

Legal Pluralism, Cultural Diversity and Rights of Minorities in Multicultural Society; Revisiting the Rights of Indian Muslims as Minorities to Follow their Personal Laws

Bittoo Rani

Asst. Professor, Department of Political Science
Dinabandhu Mahavidyalaya, Bongaon, North (24) Parganas
bittoorani@yahoo.co.in

Abstract: *The recent decades has witnessed growing scholarly interest in the fact that various cultures in a society merit equal respect. The trend became a significant force during the 1970's and 80's in the American society as various ethnic and cultural groups explored their own history and demanded due respect and recognition. Contemporary liberal democracies face severe challenges from religious pluralism as it poses twin questions as to how the majorities should respond to the religious claims of the minorities and secondly how the minorities should react to the 'so-called' secular states. Challenging the continuing legacy of moral monism in contemporary liberalism, scholars as Bhikhu Parekh, Partha Chatterjee, Will Kymlicka, Charles Taylor, Iris Young and many others have engaged in presenting an ambitious and provocative analysis of the opportunities and challenges that contemporary multiculturalism presents. They offer a nuanced examination of human nature, the essence of cultural diversity and the importance of cross-cultural interaction and present strong defence off why cultural diversity should not only be respected and accommodated but also cherished and fostered as something valuable. These scholars vehemently argue for an open and equal dialogue between mutually respectful cultural communities and suggest that the state reconcile their demands for political unity and cultural diversity. Presenting a radical critique of dominant culture these scholars uphold the need for a debate on society's operative public values.*

The most pressing questions of recent time shed light on the adequacy of a policy of 'live and let live'. The states are confronted with questions as 'how should liberal democratic governments respond to citizens as religious believers whose values, norms and practices differ with the dominant majority? Does liberal toleration fail to give all citizens their due? Do religious and cultural 'others' deserve a more robust form of accommodation from the state in the form of 'recognition'? This issue still remains far from settled as claims and counter claims over the terms of religious accommodation continue to dominate the global political agendas.

Keywords: *Accommodation, Cultural Practices, Dominant Majority, Identity, Liberalism, Minority-Rights, Multiculturalism, Pluralism, Recognition, Religious-Minorities, Religious freedom, Accommodative Secularism*

1. LIBERAL EQUALITY AND MINORITIES IN A MULTICULTURAL SOCIETY

As a philosophical tradition liberalism has always valued the rights of the individual, personal freedom or autonomy and equal human worth irrespective of gender, religion or culture and cultural beliefs and practices. The liberals staunchly entrench the claim that the laws of the country and its public institutions should allow people in living an autonomous lifestyle. Exhibiting oppositional defiance to varying forms of discrimination since its emergence in the 17th century, the main form of discrimination that liberalism opposes is based on religion. Espousing the cause of self-development, liberalism as a historical tradition has stressed on the claim that it is no business of the state to endorse (any) religion. As such, liberalism supports the cause of those desirous of pursuing goals of self-development. Valuing individuality and personal freedom, the liberal democratic states favour equal rights for all citizens irrespective of any discrimination based on race, religion, caste, colour or creed. It is generally assumed that individual differences are best dealt through liberal ideals and principles and that cultural diversity could favorably be accommodated by allowing the disadvantaged and minority groups to pursue their distinctive ends by remaining within the boundaries of common framework of laws.

The question arises as to who all are referred as 'minority and under-privileged' sections of society. In the words of Bhikhu Parekh, "they include such groups as blacks, the ethnic minorities, the indigenous population, the poor, the underclass, the long-term unemployed, large sections of the working classes, the untouchables and the tribal communities. With some qualifications, women too belong to this category. Victims of a long history of exploitation, repression, discrimination and marginalization, all these groups have for generations been denied adequate opportunities for growth and treated as naturally inferiors, almost as if they belonged to a separate species. For women it is a man's world ...; for blacks it is a white man's world, for the poor it is a middle-class world, for the working classes it is the world of the bosses and for the Indian untouchables it is a world of higher castes."ⁱ

Liberal-democratic tradition put the onus upon the state to protect the 'cultural-distinctiveness' of its citizens by providing them the right to protect their own cultural norms, traditions and practices. A liberal democratic-state carries the responsibility of providing to its every citizen equal treatment not only in terms of social goods such as education, healthcare, adequate means of livelihood, healthy environment and the rest but also adequate means to protect their 'religious-cultural heritage'. 'Religious-cultural heritage' includes the right to have belief in any religion of one's choice, freedom to practice one's religious beliefs and practices, follow one's traditional customs and rituals, observe one's religious tenets in everyday life, maintain and protect institutions peculiar to one's religious beliefs. In a multicultural society, the state often gets entangled in disputes of moral nature when fulfilling the demands (mainly religious and cultural) of its citizens. Under such circumstance, the state adopts the policy of 'neutrality' over issues of moral disagreement. Partha Chatterjee (1989) suggests that the state should maintain 'impartiality and religious toleration' in areas of moral conflict. Since the desire of distinct individuals (or groups) often conflict with that of his fellow being the state takes up the task of 'social engineering' (Otto A. Bird, 1967). Bird argues that in a 'politically organized society', when the state cannot satisfy all the claims of distinct individuals and groups, then it should "at least go round as far as possible. This is what we mean when we say that the end of law is justice ... We mean such an adjustment of relations and ordering of conduct ... the means of satisfying human claims to have things and to do things, go round as far as possible with the least friction and waste."ⁱⁱ The task of the state is to 'steer' and 'strike' balance between 'the general and personal' because the idea of justice is much wider notion than law and transcends it.

Recognizing the empirical fact of diversity, multiculturalism is a normative response to that fact. Contemporary societies are multi-cultural societies and consciously follow the policy of saying 'yes' to the fact of diversity. The multiculturalists transcend the liberal paradigm to recognize and accommodate cultural and religious diversity; it seeks maximum adjustment to facts of religious and ethnic differences in both public and private domain. Multiculturalism calls for the co-existence of diverse cultures, where culture includes both religious and racial groups and where their distinctiveness is manifested through their customary behaviour, cultural assumptions, values, thought-processes and manner of communication.

2. LIBERAL PARADIGM IN THE MID-TWENTIETH CENTURY

However, in the mid-twentieth century the liberal principle of equal rights had come under the scanner of an influential school of political theorists including Will Kymlicka, Charles Taylor, Bhikhu Parekh, Gurpreet Mahajan and Iris Marion Young. These scholars claim that the idea of equality espoused by liberalism based on difference-blind approach falls short of delivering both liberty and equal treatment. They challenge the liberal assumption of non-existence of any differences between people. As critics of liberal-equality, these scholars propose that states misdiagnose the needs of minority section of its citizens; the whole focus of liberal-equality should be to deal with differences in a fair way as far as possible. Ascribing priority to a standard of fairness that can be accepted and shared by all (including the minorities and disadvantaged groups) these scholars push forward the claim that the state should grant the underprivileged sections of society exemptions from certain laws and accept the peculiarities of various cultures granting them special recognition. In negating the idea of cultural-differences the state does a disservice to its minority and under-privileged sections.

The mid-twentieth century shifted the citizens' focus from individual autonomy to group rights. The issue of 'cultural space' demanded by religious-cultural group within the nation-state

occupied the attention of the scholars of this period. It is argued that religious diversity and cultural pluralism are the chief characteristics of any modern nation state and as such the cultural-religious communities are unwilling to be silently separated or marginalized from the main stream because of the simple reason of professing different faith, following different culture, traditions and customs. They remain vocal in demanding a more 'inclusive' system which properly recognizes their 'religious-cultural peculiarities'. They demand recognition and respect for their 'differences' but of course, remaining within the main stream.

