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Language Laws in India

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Law and language are both organic in their mode of development. Despite the precepts of grammarians and legislators, the systems of law and language both evolve over time with the inner logic and coherence of their own.

Allott:1965

Introduction: Law is known as "...a set of rules or norms of conduct which mandate, proscribe or permit specified relationships among people and organizations, provides methods for ensuring the impartial treatment of such people, and provide punishments of/for those who do not follow the established rules of conduct.". Also, "...law is typically administered through a system of courts..." .Thus "...law gives its subjects powers...rights...duties and empowers". Language law empowers a language and its speakers. It is the regulation that controls the use of language(s) in general and specific domains in the society. The multiethnic, multi-religious country with a rich linguistic heritage has thousands of years of unwritten law practiced in the society. This paper places the information relating to language policy and law in India in one place and analyses the same in a rational manner. It examines the way they are related to the linguistic, social, political, legal and economic situation of the country.

Pre-British Period: Indian civilization is based more on oral traditions. As Indian populations were largely illiterate and formal literacy and education usually were privileges in the past, records of laws are not in plenty. It appears that kings and dynasties unfortunately did not leave any systematically codified law behind. But,

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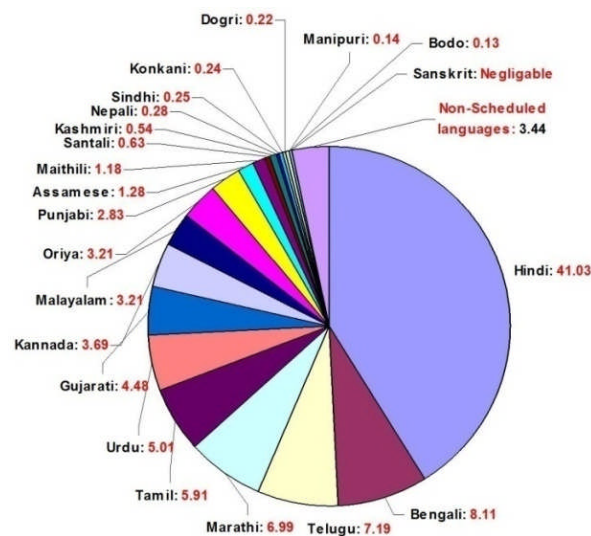
history of language law in India can be traced back to the period of the Emperor Ashoka(BC 268-226).He was the first ruler to recognize the language rights of the people. He ordered that his edicts and directions relating to governance and righteous living be communicated to the people in their language and not in his language only. Hence, one can see his inscriptions in the languages of the people in different parts of the country. At that time law was not normally written, but was mainly conventional and practiced by the people as given tenets of life for both the individual and the community. The Ashokan edicts may not be considered law in the modern sense of the term but these edicts might have had some legal force. We gain some knowledge of code of conduct through our didactic literature. But it is not clear whether trespassing dictates found in such literature led to any punishments. Most of traditional legal sanctions are mostly oral and hardly written declarations.

British Period: Written law or codification of law as a body of literature that is intended to be adhered to and interpreted in judicial proceedings is an innovation in our context. The systematic coding of the same is the contribution of British in India. It was intended for the convenience of the western model of governance. During these periods major decisions about language use in education and administration stem from the famous Macaulay's Minutes. They found a direct link between language in education and administration of the country and encouraged learning of English and through English. English entered the field of education in India in 1792A.D. It became official language in the country around 1830. At the same time, emphasis is laid on communication with the governed in their language. There are ample of official guidelines and suggestions issued by the British government relating to language use in education and administration. Before we discuss the language laws in India, we can have a panoramic view of the linguistic landscape of India which is essential since it is the ground reality for discussion..

Linguistic Landscape : India is an abode of 1652 or so mother tongues spread over a vast geographic space. The Constitution of India today has 22 languages in its Eighth Schedule which are known as Scheduled languages. This Schedule is treated as an open ended list which has got additions whenever the socio-political conditions favored inclusion of a specific language. India is also endowed with 100 Non-scheduled languages which include English. The mother tongues spoken by less than 10000 persons are not accounted. The Census of India in 2001 reports that 96.56% of the population speak Scheduled languages and the rest 3.44% speak non-scheduled languages.The Indian multilingualism is unique. Like the nation, each state and union territory is also multilingual. The speakers of different languages speak more than one language reflecting the social, geographical and political realities. The language laws are codified to regulate the use of such diversity of languages among pluralistic population. This paper provides a panoramic view of linguistic landscape of India and

sets tone for discussion about the formulation of language laws for such a multilingual society and their implementation since independence.

