

SOCIO-LEGAL ASPECTS OF STATELESS LINGUISTIC MINORITIES: AN OVERVIEW

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*“None shall be turned away
From the shore of this vast humanity
That is India.”*

These lines have a ring of feeling that from time immemorial men of diverse but fascinating culture and languages have been warmly welcomed in our great nation due to its liberal and tolerant traditions which in turn led to cultural and linguistic plurality in India.

LANGUAGE

The notion of language cannot be imprisoned within the four walls of a definition as it takes too many things in its fold. The concept of language may defy definition but it can at least be described simply as a process or channel through which people understand and communicate effectively and air their thoughts, feelings of all sorts. Language is much more than that. It is storehouse of culture and pride of the people speaking it. Hence it is difficult to measure its depth so is its spread.

LINGUISTIC MINORITY

Minority based on language is a group of persons who do not share common language with the majority and speak a language distinct from that of majority. Technically speaking they form numerically less than fifty percent of the entire population of a State. It may be emphasized that the State is taken as the unit not the whole country for the purpose.

The thick fog cover surrounding the question of determination of linguistic minority for a pretty long time has been broken by the Apex Court through its eleven judges Constitution Bench in a powerful decision of *TMA Pai Foundation v. State of Karnataka*¹. Now it appears to be settled once for all that minority based on language has to be ascertained State wise. The linguistic minority need not have any script of its own or distinct script in relation to the script of the majority in the State. Mere separate language of minority is enough. The

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¹ AIR 2003 SC 350

language need not be one of the twenty two languages which have found space in the schedule VIII of our Constitution. Even foreigners forming well defined linguistic minority residing in India are eligible to claim protection of linguistic rights enshrined in Article 30(1) even though they get foreign aid to establish an educational institution to meet their linguistic interests.

It is interesting to note that the problem of linguistic minorities which confronts us is not only national but global as well. It is a national problem of 'linguistic minorities' which includes 'stateless linguistic minorities' this paper focusses on. For brevity and convenience sake hereinafter the expression 'Stateless Linguistic Minorities' will be referred to as the 'SLMs'. The architects of the Constitution had plenty of challenging problems to face with. The problem of linguistic minority including SLMs was one of them which became all the more serious to deal with after the reorganization of States on the linguistic lines.

STATELESS LINGUISTIC MINORITY

India possesses multi-faceted linguistic landscape. There is very wide spectrum of linguistic diversity and pluralism in our country. Language in our country varies from 'pole to pole'. No wonder there would be unfortunate existence of difference of languages in every State. The stateless languages are those which have no home State that is the State in which their language gets official patronage that is a language of administration. These unfortunate languages are not official languages in any State as they are not mother tongue of the majority of people residing in any State in our country. The minorities based on such unlucky languages are called minorities based on stateless languages or Stateless Linguistic Minorities (SLMs). The SLMs may take following three forms:

1. Those living outside their home State and whose language is not official language in any State like Sanskrit and Sindhi.
2. Those living in any region of their home State but their language are not the official language in their own State e.g. Kashmiri and Dogri in the State of Jammu & Kashmir where official language is Urdu.
3. Those settlers coming from outside particularly from neighboring countries e.g. Chakmas coming from Bangladesh speaking Bengali and settled in Arunachal Pradesh where official language is English and Nepalis speaking Nepali language concentrated in Uttarakhand where official language is Hindi.

RETROSPECTIVE PERSPECTIVE

Indian political map was redrawn on the basis of language in the year 1960. The problem of SLMs ensued from the reorganization of the States which took place in the past mainly on the linguistic lines and which contributed to the formation of nearly unilingual states in India. These were unilingual in the sense that large majority of the population living therein spoke one language. In such States it was not possible to avoid some tracts where a number of small group of people belonging to different languages having no official status in other States. Soon after a State was allotted to a majority linguistic group, that started to regard the area of that State as its own and gave the feeling of outsiders to other group speaking different language(s). Thus a vicious circle of mutual distrust and bitterness was created and new problem of SLMs came to the forefront. Further, in the reorganization of states it was not possible to allot to every language a State where persons speaking it might be in large majority. Obviously some language were left out which could not get the official patronage in any State. The problem of SLMs was further aggravated as they found themselves stranded in and exposed to an unfriendly and uneasy atmosphere and their mother tongue became vulnerable to falling in disuse. Every state has islands of suffering SLMs.