Arguing for a pluralist perspective on cultural diversity, Bhiku Parekh (2000) challenges what he calls the 'moral monism' of much of traditional moral philosophy, including contemporary liberalism's tendency to recognize only one way of life or a set of values as valuable and dismiss the rest as valueless. Rejecting naturalism, which believes that men have a relatively fixed nature and that culture is incidental, he argues for a dialogic interplay between human commonalities and cultural differences. The stress is on the need for dialogic interplay between man's commonalities and cultural differences which would genuinely present balanced and thoughtful solutions to vexed cultural issues. As a method of dealing with controversial cultural practices, the intercultural dialogue begins from the society's operative values simultaneously providing an opportunity to reassess those values. The bifocal dialogue is initiated when the majority community defend their operative values while their minority counterpart defends their cultural practices in question. This inevitably will lead to a consensus as intercultural dialogue produces a better shared, cross-cultural understanding of human nature in a multicultural society.

Different cultures correct and complement each other; cultural diversity is a good way to recognize the variety of possibilities to lead a good life. 'Positive discrimination' for the under-privileged and the disadvantaged is the most effective vehicle for fulfilling moral aspirations of the depressed. Bruised by existential marginality, the under-privileged minorities often, in the words of Bikhu Parekh (1998), "are crippled by cartloads of frustrations, deep inhibitions, half-articulated fears and anxieties, and collective memories of persecution and discrimination"ⁱⁱⁱ and the state bears a moral obligation to cater to their needs through political commitments.^{iv} Espousing the agenda for their upliftment, he argues, all human beings by virtue of belonging to a common species are equal and have a right to expect the state to heal his wounded spirit and provide opportunities to pull him out from the decay of frustration and emptiness.^v

It is a recognizable fact today, that an individual citizen besides having legal rights also has some moral rights. Individual and groups alike are concerned with the question whether the state (or its constitution) properly recognize and safeguard the moral rights of individual citizen or whether the individual citizen has the right to override the dictates of the state if their moral rights are not respected.

The contemporary period has witnessed considerable support for diversityⁱ in public sphere as it has largely meant aesthetic, politically and morally neutral expressions of cultural difference; a concept seen as good, often praised and endorsed by both political and public figures alike. Erickson (2006) holds them responsible for 'enriching national culture' and strongly favours the culturally aliens. He strongly advocates that any belonging to a minority is entitled to both freedom and security having the right to take decisions, and greater society is obliged to ensure the choice, the denial of which means nothing less than 'sociological illiteracy'. Variations in rituals, customs, food-habits and everyday other practices are not worth ignoring as long as they conform to shared values. Members of minority culture have the right to be different in their own way as long as their variations in customs, rituals, dress codes, and everyday practices do not violate conformity to shared values.

'Justice needs should not be subjected to social or any other calculations. Justice as an uncompromising virtue cannot be denied to anyone in the name of larger social interest' (Rawls). Rawls while criticizing the Utilitarian principle of 'greatest good of the greatest number' said that individual claim cannot be subordinated in the name of societal welfare. Justice is an uncompromising virtue like truth and cannot be denied to any individual on the plea of larger social interest. It is wrong to subordinate any one's claim in the name of large social welfare. Justice is simply not a matter of weighing up of advantages and disadvantages and promoting uniformity irrespective of each man's distinct claims; everyone should respect each other's

'common practices'. Liberal ideas value diversity, mutual respect for each other's mutual practices and underline the need of understanding differences in cultures and practices. When a state decides to protect and promote the traditional [and religious] customs of the minority, it has not compromised or lessens its position rather it would have been so if it failed to take positive steps in that direction. Kymlicka (2002) argues that justice proposition, no doubt, requires a state to be neutral but at the same time it is the responsibility of the state to see whether its 'difference-blind' approach causes disadvantages for any particular group or community. He suggests that the state decide on such principles 'case by case in particular context' rather than assuming common or universal rules for all in advance. Bhikhu Parekh (1988) also thinks that much 'injustice' is heaped upon the minority community by the state who implement the idea of equality in narrow terms. He strongly feels that no than lone individuals are the real building blocks of a nation. Shedding of distinct religious-cultural identities in the name of 'national unity' is antithetical since it is upon the progress and contribution of individual members of different communities that a nation can progress and attain fulfilment. Individual citizens of a nation cannot progress unless he is allowed to tread along, with the ideals and beliefs which are his very own.

One cannot disassociate oneself from one's culture and cultural practices. Disassociating one-self from the past and living entirely in the present is untenable; past practices have claims over the present which cannot be ignored (Bhiku Parekh, 1988). The importance of an individual as a member of a definite religious-cultural group has been stressed by early liberals as Hobhouse, Dewey and Green. These thinkers talked in terms of giving due recognitions to individual's religious-cultural traditions and practices. Belonging to a community creates mutual interdependences among members through bonds of commonality which in turn fosters unity necessary for a good and just society. Stressing this commonality, Green stressed, "the young be brought up within the traditions, outlook and interests which characterize a community." ^{vii} Underlying a good and just society, are 'common memories, traditions and customs' (Green) as well as 'common sentiments and common interests' (Hobhouse). Questions of pride and respect are closely linked with one's cultural and traditional practices and any attempts to erase them amounts to wounding the community's respect. Freedom to practice one's religious, cultural and traditional norms provides an individual with 'meaningful choices about how to lead one's life' (Will Kymlicka, 1989) and it is for this reason and under situations that 'true freedom' is possible. Members of other cultures have the right to be different in any way they like; it is the duty of the state to provide the individual the freedom to make his or her own private decisions. The scholars vigorously endorse the fact that minority groups should be allowed to maintain their old customs and everyday practices with respect to their food, dress, religion, and recreation and to associate with each other to maintain their practices." ^{viii}

Though the claims of minority rights are tough questions that a statesman has to seek solution to, but they are legitimate enough to be guaranteed 'cultural and [religious] equality. Dworkin (1997) suggests that if the modern state is to maintain itself then it must find the place for rights within the unity of state and give scope to differences. Instead of only generalizing the common rights, the state should make room for diversity and respect collective sentiments. Therefore, an individual before claiming respect as a 'political citizen' has the right to claim respect as member of a 'definite religious and cultural group'. Milton Gordon echoes similar sentiments when he says that a national state is characterised by 'the absence, even prohibition, of any legal or governmental recognition of racial, religious ... entities'. Glazer too insists that besides being an individual entity, an individual also commands respect as member of a distinct group.

These scholars vociferously demand that cultures of different minority groups must be publicly affirmed by the state as possessing equal importance. The state by allowing its majority population to believe in the worth of their own culture only does a disservice to its minority sections by failing to asserting publicly that cultures of minority groups are no less valuable, though sometimes they might embody conflicting ideas and beliefs with the mainstream.

In a plural society, granting of minorities rights distinct to their traditions and customs involves questions of social justice along with more vital issues of state security and peace. Kymlicka (1989) opines if a society characterized by heterogeneous population (as multinational or multicultural society) is governed by principles of justice and is stable, then issues of minority rights must have played commendable role. Dworkin (1997) claims that an individual citizen's

personal right has both to be protected by the state and at the same time such rights should be free from state interference. In a society which is religiously and culturally plural, the idea of 'autonomous individual' detached from his community and communal mores is a misnomer. People are embedded in their religious traditions and practices, 'inherit a way of life' and hence are 'products of social practices' (Kymlicka, 2002). It is often argued that individual autonomy and privileges cannot and should not contain the privileges of the community as a whole. The Communitarians suggest striking the right balance between autonomy of an individual and protection of community practices which would ultimately result in a healthy nation.

