Discipline Course-I, Semester-II

Paper Title: Political Theory: Concepts and Debates

Lesson: Rights

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Content:

Introduction:

Rights, apart from providing opportunities to individual for the full development of her personality, also set important limits on state actions. The declaration of Independence (1776) by the founders of the United States stating that certain rights were inalienable as well as the French Declaration of the Rights of Man and of the Citizen (1789) are the two most influential political documents of the modern age which take the notion of rights as the central concept upon which their political organizations are built. It is generally agreed that issues of rights play a central role in the political life of a society. Looking at right historically it would be evident that the interest in rights was not restricted to the 17th and 18th centuries only. One can also witness a major resurgence of interest in the notion of human rights in the second half of the 19th century. From the 1960s onwards the civil rights movement took rights as the corner stone for the rebuilding of society. In recent times issues about rights of women and disadvantaged minorities have taken the centre stage of our contemporary debate. Even a question such as whether people have a right to die (euthanasia) is being hotly discussed in our times. Animal rights activists have raised new questions regarding using animals in research and testing. Similarly the rights of sexual minorities in terms of gay and lesbian rights add a new dimension to the rights of minorities in our times. The issue of sexual choice is being discussed today even in the traditional societies. Human rights discussions have occupied the centre stage in our rights discussions have occupied the centre stage in our contemporary times. The discourse about rights has become so persuasive in the present society that the language of rights is proving to be the most powerful language for moral change not only at present but also in the foreseeable time ahead.

Meaning and Nature of Rights

Right refers to 'one's due' as a human, citizen and individual or as a member of a group, etc. It means to be entitled to do something or to have something done. To cite an example one has a right to vote, to move freely, to have health care facilities, etc. It should be made clear here that right is different from obligation. Hobbes has pointed out that on any occasion one has a choice whether or not to exercise one's right. An individual is not obliged to do what she is entitled to do. For example, one's right to vote does not mean that one is obliged to vote. One is free to exercise one's choice, in this case, to vote or not to vote. Though a distinction has to be made between rights and obligations this is not to say that they are not connected. Rights and obligations are very much connected to each other. When an individual decides to do what she has a right to do, others have a corresponding obligation to let her do it. A pertinent question that emerges here is as regards the grounds upon which rights and obligations are justified. How one is entitled to a right and another obliged to a correlative duty? It may be noted here that a right is conferred and a correlative obligation imposed by a law in a society of which both are members and whose legal system both are subjected to. But then all rights are not legal in nature. There are many rights which are moral in character. This leads us to the understanding that rights and their correlative obligations are essentially social in nature. An individual has them as a member of a social group, whether a society or a nation. Since rights need recognition from society and from the state, they are claims which can be justified on legal, moral ethical or human grounds.

In the first place a right must be justified as something one has as a member of some social group. Second, the claim to it must be backed by some necessity i.e. it must be something which is necessary for a person to be able to play her proper part as a member. Third, one's claim to have it as a right is justified only if one is able to and willing to respect the rights of the other members of the group. In view of the close affinity between rights and obligations rights express a certain kind of relationship between two parties: the right-holder and the right observers. In this context rights thus have two sides or dimensions depending on the perspective they are viewed from. When viewed from the perspective of the right-holder, a right is permission 'to act, an entitlement to act, to exist, to enjoy, to demand'. On the other hand, if viewed from the standpoint of the right observers, the right usually imposes a correlative duty or obligation. Such a

duty can be either negative (to refrain from interfering with the right-holder's exercise of the right) or positive (to assist in the successful exercise of the right). Finally, to have a right entails certain responsibilities which bring us to the distinction between negative and positive rights.

Negative rights refer to those rights that entail non-interference from the society at large. The right to life, liberty or right to freedom of speech and expression are some such rights. For example, the right to life prevents others to kill a person but it does not obligate them to do anything positive to assist the person in living her life fully and happily. Positive rights, on the other hand, refer to those rights which impose obligations on other people or the state to do something i.e. to take some initiatives or concrete measures for a fuller enjoyment of people's rights. While negative rights are prohibitory in nature as they prevent or restrict us from doing something positive rights entail positive obligations on the part of the right-observer to do something to assist in the right-holder's exercise of the right. Thus, negative rights entail only negative obligations of non-interference whereas positive rights entail positive obligations on the part of the right observer. There can be various ways in classifying rights. They can be classified as moral, legal, human rights, etc. or civil, political and social rights.

***Legal and Moral Rights*:**

Rights can also be classified on the basis of legal and moral grounds. The acts of legal authorities ultimately decide as to what is legal or illegal. Laws differ from ordinary life or moral discourse. For example, courts have defined terms in a certain manner which may or may not agree with the moral discourse. The term 'right' is used by legal authorities to refer to four different properties: the correlate of a legal duty (claim), the absence of duty (privilege or liberty), the capacity to change legal relations (power), and the protection against change in one's legal position (immunity). Ordinarily rights can be used in two senses: right to something and right to do certain things. When we say someone has the right to something the existence of the right concerns the behaviour of someone other than the right-holder. Because if I have a right to something it means that someone has the duty to act in a certain manner towards me. But in the second case to say that one has a right to do certain things or that she has a right to act in a particular way is to say that she is morally free to do so – that it is not wrong for her to do so. These two senses of the use of the term 'right' correspond in part to Dworkin's (Dworkin, 1977:188) 'strong' and 'weak' senses of right.

In case of a claim-right another person has the duty to act in a certain way with respect to the 'thing' to which the first person has a right. But a pertinent question that arises here is whether a right-to-something merely implies a duty in others or is it a package of normative advantages? However, the core idea of right, in either case, appears to be that an object or interest protected by a duty has some things that are considered to be good. Then if it is said that one has a right to such a thing it also means that one's interests in that thing deserves protection. It would be wrong to state that all goods or interests generate rights. There must be a particularly important moral reason for protecting the good or interest in question regarding which we claim of there being a right. Dworkin's (Dworkin, 1977:189-90) well-known claim that individual rights are political trumps held by individuals also expresses this idea. He also argues that individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do. In other words, it is not a sufficient justification for imposing some loss or injury upon them. There is also a similar idea in Raz's (Raz, 1995:166) claim that a right exists if an aspect of a single person's well-being is a sufficient reason for holding some other person or persons to be under a duty. So far as the importance of certain goods or interests for human beings is concerned political theories will, of course, differ in their estimate. Consequently they differ in their ascription of particular rights. However, there is no denying of the central idea that important interests of individuals are protected against wider moral considerations. Thus, in Hartney's (Hartney, 1991) view, giving rights to the society would simply annihilate any competing individual rights. But it needs to be noted here that Hartney ignores the very important

issue of individual's not as atomized entities but as culturally embedded, and the idea of 'good' as rooted in one's culture.

