
to represent the viewpoint of the community at the cost of the viewing point of the
parts. The viewpoint expressed in the group right may be views that are most visible
or dominant for several reasons. This may not always represent the views of the
several viewing points from the various parts of the community as it is assumed that
parts are prototypes of the group as a whole. The group to represent viewpoints as
viewed the parts will have to be conceptualized as a group that is in an essential and
existential sense the sum of its parts.

This brings us to the second kind of conflation. Conceptualizing the group as the
sum of its parts does not fully take care of the problem of recognizing members as
holders of cultural right if parts tend to be viewed as organizational parts. While the
accommodation of the views from the point of viewing of the parts does take care of
the problem of representing the viewpoint as viewed from the parts, it still assumes
the viewpoint of the parts as part of the pattern system.

Culture, as a pattern system, regards structural patterns as deeply entrenched and
less amenable to transformation. Pattern then is viewed as an abstraction that enables
the theorist to attend to the commonality of all elements of a culture, while also
attending to their particularity in terms of their persistence and complexity. The
strength of the pattern theory of culture is that it enables a coherent movement from
religion to diet, from politics to dress, and from mode of production to artifact.
However, the rolling, historical 'superorganicism' reduces the role of the individual to that of being the instrument of culture or the vehicle of patterning.  

Even if parts are viewed in an ideational manner rather than merely in an organizational way, the tendency to err in equating context with meaning remains. The part provides the context, not the meaning. As Barnard explains, 'Contexts must not, however, be mistaken for causes. Indeed, to take roles and rules for causes could easily withdraw attention from what crucially confers meaning on actions. It could foreclose an understanding of an agent's own intentions, insofar as it might conflate a directional "because" (in terms of purposes) with a purely conditional "because" (historical antecedents, psychological states, structures, functions, and so on) in a manner comparable to the assimilation of "reasons for" with "reasons from", and thus explain away meaning rather than illuminate it. It is, therefore, one thing to grasp the point of an action in terms of roles and rules or common understandings, but quite another to blandly assume that this is all there is to it, that meaning must be found in customary practices.  

Conflation of the part with the people who inhabit the parts may lead to the interpretation that meaning is to be found at the level of parts, neglecting the crucial aspect that generation of meanings takes place at the level of human agents, albeit as members of the cultural community. As stated by F M Barnard, while meaning is generated in a context and it is the parts as organizational sites that provide the context and perspective, what is indispensable to the generation of meaning is the critical faculty of the members in enacting the role. Assimilating the human aspect with the organizational parts of the community is tantamount to violation of cultural identity of members.
One of the reasons for assuming the conflation between parts and the people who inhabit the parts is that the role played by the people inhabiting the parts is assumed to be congruent to the role assigned to the parts. So, for example, a community may acknowledge women as an integral part of the community. However, the community may also state that women in the community ought to dress or behave in a certain manner. While the part representing women is acknowledged, her agency to express her views is restricted, even silenced.

This may be explained by stating that since a cultural community is a community based on ascriptive ties, the placement of members and the role assigned to the members is a given and not a matter of choice. This is buttressed by the impression that members do not have a distinct identity beyond the parts that define them and the role assigned to the parts. Role is the act to be carried out by members who inhabit parts of the community. Each part is assigned a specific role and the member who inhabits that part has to fulfill the role. The role determines what is to be done. It governs the rules of conduct of the individual who enacts the role. The rules set the parameters within which the individual has to live the content of the role. Bereft of any scope to deliberate over the trajectory to be taken, the member is viewed merely as the instrument of projection of cultural identity. Since enactment of role is assigned to parts and not to members, exercise of agency by members is precluded. Since the member does not exercise agency in an individual capacity in choosing the mode of expression of cultural identity, the member cannot qualify as holder of cultural rights.

What ought to be questioned is the deterministic character attributed to the role in determining the self. The views expressed by Barnard are particularly relevant to this issue. According to Barnard, '... while a role determines what is to be done, it is
not itself determined in its meaning. The manner in which it's meaning is understood is not fixed once and for all but is subject to varying and changing interpretations.  

