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Cultural Rights and the Dynamics of Identity Formation: Implications for Human Rights

I Introduction

“An aesthetic of cognitive mapping – a pedagogical political culture which seeks to endow the individual subject with some new heightened sense of its place in the global system – will necessarily have to respect this now enormously complex representational dialectic and invent radically new forms in order to do it justice.” – Fredric Jameson in *Postmodernism or the Cultural logic of Late Capitalism*. It is this trajectory of thought that would be reflected in the discussion at hand. Though, we may begin by asking the following questions.

“Culture”¹ can be taken to be as a term, symbolic of a bearer of cultural traditions and practices which are often found wanting for always a “little more” than their present status. What is it that a culture has that makes it representative enough to be deemed of more “space”², specifically in the context of a multicultural society? Does it need to be granted the space it demands? What is the basis of preference, if at all, of one culture over the other? These are some of the questions that I would attempt to answer herein.

¹ Culture here is taken to be as we understand it in a generalised sense of the term, rather than any implied interpretation of a specific sense. It is as we imply it *prima facie*.

² Space refers to the desired representation; a kind of protective discrimination.

To elaborate and give a further clarification to these questions, I put it in the following manner. Since traditions educate³ each other towards a way of a more peaceful community-building, they bind the members of, not only the same community, but extend their harmony beyond its frontiers. Thus, I would locate the identity of a culture not only in its traditions and practices but also the effects and the imprints⁴ it bears upon the society around which it is thriving. This would lead us to re-locate the cultural identity based upon these reworked and reformulated⁵ criteria.

To begin speaking of cultural traditions is to first place them in a particularistic mode of expression⁶. Each culture bears upon it the bearings of its historical tradition or legacy. In addition, it proposes some practices, some of which become institutionalized over a period of time. And some become a matter of practice even without the institutional recognition. Hence, a culture creates within itself a universal, that is, a universal within the particular culture. This is not to undermine the ‘particularity’⁷ of a culture because essentially each one of them is distinct from the other, in one characteristic or the other.

The ‘culture’ brings with it some forms of rights which are inherent in the individuals, in its concreteness and in the ‘culture’ as such, in its abstractness. The rights are tokens for an individual to exercise their well-being and to be a part of the entire social paradigm in which he/she is located. The ‘abstractness’⁸ within the culture also imposes certain rights

³ The inherent features of a tradition that guides us to develop a mutual respect for other traditions as well.

⁴ The way in which culture itself affects the shaping of the identity; the significant contributions of culture to the emergence of a free and liberal society.

⁵ The new relational matrix arising out of the new equations between the external culture and the internal society.

⁶ An essentialised expression of a culture; a central core on which it can be distinctly called that particular culture.

⁷ The specific particular features which do bear a variance with other specific cultures.

on the individual in the form of social rights or social obligations. An obligation becomes important when individuals possess a mutual right towards the well-being of each other.

It is the common shared consciousness of all individuals within a 'culture'.

To apply the 'mutuality'⁹ outside one culture is the beginning of my problematic. At this stage, we begin by working out the factors which promote Consensus, if at all, to ensure the existence of all. First, we locate the concurrences or conjectures among two or more cultures in order to arrive at the consensus. Then, we understand the differences between them and reach a position which is equally advantageous to all. That 'position'¹⁰ is not absolute, but relative to the context. How to reach the position is one of the larger aims for creating an all-inclusive society, at a consequential successive stage.

Considering the increasing migration and the increased interchange among the communities in the contemporary milieu, there is a need for sustaining the interests of all for avoiding the possibility of a conflict, which resurfaces at any instance of contrasting 'cultures'¹¹ unable to identify the linkages which are hidden among them. The cultural case- studies bring out in greater detail the similarities and differences among them.

It helps us to understand them from a perspective which, though I cannot claim to be different, but genuine and reasonable to gain greater knowledge. The physical proximity is a materialist interpretation of cultures¹², wherein one finds a lot of sameness among

⁸ The inherent abstractness; the inherent cultural practices which are inevitably reflected as a matter of socialisation and naturalisation, within a culture.

⁹ The mutual respect and dignity among personhood, among humanity.

¹⁰ An equally advantageous position of principled distance.

¹¹ When one culture threatens the existence of another; for instance, the ethnic conflicts aptly manifest a case of contrasting cultures.

cultures spread among thousands of miles apart; the practices and styles do bear resemblance in most of the respects.

II Identity, Identity formation and Identity Politics

Identity is a sociological construct¹³. A construct, though not purely sociological, but economical, political, religious, ethnic, caste, also post-modern which originates in factors constant to the environment, but works in a flux over a period of time. It is usually personified, though not always, as animals do have an identity; a wild one. But the pertinent issue at stake is that of a personified identity, useful as a good starting point for the discussion at hand. Identity can be of differing types, as mentioned, could be social, political, economic, religious, linguistic and many more depending upon the context with which it is to be associated. Human Identity, at many times, works in overlapping conjunctures of varying identities manifest in a single personhood. Aspects of an identity vary also according to the geopolitical conditions and the notion of time¹⁴.

