

LINGUISTIC MINORITY RIGHTS: LANGUAGE LAWS, CONFLICT AND FEDERALISM IN SOUTH AND SOUTH- EAST ASIA

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ABSTRACT

This thesis explores the linguistic homogenising provisions in the Constitutions and statutes of three jurisdictions of India, Malaysia and Sri Lanka and their effect on Tamil-speaking minorities in these countries. It explicates the problems of accommodating linguistic minority rights in jurisdictions which have a politically dominant linguistic majority. This thesis then examines the relationship between federalism and devolution and protection of linguistic minority rights in the context of the three jurisdictions by tracing the historical evolution of the state structures and their interplay with linguistic minority rights. It then argues that the current systems of federalism and devolution are inadequate to resist attempts of linguistic homogenisation.

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INTRODUCTION

Background and research questions

The end of World War II and lessons learnt from the brutality of the Nazi rule in Germany led to the formation of an international human rights regime. Gradually, ethnic minority rights, of which linguistic minority rights are an important part, have taken deep roots in the larger human rights framework.¹ Starting from the Universal Declaration of Human Rights (UDHR) in 1948, a multiplicity of international rights documents has exhorted nations to ensure the protection of rights of ethnic and linguistic minorities. These include the International Covenant on Civil and Political Rights (ICCPR)² and the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. These rights have now moved beyond just the element of non-discrimination, urging countries to proactively ensure protection of such minorities by securing five dimensions of these rights: right to non-discrimination, right to native language education, right to use minority languages in community settings, right to use minority languages in official settings, and right to use minority languages in the media.³

In a socio-political context, the protection of minority rights is a corollary of the need to protect diversity. But a paradox emerges from this position. Accommodating diversity often leads to conflict as communities jostle for political and cultural space. This creates a power asymmetry between majority and minority groups. Given the majority principle of democratic systems, this also means the majority group has a greater chance of holding power and determining whose

¹ Meng Li, "Protection of Minority Linguistic Rights from the Perspective of Human Rights," *Journal of Human Rights* 16, no. 6 (December 2017): 578-596.

² Article 27 of ICCPR

³ Meng Li (n1).

culture and whose language get priority. Often, this prioritisation happens through the legal system, in the constitutions and laws that seek to fulfil the constitutional mandate.

In this thesis, I seek to study the process of how laws that venture to homogenise linguistic identities operate in South and South-East Asia, often considered one of the most multilingual and multiethnic regions in the world and where language has fueled and continues to fuel multiple conflicts.

This process is placed, throughout this thesis, in the larger historical and political context of the jurisdictions under study. The legacy of colonialism plays a vital role in how such homogenising policies were constructed and are sustained, and why they are resorted to, to deduce what interventions are necessary to counter the subversion of linguistic minority rights. Here, the question of how the federal and devolutionary elements of the political systems, put in place with the motivation of managing diversity within the idea of a larger nation, are subverted by majority groups is scrutinized, along with the impact of this subversion on linguistic minorities. India, Sri Lanka, and Malaysia are taken as illustrations from the two regions to undertake this comparative study. The reasons for the choice of countries will be explained subsequently.

Thus, the central question this thesis labours to answer is this: how have linguistic homogenising provisions been institutionalised in the constitutional frameworks of India, Sri Lanka, and Malaysia? Once this is explained, the thesis will move to a subsidiary question: how do these provisions undermine the federal aspects of these political systems that were adopted to manage diversity? Answering this question will show that self-ascription of the constitutions as federal systems, or a unitary system with substantive devolution to subnational units, is misleading and counterproductive to the entrenchment of rights. The centralising features of the constitutions

that such self-ascription tries to hide have far-reaching consequences for linguistic minority rights, something that would be studied in detail.

Selection of jurisdictions for comparative study

Why choose India, Sri Lanka, and Malaysia for this study and not the many other countries in the two regions exhibiting the same kind of diversity and problems for linguistic minorities?

The purpose of this thesis is not only to study the linguistic homogenising attempts in the two regions of South and South-East Asia, but also to place them in the context of how it affects the Tamil-speaking minority populations. Tamils form minority linguistic groups in all three countries. Their positionality in the three countries will be explained in detail in Chapter 1. This apart, all three countries went through centuries of British colonial rule, thereby displaying similar logics in the way they shaped their political systems at the time of Independence.

In particular, the problem of a centralised system, which is a legacy of the British rule, and its effect on the manifestation of linguistic homogenising attempts, have common threads in all three countries, where the colonial “divide and rule” policies placed minorities in similar, vulnerable positions by fueling parochialism in the majority. This will be studied in Chapter 3.

Apart from the similarities, the differences in the three political systems also provide scope for study of the diversity of the mechanics at play in the realm of linguistic minority rights. While India has a stronger federal system with states organised on linguistic basis, Malaysia has a strong form of centralised federalism without linguistic units. Sri Lanka, on the other hand, has a unitary model with substantial devolution developed as a response to the ethnic strife, with provinces matching the ethnic spread.

Finally, the author being a Tamil provides scope for accessing debates over the linguistic problem in the native language, which makes a considerable difference for understanding the socio-political context in which the legal developments transpired.

Methodology

The methodology this thesis follows is doctrinal. The text of the constitutions, of the laws and policies, and scholarly publications are used to extract facts and build an analysis of the problem at hand. However, this is done with the acute awareness that the law does not function in a silo, and that an interdisciplinary approach is necessary to “discern the contextual nuances” in which the law emerges.⁴ Thus, works of political theorists are utilised along with those of legal scholars for the analysis with the hope to contribute to the larger field of doctrinal comparative constitutional studies.

⁴ Bhat, P. Ishwara. "Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles." In *Idea and Methods of Legal Research*. Delhi: Oxford University Press, 2020. 143, 144.

CHAPTER 1

Linguistic minorities: key concepts

Linguistic rights involve multiple dimensions, especially when articulated within the larger framework of minority rights. But before I delve into the characteristics of this right, it is important to first frame the very idea conceptually to understand what constitutes a linguistic minority that will be the basis for this thesis. This is because the rights encompass a category and measures to protect these rights will have to be targeted at this category. Thus, when do people speaking a particular language become a linguistic minority? Is it simple arithmetic where a minority in numbers directly translates into linguistic minority status?

Scholars have acknowledged the complexity in this categorisation. Oukhiar traces the many attempts by various scholars to define the category of linguistic minorities based not only on the number of people speaking such a language but also on their positionality within a particular polity.⁵ According to Tina Kempin Reuter, a minority language is one that exhibits certain specific characteristics, some of which are: it functions in a larger society with a dominant language; it faces exclusion from administration and education; it is confined to one geographical area, religious denomination, or literary field; and it is at risk of extermination both by opponents and by its own users [who adopt the dominant language for diverse benefits].⁶

⁵ Oukhiar, Fouad. "Linguistic minorities: a conceptual framework." *Revista Iberoamericana de Linguística* 6 (2011): 49+. *Gale OneFile: Informe Académico*. 1, 2.

⁶ *ibid* (n5) 1-3

Reuter's conditions pose certain problems in framing the category of linguistic minorities in the three jurisdictions of India, Sri Lanka, and Malaysia. The primary of these is the question of confinement to a geographical area.