3. CALL FOR GOING BEYOND LIBERALISM

Looking at society as all about proper relationship between different cultural communities, Bhiku Parekh (2000) asserts norms governing principle of justice can 'only' be derived from an open dialogue between different cultural communities and not from any one culture 'alone' as being culturally biased towards any one particular culture or cultural community cannot do justice to others. In order to accommodate difference, scholars as Bhikhu Parekh (2000) and Charles Taylor (1992) have prescribed going 'beyond liberalism' for the sole fact that liberalism in being harsh to differences manifest exclusive homogenizing tendencies. The principle of equal treatment of all is linked up with the ideal of assimilation. It is vehemently pointed out time and again that marginalized section do not demand equal treatment but what is central to them is recognizing their 'dissimilarities'; they need respect for their distinct identities as members of particular cultural communities which the liberal state is said to pay scant attention.

The modern world indeed must respond to the fact of moral, religious and cultural diversity, differences should be tolerated and respected. With an agenda to eliminate all differences, the state pays insufficient attention to issues of culture, identity and individual personality. In the name of neutrality the state professes 'benign neutrality'ⁱⁱ which does not offer satisfactory accommodation for differences- national, religious, cultural, and ethnic. It is a reality and needs no establishing that individual is much a product of his culture and its history. The so called neutral state silently professes a cultural orientation. It is the culture of its larger or the majority group which find full reflection in everyday activities of the state as 'state ceremonies, public holidays and the language of the official communication' (Yael Tamir, 1988). In such circumstances the numerically weaker non-dominant minority community members are placed under an 'unacceptable disadvantage' which necessitates taking 'measures' on the part of the state to live up to its professed policy of equality of treatment. In order to promote equality of treatment among citizens the modern state is required to take cognizance of the religious-cultural orientation of its minority members. Yael Tamir asserts that when we ignore the cultural background of an individual or group and impose a single mode of action, then we actually deny that particular individual or group equality of treatment. In following such a treatment the state ends up promoting injustice in the name of equal treatment consciously or unconsciously.

Alleging that state neutrality is a system heavily inclined in favour of the majority group, Will Kymlicka (1989) prescribes that state should take into account the specificities of culture, an important paradigm of social justice in a multicultural society as modern societies are generally culturally diverse. Taking individual equality as the point of take-off, Kymlicka opines that social justice implies not only that individuals should be free to lead their lives as they choose to but also providing them the same opportunities for choosing and realising his or her life plan. The state must complement its difference blind approach with acknowledgement of minority rights. Special legal or constitutional measures beyond the common rights of citizenship must be promoted to protect and preserve the culture, religion and identity of members of minority groups. Cultural differences must be complemented by special rights of the minorities if the state follows its policy of benign neglect policy as special measures will promote inclusion and integration of differing groups with the mainstream.

Culture as an important element of justice has long been ignored by the state. An individual can regard himself as an autonomous being only when he has the freedom to his cultural practices, but in situations where members of minority groups face disadvantage, it is legitimate for the state to rectify it by 'special group-based measures' or 'minority rights'^x. Justice requires special attention to the specific needs of those who are concerned; by providing special rights to its various cultural

minority groups the state neutralize inequality and hence discrimination (P. Loobuyck, 2005). 'Group-differentiated rights' are thus a matter of justice between members of different groups which serve to preserve cultural identity and negate inequality and discrimination thereby decreasing diversity and social isolation.

'Religious-cultural plurality' as dominant and sensitive issue is by-passed by the modern nation; in the name of neutrality and secularism. The state treading the 'assimilationist policies' ignoring 'difference multiculturalism'^{xi} is guilty of neglecting the issue of right of the minority groups and religious-cultural pluralism. The assimilationist policies of the liberal state fail to appreciate the reality of religious-cultural pluralism that by subjecting everyone to uniform treatment, it treats 'unequally' its citizens belonging to and professing different faith and beliefs. The assimilationists in their zeal in maintaining uniformity overlooks 'difference multiculturalism' based on celebrating diverse cultural values instead of one uniform cultural norms and practices (Erickson, 2006). By hoping that all differences and distinctive identities (social, religious and so on) will disappear some-day liberalism is charged for promoting utopianism failing to realize that total cultural homogeneity is entirely impossible^{xii}. Condemning liberal rights as of little significance in the absence of affirmation to the people of allowing them the way of life they prefer, scholars argue for 'cultural exemptions'^{xiii} Highlighting the merits of cultural exemption Barry (2002) believes that by building strong communities, they help people overcome obstacles faced due to cultural difference making them strong and competent to ignore isolation and feel at home. Equally it helps in preserving cultural resourcesⁱⁱⁱ and traditions enabling them to lead their lives according to their own principles; it is good enough to enhance self-determination and autonomy to a community. Thus, there is much validity in arguing that policies initiated by difference-blind approach sometimes become irrelevant for minorities.

Scholars as Iris Young demand that cultures of different minority groups must be publicly affirmed by the state as possessing equal worth. The state by allowing its majority population to believe in the worth of their own culture only does a disservice to its minority sections by not asserting publicly that cultures of minority groups are no less valuable, though sometimes they may embody conflicting ideas and beliefs with the mainstream.

Raising the issue of values of culture in the dominant discourse Bhiku Parekh (2000) finds no prime facie reason for the majority to assert their cultural superiority. Since humanity is indivisible all deserve to be equally respected, the denial of which would invite degradation of their own moral capital. Charles Taylor points out that an individual's identity is formed in interchange and "is partly shaped by recognition or its absence ... and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves."(Charles Taylor, 1994)

Scholars as Bhikhu Parekh (1988) today articulate the concept of 'cultural laissez-faire' which allows for the extension of the liberal principle of individual choice to the realm of community allowing the community members the freedom to follow their 'way of life'. Proponents of 'cultural laissez-faire' (such as John Gray) are of the view that the state in the name of maintaining neutrality (or in the name of neutrality professing the cultural traditions of the majority group) should 'not throw its weight behind the liberal way of life', 'ruling out the traditional means of cultural homogenization' for 'other way of life suffer from structural disadvantage' and 'the liberal state's claim to respect or even tolerate them remains hollow.

Since man is a moral being, human fulfilment would occur when community is restored. Individuals as moral rational beings should be at liberty to decide what is worth doing for oneself. Respect for different cultures along with recognition and respect of minority rights, says Kymlicka (1989), foster both national and international peace. The theorist strongly argues that minority claims are just and argues that attempts at incorporation of universal values involves unfairness to minorities. It is a wrong notion to believe that minority rights create instability; rather it is the state's relation with its national majority and its "attempts to create a 'nation-state' out of a culturally plural society threaten minorities, who then must seek to change their relationship to the state. Rather than asking the minorities to shed their cultural-religious peculiarities, the state must seek to reorganize its equation with its national population. In the words of Kymlicka, "the remedy is cultural or symbolic change to upwardly disrespected identities and cultural products ..., or positively value cultural diversity."^{xv}

4. MULTICULTURAL STATE AND POLITICS OF RECOGNITION

The cultural-religious minorities seek 'recognition' of their 'differences' without being excluded from the 'national-culture'; they emphasize is upon 'politics of recognition' asking 'exemption from laws that interfere with their religious worship, practices and their cultural way of life. The members of minority groups consider their difference to be unique to their community which is appropriate for them and 'only them' and hence it for this reason that they claim recognition from the modern state of being recognized 'differently' from the rest. It is argued that cultural groups are not only entitled to non-discrimination, but also to some form of public recognition. Recognising cultural differences is essential for the individual and thus for individual equality because the notion of culture provides insights and shapes his life plan.

