CHAPTER V
MINORITY RIGHTS VIS-À-VIS COSMOPOLITANISM:
UNDERSTANDING THE DYNAMIC

5.1 BRIEF INTRODUCTION

The separate examination of the concept of minority rights, on the one hand, and cosmopolitanism, on the other would, in the preceding chapters would reveal that there seems to be an intrinsic tension between the two ideas. While minority rights lay emphasis on a right or an entitlement on the basis of membership of a particular ‘group’, cosmopolitanism lays emphasis on the need to eschew group differences and the creation of a division-less society while only being concerned with the rights of the individual as against the State.

This difference in approach has been characterized by certain scholars as an inevitable conflict between collective minority rights and individual rights. However, a deeper examination of the dynamic between the two ideals is required, beyond this simplistic ‘conflict’ formulation.

The present chapter aims to analyze this dynamic by examining the position that minority rights enjoy within the theory of liberalism, which is a theory that strongly promotes the autonomy and freedom of the individual. This

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examination is undertaken by considering the arguments for and against encompassing minority or group rights within the liberal fold. Further, the chapter also analyzes certain theories which posit the importance of minority or group rights while retaining the values of individual freedom and autonomy. Certain other important issues such as the relationship between nationalism and cosmopolitanism are also touched upon. The central goal of the present chapter is to examine the relationship between the ideals of particularistic loyalty on the other hand, and the need for a greater engagement with the larger community, on the other.

A good primer for such an examination can be found in Bert van den Brink’s examination of the two central ideals that play an important role in the debate over multiculturalism. Multiculturalism, it may be noted, refers to the policy by which specific groups and their cultures are considered to be worthy of official recognition and identified as such, with the result that they are protected by the state and accommodated within the social, political and economic arrangements of the particular society.

Brink defines these two central ideals as being partly overlapping and partly conflicting. The first ideal that Brink postulates is that of being loyal to particularistic ideals, cultural adherences and observances. The second ideal that he postulates is that of justice, peace and the existence of social co-

553 BRINK, supra note 344 at 203.
554 NAGLE, supra note 401 at 6.
555 BRINK, supra note 344 at 203.
operation amongst those who reside in pluralist societies, which co-operation is for the greater good.\textsuperscript{556} It can be said that the desire to live, and flourish, in a pluralist society would ensure the over-lapping nature of the aforesaid two ideals in as much as the total extinguishment of either ideal in favor of the other, would not engender a peaceful society comprised of contended citizenry. It is therefore, the balance that is required to be struck between the two ideals in order to make them ‘optimally overlapping’, which becomes a matter of debate. The most crucial question to be considered however is whether such a balance is in fact possible, or is the same a mere mirage or a utopian fantasy?

5.2 EXAMINING CERTAIN RECURRING THEMES

Before wading into the aforesaid issue however, it would be necessary to attempt to briefly define certain recurring terms or themes that would find place in the discussion that is to follow.

(i) Cultural Preservation

The first of these terms is ‘cultural preservation’. Cultural preservation can be defined as the right that is given to minority groups to preserve and to continue to develop their own cultures.\textsuperscript{557} This right of preservation can be sourced to the UN Declaration on the Rights of Persons Belonging to

\textsuperscript{556} Id. at 203.

\textsuperscript{557} Asbjorn Eide, \textit{Interdependence and Indivisibility of Human Rights, in HUMAN RIGHTS IN EDUCATION, SCIENCE, AND CULTURE: LEGAL DEVELOPMENTS AND CHALLENGES}, 34 (Yvonne Donders & Vladimir Volodin eds., 2007).
National or Ethnic, Religious or Linguistic Minorities; which in Article 1 stipulates that the identities of minority are worthy and deserving of protection and promotion by the states in which they reside.\textsuperscript{558} Since the foremost marker of the identity of a minority group is usually the culture which the minority group exemplifies and practices, consequently, the right to preserve and develop that culture is evidently of paramount importance to the minority group.\textsuperscript{559} Cultural preservation can thus be seen as being concomitant to minority rights.

(ii) Liberalism

The second term that requires to be understood is ‘liberal legal theory’ or, quite simply, liberalism. A caveat may be lodged at this stage itself that an examination of the long evolutionary history of liberal legal theory and the various contributors to the same, is beyond the scope of the present study. Therefore what is only being brought out is a distilled and concise representation of what the theory stands for, or rather is perceived to stand for, as of today. It can be said that, at its very root, liberal legal theory promotes constitutional government and enshrines a system of separation of power and checks and balances, all with the ultimate aim of preventing the government from behaving tyrannically to the detriment of its citizens.\textsuperscript{560} The theory, at its core, is wary of the possibility of the abuse of power in as much it perceives that it is the state itself which can possibly pose the greatest

\textsuperscript{558} Id. at 34.
\textsuperscript{559} Id. at 34.
\textsuperscript{560} GEORGE KLOSKO, HISTORY OF POLITICAL THEORY: AN INTRODUCTION: VOLUME II: MODERN 523 (2013).
threat to individuals, and therefore its foremost project is ensuring protection against abuse of government power.\textsuperscript{561} It is therefore said that by protecting individuals from coercive or violent acts by one another and further from the abuse of political authority by the government, the liberal state maximizes freedom and eradicates the avenues of coercive interference by other entities.\textsuperscript{562} The foremost way by which liberal legal theory provides this safety net for individuals is by positing that every coercive or interfering act of the state has to be justified by applying the benchmark of a general law which is administered by other independent organs of the state other than the one which seeks to implement the coercive or interfering act.\textsuperscript{563} For reason of this focus on the individual \textit{vis a vis} the state, liberalism posits the individual as the fundamental unit of moral and political concern.\textsuperscript{564} It is therefore said that individual emancipation is the ultimate aim towards which liberalism strives.\textsuperscript{565}

This focus on the individual has also led to liberalism being equated with a theory that seems to put almost exclusive emphasis on the individual person, at the expense of his socially constructed reality as a member of a group or community and the associated ties that come with such membership. Liberalism, looked at in this light, is represented as a theory of rampant

\textsuperscript{561} \textit{Id.} at 523.
\textsuperscript{562} \textit{Id.} at 523.
\textsuperscript{563} ANDREW ALTMAN, CRITICAL LEGAL STUDIES: A LIBERAL CRITIQUE 25 (1993).
\textsuperscript{564} Michael Freeden, Twentieth-Century Liberal Thought: Development or Transformation?, in THE EDINBURGH COMPANION TO CONTEMPORARY LIBERALISM (Mark Evans ed., 2001).
\textsuperscript{565} MILAN ZAFIROVSKI, LIBERAL MODERNITY AND ITS ADVERSARIES: FREEDOM, LIBERALISM AND ANTI-LIBERALISM IN THE 21ST CENTURY 121 (2007).
individualism, unauthentic atomism and runaway materialism. As Maria H. Morales puts it:

“The liberal self is a voluntaristic atom, an asocial (or presocial) being detached from the community and defined independently of it.”

Proponents of liberalism, have of course decried the attempt to paint liberalism with this brush and have labelled such interpretations of liberalism as a misrepresentation. They say that liberalism does not presuppose atomism and that there would be no occasion for over-arching political theory of any type whatsoever if people were indeed isolated atoms.

(iii) Communitarianism

Be that as it may, this supposed emphasis that liberalism places on the individual has attracted strong criticism from the proponents of a theory called communitarianism, which is the third term that we must proceed to examine. In the 1980’s, in the field of jurisprudence, a number of political philosophers challenged the predominant theory of liberalism for ignoring the importance and value of the group or community. Communitarianism is the wider label which was given to this grouping and it comprises a number

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569 Peter Schaber & Norbert Anwander, Communitarian Values, 1 in INSTITUTIONAL ISSUES INVOLVING ETHICS AND JUSTICE , 144 (Robert Elliot ed., 2009).
of distinct assertions. Liberal theory is criticized by the proponents of communitarianism on the methodological level for its apparently incorrect understanding of individualism, and by extension that of the ‘self’, and for having obscured and neglected a very important source of action and practical reasoning i.e. membership within groups and communities. On the normative level, the communitarian critique postulates that liberalism and its proponents place an extreme and undesirable emphasis on autonomy, thereby obliterating and overlooking the importance of community and society. Some communitarians also take issue with the liberal stand that the state must be neutral to competing notions of what is good and instead are of the opinion that the state and its institutions should implement and promote the morality which is embraced and practiced by the majority within the particular community or group.

(iv) The interaction between Liberalism and Communitarianism

The points of difference between communitarians and liberals may be considered in some more detail, in as much this examination is ultimately very relevant to the core issue being examined by way of the present study. It must be conceded, at the outset, that there are different theories advanced by different liberals and communitarians, each containing their own nuanced views on the subject, and consequently there may be varied permutations and variations.

570 Id. at 144.
571 Id. at 144.
572 Id. at 144.
combinations of the exact disagreements between liberals and communitarians. However, the critical areas of difference can be identified. It would be appropriate in this regard to refer to Eric Dickson’s concise identification of the three major areas of debate and difference between communitarians and liberals, which are as under:

Firstly, the debate as to the relationship that individuals share with the societies they inhabit i.e. the extent to which individuals are socially constructed and the value of social membership;\textsuperscript{574}

Secondly, the debate as to role of the state in determining a conception of the good life i.e. should the state enforce a perfectionist policy or it should exercise restraint in this regard and only promote anti-perfectionist principles. Liberalism as a theory would vouch for an anti-perfectionist policy to ensure that the state does not get the power to directly judge the morality of a particular activity or idea, whereas communitarianism does not believe that this is necessarily a bad thing and in fact endorses such a course of action with the ultimate aim of constructing and perpetuating a common and uniform conception of what is morally permissible;\textsuperscript{575}

Thirdly, the debate as to how the principles of justice are to be arrived at. Liberalism posits certain values, such as equality and freedom, as universal values that should be respected on a global level by all societies, whereas communitarians espouse a more particularistic approach and believe that the applicable principles of justice must be determined with reference to the

\textsuperscript{575} Id. at 8.
shared values of a particular society or community which represents the common understanding of the good life amongst the members of that particular society or community.\textsuperscript{576}

As is the case with most theoretical debates, it is difficult to mark out a clear winner in the above exchange as well. However, it has been said that the communitarian challenge to mainstream liberalism has subsided in recent years as it has been gradually established that what is valid and noteworthy in the communitarian critique does not in fact delegitimize or obliterate the aspects of liberal theory that it aims to critique.\textsuperscript{577} For instance, Amy Gutmann is of the opinion that the communitarian critique of liberalism, rather than leading to the ultimate consequence of the supplanting or outright abandonment of liberalism, has actually in a way led to the enhancement and enrichment of liberal thought and has resulted in a liberalism that effectively pools together communitarian and liberal tenets.\textsuperscript{578} Gutmann’s position is therefore that communitarian values can actively supplement liberalism.\textsuperscript{579}

This ‘softened’ or ‘evolved’ liberal position is best represented by what Margaret Moore calls the need for a 'contextual assessment'.\textsuperscript{580} Moore explains this position as under:

\textsuperscript{576} Id. at 9.
\textsuperscript{577} ANDREW LEVINE, RETHINKING LIBERAL EQUALITY: FROM A “UTOPIAN” POINT OF VIEW 5 (1998).
\textsuperscript{579} JAMES R. HURTGEN, THE DIVIDED MIND OF AMERICAN LIBERALISM 96 (2002).
\textsuperscript{580} Margaret Moore, Liberalism, Communitarianism and the Politics of Identity, in CONTEMPORARY DEBATES IN POLITICAL PHILOSOPHY , 338 (Thomas Christiano & John Christman eds., 2009).
“As long as liberal theorists accept the possibility that conceiving of equality as equal treatment might be unfair in contexts of deep division of individual and social position, and cultural difference, they will then accept the need for a contextual assessment of the operation of the rules of justice or principles of liberalism in the society. Liberalism is fundamentally committed to equal treatment, and this principle does not in itself preclude more contextual assessment of rules and policies in the interests of equality.”

She therefore argues that the liberal commitment to equality permits extending exemptions when there is a case made out of an undue burden being cast upon an individual or group, and therefore authorizes altering or varying otherwise uniform rules and policies when individuals face discrimination as a result of the same.

