
RIGHT TO CHOOSE MEDIUM OF INSTRUCTION

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ABSTRACT

India is a country of varied culture, religions and languages. The country revels in its concept of unity in diversity. We have people of various races and religions united by the love for our nation. But with myriads of languages across the length and breadth of the nation, a lot of times the diversity threatens the unity by way of the differences which crop up due to the inability in understanding and appreciating other languages and culture. A very common feature in India is that people take pride in identifying and attaching themselves with their language. A lot of times, this leads to the feeling of intolerance towards people speaking other languages and leads to disharmony. However, despite this, one's culture and regional language is an important aspect of an individual. Even during the days of our struggle for independence, a lot of intellectuals harped on the importance of associating oneself with their culture and regional language. But with time and with gradual liberalisation, privatisation and globalisation, Indians are shifting towards learning other foreign languages or as Yogendra Singh puts it as "the language of symbolic domination".¹

Today the people understand that to attain jobs, they have to converse in languages that are globally accepted. With time, English has become the language of preferred choice of language for the Indian parents for their children in schools. This has come into conflict with some states and groups which feel that learning a foreign language by sidelining one's own language, is harmful for the growth of the nation. A lot of states are making the mother tongue language as the mandatory medium of instruction for the children at school level. This takes away the right of the parents to educate their wards in the language of their choice. Hence, we see a clear conflict of interests between the parents on one hand, who claim that they should have the freedom to choose the medium of instruction for their wards and it is their inalienable right and the various states on the other hand which claim that it is their duty to protect the regional languages in India. In this project, the author has made an attempt to understand the respective rights of the parents and the states. An attempt had been made to analyse the historical and Constitutional validity for this issue and to find out a solution for the same.

¹ YOGENDRA SINGH, CULTURE CHANGE IN INDIA 140 (2000).

OBJECTIVES

- To understand the issue of the right to medium of instruction.
- To analyse the constitutional basis for the right.
- To study the Indian judicial cases revolving around the issue with special reference to Karnataka.
- To analyse the Canadian perspective.

RESEARCH METHODOLOGY

For the present study, the researcher has adopted the doctrinal method of research and the paper is descriptive-cum-analytical in nature. Comparative method is also employed. It is largely based on secondary & electronic sources of data. The paper is prepared through extensive study and analysis of various research articles. The researcher has mainly resorted to several online articles and newspaper readings for the completion of the project.

MEANING AND HISTORICAL BACKGROUND

Famous poet, Rita Joe, had written,

"Lost My Talk

I lost my talk

The talk you took away.

When I was a little girl

At Shubenacadie School

You snatched it away:

I speak like you

I think like you

I create like you

The scrambled ballad, about my word

Two ways I talk

Both ways I say,

Your way is more powerful.

So gently I offer my hand and ask,

Let me find my talk

*So I can teach you about me."*²

This small verse throws a strong message about the importance of one's mother tongue. This poem has been written by a poet belonging to the aboriginal community. It shows the anguish she experienced when she was forced to converse and was educated in language other than her mother tongue, the Mi'kmaq language. This says that she lost her cultural identity due to the forced foreign language.³

Mother tongue is in simple words the native language of the speaker.⁴ According to Oxford dictionary, it is the language which a person has grown up speaking from early childhood.⁵

It has been an accepted fact that learning in one's mother tongue helps a child to learn things quicker and in an efficient manner. A child is able to relate better when the medium of instruction is same as that of the language spoken in his day to day life and at home. Emphasising, the role of mother tongue, Gandhiji had said that it was more important to have use mother tongue at elementary level so as to lay a strong foundation for the children. He found that it would be a waste to struggle and learn in a foreign language and sideline a language which the child is culturally and spiritually more connected to.⁶

The earliest piece of legislation dealing with the issue of mother tongue was the Education

² Written by Rita Joe, reproduced from Dorothy Moore, *The Value of Mother Tongue Education*, 12 REV. QUEBECOISE DE DROIT INT'L 163, 170 (1999).

³ *Ibid.*

⁴ M. Ben H. Rampton, *Displacing the 'native speaker': Expertise, affiliation, and inheritance*, 44.2 ELT J 97 (1990).

⁵ https://www.oxfordlearnersdictionaries.com/definition/american_english/mother-tongue, last accessed on December 05, 2022.