It is interpretation of the role that endows it with meaning. The act of interpretation has been compared to the reading of a text. A text has no autonomous existence apart from its reader. Theories of reading place emphasis on reading as a dialogue, or transaction, between texts and their readers and a related emphasis on the reader's creative role. It is up to the reader to fulfill or actualize the messages which the text itself only contains in a virtual or potential state. Without a reader prepared to interpret the text, the text would remain pretty meaningless.  

In the context of a cultural community, culture is the text and the member is the reader. Meanings then are the expressions of the way the member (as reader) relates to culture (as the text). Since each member relates in a manner that is unique to that member, each member ought to be viewed as the source of generation of meanings. As Barnard states, "We can never be certain of the diverse generative sources of meaning; and it is precisely this uncertainty of interpreting and uncovering bases of "objective" meaning (functionally or historically) which lends point to Max Weber's insistence on "subjective" meaning as an indispensable key not only to the understanding of action but to the very recognition of conduct or behaviour as action. To expect, therefore, subjective meaning to be self-evidently disclosed as a result of minute attention to contextual roles and rules is not only to incur the risk of losing sight of the ineffable, but indeed to court the danger of confusing "action" with "event"."  

*Culture as Constitutive Rules*

The view of culture as a constitutive rule system also contributes to the impression that cultural right is to be held by the group qua group. As a constitutive rule system
culture defines forms of behaviour. It tells the actor how the scene is set and what it all means. Now, it is a basic part of constitutive rule systems that the entities created entail norms. Norms are oriented to patterns for action. They tell the actor how to play the scene. Norms also entail regulative rules to regulate inter-personal relations.  

However, the entailments between constitutive rules, norms and regulative rules are not a matter of logic but rather consist of the assumption that such linkages exist. Also as Barnard states, “Acting within the role – and rule – governed contexts is not tantamount … to strict or permanent conformity with established norms. Norms frequently conflict and rarely remain uncontested. Even when they are not openly challenged, or indeed not challenged at all, norms may be profoundly at odds with actual practices. We cannot therefore simply deduce meaning from normative structures on the model of logical inference or empirical generalizations, just as we cannot attribute to them determinate causal properties.

So a genuine attempt to protect and acknowledge the cultural rights of members in their individual capacity should go beyond acknowledging the parts they inhabit. It should acknowledge them as sources of meaning and their capacity to exercise choice in identifying with the good in a manner that they are in sync with their being. The differences that may arise within the community need not be disruptive of the identity of the community as it is the creative interpretation of members that enables the community to regenerate itself to survive in changing times.

*Culture as a Participatory good*

The second reason why a cultural right is viewed as held by the group qua group to the exclusion of the members as holders is that the interests that grounds the cultural right is a participatory good.
Participatory Good – Meaning

How is a participatory good produced? As Morauta explains, a common element in many definitions of participatory good is something like the following: a good G is a participatory good if and only if G is constituted by an activity which requires the participation of more than one individual. It is participatory in two senses of the term. One, the production of a participatory good (bringing it into existence or sustaining it in existence) requires more than one individual to participate in a certain kind of activity. Two, a participatory good is the activity in which those individuals participate. In other words, a participatory good is a process based good.14

In what way is cultural identity a participatory good? Cultural identity is a participatory good in the same way speaking one’s native language can be a participatory good. Speaking the language to each other is not just a way of producing the good involved in speaking the native language; it does not just bring that good into existence or sustain its existence. Rather, it constitutes the good.15

Two points need to be addressed in the constitution of the participatory good – the criterion to decide as to who participates and how many are required to participate. As to the numerical aspect, being a participatory good, the activity of constituting a participatory good needs at least more than one individual. The threshold number depends on the nature of participatory good. For example, in the case of friendship, the number can be as low as two people. With regard to who can participate, all those whose interests are reflected in the participatory good and value the activity of generating the participatory good partake in the activity of constituting the participatory good.16

It is as a process-based good, that cultural identity is constituted as a participatory good. The two aspects that constitute cultural identity as a participatory
good are the process of identification and the act of expression. Cultural identity is the process of identifying with the various elements in one’s context and relating to them in a certain manner. It is the expression of this process that creates as well as sustains identity. As stated by Hunter, identities, once formed, require expression in order to exist, but they also require expression in order to be created. Expression of identity emerges through the interaction between the actor and the circumstances that one is placed in. Both process of identification and expression are generated in the process of participation.