The Theory of Natural Rights

The natural rights theory is the first and the oldest theory of rights of the various theories on the origin of rights. It was very popular in seventeenth and eighteenth –century political thought treating the rights of human beings as a corollary of natural law. The protagonists of natural law regard it as superior to any other law. It is directly derived from nature and can be discovered through moral intuition and by the application of human faculty of reasoning. The main argument of the theory is that rights are not granted by the state, but they are inherent in the very nature of human beings i.e. in their own intrinsic being. The theory of natural rights was broadly developed on two important bases: the contractual and the teleological basis. Based on the liberal theory of the origin of state from 'social contract' it is argued that before the formation of civil society individual enjoyed certain rights in the 'state of nature'. These natural rights, which were prior to the state, must be respected and protected by the state. Since state did not create these rights it did not have the right to take away them. On the contrary, State had, indeed, come into existence to protect these rights. John Locke is regarded as the one who gave the most influential statement on natural rights in his 'Second Treatise on Civil Government' published in 1690 (repr.1946). But before him it was Thomas Hobbes who had also propounded a theory of natural rights. His idea of natural rights can be traced to his conception of the 'state of nature' which is the condition of human life in the absence of organized political authority and government, the natural condition of man in contrast to his artificial condition under a government. According to Hobbes (1946: 80-81), the right of nature or what he calls 'Jus Naturale', is the liberty each person has to use his/her power for the preservation of one's own nature i.e. his/her life, and consequently of doing anything which in his/her own judgment and reason will be the best. Since each person has it in the state of nature this liberty is a right to nature. It is also the only right that anyone can have in the absence of a government. But Hobbes does not consider this to be a worthy right. In Hobbes view the state of nature is a condition of perpetual war and uncertainty. In such a state everyone is against everyone and also everyone is governed by his or her own reason. These assumptions lead Hobbes to the conclusion that the natural right of every person to everything must be given up as a necessary condition for the establishment of a government and to end the anarchy of the state of nature. There must be an agreement by all to agree unconditionally on one supreme authority. However, Hobbes is in favour of their retaining one natural right i.e. the right to life. Thus, in case of a government ordering a person to kill oneself the person may resist. Like Hobbes John Locke too considers the state of nature as being the condition of human beings in the absence of government. But there is a prominent difference between the two as regards the nature of life in this state nature. For Locke the state of nature is not inherently a state of war. Though, without a common superior on earth with authority to judge between them human beings live together according to reason. In Locke's view people live in perfect freedom in the state of nature to order their actions and dispose of their possessions and persons as they think fit within the bounds of the law of nature without depending upon the will of any other person. It must also be kept in mind that Locke's state of nature is a state of equality wherein all the power and jurisdiction is reciprocal with no one having more than the other. However, this is not to argue that this natural freedom is a freedom to do as one likes. It must be insisted here that it is freedom 'within the bounds of the law of nature'. There is a law of nature to govern the state of nature. It is this law which teaches all mankind that all being equal and independent no one ought to harm another in one's life, health, liberty or possessions.

Locke maintains that human beings are born with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of nature. By these rights and privileges Locke means a person's natural right to one's life and freedom of action to use one's property as one thinks fit provided one does not interfere with any other person's enjoyment of the same conditions.

Teleology refers to the doctrine of final causes. According to this view any developments in the universe are the outcome of the purpose or design that is served by them. So this view of rights seeks to relate the rights of individuals with the purpose of human life. Such rights are, therefore, natural rights and they do not depend on any institutional arrangements. They, rather, arise from the very nature of human beings and serve the purpose of their life. The theory of natural rights on teleological basis was propounded by Tom Paine in his 'Rights of Man' (1791) who rejected the doctrine of social contract which, according to him, was 'eternally binding, and hence a clog on the wheel of progress.' Paine argued that every generation should be free to think and act for itself. However rights to 'liberty, property, security and resistance of oppression' are the proud possessions of individuals in civil society and they derive their sanction from the natural rights 'pre-existing in the individual'.

Despite the fact that the theory of natural rights has served as a source of inspiration for the American and French Revolution in modern history the theory remains an ambiguous one. It was put forward for securing favourable conditions for a free market society. It has been a subjective concept and has been interpreted to uphold the values of the particular class which invokes these rights. The irony is the fact that while claiming natural rights to be eternal and immutable they have been subjected to immense variations in actual practice. Thus the character of natural rights depends on the views and values of the class which interprets and articulates them. There can be no 'fixed' natural rights and therefore the concept is a dynamic one. The nature and degree of the prevailing social consciousness determine their interpretation. In contemporary society natural rights can hardly be invoked for building up a rational system of rights. In modern times human rights are, instead, widely invoked to determine the policy objectives or goals of states as well as international organizations and movements. Many international declarations and conventions have made a very substantial contribution in forming a broad consensus in society as regards the contents of human rights. Human rights, today, are believed to be based on recognition of 'human dignity' which cannot be exchanged for any type of substantive benefit.

The theory of moral rights also emanates from the dictates of human reason. It is dependent on human being's sense of right and wrong, good and evil. The accepted morals in society form the basis of moral rights. Though there are some cultural variations regarding the conceptions of right and wrong, good and evil it may be hoped that ultimately all human beings would think alike on moral questions. In spite of different customs, laws and practices in different societies the same moral rights are likely to be recognized in all modern societies. Moral theory of rights has also advanced its case on teleological basis. Immanuel Kant has argued that Reason is the distinctive feature of individual and of human agency which impels a person to treat herself and others and ends and never as means only. All persons with goodwill would consider every one as members of a 'kingdom of ends'. Since such conditions are not present in nature political community becomes necessary to assist individual to rise towards Reason. Kant has tried to build a bridge connecting the moral realm to the political-legal realm. The political-legal realm which, thus comes into existence, is required to be responsible to protect moral rights of individual. T.H.Green has also used teleological arguments to defend his moral theory of rights. Unlike Locke Green argues that the rights of individual do not emanate from a transcendental law, rather they come from the moral character of individual herself. The ideal objects of all individuals are common objects in view of the fact that all of them share the same moral consciousness. Thus after the formation of a state they agree to recognize each other's claim to pursue their ideal objects. Green acknowledges that rights depend on recognition, but this recognition is granted by the moral consciousness of the community and not by the state. It may be kept in mind here that Green is not concerned with legal rights; his concern is only with ideal rights which derive their sanction from the inherent moral propensity of individual, not from the force of the state.

