
LINGUISTIC-CRACY

DR. ASHIT SRIVASTAVA¹ & AASHUTOSH JAGTAP²

Language is not merely a medium of instruction, but also a reservoir of culture. Moreover, the crucial role language plays in our daily life cannot be understated. It is not only a mode of communication but also a formidable weapon that has shifted and continues to shift the structural paradigm of the world as we see it. Thus, the authors in this article highlight the phenomenon of language-based discrimination. Additionally, the paper ontologically studies the relationship between theocracy and language. At the outset, it aims to delve solely into the issue of language from a perspective that considers its role either in alignment with or independent of the state.

The objective of this article is first, to explain the socio-cultural rights connected with the language. Second, delve into the dominance of these rights via language and lastly, the authors shall attempt to analyse how these rights are curtailed when they conflict with other similar or contemporary rights. Generally speaking, it has been widely accepted that religion and language often become the basis of discrimination. Such biases are either unconsciously underlying in the society or have been actively used by the state as a tool of systemic oppression. This phenomenon is widely seen in theocratic states. Conversely, language is yet to be seen as a primary ground of state-sponsored discrimination. There are few, if any, instances where nations have taken language as a qualification for citizenships and even attempted to bring a cultural homogeneity through the means of language. A notable exception is Canada's Francophone immigration policy, which seeks to counter the declining Francophone population in Northern Canada by granting residency to skilled laborers based on their proficiency in French.

However, the authors seek to highlight specific instances in which language, under the patronage of the state, leads to problematic identity-issues for languages that are in the minority. Language, when considered in isolation, serves primarily as a medium of

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¹ Dr. Ashit Srivastava is Assistant Professor of Law at Dharmashastra National Law University, Jabalpur. The author may be reached at <ashit@mpdnlu.ac.in>. The author would like to extend their gratitude to the editorial team at CALJ for their work on the article.

² Aashutosh Jagtap is a Final Year Law Student at Dharmashastra National Law University, Jabalpur. The author may be reached at <aashutosh011-19@mpdnlu.ac.in>.

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communication. It is this particular instance of language that the authors try to examine, in comparison with that of religion. This phenomenon is termed by the authors as 'Linguistic-cracY'.

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INTRODUCTION

Language has continuously evolved since the inception of civilization. It has not only served as a medium of communication but also as an explicit manifestation of culture.³ Consequently, any restriction, impediment, or regulation on the free traverse of the language is considered an attack on the self-expression of people.⁴ Thus, it becomes essential to not only protect language but also to actively promote its preservation and development.

However, in a globalized world, the extent of this protection varies according to the changes in jurisdiction. In some cases, protection offered to one language may prove to be counterproductive to another language.⁵ In some extreme cases, this protection may even translate into oppression of a particular language, whether it belongs to a minority or a majority group. A notable example is the oppression of the Bengali-

³ Andrew Whiten & Carel P. van Schaik, *The Evolution of Animal 'Cultures' and Social Intelligence*, 362 PHIL. TRANSACTIONS ROYAL SOC'Y LONDON 1480, 1485 (2007).

⁴ *Id.*

⁵ Bruno de Witte, *Language Law of the European Union: Protecting or Eroding Linguistic Diversity?*, in RACHAEL CRAUFURD SMITH ED., *CULTURE & EUROPEAN UNION LAW* 208 (Oxford University Press, 1st ed., 2004).

speaking oppressed class in Bangladesh by the Urdu-speaking elite.⁶ Based on this premise, the authors try to determine whether such restrictions are also imposed upon the freedom of the individual on the basis of language.

Across jurisdictions, there are various constitutional protections that safeguard the right of a community to protect their rights to speak their language. This protection is often embedded in the provisions which address the rights of minorities in the jurisdiction.⁷ The universal provision specifically addressing the protection of linguistic rights can be found in Article 27 of the International Covenant on Civil and Political Rights (ICCPR).⁸ It states:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”⁹

Although this article is negatively phrased, restricting interference with minorities’ rights to profess their culture and to speak their language — the United Nations Human Rights Commission (UNHRC) interpreted it as imposing a positive obligation upon the states to actively protect minority rights against infringement by all others.¹⁰ Similar protection is enshrined under respective jurisdictions namely, Europe,¹¹ USA,¹² India¹³ etc.

⁶ Kimtee Kundu, *The Past Has Yet To Leave The Present Genocide*, HARVARD INT. REV. (May 29, 2024) <https://hir.harvard.edu/the-past-has-yet-to-leave-the-present-genocide-in-bangladesh/>.

⁷ Witte, *supra* note 5.

⁸ International Covenant on Civil and Political Rights art. 27 Dec. 16, 1966, 999 U.N.T.S. 171.

⁹ *Id.*

¹⁰ Moria Paz, *The Tower of Babel: Human Rights and the Paradox of Language*, 25 EURO. J. INT. L. 473, 479 (2014). See also PATRICK THORNBERRY, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES, at 197 (Clarendon Press, 1st ed., 1991).

¹¹ European Convention on Human Rights art. 14, 213 U.N.T.S. 221 (adopted on Nov. 4, 1950, entered into force on Sep. 3, 1953).