Though the aforesaid discussion of the debate between liberalism and communitarianism is otherwise sufficient, there is still a lingering need to examine in particular the views of one of the defenders of liberalism against the communitarian critique. This defender, namely Will Kymlicka, is deserving of this special attention because of the fact that his defense of liberalism goes hand in hand with a stoic assertion of the value and need for cultural preservation and minority rights. Kymlicka’s views on minority rights and cultural preservation can be postponed to the later portion of the

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581 Id. at 338.
582 Id. at 338.
present chapter in as much as it can then be better juxtaposed with the criticisms that it has attracted from proponents of cultural and legal cosmopolitanism. It is sufficient at this stage, to understand that he puts forth the argument that providing for minority rights and cultural preservation is not incoherent with or opposed to the core values of liberalism. For the present however, his defense of liberalism as not being guilty of the sins that communitarianism accuses it of may be considered. Kymlicka endorses the communitarian idea that the worth that a particular thing or idea may have in the eyes of an individual person is a product of the significance granted to the said thing by that particular individual’s culture, and by further extension the said thing or activity may fit within the general understanding of leading a good life which is shared between the members of that particular culture.\(^5\) He however argues that there is no mutual exclusivity or inherent contradiction between this emphasis on a group’s culture as being necessary for leading a good life and the liberal emphasis on autonomy, because individual freedom is not overly constrained within this paradigm that focuses on the value of culture.\(^4\) He says that individual autonomy as represented by the value of self-determination is liberalism’s core ideal and therefore as long as an individual is able to critically evaluate his/her ends without any coercive interference being applied by the state or by other individuals, then the individual is possessed of liberal autonomy.\(^5\) Kymlicka also, in fact, explicitly attacks communitarianism for advocating a

\(^5\) WILL KYMLICKA, LIBERALISM, COMMUNITY AND CULTURE 166 (1989).
\(^4\) Id. at 166.
\(^5\) Id. at 52.
position in which social rules are pre-determined and immutable and effectively take away the autonomy of the individual to choose not to occupy the roles that he or she had been assigned, and which position is eminently unacceptable.\textsuperscript{586} He says further that though the choice that the individual person makes about how to live his life in the most fulfilling manner possible may have to be made within, and structured according to, a certain social or cultural context which may have come about involuntarily, the ultimate freedom to make the choices still rests with the individual.\textsuperscript{587} Looked at in this light, he therefore seems to rescue liberalism from the foremost communitarian critique of having devalued the importance of societal relationships. To summarize, Kymlica argues that liberalism is also concerned with the larger question of the relationship between the individual and society. He makes the fundamental point that, provided that certain basic precepts are met, group/minority rights can be viewed as not only being permissible within the liberal fold but also outright necessary for liberal freedom and equality.

(v) **Ethnic Nationalism**

Before ending with this broad survey of certain relevant concepts, it would be necessary to deal with a fourth concept. This is what is referred to as ‘ethnic nationalism’. Ethnic nationalism can be defined as the sense of identity and fellow-feeling shared by a group of people united amongst


\textsuperscript{587} K\textsc{ymlica}, \textit{supra} note583 at 166.
themselves and distinguished from others by one or more of the following factors; language, religion, culture and a belief in a common ancestry or descent.\footnote{588}

It may be noted that in certain contexts, ethnic nationalism is simply referred to as nationalism itself, though in such cases it must be remembered that this use of ethnic nationalism as nationalism should not be confused with it supposedly subsuming within itself the all-together different concept of ‘civic nationalism’. Civic nationalism stands for a community of citizens who share equal status and are endowed with rights, and owe allegiance to a shared set of political practices and values, meaning thereby that civic nationalism is conceptually quite different from ethnic nationalism.\footnote{589}

\section*{5.3 CULTURAL COSMOPOLITANISM AND THE LIBERAL CHALLENGE TO MINORITY RIGHTS}

A survey of the literature on the subject would show that Jeremly Waldron is not alone in in his views regarding the unacceptable nature of minority rights. Continuing with examining the thread of the opposition to multiculturalism, it would be important to examine the views of Brian Barry.\footnote{590}

\footnote{588 JAMES M. MCPHERSON, IS BLOOD ThICKER THAN WATER?: CRiSES OF NATIONALISM IN THE MODERN WORLD 66 (2011).}
\footnote{589 VLADIMIR FEDORENKO, CENTRAL ASIA: FROM ETHNIC TO CIVIC NATIONALISM 20 (2012).}
\footnote{590 BARRY, supra note28.}
(i) Barry’s Liberal Egalitarianism

Brian Barry has espoused a trenchant criticism of the group rights and cultural preservation, as represented in the doctrine of multiculturalism, and has slammed multiculturalism for having led to the creation of far more problems than the ones it has been able to ostensibly solve and for having resulted in the dilution of the liberal guarantees of liberty and equality.\textsuperscript{591} Though Barry does not strictly deal with the issue in the ‘cosmopolitanism versus minority rights’ prism, Barry echoes, and in many ways exceeds the Waldronian critique of minority rights, by labelling multiculturalism as a danger and as a hindrance to the achievement of a state of liberal egalitarianism. He argues that this is so because multiculturalism treats traditional liberal rights as deserving of lesser importance than the demands of minority groups, and therefore runs the risk of dividing society, while at the same time sidetracking the most important contemporary problem of socio-economic inequalities.\textsuperscript{592} He further says that the various philosophical or ideological arguments that the proponents of multiculturalism have put forward to defend group rights and cultural preservation, have all failed.\textsuperscript{593} Barry throws his weight behind uniform and universal rights as the best way of ensuring equality and justice, and other protections, in modern liberal societies.\textsuperscript{594}

\textsuperscript{591} ANTHONY M. CLOHESY, STUART ISAACS & CHRIS SPARKS, CONTEMPORARY POLITICAL THEORY IN CONTEXT 140 (2009).
\textsuperscript{592} Id. at 140.
\textsuperscript{593} Id. at 140.
\textsuperscript{594} Id. at 140.
It would be relevant to enter into the specifics of Barry’s critique of group rights. Barry focuses most of his attack on cultural preservation predicated on religious lines. Barry suggests that a lot of the practices which are defended as being worthy of protection in as much as they are religiously mandated, are in fact not so mandated, and have been cleverly packaged to give an impression that they are backed up by religious instructions and directives.\(^{595}\) Since these practices are therefore not critical or fundamental to sustain religious observance, he says that the persons who engage in such practices may very well possibly reconsider their continued adherence to such practices if they are faced with a situation where no special exemptions are granted to them by the state to continue to permit or subsidize these practices.\(^{596}\) His over-arching rationale for attacking religion-based exemptions is that a universally applicable general rule does not amount to a curtailment of religious freedom but only amounts to restricting the particular practice or conduct that is rendered impermissible by the universally applicable general rule.\(^{597}\) For instance, he contends that when humane slaughtering requirements do not permit particular ways of slaughtering livestock, then in such a case the ultimate act that is being proscribed is not the observance of the particular religion but only the practice of eating meat that has been procured in a particular manner, and the eating of meat is anyway a matter of choice and not something that is


\(^{596}\) Id. at 212.

\(^{597}\) Id. at 212.
mandated by any religion. He also argues that providing group differentiated rights based on cultural practices is, in most instances, as frivolous as providing a right on the basis of a person’s preference for the vanilla flavor of ice-cream as opposed to the strawberry flavor.

Barry also makes a strong claim that cultures or groups are not the kind of entities which can be properly granted any kind of rights, and even if such a grant can be presumed to be possible and permissible, these rights can only be bestowed on the individual members of that culture or group. He in fact attacks the very nomenclature of ‘group rights’ in as much as he is of the view that there is no such group or corporate entity that can be provided with the special rights that are being sought for. He says that ultimately all group differentiated rights benefit only the individual person and there is no corporate entity acting as a beneficiary.

According to Barry, any justification for a liberal theory of group rights can predicated on and expressed only by the provision of individual rights. Affirmative action programs can be implemented, as per him, in favor of groups whose individual members can be demonstrated to have suffered from wide-ranging disadvantages, however these disadvantages must

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598 Id. at 212.
599 Barry, supra note28 at 36.
600 Id. at 67.
601 Id. at 113.
602 Id. at 113.
necessarily have been suffered in universal and not particularistic terms, like for instance economic deprivation or physical disability.\(^{604}\) However even these group rights that are predicated on the wide-ranging disadvantages suffered in universal terms cannot be permanent in nature, and can continue for only as long as the disadvantage continues to exist in real and practical terms.\(^{605}\)

Mirroring Waldron’s approach in many ways, Barry has sought to challenge the predominant view of support for group rights by invoking the specter of such a project being opposed to the tenets of a liberal legal theory that is predicated on equality.\(^{606}\) He argues that liberal principles of justice and equality necessarily posit the importance of the virtue of uniformity above all else and therefore do not permit the existence of differentiated rights amongst persons who are otherwise on an equal level by virtue of their status as citizens.\(^{607}\) Barry’s primary target in this regard is a group differentiation, and the particular rights that accrue thereupon, which is founded upon and takes root from cultural attachments such as religious practices.\(^{608}\)

(ii) Kukathas’s argument for State Neutrality

Chandran Kukathas also attacks the notion that group rights are defensible under liberal theory. Kukathas’s argument starts off by saying that the

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\(^{604}\) Id. at 45.

\(^{605}\) Id. at 45.

\(^{606}\) E. J. MITNICK, RIGHTS, GROUPS, AND SELF-INVENTION: GROUP-DIFFERENTIATED RIGHTS IN LIBERAL THEORY 159 (2013).

\(^{607}\) Id. at 159.

\(^{608}\) Id. at 159.
primary value espoused by modern liberal thought is that of toleration and not, as is widely mistaken, autonomy.\textsuperscript{609} He then states that the two central pillars of this liberal idea of toleration are the guarantees of the freedoms of conscience and association.\textsuperscript{610} Leapfrogging from this arena of freedom of conscience and association, he then terms groups or communities sharing a common culture as private associations which are brought into existence and perpetuated by the exercise of the freedoms of conscience and association that are available to their individual members.\textsuperscript{611} The continued survival of these groups or communities is therefore dependent on them being able to continue to convince their individual members to remain associated with the group or community.\textsuperscript{612} The state however should not interfere in this natural and organic process, and should not attempt to save a group or community from extinction if the same is naturally losing its adherents in the course of time.\textsuperscript{613} The provision of minority rights therefore would contradict the stated goal of state neutrality. However Kukathas says that this conceptualization of a liberal state does not debar the provision of internal restrictions within minority groups, such as to curb dissent, if they are required to ensure that the freedoms of conscience and association are fully enjoyed by the individual constituents.\textsuperscript{614} He however further qualifies this by saying that internal restrictions are permissible only if a corresponding

\textsuperscript{610} Id. at 5.
\textsuperscript{611} Id. at 5.
\textsuperscript{612} Id. at 6.
\textsuperscript{613} Id. at 6.
\textsuperscript{614} Id. at 7.
right to exit the particular group is granted to each individual member, so that the said individual’s freedoms of conscience and association can also be exercised to disassociate whenever the individual deems fit.\footnote{Id. at 7.}

It may however be noted at this stage that this argument for state neutrality is required to be taken with a pinch of salt in as much as institutions of the state sub-consciously espouse the ethos of the majority despite the purported neutrality that that may claim to follow. It can be startling to discover examples of such majority-centric amplification in the most unexpected places. For instance, one may take the example of one of the most celebrated common law judges of the 20\textsuperscript{th} century i.e. Lord Alfred Denning. Lord Denning, who is revered for his major role in the development of the common law in the last century, is often lauded for his approach towards justice that was premised upon the attainment of equity, over merely slavish adherence to judicial precedent or formal legal rules. However, what is often missed out is that this conceptualization of equity was significantly influenced by Lord Denning’s own personal values that were predominantly premised on a pastoral vision of an idealized 'England' which also brought along with a certain subjective standard of behavior which every person must adhere to. Lord Denning, in as far as his personal values was concerned, was very much representative of the majority cultural-social-religious ethos of British society of his time. However, the application of this majority ethos to judicial adjudication lead to subtle isolation and discrimination against
elements that were seen as ‘alien’ to the English way of life, which in a large number of cases were immigrants and ethnic minorities. Thus, it can be said with some measure of certainty that even the so-called uniform provision and application of laws also originates in a particular socio-legal context and which context is suffused with its own leanings and suppositions about what is right and wrong.