The concept of Identity bears significance to the continual theoretical formulations of 'identity' as such, usually leading to a practice of one theory being subsequently challenged by the other. Also, practically, identity changes according to the context defining it as more a dynamic concept in practice than even in theory. In different contexts, identity can be defined in a number of ways. It may be defined primarily according to the socio-cultural and environmental factors that make an identity. In other

¹² An interpretation which lacks a deep philosophical and logical understanding; a superficial interpretation.

¹³ A construct brought about by the dynamics of the society, the societal formations leading to this complex identity.

¹⁴ The concept of Time as delineated by a linear motion.

words, the factors which make a way for the recognition of that particular Identity are the features that operate within a context, in which the identity is located. An Identity comes into being by a small number of contextual factors that add up to that identity. It is an additive phenomenon that makes up for a consolidated identity¹⁵. Though it is not just a summation of factors but bringing together of differently existing contextual factors that lead to an identity. It is ultimately formed out of the mixture of heterogeneous features. Every feature or factor contributes to that Identity though there may always be a variance among the degree¹⁶ to which they exercise their influence. Also, at times, there may be a change in this degree among different factors which may lead to a state of one toppling the other, in the exercise of influence. The contextual features might be, depending upon the context, the features constituting the societal dynamic milieu, the economic upheavals, the ethnic belongingness, the religious connotation et al. These features can be taken to be as constitutive of a society as such, in which the identity is located. The context may be as wider feasible as possible, though for understanding its particular association with the identity, it is relevant to have a closer look at one or two dominant factors that lead up to an existence of this consolidated identity.

The use of Identity in politics is many-folded. One of the prominent among them being the case where identity is misrepresented or under-represented¹⁷, which gives rise to a dire need for using Identity on a political front to bargain for a greater share in power-sharing mechanism. At times, it has also led to the creation of a separate state on the basis

¹⁵ An identity which is a complex mix of adaptations to the different contextual situations in a human life.

¹⁶ The extent to which one of the specific factors accounts for a significantly higher proportion in relation to the others, in the creation of an identity.

¹⁷ The case where identity has not even reached a basic optimum level of being represented.

of specific linguistic identity or an ethnic identity, leading to creation of more separatist demands. It does embark upon a dangerous tendency of the fear of generating more separatist claims¹⁸, leading to a more differentiated, decentralised though a fractured democracy. A centralising force for a unitary policy does become relevant in such a circumstance when certain matters of common concern desire for a more universal and cross-cutting solutions. Hence, Identity works for both, the pros and cons of its contribution to a political system, especially democracy. However, in a totalitarian regime, the position of identity, as such, seems to be stifled by the single authoritarian ruler wherein it is a homological¹⁹ identity, without the existence of other varied identities.

Especially in the contemporary era of immigration, human personhood undergoes a, displaced identity²⁰ wherein his/her identity shifts with the shifting of the physical location, thus bringing about a kind of complex identity. A citizen bears upon certain traditions from the previous country of residence and then accommodates himself/herself to the newly existing circumstances. There is a great attempt to find a middle path of existence which concurs with the existing reality, with a reflection of the past. This, definitely, leads to a distortion of the essential identity, which had been in its existence and leads to a crisis state or situation. A situation where the human personhood being constant, there happen multiple identities overlapping and coinciding at one and the same time. This subsequently leads to the beginning of the dynamics²¹, rather the beginning of

¹⁸ For instance, the creation of separate provinces within a nation, based on language, ethnicity etc.

¹⁹ A homologous identity with a monological character, eliminating all possibilities of cross-cutting dialogical interaction .

²⁰ A displacement of an identity occurs when there is a shift in the context of a culture.

²¹ The motion of dynamics, marked by a change in the nature of identity, wherein an identity is no more an essential one; it changes according to the shifting contextual conditions.

the flux of the inherent conceptual trajectory of identity. This marks as an important landmark point for a number of sultry other trajectories which lead to a kind of cultural displacement, being one of them. It is at this stage that 'identity' enters into a stage of its dynamic evolution of multicultural identity.

A similar instance can be recalled here by referring to this piece of literature by V.S. Naipaul named "The Mimic Men". This novel brings out clearly the dilemmas of cultural displacement which the protagonist of this novel, Ralph Singh faces during the different phases of his life. Rather, it is a cultural experience which he indirectly undertakes in order to later realize the feeling of ultimate disillusionment²² brought about by the shift in the cultural contexts²³ of his life.