Almost immediately after its constitution was adopted in 1950, India faced demands from its linguistic minorities to revamp its federal structure.⁷ This led to the linguistic reorganisation of its states in 1956. States were reorganised according to the demographic spread of people speaking particular languages. While controversies arose over allocation of certain geographical areas to states due to competing claims over these areas (a few of which continue to date), the fact that linguistic groups mostly occupied certain geographical areas made the exercise of reorganisation fairly straightforward.⁸

In Sri Lanka, which is a unitary constitutional republic that has undertaken devolution as its model following years of civil strife, the ethnic Tamils, the largest minority, predominantly occupy the North and East of the island. The Sinhalese form the majority in the rest of the country, and due to their numerical superiority, the majority in the island-nation as whole. However, ethnic Tamils are not the only Tamil-speaking population in Sri Lanka. The plantation Tamils, who are Tamils of Indian origin brought to the island by the British in the late 19th and early 20th centuries to work in the plantations, have historically and culturally maintained their uniqueness from the ethnic Tamils. And they are found in areas that are within the regions where the Sinhalese form the majority. Thus, if Tamil is taken as a minority language, speakers of this language form at least two subcategories and occupy multiple geographical areas in Sri Lanka.

⁷ Faisal Kamal, 2015. "Remapping India: New States and Their Political Origins, by Louise Tillin," *Publius: The Journal of Federalism*, Oxford University Press, vol. 45(3). 1-9.

⁸ "11 States, one Union Territory have boundary disputes, says Centre," *The Hindu*, December 14, 2021, available at <https://www.thehindu.com/news/national/11-states-one-union-territory-have-boundary-disputes-says-centre/article37953032.ece>

Malaysia presents an even drastic deviation from India and Sri Lanka. As Harihar Bhattacharya points out, the Malaysian Federation today consists of a total of 13 states, with 11 states in the Malaysian Peninsula and the two states of Sabah and Sarawak in northern Borneo.⁹ In this, over 90% of the population in each of the 11 peninsular states are Malays, often referred to as *bhumiputeras* (a Sanskrit term meaning sons of the soil). This means, a linguistic-based territorial federal decentralisation is impossible in Malaysia like it is undertaken in India and Sri Lanka. Any attempt at decentralisation will have to be personal/communal rather than geographical, severely restricting political autonomy of minority groups, who will require the support of the majority to undertake any meaningful policy decisions.

Of note is that linguistic minorities in South and South-East Asia transcend strict religious identities, even though a majority may belong to a particular religion. While in India and Sri Lanka the majority of Tamils are Hindus, it is only in Malaysia, where too Tamils are overwhelmingly Hindu, that religion has become a crucial tool of mobilisation for the Tamil minority.¹⁰ In fact, Tamils in India have a robust social movement in the Dravidian movement that challenged the hegemony of Brahminical Hinduism and attempted to construct a secular image for the linguistic group.¹¹

The second condition proposed by Reuter requiring further consideration is the exclusion of a language from administration and education.¹² The logic of colonialism has problematised this condition given the position of English in the former British colonies, including India, Sri Lanka, and Malaysia. Rather than the local dominant language excluding minority languages, the

⁹ Bhattacharyya, Harihar. *Federalism in Asia: India, Pakistan and Malaysia* / Harihar Bhattacharyya, (Routledge London; New York, 2010) 38-40

¹⁰ Lian Kwen Fee and Jayanath Appudurai, "Race, Class and Politics in Peninsular Malaysia: The General Election of 2008," *Asian Studies Review* 35, no. 1 (March 2011): 63–82

¹¹For a general overview of the Dravidian movement, see Pandian, M. S. S. *Brahmin and Non-Brahmin: Genealogies of the Tamil Political Present*. Delhi: (Permanent Black, 2007).

¹² Oukhiar (n2)

global currency that English offers makes this language aspirational.¹³ The preference for English education not only affects minority linguistic groups, but it may have similar exclusionary effect on speakers of the dominant language in a society. Take the case, for example, of the judicial system in India. The higher judiciary, which consists of the Supreme Court and the High Courts, function almost exclusively in English, posing problems of access to those not conversant in the language. This is a form of exclusion in administration that cuts across linguistic groups.

However, it is also to be noted that while English poses a challenge to all languages, the way English is perceived in comparison to the local dominant language is more positional than universal. The presence of English could become a tool for the minority groups to resist expansion of the local dominant language. To cite India yet again, Tamils, while opposing the idea of making Hindi the only official language of India, have historically backed the idea of maintaining English as an associate official language. One of the characteristics of the 1965 anti-Hindi movement in the state of Tamil Nadu was the demand to sustain the position of English as an associate official language or link language, a status that was to end in 1965 as per the plan put in place during the adoption of the Indian Constitution in 1950.¹⁴

Conversely, majority linguistic groups see English as a challenge and seek its replacement with the dominant language on two counts. One is the logic of decolonisation. English being the coloniser's language, such groups argue for an indigenous transformation of the administrative and educational systems with the native language to complete the project of decolonisation. Second is the argument that stands partly on the decolonisation project but at the same time moves further. That a national language is necessary to forge the idea of a single nation given the central

¹³ Leya Mathew & Ritty Lukose (2020) Pedagogies of Aspiration: Anthropological Perspectives on Education in Liberalising India, *South Asia: Journal of South Asian Studies*, 43:4, 691-704

¹⁴ Pandian (n11)

position of language in the construction of cultural unity. Decolonisation means this cannot be English. This aspect and how it is used for dominance by the majority linguistic groups will be dealt with in the proceeding chapters.

Thus, while Reuter's conditions for identifying linguistic minorities are adopted for the purposes of this thesis, the above qualifications are accounted in the final analysis: that confinement to a geographical area need not be a necessity and that exclusion from education and administration is a logic that transcends the idea of linguistic minorities given the history of colonial rule.

Tamils as linguistic minority in India, Sri Lanka, and Malaysia

While the previous sub-section had indicated the geographic location of the Tamil population in the three jurisdictions, it is necessary to provide a view of their demographic spread in the three countries to set up further analysis of how they face linguistic homogenising attempts.

Tamil is a classical language that belongs to the Dravidian group of languages. According to David Shulman,¹⁵ the language is attested from at least the first century B.C though its roots go further back. It is also the only language of such ancient stock in South Asia that continues to be a vibrant mother-tongue language of at least 80 million people in the region, and several thousands in the West as a vibrant diaspora.¹⁶

The origin and spread of the Tamil people from the southern parts of India is beyond the scope and purview of this thesis. I focus on the demographic profile of Tamils in the three jurisdictions that situate them as a linguistic minority under constant threat of homogenisation by dominant linguistic groups.

¹⁵ Shulman, David, *Tamil: a biography*, (Harvard University Press, Cambridge, 2016). 1, 2.