(iii) McDonough’s argument as to the varied construction of identity
Kevin McDonough is another critic of the cultural recognition model. In his criticism of cultural recognition, in the context of education, McDonough is a clear supporter of the ‘cosmopolitanism alternative’ propounded by Waldron. He goes to great lengths to defend, while attempting to further refine, the conceptualization of cosmopolitanism propounded by Waldron. He encapsulates the cosmopolitanism view as being that individuals who may seem at first blush to be defined by the shared culture and values of their groups or communities may, in fact, on deeper scrutiny reveal fascinating diversity and multifarious influences in the makeup of their individual identities. Therefore, there is no pre-determined cultural lens by means of which individuals should be viewed and dealt with in the sense of the respect or the entitlements that are owed to them. He elaborates upon Waldron’s example of Salman Rushdie and says that to slot a person like Rushdie into

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616 For a detailed examination of this theme, see: Amit George, Justice, Equity or Good Conscience? A Study of Lord Denning’s Value System and its Impact on Justice, 3 NLUD STUD. LAW J. 49–68 (2014).
617 McDonough, supra note30.
618 Id. at 132.
619 Id. at 132.
the narrow constricts of a homogenous identity, based solely on his nationality or religion or profession, would amount to demeaning the multi-layered intricacy of the identity of the individual person, in this case Rushdie.\textsuperscript{620} For McDonough, the correct way of showing appreciation towards the holistic nature of individual identity is by acknowledging the great diversity of literary, cultural, national and religious traditions that come together to shape this final identity that an individual person ultimately bears.\textsuperscript{621}

He is of the view that in order to be successful in cultivating a truly cosmopolitan cultural identity, what is most essentially required is a capacity for self-evaluation and criticism that should also encompass a review and questioning of the traditionally enshrined cultural practices that one has been endowed with by one’s group or society.\textsuperscript{622} The ultimate point that he seeks to make is that cultural identity is the product of an eclectic mixture of varied values and influences, all of which is geared towards equipping an individual person to construct a unique identity of his own.\textsuperscript{623} Therefore, any policy or measure that has the end result of strengthening and reiterating the traditional identities that an individual is born with, in fact demeans and devalues this inherent capacity of that individual.\textsuperscript{624}

\textsuperscript{620} Id. at 132.  
\textsuperscript{621} Id. at 132.  
\textsuperscript{622} Id. at 134.  
\textsuperscript{623} Id. at 134.  
\textsuperscript{624} Id. at 134.
(iv) Delanty’s critical cosmopolitanism

A softer defense of the Waldronian conceptualization of cultural cosmopolitanism can be found in the work of Gerard Delanty, though it can be seen that the ultimate hypothesis offered does not seem to vary significantly from Waldron’s. Delanty attempts to soften the harsh emphasis of the idea of cosmopolitanism as a particular or singular condition that can be clearly identified as having been achieved or not. He instead propounds the idea of a ‘critical cosmopolitanism’. He says that such a form of cosmopolitanism is one in which the world is engaged with through a sense of openness rather than by the postulation of, or the desire for, a homogenous universal system. However, as noted by Chris Rumford, this conceptualization of cosmopolitanism also does not allow for the possibility that cosmopolitanism can lead to the existence of contrasting and diverse worlds.

Waldron’s and Barry’s views have been echoed by other scholars as well, though perhaps not exactly within the rubric of the debate between cosmopolitanism and minority rights. Arthur Meier Schlesinger, for instance, labels group identification based on ethnicity as being equivalent to the propagation of an undesirable cult. Schlesinger’s view is that if state

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626 Id. at 12.
627 Id. at 12.

support is extended to group identity and cultural preservation, then it might end up damaging civic harmony and lead to secessionist tendencies. In his view, multiculturalism all too easily ends up encouraging ethnic chauvinism when it ought to be encouraging understanding between different groups.

5.4 THE ARGUMENT FOR ENCOMPASSING MINORITY RIGHTS WITHIN THE LIBERAL TRADITION

The aforesaid view regarding the purported incompatibility between the provision of minority rights on the one hand and liberal theory on the other is however is not without its critics. This criticism, as is the view that is sought to be critiqued, is multi-faceted. Therefore, it would be more pertinent to deal only with those critiques or counter-views which lay bare, to a larger extent, the dynamic sought to be explored in the present study, namely the relationship between minority rights and cosmopolitanism. The focus is this maintained on those views which posit nationalism, or group identity, as a part of the fabric of liberalism. The first port of call in such a voyage must be the work of Will Kymlicka.

(i) Kymlicka’s ‘liberal’ defense of minority rights

Kymlicka has been referred to as a pioneer of the movement that postulates the existence of group rights as being the foremost guarantee of equality

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630 Id. at 73.
among citizens in contemporary multi-cultural societies.\textsuperscript{631} This is not without reason. As has already been briefly touched upon in the preceding part of the present chapter, Kymlicka argues that group rights do not fall afoul of liberalism and can instead be accommodated within the liberal tradition. Now we may proceed further to examine his justificatory theory of minority rights.

Kymlicka is of the view that minority rights, to which he ascribes the moniker ‘group differentiated rights’, are consistent with freedom and justice. In his influential and provocative work, ‘Multicultural Citizenship: A Liberal Theory of Minority Rights’\textsuperscript{632}, Kymlicka explains in detail his theory of the legitimacy of minority rights. A concept that is at the core of his argument is that of the ‘societal culture’. Kymlicka defines societal culture as follows:

“How a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres.“\textsuperscript{633}

Kymlicka says that social cultures can be said to be quite similar to nations in the sense that both these entities are usually anchored within a defined

\textsuperscript{631} \textsc{Amal Jamal, Arab Minority Nationalism in Israel: The Politics of Indigeneity} 17 (2011).

\textsuperscript{632} \textsc{Kymlicka, supra} note 31.

\textsuperscript{633} \textit{Id.} at 76.
territory and their constituents partake of a common language. A societal
cultures therefore can be said to provide for its constituent members ‘the
everyday vocabulary of social life’. This vocabulary would encompass the
history, traditions, and conventions of the group and the distinct practices and
institutions that are associated with it. It has been remarked that
Kymlicka’s definition of social culture is quite unique in the liberal tradition
in as much as it is more substantive than certain seemingly similar
approaches as represented in the overlapping consensus proposed by John
Rawls and the constitutional patriotism proposed by Jurgen Habermas.

However, one is naturally confronted with a question as to how Kymlicka
incorporates the aforesaid societal culture within the rubric of individual-
focused liberalism? Kymlicka begins this endeavor by setting out the
importance of providing varied options to an individual to lead a fulfilling
life and that individual rights that are the cornerstone of liberal theory, are in
fact, present precisely to protect these options. He establishes this by
arguing that every person has a vital interest in living a life that is genuinely
worthwhile. However, as to what is the value of this life can only be
determined from the perspective of the person himself i.e. a person will
consider his life to be of genuine worth only if he or she can live it according
to his own inner convictions, and not a life that is dictated by others.

634 Id. at 76.
635 Id. at 76.
636 Id. at 76.
637 BRINK, supra note344 at 212.
638 KYMLICKA, supra note31 at 80.
639 Id. at 81.
Forcing someone to live a life that he or she rejects, does not promote that person’s vital interest at all. Kymlicka’s argument here may be seen as akin to endorsing a form of pluralism that respects what an individual people wants for himself or herself, and is appreciative of the fact that even a widely preferred conception of the good life is just one amongst many reasonable options and so there is no absolute basis to prefer one particular conception to the extinguishment of all others.  

However, Kymlicka is aware of the very real possibility that a person may have a very limited knowledge of sources of options that provide genuine worth in life. Therefore he is of the view that every person should be free to deliberate and revise their conception of what makes life worthwhile as they go along in life and as they discover new ideas and have new experiences. Individual rights, like the right to personal liberty and the right to free speech, protect people against having ways of life forced upon them and protects their ability to deliberate and revise their views. Individual rights therefore protect people’s vital interests by ensuring constant access to varied, and constantly changing, options to lead a good life.

Having established this aspect, Kymlicka proceeds to the next leg of the argument which is that a societal culture is an important component of leading a good life as a good life includes having the freedom to make

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641 KYMMLICKA, supra note 31 at 81.
642 Id. at 81.
choices amongst various options, and a societal culture not only supplies individual members with these various options, but also makes these options valuable. He says that the relative value of these options is something that is determined on the subjective basis of individual belief and this belief is actuated by an understanding of the meanings attached to that activity by the particular societal culture. Therefore a state that is committed to its citizens’ freedom of choice, as a liberal state should be, should likewise be committed to preserve the varied societal cultures of its citizens. One of the mechanisms of doing so is through group-differentiated rights. Kymlicka states that in the absence of group differentiated rights, minority cultures are bereft of the same range of options as enjoyed by the majority culture i.e. the members of the minority cultures do not have the opportunity to live and work in their own culture or group. The net effect of such a state of things, as he surmises, would be that minority cultures would be confronted with only two options, each as prejudicial as the other i.e. either the outright abandonment and rejection of their minority culture or the acceptance of second-class status within the nation.

Kymlicka argues that the need for group-differentiated rights is further accentuated because the state is never neutral. Kymlicka is of the view that

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643 Id. at 83.
644 Id. at 84.
645 There can be no quarrel with the proposition that the fundamental founding principle of a liberal State is freedom of choice. See: MAJID BEHROUZL, DEMOCRACY AS THE POLITICAL EMPOWERMENT OF THE PEOPLE: THE BETRAYAL OF AN IDEAL 101 (2006).
646 KYMLICKA, supra note31 at 84.
647 Id. at 109.
648 Id. at 112.
it is inevitable that the ethos and values of the majority culture are reflected in the societal institutions of the nation, to the exclusion of the minority cultures.\textsuperscript{649}

He argues further that a common characteristic that binds together almost all liberal democracies is that they have endeavored to bring about a single and uniform societal culture within their respective territories.\textsuperscript{650} Decisions such as the choice of the official language of the state and the appointment of certain days as national days or holidays are used as examples to back up his argument that the state is not really as neutral as is claimed.\textsuperscript{651} In light of this dominant cultural narrative that is supported by the State, there is thus a need for national minorities to be provided group-differentiated rights. As Kymlicka puts it:

“\textbf{In a democratic society, the majority nation will always have its language and societal culture supported, and will have the legislative power to protect its interests in culture-affecting decisions. The question is whether fairness requires that the same benefits and opportunities should be given to national minorities. The answer, I think, is clearly yes. Hence group-differentiated self-government rights compensate for unequal circumstances which put the members of minority cultures at a systemic disadvantage in the cultural marketplace, regardless of their personal choices in life.}”\textsuperscript{652}

\textsuperscript{649} \textit{Id.} at 51–52.
\textsuperscript{650} \textsc{John SchwarzmanTEL}, IDEOLOGY AND POLITICS 96 (2008).
\textsuperscript{651} \textit{Id.} at 96.
\textsuperscript{652} \textsc{Kymlicka, supra note}31 at 113.
Another very important, and nuanced, aspect of Kymlicka's theory comprises of his differentiation between 'internal restrictions' and 'external protections'. Kymlicka terms external protections as being intended to protect the minority group, and its unique identity, from the impact of external decisions (e.g., the economic or political choices of the majority group) whereas internal restrictions are intended to protect groups from the impact of internal dissention by limiting the individual liberty of its constituent individual members (e.g., the choice of individual members to reject a traditional practice).653 However, it does seem quite evident that these internal restrictions impugn on the cherished liberal ideal of freedom of choice. Kymlicka is of the view that what is necessary to preserve the minority culture is external protection against the majority culture, and not internal restrictions. He explains this view in the following words:

“I will argue that liberals can and should endorse certain external protections, where they promote fairness between groups, but should reject internal restrictions which limit the rights of group members to question and revise traditional authorities and practices.” 654

Kymlicka sums the effect of such a prescription as leading to a resoundingly liberal end result, in the following words:

“In short, a liberal view requires freedom within the minority group, and equality between the minority and majority

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654 KYMLICKA, supra note31 at 37.
groups. A system of minority rights which respects these two limitations is, I believe, impeccably liberal.”

Kymlicka also sought to answer subsequently some of the criticisms that Jeremey Waldron raised against the argument for cultural preservation and the value of minority cultures for its members in the light of societies supposedly turning increasingly cosmopolitan. He accepts the point Waldron makes that there is a widespread exchange of cultural values in the modern world, and that this is unequivocally a positive development. He also admits that liberal legal theory would not permit within its rubric an understanding of culture that views any interaction with the outside world as a danger to the purity of a particular culture. Liberals, he says, do not support the construction of isolated cultural ghettos.

He identifies Waldron’s concern as being that cultural preservation conflicts with the desire for a diverse and cosmopolitan way of life. He however is of the view that Waldron’s ‘cosmopolitan alternative’ is not really very different from the state of things that it claims to be an alternative to. He says that this is because the inter-mingling of cultures, which is truly typical of the modern world, does not involve abandoning one culture before moving to another but can simply be the process of enjoying the diverse cultural

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655 Id. at 152.
657 Id. at 142.
658 Id. at 142.
659 Id. at 143.
660 Id. at 143.
avenues that are provided by pluralistic societies while retaining one’s own culture. Kymlicka states this in the following words:

“The fact that some Quebecois now eat Mexican food and practice Zen Buddhism does not mean that they cease to form a distinct culture, living and working in French-language institutions. It simply means that the societal culture they belong to is an open and pluralistic one, which borrows whatever it finds worthwhile in other cultures, integrates it into its own practices, and passes it on to the subsequent generations.”