The politics of recognition underscores the fact that there is more to social justice than fair distribution and equal opportunities for individuals. The multiculturalist claim of justice is premised on the fact, "there are no universal laws of justice. Instead, we must see justice as the creation of a particular community at a particular time. A just society is one where the substantive life is lived faithfully to the shared understanding of all members. Multiculturalists demand that cultures of different groups must be publicly affirmed as being of equal value. Cultural particularity is a basic need of every human being, therefore, members of minority groups should be allowed to believe in the worth of their own culture, including the beliefs and values that it embodies, as no less worth than the cultural traits and practices of the majority group. The Liberal notion of justice, to the multiculturalists, is but a minimum standard and consequently, the demand is for taking into account additional requirements as specific notions of differences. Cultural differences are more fundamental than any other individual differences; it is more essential for the individual and for individual equality; therefore, justice, implies, recognition of those differences. Taylor (1994) putting forward his claim for 'cultural specificity' argues that members of minority groups have the right to due acknowledgement of their identity (what is peculiar to each) and under no circumstances does the majority possess the right to impose their own limited and ethnocentric standards on the 'others'. To quote Bhiku Parekh (2000), however rich it might be, no culture embodies all that is valuable in human life and develops the full range of human possibilities. Different cultures thus correct and complement each other, expand each other's horizon of thought and alert each other to new forms of human fulfilment." (Parekh, 2000) Equality of treatment, argues Taylor (1994) should be complemented by the recognition of differences.

Favouring politics of recognition, Amy Gutmann (1994), asserts that true equality is possible only on recognition of cultural differences. Putting forward her view, she forcefully opines, culture matters for individuals, since culture and cultural traits give shape and meaning to his life plan; and as such the liberal state has an obligation to help the marginalized group preserve their culture against intrusions. Voicing her concern for the marginalized, she stands for recognition of individual particularity. Speaking in the same tone, Bhikhu Parekh (2000) believes that respect for cultural diversity is an essential condition for promoting human freedom creating climate for beneficial interaction and dialogue.

5. MUSLIMS AS MINORITY COMMUNITY IN INDIA

The concern for the members of the minority community was fully reflected in the proceedings of the Constituent Assembly entrusted with the task of framing the Constitution of India. The members of the Constituent Assembly were aware of the needs and aspirations of the various sections of the Indian communities. The proceedings of the Assembly reflected the sentiments of its framers in trying to endorse the moral rights of an individual. Insisting upon protection of the minority rights to the far possible extent, the Assembly was bent upon going 'round as far as possible with the least friction and waste' in order to satisfy community claims. The ground was that an individual citizen besides having his obedience and loyalty to the state also has equal duty towards his faith and traditions. "A man must honour his duties to his God and to his conscience, and if these conflict with his duty to the state, then he is entitled, in the end, to do what he judges to be right." ^{xvi} In the opinion of Dworkin (1997) an individual has the duty to show obedience to law "but have the right to follow their conscience when it conflicts with that duty. To be treated as

a member of human community, human dignity supposes respecting man's moral sentiments and his consciousness.

It had been the avowed policy of the British in India not to interfere in matters of religion. By the late 19th century, they eschewed from interfering in religious customs and firmly took to the policy of religious neutrality. Though they had become reasonably strong they were careful so as not to be involved in religious disputes to be clear of the blame of promoting Christianity. Though new civil and criminal laws were formulated, but the "area left out, however, was that of personal law which continued to be governed by the respective religious laws ...^{xvii} Providing reasons for allowing the Indians (Muslims) to practice their personal laws, Partha Chatterjee comments that, personal laws found space because of "the reluctance of the colonial state to intervene in matters close to the very heart of religious doctrine and practice."^{xviii} Moreover, the previous practice of administering and overseeing of religious and charitable institutions was given up and their responsibilities handed to local trusts and committees. The British followed the policy of 'minimal state' and 'political neutrality' in matters of religion and customs of its subjects. Precisely, the colonial state did not feel keen in interfering in religious disputes of its subjects and left their regulation into the hands of the natives for these did not seem to affect or influence the British power in any way. With the rise of nationalism in the late 19th century, the British government were denied avenues into 'crucial' areas of 'cultural identity of the nation'. Reforms in respective social and religious customs were held to be beyond the 'legal authority of the colonial state' and within the 'moral authority of the ... community. The colonial state's intervention in religious norms and customs were all the more undesirable because of its colonial character. An alien ruler had no moral right to either regulate or control the indigenous populations' belief structure. (Partha Chatterjee, 1989)

Committed to liberal-democratic norms, India is a multicultural state where questions of 'minority rights' assume special significance. Granting the minorities their 'due share' the British colonial government granted them right of representation in colonial government. The colonial state viewed India as a confederation of communities and gave minority preference in order to balance their representation in various government bodies and public services. Post-Independence, the issue of minority rights retained its importance; this was reflected in discussions of the Constituent Assembly. Though the framers of the Constitution were united on principles of democracy and national unity, tension ran high on issues as rights of minorities. Influenced by historical and cultural factors the leaders of the minorities argued for minority rights granted by liberal-democratic state (Constitution) such as 'religious freedom', 'freedom of thought and expression', 'freedom of conscience', and right to maintain one's culture and traditions. They argued that election of the members of the Constituent Assembly (July 1946) was in accordance with the provision of the Cabinet Mission Plan (16th May 1946) which clearly stated that the transfer of power (on the basis of a constitution framed by the Constituent Assembly) to the Indian people would be conditional upon making adequate provisions for protection of minorities. In the proceedings of the Constituent Assembly the issue of minority rights was highly debateable where the minority leaders put forward their concerns about religious-cultural autonomy. They argued that by retaining their distinct cultural practices the members of minority communities would be able to fully contribute to national progress. They argued that communities rather than lone individuals are the real building blocks of a nation. Shedding of distinct religious-cultural identities in the name of 'national unity' is antithetical since it is upon the progress and contribution of individual members of different communities that a nation can progress and attain fulfilment. Individual citizens of a nation cannot progress unless he is allowed to tread along, with the ideals and beliefs which are his very own.

6. CONSTITUENT ASSEMBLY DEBATES

Independence in 1947 brought with it an urge to enact new laws on social and religious matters. The reform agenda received most prominence during the period of Constitution making. The Constituent Assembly entrusted with the task of framing the Constitution embarked upon the task of framing new and uniform laws for the entire country. But all was not smooth since objections were raised and the state was accused of interfering in the 'religious freedom' of an individual. The Constituent Assembly was charged with meddling in personal laws which was strictly the enclosed area of respective communities. It was argued that India as a nation stood on universal

principles of 'liberty and equality'. To these universal principles could be added the principle of 'neutrality'. The liberty principle emphasised that the state should not interfere with the rights of the individuals, be it religious or otherwise. Similarly equality demanded that each individual should not to be discriminated on the ground of his religious beliefs and practices. The state was caught in the web of 'reforming religious practices and institutions' vis-à-vis the fundamental freedom of 'right to religious freedom'. In recognizing practices and beliefs essentially religious in character and deciding their limits to regulate individual life, the state was willing to entrust such responsibility (of recognizing and deciding their limits) to the courts but in doing so, the state would be enmeshed in a host of complicated religious disputes which it was reluctant to do.