CONSTITUTIONAL PROTECTION

The Constitutional protection of SLMs may take two forms. First is the cultural and educational right in the form of specific Fundamental Rights mentioned in the constitution. Second is the administrative machinery which is included in the Constitution but not in the form of Fundamental Rights.

Safeguards in the form of Fundamental Rights

The framers set out a Constitutional cover on linguistic minorities through two Fundamental Rights enshrined in Articles 29 and 30. They are 'two gems' studded in the Constitution. The fabric of their special protection mentioned in these articles has been woven with great care and compassion by giving voice to the feeling and sentiments of SLMs. These twin articles had been fine tuned in line with the liberal values of Indian culture and crafted in liberal terms which have been further decoded and liberalized by judicial interpretation and which further brought many victories to the SLMs. The enterprising judiciary has added blood and flesh to the dry bones of the aforesaid articles to give effect to noble vision of the framers to establish cohesive society and bring about unity in plurality.

Article 29(1) confers right to conserve the language on any section of citizens residing in India having a distinct language, script or culture of its own. Though the expression ‘any section of citizens’ covers both minorities and majority, but essentially Article 29(1) is meant to give protection to minorities as majority does not need the same protection. This inference is further buttressed by the fact that the expression ‘protection of interest of minorities’ finds mention in the marginal note of Article 29(1). It deliberately states right of minorities to conserve ‘language, script or culture’ which widens the scope of Article 29(1). There are sections of citizens with separate language and script but not separate culture e.g. Andhris settled in Odisha and Maharashtrians settled in Bengal. Similarly there are sections of citizens which have separate culture but no separate language or script e.g. Muslims in Bengal. Both the aforesaid categories of citizens get protection under the umbrella of Article 29(1).

Articles 29 and 30 confer three fold special rights on SLMs covering 1) Right to conserve their language, etc.; 2) Right to freedom of education in respect of their language; and 3) Right to State aid to their educational institutions for protecting their linguistic interest

It may be pointed out that the word used in Article 29(1) is ‘conserve’ and not ‘preserve’. The right to ‘preserve’ is merely a negative and passive right in the sense that it implies the right to maintain and keep its existence alive. On the other hand right to ‘conserve’ is positive and active right not only to keep its language intact but also to develop and “agitate for the protection of its language” to siphon off the words from a landmark judgment of *Jagat Singh v. Pratap Singh*² handed down by highest Constitutional Court of last resort. Our Apex Court has increased the span of the word ‘conserve’ by interpreting it very liberally. Since the right to conserve takes in its fold not only the right to preserve but also right to develop the minority language, it can best be done through the right to establish and administer educational institutions of their choice under Article 30(1). This right has been described by the Apex Court as charter of educational rights of SLMs. Clause 2 of Article 30 unfolds the obligation imposed on the State to grant aid to education institutions under the management of SLMs without discriminating between minority and majority. It may be parroted that both the negative and positive dimensions have been well taken care of by clauses 1 and 2 of Article 30. Financial resources for establishing an educational institution is indispensable. Obviously SLMs do not get cooperation from the majority community and the State which

² AIR 1965 SC 183

represents them and home State as they have none. The protection available to them under Article 30(1) is in reality robbed of.

Safeguards in the form of administrative machinery

The administrative machinery has been put in place to give effect to the safeguards so that they may be put into action and may not remain mere paper safeguards and the SLMs may not risk losing out on advantages which find mention in the Constitution.