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However, implementing these provisions across jurisdictions is a whole new ball game. For example, the UNHRC in the case of *Guesdon v. France*,¹⁴ ruled against the accused's request to present his case in a language other than that of the court and denied him access to a translator for the purpose of understanding the charges against him and presenting his case effectively. The Committee noted,

*“...the requirement of a fair hearing does not mandate State parties to make available to a citizen whose mother tongue differs from the official court language, the services of an interpreter if he is capable of expressing himself adequately in the official language...”*¹⁵.

In contrast, Indian criminal procedure mandates that the court read the charges in a language that the accused understands.¹⁶ Moreover, it directs the court to explain the evidence recorded to the accused or his pleader, especially when the evidence is recorded in a language not understood by them.¹⁷ In *Guedson v. France*, the Committee implicitly permitted a trial to proceed in a language that the accused was not well-versed in, which clearly contradicts the intent behind Article 27 of the ICCPR. This decision raises the concerning possibility of an accused being put to trial in a language they do not fully understand.¹⁸

In a case decided by the European Court of Human Rights (ECHR),¹⁹ the core issue centered on a challenge to the Belgian linguistic legislation

¹² Although there is no explicit law on the protection of linguistic rights of the individual, the protection can be claimed under the first and fourteenth amendment. See Cristina Rodríguez, *Language and Participation*, 94 CALIFORNIA L. REV. 687, 709–718 (2006).

¹³ INDIA CONST. art. 29 & 30.

¹⁴ Human Rights Comm., Communication No. 219/1986, *Guesdon v. France*, CCPR/C/39/D/219/1986 (1990).

¹⁵ *Id.* at ¶10.2.

¹⁶ CODE CRIM. PROC., 1973, § 228 r/w § 240.

¹⁷ CODE CRIM. PROC., 1973, § 279. See also, *CBI v. Narottam Dhakad*, 2023 SCC OnLine SC 1069.

¹⁸ Communication No. 323/1988, *Cadoret v. France* (1991); these precedents were also followed in ECtHR see App. No. 26891/95, *Lagerblom v. Sweden*, No. 26891/95, ECtHR (Fourth Section), 14 Jan. 2003.

¹⁹ Case ‘Relating to certain aspects of the laws on the use of languages in education in Belgium’, [1968] Yrbk Eur. Conv. on HR 832 (ECommHR) (‘The Belgian Linguistic

that structured the education system on the basis of regional language decisions—French for the French-speaking region, Dutch for the Dutch-speaking region, and German for the German-speaking region. This created its own set of administrative glitches and demographical problems. In one such instance, a group of parents, along with their children challenged the validity of the enactment on the pretext that it denied their French speaking children the right to receive education in their native language within Dutch-speaking regions. The parents claimed it constituted a clear violation of Article 8 of the European Convention on Human Rights.²⁰

Furthermore, the Belgian State withheld student grants for non-compliance with the linguistic mandates of the public schools. Notably, the Court did not interfere in the matter, primarily citing a lack of jurisdiction. In fact, it held that ‘*a right to obtain education in the language of his own choice would lead to absurd results...*’²¹ This decision is contrary to the need for state administration to take into account cultural and linguistic identities.

WHAT IS LINGUISTIC THEOCRACY?

Globally, the term *theocracy* has several connotations. It denotes an institutional recognition or affiliation granted to a religion within a country. In practice, religion often becomes a qualification for holding governmental positions. State-sponsorship of religion can be generally classified into two categories: ranging from a radical theocratic states²² (that tend to follow religious ideology radically) to moderate theocratic

Case’); *see also*, App. Nos 43370/04, 8252/05, and 18454/06; *Catan and Others v. Moldova and Russia* (2012).

²⁰ European Convention on Human Rights art. 8, 213 U.N.T.S. 221 (adopted on Nov. 4, 1950, entered into force on Sep. 3, 1953).

²¹ Case ‘Relating to certain aspects of the laws on the use of languages in education in Belgium’, [1968] *Yrbk Eur. Conv. on HR* 832 (ECommHR) (‘The Belgian Linguistic Case’); *Also see*, App. Nos 43370/04, 8252/05, and 18454/06, *Catan and Others v. Moldova and Russia* (2012).

²² RAN HIRSCHL, *CONSTITUTIONAL THEOCRACY*, (Harvard University Press, 1st ed., 2010); Pakistan can be regarded as a hard theocratic laws, with religion being a qualification to hold a higher constitutional position.

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states²³ (which despite being theocratic states, are still open to modern outlook). The number of theocratic states has gradually increased. It is on these lines that the authors differentiate between a radical theocratic state, that tends to emphasize more on a radical interpretation of religion, inclining more towards religious dogmas and tends to govern the civil and secular system based on religious order. For instance, Pakistan, which established Federal Shariat Courts, under the military dictatorship of Zia-Ul-Haq in early 1970s²⁴ with stringent blasphemy laws,²⁵ and largely diluted civil governance in favour of religious authority.

