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## Analysis of Linguistic rights based on different sources of law

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*This work deals with Linguistic rights- How minority groups need these rights to protect their cultural identity and their language, what losses are faced if the language goes extinct, what all rights are included in it, their importance. Certain statistical data related to it is also shown. Further, Analysis of the rights-based on three sources of law- customs, precedence, and legislation which talks about its history, issues arising in it with different perspectives and opinions of some people, what lead to the formation of this law, some instruments around the world protecting the rights with some cases laws on it.*

**Keywords:** *linguistic rights, custom, precedence, and legislation.*

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### INTRODUCTION

A group of people whose practices, race, religion, ethnicity, or other characteristics are distinct than the other dominant groups because of which they are singled out from the others in the society in which they live and are known as objects of collective discrimination because of the differential and unequal treatment is termed as minority groups. There exist several minority groups around the world and to seek justice and save them from being the victims of discrimination and have a proper stand and equal treatment, many minority laws have been made in which certain rights of such people are mentioned and taken into consideration. It

includes- educational rights, land rights, linguistic rights, right to development, right to participation, and many more.

Linguistic rights, in particular, protect the rights of an individual or a group to choose one's own language to communicate with others in public or private spheres. It includes several rights under it such as "The right to speak one's own language in legal, administrative, and judicial acts", "The right to receive education in one's own language", and "The right for media to be broadcast in their own language". Minority communities can use linguistic rights to safeguard their own language, as well as their identity and culture, in public. They are frequently addressed in international treaties as part of the broader context of cultural and educational rights.

## **ANALYSIS BASED ON SOURCE OF LAW**

### **CUSTOMS**

Because language is so important to human nature and society, when a community loses its language, it frequently loses a significant portion of its cultural identity as well. It's frequently interpreted as a loss of social identity or a sign of failure. Language is used to experience much of a people's cultural, spiritual, and intellectual lives. Prayers, myths, rites, poetry, oratory, and technical vocabulary are all covered, as well as ordinary greetings, leave-takings, conversational styles, child-friendly language, and names for habits, behaviors, and emotions. All of this will be lost if a language is destroyed, and people will have to change and adapt to the new language, which will have different words, sounds, and syntax. Traditions are frequently lost in the process and replaced by the cultural practices of the more powerful group, for a variety of reasons, one of which is that the survival of the community's language is often highly crucial. Other reasons for languages becoming distinct are under conditions of marginalization, exclusion, and discrimination.

Many cultures around the world have been colonized or dominated by any other culture, which leads to suppressing their culture including their native languages, making them extinct day by day. Like in the linguistic history of Africa, colonialism brought by European

languages lead to them becoming the ruling languages and suppressing other African languages making them disappear. Talking about India when Britishers came to rule India, they dominated people and made them work according to their cultures and traditions which made people lose their culture. They made English the superior language used as a medium to communicate because of them not knowing Hindi. Eventually, people started learning English and there was a time when English was ruling India. People left their mother tongue, it was no longer considered to learn or speak it, and gradually this led to languages losing their identity and going extinct.

It was believed that there are roughly 1500 languages in India after they left while establishing the constitution. India's official languages for communication with the center shall be Hindi and English, according to Articles 343–345 of the Constitution. According to the Constitution, there are 22 official languages. Article 345 states that "the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State: Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution". Now, India's own languages with origin here are considered as minority languages for which there is a need to issue rights to protect them and the English language is considered as the most known language though it has neither originated here nor was adopted by people willingly.

## **PRECEDENCE**

Though language policies and legislation were a part of early European history, the majority of the literature came from linguistic divisions based on linguistic diversity, which resulted in linguistic rights, there were often instances where a language was imposed on people while other languages or dialects were ignored. It was only after the Second World War that individual rights started becoming an important matter and thus linguistic rights though being just a small part came into consideration. Till the 1900's it had no official status, and problems faced by minorities during the wars were liquidated through treaties.

Various works have talked about the complexity of the issues faced by earlier people and how they wished for linguistic unification and rights. Vilfan (1993) presents a comparative study of language rights in Europe from 1850 to 1940, Akinnaso (1994)'s article on linguistic unification and language rights in Nigeria is a superb depiction of the complexities of the issues in a typical post-colonial state, and Fernand de Varennes' book on Language, Minorities, and Human Rights (1995) is one of the most comprehensive treatises on the subject.<sup>1</sup> Another debate was put by Kenneth McRae, "societies characterized by linguistic pluralism differ from those characterized by racial, religious, class or ideological divisions in one essential respect, which stems from the pervasive nature of language as a general vehicle of communication" also, 'Gomes de Matos' wrote that, "Although ours has been said to be 'the age of rights' . . . there has not yet been a thorough, well-documented, carefully thought out discussion of the crucial problem of the human being's linguistic rights".