Briefly stating, the novel was written in a boarding house in London. It is a retrospect. It is a first-person account of Ralph's life, ranging over his childhood in the fictional West Indian island of Isabella, his university days in London where he meets and marries a white woman. Ultimately, it also depicts his somewhat successful business and political careers back in Isabella. Ralph Singh is a colonial character, an intelligent and sensitive person confused by the plural but unequal society in which he's raised, for whom identity is a primary issue.

However, briefly can be stated the conceptual significance of identity, in the words of

²² The disillusionment brought about the confused and more complex stage of identity formation.

²³ As also Homi K. Bhabha reflects in *The Location of Culture*, the changing character and the paradox of colonial-cultural contexts.

Charles Taylor, in his essay “Politics of Recognition”²⁴. The following can be a good reference point for proceeding with the debate. Taylor, succinctly, puts up a view mentioning how the dynamics of an identity contributes to ‘authenticity’. As he says.....”.....we are all aware of how identity can be formed or malformed through the course of our contact with significant others.....we have a continuing politics of equal recognition.....recognition plays an essential role in the culture that has arisen around this ideal.”

III Culture and Identity: A Relationship

The evolution of an identity is always accompanied by the evolution of a culture. The cultural factors always mould, shape and reshape an identity. An identity is also a more explicit, personified expression of a culture²⁵. The ingredients of an identity are basically derived from the aspects of a culture itself. Culture is something to be understood in the sense of more than a lifestyle. It is a necessary part of a human bearing, including in the first instance traditions which human beings bear upon themselves. The practice of a cultural tradition may change over a period of time but the respect always remains for that particular tradition. It is the acculturation²⁶ that assumes significance in respect of our discussion herewith. Through the means of acculturation, there is a need for reaching a compromise between the old inherent traditions and the newly acquired ones, without losing the respect and dignity for either of them.

Hence, an identity is affected by the externality of culture at any given point of time and

²⁴ Taken from *The politics of Recognition*, in *New Contexts of Canadian Criticism*.

²⁵ One of the important facets of an expression of a culture is the identity, the personified identity.

²⁶ Acculturation refers to an adaptation to the other culture, being, in turn, an integral part of the new culture.

in any given context. The existing political culture of a state, for instance, will affect the identity of a citizen in the nature of the characteristics of the political culture, say political participation, affecting the behaviour of the newly emigrated citizens since the political culture²⁷ of states is at variance with each other. Identity modulates at this point of time though it is not just one factor that reformulates the new identity but a number of sultry other factors that shape or remould the new identity. It is the overarching framework of culture, the extending externality that makes it necessitated also in turn to be affected by the newly emerging identities.

The culture makes an entry into the identity by appealing to its inherent characteristics²⁸, as mentioned above and also some other factors. These factors account for the major portion, in terms of cultural traditions and practices primarily practiced within a specific community, which render it inevitable to enter into the identity. Secondly, though, it might also be the positive effects thrown into gear by an inherent culture that permits an adaptation to a culture rather than being affected by them in the ‘necessity’ dimension. Hence, this leads to a consonance between the two – culture and identity – on the complementarities of culture improvising the identity. This occurs, basically through the doors opened in terms of a ‘thinking’ of an individual, ‘actions’ performed by an individual and the ‘responsibilities’²⁹ undertaken by an individual, wherein his/her identity is characterised by the outer culture which fulfils the desired function. To state it simply, culture completes the functioning of the organism of identity which had parts of

²⁷ Primarily the practice of political participation, political activism etc.

²⁸ The inherent identity in terms of how it evolved so far, being, in turn, complemented by the culture, in its essentiality.

²⁹ The cultural-moral responsibilities, which need to be taken up in wake of the changing circumstantial cultural dynamics.

vacuum, rather to be filled only by the culture. Thus, emerges a direct relationship between the two, in a way, culture directly affects the aspects of an identity, thus moulding it or rather reshaping it to give a substantial sense to it, in a way of ‘completing’³⁰ the identity.

This leads to the new identity, a reformulated identity which is deemed to emerge in wake of the cultural necessities. To put it briefly, a culture necessitates the development of this new identity. This is so because what a culture propounds in theory, the identity performs it in action. This marks the beginning of a consensual relationship between the two, wherein the moment an identity reaches a stage of saturation or becomes static; culture does reshape it to a newer level of operationalization³¹ of the societal functions. An identity does become more used to the dynamic motion of rapid action where the culture lends it the features which make it durable to perform not only in a particular context but across many contexts. A reformulated identity is not dependant on any time conditions or so as it may change according to the need of the hour. By accepting the culture, it makes itself more vibrant and diverse to ensure its viability for as long as it possible. Hence, a culture sustains itself as long as the societal demands find their usefulness with the existence of this particular identity, which is already on its way to become universal³².