On the other hand, comparatively moderate theocratic states adopt a less stringent interpretation of religious text, and instead seek to control religious organizations and their interpretation of religion in sync with a modern economic outlook. For instance, Egypt and Israel, have given preference to secular courts over religious or *Rabbinical Courts*.²⁶ In fact, the orders/judgments of the religious courts are subject to appeal before secular courts.²⁷

Generally, in comparative studies, this is regarded as a push towards a novel global constitutional order, where, instead of resisting the concept of religion in the functioning of the state, religion is becoming central to the state's identity. References to this can also be found in writings on comparative constitutional law, which highlight how modern states are increasingly willing to integrate religion into governance while incorporating elements of minority rights and a secular outlook.²⁸

²³ See, Ran Hirschl, *Constitutional Courts vs. Religious Fundamentalism: Three Middle Eastern Tales*, 82 TEX. L. REV. 1819, 1820-1824 (2004); Egypt can be seen as an example of a soft theocratic state. With State-controlled interpretation of the religious tenets, the Egyptian Government has attempted to follow a secular outlook.

²⁴ Osama Siddique, *The Jurisprudence of Dissolutions: Presidential Power to dissolve assemblies under the Pakistani Constitution and its discontent*, 23 THE ARIZ. J. INT'L & COMP. L., 3 (2006).

²⁵ *Id.*

²⁶ Hirschl, *supra* note 23.

²⁷ *Id.*

²⁸ Mallat, Chibli, *Islam and the Constitutional Order*, in MICHEL ROSENFELD AND ANDRÁS SAJÓ (EDS.), THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW (Oxford University Press, 1st ed., 2012).

Due to the lack of appropriate literature, the authors propose the term ‘*Linguistic Theocracy*’ to describe the concept of state affiliation with or recognition of a particular language as the foundational element in the governance or functioning of the state. The prefix ‘*linguistic*’ signifies the role of language, while ‘*theocracy*’ traditionally denotes a system of governance prioritizing religion. Drawing a parallel with theocratic systems, this study focuses on countries that base governance on language rather than religion, thereby coining the term ‘*Linguistic(cracy)*’ to capture this phenomenon.

From a socio-political perspective, the concept of theocracy and linguistic (cracy) exemplify a larger goal of cultural majoritarianism.

THE EUROPEAN CASE

The European Union has grappled with the complex challenge of determining a representative language for each member of the union.²⁹ These issues may have been caused due to non-homogeneity or cultural differences. Things started to shape differently with the inception of the Council of Europe (CoE) after World War II,³⁰ which led to the enactment of the European Charter of Human Rights (ECHR), the European Charter for Regional and Minority Languages (ECRML) and the Framework Convention for the Protection of National Minorities (FCPNM).³¹ These conventions and charters facilitated the recognition of minority rights, including the protection of their culture and linguistic heritage and also imposed a corresponding obligation on the State to safeguard these rights.³²

In English-speaking settler societies such as the United States and Canada, the linguistic landscape has been significantly altered by

²⁹ Kathleen R. McNamara, *Introduction*, in *THE POLITICS OF EVERYDAY EUROPE: CONSTRUCTING AUTHORITY IN THE EUROPEAN UNION 12* (Oxford University Press, 1st ed., 2015).

³⁰ Philip McDermott, *Language rights and the Council of Europe: A failed response to a multilingual Continent?* 17 *SAGE J.*, 603 – 626 (2017).

³¹ Peter S, *The European charter for regional or minority languages*, in *PROF. DR. ALEXANDER, H.E. MORAWA, ET. AL. EDS., MECHANISMS FOR THE IMPLEMENTATION OF MINORITY RIGHTS*, 131–158 (Council of Europe, 1st ed., 2004).

³² *Id.*

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genocide, displacement, disease, and various forms of prejudice imposed on native peoples.³³ Approximately half of the 300 distinct languages originally spoken north of the Rio Grande have disappeared, and most of those that remain are no longer actively used, with fewer than ten native speakers.³⁴ Only a handful of widely spoken indigenous languages, such as Cherokee, Navajo, and Yup'ik, can be considered relatively secure, although they also remain under considerable threat. Similarly, the majority of the hundreds of Aboriginal languages once spoken in Australia are either no longer spoken or are now limited to small groups of elderly speakers, with only a few languages still being passed down to younger generations.³⁵

On a similar note, in 2009, the Spanish parliament rejected a bill without any deliberation on it, solely because it had not been translated from Basque to Castilian (standard Spanish), despite Spain being a signatory to the ECRML.³⁶ In 2023, the Spanish Parliament granted Basque, Catalan and Galician languages parliamentary status,³⁷ which means what was denied in 2009 has been granted in 2023.

Furthermore, in February and March 2007, European Personnel Selection Office (EPSO), the agency responsible for recruiting EU officials, announced competitions for administrators and assistants in fields of information, communication, and media. The announcements were published in English, French, and German in the official journal of the European Union. Candidates were required to have a thorough knowledge of one official EU language as their main language and a satisfactory knowledge of English, French, or German as a second

³³ B. Kiernan, *Settler Colonialism*, in BEN KIERNAN ET AL. EDS., *THE CAMBRIDGE WORLD HISTORY OF GENOCIDE* 21–96 (Cambridge University Press, 1st ed., 2023).

³⁴ Ross Perlin, *Disappearing tongues: The Endangered Language Crisis*, *THE GUARDIAN*, (Feb. 22, 2024) <https://www.theguardian.com/science/2024/feb/22/disappearing-tongues-the-endangered-language-crisis>.

³⁵ *Id.*

³⁶ Sam Morgan, *Language Discrimination Rife Across EU*, EURACTIV (Jun. 9, 2016) <https://www.euractiv.com/section/languages-culture/news/language-discrimination-rife-across-eu/>.