*Right to participatory good – a group right*

A right is said to be grounded in certain interests if the right is both justified by those interests, and protects the interests to some degree. If the interests are of the kind to be constituted by participation, then these interests involve a participatory good. A right is said to protect a participatory good when the interest that grounds the right is a participatory good. The object of using the language of rights among others is to protect such interest.

The activity of constituting participatory good requires the participation of more than one person and the constituted good is the good of all participants in a collective sense. It is the activity of participation that is a participatory good as well as the generation of participatory good. Control over the right to protect the interest of the participatory good ought to be held by that which provides the common bind for participation. Participation among agents can take place only against the collective canvas. Therefore, the right whose interests are grounded in a participatory good is a collective right. 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.

*Participatory good – why not an individual right?*
Why can't individuals hold rights whose interests are grounded in a participatory good? There can be two possible reasons for this. Firstly, by holding the right, the right holder ought to be able to enjoy the right on her/his own. This is not possible with a participatory good. To hold a right to participatory good is then to have one's interest in that good satisfied. An individual cannot enjoy participatory good on her/his own as the very generation as well as constitution of participatory good requires more than one individual.\(^{18}\)

This can be countered by refuting the very idea that enjoyment of a right is the criterion to be a right holder. After all, there are many rights that are enjoyed by several people other than the right holder.

The second reason as to why individuals can't hold rights whose interests are grounded in a participatory good is that to hold a right, one has to exercise control over the right, more specifically control over the benefit of the right.\(^{19}\)

What does control over the benefit of right entail? According to Morauta the control requirement can be formulated as follows:

The Control Thesis: x holds a right R only if x has control over the benefit of R, and x has control over the benefit of R if and only if the following is true: If the accrual of the benefit of R depends on the performance of some action \(\varphi\), then either (a) \(\varphi\) is an action which x can perform, or (b) \(\varphi\) is an action which can be performed by some other agent y, and R gives x the power to demand that y perform \(\varphi\).\(^{20}\)

An individual cannot fulfill requirement (a) of the Control Thesis on her/his own. In other words, while an individual can contribute to the participatory good, it cannot come into being solely through the individual’s contribution. On requirement (b), considering that the defining feature of the idea of individual as a holder of right is to fence the area of an individual’s life that cannot be interfered in, individual right
could logically never entail giving an agent the right to demand performance of an action by another agent. Hence, an individual cannot fulfill requirement (b) as well.

As an individual cannot fulfill either of the criteria in the control thesis, it is arguably felt that an individual cannot be the holder of such a right. This argument does sound plausible with regard to cultural identity as a participatory good. After all a participatory good can only be apprehended at the level of the group. Cultural identity cannot be produced by an individual on her/his own, as cultural identity is constituted by the coming together of members and by the very act of evolving cultural identity.

Nevertheless, it has to be admitted that each member in an individual capacity has an interest in cultural identity as a participatory good. This is because of two reasons – (1) As an intrinsic reason, culture as a participatory good is valued because those who are defined by it invest their personalities in the same. The aspect of investing one’s personality is significant as the common enterprise may be valued even by an outsider, but it is a participant in a participatory good who sees a dimension of oneself in the good.\(^{21}\)

As the participant in the participatory good, each individual’s contribution as member will be reflected in the good. As discussed earlier, the act of participation also is the act of constituting the good. The good then partly because of being constituted by the member becomes an important constituent of the member’s identity. By the very act of participating in the constitution of the good, the good becomes an integral part of the participant.