Post-Independence Period: The language laws framed by the Constitution and through legislation, notification etc., are in vogue for decades. They are available in the form of *statutory law, language legislation and judicial precedents*. These are also results of recommendations of various committees and commissions. There are hundreds of judicial pronouncements in different courts including the Supreme Court of the country relating to language use. They speak about (1) Scheduled and Non-Scheduled languages (2) Classical languages (3) Educational languages (4) Official languages (5) Minorities, Rights and languages (6) Rights of languages etc. Broadly, a summary about each of these is given below to be elaborated during lecture.



Scheduled and Non-Scheduled languages :The makers of the Indian constitution created a list of languages and placed it in the Eighth Schedule of it. The languages in this Schedule are called Scheduled languages. As a consequence of this, languages used in India that are not in this list are popularly referred to as Non-Scheduled languages.

This Eighth Schedule of the Constitution is cited in language related discussions more often than any other language related Articles of the Constitution and discussion on language related decisions. This indicates its importance as well as utility. The Constitution of India adopted on November 26, 1949 in the Constituent Assembly listed 14 languages in the Eighth Schedule. The same in the last 60 years was amended thrice through Constitution Amendment Bill No.21 in 1967, to include Sindhi, Bill No.71 in 1992 to include Konkani, Manipuri and Nepali and Amendment

Bill No.100 in 2003 to include Bodo, Dogri, Maithili and Santali. Thus at present there are 22 languages in the Eighth Schedule. As on today requests from the speakers of 38 other languages are pending before the Government of India for inclusion in the Schedule and recently a demand was put forth to the government to recognize sign language also. The original aim of this schedule was to have a list of languages to be developed for administration, expression of science and technology in independent India. But, at present this list of languages is used as a select list of Indian languages used for various purposes. But it is essential to know why this list was originally thought for (a)The reported intention of the (first) author of the list (b)The functions that the members of the Constituent Assembly desired for these languages (c) The Constitutionally assigned role and function of the Schedule (d) Extension of the role by the Official Language Resolution 1968 and (e) Some of the purposes for which the Schedule is utilized since the adoption of the Constitution; Consequences of the same in terms of advantage and disadvantage and the interpretation by the judiciary.

The Constitution vide Articles 344 and 351 has assigned two specific functions for the Eighth Schedule. Article 344-Constitution of Commission and Committee of Parliament on official languages and Article 351-Special Directives: Directives for development of the Hindi language. Thus the Constitutional assignment is for the development of official Hindi, Hindi for communication across different languages and spread of Hindi across the States and the Union Territories. Article 344(1) is considered as 'inoperative' and Article 351 as 'recommendatory'. However, consciously or unconsciously attempts are made to enlarge the scope of the Schedule to make it relevant. One such attempt is the Official Language Resolution, Jan 18, 1968 adopted by both Houses of Parliament. It extended the functions of Article 351. Accordingly, it became the "...duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a median of expression" Simultaneously, "... the English Schedule to the Constitution specifies 14 (now 22) major languages of India besides Hindi, and it is necessary in the interest of the educational and cultural advancement of the country that concerted measures should be taken for the full development of these languages"; and "... a programme shall be prepared and implemented by the Government of India in collaboration with the State Governments for the coordinated development of all these languages, alongside Hindi, so that they grow rapidly in richness and become effective means of communicating modern knowledge". The responsibility for the compliance of this is mainly with the Department of Education of the Central Government. Since the Constitutional assignment was looking biased towards Hindi, the development of languages of the Eighth Schedule for educational and cultural advancement also was added as the responsibility of the Union Government. A language gets not only a different status after its inclusion in the Eighth Schedule, but also certain specific privileges. The languages of the Schedule languages have many statutory privileges

like printing of denominational value on the currency notes. The UPSC has to add the language into the civil services examination, an optional paper in the language has to be there and it should be possible for the candidates to be interviewed in the concerned language. They are the preferred languages for educational and administrative purposes. They are not ignored or left out in most of the language-related decision-making process. If someone tries to find out the criteria for inclusion in the Schedule, they will be left with no answer. But as the demands grow; attempts are being made to frame criteria, according to one of them the language (a) should be spoken by at least one lakh persons (b) is part of school education (c) has rich literary heritage (d) has recognition of the Sahitya Akademy for literary awards etc. In 2009 the Union Home Ministry said that "...Centre was committed to giving due recognition to all the languages through a proper mechanism of evaluation. The most important part is to differentiate between a language and a dialect. There should be proper guidelines to determine a language's status".