¹⁶ *ibid* (n15)

India

The state of Tamil Nadu in southern India has the largest population of Tamils living in a single region anywhere in the world. This is also the ancient homeland of the Tamil-speaking people. According to Census of India, 2011, Tamil Nadu has a population of about 72 million.¹⁷ However, the percentage of people who identify Tamil as their first language is lower at 69 million given the presence of other linguistic groups in the state. As a percentage of India's population, Tamil Nadu constitutes about 6%, making it the sixth most populous state in the country. Tamil Nadu also ranks high among states in human development indicators and has the second lowest rate of population growth among all large states in India after Kerala. Tamils form the fifth largest linguistic group in India.¹⁸

Sri Lanka

There are two categories of Tamils in Sri Lanka. The Sri Lankan ethnic Tamils, who trace their lineage to migrations into the country during the ancient times, form majorities in the Northern and Eastern provinces of the island nation. According to Census of Sri Lanka, 2012, there were about three million Sri Lankan Tamils in the country, mostly concentrated in the two provinces mentioned above.¹⁹ The Indian or plantation Tamils, who are the descendants of Tamil labourers brought by the British from India in the late 19th and early 20th centuries to work in the plantations, are about 0.8 million in number and are concentrated in the Central province. The

¹⁷ See Census of India 2011 data at <http://censusindia.gov.in>

¹⁸ *ibid* (n17)

¹⁹ Sri Lanka Census Population and Housing, 2012, available at <http://www.statistics.gov.lk/pophousat/cph2011/pages/activities/Reports/SriLanka.pdf>

Tamil-speaking population of Sri Lanka constitute about 16% of the total population. They form the second largest linguistic group after the majority Sinhalese.²⁰

Malaysia

The Malaysian Federation has three major ethnic groups: The Malays, considered the indigenous population, form a majority 69% of the population as per statistics from the Malaysian government in 2017.²¹ They speak Bahasa Malaya, the national language of the country. The Chinese are the second largest ethnic group, comprising of about 23% of the population. Indians form the third largest ethnic bloc, making up 7% of the population. While the Indian population is multilingual in nature, Tamils are an overwhelming majority of 80% among Indians. Unlike India and Sri Lanka, the Malaysian Tamil population is spread across peninsular Malaysia and they do not form a majority in any of the 13 states in the federation.²²

²⁰ ibid (n19)

²¹ Malaysian Population Estimates 2016-17, Department of Statistics, available at https://www.dosm.gov.my/v1/index.php?r=column/cthemByCat&cat=155&bul_id=a1d1UTFZazd5ajJiRWFHNDd uOXFFQT09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09

²² Bhattacharya (n9)

CHAPTER 2

Federalism: conceptual framework

Like the question of what constitutes a linguistic minority, what are the essential elements of federalism is a much-debated question. Palermo captures this predicament succinctly: “...federalism is a manifold concept which may have several institutional manifestations and often means different things to different people in different contexts.”²³ Before going into what these “institutional manifestations” could be and if there are minimum standards to define a federal state, I look at the other aspect of federalism that is relevant to the debate of linguistic minority rights: federalism as a political ideology.

While federal states are identified by institutional elements, in political theory, some scholars have framed the idea of federalism itself as a “political ideology” that informs certain institutional arrangements. For Graham Smith, in its most general and commonly conceived form, “federalism can be considered as an ideology which holds that the ideal organisation of human affairs is best reflected in the celebration of diversity through unity.”²⁴ However, this claim demands closer scrutiny. As Smith himself points out, as a self-referential theory, federalism struggles to attend to questions of human conditions like justice, value, desire, happiness, and other such elements that a political ideology is expected to answer.²⁵ Thus, he provides what I consider a more practical way of looking at federalism as a concept that traverses multiple political ideologies when he says, quoting Burgess and Gagnon, that it is a “doctrine that trumpets universal

²³ Palermo, Francesco, and Karl Kössler. "Manifestations." In *Comparative Federalism: Constitutional Arrangements and Case Law*. Hart Studies in Comparative Public Law. (Oxford: Hart Publishing, 2017). 34-66.

²⁴ Smith, G. *Federalism: The Multiethnic Challenge* (1st ed.) (Routledge, 1995). 4, 5.

²⁵ *ibid* (n24)

a priori truths.” That is, “federalism is best treated as traversing a broad range of what we can more usefully call programmatic orientations.”²⁶

There are many examples to support such a position. The United States, often seen as a classic example of a federal state, fold federal institutional elements within the larger ideology of a capitalist society. In all the three jurisdictions of India, Sri Lanka, and Malaysia, the constitutions self-ascribe the countries as socialist, while institutionally they either consider themselves as federal, as in the case of India and Malaysia, or as unitary state (with elements of devolution) in Sri Lanka. I will elaborate on the problem of self-ascription in more detail in the second part of this chapter and why this is important from a comparative constitutional study perspective. But suffice to state at this point that federalism, if taken as a “programmatic orientation,” can be exhibited in a variety of different political ideologies.

I now turn to considering federalism as manifesting in a clutch of institutional arrangements. If one can identify a federal arrangement through certain institutional elements, are they concretely definable? Are there common minimum standards to identify a federal state?

Yet again, prevailing legal and political literature highlight the complexity of deriving such minimum standards. Here, it is worthwhile to make a distinction between terminologies that are often used synonymously in common parlance but have specific connotations in political and legal literature. For Ronald Watts, “federalism” refers to the “advocacy of multi-tiered government combining elements of shared rule and regional self-rule.”²⁷ That is, the ism in federalism makes it an idea that prescribes certain institutional elements. On the other hand, the terms “federal

²⁶ Smith (n24).

²⁷ Watts, Ronald L. & Queen's University (Kingston, Ont.). Institute of Intergovernmental Relations. & Queen's University (Kingston, Ont.). School of Policy Studies. (1996). *Comparing federal systems in the 1990s*. Kingston, Ont : Institute of Intergovernmental Relations, Queen's University.

political systems” and “federations” are descriptive of the institutional elements that fulfill the idea of “federalism.” The former is broader, and the latter is narrower. A “federal political system” refers to a system where there are two or more levels of government, such as federations and confederations. A “federation” denotes a specific federal political system in which one level does not dominate the other, each has sovereign powers within their spheres and deals directly with the citizens in their political realm. Watts’ definition also makes the existence of a constitution a necessity for this system along with democracy where each level is directly elected by the people.²⁸ Given the narrower scope of this thesis and characteristics of the comparative jurisdictions which are all democracies, I refrain from analysing the problem this definition poses in a non-democratic society, of whether there could be independent multi-level government in an authoritarian state that respects the sovereignty of the individual units within their spheres.

Palermo refers to a more legalistic examination of “federalism” by Peter Pernthaler,²⁹ for whom there are four common minimum standards: sovereignty within their respective spheres is guaranteed constitutionally and cannot be effaced without the consent of the respective unit; the regional or subnational unit is guaranteed effective participation in decision-making (especially constitutional amendments and law making) processes at the central level; constitutional autonomy of subnational units to make independent choices within the confines of a national constitution; and division of financial powers between the central and the regional or subnational units.³⁰

This leads us to the second question, a logical extension of the attempt to define federalism. What is it about linguistic rights that makes the institutional systems of federalism worthwhile of exploration?

²⁸ *ibid* (n27)

²⁹ Palermo (n23)

³⁰ *ibid*

The autonomy that federalism theorises to protect is of vital importance. If Pernthaler's institutional common minimum standards are considered, federalism as a model lends itself to creating spaces of autonomy for minorities in societies that face the multiethnic challenge, like those of India, Sri Lanka, and Malaysia. Language being central to the identity of linguistic groups, this realm of autonomy serves two benefits: the ability to forge policies independently to protect linguistic rights and a tool of resistance against homogenising tendencies of linguistic majorities through constitutionally protected institutional guarantees.

