

# Locating Multiculturalism and the Cultural rights of Minorities

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## Abstract

*Multiculturalism as an ideology implies equal respect and consideration for varied cultural groups and their cultural identity while recognising equality at an inter group level to be its underlining principle. It tries to ensure parity among different cultures by recognising that the individuals and their selves are culturally situated and cultural forms a significant part of their individual self. This paper tries to underline the claims put forward by different minority cultural groups within a liberal democracy in terms of their right to assertion of their culture while seeking its preservation and protection as well. It also tries to understand the various conflicts that emerge owing to the assertion of their cultural rights viz. the tussle between the individual rights and the collective rights, the vulnerability of the inside minorities within cultural groups, the issues of minoritarianism as well as majoritarianism and many more. Further, the paper seeks to address as to how far can we go in terms of justifying the legitimate claim for cultural rights of minorities for self-governance executed in the private sphere while reflecting on the implications of providing such rights to the cultural group for its individual members in terms of honouring the idea of justice and ensuring equality for the individual members of the liberal state. Therefore, it tries to do so by elucidating the theoretical work of Kymlicka, Bhiku Parekh, Sandel and Seyla Habeeb and Okin while also demonstrating the Indian case of claims of religious minorities and their assertion of cultural rights while reflecting on the various possibilities and multicultural paths that can provide a democratic reconciliation to the tussle between the collective and individual rights.*

**Keywords:** Multiculturalism, community, gender, minority culture

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## Understanding the Self through Multicultural lens

Tracing the pertinence of community association and membership, Sandel advocates the communitarian perspective while asserting the significance of community in terms of cultivating and shaping the individual self. He states that communities constitute the individuals who are part of it since who we are is shaped through our moral engagement with the cultural community, we are part of. Therefore, he affirms that what an individual value and how he defines himself is largely a product of the community he belongs to. Therefore, Sandel acknowledges community as valued good demonstrating a moral engagement of the individual. Therefore, according to him, the way of life of a community holds salience and is worthy of being preserved and protected without any prejudices and biases of the liberal democracies and its principles of fairness and justice. Hence, external intervention by the other groups and the state that makes the group values vulnerable is seen as lesser desirable in nature.

Likewise, Multiculturalists like Kymlicka also perceive cultural membership as a valued and primary good in itself that must be recognised by the state. He underlines that individuals constitute a part of a cultural community as well as a political one. Therefore, recognising the salience of the cultural membership, the liberal state should

consider the cultural allegiances as well as the cultural values and background held by its members which must not be overlooked as it can entail a means of disadvantage for the cultural group and its members. He underlines that the various universal principles held by the liberal state should not be uniformly applied to the cultural communities and their way of life as overlooking their (minority cultures) cultural values and ethos would further put them in a state of vulnerability.

Therefore, he advocates special rights to ensure protection and preservation of minority cultures. Besides, he also states that there must be enough scope for internal dialogue within the minority cultural group and if it does not exist, then the liberal state should intervene to hold the democratic principles intact. Upholding the liberal ideals of respecting cultural diversity and ideas while ensuring equal treatment for different cultures, he advocates the concern of external protection for national minorities. Therefore, he embraces the idea of self-governance rights for the national minorities to enable them to define their own ways of living according to their belief system and values.

Communitarian multiculturalists of the like of Bhiku Parekh also understand and inform culture as defining the individual identities. He tries to identify culture not just as giving its members a background facilitating their choices and as an option they can access. He tries to identify cultural membership as a legitimate basis of providing differentiation.

### **Critical engagement with the Multiculturalists**

Giving recognition to the cultural groups and acknowledging the cultural diversity raises certain tensions and problematic aspects as well. Kymlicka embraces and advocates protection and preservation of various cultures without recognising the fact that the culture can be oppressive of the minorities present within the cultural group. The cultural group might have the presence of certain dominant and certain suppressed voices within the group itself. Therefore, giving the minorities the right to preservation and self-governance also raises concerns of justice and equality for the individual members within the group itself.

Therefore, keeping these gender issues into consideration, Susan Okin advocates against the granting of group rights for minorities while asserting that such societies in which minority cultures emerge and are situated are largely patriarchal and gendered in nature. There exist differences in the control that different members of the group exercise and the advantages and power shared by its individual members in terms of men and women.

She further states that the personal sphere and the sexual life of women are central to these cultures with these cultures primarily associated with having their own personal laws incorporating marriage, inheritance and divorce etc. Besides, the members who shall be a part of the public sphere of the cultural community is decided in the private sphere which regulates both the private and public life of the group. Therefore, when the culture expects the women of the group to be limited to the private/domestic realm, the lesser they have the choice and opportunities of being a part of public sphere of the cultural group.

Therefore, she asserts that giving group rights to the minority cultures requires the addressing of the private sphere of the culture where discrimination is reinforced and possibilities of compromising on self-respect exists. Therefore, Okin ascertains the significance of one's social roles within the culture and therefore cautions the state to consider the plight and status of the vulnerable sections within the minority cultures who should equally be considered as worthy of representation and having a voice and thus, having a opinion on the table involving decision making and negotiations with the state.