Embodying the values and aspirations of its framers, the constitution is not only a legal document but a source for the fulfilment of moral aspirations of 'all' its people. It reflected the ideals which the framers wanted to incorporate in society. However, the Constitution is not the only source through which the people could express their desire. Another very powerful outlet for people to express themselves and their feelings and identities are their religion, their customs, traditions, their cultural norms which are often expressed through their religious institutions. Often people strongly identify themselves with their traditional beliefs and rituals and any infringement or disrespect shown to them are sufficient causes for violent disruptions. Religious and cultural identities are potent enough to make men die for it. Prolonged religious and cultural practices are deemed to be a part of one's identity and men readily identify themselves with those traditions. Customary practices, usages and conventions form an inalienable part of a man's self. "Reconciling these pre-existing values with constitutional mores is as much a political issue as a legal question."^{xix} Personal laws are those laws regulating certain aspects of an individual's life such as marriage, divorce, property, inheritance (both intestate and testate) and succession having its sources in religion and traditional practices. These are laws which a person practices by virtue of belonging to a particular religion and thereby community.

Commenting on the Objective Resolutions of Pandit Nehru, Purushottam Tandon, (Congress leader and member Constituent Assembly) stated that the underlying thrust of the Resolution is 'justice' to all religious communities by giving them full freedom in their religious practices. He further commented that this ideal should find expression in the Constitution of future India where provisions would be incorporated for the protection of the rights of religious minorities. And these would be 'Fundamental rights' (justiciable). The voice of Vijay Lakshmi Pandit supported Purushottam Tandon when she stated that Independent India will be a witness to full justice provided to the minorities both as individual citizens and also as members of religious minority community. Though the Congress leadership time and again repeated their promise of providing safeguards to the religious minorities but majority of the members of the Constituent Assembly were against any such protection. Though members of the minority community argued that an initial commitment has been made in the Constituent Assembly for the promotion and protection of their distinct religious-cultural rights by the Objective Resolutions of our first Prime Minister, but majority argued that safeguards for the minority ended with the partition of the country.

The idea of Uniform Civil Code was resented by the members of the minority community by arguing that any attempt at homogenization would end up enforcing a 'majority code' on the entire population. Uniformity overlooks the fact that each man is separate from the other and in order for his fuller development 'separateness of people', should be respected and maintained. "Hence, to bring in a Uniform Civil Code... would amount to doing injustice to this promise and to the expectations of the minorities."^{xx} Leaders of the minority community pointed out the promise of the national leaders that "reforms in the sphere of personal law have to be carried out in accordance with the sentiments of the community and also keeping in mind how receptive each community is likely to be to such reforms. They appealed to the good sense of the state to help them maintain their traditional beliefs while participating in the functioning of the modern state. Drawing attention to the fact that has been a clear trend 'towards the greater recognition of minority rights' in the Western democracies, the members of the minority community argued that what they demanded was autonomy to practice their traditional beliefs along with due respect and recognition so that they are not categorized as 'second-class citizens'.

The idea of homogenous or uniform laws for all citizens do not hold good because they threaten the distinct cultural identities of the minority group since the idea is not altogether neutral. The homogenous category within itself hides the culture of the dominant or majority group. Hence, leaders of minority group argued that it is only the members of the minority group who are asked to compromise their distinct cultural identities. The majority do not shed any of their cultural traits; rather they impose their own practises and beliefs upon the 'others' in the name of homogeneity and uniformity. Hence, "neither universalism nor neutrality can have any moral priority of cultural groups to protect their autonomous existence."^{xxi}

'Justice as fairness' demands that moral disadvantage of an individual or group should be eradicated or at least compensated. Belonging to a particular group is not a moral disadvantage and if so, the state's task is to undo the moral disability and do justice. Justice requires that undeserved or 'morally arbitrary' disadvantages should be removed or compensated for. If such disadvantages attach to persons because they were born into particular minority cultural groups, then liberal equality itself must demand that individual rights be differently allocated on the basis of culture. 'Status inequality' more than 'material inequality' (economic inequality) matters more than anything else to the minority group. Absence of 'difference' recognition wanes bonds of social solidarity. Recognition of differences on the other hand, strengthens civic solidarity and political participation. By breaking the barriers of suspicion and distrust the state creates a more 'inclusive' system which would attract the minorities to whole hearted participation in the political process. This would promote social cohesion, integration and national unity. Respecting the personal laws and their way of life of the minority community do not threaten social cohesion and integration; on the contrary recognition of diversity promotes cultural and moral depth. There have been instances where democratic stability has been achieved by 'fairer terms of integration' for the minority group.

'Fairness' implies an obligation to deal equally with minority communities [who live under the same Constitution] without rending their custom or tradition asunder. Every individual has the freedom to pursue his end while refraining from interfering into others freedom; the existence of state is solely to protect and promote each individual's rights and liberties. "A constitution can, for instance, forbid a democratic government to interfere with the 'religious freedom' of its citizens."^{xxii} 'Consideration of peace and stability' (Kymlicka, 1989) along with 'fairness' stands for the rights of the minorities. Religious neutrality as opposed to religious favouritism does not require the state to distance itself from all that is religious both in its character and practice but what is required is 'basic symmetry of treatment'(Amartya Sen, 1989) among members of different religious and cultural denominations. Symmetrical treatment does not demand complete detachment of the state from different cultural and religious groups; "the preservation of religious freedom" (religious freedom includes religious practices) "does not breach the principle of secularism."^{xxiii} It goes very well with the dictum of Aristotle, 'treat equals equally and un-equals unequally.' According to Sen (1989), while justice entails going 'beyond secularism', 'admiration of traditional ways of life has over the centuries, developed internal principles of tolerance'. Emphasising individual's 'cultural identity as prior to any 'composite identity', the 'prior identity critique of secularism'^{xxiv} advocates that it is only after assimilation of all separate identities that a 'composite identity is formed. Post-modernism favours past traditions of peaceful co-existence of different religions and its practices. Principles of mutual respect and tolerance develop better in multicultural and multi-religious societies. The 'Cultural Critique of secularism' argues why should cultural dominance of one [major] group suppress or wipe out the religious-cultural pattern and way of life of other community, even if they be minority. It has been further argued that culture of any country or state is constitutive of the assimilations and adjustments of the religious-cultural patterns of both the majority and minority groups for years or sometimes even centuries of co-existence; and India is no exception to such phenomenon Hence, suppressing or disregarding religious-cultural traditions and practices of the minority community would be tantamount to the cultural health of a nation.