However, federalism itself is not a complete solution to the problem of protecting diversity and in turn the rights of minority groups. As Gagnon points out "the success of federal systems is not to be measured in the elimination of social conflicts but instead in their capacity to regulate and manage such conflicts."³¹ In fact, Gagnon states that conflicts should be considered as inherent to federal systems. That is, the very choice of a federal system acknowledges both the aspect of diversity within a society and the fact that this diversity, given the jockeying for political space, leads to conflicts.³² It has also been argued that this very principle of accommodating diversity could lead to conflicts as it provides diverse groups with the ability to politicise identities. However, the profound liberal democratic value that minority rights represent must give way to any apprehensions about the possibility of future conflicts emerging from accommodation of such rights. That is, political stability must be forged not by effacing diversity but by managing it.

But these common standards too, while generally acceptable and fairly comprehensive, pose a challenge to certain aspects of dual government, especially in the context of linguistic minority rights. What is conspicuous in definitions proposed by both Watts and Pernthaler is the

³¹ Gagnon, Alain, *Political uses of Federalism, in Comparative Federalism and Federation*, (Harvester and Wheatsheaf, 1993). 4, 5.

³² *ibid* (n31)

idea of constitutional supremacy being central to the institutional arrangement in a federal polity. The central problem that this thesis will confront is the fact that the design of a constitution itself can be inimical to linguistic minority rights, even if the institutional arrangements are touted as a federal system seeking to accommodate diversity and manage conflicts. How does this happen?

Manifestations of federalism are extremely diverse. A system may adhere to usual definitions of a federal political system, in say, the distribution of financial powers between the central government and the subnational or regional governments. But the same system may show a high degree of centralising tendencies in other aspects of shared rule. Often, both centralisation and decentralisation have their basis in the constitution. Thus, the confinement of the constitution could mean constitutional supremacy becomes a limitation on federal rights. This is even more problematic in a multiethnic society with one dominant group that wields majority political power. This majority may shape the constitution in such a way that suppression of rights itself becomes a feature of the constitution, countering which may attract the label of movements being anti-constitutional due to the principle of constitutional supremacy. This problem could be further explored by analysing how constitutions describe themselves when it comes to vertical separation of powers and how this self-ascription differs from actual practice.

Constitutional self-ascription and deviation in practice

As Smith points out, self-ascription provides no certainty that the system is indeed what it claims to be as “of the one in ten present-day polities that claim to be federations, closer scrutiny reveals that it is often difficult to distinguish them from unitary states.”³³ However, self-ascription is a good starting point to check how the system deviates in practice.

³³ Smith, (n24), 7.

There are two ways in which the motivations of the constitution framers could be deduced in assessing what kind of structure was ideated for the state that they eventually created. First is the text of the constitution, which often describes, in both aspirational terms in the form of a preamble and in concrete terms through the language of its provisions, the nature and the institutional arrangements of the state. Second, the debates during the drafting of the constitution throw light on the logic and purpose of the final text. In some cases, careful consideration of the debates provides answers to complicated questions that are not directly answered in the text of the constitution.

India finds a prominent place in most comparative analysis of federal systems; both in legal and political studies. However, the framers of the Indian constitution decided not to call the new Republic in 1950 a federation. This involves an interesting turn of events during the drafting process.³⁴

In 1947, following the failure of the Cabinet Mission Plan that sought to keep India as one country by negotiating a consensus between the Muslim League and the Indian National Congress (INC), British India was partitioned in 1947 into the two nations of India and Pakistan. Following the division, the process of framing the constitution in India quickened, aided by the fact that there was already a Constituent Assembly in place elected in 1946.

In October 1947, B N Rau, the adviser to the Assembly, placed before the drafting committee the first draft of the proposed constitution. It declared that from the date of its commencement, India will be a “federation.” However, this identification of the new nation as a “federation” was changed by the drafting committee, which decided to call the new Republic a

³⁴ Singh, MP,” Constitution to SC: How the federal doctrine evolved,” Hindustan Times, accessed on Jan 24, 2022, available at <https://www.hindustantimes.com/india-news/constitution-to-sc-how-the-federal-doctrine-evolved/story-JCCDW0q2rXq0BhUV6FXSYM.html>

“Union of States.”³⁵ BR Ambedkar, the chairperson of the drafting committee, stated that the committee had adopted the term “union” instead of “federation” by following the British North America Act of 1867. “There are advantages in describing India as a Union although its constitution may be federal in structure,” he said.³⁶

This change in nomenclature had its impact on the final constitution. India fails to fulfill Pernthaler’s important common minimum standard for a federation, namely the sovereignty of the subnational unit that cannot be removed without its consent. Article 3 of the Constitution allows Parliament to create or undo a state without its consent.³⁷ This has serious implications for linguistic minority rights, given that the states were eventually reorganised on linguistic basis in 1956 and their linguistic character could be altered without their consent by Parliament by adding and removing territories. This power of Parliament to alter the character of a state was on full display in 2019 when it unilaterally divided the state of Jammu and Kashmir into two Union Territories, which are federal units under the Indian Constitution inferior to the status of a state with a larger role for the central government in administration.³⁸ In fact, Jammu and Kashmir was the only state in India with a separate subnational constitution that protected its special status in the Indian Union.

The Malaysian Constitution displays similar logics that contradicts its self-ascription as a federal Republic. As Andrew Harding points out, the 1957 *Merdeka* Constitution emerged as a form of a negotiated social contract between the indigenous Malay community and the immigrant groups such as the Chinese and the Indians.³⁹ It had as its central scheme the protection of the

³⁵ *ibid* (n34)

³⁶ *ibid*

³⁷ Article 3 of Indian Constitution, available at https://www.constituteproject.org/constitution/India_2016?lang=en#27

³⁸ See Jammu and Kashmir (Reorganisation) Act, 2019, available at <https://egazette.nic.in/WriteReadData/2019/210407.pdf>

³⁹ Harding, Andrew. *The Constitution of Malaysia: A Contextual Analysis*.: Hart Publishing (Oxford, 2012). 17, 18.

privileges of the Malays, with concessions afforded to the ethnic minorities to construct a peaceful transition from colonialism. In due course, this logic transformed into a centralising project that undermined multiple elements of the federal structure.

In his comparative study on federal systems that showcase the diversity of federal structures across the world, Ronald Watts has characterised the Malaysian state as “centralised quasi federation.”⁴⁰ Unlike India where linguistic groups occupy specific regions that allowed for the reorganisation of the federal structure on linguistic basis starting the 1950s, Malaysian states do not correspond to dominance of specific ethnic groups. Except for the one state of Penang where the Chinese minority outnumber the Malays, the latter form the dominant group in all other subnational units. But even so, the constitution under Article 2 allows Parliament to admit new states and alter existing states, albeit with their consent.⁴¹ However, for much of its post-colonial history, Malaysian politics has been dominated, both at the national and subnational levels, by the ruling alliance that came together immediately after Independence from the British in 1957. Thus, the constitution had left the possibility of manufacturing the consent of the state governments open.

The Sri Lankan Constitution characterises the Sri Lankan state as “unitary” in nature. However, the protracted ethnic crisis in the country that led to a civil war in the 1980s forced Sri Lanka to adopt measures to devolve power to the provinces. This development was fueled by external pressure from India, which negotiated the Indo-Sri Lankan accord on behalf of the Tamil population to augment the autonomy of the ethnic Tamils, leading to the enactment of the 13th Amendment to the Sri Lankan Constitution in 1987.⁴²

⁴⁰ Watts, Ronald L. 2008. *Comparing federal systems*. Montréal: Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press. 14.