The second reason is the recognition by states of citizens not as individuals but qua members of the cultural group they belong to. To not acknowledge and bother about one’s cultural affiliation is to find one’s identity as a citizen also not fully
recognized since the identity of the citizen is also mediated via cultural identity of the individual as a member. (The thesis has already stated that it believes that cultural identity need not be important for each individual, just that if it is important, it has to be valued and recognized taking into account the way the member relates to it. However, the Indian state views the identity of the citizen only through the prism of cultural identity. Till the member is not viewed as the holder of cultural right, the member will have to make a harsh choice between being a part of the community she/he belongs to but does not identify with in order to avail of one’s rights even as citizens or, neither associating with cultural practices that the member does not relate to and as a result nor be allowed to avail of one’s rights as citizen. This necessitates exercise of control by the member over right to cultural identity even to avail of one’s rights as a citizen.

Two categories of rights that enable an individual to exercise control over the benefit of the right as stated in the Control Thesis are – choice rights and actualization rights.

Choice right and member as right holder in an individual capacity

One element present in at least many rights is the agent’s opportunity to choose, free of deontic constraints, among alternative courses of action.22 To the extent one subscribes to the choice theory of rights, it makes sense to ascribe choice only to those beings capable of choice. The concept of rights as choices captures the essential link between rights and the exercise of individual autonomy.

A choice right is a right of a member to have a choice of whether or not to participate in the activity constituting the participatory good. A member’s choice right, unlike an actualization right that gives the member a right to the activity (discussed below), is a right to participate or not to participate in the activity.
A choice right can be defined as follows: Where a participatory good $G$ is constituted by the activity of a group $M$, a right $R$ held by an individual member $x$ of $M$ will be a choice right to $G$ if and only if: $R$ gives $x$ a right to the existence of those circumstances which will enable each member of $M$ (including $x$) to participate in the activity constituting $G$.23

The circumstances that enable a member to participate in an activity constituting the participatory good are what can be referred to as the existence conditions for a right. In other words, the existence conditions for a right also tell us what must be the case in order for that right to exist. More specifically, the social environment conducive to the exercise of rights are what are called the existence conditions for rights. It is therefore important to be cognizant of the social environment of the right holder, in other words the context in which the right is exercised. An oppressive environment may not always harm overtly; rather, it ‘locks the victim in a closet and convinces the victim of its correctness’.24 Members of such an environment need not be explicitly discontented or unhappy. Having been conditioned in an oppressive cultural environment they accept inequalities as natural. A person’s identity is based on a set of beliefs about what is meaningful in life. To the extent these beliefs are ingrained with inegalitarian cultural meanings, the person’s judgment of her/his good need not be a well-informed judgment. This can result in the member being harmed by her/his cultural environment even without realizing it. Such harm is cumulative in nature. It cannot be traced back to any single act. The likening of oppression to a cage by Marilyn Frye is particularly instructive – one bar of the cage will not hold the prisoner, but all the bars together will.

A choice right will enable the member to make an informed choice of whether or not to participate in the act of constituting the participatory good. A choice right
entails right to the existence of whatever circumstances are necessary to enable each member of the group to make the relevant choice.

Now a choice right if exercised by a member in an individual capacity, will also logically be held by other members of the group each in an individual capacity. This means that a choice right would not just give members the choice of whether or not they want to participate in the constitution of the participatory good. It also qualifies the right of members to participate in the activity of constituting the participatory good by the condition that other members of the group choose to participate in sufficient numbers to make that activity viable.25

Now a significant reason for participating in a participatory good is that it grounds the interests of the participants who engage in the constitution of the good. Now if a member who does not want to be a part of participatory good bereft of a choice right is made to participate in a participatory good two kinds of undesirable consequences may follow – (a) the member who does not relate to the enterprise of constituting the good will not find her/his interests grounded in the right as a participant. The absence of identification with the participatory good may give rise to feelings of anomie. Ironically, the reason for the resultant anomie lies in being forced to be a participant in an act that is supposed to foster a sense of belongingness; (b) the status of the participatory good comes to be questioned. For if the participatory good that is supposed to ground the interests of the participants is constituted at the cost of neglecting the interest of even one of the participants, the idea of participation stands weakened.