Taylor gives us a political ontology that stresses the interactive component of individual

³⁰ By complementing the identity, it completes the identity by making it a more specifically functional entity.

³¹ An operational identity, which due to the cultural interference, becomes fully equipped for dealing with the sultry other societal functions such as socialisation and integration.

³² A universal identity within the particular culture.

identity-formation: As he says "Identities are formed in open dialogue, unshaped by a predefined social script...". To be sure, if identities are formed intersubjectively and – all things being equal -- without a "predefined social script," it would seem that cultural rules and traditions, insofar as they govern interaction and set terms of self-identification, would impinge upon the ideal of authenticity, that is, unless they can be accounted for within this matrix of a struggle for recognition. In other words, cultural influences imposed on participants from the outside would be a form of misrecognition, and only those cultural identifications produced among the participants themselves as part of an ongoing dialogical process³³ would count as authentic cultural substance. This seems to be a fair account of the development and maintenance of cultural goods³⁴ in the context of Taylor's paradigm, but it runs into tension when one thinks about the boundaries of cultures.

Instead of entertaining a concept of culture that circulates and revitalizes itself among cooperating individuals in ongoing dialogue, Taylor does not address the relationship between the development of individual identity to an ongoing development of collective identity, but simply posits cultural substance as a given that can be identified independently of its participants. This leads to a rather absolutist and inaccessible concept of culture, one to which we can ascribe as a singular and homogeneous unity with determinate boundaries. "Cultural claims"³⁵ are left in want for an internal link to the claims of its members, and it is through this detachment that cultural substance comes to be an end in itself.

³³ A dialogical process of "me" vis-a-vis "the other". "I" am recognised only in relation to the "others".

³⁴ The bearers of cultural traditions and practices.

³⁵ Claiming to have a single coherent unity of culture.

In his Quebec example, Taylor makes no assertion that French-Canadian culture develops and obtains its identity in dialogue with Anglo-Canadian culture, and vice versa. If anything, he seems to imply that any identity-influencing interaction would be an intrusion upon French-Canadian cultural identity; Anglo-Canadian culture is only treated as being abrasive to French-Canadian self-determination³⁶. "Creating" individual identities is a different matter from preserving, protecting, or recognizing already-existing individual identities of which a common cultural identification is the relevant part.

As Fred Dallmayr points out in his *Dialogue Among Civilizations* in the following manner, how an interaction between the culture and identity can be applied on a global level, we move forward to the next level of a new emerging identity. He says “ As a result of historical sedimentations, “civilization” is an intricate, multi-layered fabric composed of different, often tensional layers or strands; moreover, every layer in that fabric is subject to multiple interpretations or readings, and so is the inter-relation of historical strands. In addition to this multi-dimensionality, one also needs to recall the embeddedness of civil life in the web of what I call its corollaries or horizontal supplements.”

IV The New Identity

The new identity is characterised by the features, more than its dynamism. It completely changes its nature, according to the new demands of the time and culture, though still retaining the old features on which it is based. The change in this new identity, though gradual, comes over a period of time³⁷, in the way of completely transforming the old

³⁶ The Right to Self-Determination (in the specific sense).

identity; hence metamorphosis, due to which it becomes adept to the new external, - physical, psycho social conditions. Its new features are more diverse depending upon the contextual culture³⁸ which casts an inevitable influence on this identity. One of the foremost, primary features of this new identity, the most significant aspect of it all which characterises it as new is the cultural tag that it puts on in a way of adapting the cultural features which distinguish it from the older one. The cultural identity that emerges therein is marked by the special cultural features of the externality in which the identity is located. As discussed above, it is the varied aspects of the culture – social, cultural, political et al – that distinguish it in respect of the other cultures, the practices in these of the subsets of culture that do create a differential identity in contrast with the other ones. The kind of culture that gives rise to such an identity is the continuation of the already existing culture together with its adulteration or the modulation which rests itself in the identity, giving rise to further scope for its dynamic motion. This identity acquires the new features of the pervasive culture and renders itself to modulate according to this particular culture. An argument can also be made as to place this identity as a primary source rather than as a secondary This is so because this emergent identity is more significant in rendering itself functional to the existing reality of the outer culture. In other words, it is more efficient and functional to work in accordance with the practices of the existent prevailing culture in the outer world. It is a specific functional identity.³⁹

The specific applications of this new identity are demonstrated in the adaptation of the

³⁷ The change, which comes about in stages, over a considerable period of time. Only after a long span of time, can the distinction be noticeable among the two identities.

³⁸ The culture within which it is located.