⁴¹ Article 2 of Malaysian Constitution available at https://www.constituteproject.org/constitution/Malaysia_2007?lang=#11

⁴² Marasinghe, Lakshman M. “The Indo-Sri Lankan Accord in Perspective.” *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 21, no. 2 (1988): 157–85.

However, this devolution has subsequently been undermined, a process that has heightened since the defeat of the Liberation Tigers of Tamil Eelam (LTTE) in 2009. In Sri Lanka too, Parliament holds exclusive powers under Article 5 to redraw or remove provinces from the map thereby affecting how Tamils exercise their autonomy within these spheres.⁴³

This apart, there is a larger reason as to why it is necessary to focus on the institutional design of federalism and devolution in the context of linguistic minority rights. In many countries, including the three this thesis is concerned with, a multiplicity of legal provisions affects rights of linguistic minorities. These encompass areas of legislative, executive, and judicial competences.

These provisions may not refer directly to minority languages or linguistic minority groups but the exercise of legislative, executive, and judicial power in these areas profoundly affects their linguistic autonomy. These include, but are not limited to, school and higher education, administration, and electoral laws.

Thus, any attempt to improve the autonomy of linguistic minorities must move past the self-ascription of the political systems seen in the constitutions and scrutinise deeper the actual provisions in the constitution and their effect on such minorities if reforms are to carry any significant meaning.

⁴³ Article 5 of Sri Lankan Constitution available at https://www.constituteproject.org/constitution/Sri_Lanka_2015?lang=#30

CHAPTER 3

Colonial and post-colonial foundations of the language problem

Having elaborated in the previous chapter the conceptual similarities and differences in the structure of federalism, devolution and autonomy in India, Sri Lanka, and Malaysia, I examine in this chapter the extent to which these founding ideas of the three countries have been maintained or vacated in the realm of linguistic minority rights. The first sub-section provides an overview of the colonial administration's contribution to centralisation of administrations and how this affected post-Independence state organisation and the question of ethnolinguistic rights. The second sub-section elaborates on the idea of "national unity" that laid the foundation for linguistic homogenising tendencies of the central governments after Independence. Here, the similarity in political rhetoric that informed decisions to include provisions in the constitutions that laid the foundations for linguistic homogenisation comes through.

The colonial logic behind the political structure of British-ruled India, Sri Lanka, and Malaysia was that of resource exploitation. The administrative and territorial arrangements were founded on the idea of facilitating this exploitation with maximum efficiency. Post-Independence when India was faced with internal mobilisations by linguistic minorities demanding greater autonomy in governance, the central government under Prime Minister Jawaharlal Nehru, whose party the INC had reluctantly agreed to an exploration of reorganisation of states on linguistic principles, appointed the States Reorganisation Commission in December 1953. In its report published two years later, the Commission directly attributed the problems of territorial reorganisation in Independent India to the extractive policies adopted by the British. "...there was a conscious or deliberate design behind the demarcation of the territories of administrative units,

it was grounded in imperial interests or the exigencies of a foreign government and not in the actual needs, wishes or affinities of the people.”⁴⁴

While ethnic homogeneity emerged by accident in the construction of several administrative units under British rule in India, large swathes of ethnically incongruous regions were merged, and many ethnically congruous territories were split, to facilitate the logic of imperial, exploitative rule in the 19th century. It was with the emergence of the nationalist movement in India that the British adopted a policy of minimum accommodation of native interests in administrative arrangements, partly reorganising provinces, and other administrative units, in the early years of the 20th century as the colonial administration moved towards affording natives some autonomy.⁴⁵

The first mention of the linguistic principle as a reason for administrative rearrangement of provinces finds place in the 1905 report of Governor-General Lord Curzon, who cited “linguistic peculiarities” of certain areas in the Madras Presidency in South India to reject demands of integrating them with other provinces for geographical consistency.⁴⁶ However, larger considerations of administrative viability and balancing of Hindu and Muslim interests dominated the so-called reforms, especially in the partition of Bengal in 1905 that led to widespread resentment among Indians, particularly Hindus.

Thus, while language was a principal marker of ethnic identities in India, the colonial logic of sustaining a strong central government for administrative convenience and prioritising other identities, such as religious, to subvert the nationalist movement, undermined the demands for

⁴⁴ Report of the State Reorganisation Commission, 1956 (Ministry of Home Affairs, New Delhi). 1-3.

⁴⁵ Veerathappa, K. “British Conservatives and the Constitutional Experiment in British India, 1935-1939.” *The Indian Journal of Political Science* 27, no. 2 (1966). 55.

⁴⁶ Report of the State Reorganisation Commission, 1956 (Ministry of Home Affairs, New Delhi). 1-3.

linguistic autonomy in territorial demarcations.⁴⁷ Coupled with the attitude of the Indian Independence movement itself, which sought to unite diverse peoples under its umbrella and under the concept of self-rule with the common identity of “Indians,” the linguistic problem was postponed for the purposes of this unity, which was already being undermined due to the Hindu-Muslim divisions.⁴⁸

This insistence on a strong central government during the colonial rule, and the adoption of the unitary model in Sri Lanka and “centralised federalism” in the post-Independence era in India and Malaysia, had a profound detrimental effect on the autonomy aspirations of linguistic minorities. In all three countries, speakers of the so-called “national language,” by virtue of brute numbers, held political dominance over the central government through electoral advantages, and the interests of these groups superseded considerations of linguistic autonomy of minority language speakers. They inherited and implemented the colonial legal and administrative architecture primed to the enforcement of specific interests of the power holders.

As in India, the Sri Lankan experience betrays the colonial impact on post-Independence ethno-political relations, albeit in a more diffused manner due to the peculiarities of the ethnolinguistic demography and variations in the way colonial rule dispersed.⁴⁹ In Sri Lanka, the importance accorded to the English language in administration and, contradictorily, the failure of the British to efficiently distribute English-language training across the island colony have been

⁴⁷ Morrock, Richard. “Heritage of Strife: The Effects of Colonialist ‘Divide and Rule’ Strategy upon the Colonized Peoples.” *Science & Society* 37, no. 2 (1973). 129–51.

⁴⁸ Bose, Sugata. “Nation, Reason and Religion: India’s Independence in International Perspective.” *Economic and Political Weekly* 33, no. 31 (1998). 2090–97.

⁴⁹ De Silva, K.M, *A History of Sri Lanka*, Penguin Book India (2005). 275-285.

identified by scholars as significant contributors to post-Independence conflict, even when the colonial strategy of educating only the native elite in English is accommodated.⁵⁰

When the British took over the island from the Dutch in the early 19th century, they were faced with effects of the Dutch policy that had already established a network of native-languages schools in Sri Lanka. By 1815 when the British entrenched their hold over Sri Lanka, English education was primarily in the hands of American missionaries, whose work disproportionately focused on the Sinhalese southern lowlands, and North and East of the island, which was home to the Sri Lankan Tamil population.⁵¹ Even at the turn of the 20th century, almost 85 years into British rule, these missionaries dominated the English education sector, running 144 English schools compared to a mere four schools run by the British administration.⁵² In contrast, the British colonial administration functioned in English, thereby putting at advantage the elite among the Sri Lankan Tamils, and a section of the Sinhalese, who were trained in the language and accessed white-collar government employment.⁵³ This disproportionate representation of the Tamils in the government machinery, even though was not a deliberate policy of the British, sowed the seeds for the Sinhala majoritarian movement after Independence.