The fact that moral rights theory is based on the convergence of law and morality is problematic. Ronald Dworkin (Taking Rights Seriously,1977) argues that law ought to 'take rights seriously'. In his view rights trump other considerations such as community welfare. Rights cannot simply be subordinated to the interest of the community. In another work (Ronald Dworkin, 1986) he has projected his vision of 'law as integrity' which combines the goals of descriptive and normative

theory. According to Dworkin a judge should not try to give voice to his own moral or political convictions, but as an author in a chain of the common law. It requires the judge to treat the law as if it were a seamless web. To take rights seriously they cannot be treated as instruments of some other virtue. Pragmatists fail to realize this independent existence of rights since for them; rights are simply a means to make life better. Dworkin distinguishes between principles and policies. For him while the former describe rights the latter describe goals. But rights, as trumps, have a 'threshold weight' against community goals. Judges have to rely on certain principles for reaching a decision in difficult cases where application of rules does not give a clear answer. These principles are not 'extra-legal' criteria; rather they are used by judges as part of law. For example, the New York Court's rule that a murderer could not be allowed to benefit from his victim's will is based on the principle that 'a man should not benefit from his own wrong'. Moral rights theory is also criticized on the ground that moral rights, like natural rights, are purely hypothetical and not concrete rights. They are merely expectations of people which can not be termed as their rights in true sense of the term. Joseph Raz (The Authority of Law, 1979) has also argued that the law is autonomous and its content can be identified without recourse to morality. Moral rights are also challenged by the champions of moral relativism who contend that there are no fixed morals for all societies at all times. So according to them moral rights can not be recognized as universal rights.

Rights: A Utilitarian Perspective

It was Jeremy Bentham, an English Philosopher during the 1st half of the 19th century, who outlined the utilitarian theory of rights. The aimless and 'unscientific' character of the legislation of his time was the basic cause of his dissatisfaction. Bentham was very critical of the idea that significant and genuinely reforming legislation could be based on the traditional idea of rights'. He suggested that law makers should use the 'principle of utility' to construct morally sound legislation. Utility is the property in any object which tends to produce benefits, advantages, good or happiness or that which prevents the happening of mischief, pain, evil or unhappiness to the party whose interest is considered. The party may be the community or a particular individual. Thus, it could be happiness of the community or happiness of the individual depending on the case in question (**Burns and Harts 1970:14) [94].** In Bentham's view the principle of utility commands a state to maximize the utility of the community. As per this argument a government's measure is guided by the principle of utility when it takes care of the greatest happiness of the community, rather than the happiness of some people. Bentham brings out a mathematical way of calculating utility to provide a scientific authority to his analysis. This may also be added here that this Benthamite principle of utility has been persistently alluring to generations of politicians, policy makers and theorists. Apart from its simplicity, scientific appeal and mathematical formulation what is more important is that it is also centrally concerned with human welfare which may be taken to be the core of morality. Yet, this principle is not without vehement criticisms. That is why the advocates of the principle of utility have attempted to modify and redefine it so as to make it plausible. For a critical evaluation of the principle of utility it would be worthwhile to consider the interesting theoretical assumptions underlying it. First, Bentham takes it for granted that each of us can evaluate our own happiness. Second, Bentham assumes that this evaluation can also be made by those who are determining policy in a state. Third, there is also an assumption in the Benthamite principle that this evaluation is quantitative. It means that happiness inside each of us is something that can be measured and represented by a single number. Fourth, there is an assumption in Bentham's principle that the happiness of each person can be added to the happiness of any other person, paving the way not only to compare the happiness of persons but also to add their 'happiness' together to get a sum total of happiness.

These assumptions were not free from criticism. For example, the third assumption that the evaluation of happiness is purely a quantitative matter is very much problematic. There can be serious doubts regarding measuring people's happiness on the assumption that happiness is only

one kind of thing that comes in degrees but does not differ in kind. Bentham's contention was that happiness was not a word that denoted multiple experiences or feelings in a human being but only one kind of feeling- the feeling of pleasure. But John Stuart Mill, another utilitarian thinker, differed from it and maintained that experiences of 'pleasure' not only differ in quantity but also in quality. Mill had all sympathies with the critics of Bentham who challenged the idea that life had 'no higher end than pleasure'. On the contrary there are also people who would not like to abandon Bentham's idea but they would suggest only to redesign it. In this connection they insist on a better way of identifying human welfare, such that it can be quantified, measured and aggregated. Besides John Von Neumann, Oskar Morgenstern and Leonard Savage – all protagonists of contemporary utility theory – have generated a way of 'measuring' the satisfaction of preferences, so that we come up with a number that accurately reflects how well a person has received what she wants which helps in showing the intensity of those wants. But the problem here is that these 'measurement numbers', as they stand, cannot be added together as per the requirement of the principle of utility. According to many critics such an idea is wrong. They have raised the technical issues about the nature of the 'measurement' of preferences that game theory gives. Apart from this critics have also argued that there are even more problems plaguing the theory because of the kind of policy recommendation it would generate if its foundational assumptions could be better clarified and defended. The utilitarian theory tells us to maximize total happiness. If maximizing total happiness depended upon impoverishing some members of the society, the principle of utility would nonetheless tell us to do so. But this intuitively strikes us as unfair.

Intuitionism, a moral theory put forward by some people, is of the view that we have fundamental moral ideas within us that are the source of our conceptions of justice and to which any adequate moral conception must answer. However, such a theory has no resources within it to systematize or interpret intuitions if they come to us in an *inchoate* form. Secondly, this theory has no theoretical resources to prioritize among intuitions or decide between them in case of a conflict. Thirdly, since many intuitions held by people reflect the prejudices, injustices and peculiarities of their culture, intuitionalism must be able to identify which intuitions should be morally relied upon. But, intuitionalism does not have the theoretical resources to do so. This has led to a situation where philosophers critical of utilitarianism have attempted to formulate alternatives to intuitionism. This could not only show the failure of the principle of utility in a way that relies less on intuition but also yield a satisfactory conception of justice based on reason. John Rawls is one of the prominent scholars who has made similar attempt in this regard which is an important topic of contemporary debate (John Rawls, 1971). According to John Rawls individuals' means to pursue their own ends to live whatever 'good life' they choose for themselves is directly relevant for social ethics and justice. His vision of the just state is deeply egalitarian in sprit. He makes use of the idea of a hypothetical social contract in his argument for explaining the nature of justice. For Rawls people are to imagine themselves in a contract situation in which they must agree with all those people who will live with them in a society based on the principles of justice that will govern it. As per Rawls' agreement any principle of justice that results from this hypothetical agreement process should be understood to be the best defensible conception of justice available to the people. John Rawls was influenced by Kant to a great extent in this regard. In Kant's view the idea of contract acknowledges the way in which people should be treated as 'ends' in themselves and not solely as 'means'. In Kantian perspective a social contract test of political policies is a way to secure that acknowledgement by hypothetically involving each member of the society in the assessment of those policies in a way that respects her interests and perspectives as an individual.