³⁹ The specific function of the specific culture, the function of cultural norms and practices.

new responsibilities⁴⁰ towards the external cultural society. It is basically an all-inclusive identity. One of the primary aims of this new identity is to make it all-inclusive, rather it emerges as all-inclusive and not vulnerable to any exclusionary considerations. re-invoking the rhetoric that culture, identity are never used in the separatist sense.

Taylor argues that the modern identity is characterized by an emphasis on its inner voice and the capacity for authenticity⁴¹ — that is, the ability to find a way of being that is somehow true to oneself. While doctrines of equality press the notion that each human being is capable of deploying his or her practical reason or moral sense to live an authentic life of an individual, the politics of difference has appropriated the language of authenticity to describe ways of living that are true to the identities of marginalized social groups. Hence, as he explicitly states in his “The Politics of Recognition”, “My identity is defined and located in relation to the other”. Thus, all proper conceptions of the self are dependent on social matrices. In order to understand the self⁴², we must view it both in its relation to the good and in its relation to the other.

This dialogical character, which implies a mutual interdependence, is not antithetical to one's ability to achieve individuality, but is rather a crucial aspect of it. Our awareness of this dialogical⁴³ character, he argues, is a distinctive feature of the modern age, in which we are free to define ourselves and produce an "authentic" relation with the self, and in which we struggle to have our identities recognized in the context of our larger society.

⁴⁰ The new responsibilities towards the new culture.

⁴¹ How authentic is my identity for me, and also, for the others around me.

⁴² My understanding of the self is incomplete without the others' recognition of myself.

⁴³ A continual dialogue between my identity and the other in a society or a culture.

For instance, as Joseph Carens⁴⁴ contends that “Quebec language policies and its official expectations of immigrants are morally defensible from the perspective of justice as evenhandedness because there are the sorts of demands that go hand in hand with a commitment to providing immigrants and their children with equal opportunities in Quebec and with the other rights and freedoms that a liberal democratic political community should provide to its members”.

Going a step further, to recall the words of Stephen Macedo⁴⁵, “while the commitment liberalism to individual freedom and equality is far more easily reconciled with group-based remedies for group-based inequalities than the critics of liberalism allow, the liberal commitment to freedom of association imposes limits on group recognition by insisting on intragroup openness and diversity”.

V Culture, Identity and Rights

Now at this stage, there arises a necessity to institutionalise the newly formed identity.

The question arises as to - why to give this recognition in the form of institutionalisation?

What are the criteria of coding them? Which one shall we place one over the other?

How can they be applied in specific societies? Can they be applied in multicultural societies? In what aspects can they be applied in multicultural societies? How are they useful? How is their application viable? Rather, What is their application ?

⁴⁴ Carens contends this in his book *Culture, Citizenship and Community: A Contextual Exploration of Justice as Evenhandedness*

⁴⁵ Macedo contends this in a chapter on *Liberalism and Group Identities* in the book *Citizenship and Education in Liberal-Democratic Societies: teaching for Cosmopolitan values and Collective Identities*.

Briefly stating Taylor's trajectories, here again, over the conceptual 'identity', who argues for a form of communitarianism, that attaches intrinsic importance prima facie to the survival of cultures. In his view, "differential treatment for certain practices is sometimes justifiable on the ground that such treatment is important for keeping a culture alive". Taylor goes as far as to claim that cultural survival can sometimes support basic individual rights, such as freedom of speech. Accordingly, he defends legal restrictions on the use of English in Quebec, invoking the survival of Quebec's French culture.

Rights play a crucial role in shaping identity by organizing the recognition of self by others and by legal and social institutions. For Hegel⁴⁶, though, "legal rights lead to an abstract type of recognition based on the universality of the law. The concreteness of the person, alongside the respect bestowed by legal recognition calls for the acknowledgement of honour and esteem".

Hence, the resonance of Hegel that I see in debate on cultural rights is in the fact that the whole process of the actualization of the will⁴⁷ can be taken as a foreground for laying the basis for actualization or realization of the conditions of cultural rights. Since, it is through this actualization that the will attains freedom, thus, granting cultural rights actualizes the freedom condition in the individuals of that particular group.

Kukathas makes a direct assertion about the cultural health of ethnic minorities that seem

⁴⁶ Hegel's *Philosophy of Right*.

⁴⁷ The will that moves from the abstract to the actual.

to have suffered over the last decades. According to Kukathas, the communitarians and other critics account a great amount of reasoning for this to “the disdain for liberal thinking” – since it neglects communal interests and favours individual autonomy. As the communitarians put it, there is “no prospect of individuals abandoning their particular loyalties for a universalist humanism”. For Kukathas, however, there is a need to lay emphasis on the fundamental importance of individual liberty or individual rights⁴⁸ and question the idea that cultural minorities have collective rights.

Hence, there is no need to depart from the liberal language as such, for Kukathas.