It was vehemently argued that the question of separate personal law does not only relate to the identity of a particular cultural-religious group but has deeper political implications. The representatives of the minority community pointed out that "Section 112 of the Government of India Act, 1915, "directed the High Courts to apply in exercise of their original jurisdiction in suits against natives, 'personal law or custom having the force of law ...'"^{xxv} The Government of

India Act 1915 was no less important, by any means, for it was one of the models before the members of the Constituent Assembly while framing the present Constitution for the country. In the Constituent Assembly, one of the members Mohammed Ismail Sahib, who was supported by B. Pocker Sahib argued it is the fundamental right of a group or a community to observe and adhere to their personal law and “this provision should really be made amongst the statutory and justiciable fundamental rights ... Personal law is the part of the way of life of those who are following such laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages.”^{xxvi} The members pointed out during the Constituent that one finds such precedents in European countries, ‘the Serb, Croat and Slovene State agrees to grant to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with the Mussulman usage.’ Hence, retention of personal law of a particular religious minority would not be something new and impossible for similar clauses are present in several other Constitutions also. Greece is bound by international agreement whereby the personal laws of Greek Muslims are left untouched. The Muslims of Burma, Ghana, Thailand and Uganda are governed in their personal matters by their traditional law of Islam (Tahir Mahmood, 1980). The practice of religious beliefs and rituals “must be left to the conscience and conviction of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right ... because what is here a right towards man is a duty towards the creator.”^{xxvii}

Harmony cannot be achieved by compelling people to give up their beliefs and practices. On the other hand, if the members of the minority community are allowed to pursue their own religious and cultural practices, dissatisfaction can be ruled out. It was strongly suggested, “the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community...”^{xxviii} It was not only the Muslim members who argued for retention of their personal laws; there were even members from the majority community who were not in favour of a uniform code. Prominent among them were Guru Golwalker of R.S.S and leader of the Sanatan Dharma Swami Kripatriji. Golwalker viewed the Indian Constitution as ‘a hotch-potch of foreign Constitutions’ which has ‘not been formulated in the light of Indian experience’ argued that ‘something cannot be desirable only because it is mentioned in the Constitution’. In September 1972, criticizing the interference of the Indian nation in the customs and traditions of any community at a meeting in Varanasi, Swami Kripatriji commented that those who could not be loyal and truthful to either the ‘Dharmashastras’ or the ‘Quran’ cannot be expected to be truthful to the Constitution either (Tahir Mahmood, 1976)

“Can a liberal-democratic state claim to fulfil the moral aspirations of its people by deleting the religious practices and rights of minorities? Can a state claim to be secular by suppressing the religious practices of a section of its citizens? A secular state, while maintaining equal-distance stands to respect all religions equally. By suppressing the religious traditions of its minority section, can the state still claim to show respect to all religions alike? These and a host of similar questions were debated in the Constituent Assembly. Is the ‘no-concern theory of secularism’ apt for a multicultural state like India? Could India, unlike European countries, follow the American principle of ‘wall of separation’ strictly delineating religion from state? During one of the debates, K M Munshi (a member of the Constituent Assembly) commented, “the non-establishment clause (of the US Constitution) is inappropriate to the Indian conditions and we have to evolve a characteristically Indian secularism.” He further stated, “we are a people with deeply religious moorings. At the same time we have a living tradition of religious tolerance the result of the broad outlook ... that all religions lead to the same God ... In view of this situation, our state could not possibly have a state religion, nor could a rigid line be drawn between the state and the church as in the US.”^{xxix} A. K. Aiyar, (another member) supporting the general principles of individual rights and non-discrimination, suggested that the state must ensure protection of religious rights and its religious endowments of the minority community from encroachment of the government (Mahajan, 1998). Similar sentiments were echoed by Lakshmi Kant Maitra and H V Kamath. Protection and promotion of the rights of the minorities is crucial since it represents the state’s promise to the minorities that their dignity and equality will be respected. Granting cultural-religious rights ‘supplement’ individual citizen’s autonomy and liberty and thereby meet the

needs and aspirations of the people which would be neglected otherwise in a state that rigidly hang on to neutrality

Sensing the religious uniqueness of the [religious] minorities, Dr. B. R. Ambedkar, the Chairman of the Drafting Committee during the debates in the Constituent Assembly said that it would be wrong for the majority to deny the existence of minorities". (Constituent Assembly Debates ...) What the Indian religious minority desire is to achieve equality along with other major social groups in the sense of non-discrimination along with the recognition of their 'religious exclusivity' One of the formidable task before the Indian-nation is to provide effective safeguards to the religious minority along with engaging them in the task of nation building (K. K. Wadhwa, 1935). Appealing for insertion of provisions for protection of minority rights, Dr. Ambedkar in his draft articles on justiciable rights (March 1947), criticized the dominant discourse in the following words, "Indian nationalism has developed a doctrine called 'the divine right of the majority to rule the minorities according to the wishes of the majority. Any claim ... by the minority is called communalism while the monopolising ... by the majority is called nationalism". (Constituent Assembly Debates ...) Without compromising the criterion of equal citizenship, he argued for upholding the 'autonomy' of minority rights and placed the onus of reform with the itself(minority) community. In a democracy worth its name, whatever may be the nature of a minority and its practices the state should provide adequate means of expression.

Confronting the statist approach of some of the members of the Constituent Assembly, Sardar Hukum Singh appealed for safeguarding the religious practices of the minorities against the "pervading evil of democracy - the tyranny of the majority". Appealing to the democratic norms of the state, he argued forcible suppression of one's traditional practices was sacrifice of democratic principles. The anxiety was that the contours of the community were being delineated in complete disregard of, and with no reference to its cultural peculiarities. Drawing reference from Mill the members argued that it would be 'personal injustice to withhold from any one... the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has ... interest ... Justice implies something which is not only right to do, and wrong not to do but which some individual can claim ... as his moral right.' In a similar tone, Mahmood Ali Baig argued that people seem to think that under a secular state there must be a common law observed by its citizens in all matters including matters of their daily life, their language, their culture, their personal laws. This is not the correct way to look at the secular state. In a secular state, citizens belonging to different communities must have the freedom to practise their own religion, observe their own life and their own personal laws should be applied to them.

Arguments and counter arguments in the Constituent Assembly emphasized that secularism does not mean that the state would be anti-religious or that it would cast aside all religious traditions and practices. Arguing strongly on the basis of secularism, the leaders pointed out that a secular state neither means a 'Godless' state or 'Godlessness'. The idea of secularism cannot be used as a veil to deny the minorities their right to follow their way of life. In India where the people are deeply rooted in religious fervour the state cannot adhere to such sterile concept of secularism. The Indian nation cannot be secular to the point of disregarding religion and religious sentiments in the life of its citizens. Though secularism implies exclusion of religion from state affairs but at the same time it also implies freedom to follow and practice one's religious beliefs. The Muslim members argued that important aspects of their private life such as marriage, divorce, maintenance, inheritance and the like are governed by their personal laws and such important issues of life demand immunity from any sort of state interference.

7. CONCLUSION

Since religious norms and traditions are intricately linked with a man's identity, a liberal state should provide opportunities for his all-round development which in turn helps him to develop and establish his identity. An individual's identity is not something which can be changed and forcing him to forego his identity is a direct encroachment on his autonomy. Such action on the part of the state is against the very spirit of liberalism and individual autonomy. Jai Prakash Narayan correctly but indirectly pointed out that it is not 'religion-as-faith' that causes fissiparous tendencies rather it is 'religion-as-ideology' that creates divisive tendencies in society. Religion should not to be narrowly interpreted associating it exclusively with its place of worship, but should be interpreted in a larger framework depicting it 'as a way of life'. Accommodative

secularism as advocated by George Jacob Holyoake is more meaningful in the Indian context which allows accommodation of all sections along with their 'religious-cultural traits' emphasising 'diversities and co-existence'.