Classical Languages: The Government of India created a new class/category of languages called Classical Languages in 2004 through Gazette Notification, a constitutional decree. So far it has declared four languages as classical languages viz Tamil, Sanskrit, Telugu and Kannada. The criteria for such declaration are: (1) High antiquity of its early texts/record history over a period of 1500-2000 years. (2) A body of ancient literature/texts, which is considered a valuable heritage by generations of speakers. (3) The literary tradition has to be original and not borrowed from another speech community and (4) The classical language and literature could be distinct from its current form or could be discontinuous with its later forms or its offshoots. The matter relating to the declaration of Telugu and Kannada is before the Madras High Court for adjudication.

Educational Languages: A multi-ethnic and multi-lingual pluralistic nation needs to evolve education and language policies in such a way that all the segments that constitute that nation develop a sense of participation in the progress of governance and nation-building. It is researched and said that in ancient India the learning and teaching were mainly confined to the priestly class and these were more of religious significance. During the Muslim period of ruling, the same situation continued. Education was part of effort of preservation and transmission of cultural traits from generation to generation rather than that of economic development of the individual or the society. "There was no state-controlled and state-financed system of education. Education depended partly on private effort motivated by philanthropic considerations, partly on the beneficence of wealthy people, who were religiously inclined, and partly on royal patronage, which varied, of course, with individual rulers. Pre-British period was either educationally obscurantist or indifferent to the

educational needs of the people.” English Education in India is traced back to 1792 A.D. and the debate of East India Company to send school teachers to India. Macaulay’s Minutes of 1835 emphasized that “In India, English is the language spoken by the ruling class. It is spoken by the higher class of natives at the seats of government...We have to educate a people who cannot at present be educated by means of their mother-tongue.”

India's Freedom Struggle was not merely a struggle for independence; it also laid the groundwork for all nations building even when the people were under foreign yoke. Our leaders did not postpone nation-building processes until we were given freedom. The resolutions passed in the various conferences conducted by the Indian National Congress reveal that the national leadership while waging their battle against the British rule thought well ahead of time and prepared the nation with advance steps in the fields of education and language policies. One such step was the generously agreed upon principle to re-organize the British India provinces that were a product of the British tactics of accession for the administrative convenience of the rulers into somewhat linguistically cohesive states. Another resolution that was passed and partially implemented twenty-five years before independence was the policy on National Education that emphasized the use of the mother tongue as medium of instruction in schools. It has to be noted that the makers of the Indian Constitution did not lay down elaborately the policy for the domain of education in independent India as they did for administration or judiciary.

The Constitutional law experts opine that “A difficult question arises regarding the medium of education at various levels. The Constitution prescribes no policy or principle, and makes no provision, in this regard. To begin with, the matter was left to the legislative power of the States as ‘Education’ was a State subject. The States enjoyed full right to prescribe the media of instruction at the primary and the High School levels. Due to its sensitive nature and fluid language situation at that time, with broad guidelines they allowed the language law to be evolved in the context of multilingual situation under various rights bestowed in the Constitution through the process of adjudication. Hundreds of litigations in the Courts relating to teaching language as subject and teaching through language have been adjudicated and summary of the same are: (1) The three-language formula, which was designated as a strategy, and which had no direct Constitutional status and was totally dependent on the governmental and institutional support, has been given a legal sanction and status from the Apex court of the country for its implementation (2) Teaching a regional language, the Official Language of the concerned state as a compulsory language in the schools, more specifically at the secondary stage, is recognized as legally acceptable. It may even be considered as a must (3) Earlier research had claimed that learning more languages is not a load. The same is reinforced by the judgment that teaching more languages as subjects from primary schools is not a burden imposed on the students (4) A government need not wait up to Vth standard