Actualization right and member as holder in an individual capacity

The actualization in participation to constitute the participatory good is what makes the right to a participatory good an actualization right. The right to a participatory
good as an actualization right accords a significant role to the individual as participant. An actualization right implies two things – it is a right to the actual existence of a participatory good, it is a right that the members of the group actually engage in the activity constituting the good.26

While the right to a participatory good can not be enjoyed by an individual on one’s own, the actualization right gives the individual a right to that good the actualization of which the individual has contributed to. For instance, where the participatory good is constituted by a group speaking their native language, the right will be that the group actually speak their native language. With regard to cultural right as a participatory good, an actualization right will be the right of members to live out their cultural identity by adhering to cultural beliefs and being a part of shared cultural practices.

As discussed by Morauta, it also seems that the benefit of an actualization right is the kind of thing that an individual could have control over, partly in the sense of ‘control’ required by the Control Thesis. For instance, although it is true that I cannot speak my language unless other people speak it with me, and thus that I cannot enjoy the good of speaking my language on my own, it is perfectly possible to give me the power to demand that others speak my language with me. While this is possible, as pointed by Morauta states, it is not felt to be a viable option. This is because giving an individual the right to control other’s actions would amount to exercising coercion on others. Also, such control may work against the interests of others. It is important to remember that every member is a right holder whose interests the right protects. In this context it is not possible to violate the interests of others to serve the interest of any one individual right holder.27
What Morauta does not seem to take into account is the equally possible tendency of the group right to a participatory good held by the group to coerce members to actualize the participatory good. This can be explained in the following manner. A participatory good when held as a group right is still exercised by certain individuals in the group. This is because group as a category is an abstract concept. Human agency is required to exercise the concept of right, even if the human agency represents the group. Once it is acknowledged that it is human agency that exercises the group right that is held by the group, one has to again confront the very non-viability of giving certain individual(s) the right to control the actions of others.

The thesis however does not want to depart from the status of group right for the right whose interests are grounded in a participatory good. It fully supports the view that a right to protect such interests can only be discussed under the rubric of group rights. What it suggests is recognition of the member as a participant in the enterprise of constituting the participatory good.

A possible argument that can be made by the advocates of right to participatory good being held by the group is that a group right held by a group is inclusive of rights of the individuals who constitute the group. After all, the collective is inclusive of members and the very term participatory good acknowledges the contribution of the participants. Therefore, it is redundant to make a case for members to exercise a right grounded in participatory good.

While this is a valid argument for a right grounded in the interests of a participatory good to be a group right rather than an individual right, it does not follow that it is to be held by the group as a collective. However, the role of the member as participant ought to be acknowledged by recognizing the members as right
holders. While this will not reduce the right to a participatory good to an individual right, it also does not relinquish the language of group right.

The problem then is to work out a theory that enables members in an individual capacity to exercise group right whose interest is grounded in a participatory good without violating the Control Thesis. The thesis feels that it is possible to chart a way that allows the actualization right to be exercised by members in an individual capacity. The two things that need to be done are – delineate spheres over which the member in an individual capacity ought to have control over the benefit of the group right and modify the Control Thesis.

Delineate spheres between rights of members and rights of group as a single unit

Within a group that is based on ascriptive ties, identities work at two levels, both bound by the idea of the shared good (here cultural identity). One, at the level of the relation between the members by virtue of the members' cultural identity embedded in a common matrix (culture). Two, at the level of the relation between the group as a holistic collective unit and culture where in the identity of the members is assimilated by the identity of the group as a collective unit. A group right is then held and exercised by the group as an irreducible unit to which the identities of members have been assimilated. What the thesis intends to point out is that on matters that are personal to members, one has to resist such assimilation and acknowledge members as holders of the group right. This is because the rights serve different interests at different levels.