Like several other colonies in South and South-East Asia, the British united the disparate ethnic regions in Sri Lanka, which for much of history functioned as independent units, under a centralised system. When the British ceded certain amount of autonomy to the natives in the island

⁵⁰ Paul Castañeda Dower, Victor Ginsburgh, Shlomo Weber, *Colonial legacy, polarization and linguistic disenfranchisement: The case of the Sri Lankan War*, Journal of Development Economics, Volume 127, 2017. 440-448

⁵¹ *ibid* (50)

⁵² Dower, Ginsburgh, Weber, (n50).

⁵³ Tambiah, Stanley, *Sri Lanka. Ethnic Fratricide and the Dismantling of Democracy*. (University of Chicago Press, Chicago, 1986). 37-39

in the 1930s and 1940s, it created a system of territorial and demography-based representation through universal suffrage in the legislative council (Donoughmore Constitution, 1931), setting the stage for a majoritarian electoral principle that would open ethnolinguistic fault lines immediately after Independence.⁵⁴ Post-Independence central governments controlled by the Sinhalese set out to rectify the disparity in representation in employment and education by prioritising Sinhala and marginalising Tamil. However, unlike India, the centralised colonial system inherited by the post-Independence Sri Lankan state led to a full-blown civil war by the 1980s. Subsequent chapters will explain the structural designs that contributed to violence in Sri Lanka but did not do so in India, a seminal reason being the method of constitution making.

Departing from this model of a seamless adoption of the colonial centralised system is Malaysia, where the local political elite forged such a system deviating from historical trends just before the transfer of power from the British in 1957.⁵⁵ Immediately after the end of World War II, when British control of the region was reinstated following a brief occupation of Malaya by the Japanese between 1941-45, the position of the sultanates, who were groups of regional monarchs with substantial autonomy under the colonial rule, was undermined in the country's political system. Hitherto, the British had administered these regions through officers known as residents or advisers. With the establishment of the Malaya Union in 1946—a new scheme of governance that unified different units of the Malay Peninsula for the first time under a single government—the sultans were transformed into symbolic rulers and power was formally transferred to the British Crown.⁵⁶

⁵⁴ De Silva, K.M, An Era of Reform and Reconstruction, in *A History of Sri Lanka*, Penguin Book India (2005). 338-360

⁵⁵ For a comprehensive account of the colonial transition see Smith. S, *British Relations with the Malay Rulers: From Decentralization to Malayan Independence 1930–1957*, Kuala Lumpur: Oxford University Press (1995).

⁵⁶ Francis E. Hutchinson (2014) Malaysia's Federal System: Overt and Covert Centralisation, *Journal of Contemporary Asia*, 44:3. 422-442.

This, however, quickly unraveled as under the Malaya Union, the British liberalised citizenship rules and brought a position of parity among the three major ethnic groups of Malays, Chinese and Indians.⁵⁷ The Malays saw this as a challenge to their position *bhumiputeras* and mounted political resistance through the United Malays National Organisation (UMNO). Two years later in 1948, the British relented and formed the Federation of Malaya, reauthorising the sultans and tightening citizenship rules for Chinese, Indians, and other immigrants. In the national elections of 1955, the UMNO formed an alliance with Indian and Chinese ethnic political organisations and emerged as the principal power holder. It then changed tactics and demanded and established a highly centralised political system through a negotiated constitution which established a constitutional monarchy. This predominance of UMNO and Malay interests in the nascent stages of state formation left a lasting impact on the ethnolinguistic landscape, leading to gradual consolidation of power with a central government that resorted to linguistic homogenisation by the 1960s.⁵⁸

Forging national unity and ethnolinguistic tensions

The utility of a common language for creating and sustaining national consciousness has been well-studied by scholars of political science and sociology. Kelman argues that a common language aids in the entrenchment of both sentimental and instrumental attachment to the national group.⁵⁹ Sentimental attachment is strengthened by “enhancing not only the continuity but also the

⁵⁷ Lau, Albert, “*The Malayan Union Controversy, 1942–1948*,” (Singapore: Oxford University Press, 1991). 46-57

⁵⁸ *ibid* (n57)

⁵⁹ Kelman, Herbert C. “Language as an aid and barrier to involvement in the national system.” In *Can Language Be Planned?: Sociolinguistic Theory for Developing Nations*, edited by Joan Rubin and Björn H. Jernudd, (University of Hawai’i Press, 1971).

31.

authenticity of the national tradition.”⁶⁰ For example, language becomes the vehicle for transmitting history through varied forms such as literature, folklore, and myths, augmenting emotional investment of the individual in the group.

In the instrumental form, it deepens attachment by improving integration into the national system. Governmental policies that serve the entire nation, and not just a particular section, become easier. However, Kelman is quick to caution against enforced common linguistic policies in a multilingual society. What are seen as advantages of a common language could quickly transform into divisive forces.⁶¹

Two elements stand out in this transformation. First. Language policies that seek to force a common language on diverse linguistic groups may lead to alienation from the national tradition. Minority linguistic groups may feel that their rights to freely use their languages are being denied and in turn they are excluded from opportunities available to the speakers of the dominant that the state constructs as a common language. Secondly, Kelman also points out that differences in language are under most circumstances accompanied by differences in ethnicity and/or religion. An implication of this bondage of multiple identities is that when linguistic identity is subverted, the feeling of alienation may radiate to other accompanying identities.⁶²

As Eric Hobsbawm points out, the idea that a common language was necessary for forging a national, common identity was a much later development in the discourse of nation-states.⁶³ But this came to be a crucial element of post-colonial nation-building in multiethnic societies such as South and South-East Asia. While diverse territories and peoples were merged to sustain the

⁶⁰ *ibid* (n59)

⁶¹ Kelman (n59), 30-35.

⁶² Kelman (n59).

⁶³ Hobsbawm, Eric. “Language, Culture, and National Identity.” *Social Research* 63, no. 4 (1996). 1065, 1066.

paramount colonial logic of administrative convenience, the newly formed post-colonial states were left with the task of sustaining the nation inherited with colonial boundaries.

In doing so, finding commonalities for the construction of a national identity became an urgent task. In this, language and religion played central roles. However, I show that the need for a common language to forge national unity at a time when these countries were trying to entrench the post-colonial state became a ruse for linguistic homogenising attempts.

The Constituent Assembly of India elected in 1946 took up the task of framing India's post-Independence constitution amidst deep communal polarisation that was tearing the country apart. In 1947, British India was partitioned into India and Pakistan, with the latter plumping for an Islamic state. In India, the experience of Partition meant that national unity became an even more urgent proposition with the central government headed by Prime Minister Jawaharlal Nehru negotiating with over 540 princely states to join the newly formed union.⁶⁴ Thus, two parallel processes were taking place: the framing of the constitution to unite the country under a common legal framework, and the political process of uniting the territories to make this a working unity. The question of new India's attitude towards religion was settled quickly, given the INC's unflinching position on secularism. While there were Hindu nationalists, including within the INC, who voiced for a Hindu nation as a retaliation to a Muslim Pakistan, the overwhelming dominance of the secular faction of the INC in the Constituent Assembly led by Nehru quickly achieved a consensus on the secular nature of the new state.⁶⁵ The story of language, however, took a different turn and was the most vexed of debates in the forum given the divisions within the INC.

⁶⁴ Austin, Granville. "Making and Preserving a Nation." In *Working a Democratic Constitution: A History of the Indian Experience*. (Delhi: Oxford University Press, 2003). 144.