Kymlicka therefore characterizes as a mistaken assumption, Waldron’s assessment that what is being sought by national minorities is cultural isolationism. Waldron makes this mistaken assumption, as per Kymlicka, because he seems to assume that the sole purpose of minority cultures seeking group rights is for them to be able to defend the purity of their culture. This is however an incorrect assumption to make because, as per Kymlicka, minority cultures:

“…do not seek to preserve their authentic culture if that means living the same way that their ancestors did centuries ago, unable to learn from other peoples and cultures. They want to live in modern democratic societies, and to share in a common Western civilization. What the Quebecois or Catalans want, for example, is to preserve their existence as a culturally distinct group—always adapting and transforming their culture, of course, but resisting the

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661 Id. at 143.
662 Id. at 143.
663 Id. at 143.
pressure to abandon entirely their group life and assimilate into the larger society." 664

He concludes the response to Waldron by stating that minority cultures wish to be cosmopolitan and to partake of the benefits that can be accrued by tapping the diverse cultural avenues that interaction with other cultures opens up.665 However they so wish to be so cosmopolitan without acquiescing in or succumbing to Waldron’s ‘cosmopolitan alternative’ which calls for the outright obliteration of their distinctive identities.666

Kymlicka’s response to Chandran Kukathas may also be briefly considered. He says that in so far as Kukathas’s theory is based upon mere toleration, it is too feeble to count as a distinctly liberal theory.667 He says that this is the case because if mere toleration, in the absence of autonomy, was the benchmark for a truly liberal state of affairs then even conservative, theoretical and patriarchal societies such as the Ottoman Empire would be classified as liberal, and which is ex-facie absurd.668

Having seen Kymlicka’s theory of the compatibility between liberal legal theory and national identity, reference may also be made to the writings of

664 Id. at 143.
665 Id. at 143.
666 Id. at 143.
668 Id. at 143.
David Miller that deal with the subject of nationalism, wherein he makes certain important complementary points.669

(ii) Miller’s ‘soft’ nationalism

Miller takes issue with, what are in his words, certain misplaced beliefs about nationalism in contemporary liberal though. He seeks to debunk two commonly held views beliefs about nationalism. These two beliefs can be defined as under:

Firstly, that the idea of nationalism, though having significant worldwide influence, is more of an emotional or subjective sentiment and therefore it is not possible to view it through the prism of rationality or to subject it to rational argument.; hence there is no purpose that is served by attempting to construct a political theory on the edifice of such a fluid and non-objective value.670, and

Secondly, that nationalism lends itself to right-wing extremism and is inimical to freedom and liberal values.671 Therefore, all right minded liberal persons are called upon to resist and fight the advent of nationalism, in as much as if it could be somehow obliterated then the world would be instantly transformed into a much better and safer place.672

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669 See: MILLER, supra note33.
671 Id. at 409.
672 Miller, supra note670.
These two beliefs are bound together by their shared understating of nationalism being a universally immutable and concrete manifestation in terms of the actions and values that it promotes. Against this notion, Miller argues that the concepts of nationality and nationalism are more varied and flexible than it is generally believed, and therefore care must be taken to see that acceptable variants of nationalism are not en-masse rejected on account of their perceived association with the more extreme and dangerous variants.

He says that he wants to embrace a ‘softer’ vision of nationalism than the widely understood ‘hard’ formulation which suggests that service to one’s nation is the most fundamental and over-arching duty that is owed by the individual person and that the said duty subordinates all other global or local associative links and loyalties. His vision of what nationalism should be understood to mean comprises three interconnected claims, which are as under:

First, it is not undesirable or illegitimate for an individual to construe his nationality as an important part of his personal identity. The logical corollary being that any stated desire to protect this national identity from extermination or devastation by external sources is also not irrational or something to be condemned.

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674 See further in this regard; POOLE, supra note171.
675 Miller, supra note670 at 410.
676 Id. at 410.
Second, since the normative basis of national identity is acceptable, nations that are constructed around individuals with this shared attachment to a nationality represent legitimate communities. On the basis of this shared attachment, it is permissible for the resulting nation, as also its constituent members, to exhibit special concern towards, and make provisions for the welfare of, the members of this national community even though there may be foreign persons or communities who have a greater necessity for these resources.  

Third, with this shared attachment and shared national identity also comes the corresponding right to be able to take independent decisions and to be able to run the affairs of the nation as per the conception of what is right and wrong. This right can be manifested in the form of varied frameworks and institutions, all of which should at their core guarantee the right to self-determination.

He also makes takes issue with the argument that posits the rapid whittling away of national identity in the era of the global-village and of interconnectedness. He is of the view that not only is the case being made by the aforesaid argument plainly overstated, yet further the argument is made within a context which seems to presuppose that global inter-connectedness in the 21st century is the first major challenge that nationalism has faced, and

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677 Id. at 410.
678 Id. at 410.
which is plainly wrong in as much as nationalism has at all times had to contend with rival associative links like religion and class.\textsuperscript{680} He says further that national identities are important from the point of view of marginalized and minority groups as well because it creates a common table of citizenship around which these groups can congregate and claim, as a matter of right, equal treatment from their majority compatriots.\textsuperscript{681} Miller’s ultimate conclusion is that instead of actively seeking to supplant national identity with untested and inadequate replacements, the focus should be on constructing forms of national identity that are respectful of the existence of various kinds of obligations, both global and local.\textsuperscript{682}

(iii) Mitnick’s rebuttal of Barry

In a similar vein to what Kymlicka and Barry argue, Eric J. Mitnick has also stressed upon the critical relationship that exists between the provision of group differentiated rights and individual freedoms. Mitnick lays out his disagreement with the contrary view in a searing and detailed review of Brian Barry’s book on the subject of multiculturalism titled ‘Culture and Equality: An Egalitarian Critique of Multiculturalism Culture and Equality,’\textsuperscript{683} which book and Barry’s views contained therein, have been briefly discussed in the preceding part of the present chapter.

\textsuperscript{680} Miller, supra note670 at 419.
\textsuperscript{681} Id. at 420.
\textsuperscript{682} Id. at 420.
\textsuperscript{683} BARRY, supra note28.
He says that freedom to practice and adhere to the traditions of one’s religion is very central to the existence of individual persons.\footnote{Mitnick, supra note32 at 539.} However, the argument that is put forward by the opponents of group differentiated rights and cultural preservation, is that such practices can be accommodated by liberal legal systems only if they achieve some general measure of acceptance and support in the wider society.\footnote{Id. at 539.} If this general level of acceptance is non-existent, then the liberal state ought to ignore any claims for accommodation of the said practice. He notes that if this argument is accepted, then it amounts to a \textit{Fait accompli} against group differentiated rights and cultural preservation in as much as the claims made by a marginalized or numerically inferior minority group would then have to pass muster with the subjective will and disposition of the majority group or community. This represents an undue and debilitating deference to majority will.\footnote{Id. at 540.}

He then attacks the argument that rights can only be conferred on individuals and not on groups themselves. The rights that individuals enjoy, often have the foundation of their grant in the membership in a particular group or community. Yet further, there is a very intricate and nuanced relationship between individual bearers of rights and the groups that they constitute.\footnote{Id. at 545.} He says that in most contexts it is possible to see that the rights that have been bestowed upon individuals can be ascribed to their membership within

\footnotesize{\begin{flushleft}
\textsuperscript{684} Mitnick, supra note32 at 539. \\
\textsuperscript{685} Id. at 539. \\
\textsuperscript{686} Id. at 540. \\
\textsuperscript{687} Id. at 545. 
\end{flushleft}}
a wider community or political group, for instance the element of citizenship.\textsuperscript{688} Additionally, even the most strident opponents of group differentiated rights and cultural preservation do not deny the fact that certain legal or policy measures might affect certain communities or groups in a far more harsh manner than it affects others, and therefore when such a situation is an uncontested reality then it cannot be said that a liberal state should be completely blind to the existence of such a patently unequal burden being imposed on some of its members.\textsuperscript{689}

Also critiqued is the argument that a lot of the practices which are defended as being worthy of protection on account of religious prescription are in fact not religiously mandated. He says that this argument cannot be countenanced because what is ultimately being sought for is the proscription of a certain activity, which is otherwise available to the members of the majority within their cultural contexts.\textsuperscript{690} Defending such a proscription as being not harsh at all is like saying that censorship laws do not impugn on the right to freedom of expression in as much as people could just not express their opinions anymore and therefore not fall afoul of the law.\textsuperscript{691} When a particular individual cannot engage in a religious or cultural activity that is otherwise open to individuals who belong to another religious or cultural background, simply on account of the fact that the general law for some reason proscribes the contemplated activities of the particular individual, then it cannot be said

\textsuperscript{688} Id. at 545.
\textsuperscript{689} Id. at 550.
\textsuperscript{690} Id. at 551.
\textsuperscript{691} Id. at 551.
with any manner of sincerity that the religious freedom of the individual is not being impugned upon. 692 Mitnick’s view in this regard seems to draw inspiration from a conception of religious freedom that moves beyond mere toleration and aspires for genuine cultural pluralism. 693

He further criticizes the stand that since cultural rights are particularistic and permanent these cannot be countenanced by liberal justice. He is of the view that special measures that are intended to assuage universally expressed disadvantages, such as disability, cannot be said to have been successful in permanently eradicating these disadvantages. 694 He says that this indefinite time frame of operation is something that is shared by most social and economic affirmative programs and so there is nothing temporary or transitory about them. 695 Hence gauging the validity of measures on the basis of their purportedly permanent or temporary nature is, in his view, demonstrably incorrect.

He also takes issue with the other part of the argument i.e. by which cultural rights are characterized as permanent. He says that it is incorrect to presume that minority communities will always be in contestation with, or aggrieved by, the wider norms that the state promotes. This is because claims for exemptions or differentiated rights from minority groups and cultures are

692 Id. at 552.
694 Mitnick, supra note32 at 554.
695 Id. at 554.
going to exist only as long as there exist general policies or legislations that contradict and proscribe their own values and norms.\textsuperscript{696} It could also be said that the argument that is being critiqued over-looks the internal heterogeneity of minority discourse and the fact that different minority groups are not always on the same page about the norms and values that deserve to be protested against by them.\textsuperscript{697}

A crucial argument that Mitnick makes regarding the deep relevance that religious and cultural ties have for individuals may also be noted. He says that the inclinations and thought processes based on cultural or religious beliefs are far more fundamental to the make-up and identity of an individual person than mere personal preferences, which can be as simple or frivolous as say the choice of one mobile phone brand over the other.\textsuperscript{698} Whilst preferences can be summarily rejected as not being worthy of state protection premised upon group differentiation, the same cannot be said of beliefs which are in fact worthy of such recognition and protection.\textsuperscript{699} He surmises by saying that it should not be forgotten that the foremost liberal principle is that every individual should have the maximum freedom, and the ability to pick from a wide avenue of options, when deciding his or her conceptualization of the good life.\textsuperscript{700}

\textsuperscript{696} Id. at 554.
\textsuperscript{698} Mitnick, supra note32 at 557.
\textsuperscript{699} Id. at 557.
\textsuperscript{700} Id. at 557.
5.5 **THE LIBERAL NATIONALIST ARGUMENT**

It can be seen that both Kymlicka and Miller, and to a certain extent Mitnick, have attempted to rescue nationalism, or group affiliation, from its status as a cultural anachronism that is obsolete in today’s liberal world. They do so by inter-linking national or group identity with personal identity and building a narrative for the legitimacy for actions and rights based on group membership. Their theoretical outlook therefore builds space for a possible support of cultural preservation within liberal theory. This broad theory, that Kymlicka and Miller are advocates of, has been tagged under the rubric of ‘liberal nationalism’.

The liberal nationalist argument can thus be said to comprise of four principles components.\(^701\) These are as under:

*Firstly,* the argument affirms that liberalism as an idea is most concerned with individual freedom and autonomy.\(^702\)

*Secondly,* the argument follows on and seeks to bring about a conducive environment in which individuals can partake of the values of freedom and autonomy.\(^703\) This element focuses on the importance of having a wide range of meaningful options to choose from. This has twin implications; the individual must have a personal and autonomous understanding of what he

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\(^702\) *Id.* at 5.