⁶ As cited in *English Medium Students Parents Assn. v. State of Karnataka*, (1994) 1 SCC 550 (India).

policy of 1994. The policy laid down the rule that all children should be taught in their mother tongue in the primary as well as the middle classes. English had to be taught only after a child had learned a few basic concepts in his mother tongue. In the year 1906, the Indian National Congress started the National Education movement, which also laid great stress on learning one's culture and mother tongue along with keeping English language as a compulsory subject. After an array of commissions in year 1949, 1953, the three language rule came into being in 1956. The All India Council for Education formulated this policy which stated that every child had to learn the following:⁷

- 1 The mother tongue or the regional language;
2. Hindi, which is the India's language or English, which is India's associate official language.
3. Any other foreign language or modern language. Southern languages were considered to be modern languages. However, later in some Northern states, classical languages like Sanskrit were also considered a modern language.

However, this formula saw some opposition from Southern states, especially Tamil Nadu, which blatantly follows only Tamil and English.

The National Policy on Education which came out in 1968 supported the three language policy and the use of regional languages and mother tongue language. However, given the needs of the changing society, it also stated that special emphasis had to be laid on English.⁸

Given the fact that at that time, education was in the state list, these policies could not be applied uniformly across the nation and there were various anomalies in different states. The states had the discretion over which language to choose as the first language. Also, the biggest challenge which was presented to this formula was the different application of this formula by different states. The worst affected by this were those belonging to the linguistic minority of any state because they had to learn four languages, the mother tongue, the regional language, along with English and Hindi.⁹

Hence, we see that the language policy has actually not been implemented properly ad

⁷ Leena Ratti, *The three language formula: challenges in its implementation in multilingual India*, (IJELR); <http://www.ijelr.in/>, last accessed on December 05, 2022.

⁸ P. ISHWARA BHAT, LAW AND SOCIAL TRANSFORMATION IN INDIA 320 (2009).

⁹ *Supra* note 7.

uniformly across India. This has caused a lot of confusion and problems in the past and continues to be so. Owing to this, currently there is no uniform language policy in education being followed in India. There have been cases of states enforcing their own policy and making it mandatory, neglecting the rights of the parents.

CONSTITUTIONAL FRAMEWORK

In the Indian Constitution, there are various Articles which deal with the issue of language.

Article 29 deals with the protection of interests of minorities.¹⁰ Section 1 of article 29 reads as:

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Hence, we see that the Constitution has given importance to the maintenance of the culture and languages of the people.

Article 30¹¹ deals with the right of the minorities to establish and administer educational institutions. Although this right is also applicable to linguistic minorities, however, this Article actually protects the right of the minorities to education and not protection of the language or the mother tongue of the minorities.¹²

The most important provision in this regard is Article 350-A¹³. This Article puts a duty on the states to provide primary education in the mother tongue language of the people belonging to the linguistic minorities. It reads as:

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

¹⁰ INDIA CONST. art. 29.

¹¹ INDIA CONST. art. 30.

¹² *Supra* note 8 at pg. 323.

¹³ INDIA CONST. art. 350A.

However, in such a case, question arises whether in the garb of the duty given under Article 350-A, the states can enforce mandatory education policies by ignoring the rights of the parents under Article 19 and 21.

An answer to this question can be found by analysing a few cases which were on the same issue.

The earliest case dealing with the educational policies of the *State was State of Bombay v. Bombay Education Society*¹⁴. In this case, the Honourable Supreme invalidated an order passed by the government of Bombay in which such students whose primary language or mother tongue was not English were denied admission in English medium schools on the pretext that this would encourage of the use of Indian languages.

In the case of *D.A.V. College Bhatinda v. State of Punjab*¹⁵, the Supreme Court stated that, "*While the University can prescribe Punjabi as a medium of instruction it cannot prescribe it as the exclusive medium nor compel affiliated Colleges established and administered by linguistic or religious minorities or by a Section of the citizens who wish to conserve their language script and culture, to teach in Punjabi or take examination in that language with Gurmukhi script.*"

THE KARNATAKA GOVERNMENT CASE

Among all the different states in India, the Karnataka government has by far been the most active and controversial in framing educational policies making Kannada as a compulsory medium of instruction for all students at the primary level. There has been an array of cases which deal with this issue in Karnataka.

After the formation of the Karnataka state, the state came out with the Karnataka Official Language Act in the year 1963 and made Kannada as its Official language. Initially with the formation of the state, Karnataka followed a well rounded education policy keeping in line with the three language formula. However, with time various factors like dissent among Kannadigas for Hindi language, growing erosion of Kannada, low availability of government

¹⁴ AIR 1954 SC 561 (India).