In a similar way Rawls also believes that a contract test takes the individual seriously in a way utilitarianism does not. In the utilitarian calculation the boundaries of the individuals are merged. Their welfare is aggregated together. But Rawls does not endorse a moral reasoning procedure that explicitly conflates individuals. On the other hand, he contends that an adequate theory of

justice must morally respond to and preserve the 'distinction of persons'. There are two principles in Rawls' theory of justice as fairness:

(i) The first principle is regarding each person having an equal right to the most extensive liberty compatible with a similar liberty for others.

(ii) As per the second principle 'social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be in everyone's advantage and in particular, to the advantage of the least well-off persons; and (b) attached to positions and offices open to all'.

Rawls' views have been subjected to both right-wing as well as left-wing criticism. The right-wing critics have accused that Rawls has failed to acknowledge the proper role that effort, merit and responsibility should have in the distribution of resources. People receiving roughly equal allotments is questioned in view of the facts that some work harder than others, some invest more wisely than others or some are lazy and fail to contribute effectively to the community. It is argued that a system of distributive justice that ignores differences in effort undermines individual responsibility, promotes sloth and allows the lazy to free ride on the efforts of the industrious in a way that will likely lead to social unrest and negatively affect the economic pool. In case of the latter development Rawls' own theory would disallow that distribution, because in this situation giving more to the industrious is justified in order to increase the economic pool and to yield more for everyone. So, Rawls would allow unequal distribution in order to forestall a drop in productivity. On the contrary he would not allow them if the economic pool were increased but the only people to benefit from the increase were the most advantaged. However, this is not to say that the right-wing critics would support if the more advantaged by virtue of creating those increases are allowed to enjoy their share of the increased economic pool even if that adds to social inequality. The left-wing critics have pointed to Rawls' willingness to depart from strict equality of holdings. Some of them have expressed their desire for a conception of equality that focuses more on the equality of people's welfare than the equality of their resources. The critics on the left have also complained of Rawls' failure to incorporate more fully the idea of personal responsibility into his theory.

Robert Nozick's Conceptions on Rights

In a kind of reply to a theory of justice by John Rawls Robert Nozick in his book Anarchy, State and Utopia (1974) argues against what he calls 'patterned' and 'end-state' conceptions of justice which seek to implement a distributive scheme according to some patterning principle. On the other hand, Nozick's conceptions seek to attain a certain kind of telos, or goal, via a certain distribution of resources. As per Nozik's view each individual has certain rights and in particular, certain property rights that are 'absolute' in character in the sense that no amount of good accruing to the community generally or to other individuals can justify the infringement of or overriding of these rights. Nozick is concerned with the way end-state and patterned conceptions of justice interfere with liberty. That is why Nozick argues for a historical conception of justice on which he bases the theory of rights. This particular version of historical principle is what Nozick calls the 'entitlement theory of justice' consisting of three principles:

(i) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.

(ii) A person who acquires a holding in accordance with the principle of justice in transfer from someone entitled to the holding is entitled to the holding.

(iii) No one is entitled to a holding except by repeated applications of (i) and (ii).

Nozick also endorses a principle of rectification, in addition to these principles that would provide for the redressal of past injustices. However, such a conception of justice essentially entails the defence of the free market and the capitalist system. It is a way of defending the free market insofar as it realizes justice by respecting the liberty of the individual regardless of its effects on aggregate welfare and regardless of its economic implications. A critical evolution of this

conception would show that the libertarian notion of rights has been the subject of the most obvious and popular criticism. The central question that crises here is why should we think that morality demands that we accord people such absolute rights. It is also a pertinent question how could rights be thought to trump so decisively all considerations of others' welfare in the community? There could also be a situation that the economy flourishes better if the state interfered in the market economy. Even amidst libertarians not allowing it most citizens and firms might actually want it and even demand it, insofar as they believe they will be better off with such governmental interference.

Human Rights

Human Rights can be defined as international moral and legal norms aspiring to protect all people everywhere from severe political, legal and social abuses. Some common examples are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured and the right to engage in political activity. Such rights exist in morality and in law at the national and international levels. These rights are addressed primarily to governments, requiring compliance and enforcement. The Universal Declaration of Human Rights (1948) and the many human rights documents and practices that have followed in its wake remain the primary source of the contemporary conception of human rights.
In the philosophical aspect of human rights questions about existence, content, nature, universality and justification of human rights are addressed. A list of over two dozen specific human rights have been set out by the universal declaration of human rights which are expected to be respected and protected by countries. These rights may be categorized into six or more families: (i) Security right protecting people against crimes such as murder, massacre, torture and rape; (ii) liberty rights protecting freedom in areas such as belief, expression, association, assembly and movement; (iii) political rights protecting the liberty to participate in politics through actions such as communicating, assembling, protesting, voting and serving in public office; (iv) due process rights protecting against abuses of the legal system such as imprisonment without trial, secret trials and even excessive punishments; (v) equality rights guaranteeing equal citizenship, equality before law and non-discrimination; and (vi) welfare rights (or 'economic and social rights') requiring the provision of education to all children and protecting against severe poverty and starvation. There can still be another family of rights i.e. group rights which do not find any mention in the universal declaration of human rights. Nonetheless subsequent treaties include group rights consisting of protection of ethnic groups against genocide and the ownership by countries of their national territories and resources.

The generality or specificity of human rights is another important question. The general idea of human rights can be explained by setting out some defining features. In this context an attempt is made to answer the question of what human rights are with a general description of the concept rather than a list of specific rights. It would be interesting to note that two people can have the same general ideal of human rights even though they disagree about whether some particular rights are human rights. Thomas Pogge's view (Thomas Pogge, 2000) regarding human rights is very relevant here. According to him 'to engage human rights, conduct must be in some sense official'. This is in conformity with the view that human rights are political norms dealing mainly with how people should be treated by their governments and institutions. Hence, they are not ordinary moral norms applying mainly to interpersonal conduct (such as prohibitions of lying and violence). But one must be careful here since some rights, such as rights against racial and social discrimination are primarily concerned to regulate private behaviour. However, governments are directed in two ways by rights against discrimination. They are forbidden to discriminate in their actions and policies. On the other hand these rights impose duties on governments to prohibit and discourage both private and public forms of discrimination.