\(^703\) *Id.* at 5.
or she holds dear, and then there must be at least some options, amongst the otherwise larger range, that have value for that individual on the basis of this personal and autonomous understanding. The complete lack of options or the lack of options that have value for the individual on the basis of his or her personal and autonomous understanding of what is considered dear, would mean that there would be no possibility of living a good and fulfilling life as per the vision of the individual.\textsuperscript{704}

\textit{Thirdly}, the argument follows on and attempts to make the case that the presence of varied options would necessarily assume the existence of a certain culture and it is through the medium of this particular culture that these varied range of options are made accessible to individual persons.\textsuperscript{705}

\textit{Fourthly}, the argument reaches a logical conclusion by stating that since it through the means of national cultures that these varied range of options are made accessible to individual, there is thus a strong motivation for the State to protect and preserve these national cultures for the sake of its citizens.\textsuperscript{706} If the state neglects to do this, and a particular national culture is suppressed or obliterated as result, then the members of that culture would suffer the debilitating consequences of a severely reduced range of options from which to choose from in order to live their daily lives in a fulfilling manner.\textsuperscript{707}

\textsuperscript{704} Id. at 5.
\textsuperscript{705} Id. at 5.
\textsuperscript{706} Id. at 6.
\textsuperscript{707} Id. at 6.
It is important at this stage to also note the differentiation between liberal and illiberal nationalism. While liberal nationalists support and promote an understanding of nationality that is more informed by the aspects of culture and language, and as operating within a liberal constitutional state; illiberal nationalists on the other hand inform their understanding of nationality in terms of religious or genetic identity, in the backdrop of an authoritarian state.\footnote{708}{Michael Lind, \textit{In Defense of Liberal Nationalism}, 73 FOREIGN AFF. 87–99, 88 (1994).}

Having analyzed the basic precepts of the liberal nationalist argument, it can be seen that it borrows certain core ideas in making its point, particularly the idea of the requirement of the need for a range of options and the idea of the necessity to be able to lead a fulfilling life. Seen in this light, liberal nationalism owes a large part of its justificatory argument for group-differentiated rights to Joseph Raz and Ronald Dworkin. These two connections may now be consider in some detail.

\textbf{5.6 RAZ AND THE NEED FOR AN ADEQUATE RANGE OF OPTIONS}

From Joseph Raz, the liberal nationalist camp derives the duty that the state owes to its citizens to provide them with an adequate range of options. Raz identifies three ‘conditions of autonomy’ that must be fulfilled for the agent, or citizen, to be able to lead an autonomous life which are; ‘appropriate
mental abilities, adequate range of options, and independence’. While referring to the appropriate mental abilities, Raz means that the individual person must have a bare minimum level of understanding and rationality, so that the individual person is able to not only determine what is that he or she wants in life but also that individual person must be aware of what exactly is needed to be done in order to achieve the ends that are desired. By adequate range of options, Raz mirrors the liberal nationalist conception in this regard when he says that every individual should have a wide range of options to choose from while determining the course of the life that he or she wants to live. By independence, Raz means that the individual should be truly free to choose between these various options and that this choice should not be influenced or colored by coercive interference or manipulation of any kind by external forces.

These three aforesaid conditions tie in with Raz’s wider idea of what constitutes a valuable life and of individual well-being. Raz’s basic conception of well-being is that an individual should be the master of his or her own fate in the sense that he or she should have ultimate, and uninfluenced, freedom to decide how life should be lived, and this choice should be made not within the confines of one or two options, but should

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710 *Id.* at 5.
711 *Id.* at 5.
712 *Id.* at 5.
instead be made amongst the presence of a wide range of options.\textsuperscript{714} However, Raz makes clear that the range of choices should be qualitatively substantial and diverse as well. The options themselves should not be frivolous, and should instead be real and substantial.\textsuperscript{715} For instance, the choice between brands of a popular soft drinks, though a choice in the strict sense of the term, would not amount to a substantial set of options by which a meaningful life could be lived.\textsuperscript{716} Apart from frivolousness, options are also meaningless if they do not offer anything different under the surface and are too alike.\textsuperscript{717} Yet further, it is also an eminently unacceptable situation if the range of choices are not morally acceptable ones.\textsuperscript{718} For instance, asking an individual to choose between either killing another human being or in the alternative to pledge his vote and support to one political party for the rest of his life would not amount to a true range of choices.

Tied in with these three aforesaid conditions, are also three corresponding duties that are essential to promoting autonomy, which the state must perform. The first duty is the negative duty to refrain from coercively interfering with individuals.\textsuperscript{719} The second duty is a positive duty and stipulates that there must be assistance extended to individuals to help them develop and nurture the essential perquisites for leading a good life.\textsuperscript{720} The

\begin{footnotesize}
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\item Moraro, \textit{supra} note709 at 5.
\item David J. Blacker, \textit{Democratic Education Stretched Thin} 60 (2007).
\item \textit{Id.} at 60.
\item \textit{Id.} at 61.
\item \textit{Id.} at 61.
\item \textit{Id.} at 11.
\end{enumerate}
\end{footnotesize}
third duty is also a positive duty and requires that an adequate number of
different formulations or options for leading a good life are made available
to the individuals.\textsuperscript{721} Raz makes the important point that the definition of
harm would encompass a state of affairs where the opportunities or options
available to an individual are curtailed, and hence the failure to discharge the
two positive duties would definitely inflict harm on the individuals.\textsuperscript{722}

5.7 DWORKIN’S IDEA OF THE GOOD LIFE

The emphasis that Raz places on the options necessary to lead a good life
also finds resonance in Ronald Dworkin’s conception of the good life.
Dworkin suggests that the good life is one that is so endorsed by the person
who is seeking to live, or is living, as per that particular vision of the good
life.\textsuperscript{723} The good life is one that is constituted by a person doing what he or
she himself or herself critically believes that he or she ought to be doing and
this personal endorsement is therefore constitutive of leading a grand life.\textsuperscript{724}
Dworkin relies here on the liberal idea of ‘critical well-being’ as per which
an individual’s own view of what is valuable and representative of his or her
well-being, trumps all other external considerations.\textsuperscript{725}

\textsuperscript{721} Id. at 11.
\textsuperscript{722} Id. at 11.
\textsuperscript{723} STEPHEN GUEST, RONALD DWORFIN 301 (1991).
\textsuperscript{724} Id. at 301.
\textsuperscript{725} Id. at 301.
It is important to note however that by ‘well-being’, Dworkin is not referring to basic goods such as food and shelter in as much as these resources can be termed as ‘endorsement neutral’ i.e. irrespective of whether the individual endorse them, they nonetheless are important for the individual’s welfare.\textsuperscript{726}

Therefore, the emphasis on endorsement is only to be seen in the context of the elements of life that require some form of a subjective evaluation.\textsuperscript{727}

Dworkin further elucidates the concept of a ‘good life’ by stating that what matters is the subjective value of the life that the person living it has of it himself or herself, and not the impact that the life has in real terms upon the world. Dworkin here makes the crucial point that the ‘good life’ is not something to be objectively measured based on the ‘product value of living’ but rather it is the subjective satisfaction that the person garners from its performance, irrespective of the result, that matters. It would be apt to reproduce an extract from Dworkin’s book, ‘Justice for Hedgehogs’\textsuperscript{728} where he elucidates upon this aspect in the following words:

“We may count a life’s positive impact – the way the world itself is better because that life was lived – as its product value…

…It is difficult to find enough product value in most people’s lives to suppose that they have meaning through their impact. Yes, but for some lives, penicillin would not have been discovered so soon and Kind Lear would never have been written. But if we measure a life’s value by its

\textsuperscript{726} MONICA Mookherjee, Women’s Rights as Multicultural Claims: Reconfiguring Gender and Diversity in Political Philosophy 143 (2009).
\textsuperscript{727} Id. at 143.
\textsuperscript{728} RONALD DWORKIN, Justice for Hedgehogs (2011).
consequence, all but a few lives would have no value, and the great value of some other lives – of a carpenter who pounded nails into a playhouse on the Thames – would be only accidental. On any plausible view of what is truly wonderful in almost any human life, impact hardly comes into the story at all.\textsuperscript{729}

5.8 \textbf{VIEWING LIBERALISM AND NATIONALISM AS COMPATIBLE}

This emphasis on autonomy and on choosing one’s own path in life from a diverse range of options, which is a gift of the liberal tradition, is therefore extensively used by liberal nationalists to argue in favor of their standpoint. A concise enunciation of the liberal nationalist approach on this issue can perhaps be best expressed in the broad formulation that the exercise of individual autonomy is not fully possible in the absence of national cultures.\textsuperscript{730} The reason why the national cultures are so important is because they effectively mediate the individual’s inter-action with the range of choices that he or she must make in order to lead a fulfilling life. This mediation is in the sense that the national culture provides the ‘evaluative criteria’ by means of which the individual can gauge and give varying values to the distinct options that are placed before him or her by the larger society.\textsuperscript{731} National cultures in this sense can be said to play the role of incubators which equip individuals with the tools necessary to be truly autonomous by bestowing upon them ‘standards of value’.\textsuperscript{732} Therefore,

\textsuperscript{729} Id. at 198.
\textsuperscript{730} ANNA STILZ, LIBERAL LOYALTY: FREEDOM, OBLIGATION, AND THE STATE 140 (2009).
\textsuperscript{731} Id. at 140.
\textsuperscript{732} Id. at 140.
national cultures are an important part of the liberal project. Though it can be argued, as Jeremy Waldron does, that this valuable role played by culture only establishes the need for some semblance of it to be around, perhaps in a hybrid or mixed form, and does not provide the justification for the preservation of a specific kind of culture. The liberal nationalist response to this argument is that in the real world individuals are deeply rooted within, and tend to be identified by, the cultures which they are members of and therefore the obliteration of this culture or its assimilation into another causes severe harm to the members of the particular culture.\textsuperscript{733}

Supplementing the argument that liberal nationalism draws on liberalism’s most basic tenets, it has also been argued that several of the practices of significance in contemporary liberal states have in fact been built upon nationalistic edifices.\textsuperscript{734} Yael Tamir points out that the allegiance that liberals display towards their government is not because of its demonstrably innate goodness or its status as the most just government in the world, but seems to be born out of the associative links of political community.\textsuperscript{735} She further states that the liberal welfare state is concerned only with ensuring adequate resource allocation to all of its own members, and is mostly unconcerned with the requirements and needs of individuals who are non-members even though such persons may have a demonstrably greater need.\textsuperscript{736} Tamir seems to mirror a part of David Miller’s conceptualization of nationalism when she

\textsuperscript{733} \textit{Id.} at 140.
\textsuperscript{734} CHAIM GANS, THE LIMITS OF NATIONALISM 33 (2003).
\textsuperscript{735} \textit{Id.} at 33.
\textsuperscript{736} \textit{Id.} at 33.
says this. Tamir therefore surmises that the only explanation for the aforesaid practices is that liberal theory indeed incorporates a significant part of nationalist thought. While trying to encapsulate the basic philosophy of Tamir’s conceptualization of liberal nationalism, it can be said that it:

“…combines a commitment to personal autonomy and individual rights with the importance of membership in human communities in general and national communities in particular. By using terms of communitarian discourse as a stepping stone, she hopes to seek a union between nationalism’s positive aspects like belonging, loyalty and solidarity and liberal ideals like personal choice, reflection and autonomy.”

Moving forward with this thought process of the possibility of a compatibility between nationalism and liberalism, it can be seen that there is a growing consensus that not only is there a harmony between liberalism and nationalism but they in fact strengthen and fortify each other. Kok-Chor Tan says that these ideas are mutually reinforcing for the reason that just as nationalism needs liberalism to modulate and temper it, and to draw certain moral boundaries for it, in the same way nationalism also does liberalism the great service of providing its individual members an environment or a culture within which the core liberal values such as individual autonomy can be most efficiently realized.

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737 Id. at 33.
739 Kok-Chor Tan, Nationalism and Cosmopolitanism, in THE COSMOPOLITANISM READER, 176 (Garrett W. Brown & David Held eds., 2010).
740 Id. at 176.
The most interesting point that Tan makes is in regard to the dynamic between cosmopolitanism and this newly postulated combination of liberalism and nationalism. He says that there can be two responses that can be provide by the proponents of cosmopolitanism when faced with the supposed dichotomy of a liberalism that has embraced certain tenets of nationalism. The first response is outright rejection of this nationalism embellished liberalism. However, the second response can be one of acceptance, characterized by a recognition of the reconciliation and coming together of these seemingly distant concepts. He surmises that the second response is the valid one. The important reason that he provides for having arrived at this conclusion is that if cosmopolitanism outright refuses to accept the intrinsic worth of certain particularistic attachments that individuals hold dear of their own violation, then such a cosmopolitanism is implausible and not grounded in reality.