But, as Kukathas points out, groups are changing with the environment and shift with the political context. Hence, this does not give sufficient basis for the granting of group rights. “Group formation”, Kukathas says, “is the product of environmental influences, and among these environmental factors are political institutions.” Infact, culture adds post facto content to group identity⁴⁹. Also, collectives matter only due to actual individuals and ethical or moral evaluations of a community or a collective are based on actual individuals’ interests.

Furthermore, as Kukathas claims, within a group there is a prevalence of subgroup conflicts and internal differentiations. Differences arise, in the first place, due to the variation in the interests of masses and elites. The congruence of their interests is like a rare phenomenon which is found wanting for any sense of coherence or unity. This, specifically, poses a particular dilemma for cultural minorities seeking self

⁴⁸ The significance placed upon the individual which is more than, and over, the collective.

⁴⁹ The identity of a group as a collective.

determination⁵⁰, as within a minority the right of self-determination for each individual is at different stands.

Hence, Kukathas, in a way puts up a defence of liberal theory, which is generally concerned to avoid entrenching majorities or creating permanent minorities. As Vernon Van Dyke says “Individualism as destructive of minority cultures”, but Kukathas defends the liberal view by stating that since there is a conflict between the whole and individual members there does not come out any coherent or unified set of minority culture, rather cultural communities, at most times also run the risk of running into as electoral majorities⁵¹, creating even further complications for the existence of minority cultures, as such.

As Kukathas puts it that even if cultural communities exist, they exist as voluntary associations. Hence, individuals should be “free to associate: to form communities and to live by the terms of those associations”; and it is this right of the individuals that gives a great deal of authority to the cultural communities.

Thus, cultural groups are not “natural” but rather associations of individuals drawn together by history and circumstance and the group as such has no right to self-preservation or perpetuation, owing to its constantly changing dynamics.

Now, we turn to a more important sub-section of this debate, specifically, which deals

⁵⁰ The Right to self-determination recalled again, herein.

⁵¹ In other words, Group Majoritarianism.

with the defensive liberal theory offered by Will Kymlicka which shows us the nature of liberal theory to be found compatible with a “culture”, in its conceptual manner.

Kymlicka proposes liberalism which gives special weight to cultural membership, and also equal citizenship. For him it is the cultural structures⁵² that provide the context of choice for an individual in that culture. Hence, group interests have their basis in liberal concerns about choice and equality.

Rather, to be clearer, it is the cultural rights that protect individual autonomy.

Kymlicka states his primary aim as the need for protection of the specific cultural “context”⁵³, since the context allows an individual to exercise his own choice consistent with the liberal principles of equality. Some clarification by Kymlicka is provided here when he states that different kinds of disadvantages require different kinds of rights, hence this lays sufficient grounds for special status for members of minority cultures.

Moreover, a theory of special cultural membership or citizenship, rather a liberal theory of special rights protects autonomy of the individual whereas the internal structure of a culture restricts it.

Hence it is the membership in a culture is what enables informed choice about how to lead one’s life. A theory is a deficient liberal theory if it lacks preconditions for making a meaningful choice, in other words which is not a sufficient system of minority rights.

⁵² The organisational structure within which, and under the limits of which, an identity has to function.

⁵³ The protection of a cultural structure.

Thus, the liberal conception of minority rights has to accomplish a two-fold task of first identifying the rights and then imposing them in a culture in order to ensure equality among groups. Following the fundamental liberal principles and the liberal system of minority cultures, there begins a process of dialogue of liberal minority cultures with the more liberal majority culture based on the liberal principles of freedom and equality; hence, it is not “the path of interference” rather the “first step in starting a dialogue”.

The culture, as such, for me, does not have any fixed boundaries to begin with. The history of the world civilizations have shown that even if a culture is static, the boundaries become blurred at any point of time. What constitutes the culture as such is the core, from which diverge other practices of the same like the lifestyles, for instance. If a culture is disadvantaged from a historical injustice, then there are means to rectify it. I agree with Kymlicka when he says that group rights as such need to be accorded in order to rectify the disadvantage. But I disagree with him at a certain point when the problematic starts resurfacing in the light of Group Majoritarianism. Kukathas is right when he says that Kymlicka makes an interpretation of liberal principles, in it's defense but halts after a point of time. He does not take into account the problems arising with a group, in terms of individual differences.

What I will attempt to do now is to rework the debate in this manner. I may take up an example. For example, the one related to immigrants in Europe, say Great Britain. For instance, there is large Indian Community therein. Hence, the moment differences arise between the cultural practices of Indians and the British, legislation has to be initiated to

protect the cultural practices of the Indians. But even if you grant them (as in all Indians the same rights) another issue arises is that of people is belonging to different religions within India. Then the rights granted may favour the Hindu Indians and might not be useful to the Muslim Indians though they may be granted to them in the name of special rights granted to “Indians” as such. Hence, at this juncture Kukathas seems right when he asserts that collectives matter only because of the interests of actual individuals. Also his claim stands right here when he speaks of different disadvantages suffered by the individuals within the group.