It is also important to note that every question of social justice or wise governance is not a human rights issue. There can be situations when a country could have too much income inequality, inadequate provision for higher education, or no national parks without violating any human rights. Thus, the decision as to which norms should be counted as human rights are a difficult one. With the passage of time and change of circumstances there is continuing pressure to expand lists of human rights to include new areas. In order to publicize, promote and legitimate their concerns at the international level many political movements would like to see their main concerns categorized as matters of human rights. Consequently this has led to a situation where there is human rights inflation. In turn this case of producing too much bad human rights currency has caused the devaluation of human rights.

Three Generations of Rights:

Civil, Political, and Social Rights

Human thinking regarding rights has been continuously growing keeping pace with changing times and circumstances. When new areas of safety and development of individual emerge the list of existing rights is suitably revised and enlarged so that favourable conditions are created to achieve these objectives. To put it briefly civil and political rights belong to the first-generation rights where as social and economic rights are considered in the second-generation and the newly recognized human rights such as cultural rights of minorities in a multicultural society taken to be the third-generation rights. The three generations of rights give a broad picture of the sequence of rights as they have emerged in their specific contexts which can be discussed accordingly.

Civil rights are the basic legal rights a person must possess in order to secure the status of equal citizenship in a liberal democratic state. During the 1950s and 1960s the term 'civil rights' is linked to the struggle for equality of African Americans who aimed to secure such a status. These rights constitute free and equal citizenship and include personal, political, and economic rights. It is generally agreed that such rights cannot be legitimately denied to a person on the basis of race, colour, sex, religion, national origin, or disability.

It was until the middle of the 20th century that civil rights were usually distinguished from 'political rights'. Civil rights included the rights to own property, the rights to make and enforce contracts, the right to legal recourse and the right to one's religion. They also covered freedom of speech and of the press. Political rights, on the other hand, included the right to hold public office, vote, or to testify in court. These rights were reserved for adult males. But this civil-political distinction was conceptually and morally unstable insofar as it was used to sort citizens into different categories. It was part of an ideology to deprive women of political rights. However, with the breaking down of that ideology the civil-political distinction became increasingly implausible. Such distinction could not survive the cogency of the principle that all citizens of a liberal democracy were entitled, in Rawls' words, to 'a fully adequate scheme of equal basic liberties'.

The first-generation of civil rights claims were the claims for which the American civil rights movement ought in the 1950s and 1960s. The 18th century set of civil rights such as the right to legal recourse and to make and enforce contracts were included in these rights. Besides they covered political rights as well. But it was argued by many that these first-generation rights were too narrow to define the scope of free and equal citizenship. It was contended that an additional set of claims such as rights to food, shelter, medical care, housing and employment could only lead to the realization of such citizenship. These rights belong to the second generation (19th century) of economic 'welfare rights' which ensured that the first generation rights could be made effective in protecting the vital interests of citizens and were not simply paper guarantees.

The traditional political and civil rights can be readily secured by legislation. As these rights are mostly rights against government interference the legislation needed had to do no more than restrain the executive's own arm. However, in case of rights such as the 'right to work', the 'right

to social security', etc. it is no longer the same. These are positive rights which require of the state to undertake specific measures like social welfare programmes and social legislation so as to enable people to enjoy these rights effectively. Such rights have been duly recognized by many states all over the world through their constitutions or International Covenants. The Directive Principles of the State Policy in part iv of the Indian constitution is an example of this. International Covenant on Economic, Social and Cultural Rights (1966) which came into force in 1976 insists on the member states for recognizing the ' right of everyone to an adequate standard of living' and also to the 'continuous improvement of living conditions'.

'Rights of cultural membership', which include language rights for members of cultural minorities, and the rights of indigenous peoples to preserve their cultural institutions and practices and to exercise some measure of political autonomy, belong to the third generation of rights (20^{th} century). Here though there is some overlap with the first-generation rights, such as that of religious liberty, rights of cultural membership are broader and more controversial. Due to both historical reasons as well as large scale migrations of people with diverse cultures in search of better opportunities in countries other than their own in this age of globalization a situation is arising where more and more countries are having cultural minorities within their territories. The fact that such minorities now wish to maintain the salient features of their respective cultures in terms of language, symbols of identity, religion, custom, dress code etc. it is increasingly felt that they need to be given the freedom and opportunity to preserve their cultural institutions and practices and to exercise some measure of political autonomy. Such rights are known as third-generation rights. More than a mere absence of interference by the state, which may be sufficient in case of the first- generation rights, positive steps are needed for tangible protection as well as assistance in maintaining their cultural identity. Cultural and Educational Rights of minorities as provided under Articles 29 and 30 of the Indian constitution in its Fundamental Rights section are good examples of these rights. Under the provisions of these articles minorities have their right to conserve their language, script or culture and establish and administer educational institutions of their own choice without any fear of discrimination to such institutions by the state. The state is also obliged to ensure due respect of sacred books of various religious communities and full safety of their holy cities and places of worship. In multicultural large countries the provisions of such rights are helpful in the nation-building process as they provide the cultural minorities with a sense of security and strengthen their allegiance and commitment to the nation. Existence of variety of cultures makes a nation richer and healthier in many respects as people have the opportunities to learn from each other's experience in a truly democratic spirit of give and take and fellow feeling. However when minority groups, in the name of protecting their identity, oppose progressive steps intended to change or reform irrational, superstitious, inhuman, undemocratic and unjust practices it could be counter-productive. Cooperation and collaboration in a congenial environment of mutual appreciation and acknowledgement is the need of the hour. By recognizing the right of everyone to a fare share in the resources of the earth and space and their right to healthy global environment, peace and humanitarian relief in case of natural disasters third-generation rights promise to cultivate a cosmopolitan outlook. The rich global heritage of knowledge and technical knowhow, which is the proud possession of all humanity, could be fruitfully utilized to solve world's problems in a collective endeavour.