Having analyzed the wider ideals that form the bedrock of liberal nationalism, it can be seen that the arguments that are propounded both by this theory, and its opponents, are structured primarily within a western jurisprudential and philosophical context. However, deriving an overwhelming amount of the jurisprudence on a subject from certain specific channels, no matter how rich and varied, often comes with the attendant danger of the possibility of obscuring or ignoring alternative perspectives.

741 Id. at 177.
742 Id. at 177.
743 Id. at 177.
744 Id. at 177.
and viewpoints that emanate from different cultural contexts and legal and political traditions. How then can this issue be examined from a more non-western or vernacular perspective, and more importantly, has such an endeavor been made as of yet? This question can be answered in the affirmative, in the light of the work of three scholars, in particular, in this field. Their views and opinions on the subject may now be considered in some detail.

5.9 PAREKH'S THEORY OF RECIPROCAL OBLIGATIONS

The first figure being referred to in this context is Bhikhu Parekh. This focus on his work can be said to at least partly driven by the symbolic fact of Parekh’s roots in the sub-continent by virtue of his birth and early education in India, leading to a different cultural background and context than most participants in the debate so far. It is also driven largely by the fact that Parekh was Chairman of the ‘Commission on the Future of Multi-Ethnic Britain’ from 1998 to 2000.

Parekh is best known for his views on multiculturalism. Though his body of work on the subject is rich and varied, what is sought to be focused on herein are his views on the worth of culture and its value and significance for the individuals that have been born and raised within it. In this regard, Parekh’s

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746 Id. at 359.
enumeration of the ways in which multiculturalism informs our understanding of the issue can be examined. These ways are as under:

First, the cultures that individuals are born into, and raised, in strongly inform their sense of identity and their way of looking at the world. Many of the decisions that individuals make, from vocational choices to choices about personal relationships, are strongly influenced by the values that are ascribed to these choices as a result of the enculturation of the norms and values of their culture or society. He clarifies however that this does not equate to saying that the culture dominates and controls every aspect of an individual’s life or that the individual is reduced to being a mere puppet in the hands of his culture.\textsuperscript{747} The inherent rational capacity in each individual means that the person may well question and revise the influence that his or her culture wields on daily life, and as required reduce or overcome this influence in varying degrees. However, his central argument is that what should not be forgotten is that each individual makes his decision in the context of a certain cultural background, and it is nigh impossible to completely obliterate the impact it has on his or her actions and thought processes.\textsuperscript{748}

Second, the norms and values of each culture in fact represent a certain valid formulation of leading a good and fulfilling life. However, each of these formulations are not perfect; in the sense that they are all limited in their own

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\textsuperscript{747} Parekh, \textit{supra} note 34.
\textsuperscript{748} \textit{Id.}
ways in as much the sheer complexity and diversity of the human experience is difficulty to be encapsulated in or represented by any singular culture, no matter how dominant or powerful or widespread. This does not mean however that each of these cultures, in isolation, can only offer a brutish or woefully inadequate way of living to their members. What it does mean however is that each of these cultures can benefit in myriad ways from exposure to each other i.e. by experiencing new perspectives and values, plugging weakness, reducing tendencies of absolutism etc.\textsuperscript{749} Therefore, not only is it practically impossible in the modern world for a culture to completely seal itself off from others, it is also not desirable or beneficial for the particular culture to do so as well. The seminal point that he makes therefore is that each culture, no matter seemingly insignificant or seemingly alien in its beliefs, has a measure of intrinsic value attached to it and therefore homogenizing tendencies that at their root are driven by a sense of superiority need to be rejected.\textsuperscript{750}

\textit{Third}, it is a gross mistake to presume that each culture is internally homogenous. There is a constant and ever ranging internal struggle and contestation between different streams of thought and ideologies within each culture. This does not mean that the culture is unstable or that it cannot provide its members with a stable identity. It simply means that the culture is vibrant and diverse, and that it is not a monolithic structure that is

\textsuperscript{749} Id.  
\textsuperscript{750} Id.
immutable and devoid of the possibility of transformation and change. He makes the very important point that each culture therefore, when looked at from within this internal lens, is multicultural or cosmopolitan in its own way and imbibes influences and norms from other cultures as well by the process of exchange and interaction. This imbibing of diverse influences does not come about by way of a forced or coercive process, but is instead a natural and organic development that is accentuated by internal forces.751

Parekh proceeds to state that a society should always value and protect its internal diversity and should further ensure that this diversity is used as the stage for a mutually beneficial exchange of ideas and norms between the various cultures.752 What is the most though provoking part of his vision is the idea of the reciprocal nature of the attachment or loyalty that minority communities or groups are expected to owe to the state; in as much as such he says that such loyalty is required to be reciprocated by the state in certain ways. Parekh’s argument in this regard can be said to build up gradually through three distinct stages.

Firstly, he lays down the parameters for a peaceful ordering of society. This peaceful existence is not possible without what he calls the development of a ‘common sense of belonging’.753 He says this belonging or loyalty cannot be based on relatively narrow constructs such as ethnicity, in as much as a

751 Id.
752 Id.
753 Id.
multicultural society is by its very nature too diverse and complex to be accurately represented by such constricted themes. Therefore, what is required is that loyalty must be inculcated towards the over-arching political structure of the society which encompasses all the diverse cultures within its fold and sphere of influence. Though the membership of this political community does not mean that individual members of diverse cultures suddenly achieve a state of uniformity in terms of cultural practices and norms, it however quite importantly ensures that there is the creation of a sense of commitment over and above what is owed to their respective cultures. This commitment is significant because it then leads to the creation of the feeling of having a stake in the political structures of the society amongst the various diverse cultural groups. This stake or sense of ownership and belonging, leads to true membership within the political community. This membership then ensures that the inevitable local disagreements and conflicts do not result in the disintegration of society itself in as much as the various cultures now have a stake in ensuring the continuance of this political community for their mutual benefit.\textsuperscript{754}

\textit{Secondly}, he then goes on to talk about what this commitment to the over-arching political community actually means. He is of the view that such a commitment is something that, despite allowing for differences and disagreements, extracts a basic promise not to subvert the larger interests of the body politic or to threaten its safety and continued existence. There is no

\textsuperscript{754} \textit{Id.}
prohibition whatsoever on contrasting opinions and views even on fundamental aspects, such as public morality and economic and social ordering. However, all that is asked for is that the differences should not escalate to a level where the physical integrity and the continuance of the society itself is threatened, say for example by armed insurrection.\textsuperscript{755}

\textit{Thirdly}, Parekh arrives at the crucial part of his thesis i.e. what the state is required to do in order to ensure such commitment from its citizens. He is of the view that the state is required to give equal respect and value to all of its constituent citizens. This would involve not just the provision of negative protections against harm but also the positive provision of opportunities and resources to be able to lead a fulfilling life. This equal value and respect also cannot be mere lip service but must be reflected on the ground level and in the structural framework of the state as represented in its social, economic and political institutions. This equal treatment should further take into account the inherently unequal status of certain communities and their correspondingly differentiated needs. These differentiated needs then should be remedied, if required, through differentiated policies and measures. This is not a betrayal of the principles of liberal egalitarianism, and instead represents the commitment of the state to ensure the welfare of all those that profess their loyalty and membership to it.\textsuperscript{756}

\textsuperscript{755} \textit{Id.}  
\textsuperscript{756} \textit{Id.}
Parekh’s outlook has been characterized as promoting the vision of a society that avoids the twin evils of separatism as well as rank majoritarianism, while being alive to the particularistic cultural contexts of each of its citizens.  

Parekh’s concern for wider participation and access to justice has also been reflected in his work on issues relating to the global stage. For instance, one may turn to his enunciation and defense of the concept of a ‘globally oriental national citizenship’. Such a type of citizenship has three important components. First, there must be a commitment towards the critical self-examination of the polices of one’s country in order to ensure that even if it cannot contribute significant resources towards enhancing the welfare of humanity at large, it must at the very least, not threaten or compromise the prospects of the global populace. Second, a policy of isolationism should be avoided and there should be awareness and concern about the matters of other nations. Third, there should be a desire for the achievement of a just world order. The aforesaid conceptualization of global citizenship has been characterized as yearning for internationalism as opposed to cosmopolitanism.

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Parekh’s central thesis is that multiculturalism, and the group differentiated rights that it supports, is critical for a just ordering of the state in as much as it is multiculturalism that fosters the ‘common sense of belonging’ amongst minority groups that makes the peaceful existence of the state itself possible. This basic commitment to not threaten the safety and continued existence of the body politic cannot be brought about merely by providing rights in favor of the individual, as the atomistic conceptualization of liberalism might favor, but in fact requires deeper engagements with the communities and group that come together to constitute the State as a whole.

5.10 APPIAH’S ROOTED COSMOPOLITANISM

Continuing with an examination of conceptualizations of multiculturalism that are somewhat distinct from the western liberal tradition of Kymlicka and Miller, there needs necessarily to be a reference to the work of Kwame Anthony Appiah. Born in London, of mixed Ghanaian-English heritage, and having lived for several years in Ghana before returning to England for his studies, Appiah has been described as having lived a life that has transcended race, culture and geography.\footnote{Fletcher Moon, Kwame Anthony Appiah, in FREEDOM FACTS AND FIRSTS: 400 YEARS OF THE AFRICAN AMERICAN CIVIL RIGHTS EXPERIENCE , 95 (Jessie Carney Smith & Linda T. Wynn eds., 2009)}

Appiah says that cosmopolitanism begins with the simple idea that there is a concerted effort that is required to develop ways and means by which
humankind may live together as one.\textsuperscript{761} Appiah notes the long history of cosmopolitanism beginning in the third century, but notes however that cosmopolitanism has achieved a surprisingly rapid ascendancy in the 21\textsuperscript{st} century with the support of globalization.\textsuperscript{762} As per Appiah, in order to better understand the true nature of cosmopolitanism, there is a need to appreciate the two facets that define it. \textit{First}, that obligations that an individual owes to others are not just restricted to fellow members within the local community or even within the over-arching political community but are in fact owed to every single human being irrespective of his or her particularistic affiliations.\textsuperscript{763} \textit{Second}, the facet that the obligation that is owed towards other human beings should not be limited to mere concern for their lives but should also extend to their traditions and norms that truly constitute the experience of living.\textsuperscript{764}

The greatest importance of Appiah’s work for the purpose of the present research lies in his discussion on what it means to have a difference in opinion. He accepts the position that disagreements and differences in opinion are unavoidable, and these not only exist amongst different cultures but also within each one of these different cultures. He says that these differences in opinion occur as a result of the subjective understanding of the terms of the issue at hand, as informed by the distinct cultural contexts that these understandings emanate from. However the existence of such a

\textsuperscript{761}\textsc{Appiah, supra note35 at ix.}  
\textsuperscript{762}\textit{Id. at xiv.}  
\textsuperscript{763}\textit{Id. at xv.}  
\textsuperscript{764}\textit{Id. at xv.}
difference does not embargo an agreement on the wider concept. To better elucidate the point that he is trying to make, Appiah gives the example of the different ways in which cultures may fix the responsibility for the welfare and raising of children amongst generations.\footnote{EXAMINED LIFE: EXCURSIONS WITH CONTEMPORARY THINKERS, 92 (Astra Taylor ed., 2009).} In this regard, he juxtaposes the models of child-rearing being followed by British Society on the one hand, and that of the Ashanti\footnote{A region located in South Ghana to which Appiah traces his roots.} society, on the other hand. He says that in British society, amongst male members within the family, it is primarily the father’s responsibility to take care of his offspring. However, this is not the case with Ashanti society in as much as there the primary responsibility is that of the maternal uncle i.e. the mother’s brother. Viewed from within the confines of the respective societies, these corresponding customs may seem strange and inexplicable. However, as Appiah notes, each of these methods performs their primary function i.e. child rearing, in a satisfactory manner.\footnote{EXAMINED LIFE, supra note765 at 93.}

Therefore, it does not make any sense to insist that only one of these two methods can be correct, in as much as both these methods agree on the core theme which is that of placing responsibility for child rearing on a responsible adult, though they may action the said ideal in different ways. Which one of these ways is preferred or liked more depends on the norms and values of the culture that a person is brought up in.\footnote{Kwame Anthony Appiah, Relativism. Culture and Understanding, in RELATIVISM: A CONTEMPORARY ANTHOLOGY , 492 (Michael Krausz ed., 2010).} Societies might well be agreeing on the universal values at play i.e. in this case, the good

\footnote{EXAMINED LIFE: EXCURSIONS WITH CONTEMPORARY THINKERS, 92 (Astra Taylor ed., 2009).}
\footnote{A region located in South Ghana to which Appiah traces his roots.}
\footnote{EXAMINED LIFE, supra note765 at 93.}
\footnote{Kwame Anthony Appiah, Relativism. Culture and Understanding, in RELATIVISM: A CONTEMPORARY ANTHOLOGY , 492 (Michael Krausz ed., 2010).}
nurturing of children, but the ways in which these values are sought to be achieved can be highly particularistic and dependent on local customs and social arrangements.\textsuperscript{769}

Central to Appiah’s project of understanding difference is also his use of the idea of a taboo. Appiah’s basic point is that each society or culture views certain activities or ideas as repulsive which may be categorized as a taboo for that particular culture or society. Something which might be taboo in one culture might not be taboo in another. For instance, the eating of pork which would be a definite taboo in most Muslim majority states would be a very normal practice in most western societies. Appiah is of the view that a person’s perception of a particular activity or idea being taboo is largely a result of the society that the said person grew up i.e. the taboo is encultured. Therefore disagreement over a taboo, in this context, would not mean disagreement over the belief in the idea but instead is a disagreement over the weight or significance of the value that the two disagreeing persons place on those ideals. As per Appiah, the cosmopolitan view would be that there is nothing wrong in having such a disagreement because no one person grew up the same or retains identical values.