Though Government regulating language use is not a new phenomenon, it was long recognized in the fifteenth century as the law requires a 'common tongue' to conduct the proceedings, it took a lot of time for linguistic rights to get recognized as a human right because issues were seen like If linguistic human rights are simply applicable to individuals, or whether there are rights that pertain to all people as "group rights", is there a pressing need for such rights, and should they be considered in any action involving state officials and their preferred languages; influence on minorities' participation and inclusion?; and occurrence of extremely diverse circumstances and conditions because each language matters but when 'one-size-fits-all' is needed to keep the unity. Essentially, the question that policymakers must answer in such debates is whether pluralism, as an essential condition for a democratic social order, extends to the issue of language.<sup>2</sup>

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<sup>1</sup> Robert Phillipson & Tove Skutnabb-Kangas, 'Linguistic rights and wrongs' (*Research Gate*, January 2017) <[https://www.researchgate.net/publication/311453345\\_Linguistic\\_rights\\_and\\_wrongs](https://www.researchgate.net/publication/311453345_Linguistic_rights_and_wrongs)> accessed 10 January 2022

<sup>2</sup>Eliana D. Rojas & Timothy Reagan, 'Linguistic Human Rights: A New Perspective on Bilingual Education' (*Educational Foundation Winter*, 2003) <<https://files.eric.ed.gov/fulltext/EJ775212.pdf>> accessed 10 January 2022

## LEGISLATION

Language policy is a causal impact on linguistic rights in terms of legislation. Language policy encompasses the area of language planning. There are three sorts of language planning: status planning (language uses), acquisition planning (language users), and corpus planning (language corpus) (language itself).

## DIFFERENT INSTRUMENTS AROUND THE WORLD TO PROTECT LINGUISTIC RIGHTS

### **‘Universal Declaration Of Human Rights (1948)’<sup>3</sup>:**

**Article 2** - It does not expressly state that linguistic rights are protected, but it does state that no one should be denied basic rights because of their language. It prohibits discrimination based on languages.

**Articles 4.2 and 4.3** - state the bindings of linguistic rights and the measures that a state should take in regards to linguistic rights. The "recognize-implement-improve" strategy can be used to describe the human rights approach to languages. Language rights must be recognized in policies and processes within a human rights framework. Authorities must incorporate it into their conduct and activities mechanisms in order to improve people's lives and protect them from discrimination and the judicial system.

### **‘African (Banjul) Charter On Humans And Peoples Rights (1981)’<sup>4</sup>:**

Article 2 mentions the rights and freedom related to language. Though the charter was adopted in 1986. The case in 2009 of *“Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another.”*<sup>5</sup> It was the first time the Constitutional Court granted structural remedy for a violation of a socioeconomic-cultural right, as well as the first

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<sup>3</sup> Universal Declaration of Human Rights, 1948

<sup>4</sup> African [Banjul] Charter on Human and Peoples' Rights, 1981

<sup>5</sup> *Head of Department: Mpumalanga Department of Education and Another v Hoerskool Ermelo and Another* [2009] ZACC

time the court looked at the relationship between language teaching policy and the right to education.

### **European Convention Of Human Rights(1950) <sup>6</sup>:**

**Article 5** states that - Any individual who has been arrested has the right to be informed of the reasons for their arrest and any charges they may face in a language that they understand.

**Article 14** contains anti-discrimination legislation based on "sex, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or another status". The *Belgian Linguistic case* (No. 2) (1968) was under the "European Convention of Human Rights" based on the right to education. It was about many parts of Belgian regulations governing the use of languages in education.

### **Constitution of India<sup>7</sup>:**

Article 30(1) talk about granting linguistic minorities the inherent right to form and run educational institutions of their choosing. In the case of "Sindhi education society & Anr v Chief Secretary Govt. of NCT"<sup>8</sup>. On 8 July 2010 this article was applied that since they belong to the minority group, they can enjoy and get benefits of establishing an institute of their choice. Another similar case was of *Usha Mehta V State of Maharashtra* (2004)<sup>9</sup>. Though the rights conferred on minorities' religion and language to establish an educational institute of their own choice was held as a fundamental right in the case of the *TMA Pai foundation*<sup>10</sup> but the Case of *Modern school v Union Of India* (2004)<sup>11</sup> talked about the certain restrictions on Article 30(1) imposed by law.

### **'UN Declaration on the Rights of Persons belonging to national or ethnic, religious and Linguistic minorities' (1992):**

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<sup>6</sup> European Convention on Human Rights, 1950

<sup>7</sup> Constitution of India, 1950

<sup>8</sup> *Sindhi Education Society & Anr v Chief Secretary Govt. of Nct.* [2010] SC 495

<sup>9</sup> *Usha Mehta v State of Maharashtra* [2004] 6 SSC 264

<sup>10</sup> *TMA Pai Foundation v State of Karnataka* [2002], AIR 2003, SC 355

<sup>11</sup> *Modern School v Union Of India* [2004] 5 SSC 583

Article 4.3 mentions that the state should take measures so that, persons belonging to minorities have adequate opportunities to learn their mother tongue or to have their instructions in their mother tongue.

## CONCLUSION

Other than gender and race, language is one of the most essential human attributes on which people cannot be discriminated against. Unfortunately, Government mostly uses a majority language for government services, central government law, and communications, which sometimes make it difficult for a minority language that, are not bilingual but there is a difference in protecting the languages by providing some rights and promoting the languages, they need to understand this and amendments should be brought in consideration to not only just protect them but also promote them because, despite the fact that they are recognized and protected by law, these language rights are not always consistently applied due to a lack of financial resources, a lack of experienced translators, or even the accused's ignorance of their rights. This is an issue that affects smaller linguistic minorities in particular, and it can lead to major legal errors.

People's histories are carried down through their languages, therefore when those languages fade away, they may take with them essential information and knowledge about the community's history and culture. Linguists' ability to learn about human cognition is severely limited as a result of the extinction of human languages. We can learn what is and isn't conceivable in a human language by looking at what all of the world's languages have in common. This reveals vital details about the human mind, such as how youngsters can pick up a complex system like language so rapidly and readily. We will be able to understand less about the human mind if there are fewer languages to study. Thus linguistic rights should be implemented and promoted in the best ways possible providing each language its identity and rights.