Rights: The Feminist Perspective-

Feminists support the idea that justice should be understood from a 'group' perspective as groups or communities play a crucial role in shaping one's perspectives on justice. In feminists' perspective social or political systems based on the individual perspective of justice are highly biased as they are shaped by the dominant individual male and not by women or other marginalized groups. Such political and social systems of domination can distort society so severely that none of the theories of justice will prove acceptable. Thus these systems of

oppression need to be overturned first and foremost if a just society is to be built where women as well as other such marginalized groups have any meaningful rights. The gravity of this daunting task can be judged from the ideological nature of the hegemony which is very complex and subtle. What is required is a consistent, long-drawn and comprehensive struggle also in the realm of ideas to counter and dismantle it effectively. The structures of domination are such that more often than not women walk into the trap of their domination and exploitation quite helplessly, even sometimes their being unaware of such a phenomenon. So strong is the indoctrination through socialization by different mediums- family, society, religious institutions; productions in the realm of culture such as literature, films, theatre, dance, drama, music, painting, etc. that powerful or dominant ideas rule the roost and appear as natural or matter of fact . Even while projecting women as 'Shakti' and 'Mother Goddess' the flood-gates of their exploitation are kept wide open. A 'Goddess' is, and quite understandably so, above all human needs and desires. She is so complete in all respects that she has everything to give/offer to others and absolutely in no need to take anything from anyone. With a 'Divine Halo' around her She finds herself, ironically, in a complete 'denial mode'- a complete negation of herself and her very identity. In an attempt to catch that 'public imagination', live up to that 'ideal' –all created by the patriarchic structures of domination- to be an ideal daughter, sister, lover, mother, etc. she is ever willing to make all kinds of sacrifices and often dies before her death. In view of all this the feminists rightly argue that demand for greater resources or merely distributing resources in some kind of 'equal' fashion will not be enough to secure justice. Equal citizenship rights for both men and women turn out to be empty and look attractive only on paper. Since political involvement is time consuming and women, due to their being over-burdened in bearing responsibilities for domestic labour, have little time for political activities they cannot make use of the equal value of political liberties. This kind of equality is out of reach in a gender-structured society. Susan Moller Okin(1989) argues that Rawls' own characterization of the original position, despite its occasional claims to gender neutrality, in fact, contains many implicit assumptions that would tend to reinforce the current inequality of women in the gendered structure of social institutions. Rawls' characterization of parties to the original positions as heads of families and as members of the paid work force suggests an implicit assumption that the parties are the male heads. Okin is critical of the social structure of gender relations and the nature of family which would certainly raise issues of justice. As domestic labour is performed mainly by women, women's inequality in other spheres is virtually assured. Another important argument in this regard is that the primary goods for the social basis of self-esteem are less sure for girls than for boys. According to Okin (1987) the consequence is that in a gender-structured society the distant standpoint of women cannot be adequately taken into account by male philosophers, whose moral reasoning abstracts altogether from gender.

Iris Marion Young (1989) argues that the ideal of 'universal citizenship' contains three meanings of universality. She also goes on to show how the first meaning stands in tension with the other two meanings of universality. The first meaning is universality as inclusion of all in citizenship status and in participation in public life. The second one is universality as a focus on the common good which is defined in terms of what citizens share rather than what divides them. The third meaning of universality is universality as equal treatment, defined as same treatment, without regard to group differences. As per Young's argument a genuine commitment to universality in the first sense will require a conception of differentiated citizenship both with respect to deliberation about the common good and with respect to allocation of rights. Her target of attack is the republican tradition as according to her contemporary republicans emphasize on what citizens have in common. It undermines the fact that different social groups have different needs, cultures, histories, experiences and perceptions of social relations, which influence their interpretation of the meanings and consequences of policy proposals, and the form of their political reasoning. Such differences in political interpretation are not merely or even primarily a result of differing or conflicting interests. Because groups have differing interpretations even when they seek to promote justice, and not merely their own self-regarding ends. That is why a genuine commitment to the inclusion of all in public deliberation requires that differences be not

suppressed but acknowledged and respected. This can be done in the best possible way by establishing special forms of representation for disadvantaged groups. Such arrangements do ensure that these groups have the resources needed to organize themselves, and their perspectives are seriously considered in public decisions. The ideal of universal citizenship finds the public embodying generality as opposed to particularity, commonness versus difference. Thus the attempt to realize such ideal will tend to exclude or put at a disadvantage some groups even when formally they have an equal citizenship status. Homogeneity becomes a requirement of public participation. The idea of the public is projected as universal and there is a concomitant identification of particularity with privacy. All citizens are expected to assume the same impartial general point of view. But Marion Young is opposed to such a view of universal citizenship. She contends that societies have certain privileged groups and some oppressed groups. In such a situation if particular affiliations are left behind to adopt a general point of view it would mean that the interests of the privileged will dominate. In place of universal citizenship Marion Young proposes 'a group differentiated citizenship' and a heterogeneous public. Special rights for a minority culture against the larger community can be accepted within a liberal theory so as to ensure equality of circumstances between them provided it does not justify special rights for a culture against its own members. Individuals have the right to decide for themselves which aspects of their cultural heritage are worthy passing on. Liberalism is committed to support this. Individuals should have the freedom and capacity to question and possibly revise the traditional practices of their community in case such practices are considered to be irrelevant and unworthy. Liberalism is also committed to this view.

It would be unreasonable to assign rights to individuals alone as individuals are incomplete without the cultural resources that communities provide them. But it is also not proper to buy peace between the communities at the expense of individuals. In view of this it may be suggested to consider community rights as conditional rights. However it needs to be kept in mind here that these cultural rights should not override the core rights, such as the right to life, freedom, equality, and the right to assert rights.

Rights of the Girl Child

Full consideration of the girl child's intersecting identities as well as the cultural context in which she lives must be part of any analysis to move her from the margin to the centre of equality. This is so because of the delicate position as the girl child hangs in the balance between protecting human rights and promoting culture. The GRACE model, premised on the fact that Gender, Race, Age and Culture intersect to inform the girl-child's particular Experience of the world is proposed as the method of analysis. Her experiences are traditionally negative due to being characterized by disadvantage, marginalization and discrimination vis-à-vis other members of her society. The GRACE model is suggested as a means to demarginalize the girl-child and empower her by fully acknowledging her intersecting identity. There is a cultural context to rights and the specific rights that the girl-child lacks may vary from culture to culture. However the link between culture and the girl-child's lacking certain rights is a characteristic feature in all cultures. Many cultural practices, quite disrespectful and demeaning to women, such as female infanticide, female feticide, Devdasi, etc. result in marginalization of the girl-child because of the intersection of her gender, age, race and culture. In view of this any meaningful solution to this problem lies in a thorough analysis of the intersectionality. The social construction of the girl-child is shaped by the intersectionality of various categories of identity. One's identity is basically formed by one's culture, social context and geographical environment. It is seen that people, very often, define and identify themselves by their nationality. But self identification can also be through ethnicity and religion or a combination of all of these. In fact it is a case of all people having multiple identities. Some of these identities may secure positions of privilege. While on the contrary, if an identity stems from membership in a minority group or a group traditionally disadvantaged there can be oppression and discrimination. The situation gets worse and becomes compounded when an individual is simultaneously a member of many minority groups. As a result of this complicated

process an individual experiences discrimination from identification with each of the groups at the same time (A. K. Wing and Tyler Murray Smith, 2003).