The nature of identity that evolves when members relate to each other is different from the nature of identity that emerges when the members are viewed as undifferentiated parts of the group as a whole. As Waldron points out, the cosmopolitan individual is a creature of modernity, conscious of living in a mixed-up
world and having a mixed-up self. When members relate to each other they relate as several competing selves within each member living in several spheres of life. Their interests consequently are conditioned by not just symbolic cultural concerns (though that is fore grounded with regard to group rights), but also by concerns influenced by modernity that is characteristic of the modern being living in several spheres simultaneously. Let us take the example of a member who values the cultural membership of the community she/he belongs to, is also be a publisher who runs a magazine on environmental issues, a person who is fond of traveling, and who is an animal lover activist. Now such a person’s conception of cultural identity will not just be influenced by the cultural influences of the community she/he belongs to, but by the plethora of activities and roles that she/he is involved in.

Modification of Control thesis

The thesis feels that an actualization right can enable the member in an individual capacity to exercise cultural right, the interests of which are grounded in a participatory good. To begin with the thesis acknowledges that if an actualization right’s interests are grounded in a participatory good, the individual cannot exercise the right on her/his own. In other words, an individual cannot practice culture practices or facilitate mediation of cultural identity on one’s own. As to the nature of control, control is minimally viewed as being in control over one’s own life and not be controlled by others on issues pertaining to what Mill would call one’s ‘self-regarding’ actions. Such a view of control need not extend to the idea of controlling others so as to direct their cultural practices or their mediation of identity.

Control over the benefit of cultural right here would minimally entail three things. It entails the choice to be or not to be an agent of cultural identity. In other words, one has a right to cultural identity though one is not obliged to have a cultural
identity. So a right to cultural identity would include the right to exit, the right to be an atheist, the right not to be identified with any culture. In other words, a right to cultural identity includes the right not to have a cultural identity. Secondly, having control over one’s right to cultural identity would entail that others (particularly the community and the state) have an obligation not to hinder one’s right to cultural identity. Thirdly, one exercises control over the benefit of cultural identity as a holder of cultural right if the state positively has an obligation to see to it that the conditions for the exercise of such are right are created and maintained. 30

It still qualifies as a participatory good as the interest (culture) that grounds the right is a participatory good. the right holder is a participant in the enterprise of constituting the participatory good.

The question may arise as to the solidarity of the group if the Control Thesis as articulated by Morauta is abandoned. After all, if a member decides to interpret culture in a manner that does not conform with the categories of dominant interpretations and insists on living the interpretation she/he is in sync with, it does threaten the identity of the community as understood through the dominant views. 31

Here, one has to be aware of the tendency of the statements about culture by legal and political philosophers, extracted from any specific social and historical context, to ignore its shifting political meanings. Lacking a theory of the relational attributes of culture and their capacities for transformation, both scholars and activists who support cultural recognition tend to become preoccupied with ‘cultural survival’, rather than seeing cultural change as potentially positive, as well as inevitable. Internal homogeneity is too easily assumed and taken as natural. An endangered ‘culture’ is perceived as a pre-existing given which must be defended, rather than as something creatively reworked during struggles to actualize rights. 32
The creative agency of members as participants ought to be acknowledged even if it questions and challenges the prevailing dominant interpretations. This is because the integrity and identity of every community survives through change. This dynamic process of enduring identity through change takes place by the regeneration and renewal of cultural resources. Such regeneration and renewal is crucially dependent on the creative human agency of individual members. Without the creative agency of members regeneration would not be possible. Without regeneration, the community would not have survived over the ages. In other words regeneration and renewal of cultural resources that enable the cultural community to survive is not possible without the creative agency of individual members. This creativity is manifested in the diverse ways of relating to the cultural community. The diversity arises from the various points from which identity is mediated and the creative distinctness bestowed by the human attributes of the members inhabiting the parts. Not taking into account the creative human agency is closing scope for regeneration of the cultural resources. Hence, it is important to acknowledge and take into account human agency in the exercise of group rights.