In the Indian context as well, the demand for special cultural rights for religious minorities specifically the Muslims also creates a similar dilemma of collective and the individual and binaries of minority and majority cultures including concerns of inter group equality as well as intra group concerns for justice. In a pluralistic

country like India, the cultural rights of the minorities were respected by allowing for the preservation of their cultures. It is underlined that all citizens are equal before law in Article 15 irrespective of their religious inclinations while also recognising religion as a significant marker of a person's individual identity as underlined in article 25 giving the right to practice, profess and propagate religion thus becoming the ground of upholding of Personal laws explicating matters related to divorce, marriage, family, etc. During the debates in the making of the constitution concerns were raised by various representatives including Hansa Mehta, Amrit Kaur regarding the position of women within the cultural communities in terms of giving rights to the religious communities. However, the constitution did recognise the right to religion of the individuals acknowledging the cultural diversity evident within the country.

Therefore, in India giving minority rights created two implications within our democracy. First, it introduced community as legitimate subject within the political discourse besides making equality at the inter group level a priority for the state. This created problems in the sense that community's right to culture acquired precedence over citizenship rights of the individuals. Therefore, it overshadowed the concerns of vulnerable voices within the cultures and issues of gender justice in many instances of inheritance, family etc which were governed by the personal laws of the minorities where the state could not intervene.

Religious leaders from Muslim community have time and again opposed the imposition of Uniform Civil Code and further reform in the muslim person laws by the Indian state. Though reforms have been undertaken in the personal law of the majority after independence, However, similar change has been seen with paranoia and apprehensions within the minority community which has overshadowed or downplayed concerns of women within the minority community.

Similarly, the Special Marriage Act of 1954 was enacted to cater to concerns of gender. However, since this could be availed only at the marriage time, due to lack of awareness of this law, the vulnerable would still be in a position of disadvantage being governed by the same community laws. Therefore, in this context various options were put forth including the choice of UCC, internal reformation of personal laws, bringing gender justice laws etc.

The option of having a UCC was largely meant for integrating communities and bringing in uniformity of laws in the creation of a modern nation. It however could not explicitly own the concerns of gender justice and therefore, it was largely capitalised by the majority community to put forth a communal propaganda undermining concerns of gender. It was further explicated and corroborated with the Shah Bano case of 1985 and the Sarla Mudgal case of 1995 where the courts reaffirmed the logic of national integration and therefore did not disconnect the question of unity of the nation from the gender question. Therefore, the electoral realities even in the contemporary times invisibilizes a viable Uniform civil code. Besides, owing to its limited approach, it was largely concerned with the inter group inequalities between communities rather than the question of gender and injustices that were present within the personal laws. Therefore, the ideological notions overpowered the genuine concerns of bringing in a UCC.

Taking it further, the personal laws of communities are problematic as well as the do not provide an equal voice to its individual members. Therefore, it is recommended to have reforms internally within communities as that there isn't a tradeoff between culture and concern for equality by allowing them to have equality without giving up on their culture. It is explicated in the feminist movement in Islam today which questions the interpretations of the Sharia law dominated by a particular school in Islam. Similarly, NGOs by Muslim women e.g. Awaaz e Niswan also put forth the agenda of creating legal awareness and advocating women rights by bringing in women emancipatory texts from within the religion itself rather than the liberal laws of the modern state. Therefore, there is a churning emerging from within the community which is the best way of seeking gender justice and taking care of the vulnerable within the community. However, for that to be a tangible possibility, it is equally significant that women voices are recognised within the group as well as seeking the support of various women in organised

groups to raise their voices. Besides, this change can also be sought by moving beyond the binaries of the self and other created through the idea of majority and minority.

Besides, gender justice laws can also be accessed by the citizens belonging to various cultural groups unless they opt out from it. The proposal of reserve optionality is equally significant in the sense that it would cater to the interests of the internal minorities implying that civil law shall govern the individuals within the liberal state unless they themselves choose to opt for the personal laws governing their community. It would enable those vulnerable within the group to have a choice of being administered under just laws.

## Conclusion

It can be concluded that we need to understand the cultural claims for group rights in terms of the lived realities experienced by religious communities who are distanced from the liberal democratic ideals of citizenship and its sense of association and belonging. Therefore, in order to put their cultural rights into perspective, we need to understand the larger context of politics. Taking the Indian case, with the emergence of Hindutva politics and the fear psychosis perpetuated by the same, seeking reformation in the laws of religious minorities from a majoritarian perspective with the intent of dominating the minority rather than from a gender lens and with the political parties trying to garner support on the same, the quest for reform seems unlikely by the minority community owing their socio economic vulnerability in the larger context of majority. This has further resulted in underplaying the concerns of minorities within the larger minority cultural groups specifically the concerns of women leaving the feminists efforts challenging various discriminatory customs and practices within the minority cultures as insignificant.

Therefore, as upheld by Kymlicka that individuals are both a part of a cultural community as well and the political community of the liberal state, therefore, upholding the principles of democracy and egalitarianism, it must ensure that cultural rights have adequate scope for revision as well so as to ensure that the citizenship rights of the cultural minorities and the minorities within them are not compromised. These cultural minority groups should be allowed to reform themselves from within while also empowering the voices of various marginalised sections within the minorities as well advocating the agency of all its individual members. Therefore, it is suggested that the scope of negotiation and further dialogue should remain open within the internal segments of the cultural group and the external communities and influences as well so as to ensure the accommodation of equality while honouring diversity. This would further substantiate multicultural understanding of various cultural groups and their claims for seeking equality.

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