But this does not mean that in the name of individual-centric approach, group rights are not guaranteed at all. There are, for instance, many groups, which face disadvantages, and granting them same rights will act in their favour as their grievances, too, need to be redressed. But let’s see the debate if I put it simply in this manner.

Hence, to come back to the debate that we started with, in order to ensure a good healthy environment for the cultural minorities and to ensure the protection of their cultural practices, Kymlicka and Kukathas, both offer a solution at different levels within the liberal framework. Kymlicka offers it in terms of Group or Cultural membership or citizenship, Kukathas even goes beyond Kymlicka, by proposing to see not only group differences as such. But rather the individual differences within a group. Hence, for me, they do not appear at loggerheads with each other but rather can be seen as advocating

different levels of problem-solving where Kukathas goes a step beyond⁵⁴ or ahead of Kymlicka.

However, as a matter of this debate, now we attempt to find ways to tackle them like this.

In a multicultural society, we respect the life and dignity of each and every individual.

Hart invokes rightly the natural right of all men to be free. But Kukathas completes his project by taking into consideration the conflicts which may arise in such a society. Still the problem remains unsolved for me because considering the fact that group identity keeps changing but to settle the matters in their instantaneous capacity, it is essential to legislate in order to avoid the conflicts. The context has to be a liberal wider society because what leads us out of this crisis is the integration of the minorities and assimilating them into the mainstream. At many times, cultural interference may be seen in the negative light but it is important to understand that interference is desired in order to protect the autonomy of the individual and save it from a particular cultural authoritarianism or totalitarianism. This is one point where I disagree with Kukathas when he speaks about “cultural interference”. Kymlicka is partly correct when he mentions it as a “dialogue” rather than interference.

But, to state it more clearly, my position comes closer to Kukathas as he delves deeper into the crisis and for me individual interests are greater than the group interests as the problems do not stop at just granting group rights considering that all individuals face the same disadvantages within the group. There are, as a matter of fact, individual differences

⁵⁴ Since, the problematic goes beyond a collective identity. The individual differences within a group cannot be ignored.

within the group, which might resurface to a conflict-like situation if they, as well, are not granted special rights.

Hence, it might be said that in the process of debates, it comes out even more clearly on what is to be preferred over the other rather than making claims just in the superficiality of social – political terminology. The relation between culture and rights is a delicate one, where individuals cannot be ignored because both, the culture and rights can be realised through the concrete individual. The individual is a part of a culture but nevertheless he realises his potentiality of life through the rights. The community, rather, can be seen is something which is not well-defined with bizarre or blurred boundaries. A group is a step towards a community but moving towards a community should again always be to avoid any entrenching tendency towards a majority community. The existence of a minority community leads even to a greater degree of a continuous state of opposition towards to a majority community, which can explode any time.

Hence, the specificity of a “context” does assume importance even when granting special rights so as the rights are not rendered useless. But another aim could be stated here to be moving towards a greater shared ness, not to confuse this to accord to the liberal mainstream standards, but with the consent of all the individuals which invokes a direct spirit of mutuality of freedom in a true sense.

In the ultimate sense, post-modernists do assume significance because the attribution of figures such as “majority” and “minority” do themselves create the problematic, hence

there is a need to do away with the “subject”. How this can be done is still a riddle in the long run of the formulation of political theory of the contemporary world.

Not to forget at this juncture, the “theory of natural rights” offered by H L A Hart⁵⁵ (one of the major legal philosophers of the twentieth century) who has to say on one essential natural right, for which he makes a conditional assertion in the following manner.

According to him, “If we can recognise the existence of at least one basic or natural right, it is the equal right to liberty, implied negatively as the basis for justifying interference in the freedom of others in order to protect the liberty of all persons.” Hence, Hart advocates the equal right of all men to be free; though as he says, “it is only the conditional assertion that if there are any moral rights then there must be this one natural right.”

In order to state his point in an exemplary form, my freedom may be restricted in order to ensure equal freedom for those around me. Hart, not only justifies the concept of negative liberty but restates it in the form of a natural right. Also, he makes a clarification as to the fact that this concept is to be made distinct from a right in relation to duty. Further justification and clarification theorisation can be understood when he lays moral grounds for “limiting the freedom of another person and for determining how he/she should act.”