¹⁵ AIR 1971 SC1731 (India).

employees fluent in Kannada made the government shift towards bringing Kannada back into limelight.¹⁶

In the case of *Sahyadri Education Trust v. State of Karnataka*¹⁷, the High Court squashed the order of the State government of making Kannada the exclusive medium of instruction in schools.

In a similar judgment, the High Court in the case of *State of Karnataka v. Noble Saint Education Society*¹⁸ held that parents have a right to have the freedom to choose the medium of instruction for their wards.

In the landmark case of the *English Medium Students Parents Ass. Case*¹⁹, the Karnataka government through its education department ordered that all those primary schools which were set up after the year 1994 would follow Kannada medium for education. On appeal to the High Court, the order was stayed. However, post the stay order, the government again issued orders but it was found out that despite stating that they would follow and convert to Kannada medium, lot of schools were still following English medium. Later in 2007, the government planned to get all schools converted within four years and wanted to effectuate the same by way of penalties. On challenge, the High Court sided with the government stating that the schools had failed to fulfil the legal obligations.

Finally these issues were dealt in detail in the case of *State of Karnataka & Anr v. Associated Management of (Government Recognised – Unaided – English Medium) Primary & Secondary Schools & Ors*²⁰. In this, the 1994 order was challenged by the respondents in the High Court, which invalidated the order. On appeal to the Supreme Court, the case came before the Constitutional bench of the Court.

The main argument of the Respondents was that the parents had a right to choose the medium of instruction according to Article 19(1)(a), which is the right to freedom of speech and expression and Article 21, which the right to live with dignity. They also contended that the right to choose the medium of instruction was the fundamental right of a child under Article

¹⁶ B. Mallikarjun, *Language policy for education in Indian states: Karnataka*, 2 LANGUAGE IN INDIA (December 2002).

¹⁷ ILR (1988) Kant 2188 (India).

¹⁸ (1993) 2 Kar L.J. 19 (India).

¹⁹ Karnataka (Reg.) Unaided Schools v. State Of Karnataka, Education AIR 2007 Kant 157 (India).

²⁰ (2014) 9 SCC 485(India).

19(1) (a) and 21A. Meanwhile the Karnataka government on the other hand stated that with a view to Article 350A, it had the duty to promote the mother tongue and hence it was duty bound to do the same.

Upholding the arguments of the Respondents, while citing the case of *Secretary, Ministry of Information & Broadcasting, Government of India v. Cricket Association of Bengal*²¹, Article 19 indeed contained the freedom get educated and the dissipation and receipt of information. The court held that the parents and the children have the right to choose the medium of instruction as a part of their Fundamental Rights. The court also held that such a government order would also infringe the rights of the minority communities given under 29(1) and 30(1).

NEW EDUCATION POLICY 2020

There was a new education policy floated by the central government in 2020. The policy focussed on creating a well-rounded and holistic individual as a product of the Indian education system. In order to break down language barriers, there is a focus on encouraging multilingualism, on the importance of language in teaching and learning, and on the significant use of technology in both of these areas. The current National Education Policy (NEP's three-language) formula recommends that at least two of the three languages students learn in school be indigenous to India, one of which is most likely to be the local/regional language.

Wherever feasible, pupils up to Class V in schools should receive instruction in their mother tongue, regional language, or local language, according to NEP 2020. The concept is based on research showing that young infants comprehend concepts better in their mother tongue or home language, with the caveat that teachers may teach subjects using a bilingual method. The policy further states that the system should make every attempt to provide a suitable number of schools with a language of instruction that caters to the large linguistic minorities in that area.

Of late, there have been attempts to encourage use of Hindi and other local languages for imparting even higher education. There have been attempt to translate English books into Hindi and other local languages for science and other streams. However, how far can this be

²¹ AIR 1995 SC 1236(India).

realistically be done without losing meaning of the complex and difficult technical and scientific words and terms is yet to be seen. The process has been slow so far.

CANADIAN PERSPECTIVE

Before discussing the education policy of Canada with regard to the language followed for the medium of instruction, it would be useful to have a glimpse of the historical background and evolution of the language policy in Canada.