³⁷ Sam Jones, *Spain grants Basque, Catalan and Galician Languages Parliamentary Status*, *THE GUARDIAN* (Sept. 19, 2023) <https://www.theguardian.com/world/2023/sep/19/spain-grants-basque-catalan-and-galician-languages-parliamentary-status>.

language. Only English, French, or German were to be used for test invitations, correspondence, and the tests themselves. These conditions also applied to admission to and in the taking of written tests. This led to a case being filed by Italy on the basis of language discrimination.³⁸ In its judgment, the European Court of Justice (CJEU) reviewed two key issues.

First, it addressed the lack of full publication of recruitment notices in all official EU languages, noting that EU rules require such notices to be published in all twenty-three official languages. The Court found that the failure to publish the notices in full, in all languages, was a legal error, even though amendments were later published. This lack of full publication disadvantaged candidates whose mother tongue was not English, French, or German, as they would have had to obtain and read the notices in one of these languages, potentially affecting their understanding and preparation time.³⁹

Second, the Court examined the limitation on the choice of a second language for participation in competitions. It stated that such limitations could be justified in the interest of the service but required clear, objective, and foreseeable criteria. However, the institutions had not adopted rules specifying which languages to use, and the Commission had not provided other measures or reasoning for the language choices in the notices.⁴⁰

This judgment showcases the inherent possibility of discrimination that can be propounded by those who are in majority. This instance bolsters a sense of ‘normalisation’ and preferential treatment for speakers of the majority-tongue, while rendering deviant and marginal, those groups that are unwilling to assimilate linguistically.⁴¹ This is not the only instance where the CJEU recognised state-oriented discrimination on the basis of

³⁸ Case C-566/10 P, *Italy v. Commission*, Judgment on November 27, 2012.

³⁹ *Id.* at ¶ 9.

⁴⁰ *Id.* at ¶ 16.

⁴¹ Stephen May, *Language Rights: Moving The Debate Forward*, 9 J. SOCIOLINGUISTICS 319, 322 (2005).

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language. In a 1989 case⁴², the CJEU held that the imposition of one language over another who does not speak or use such language must be justified by a clear and specific reason. Additionally, such a requirement must be proportionate to the objective pursued, reasonable and not arbitrary.⁴³

Further, the CJEU, while expanding its scope, held that even a private entity or individual could not discriminate on the basis of language.⁴⁴ The court further held that a private employer's requirement for a specific diploma as a condition for employment hindered workers' freedom of movement. It observed that individuals not living in the province had limited opportunities to obtain the diploma, making it difficult for them to access employment.⁴⁵ In a similar case, where the issue involved a decree of Flander that required all cross-border employment contracts to be drafted in Dutch,⁴⁶ CJEU held that the requirement to draft all cross-border contracts in a specific language (in the instant case Dutch language) infringes freedom of movement for workers.

The above cases exemplify language-based majoritarianism. The decision of the CJEU rests upon the principle as enunciated in Article 14 of the ECHR, and along with the issue involved in the respective cases the court also recognized the minority and cultural rights concerning the language.

THE EAST PAKISTAN CASE

Thousands of people in India and Pakistan lost their lives during the phase of Partition. This led to inquiry on why the Partition took place in the first place, and on what ground the partition took place. This is not the core question of discussion of this paper. However, an aspect which

⁴² Case C-379/87, *Groener v. Minister for Education and the City of Dublin Vocational Education Committee*, Judgment on 28 November 1989. In this case, the court upheld the passing of the Irish language test in order to get permanent status as a lecturer.

⁴³ *Id.* at ¶ 11.

⁴⁴ Case C-281/98, *Roman Angonese v Cassa di Risparmio di Bolzano SpA*, Judgment on 6 June 2000.

⁴⁵ *Id.*

⁴⁶ Case C-202/11 *Anton Las v PSA Antwerp NV*, Judgment on 16 April 2013.

is related to the partition is of great relevance and that's why a brief knock at this is required.

The main reason for the partition was religion. India emerged a Hindu-majoritarian state, whereas Pakistan, including West and East Pakistan, was established a Muslim Majority state. This is the view broached by those who favour the two-nation theory.⁴⁷ Upon Pakistan's creation, its government declared the nation to be an Islamic state rather than a secular state like India.⁴⁸ With time, the government started declaring all the symbols of Islam as a State symbol. It is in furtherance of this that the Government mandated the exclusive use of 'Urdu' for media and educational institutes.⁴⁹ This imposition was excessive for East Pakistan, as the culturally homogenous population of East Bengal identified themselves as 'Bengali' because of the region they lived in and the language they spoke.⁵⁰ Thus, the imposition of Urdu over East Pakistan was seen as an act of the imposition of the culture of West Pakistan over East Pakistan. This policy led to the outbreak of 'Bhasha Andolan' in East Pakistan and the first major resistance against the government which was dominated mostly by elites of West Pakistan.⁵¹

The identity of East Pakistan as 'Bengali', centred around its language and can further be understood through the historical stance of its people when Bengal was divided by Lord Curzon in 1906, for the purpose of better administration.⁵² While '*better administration*' was the reason given by the Britishers, yet a letter written by AHL Fraser (the then Lieutenant-Governor of Bengal) to Lord Curzon hints at something else. He pointed out in this letter the reason to bifurcate the two regions by stating "*the hotbed of the purely Bengali movement, unfriendly if not seditious in character, and*

⁴⁷ C. Bennett, (2018) *Two-Nation Theory*, in Z.R. KASSAM, Y.K. GREENBERG, ET. AL., ISLAM, JUDAISM, AND ZOROASTRIANISM (ENCYCLOPEDIA OF INDIAN RELIGIONS), 695-699 (Springer, 1st ed., 2018).