- ***Right to official recognition of the language (Articles 347 and 350):***

Article 347 provides for official recognition of a language spoken by a substantial proportion of the population of a State but the safeguard loses its entire efficacy as the number of members of SLMs form microscopic proportion and not substantial proportion of the population. Article 350 enables a person to submit a representation for redressal of his grievances to any officer or authority in any language used in the Union or the State. This language need not be any of the twenty two languages which are part of Eighth Schedule of the Constitution or officially patronized.

- ***Right to teach and be taught under Articles 350 A and 350 B:***

Article 350 A provides for facilities for instruction in mother tongue at the primary stage to children belonging to linguistic minorities including SLMs and imposes a duty in this regard both on the State as well as every local authority within the State. Article 350 B contains a provision for appointment of a Special Officer for linguistic minorities including SLMs to safeguard their rights in this regard provided under the Constitution.

- ***Right to be understood (Articles 120 and 210):***

With regard to the right to be understood Art.120 permits the Chairman of the Council of States or the Speaker of the House of People to permit nay member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue. Art.210 makes a parallel provision in respect of State Legislatures.

CONCLUDING REMARKS

The point has come to arrive at certain conclusions regarding the shortcomings and loopholes of the safeguards in their operation on SLMs. The jurisprudential and social analysis of the safeguards available to SLMs discussed above make them appear impressive but in reality they are not so in their application to SLMs. Due to lack of State backing ,poor numerical

strength the content of their protection is sucked out. They have not been able to derive full benefit of preserving and enriching their language, script or culture. The interests of SLMs living in the midst of huge majority community are always side stepped. Merely because of their speaking a language having no State patronage they are overwhelmed and treated unfairly due to lack of linguistic tolerance of majority. There are many ills that plague them as they do not have any home State and hence do not have the advantages of keeping intimate contact and maintaining emotional bond with the co-linguist having State backing. They have to struggle hard to keep their language intact. Some of their languages are overlooked so much that they run the risk of being forgotten. There are many stateless languages of SLMs which have died slow death.

These disconnected stateless languages are subject to high handedness by the majority speaking different language in the State they reside in. The SLMs unlike other linguistic minorities do not have privilege of having their own State anywhere in the vast sub-continent of India. The State giving step-motherly treatment to them has no apprehension that similar treatment may be meted out to the group of people speaking its official language in the home State of underprivileged SLMs.

Moving on to the solution of their problems. There is an intimate connection between the form of administration with the form of Constitutional protection and the former must at least match if not exceed the expectation of the latter. Elimination of Tibetan language and culture despite its recognition by the Chinese Constitution is an instance in point. When a language is destroyed the identity of the community speaking the language is also lost.

Only leaning upon the Constitutional and other legal provisions will not do as they do not provide answer to every problem the SLMs confront. They should turn to their own efforts to protect and advance their mother tongue and make it a literary force and repository of their culture to enable it to command respect in the linguistic milieu of the State.

India's picturesque and wonderful linguistic panorama is shaped by all the languages which are spoken by the people in our country and are our own whether they are scheduled (part of Eighth Schedule) or they belong to majority or minority or they get full (official) or partial (co-official/additional) or no patronage. No language should be treated unequally.

The Constitution has conferred chain of rights on SLMs. More the rights, greater the responsibilities & duties. It can be said in unvarnished words that they are under a duty to

reset their ties with the majority so that in spite of being on the wrong side of the border may not feel alienated and think of packing up and crossing over the border. The majority should also stretch out its hands in the spirit of cooperation with the linguistically marginalized group of SLMs. The linguistic conflicts and barriers should find no quarter in our soil as SLMs cannot look across the border of the State for ventilating their grievances.

However untrue the saying: ‘minorities must always suffer’ may have become in modern democracies, but in the Constitutional and social scenario of India it is certainly true at the ground level for one species of minorities namely minorities based on stateless languages which form weakest but important section of Indian population in the context of language. Just as the strength of a chain depends upon the strength of its weakest link so also the strength of India depends upon the strength of its linguistically weakest section. Our country can best be said to be truly strong and democratic when it infuses complete confidence in the minority community in general and SLMs in particular.