REFERENCES

- Constituent Assembly of India - Volume VII, Constituent Assembly Debate, 23 November, 1948.
- Allen Buchanan E. (1982), *Marx and Justice: The Radical Critique of Liberalism*, Great Britain; Methuen & Co., ch. 6, pp, 103-161.
- Baldwin Thomas (1985), *Toleration and the Right to Freedom*, in Horton John and Mendus Susan (ed.), *Aspects of Toleration: Philosophical Studies*, London; Methuen Publishing, 1985, ch. 2, pp. 36-50.
- Bird Otto A., 'The idea of justice', USA; Frederick A. Praeger Inc., 1967, ch. 5, pp. 79-94.
- Brian Barry, 'Culture and Equality: An Egalitarian Critique of Multiculturalism', available at <http://www.spruce.flint.umich.edu/~simoncu/269/barry.htm>
- Partha Chatterjee, "A Possible India, Essays in Political Criticism", Delhi, Oxford University Press, 1998, pp. 220-235.
- Daniels Norman (ed.), 'Reading Rawls: Critical Studies of A Theory of Justice', Oxford; Basil Blackwell, 1975, chp 1.,pp. 1-16
- Dworkin Ronald, 'Taking Rights Seriously' London; Bloomsbury Publishing Plc., 1997, ch. 7, pp. 184-205.
- Eriksen Thomas Hylland, 'Diversity versus difference: Neo-liberalism in the minority debate' in Richard Rottenburg, Burkhard Schnepel, Shingo Shimada (ed.), *The Making and Unmaking of Difference*, University of Oslo/Free University of Amsterdam; available at <http://www.folk.uio.no/geirthe/Diversity.html>
- Fisk Milton, 'Justice According to the English Common Lawyers', UK; Cambridge University Press, 1989, ch. 7, pp. 135-175.
- Don D. Fowler (1982), 'Cultural Resource Management', in *Advances in Archaeological Methods and Theory*", Vol. 5, Springer, pp. 1-50, available at www.jstor.org/stable/20210052
- Ghosh Partha S, 'Positive Discrimination in India: A Political Analysis', available at http://www.ices.lk/publications/esr/articles_jul97/Esr-Ghosh.Pdf
- Jatava D. R., 'Social Justice', Delhi; ADB Publishers, 2006, ch. 3, pp. 79-86.
- JhaShefali, 'Secularism in the Constituent Assembly Debates, 1946-1950, Economic and Political weekly, Vol. xxxviii, No. 30, July 27th, 2002, pp. 3175-3180.
- JhaShefali, 'Rights versus Representation: Defending minority Interests in the Constituent Assembly', Economic and Political Weekly, Vol. 38, No. 16, April 19-25, 2003, pp. 1579-1583.
- Wadhwa Kamlesh Kumar (1935), "Minority Safeguards in India", Delhi, Thompson Publishers
K. V. Krishnaprasad, 'Constitutional Scrutiny of Personal Laws' Available <http://www.supremecourtcases.com/index2.php?option=com...1...>
- Kymlicka Will, 'Liberalism, Community and Culture', New York; Oxford University Press, 1989, ch. 6, pp.100-131
- Kymlicka Will, 'Minority Rights and the Liberal Tradition', New York; Oxford University Press, 1989, chp 10, pp. 206-219.
- Kymlicka Will, 'Walzer and Minority Rights', New York; Oxford University Press, chp 11, 220-244.
- Kymlicka Will, *Contemporary Political Philosophy: An Introduction*, New York; Oxford University Press, 2002, 2nd ed., ch. 6 & 8, pp. 208-240 & 327-347.
- Loobuyck Patrick, 'Liberalism Multiculturalism: A Defence of Liberal Multicultural Measures without Minority Rights', available at http://peer.ccsd.cnrs.fr/docs/00/57/18/38/PDF/PEER_stage2_10.1177%252F1468796805051679.pdf accessed on 25/1/2013

- Mahajan Gurpreet, *Identities and Rights: Aspects of Liberal Democracy in India*, Delhi; Oxford University Press, 1988, Introduction & ch. 4, pp. 1- 13 & 77-114.
- Mahmood Tahir, 'Muslim personal Law: Role of the State in the Indian Subcontinent', Nagpur; All India Reporter Ltd., 1983, 2nd ed., ch. 3 & 5, pp. 38-52 & 73-95.
- Mahmood Tahir, 'An Indian Civil Code and Islamic Law', Bombay; M. N. Tripathi, 1976, ch. 1 & 6, pp. 1-21 & 65-84.
- Parekh Bhikhu, 'A Case for Positive Discrimination', in Gurpreet Mahajan (ed.), *Democracy, Difference and Social Justice*, Delhi, Sage publications, 1988, ch. 28, pp. 380-393.
- Parekh Bhikhu, 'Cultural Diversity and Liberal Democracy', in Gurpreet Mahajan (ed.), *Democracy, Difference and Social Justice*, Delhi; Sage publications, 1988, ch. 16, pp. 202-225.
- Bhikhu Parekh, 'Rethinking Multiculturalism: Cultural Diversity and Political Theory' UK; Macmillan Press, 2000, ch.1, pp. 16-50
- RajanNalini, *Secularism, Democracy and Justice: Implications of Rawlsian Principles in India*, New Delhi; Sage Publications, 1998, chp. 4, pp. 76-101
- Raz Joseph, 'Autonomy, Toleration and the Harm Principle' in Susan Mendus (ed.), *Justifying Toleration: Conceptual and Historical Perspective*, Cambridge University Press, 1988, ch. 7, pp. 155-175.
- Retzlaff Ralph H., 'The Problem of Communal Minorities in the Drafting of India Constitution' in R. Spann (ed.), *Constitutionalism in Asia*, Bombay; Asia Publishing House, 1963, pp. 55-73.
- Sandel Michael J., 'Freedom of Choice or Freedom of Conscience' in Rajeev Bhargava (ed.), *Secularism and its Critics*, Oxford University Press, 1988, ch. 3, pp 73-93.
- Sen Amartya, 'Secularism and its Discontent', in *Secularism and its Critics* in Rajeev Bhargava (ed.), Oxford University Press, 1998, ch. 14, pp. 454-485.
- Tamir Yael, "Minority cultures and the Nation States" in Gurpreet Mahajan (ed.) *Democracy, difference and Social Justice*, Delhi, Sage Publications, 1988, pp. 100-103.
- Taylor Charles, 'Politics of Recognition', in Amy Gutmann (ed.), *Multiculturalism, Examining the Politics of Recognition*, Princeton University Press, 1994, ch. 2, p. 24-50.
- WadhwaKamlesh Kumar, 'Minority safeguards in India', Delhi, Thompson Publications, 1935, ch. 1, pp. 1-68.
- Weale Albert, *Toleration, Individual Differences and Respect for Persons* in Horton John and Mendus Susan (ed.), *Aspects of Toleration: Philosophical Studies*, Methuen Publishers, 1985, ch. 1, pp. 16-34.

AUTHOR'S BIOGRAPHY



Bittoo Rani engaged as an Assistant Professor (and head) in the department of Political Science in Dinabandhu Mahavidyalaya, Bongaon in North 24 Parganas (pin: 743235), West Bengal, India. I am pursuing my doctoral thesis under the University of Calcutta and have published articles in the earlier version of your journal, (September & October 2014.)

ⁱ Bhikhu Parekh, 'A Case for Positive Discrimination,' in Gurpreet Mahajan (ed.) *Democracy, Difference and Social Justice*, Delhi; Sage publications, 1988, p. 380.

ⁱⁱ Otto A Bird, *The Idea of Justice*, USA; Frederick A. Praeger Inc., 1967, p. 93.

ⁱⁱⁱ Bhikhu Parekh, "A Case for Positive Discrimination", in Gurpreet Mahajan (ed.), *Democracy, Difference and Social Justice*, Delhi; Sage publications, 1988, p. 381.