⁴⁸ PAKISTAN CONST., 1973.

⁴⁹ Bashir Al Helal, *Language Movement*, in SIRAJUL ISLAM AND AHMED A. JAMAL EDS., BANGLAPEDIA: NATIONAL ENCYCLOPEDIA OF BANGLADESH, 200-215, (Asiatic Society of Bangladesh, 1st ed., 2012).

⁵⁰ Ramkrishna Mukherjee, *Social Background of Bangla Desh*, 7 E.P.W. 265, 265 (1972).

⁵¹ *Id.*

⁵² G Johnson, *Partition, Agitation and Congress: Bengal 1904 to 1908*, 7 MODERN ASIAN STUD. 533, 540 – 545 (1973).

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dominating the whole tone of Bengali administration".⁵³ The 'Bengali movement' is the movement where the people of the same culture speaking the same language are united against the alien. The effect of this unification can be seen in the protest against the partition of Bengal.⁵⁴ The tone of protest can very well be understood in the order passed by Indian Association, wherein they declared the partition as "*a partition against the Bengali-speaking race*"⁵⁵ addressing the protest, in the end, the order of Partition was taken back in 1911.

Post-independence, the common brotherhood came out as 'Bhasha-Andolan' (language-protest) when the Government mandated the exclusive use of 'Urdu' for media and educational institutes. This mandatory use of 'Urdu' had given birth to a counter Bengali Movement. It became a readily embraced concept and a powerful tool for mobilization. During the persistent Bhasha-Andolan, a member of the Constituent Assembly of Pakistan in 1948, introduced the motion to include Bangla as a national language. However, the same was opposed by Liaquat Ali Khan and the motion was dismissed.⁵⁶ Similar incidents led to the formation of Awami League in 1949, which was seen as an emancipator of Bengali population. Seeing growing hatred toward the government in West Pakistan by East Pakistan, the constituent assembly in 1954 recognized Bangla as a national language alongside Urdu.⁵⁷

As noted by Sujit Choudhry, unlike Indian linguistic federalism, the then Pakistan constituent assembly was not inclined to delve power to Bengali-speaking East Pakistan as they considered it to be a stepping stone to secessionist tendency.⁵⁸ He further continued that the push for

⁵³ John R McLane, *The Decision to Partition Bengal*, 2 INDIAN ECON. & SOCIAL HIST. REV., 221, 225 (1965).

⁵⁴ *Id.*

⁵⁵ S. N. BANERJEA, A NATION IN MAKING, 174-175 (Rupa Publications, 1925); *See generally*, JM Broomfield, *The Partition of Bengal: A Problem in British Administration*, 1839-1912, 23(2) THE PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 13 (1960).

⁵⁶ Case C-379/87, *Groener v. Minister for Education and the City of Dublin Vocational Education Committee*, Judgment on 28 November 1989.

⁵⁷ BASHIR AL HELAL, BHASHA ANDOLONER ITIHAS, 80-85 (Bangla Academy, 1st ed., 1985).

⁵⁸ Sujit Choudhry, *Managing Linguistic Nationalism Through Constitutional Design: Lessons from South Asia*, 7 INT. J. CONST. L. 577, 584 (2009).

Pakistan stemmed from Urdu-speaking elites' failure to maintain Urdu's dominance, leading them to advocate for a separate state where Urdu would be official. Muslim clerics opposed this movement, seeking to preserve religious personal law.⁵⁹ The eventual secession of East Pakistan (Bangladesh) highlights the centrality of Urdu and the lesser role of shared religious identity in the Pakistan movement.⁶⁰

The ill-treatment of Bangla by West Pakistan combined with non-representation of Bengali in the administration of a nation, where the Bengali population is in majority, led to the start of the Liberation war in 1970.⁶¹ There were various reasons along with linguistic discrimination which led to resentment against the West Pakistan dominated governance.⁶² This resentment came in the form of the liberation war, which was also supported by people and the government across the border.⁶³

INDIA'S TRYST WITH LANGUAGE LINES

India got its independence in 1947 and enacted its Constitution in 1950. The Constitution is a transformative document which lays down a protective framework governing various facets of the lives of its citizens.⁶⁴

Language is a facet of life that affects several other dimensions of it. The crucial role language plays in our daily lives is easily perceptible. Language has power beyond any cultural instrument. It is not only a way of communicating but also a formidable weapon that has shifted, and continues to shift the structural paradigm of the world as we see it. As elaborated above, Bangladesh is one such example that broke the shackles of linguistic imposition by an oppressive regime in 1971. They

⁵⁹ *Id.* at 602.

⁶⁰ *Id.*

⁶¹ *Id.* at 613.