Intersectionality refers to the notion of 'multiple identities', analyzed above, where two or more categories of identity overlap to present a thorough picture of one's identity (Kimberle Crenshaw, Regina Austin, 1989). The complexity of one's identity is directly related to the number of the various categories of intersecting identity. In case of the girl-child she is readily identified by the categories of gender and age. But if race and religion, two other key aspects of identity with their importance varying with culture and context are added to gender and age it becomes more complex. Class or social standing can also be added as other key aspects of identity which becomes a relative comparative factor vis-à-vis others in society. Last but not the least the status of the girl-child within the family unit must also be given due consideration. The important point to be noted here is that the multiple and intersecting identities of the girl-child, varying with culture and context, are always necessary in the analysis of equality rights for the girl-child.

It may be worthwhile here to consider some international human rights instruments which prescribe the human rights of children. The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child are some such examples which fall short of the needs of the girl-child without an intersectionality analysis to rights promotion and protection. For realizing the girl-child's right to substantive equality due consideration must be given to her intersecting identity and the cultural context in which she lives.

The theory that human rights apply equally to all persons constitutes the core of the international human rights system. The problem that arises here is that the broader and more general these rights become in their application the lesser becomes the access of the particular or minority communities to such rights. The different categories of identity of people can be broadly divided into categories that are inherent at birth, such as race and gender and others that are developed from circumstances in one's life, such as religion, class and geographical location. Individuals can claim membership in a whole range of categories at any given time. Considering time, location and context, membership in any of these categories could be more beneficial than others. It is important to note here that a commitment to equal treatment for rights holders is very basic to the realization and full enjoyment of human rights. Substantive equality and not mere formal equality is what is demanded by this equal treatment. In Donna Greschner's view 'any substantive method must look at the impact of a particular law on people's circumstances, both on those to whom the law applies and on those who are excluded' (Greschner, 2001). But despite these commitments and realizations the fact remains that girl-children are disproportionately subjected to inequality. It should not be forgotten that when human rights instruments endeavour to protect and promote the cultures of the world and the traditional practices associated with them, they also promote the inequality of the girl-child. Because amidst diversity of cultures, there is a striking similarity in terms of the negative manner in which each culture perceives and treats the girl-child. Some examples of human rights instruments promoting culture are the International Covenant Economic, Social and Cultural Rights (Arts. 1(i) and 15(i) (a)); the International Covenant on Civil and Political Rights (Art. 27); and the United Nations Convention on the Rights of the Child (Art. 31(2)).

Negotiating a balance between the protection and promotion of culture and the protection and promotion of rights for the girl-child is the real challenge here. The way out of this impasse is not a complete reconstruction of human rights principles as are provided for in the instruments at present, but rather what it calls for is a vision that reconciles or reinterprets these rights, so that the rights of the girl-child are not subordinate to culture. Despite international consensus on the provision of certain rights, culture and context influence the way in which these rights are applied. In view of all this the GRACE model, referred earlier, an analytical method that involves interpreting and applying international law tools in a manner that is reflecting of the intersecting identity of the girl-child. Such an approach is responsive to the cultural context in which the girl-child is located. Thus it helps in balancing the rights of the girl-child with the protection and promotion of cultural values. It is based on a recognition that the intersecting identities of gender, race, age and culture impact upon the girl-child's experience of the world (Jewel Amoah, 2007).

Culture and the Girl-child

Cultural and traditional practices need to be distinguished from the cultural values underlying them. It is possible then to 'modify practices without damage to culture and tradition' (UN Eco and Soc Council, Commission on Human Rights, 2002). Thus if a cultural practice is found to be harmful or problematic, allowances should be made to change the practice without causing any harm to the underlying cultural value. Culture cannot be something which is universal as its parameters may be shaped or conditioned, to a great extent, by time as well as geography. It is not necessarily rigid or fixed for it may move across borders and languages. Change being an inevitable and expected occurrence in life traditional practices ought to also be subject to change. If the value of change is recognized in the context of human rights it must also be acknowledged that rigid adherence to culture and tradition may be at the root of the problem of denying rights to the girl-child. Culture and traditional practices need to be kept relevant to the changing times and circumstances. It must be ensured that culture must not be used as a smoke screen to prevent change or transformation. The historic oppression of women and their universal, cross-cultural subordination must be recognized and necessary steps be taken to deal with such anomalies. (Berta Esperanza Hernandez-Truyol, 1996). It is important that the practice be subjected to some form of review and analysis by the process of contextualization, because such an analysis helps to determine whether substantial change is, in fact, necessary. If harmful traditional practices, even after their recognition to be so, continue it is because of the fact that a greater importance is placed on the maintenance of culture and tradition than on the rights of a vulnerable minority. For an objective assessment of the impact of culture on the girl-child it is necessary to give due consideration to both the sections- those within and outside the culture. It is so because to rely on either side solely would be lopsided, biased as well as handicapped. Every side has got its own strengths and weaknesses. Those within a cultural group lack certain objectivity and have a certain degree of devotion invested in the culture. Analysis of one's culture would mean analysis of one's self. On the other hand, those outside a culture do not have the familiarity, contextual background and knowledge to observe and understand the particular nuances of a given culture and its traditional practices. Thus any such assessment of cultural practices to be valid and reliable must be conducted from the perspective of both 'insiders' and 'outsiders'. For evaluating culture and tradition against a modern conception of human rights, input must come from a cross-section of representatives.