In light of these diverse values, Appiah is of the view that a true cosmopolitan would be accepting of the inevitability of difference, while at the same time being aware of the fact that despite these differences, the shared humanity

\textsuperscript{769} Id. at 492.
and shared moral nature common to all binds people together as one human community.

The validity of Appiah’s theory can perhaps be best understood through the means of the interesting case of the international legal framework surrounding the control of cannabis/marijuana production and use. When a group of counties, led by the United States, sought to label marijuana as a hard drug and impose a blanket ban on its production and supply by means of the Single Convention on Narcotic Drugs, 1961, India led the resistance against such a move on the basis of the socio-cultural use of organic drugs in Indian society.\(^{770}\) There is significant use of marijuana, locally known as *Bhaang*, in Hindu religious functions in India.\(^{771}\) Though the Indian effort did not achieve full success, there was an important concession gained during the course of negotiations in as much as the final draft of the treaty while defining marijuana excluded ‘the seeds and leaves when not accompanied by the tops’ of the cannabis plant therefore leaving open the use of *Bhaang*.\(^{772}\) This exemption has also been replicated in the Narcotic Drugs and Psychotropic Substances Act, 1985 which again spares the leaves and seeds of the cannabis plant from a legal ban.\(^{773}\) Even the penalty for marijuana

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\(^{772}\) Id.

\(^{773}\) Id.
possession is far less stringent than that for hard drugs.\textsuperscript{774} Therefore, in this context, what is ‘taboo’ for the rest of the world is not so for India.

Note also needs to be taken of Appiah’s concept of ‘rooted cosmopolitanism’ which he is credited with originating. Rooted cosmopolitanism rejects a conception of cosmopolitanism that regards other persons with an ‘icy impartiality’.\textsuperscript{775} Appiah attacks an untrammeled universalistic and uniformity driven conceptualization of cosmopolitanism and instead rejoices in particularistic attachments and affiliations.\textsuperscript{776} Appiah’s concept of rooted cosmopolitanism can be said to want bring together the diversity of the human experience under the rubric of a common humanity, without obliterating this diversity in the process.\textsuperscript{777}

Appiah’s views on multiculturalism are also noteworthy. As per him, multiculturalism is a fair counter-weight to the imposition of a dominant culture.\textsuperscript{778} He says that public education should assume a pro-active role in teaching an acceptance, as opposed to a mere understanding, of diverse cultures, and of not elevating a single cultural idea as the sole true one.\textsuperscript{779} He is of the view that in reflecting on these identities, alteration is almost

\textsuperscript{774} Id.
\textsuperscript{775} \textit{APPIAH, supra note35 at xvi.}
\textsuperscript{777} Id. at 187.
\textsuperscript{779} Id. at 85.
inevitable in as much as at least some of the children that are taught about other cultures will not maintain the unquestioning sense of superiority of their own. Appiah’s conclusion is that by teaching with a multiculturalist ethos i.e. the teaching of respect for other identities, what is being achieved is a constraining of individual identities so that individuals from diverse backgrounds may share a single society.

5.11 SANTOS’ SUBALTERN COSMOPOLITANISM

Boaventura de Sousa Santos, a social theorist of Portuguese origin has written extensively on the topic of globalization. He is the proponent of a movement that he refers to as a ‘counter-hegemonic’ globalization, which aims to subvert the domination that global capital exercises over the contemporary world and to eradicate the mass social exclusion that it manufactures in the process. Of particular relevance for the present study is Santos’s identification of contemporary cosmopolitanism as being a project of the ‘privileged’ and of those who can ‘afford’ it. This conceptualization of cosmopolitanism has, he says, only resulted in the continued concentration of power in the hands of a few groups, though these groups employ in this process a concept i.e.

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780 Id. at 86.
781 SANTOS, supra note36 at 459.
782 Id. at 460.
cosmopolitanism, that is supposed to be opposed to the very idea of group benefits.\textsuperscript{783} 

As opposed to this, he says that cosmopolitanism’s purpose should be to defend those persons and groups who have been disenfranchised and excluded by the hegemonic conceptualization of cosmopolitanism. A cosmopolitanism driven by this purpose i.e. to oppose and struggle against neo-liberal and hegemonic globalization, is what Santos terms as ‘subaltern cosmopolitanism’.\textsuperscript{784} This subaltern cosmopolitanism also contains the essence of transnational solidarity that is traditionally associated with cosmopolitanism in general, just that in this case this solidarity is squarely aimed at achieving social inclusion by fighting the hegemonizing forces that threaten it. He welcomes the plurality and diversity of people and ideas that would drive this subaltern cosmopolitanism on a global level, and considers this one of the strengths of his conceptualization of cosmopolitanism.\textsuperscript{785} 

This conceptualization of cosmopolitanism offers a counter-point to the traditionally understood aim of cosmopolitanism. Instead of a cosmopolitanism that aims for a singular uniformity; whether it be a common market, or a world government; this understanding of cosmopolitanism rejects such ‘top-down’ formulations and instead calls for a ‘bottom-up’

\textsuperscript{783} Id. at 460.  
\textsuperscript{784} Id. at 460.  
\textsuperscript{785} Id. at 459.
approach aimed at ensuring social inclusion for all people.\textsuperscript{786} In doing so, subaltern cosmopolitanism also calls for an expansion of the legal sphere beyond individual rights alone and calls for a ‘solidaristic’ understanding of rights that would take into account values and norms beyond just the liberal idea of autonomy.\textsuperscript{787}

5.12 ENVISIONING COSMOPOLITANISM AS REJECTING NATIONALISM AND GROUP IDENTITY

The aforesaid views of the trinity of Parekh, Appiah and Santos diverge from the defense of minority or group rights under the liberal tradition, and in fact posit independent justificatory arguments for the ‘need’ for minority or group rights. All three share this emphasis on the local identities requiring preservation and protection from being overwhelmed and subsumed by a unilateral imposition of values and norms from above.

If the aforesaid argument were to be rejected in the context of cosmopolitanism, and on the other hand an argument were to be made that sentiments of nationalism and group identity are a stumbling-block to the achievement of a cosmopolitan state based on a desirable uniform identity, then what would such a conceptualization of cosmopolitanism represent in


\textsuperscript{787} \textit{Id.} at 15–16.
the real world? Though an easy answer might be that this would lead to the tyranny of majoritarian ethos and norms, perhaps a more practical understanding can be gained by examining some doctrines which seem to largely reject the notion of nationalism and local group identity. The attempt here is not to study these doctrines or world-views in detail. The focus is on scrutinizing their respective relationships with national and group identities.

(i) Marxism

If the normative basis of Marxism as a doctrine is compared to that of nationalism, there is indeed a case for posting an inherent conflict between the tenets of Marxism and nationalism. This is because Marxism believes in the unit of ‘class’ as the perfect unit to mediate its understanding of the world and sees national and local identities as dissolving within, or altogether being irrelevant, within the various classes. These classes, in turn, are defined purely by shared economic interests amongst its members, to the exclusion of other factors such as ethnicity, nationality, language etc.

Marxism therefore roundly rejects nationalism in as much as nationalism seeks to play down class divisions and attempts to build up loyalty and patriotism towards a united nation or society, real or imagined. Marxism views nationalism as a capitalist ideology. Nationalism, seen from this

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789 Id. at 431.
view, misleads and dupes the working class and the poor into betraying their own interests by positing the need for loyalty to an imagined nation or society. Only if this duplicitous nationalism were to be rejected, could there be a global working-class solidarity, rising above national and group identities and uniting against capitalist exploitation. Vladimir Lenin is quoted as saying that in order to bring together the largest possible of workers of each and every nationality for the purpose of this struggle against capitalism, it was necessary to oppose nationalism in all forms, whether it be the nationalism represented by the Tsars or the ‘refined and disguised’ nationalism of the economically dominant class.791 Religion also invites rejection from Marxism on similar grounds, being seen as the ‘opiate of the masses’.

Though it needs to be noted that Marxism is softer on the nationalism that is exhibited by the oppressed nations while resisting imperialistic tyranny.792 This form of nationalism can be tolerated and even supported under Marxism but it is also expected to wither eventually wither away once global inequalities are weeded out.793 There is also the experience of the implementation of Marxist thought in certain countries, such as China, where Communism has been consciously fused with the interests of the nation-state.794

791 VLADIMIR IL’ICH LENIN & DOUG LORIMER, MARXISM & NATIONALISM 6 (2002).
793 Id. at 195.
In large part due to its call for a global identity in order to effect transformative change, Marxism has been considered by many scholars as being aligned with cosmopolitanism. Just like Marxism, it is argued, cosmopolitanism is also a theory that seeks to transcend the narrow divisions of nation and group identity towards a global unity that is meant for the betterment of humanity as a whole.\textsuperscript{795}

(ii) Colonialism

Nationalism can also be said to have a very contentious position within the colonial fabric. This is for the reason that colonization is also premised on the bringing about of a universalization or uniformity as its basic feature. However, unlike Marxism which posits this call for universalization or uniformity as a unification of the oppressed classes worldwide, colonialism posits a universalization of the power and influence of the colonializing state over those that it is seeking to colonize. Colonialism visualizes a political center that controls and dominates far flung territories and seeks to impose its culture and will over the territories so colonized.\textsuperscript{796} Along with this imposition, there is also the creation of economic and political frameworks be means of which the colonized territory becomes dependent, to its own detriment, on the colonizer.\textsuperscript{797}

\textsuperscript{795} WENDY M. SARGENT, CIVILIZING PEACE BUILDING: TWENTY-FIRST CENTURY GLOBAL POLITICS 53 (2013).
\textsuperscript{796} JOHN MCCORMICK, COMPARATIVE POLITICS IN TRANSITION 43 (2012).
\textsuperscript{797} Id. at 43.
However, colonialism does not call for the extinguishment of nationality. Far from it. Colonialism in fact retains national identity in two ways, each as insidious as the other. On the one hand, and which is the aspect that is more relevant for the present study, it enunciates a vision of cultural supremacy whereby the national culture of the colonizer is forcibly imposed over the colonized people with the resultant devastation of their local ways of life.\textsuperscript{798} The usual justification that is provided for this action is that the application of the superior culture is necessary to civilize the local population and rid them of their ‘backward’ practices.\textsuperscript{799} Having upheld this global application of the superior national culture however, colonialism continues to use the devastated local cultures, which have been stripped of much of their vitality, to identify the local population as the ‘other’ and for imposing discriminatory rules and practices.\textsuperscript{800}

Colonialism, and the distinct though related concept of Imperialism, therefore stresses upon the destruction of national identities when the same represent an obstruction to the colonial objective of domination. This destruction of identity is however one-sided in the sense that the colonizing state retains its own national identity which is then posited as supreme and as the obvious alternative.

\textsuperscript{798} Koo Dong Yun, The Holy Spirit and Ch’i (Qi): A Chiological Approach to Pneumatology 30 (2012).
\textsuperscript{799} Id. at 30.
\textsuperscript{800} Christine Horn, Of colonial photographs and cultural resources: The photographic archive of the Sarawak Museum, 4 Trans-Asia Photogr. Rev., 1 (2013).
Seen in the aforesaid light, scholars have warned against the possibility of a cosmopolitanism that overtly focusses on a unified and assimilated identity being nearly indistinguishable from imperialism in as much it would then employ a fundamental characteristic of the latter i.e.