⁶² Sarmila Bose, *Anatomy of Violence: Analysis of Civil War in East Pakistan in 1971*, 40 E.P.W. 4463, (2005); See also, Yasmin Saikia, *Beyond the Archive of Silence: Narratives of Violence of the 1971 Liberation War of Bangladesh*, 58 HIST. WORKSHOP J. 275, (2004).

⁶³ S RAGHAVAN, 1971: A GLOBAL HISTORY OF THE CREATION OF BANGLADESH, at 15 – 18 (Harvard University Press, 1st ed., 2016).

⁶⁴ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

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stood their ground and successfully earned a partition, granting them the chance to freely practice the use of the language that was deeply connected with their identities.⁶⁵

Part XVII of the Constitution deals with language. It concerns the language to be used by the Central or State Government for its official purposes.⁶⁶ During the making of the Constitution, Sujit Choudhry, propounds various alternatives to mold the Constitution as per either an ethnic or civic conception.⁶⁷ The ethnic conception of nationalism views nations as groups with pre-political bonds like language, history, or descent. It values political communities as a means for a nation's survival, allowing or precluding membership based on these shared characteristics.⁶⁸ On the other hand, the civic conception of a political community emphasizes shared principles of political justice and common political institutions. It views citizenship as voluntary and based on a collective commitment to political ends, with the nation's existence relying on the daily consent of its members.⁶⁹ However, the final provision that was adopted and enacted by the constitution is the compromise of both of these conceptions and a blend of historical and modern thought.⁷⁰

The approach of the Congress before the independence of India was slightly tilted towards the ethnic conception where the party is divided horizontally on the lines of language and culture.⁷¹ Gandhi was considered to be a believer of this notion, as it was because of such division that the Congress party worker at grassroots level could work for their people who speak the same language and share the same identity.⁷²

⁶⁵ G. W. Choudhry, *Bangladesh: Why it happened*, 48 INTERNATIONAL AFFAIRS 242, (1972).

⁶⁶ INDIA CONST. art. 343-348.

⁶⁷ Mukherjee, *supra* note 50.

⁶⁸ JURGEN HABERMAS, *Citizenship and National Identity*, in BETWEEN FACTS AND NORMS 491-500 (MIT Press, 2nd ed., 1996).

⁶⁹ *Id.*

⁷⁰ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* (Oxford University Press, 2d ed., 1966).

⁷¹ Mukherjee, *supra* note 50.

⁷² *Id.*

However, things started changing with the partition of India based on religious lines. Bifurcation of the Bihar province to create a new province of Odisha on the basis of language and culture was indicative of the Congress's belief.⁷³ Pursuant to the horrors of the partition, the belief of the Congress also changed and the idea that states should be made on the basis of language started shifting.⁷⁴ This shift can be termed as shifting from ethnic conception to civic conception.

To deal with the question of organization of states on the basis of language, in 1948 President Rajendra Prasad established a commission under the chairmanship of SK Dhar, also known as the Dhar Commission. The Commission mainly dealt with two questions. First, what the official language of the union should be and second, how the states must be organised on the lines of language. It was propounded that the Union should adopt an official language for all its purposes and that the states shall not be divided on the basis of language.⁷⁵ The Commission believed that if states were to be divided based on language then it might lead to a dampening of the feeling of sub-nation among the states.⁷⁶ It noted "*language in this country stood for and represented the culture, tradition, race, history, individuality and, finally, a sub-nation.*"⁷⁷ This will finally lead to the feeling of succession from the union.⁷⁸ The reason for the adoption of language for the union is to bind a union to a common link,⁷⁹ the rationale adopted by the Commission inclined towards the civic conception of nationalism.

These findings of the Commission were not accepted by the government. However, extensive debates took place in the Constituent Assembly on those findings. The argument of linguistic homogenization was also put

⁷³ Dasarathi Bhuiyan, *Political Culture, Socialization and Modernization of Odisha*, 15 SOUTH ASIAN J. SOCIO-POLITICAL STUD. 1, 10—12 (2014).

⁷⁴ Mukherjee, *supra* note 50.

⁷⁵ S.K. Dhar, REPORT OF THE LINGUISTIC PROVINCES COMMISSION, GOVT. OF INDIA PRESS (Feb. 1948).

⁷⁶ *Id.* at 27.

⁷⁷ *Id.* at 28.

⁷⁸ *Id.* at 30.

⁷⁹ *Id.* at 30 & 38.

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forward by Kher Commission (1955),⁸⁰ who was also tasked with submitting its report on the adoption and usage of Hindi as an official language of the union. The argument forwarded by the commissions can be traced to the civic conception. However, differing from both of these arguments, the Indian Constitution provides a middle path which takes into consideration both Ethnic and Civic conceptions.⁸¹ Such a middle path is adopted due to the various movements for disintegration and restructuring of a state on the basis of language witnessed in India.⁸² For instance, In 1936, Odisha's separation from the Bihar Province marked the beginning of State formation traced on a linguistic basis.⁸³ Though with independence, these movements turned violent in order for their demands to be fulfilled.⁸⁴

After independence, in 1953, Andhra Pradesh became the first state to disintegrate on the basis of language (i.e., a Telugu-speaking state). Following citizen demonstrations and Potti Sriramulu's death after a 56-day hunger strike, authorities had to separate certain Telugu-speaking territories from Madras. Thus, on August 10, 1953, in the House of People, a bill to "provide for the formation of the Andhra State" was introduced.⁸⁵ This opened floodgates for similar demands by different states across the nation.