Canada is a federal democratic country. It has been demarcated into ten provinces. Initially just like the U.S.A., Canada was also inhabited by the Aborigines who had their own language. However, later immigrants from France and Britain started to colonise Canada. According to the latest Census Report published in 2016²², 58.1 percent of the total population speaks English, while 21.4 percent speaks French. Since beginning, there has been a constant power struggle between the French speaking people known as the Francophones and the English speaking people, the Anglophones. Due to the political and social polarisations, the Francophones were majorly confined to the Quebec area of Canada.²³ Till the early 1960s, the language policy of Canada was dominated and influenced heavily by the Anglophones. However, after 1960s, French started to have wider recognition through conscious efforts made by the Francophones. Later through a lot of efforts, the Official Languages Act was passed in the year 1969 and English and French were made the Official Languages of Canada.²⁴ This act was a work of the Royal Commission on Bilingualism and Biculturalism (1963-1971), which was specially formed by the government to make an elaborate report on the social, educational, economical and various other facets of the major languages of Canada. A few key contributions of this act was that it made it after this French was taken seriously as the second language of Canada. Public officials were made to learn French along with English. French was also included in the Civil Services. Another important outcome was the recognition of the linguistic rights of the minorities, namely, the Anglophones in the French dominated Quebec region and the Francophones in the other parts of Canada. Also huge funds were specially created to help the cause of effective dissemination of French as the second language across Canada.

²² <http://www12.statcan.gc.ca/census-recensement/2016/dp-pd/dv-vd/lang/index-eng.cfm>, last accessed on December 05, 2022.

²³ Barbara Burnaby, *Language Policy and Education in Canada*. 331-341 (2008).

²⁴ *Ibid.*

Along with these, the Canadian Constitution also deals with the linguistic rights of the people. The Canadian Charter of Rights and Freedoms, which is a part of the Canadian Constitution, contains a specific provision dealing especially with the Minority language education rights. This was done more so because of the importance given to the Official Language Minority Communities (OLMCs) much in line with the Backward classes in India. In order to protect the culture of these communities and for a greater national harmony, the Constitutional framers wanted to promote the mother tongue of the linguistic minorities; hence this provision was introduced because it was realised that education can be a powerful tool to promote languages.²⁵

Section 23 gives the right to the Francophone and the Anglophone linguistic minorities of any province to have their children get their primary and secondary school education in the language which is in minority in the province of their residence.

Such education in the minority language is to be borne by the government out of the public funds. However, for clarity, the section also states that the provision applies only when the number of children who are entitled to such a provision are enough. Moreover, to be able to enjoy the benefits of this provision, some conditions have to be fulfilled, like the person should be a citizen of Canada, should be a resident of a province where the language is a minority language. Also, the parent of the child should also be using the minority language as their mother tongue, should have themselves been taught in a minority language and if any other child exists in the same family, he should also have been taught in the minority language.²⁶

However, despite the hallmark provision, there have been a few hiccups in Canadian policies also. For example, the provision only recognises French and English as the minority languages and does not include other languages like the languages of the Aborigines.

Another problem that comes with this issue is that even though the Constitution makers drafted with a holistic and federal view in mind, the reality that the subject of education is kept in the provincial list brings difficulties in the implementation in this provision, at some times.

CONCLUSION

²⁵ Joshua McKeown, *The Effects of Section 23 of the Canadian Charter of Rights and Freedoms on Shaping Official Language Minority Communities Educational Rights: A Case Study of the Francophone Minority Community in Alberta*, 9 JOURNAL OF INTEGRATED STUDIES, (2017).

²⁶ *Ibid.*

For a culturally rich and diverse country like India, where there are numerous languages and dialects being spoken at various regions, it is quite obvious that language remains an important and key issue. Even in the past, India has witnessed violence on the issue of language dominance and language pride. In view of such circumstances, it becomes extremely important to not let the dominance of any particular language by the subjugation of the linguistic minorities. Hence, education becomes an important method of bridging the language gap and bringing in harmony. Teaching languages and different cultures to young children is the best way to instil the feeling of affection for all communities. As discussed, even in other countries like Canada, language rights of minorities in education have been recognised. However, with the growing modernisation and technological advancement, English and other foreign languages are fast becoming the language of choice for the parents as a medium of instruction for their children. The Supreme Court has in various cases held that this is a fundamental right of the parents. But even the state has a corresponding duty to promote mother tongue and not let complete erosion of the Indian languages and culture in the name of modernisation. Hence a balance needs to be found out by making a few languages as compulsory to be studied at primary levels however, still leaving the choice of the medium of instruction with the parents. This would help in bringing a win-win situation for all.

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