The international community's concern for human rights includes the development and realization of group and individual rights. It is not limited to a general theory of rights. UN Convention on the Rights of the Child (CRC) is an example that children are one such particular group whose rights have been identified by the international community as warranting action and attention. But it must not be forgotten here that children are not a homogeneous monolithic group. Because both children and their needs vary according to a myriad cultural contexts. Children rights in general and the rights of the girl-child in particular cannot be properly examined and understood outside the cultural context in which they occur. However setting up of international standards is, to certain extent, intended to ensure that there is minimal variation between cultures in terms of the exercise of a right. But when transposed into reality such an ideal of international standards turns out to be a lofty goal which may be difficult to be achieved. Thus human rights standards and norms are universal in terms of their general formulation. But their actual application and exact content has to take cognizance of cultural diversity (Welshman Ncube, 1998). The differences due to multitude of ways in which rights can be interpreted and applied there are variations in the standard of treatment of children. All this can be traced to the existence of the multitude of cultures in the international community. Consequently there is often significant disagreement from one culture to another on whether or not a particular act or practice is in the best interests of the child. The point which needs to be emphasized here is that since there is recognition of various cultures by the international community it must also allow the various interpretations of rights that these cultures will offer. The fact that there is disagreement does not necessarily make one cultural interpretation more correct than another. Identification or group association is founded both on the basis of enjoyment of rights as well as denial of rights. Thus the girl-child is clearly

identified and identifiable by what she is denied: power, privilege and decision-making capacity-all of which are inherently caught up in her age and gender, and even her race and class as well.

These categories of identity, such as gender, age, race, religion and class, are categories over which the girl-child has no control since either she is born into them, or they are thrust upon her. The fact that the girl-child will eventually grow into womanhood, age is the only category of all the categories of identity which is guaranteed not to be permanent. Although religion and class are also changeable categories the girl-child's, and later the woman's, ability to change them is dependent upon a whole host of societal factors. The extent of power and decision-making capacity, which is allotted to the girl-child, is dictated by such societal factors. Women or girl-children will only be able to make their own choices in a manner so as to improve their class or social standing provided their power and decision- making capacity increase.

Socio-economic factors are at the very root of shaping the various categories of identity and the ways in which they interact. This shaping, which creates the social context, serves as a lens through which to view or interpret the ways in which categories of identity intersect (and are formed) in various cultures (Janet Kabeneri-Macharia, 1998). It is essentially the defining force of culture that is responsible for the emphasis given to identity categories. Thus the girl-child is defined by the surrounding culture and social context. It is very interesting to note here that generally, those responsible for the creation and promotion of culture and social context do not share the same identity as the girl-child. The girl-child's position of powerlessness and vulnerability is evident from the fact that so many aspects of her identity are determined for her by others, or dictated by cultural norms and ideologies that she will never participate in creating or amending. This fact of her marginalization vis-à-vis other members of her society is, very often, internalized by her as the social construction of herself as 'unequal'. This sets the context of how she comes to develop in the world. Very unfortunately this marginalized status of the girl-child will be how she comes to be identified and this identity is solidified and carried on throughout womanhood. Inequalities during girl-hood provide the basis of discrimination during womanhood (Ladan Askari, 1998).

Culture does play an important role in determining individual identities and group affiliations but at the same time it is also itself determined by the relationship between identities. The girl-child is culturally determined to be marginalized, vulnerable and powerless in her relationships with other members of her society. It is much more than simple powerlessness. Because it does not mean only lack of the full enjoyment of rights and benefits for the girl-child but it also means that she is powerless to remedy or redress this deficit or lacuna.

End Notes

The theory behind international human rights is based on a belief that there are certain minimum standards of human rights protection and entitlement that should be available to all human beings. Many national governments, by ratifying treaties outlining these minimums, have gone a step forward in this direction. Even then there is still a problem to establish international standards as there is the realization that values and priorities differ from country to country, as well as between cultures within countries. It is also argued that despite these differences the minimal standards reflect the lowest common denominator of human rights entitlements across the board. But even then the fact still remains that culture and social context often operate to diminish these international standards. The girl-child's marginalization, being a universal phenomenon, bears ample testimony to this fact. If at all a slight attention is paid to those on the margins, the focus is usually on adult females leaving the girl-child high and dry. She continues to linger on the outer fringes. The core issues of human rights miss the girl-child thoroughly. A realignment of human rights and other priorities is the need of the hour today for changing this scenario. It can be possible once there has been a change in the position that the girl-child holds in society.

It is a universal phenomenon that children all over the world are subjected to cultural beliefs and practices of their parents. But there must come a point where it is realized that the child cannot

be subjected to the parent's cultural background when child's life is directly in danger. Because the child's right to live should be the foremost consideration (Michele Wen Chen Wu, 2003). The girl-child is to be considered as a composite of her individual identities as well as by their intersection if her vulnerability to the harmful effects of human rights violations that are often embedded in cultural practices is to be minimized.

There are two basic positions: (i) that of the universalist and (ii) that of the cultural relativist in the conflict between culture and human rights. An effective analysis must reflect elements of both the positions. The universalist position, that holds the view that all human beings are entitled to the same standard of rights, finds the girl-child to be vulnerable and subject to harm. On the other hand, for the cultural relativist position the criticism from outside the culture of cultural practices that may objectively cause harm to the girl-child may be tainted with its own set of cultural biases. An aspect of the girl-child identity is based upon her culture, its values and beliefs. It follows from this recognition that it does not do the girl-child any good to condemn her culture from outside, as it would also represent an attack on one aspect of the girl-child's identity.

It is very rare that the girl-child experiences oppression or discrimination on only one of the grounds such as the age, gender, race, class etc. at any given time. If it is argued that a particular act or practice is aimed at only one category of identity of the girl-child, it cannot be shown that this practice impacts only upon that targeted aspect of identity. In view of this any method of analysis to assess and reduce the discriminatory impact experienced by the girl-child must include a consideration of intersectionality. Despite special recognition of child rights by the international community as evidenced by the UN Convention on the Rights of Children and the African Charter on the Rights and Welfare of the Child, the inadequacy of existing international protection for the girl-child is rooted in the failure to address her intersecting identities. In any law or policy involving the girl-child the intersection of these identities must be considered. So there is no need of a re-drafting or creation of new international provisions. Rather, the need is for the application of an intersectionality analysis, already explained above, which considers the various components of the identity of the girl-child and their intersection.

The key to eradicating the practices considered to be harmful to the rights of the girl-child lies not in legislative reform, but rather in concerted, sincere dialogue between proponents and opponents of the practice regarding how best to promote and protect human rights and culture. It is not one at the expense of the other. An understanding of the person, in this case the girl-child, at the centre of the discussion, is a critical component of the dialogue. It is in this context that the GRACE model, discussed earlier , which recognizes a full appreciation of the intersection of gender, race, age, culture and the impact that they have on the girl-child's experience of the world, is vital to securing human rights and equality for the girl-child.

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