Looking into the complexity of the matter, the then government, on December 22, 1953, ordered the establishment of another commission consisting of three members, including former Justice Fazal Ali, KM

⁸⁰ B.G. Kher, REPORT OF THE OFFICIAL LANGUAGE COMMISSION, GOVT. OF INDIA PRESS 251 (Jul. 31, 1956).

⁸¹ The idea of 'Civic Conception' represents an approach of the Central Government to integrate the conception of citizenship under one language, whereas, an 'Ethnic Conception' is based on multiple-language identity of the State on a sub-state level. See also Sujit Choudhry, *Managing Linguistic Nationalism Through Constitutional Design: Lessons from South Asia*, 7 INT. J. CONST. L. 577, 582 (2009).

⁸² S.C. Dash, *Government and politics in Orissa*, 26 IND. J. POL. SCI., 83, 85 (1965).

⁸³ S. Barman, *The Judiciary in Orissa: Evolution of the High Court at Cuttack*, 15 J. IND. L. INST. 74, 86 (1973).

⁸⁴ K. Seshadri, *The Telangana Agitation and the Politics of Andhra Pradesh*, 31 IND. J. POL. SCI. 60, 60 (1970).

⁸⁵ Y. Mallikarjun, *First linguistic State gets split*, THE HINDU, (Nov. 17, 2021) <https://www.thehindu.com/news/national/andhra-pradesh/first-linguistic-state-gets-split/article6072332.ece>.

Panikkar, and HN Kunzru.⁸⁶ Broadly speaking, the committee decided on two principles for separation of states: first, linguistic as well as cultural homogeneity is one of the most influential factors in determining the separation of states; and second, administration, finance, and geography for the purpose of reorganization.⁸⁷

On these lines, the commission recommended reorganizing fourteen states.⁸⁸ The government, while accepting some of these recommendations, enacted an act known as the States Reorganization Act of 1956.⁸⁹ This legislation brought major changes to the boundaries of various states, primarily dividing them on a linguistic basis, thereby dividing the whole nation into a total of 14 states and six union territories.⁹⁰ The recommendation can be said to reflect a liberal construction, considering both the conception and the prevailing circumstances. It also takes into consideration the impact of the commission's findings on the future demands of separate states. The commission's findings provide for a middle path by considering the preservation of the culture and language of the particular region, as well as the unity and stability of the Union. Simultaneously, it aims to keep feelings of secession or animosity against the union in abeyance.

The Samyukta Maharashtra Movement led the charge for a separate Marathi-speaking state with Bombay, and simultaneously, the Mahagujarat Movement pushed for a Gujarat state in the Bombay State for Gujarati-speaking people.⁹¹ The government accepted the demand for two separate states at that time, and thus the Bombay Reorganisation Act, 1960⁹² was passed. Later, on September 18, 1966, a new state called

⁸⁶ REPORT OF THE STATES ORGANIZATION COMMISSION, 237 (1955), https://www.mha.gov.in/sites/default/files/State%20Reorganisation%20Commisison%20Report%20of%201955_270614.pdf

⁸⁷ *Id.*

⁸⁸ *Supra* note 75.

⁸⁹ The State Reorganisation Act, 1956, No. 37, Acts of Parliament, 1956.

⁹⁰ Mridula Chari, *How the map of India was redrawn on the lines of language*, SCROLL.IN, <http://scroll.in/article/820359/how-the-map-india-was-redrawn-on-the-lines-of-language>.

⁹¹ Farhana Ibrahim, *The Region and Its Margins: Re-Appropriations of the Border from "Mahagujarat" to "Swarnim Gujarat,"* 47 E.P.W 66, 69 (2012).

⁹² The Bombay Reorganisation Act, 1960, No.11, Acts of Parliament, 1960.

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Punjab was formed after going through a turbulent phase of the Punjabi Suba Movement, which demanded a separate Punjabi-speaking state, denoting a shift from a bilingual state, home to both Hindi and Punjabi.⁹³ Thus, with the passage of the Punjab Reorganisation Act in 1966, Punjab became independent of Haryana and Himachal Pradesh. Recently, Telangana became the 29th state of India on June 2, 2014. Language, whether directly or indirectly, played an important role in their origination in this case as well.⁹⁴

Language influences the perception and sense of unity of individuals and communities. It can therefore be seen as a crucial determinant for the political disintegration of states. If language can play such a pivotal role in nation-building, shouldn't it be our duty to mind it, respect it, and ensure that language doesn't become a barrier to an individual's rights as well as their cultural integrity? Recognizing its significance, the Indian Constitution, through Articles 29 and 30, emphasizes on the protection and promotion of linguistic and cultural rights, particularly for minorities. Article 29 affirms the importance of safeguarding linguistic diversity and preserving cultural heritage, preventing the marginalization of minority groups. Article 30 extends this protection by granting religious and linguistic minorities the right to establish and administer educational institutions of their choice. By doing so, it empowers these communities to impart education in their language, nurturing cultural and linguistic integrity for future generations.