⁶⁵ Bhagavan, Manu. "The Hindutva Underground: Hindu Nationalism and the Indian National Congress in Late Colonial and Early Post-Colonial India." *Economic and Political Weekly* 43, no. 37 (2008). 39–48.

India's freedom struggle itself exhibited signs of a bias towards finding a national language to raise a common national identity. MK Gandhi, the leader of the struggle, advocated Hindustani, an amalgamation of Hindi, Punjabi, and Urdu, to be this national language. However, as Austin elaborates, the members of the Constituent Assembly from North and Central India were increasingly extremist on the language position.⁶⁶ The justification was explicitly majoritarian in that since a majority of 42% spoke Hindustani in 1931, it was to be the natural choice for the position of national language. However, in the backdrop of the Partition, they advocated a severance of Urdu, identified with the Muslim tradition, from the idea of Hindustani and voiced for adopting Hindi in the *Devanagiri* script as the national language.

The first signs of serious resistance to this linguistic homogenising attempt marked the acrimonious debates in the Constituent Assembly over the question of Hindi. India is home to two major linguistic families: the Indo-European set of languages to which Hindi belongs and the Dravidian languages such as Tamil. The two were also geographically identifiable, with the southern regions, which included the large Presidency of Madras, speaking Dravidian. The Tamils of Madras had a pre-Independence tradition of opposing Hindi, with an attempt to make its learning mandatory in schools leading to widespread violence in 1937-38. In the Assembly too, the vociferous opponents to Hindi as a national language were from southern regions.⁶⁷

Eventually, a trade-off was reached with Hindi being adopted as the official language and English as associate official language. However, as I will elaborate in the subsequent chapters, this element of constitutional design constructed as a compromise, coupled with the design of the federal structure, ended up making Hindi the perpetual field of language conflict in India.

⁶⁶ Austin (n64), 154, 155.

⁶⁷ Doss, Christhu, *What history tells us about discussions around Hindi as national language*, The Wire, accessed on January 30, 2022, available at <https://thewire.in/politics/hindi-rashtra-bhasha-national-language-history>

In Sri Lanka, Sinhalese politicians couched the Sinhala privileging policies in the rhetoric of national unity post-Independence.⁶⁸ But the purpose of measures adopted by the majoritarian Sinhalese government was not an attempt to construct a national identity but simply to advantage a majority section of the population. Electoral politics played a consequential role in shaping this policy. Multiple political parties fought to secure the support of the majority Sinhalese population and increasingly resorted to populist policies, or what Horowitz theoretically frames as “ethnic outbidding” or the process where politicians outbid their opponents in anti-minority stance.⁶⁹ Privileging Sinhala in administration and education was perceived by the Sinhalese as a form of social justice to right the wrong of exclusion from public opportunities during the British rule and hence garnered political mileage. These policies were mounted in such a manner that the language of Sinhala became an important qualification to access public jobs.⁷⁰

In Malaysia, the ethnic riots of May 13, 1969, that involved clashes between the Chinese and ethnic Malays, became the turning point in influencing government policy that took a decisive pro-Malaya trajectory far wider in its application than what scholars believe the 1957 Constitution envisaged when it created a special position for the *bhumiputeras*. Subsequently, the New Economic Policy (NEP) framed in 1971, which became the fundamental document that molded Malaysian society for at least the next 40 years, had as its main impulse the forging of a national unity that would transcend ethnic fault lines and avoid the rerun of the violence of 1969. However, the NEP, through its multi-layered quota system that encompassed every aspect of Malaysian

⁶⁸ Roberts, Michael. “Ethnic Conflict in Sri Lanka and Sinhalese Perspectives: Barriers to Accommodation.” *Modern Asian Studies* 12, no. 3 (1978). 356.

⁶⁹ Devotta, Neil. “From ethnic outbidding to ethnic conflict: the institutional bases for Sri Lanka's separatist war.” *Nations and Nationalism* 11 (2005): 141-143.

⁷⁰ *ibid* (n69).

society, privileged the indigenous over those considered immigrants such as the Chinese and the Indian, predominantly Tamil, population.

Further, the policies themselves were put beyond criticism using repressive laws, so much so that there was hardly any challenge posed to the policies under the NEP even in the courts.⁷¹ While scholars have pointed to the fact that the NEP managed only moderate success in bringing the *bhumiputeras* on par with other more affluent groups such as the Chinese, it undermined the very nature of the Constitutional settlement of the ethnic question achieved in 1957, thereby ensuring to this date simmering ethnic discontent among all ethnic groups in Malaysia.⁷²

⁷¹ Harding, Andrew. *The Constitution of Malaysia: A Contextual Analysis*.: Hart Publishing (Oxford, 2012). 17, 18.

⁷² For an in-depth analysis of the New Economic Policy, see Gomez, Edmund Terence. *The new economic policy in Malaysia: affirmative action, ethnic inequalities, and social justice*. (NUS Press, Singapore, 2013).

CHAPTER 4

Constitutional provisions of linguistic homogenisation

India

The Tamil resistance to imposition of Hindi, the language spoken by a majority, predates India's Constitution by at least a decade, when mass protests were held in 1937 against attempts to include Hindi in school curriculum in the Madras Presidency, where most Tamils lived.⁷³ However, Tamils were not the only community with politics based on linguistic identity. Immediately after Independence, the movement for recognising autonomy of linguistic subnationalities grew among speakers of several languages, leading to the Linguistic Reorganisation of States Act. While each of these linguistic subnationalist groups, in a sense, fought for maintaining their cultural uniqueness from others and positioned it on territorial claims within the Indian Union, the problem of the linguistic identity of the larger Indian nation was fought first in the constitutional sphere before it spilled over to the streets.

As historian Ramachandra Guha points out, Jawaharlal Nehru, the first Prime Minister of India, had in 1937 argued that while provincial languages had great value and cultural traditions, India required a common language for communication.⁷⁴ He proposed, following the lead of his mentor Gandhi, Hindustani, an amalgam of Hindu and Urdu, as a possible common language. But the Partition of British India meant this was dropped, given the identification of Urdu with the

⁷³ Pandian, M. S. S. "Towards National-Popular: Notes on Self-Respecters' Tamil." *Economic and Political Weekly* 31, no. 51 (1996). 3323–29.

⁷⁴ Guha, Ramachandra. *India after Gandhi: the history of the world's largest democracy*. (New York: Ecco, 2007). 134.

Muslim population. Thus, members from the Hindi-speaking regions, who had large numbers in the Assembly, pressed for the language to become the national language of Independent India.

This, however, was untenable to non-Hindi speakers, especially from the South of India, where an overwhelming majority spoke non-Hindi languages. After acrimonious debates that lasted three days in 1949, the Assembly came to a compromise whereby both Hindi and English (the preference of the non-Hindi speakers) became the official languages of the Union. This was to continue for 15 years, when Parliament was empowered to reconsider the position of English as an additional official language.⁷⁵

Thus, what transpired in the Assembly was a postponement of the language problem to ensure it does not derail the constitution-making process. The provision the Assembly adopted became Article 343 of the Constitution, which reads thus:

343.

1. *The official language of the Union shall be Hindi in Devanagari script.*
2. *The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.*
3. *Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:*
4. *Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.*

⁷⁵ *ibid* (n74).

5. *Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of-*

- *the English language, or*
- *the Devanagari form of numerals,*

for such purposes as may be specified in the law.