He does this by working out the following formulations. First, there is an existence of special transactions or relationships among individuals which they enter into, in a kind of

⁵⁵ Hart states in his “Is there a theory of natural rights ?”

promise. Hence, they shift their moral position “from moral independence to moral relationship”. It is nothing but a voluntary transaction which men/women enter into in order to lay further grounds for “special” rights. These “special” rights are a basis for ensuring a reciprocity among each other in respect of equal freedom. Also, when individuals surrender their rights to another, they partake a part of their capacity of freedom as to assure that all equally enjoy their own capacity to freedom.

Hart, thus accounts for “mutuality of restrictions”, besides promises and deliberations. In other words, a system wherein each follows his/her own restriction in the same and equal manner as the other. This, subsequently, leads to a structure of legal rights and duties, which men/women follow as co-operating members of the political society.

On the other hand, also to mention about the “General” Rights which come into being in their defensive use, primarily, which might as well account for the basic rights to each individual in his moral-rational capacity. “General” Rights are based on the basic premise that all men are capable of choice, invoking rather again the principles of equality and freedom.

Hence, to sum up Hart’s claim, the invocation of his conditional assertion comes out directly in the “General” rights since it brings forth directly equal freedom of all men to act freely according to their choice and “Special” rights invoke it indirectly, by making individuals first, partners in a special relationship or transaction and then exercising it according to the moral relationship. Thus, from a theoretical conjecture, it is the equal distribution of restrictions which leads to equality of freedom. How this conditional claim of Hart lays grounds for Kukathas’ defense of liberalism will be seen in the following

section.

This also calls for different standards of justice based on rights and liberties of the individual to be guarded against the vagaries of group power. The guard in this case is nothing but the political institution, which is also formed by the co-operating members of the political society (invoking HART again here). But not to forget that the formation of institutional mechanisms is contingent upon the significant power of groups within the polity. A neglect of a minority group will lead to a conflict otherwise.

VI Culture and Identity, in relation to Human Rights

Amidst the significance of the institutionalization of the cultural-identity rights, the most prominent among them that emerges is the discourse of human rights. Human Rights, embodied in the spirit of the equal respect and dignity of human beings, safeguard and protect, at its utmost, the cultural identity fabric discussed here above.

As was already stated, with regard to the special coding of the rights in the section above, this is how human rights imply in respect to the aforesaid conditions. Specifically, due to the changed circumstance, the changed cultural condition, it becomes pertinent to protect and safeguard the dignity of the human beings, in their capacity of adapting to the changing shifting contexts. This marks a beginning of the growth of the human rights networks, not only at the local level but also the global one. Before turning to my own conclusions and restating the significant implications for human rights, I would prefer to recall the following two comments by Micheline R. Ishay and Fuyuki Kurasawa.

According to Micheline R. Ishay, “With ever growing flows of migrants carrying different cultural values further and faster, along with the worldwide reconfiguration of economic production, globalisation, for all the dangers it has posed, has simultaneously opened new spaces for the progress of human rights.the formation of global human rights networks, abetted by the revolution in communications, has brought attention to the victims of wars, to the disabled, and to the plight of indigenous peoples.”

As Fuyuki Kurasawa puts it, “the belief that societies should forget the past in order to forgive, and offer an alternative according to which investigations and truth-telling exercises can establish a comprehensive and just record of severe human rights violations in transitional societies.”

VII Conclusion

Hence, at the outset, it can be stated that culture, identity and human rights have a direct co-linear relationship; rather there exists a trajectory among the three, wherein one directly affects the other. Though much has been reflected upon the conceptual connections and the coherent paths of ‘culture’ and ‘identity’, it would be apt here to draw some serious ramifications for the theoretical practical implications of human rights.

At a theoretical stage, it is the core relationship between the culture and identity, the emergence of a new identity and the practical application of the cultural identity that directly fits into the arena of human rights. What all human beings possess in the capacity

of their natural right is what makes human rights feasible for the exercise of the rights by the individuals in the newly existing cultural milieu. To put it into practice, in the other stage, is by finding suitability in the demands put forth by the newly acculturated citizens being met by the human rights institutionalism; primarily, in its capacity to redress the human demands of being accepted by the new culture, the new society. It is the ultimate fabric of dynamic identity formation, the reformulation, which finds consonance in the granting of special privileges, the privileges demanded by the need of the hour, in the form of human rights.

As David Miller says in “Immigrants, Nations and Citizenship”, “Immigration, on a significant scale, is now and will continue to be a significant feature of political life in Western liberal democracies. The intense desire of the migrants to make a better life for themselves (often against the background of intolerable conditions in their home countries) combines with the economic needs of public and private sector employees in the receiving states to defeat populist agitation for highly restrictive immigration controls”. Hence, to meet such a condition, it becomes a matter of primary importance for the existence of human rights, since it suits the criteria according to which immigration takes place, and immigration becomes inevitable, especially in the wake of growing multiculturalism in societies around the world.

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