“…a strongly coercive global proximity principle justifying the use of force against those who refuse extensive global interaction.”801

(iii) Globalization

Globalization is viewed by many as being driven by free market capitalism and being primarily concerned with the coming together of national economies, nation states and technologies to a level that has not been seen in human history so far.802 The ultimate aim of this integration, it is said, is the creation of a single global market that would not be controlled or stunted by national identities.803

National identities are seen as being completely irrelevant in the aforesaid scheme of things. The most powerful actors in the global market are multi-national corporations which are marked by their presence and influence in various countries, and their ability to market products to various cultures. On the basis of their economic clout, multi-national corporations are said to be

increasingly replacing nation states as the most powerful actors in the world economy.  

Much has been said about the strong affinity between cosmopolitanism and the process of globalization. Timothy Brennan has attempted to probe the deeper significance of the relationship between cosmopolitanism and the process of globalization. He notes the affinity between cosmopolitanism and globalization. He argues that cosmopolitanism is nothing but a veiled ‘Americanism’ that only serves to provide some sort of a justificatory theory for the establishment of an economic globalization that serves certain vested interests. He is further of the view that cosmopolitanism has been fused or melded together with the project of neo-liberal capitalism, which is actually Americanization in guise, and it does not therefore seek to establish a global uniformity *simplicitor* but in fact seeks to reiterate and solidify the exploitative structures and frameworks of Western imperialism and colonialism. He argues that the new found focus on cosmopolitanism is actually a mere front for American imperialism and for the unmitigated power of transnational capital. Cosmopolitanism is, as per Brennan, being used as a tool by these vested interests for bulldozing and obliterating alternative voices that offer opposition to globalized capital.

805 Ming-Yan Lai, Overseas Filipino Worker’s Tales, or Globalization Discourses and Development, in ON THE EDGES OF DEVELOPMENT: CULTURAL INTERVENTIONS, 112 (Kum-Kum Bhavnani et al. eds., 2009).
806 THE ROUTLEDGE COMPANION TO CRITICAL AND CULTURAL THEORY, 202 (Paul Wake & Simon Malpas eds., 2013).
807 *Id.* at 202.
808 HAMID DABASHI, SHI’ISM 316 (2011).
809 *Id.* at 317.
In much the same light, various scholars have criticized the inherently socially exclusive nature of cosmopolitanism and the fact that it seems to increasingly propagate a ‘white liberal world-view’ rather than attempting any genuine engagement with foreign and contrasting world-views and cultural orientations.\footnote{GLOBALIZATION AND BELONGING, 181 (Mike Savage, Gaynor Bagnall, & Brian J. Longhurst eds., 2004).} Craig Calhoun, for instance, sees cosmopolitanism largely as the product of capitalism and being driven by multinational corporations and their policies.\footnote{Id. at 181.} Similarly, Homi K. Bhabha is of the view that the idea of a global cosmopolitanism is one of affluence and privilege, and seems to conceive of an understanding of development that is subservient to neo-liberal, free-market ideologies.\footnote{HOMI K. BHABHA, THE LOCATION OF CULTURE xiv (1994).}

### 5.13 IS COSMOPOLITANISM INHERENTLY ANTI-NATIONALISTIC?

Having analyzed the moderate and extreme conceptualization of cultural cosmopolitanism, it is evident that such a differentiation can be applied to political and legal cosmopolitanism as well with regard to the claims that they might entail. It is further evident that the extreme or strong forms of each of these cosmopolitanisms would entail a problematic relationship with national or group identities in as much they would be sought to be supplanted by, or assimilated under, the rubric of the universal structures that the strong forms of cosmopolitanism would seek to build. It would be apt to discuss at
this stage as to what extent this relationship is defined by extolling either a strong or weak form of cosmopolitanism.

Kok-Chor Tan has sought to examine in some detail the oft quoted theory that cosmopolitan global justice is inherently anti-nationalistic with respect to its views on national institutions and culture. Tan however argues that once the different strands of cosmopolitanism are clearly differentiated from each other it can be seen that the cosmopolitan idea of distributive justice does not necessarily take an anti-nationalistic stand.\(^{813}\) Tan sets out two different sets of cosmopolitan distinctions. He says that we can distinguish between cosmopolitanism (a) as a moral claim \textit{vis a vis} as an institutional claim; and (b) as a claim about justice \textit{vis a vis} as a claim about culture.\(^{814}\) He says that it is the conceptualizations of cosmopolitanism as an institutional claim and as a claim about culture that have an anti-nationalistic streak and that this is not the case with conceptualizations of cosmopolitanism as a moral claim and as a claim about justice which are not opposed to nationalism.\(^{815}\)

He examines the argument further and notes that the primary reason that cosmopolitanism is seen as something that is fundamentally opposed to any and all claims of nationalism is because it is concerned with the establishment of a global institutional framework or a world state of some

\(^{813}\) \textit{TAN}, supra note37 at 93.
\(^{814}\) \textit{Id.} at 93.
\(^{815}\) \textit{Id.} at 93.
kind.\textsuperscript{816} Nationalism however, is seen as being at the opposite end of this spectrum in as much as it strenuously defends a right to national self-determination, which right can be manifested in several diverse ways.\textsuperscript{817} He quotes Yael Tamir to the effect that what national self-determination emphasizes is the creation of political institutions that members of the particular national community can feel a sense of affinity towards, and a feeling of ownership over, ultimately resulting in the creation of a public sphere in which the national culture may be expressed.\textsuperscript{818} This is achieved by establishing and strengthening certain major public institutions like the education system, immigration/naturalisation policies, official language etc. Such an inherent connection between nationalism and the building of national institutions is well recognized.\textsuperscript{819} It has been said that the creation of these institutions in legal, political and social contexts equates to the erection of a kind of national framework of membership within the nation-state, and that such a process dominated politics in Europe and North America in the late eighteenth and nineteenth centuries.\textsuperscript{820} He therefore says that if one were to understand the cosmopolitan project as calling for the establishment of a world state, then such a cosmopolitanism would obviously be in some kind of conflict with nationalism in as much as opposite

\textsuperscript{816} Id. at 93.
\textsuperscript{817} Id. at 93.
\textsuperscript{818} Id. at 94.
\textsuperscript{819} PAVLOS HATZOPoulos, BALKANS BEYOND NATIONALISM AND IDENTITY: INTERNATIONAL RELATIONS AND IDEOLOGY 148 (2007).
\textsuperscript{820} BRYAN S. TURNER, VULNERABILITY AND HUMAN RIGHTS 51 (2010).
institutional demands of centralization *vis a vis* decentralization would be at play.\(^{821}\)

However, he proceeds to make the crucial point that unlike institutional cosmopolitanism moral cosmopolitanism has never propagated the establishment of a global institutional structure as being a pre-requisite for the coming about of a cosmopolitan condition.\(^{822}\) Moral cosmopolitanism's concern is with the individual person and his/her inherent moral worth, and leaves the questions as to the kind of institutions that should be established to a contextual understanding of how best to achieve equal worth for all citizens in a given setting.\(^{823}\) Therefore, he surmises that it is not really the concern of moral cosmopolitanism to dictate as to how global institutions should be structured, and it is only concerned with the success that these institutions have in ensuring the welfare of the individuals whose lives they touch.\(^{824}\) He makes the critical point as to the possibility of a convergence between cosmopolitanism and nationalism and the lack of an inevitable conflict between them as under:

“….a moral cosmopolitan can as well defend national self-determination if the situation is such that the ideal of equal and impartial concern for individuals is best realised by respecting their claims to national sovereignty. So there is no necessary conflict between moral cosmopolitanism and the idea of national self-determination.”\(^{825}\)

\(^{821}\) Tan, supra note 37 at 94.

\(^{822}\) Id. at 94.

\(^{823}\) Id. at 94.

\(^{824}\) Id. at 94.

\(^{825}\) Id. at 94.
Tan therefore surmises that there is no necessary linkage between moral cosmopolitanism and institutional cosmopolitanism in as much as the moral cosmopolitan conception of distributive justice i.e. that individuals are the ultimate units of moral concern, does not necessarily require the establishment of a world government for the achievement of its goals.\textsuperscript{826}

This is a conclusion that has been arrived at by other scholars as well, because it is quite possible to think of certain global distributive arrangements that could realize the ends of moral cosmopolitanism without the drawbacks of a global state.\textsuperscript{827}

5.14 CONCLUDING REMARKS

It can be seen that the individual is the focal point of concern for liberal legal theory. This focus is motivated by a desire to ensure that the autonomy and free-will of the individual is always upheld and that they are never compromised either by actions of the state or those of other individuals or groups. The understanding of the individual as being the appropriate vessel for the bestowment of valuable rights is therefore based on the achievement of this end result i.e. maximizing individual autonomy and free-will.

\textsuperscript{826} Id. at 94.
\textsuperscript{827} LUIS CABRERA, POLITICAL THEORY OF GLOBAL JUSTICE: A COSMOPOLITAN CASE FOR THE WORLD STATE 30 (2006).
This seems to be far more preferable than an overly communitarian outlook which views individual rights as being subservient to the interests of the group and yet further as emanating from within a social or cultural group and therefore not having an independent existence. Such an approach is inherently problematic in as much as the autonomy and freedom of the individual person is then constantly at the mercy of the group and grid-locked by its dictates.

However, having empowered the individual person with universal rights, does he or she further need to be ‘rescued’ from group identity as a whole? Or in other words, does the provision of universal individual rights provide justification for a legal abandonment of the facets of community and group identity? The answer to these questions must be in the negative. This is for the reason that individuals undoubtedly attach great value to their group memberships. These memberships are not a matter of mere taste or akin to a hobby, like being a part of a wine-tasting club, but go far beyond them. These group identities, such as linguistic, cultural or religious background, are in fact central to the identity of an individual person and his or her way of looking at the world and assessing the value of its myriad offerings.

It therefore needs no gainsaying that a theory of law that posits ‘individual’ welfare and autonomy as its central aim should therefore be required to take into account this ‘collective’ or ‘group’ facet of human identity. The special protections that are required to be given to vulnerable and minority groups
can be legitimately justified on a very ‘liberal’ or ‘individualistic’ footing in as much as the aim is to ensure that their individual constituents do not suffer from the alienation that arises from the loss of their group or its culture. The critics of minority group protections seem to largely overlook this facet of an individual’s identity and mount an extreme emphasis on the individual as an isolated organism. This approach is not only short-sighted, it also does not account for the lived reality of human life. Liberal legal theory in particular, and any legal norm that postulates the importance of individual autonomy in general, cannot therefore be conceptualized as ignoring or forsaking the connected nature of the individual person and its resultant implications.

The same can be said of the cosmopolitan project. As can be seen from the viable incorporation of these collective interests into the cosmopolitan vision by Kwame Anthony Appiah and Boaventura de Sousa Santos, it is very much possible to conceive of a cosmopolitanism that while upholding universal individual rights also respects the value of group identity. This vision of cosmopolitism is therefore respectful of the varying needs of individuals and their particularistic attachments and loyalties, while at the same time also ensuring that the call to a greater humanity is not compromised in the process. Extreme conceptualizations of cosmopolitanism that deny any possibility of the aforesaid synergy are therefore guilty of an inherent hegemonic streak in as much they presume a non-existent similarity in the needs of all human being without leaving any scope for autonomous or differentiated visions. Such conceptualizations of cosmopolitanism also bear
strong resemblance to hegemonic doctrines like colonialism in as much as they reject localized national identities and stress on the supremacy of some higher ultimate power or value. They also overlook the fact that minority rights, when they offer an avenue for cultural preservation, are geared towards preventing the outright obliteration or extinguishment of a group or community and its way of life, and are not meant as shields against new ideas or of the possibilities of interaction with other groups and communities.

It is however important to note that in order for the aforesaid statement to be correct, the provision of group rights should also not be of a nature that completely obliterates the universal rights enjoyed by the individual. Therefore, group rights also cannot be permitted to go to the extent of denying to their individual constituents, under the threat of coercion, a right of ‘exit’ i.e. the right of the individual person to leave his or her social or cultural group and to embrace either another group or a hybrid lifestyle. Group identity can also not be permitted to become the vessel of certain basic rights, such as the right to life or freedom of speech and expression in as much as the same must always be bestowed on the individual directly. These two safeguards would help ensure the preservation of a minimum level of individual autonomy and not cripple attempts at genuine and equitable interconnectedness between different groups.

Having analyzed the crucial areas of the debate between cosmopolitanism and minority rights (or as one might say, liberalism and group differentiated
rights) and having examined the views of the foremost proponents of either position, there is now a wider jurisprudential and philosophical context within which a concrete example, for instance a domestic legal system, may be situated and analyzed. The question that requires examination is as to whether a legal system that provides for universal individualistic legal rights, while simultaneously making provisions for minority rights, is a plausible formulation. It would therefore be apt now to proceed to examine this issue in the context of the position that prevails in India.