These articles collectively reinforce the principle that language is not just a means of communication but a pillar of identity and dignity. They ensure that linguistic differences do not become barriers to individual rights or social cohesion, fostering a pluralistic society where diversity is celebrated and protected.

CONCLUSION

⁹³ S. S. Bal, *Punjab After Independence (1947-1956)*, 46 PROCEEDINGS OF THE INDIAN HISTORY CONGRESS 416, 429 (1985).

⁹⁴ Duncan B. Forrester, *Subregionalism in India: The Case of Telangana*, 43 PACIFIC AFFAIRS 5, 8 (1970).

This paper attempts to generate discourse and highlight a fundamental sociological phenomenon that has gone unnoticed from a large academic discourse. Gradually, constitutions across the world are seeing a growing trend of cultural assertion, under which, one or another form of cultural identities are given preference over other identities. Throughout the paper, the authors have highlighted how this preferential treatment of one language over the other had similar undertones of that of a theocratic state. It is safe to say that such policies are a reflection of a cultural assertion, no doubt, India also has such a provision under Article 351,⁹⁵ which talks about the duty of the Union Government to promote the spread of the Hindi Language, but it works at institutional level, not at private level and is primarily counterbalanced by the rights for Linguistic Minorities under Article 29 & 30.

However, the examples that the authors have highlighted in the earlier portions of the article are of those states that have purposefully infiltrated the public and private discourse with preference to certain language. The authors staunchly support the possibility that this preferential treatment for a language might gain such traction that it might impact the reasonable space for language of the minorities. This phenomenon will have the same, if not more, gravity as that of a theocratic state. A suitable example would be of *Franciso Franco* regime in Spain, wherein use of languages other than *Spanish* was banned for close to forty years⁹⁶ in between 1939-75. There was a special prohibition on the usage of the language *Catalan*, a language commonly spoken by the residents of

⁹⁵ It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

⁹⁶ Albert Gea, 'The rebirth of Catalan: how a once-banned language is thriving,' THE CONVERSATION, (Sept. 24, 2015), <https://theconversation.com/the-rebirth-of-catalan-how-a-once-banned-language-is-thriving-47587>.

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Catalonia.⁹⁷ The underlying object was to showcase Spain as a culturally and ethnically homogenous crowd.⁹⁸

State-maneuvered idea of identity, in this sense, is problematic, wherein criminalization of identity closely tied with a linguistic identity⁹⁹ seems to be the end goal of the State. A good example on this line is Turkey, an ethnically diverse country that has always attempted to portray itself as a homogenous secular nation. In early phases pre-1980's, Turkey had ensured that *Turkish* is the official language, and is predominately used in the government offices, schools, public and private spaces. Though Turkey restricts the use of other languages, yet, there is a specific target against the *Kurdish* Language.¹⁰⁰ Interestingly, Kurds are the second largest ethnic identity in the State, and Kurdish is the second largest spoken language, yet, Turkey has ensured that *Kurdish* remains prohibited.¹⁰¹ In between 1920-70s, the State had not allowed any research related to Kurdish studies and their origin, the idea was to assimilate the Kurdish identity within the Turkish identity, by tracing the roots of Kurdish identity from the Turkish origin.¹⁰² However, times have changed, post-2003 there was some democratization of the language policy by the State, yet the acceptance of the Kurdish language at the private and public space is still not a comfortable notion.¹⁰³ In short, this criminalization of an identity through the means of language summarizes the theme of the paper to great extent.

This idea of linguistic preference backed with identity politics can have severe repercussions on the ethnic identities that do not favor the same set of values. Instead, it can become a means of repression and invisibility of linguistic plurality from the landscape of a nation. The authors categorically support rights for linguistic minorities. Repression of

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Human Rights Watch, *Report on Violations of Free Expression in Turkey*, 9 RESTRICTIONS ON THE USAGE OF KURDISH LANGUAGE, (Feb. 1999), <https://www.hrw.org/reports/1999/turkey/turkey993-08.htm>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² AMIR HASSANPOUR, NATIONALISM AND LANGUAGE IN KURDISTAN 1918-1985, 132-136 (Edwin Mellen Press, 1st ed., 1992).

¹⁰³ *Id.* at 150-152.

cultural identity through the means of the language can have dire consequences on the stability of a nation, on these lines the authors suggest to include linguistic minority rights in lines to that of the Indian Constitution. Article 29 (1) & 30 (1) are a great harbinger to showcase how even language-identity can be a fundamental right. Under Article 29 (1), *any section of the Indian Citizen living in the territory of India having a distinct language, script or culture shall have a right to conserve the same* read with Article 30 (1): *All Minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.* The Indian judicial interpretation has given a definition to ‘*distinct*’ and ‘*minority*’ for Article 29 & 30 respectively,¹⁰⁴ whenever the population of a community is less than 50% of the total population of a State. In which case, that linguistic community has the right to conserve or set up an educational institution to safeguard their distinct language. This the author suggests will ensure that the minority linguistic rights will survive, even in presence of a majoritarian linguistic culture, provided the State maintains a constitutional commitment to these provisions as well.

¹⁰⁴ *In Re the Kerala Education Bill, 1957*, 1958 INSC 64; *DAV College v. State of Punjab* 1971 AIR 1737; *TMA Pai Foundation v. State of Karnataka* AIR 2003 SC 355.