^{iv} Morality and politics are integrally related. Morality lacks power and efficacy unless it finds adequate political articulation. And politics lacks depth and significance unless it becomes a medium for realizing socially relevant moral values. Bhikhu Parekh, "A Case for Positive Discrimination", in Gurpreet Mahajan (ed.), *Democracy, Difference and Social Justice*, Delhi; Sage publications, 1988, p. 383.

Legal Pluralism, Cultural Diversity and Rights of Minorities in Multicultural Society; Revisiting the Rights of Indian Muslims as Minorities to Follow their Personal Laws

^v Restoring broken or wounded selves and helping men and women flourish and lead meaningful lives, the central inspiring principle of moral conduct, obviously makes demands which none of us can individually meet ... We have no choice but to turn to the state, the sole available instrument of collective action. The state can reach areas and undertake activities that individual efforts cannot. Bhikhu Parekh, "A Case for Positive Discrimination", in Gurpreet Mahajan (ed.), *Democracy, Difference and Social Justice*, Delhi; Sage publications, 1988, pp. 382-383.

^{vi} 'Diversity' is, in the UNESCO report, largely associated with phenomena such as language, religion, rituals, food habits, folktales, arts and crafts, everyday practices as well as a few traditional economic adaptations which are either threatened by modernity or proven to be consistent with it (and should by that token be given a chance). Thomas Hylland Eriksen (2006), "Diversity versus difference: Neo-liberalism in the minority debate" in Richard Rottenburg, Burkhard Schnepel, Shingo Shimada (eds.), *The Making and Unmaking of Difference*, University of Oslo/Free University of Amsterdam; available at <http://www.folk.uio.no/geirthe/Diversity.html>

^{vii} Will Kymlicka (1989), 'Liberalism, Community and Culture', Delhi; Oxford University Press, p. 207

^{viii} Barry Brian, 'Culture and Equality: An Egalitarian Critique of Multiculturalism', available at <http://www.spruce.flint.umich.edu/~simoncu/269/barry.htm>

^{ix} It is undeniable that liberal governments are in practice less neutral than they would wish themselves to be. Nobody can neglect the fact that every political culture is a product of its particular history. The official language, symbols of state, official holidays, etc.; they are all the non-neutral results of a historical process. Neutrality is not always the best way to realize equal treatment of different members of different groups. Government should not always take up neutral position. In different domains, it may adopt accommodating policies such as offering religious subjects in public education, and the public funding of recognized religions Patrick Loobuyck, 'Liberalism Multiculturalism: A Defence of Liberal Multicultural Measures without Minority Rights' available at http://peer.ccsd.cnrs.fr/docs/00/57/18/38/PDF/PEER_stage2_10.1177%252F1468796805051679.pdf

^x Minority rights are rights which are claimed solely on the basis of membership of a particular cultural group and which have the purpose of perpetuating and protecting the cultural identity –which can find no place in liberalism. Patrick Loobuyck, 'Liberalism Multiculturalism: A Defence of Liberal Multicultural Measures without Minority Rights', available at http://peer.ccsd.cnrs.fr/docs/00/57/18/38/PDF/PEER_stage2_10.1177%252F1468796805051679.pdf

^{xi} Assimilationist advocates, 'everybody who lives in the same country should have essentially the same culture' while 'difference multiculturalism', demands that society should not be based on one set of values, but should accommodate, recognize the equality of, and indeed celebrate a great variety of cultural values. Barry Brian, 'Culture and Equality: An Egalitarian Critique of Multiculturalism', available at <http://www.spruce.flint.umich.edu/~simoncu/269/barry.htm>

^{xii} Total cultural homogeneity is an impossible (and, to most, undesirable) goal to achieve. Even in ethnically homogeneous societies; there will always be religious sects and sexual minorities, to mention only two of the most obvious examples, demanding their right to be 'equal but different'. Thomas Hylland Eriksen, 'Diversity versus difference: Neo-liberalism in the Minority Debate' in Richard Rottenburg, Burkhard Schnepel, Shingo Shimada (eds.), *The Making and Unmaking of Difference*, University of Oslo/Free University of Amsterdam, available at <http://www.folk.uio.no/geirthe/Diversity.html>

^{xiii} The term 'Cultural Exemptions' refers to the belief of some especially minority groups that in certain cultural circumstances members of a particular cultural group should be exempted from certain laws and public policies in order to protect their cultural identity or religious practices. Barry Brian, 'Culture and Equality: An Egalitarian Critique of Multiculturalism', available at <http://www.spruce.flint.umich.edu/~simoncu/269/barry.htm>

^{xiv} The term cultural resources began to be used with the National Park Service in 1971 or 1972 and soon after by others. Whatever the origin of the phrase, a working definition of cultural resource is physical features, both natural and man-made associated with human activity. These would include sites, structures and objects possessing significance either individually or as groupings in history, architecture, archaeology or human [cultural] development ... cultural properties are unique and non-renewable. Don D. Fowler (1982), 'Cultural Resource Management', in *Advances in Archaeological Methods and Theory*, Vol. 5, Springer, pp. 1-50, available at www.jstor.org/stable/20210052

^{xv} Will Kymlicka, 'Contemporary Political Philosophy: An Introduction', New York; Oxford University Press, 2002, 2nd ed., ch. 8, p. 333

^{xvi} Ronald Dworkin, 'Taking Rights Seriously', London; Bloomsbury Publishing Plc., 1997, ch. 7, p. 186

^{xvii} Partha Chatterjee, 'A Possible India, Essays in Political Criticism', Delhi; Oxford University Press, 1998, p. 235.

^{xviii} Ibid, page 235.

^{xix} Krishnaprasad K.V, 'Constitutional Scrutiny of Personal Laws', Available <http://www.supremecourtcases.com/index2.php?option=com...1...>

^{xx} Krishnaprasad K.V, 'Constitutional Scrutiny of Personal Laws' Available at <http://www.supremecourtcases.com/index2.php?option=com...1...>

^{xxi} Will Kymlicka, 'Contemporary Political Philosophy: An Introduction', New York; Oxford University Press, 2002, 2nd ed., p. 252.

^{xxii} ShefaliJha, 'Rights versus Representation: Defending minority Interests in the Constituent Assembly', Economic and Political Weekly, Vol. 38, No. 16, April 19-25, 2003, pp. 1583.

^{xxiii} Amartya Sen, 'Secularism and its Discontent', in Secularism and its Critics in Rajeev Bhargava (ed.), Oxford University Press, 1998, ch. 14, pp. 457

^{xxiv} It sees the identity of being a Hindu or a Muslim, or a Sikh to be politically prior to being an Indian. The Indian identity is built up from the constitutive elements of separate identities. Ibid, pp. 458

^{xxv} Tahir Mahmood, 'Muslim Personal Law: Role of the State in the Indian Subcontinent', Nagpur; All India Reporter Ltd., 1983, 2nd ed., ch. 5, p. 73.

^{xxvi} Constituent Assembly of India – Vol. VII, Constituent Assembly Debate on 23 November, 1948.

^{xxvii} Michael J. Sandel, 'Freedom of Choice or Freedom of Conscience' in Rajeev Bhargava (ed, 1998) Secularism and its Critics, Oxford University Press, ch. 3, pp. 86-87.

^{xxviii} Constituent Assembly of India - Volume VII, Constituent Assembly Debate on 23 November, 1948.

^{xxix} ShefaliJha, 'Secularism in the Constituent Assembly Debates, 1946-1950', Economic and Political Weekly Vol. xxxviii, No. 30, July 27, 2002, p. 3176.