to introduce a second language. It can be introduced from the IIIrd standard itself (5) The Constitutional safeguard for the linguistic minorities to have education through their mother tongues in the primary schools is made obligatory for all the mother tongue groups, irrespective of their majority or minority status (6) Regional language is now recognized by the court as the 'second mother tongue' of the indigenous speakers of the minority languages in the state (7) English can be taught as a subject from the primary school itself (7) The mother-tongue will be the language declared by the parent or guardian to be the mother-tongue (8) The parents have the right to choose the kind of education that will be given to their children (9) Right to education is a fundamental right, which also includes the right to choose the medium of instruction, and it can be exercised by the parents on behalf of their children, and they have absolute and exclusive right in this regard (10) Citizens shall have the freedom of speech and expression, which would include the right to educate and to be educated (11) Career opportunities will be more advantageous to those who have studied in the English medium than using other medium. Compelling the students to study in a specific language will affect their career, and doom their future prospects.

Official Languages: In the history of pre-independence India, though there are instances after instances wherein only one language was the Official Language, it is very difficult to find a point of time where only one language was used as the sole language of administration in a specific region. It seems that the official language was used for the purposes of rules and other interrelated activities. And used within the set up of the Government to a large extent. However languages of the people were used for all the necessary communicative purposes. The public have shown interest to learn Sanskrit or Persian or English with the aim that the knowledge of it will open up avenues for jobs in the Government. This had created a set of people, who would always join the Government service. All these happened in different type of administrative structures wherein the common man had a very little say. I would like to draw a distinction between the 'Official Language' and 'Language Used in Administration'. To illustrate this point an example can be cited here. Though the Official Language Act of Andhra Pradesh, 1966 recognizes Telugu as the Official Language for use in its territory, it also permits the use of English, Urdu, Kannada, Tamil and Oriya in certain specified situations and regions for administrative activities. Hence, these later ones are the Languages Used in Administration in Andhra Pradesh though only Telugu is the Official Language. The Constitution of India provides for the use of one or two or more languages in the administration of the Union and States, sees that the provisions for use of languages of all sections of people are made depending on the genuineness of the claim. Also, the interests of all the people of all the regions are in principle, accommodated in relevant ways. In pursuance of these Constitutional provisions the Union government as well as various

state governments has promulgated Official Language Acts. This clearly indicates that declaration of official language and making provision for use of other languages in administration are attempts to keep harmony among their population.

Minorities, Rights and Languages : The Constitution of India recognizes two kinds of minorities-linguistic and religious and provides specific safeguards. The religious minorities are products of more than 2000 years of history, culture and society. In the post independence India, in the historical process of national development, the regional languages formed basis for the reorganization of the geographic boundaries of administrative territories. Linguistic minorities are mainly products of this reorganization. The epicenter around which the discussion of language rights revolves is the rights of the linguistic minorities. The Supreme Court of India in the matter of TMA Pai Foundation and others vs State of Karnataka [Writ petition (Civil) No.317 of 1995 on October 31, 2002 decided that 'minority' within the meaning of Article 30 "...the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise". And at the same time, it said that "Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be per se regarded as weaker sections of underprivileged segments of the society." This is not the end of the criteria to identify the linguistic minorities. There are other criteria too. For the purpose of the implementation of Official Language(s) Act(s) of different states, the taluk is taken as a geographic territory to decide about whether a language is a minority language or not. If within a taluk a language spoken by more than 15% of the total population of the said taluk, that language is considered as a minority language in that context. The official documents, announcements of the government in the official language of the state have to be translated into those languages too, for use by the speakers of that language. As agreed to in the Chief Ministers Conference in 1961, whenever there are 40 students in a school, or 10 in a class-room, desiring to learn in their mother tongue at the primary level, teaching will have to be done by appointing one teacher. Here normally the mother tongue of the child is different from the regional language and generally a minority language in the numerical sense. The fundamental right guaranteed to the minority institutions under Article 30(1) of the Constitution of India includes "... right to teach the subjects in the medium of their own choice." The Universal Declaration of Human Rights - is also applicable in the Indian context since India since India is a signatory to the document.

"It would be appropriate to observe that it is the spirit and not the form of law that keeps justice alive"

Justice J Balakrishna