Yet another reason to protect the diverse ways of relating to culture is that the very object of group right is to protect the cultural identity of individual members who are a part of the group. By that logic too, the distinct interpretation of members in the mediation of their cultural identity irrespective of the difference with the dominant interpretation ought to be protected.

The chapter now turns to discuss the necessity of the member to be the locus of legal and moral concern in an individual capacity. Since right as a legal category can influence identity to the extent of constituting it, if the member is not viewed as the locus of concern, his/her identity would be derived from the identity of the
community as an irreducible unit. This may make the member prone to the phenomenon of stereotype and the consequent misrecognition that follows it. So, to enjoy as well as exercise control over the benefit of the right to cultural identity, the member ought to strive to be recognized as a holder of the cultural right in an individual capacity rather than as an indistinguishable part of the community.

Right to cultural identity in order to be acknowledged either at the level of the community or by others outside the community has to be recognized by political and legal institutions of the State. The concept of obligation and accountability that is the cutting edge of the concept of right can be realized only when there is state mechanism to enforce it. Also, while culture exists prior to politics, it is through the political process that the concept of culture is articulated.

The articulation of culture in the political and legal realm has a significant influence in constituting the holder of cultural right. Therefore, to enjoy the benefit of legal rights, members to be acknowledged as holders of cultural right in the legislative as well as judicial spheres.

The legal wording of cultural rights to accommodate the diverse strands of expression and interpretation within a cultural community also tends to gravitate towards categorization. The strands represented in these categories are more often than not the powerful, dominant and the visible interpretations. To avail of the benefit of the right members need to tailor the expression of their identity to the investitive conditions described by the right. Any projection of identity that does not fit the investitive conditions can be invalidated simply by not recognizing the expression of identity. 33

As Butler states, it is the act of recognition that functions as an act of constitution, creating a moment not only in which the addressee is acknowledged in
her cultural meaning self, but also in which she and her identity are simultaneously created.\textsuperscript{34}

That the members who do not fit the legal categorization cannot avail of the cultural right is quite unfair especially when such a member considers her/his cultural identity as an integral part of life. Refusing to enforce the cultural right of such a member by not recognizing a particular expression of cultural identity simply because she/he does not fit into the legal categories representing the dominant interpretations amounts to violating the cultural right of the member. Ironically then what ends up being violated is the very right to cultural identity that the cultural right seeks to protect.

How do rights constitute identity? A right to be enforced by the state has to be a legal right. Law as a means of social control has an element of generality in its expression to take into account the relentlessly unique and variable eventualities of social life. When rights are articulated in legal language, right-holders anticipate the effect and consequences of their action with regard to the wording of the law. The diversity of human activity coupled with the generality enshrined in law has the tendency to gravitate towards categorization. The law sorts the claimants of rights according to the degree of correspondence between their own particular situations, attributes and claims and the investitive conditions described by any legal right. Those claimants who are able to demonstrate sufficient congruence with the categories that legal rights work with are classified as right-holders.\textsuperscript{35}

Simultaneously, a certain amount of openness in legislative language would be strived for to accommodate the expressions of members whose understanding of cultural identity do not fit with the categories that legal rights work with. Also, in a
Parliamentary democracy like India, it would enable judges to reach the best decisions rather than be forced by legislative rules to resolve a case in the 'wrong' way.\textsuperscript{36}

The crucial impact exerted by the legal sphere on the cultural identity of members as well as the consequent impact on other spheres of their identity necessitates the examination of the constitutional and legislative provisions of the state. This is intended to be taken up in the next chapter.
END NOTES


(14) The discussion on Participatory good has been largely taken from James Morauta’s article, ‘Rights and Participatory Goods’ in Oxford Journal of Legal


(24) Ely, John Hart – ‘Facilitating Representation of Minorities’


(31) It is useful to remember that most of the issues involved in identity politics is a politics of interpretation – See Chapter 1.