But was this really a compromise? From the debates and the provision, it seems the Constituent Assembly gave up the question of a national linguistic identity given the exclusive use of the neutral term “official languages” in contrast to Sri Lanka and Malaysia, about whom we will see in the later parts of this chapter. And unlike the other two countries, Hindi was not accorded any special position and states were allowed to use their own languages for governance under Article 345.⁷⁶ However, other accompanying provisions to Article 343 would put to question this assumption. Not only was Hindi the only Indian language to become an official language, but there was also a constitutional mandate to progressively cut down use of English. This apart, a separate provision was adopted making it the duty of the national government to promote Hindi, a privilege not given to any other Indian language. The provisions read thus:

344. Commission and Committee of Parliament on official language

1. The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

2. It shall be the duty of the Commission to make recommendations to the President as to-

⁷⁶ Article 345 of Indian Constitution, available at https://www.constituteproject.org/constitution/India_2016?lang=en#s3544

- a. the progressive use of the Hindi language for the official purposes of the Union;
- b. restrictions on the use of the English language for all or any of the official purposes of the Union;

351. Directive for development of the Hindi language

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.

This apart, states were obliged to receive the consent of the central government to use the local language in the High Courts, which are constitutional courts at the state level. To date, several High Courts have still not moved to using the local language in courtrooms, including Tamil Nadu, due to lack of approval from the central government.⁷⁷

In 1965, when the 15-year timeline to remove English as an associate official language ended, attempts to enforce Hindi as the only official language led to violence on the streets, especially in South India, where, by this time, the INC was facing stiff electoral resistance from other parties such as the Communist Party and the Tamil Nadu-based Dravida Munnetra Kazhagam. This violence forced the Union government to concede that English would remain an associate official language if the states wanted it.⁷⁸

⁷⁷ Jayarajan, Sreedevi, *Tamil cannot be Madras HC's official language: Centre rejects TN's request again*, The News Minute, accessed on June 10, 2022, available at <https://www.thenewsminute.com/article/tamil-cannot-be-madras-hcs-official-language-centre-rejects-tn-request-again-75808>

⁷⁸ Guha (n74), 394, 395.

However, no meaningful changes were made to the Constitution to ensure attempts to impose Hindi on the states are once and for all ended. This has periodically reignited language conflicts between states and the central government. Instead, other amendments to the Constitution have eroded federal rights of the states in several areas where language is a key instrument, including education.

In 1976, the Indira Gandhi government, at the peak of Emergency, moved the subject of education from the states' list to the concurrent list in the Indian Constitution, creating powers for itself to legislate on education policies.⁷⁹ As will be seen in the next chapter, this has become a central flashpoint in language relations, allowing for the central government to force Hindi on the states through national education policies. Further, Parliament retains the power to redraw the map of the linguistically reorganised states without their consent.⁸⁰

Thus, while the linguistic reorganisation of states dispersed the already available federal autonomy in the Indian Constitution to linguistic groups by redrawing states on linguistic basis, this project remained half-complete given the provisions in the Constitution that both privilege Hindi and allow centralised imposition of the language across India.

Sri Lanka

This thesis will deal with the Sinhala Only Act of 1956, the watershed moment in the island nation's history, in the subsequent subsection. More than the Constitution itself, it is this law that laid the foundation for the civil war that erupted in the early 1980s. However, this law and the

⁷⁹ The Constitution (Forty-Second) Amendment Act, 1976.

⁸⁰ Article 3 of Indian Constitution, available at https://www.constituteproject.org/constitution/India_2016?lang=en#s27

subsequent political developments in Sri Lanka through the 1960s and 1970s profoundly shaped the constitutions of 1972 and 1978. This thesis will focus on the latter, which is the Constitution currently in force. But first, some context on what changed between 1972 and 1978.

The Ceylon Independence Act of 1947, along with the Ceylon Independence Order in Council, 1947, formed what is termed as the Soulbury Constitution, under which Sri Lanka, then called Ceylon, functioned till 1972, when the first post-Independence Republican Constitution was drafted with Sirimavo Bandaranaike as Prime Minister. The Soulbury Constitution did not, in its text, directly attend to the language question. However, Article 29 of the Order in Council established a non-discriminatory clause that prohibited Parliament from making any laws that either privileged or discriminated against a religion or community in any manner.⁸¹ The first blow to this provision came in the form of Ceylon Citizenship Act, 1948, through which a large section of the Indian Tamil population was disenfranchised, given the mandate that citizenship was to be accorded only on those born in Ceylon and their descendants.⁸² Since many of the Indian Tamils were brought from India to work in the plantations, this automatically excluded them. The next target of the Sinhalese majority was the Sri Lankan Tamil population.

By 1956, as explained in the previous chapters, the political tug-of-war between the Sinhalese political parties led to increasingly populist rhetoric on the language problem, culminating in the passage of the Sinhala Only Act.⁸³ The law made Sinhala the only official language and the government was mandated to implement this position through regulations. But massive protests from the Tamil community forced concession from the government, with the Tamil Language (Special Provisions) Act, 1958 allowing Tamils to write civil service examination

⁸¹ Amita Shastri (1999) Estate Tamils, the Ceylon citizenship act of 1948 and Sri Lankan politics, *Contemporary South Asia*, 8:1. 73, 74.

⁸² *ibid* (n81).

⁸³ Devotta (n69).

in Tamil and officials in the Tamil regions of North and East to communicate in the language.⁸⁴ However, this law did not make Tamil an official language like Sinhala.

The 1972 Constitution, which changed the name of the country from Ceylon to Sri Lanka, retained Sinhala as the only national and official language. This, combined with the rigid unitary state that the 1972 Constitution established with close to no devolution of powers to the regions, made it increasingly difficult for the Tamil United Front (TUF), the major Tamil political organisation, to confine its demands to autonomy for the Tamil regions of North and East. This led to the adoption of the Vaddukoddai resolution in 1976, when the TUF became the Tamil United Liberation Front (TULF), having called for an independent Tamil Eelam or Tamil nation.⁸⁵

The 1977 elections marked a turning point in the political and constitutional discourse of the country.⁸⁶ There was a change of guard in the national government, with United National Party's J. Jayawardene taking over as prime minister, having campaigned during the elections for a new Constitution. On the other hand, the TULF won 17 of the 19 parliamentary seats in North and East, having converted the polls into a mandate from the Tamil population for a separate Tamil nation.⁸⁷

Jayawardene formed a committee almost immediately after the electoral victory to draft a new Constitution, a forum that the Tamil front boycotted. The Constitution of 1978 converted the political system into a presidential system from the Westminster model, concentrating powers in his hands. But one concession that the 1978 Constitution made was to declare Tamil as the second national language under Article 19.⁸⁸ This, nevertheless, was considered meaningless by the

⁸⁴ Sivakumar, Chitra. "Social origins of the Sri Lankan Tamils' militant movement." *Sociological Bulletin* 38, no. 1 (1989). 124, 125.

⁸⁵ Oberst, Robert C. "Federalism and Ethnic Conflict in Sri Lanka." *Publius* 18, no. 3 (1988). 175–93.

⁸⁶ W. A. Wiswa Warnapala. "Sri Lanka 1978: Reversal of Policies and Strategies." *Asian Survey* 19, no. 2 (1979). 178.

⁸⁷ *ibid* (n85) 179–182.

⁸⁸ *ibid* (n87).

increasingly radicalised Tamils, a section of whom had already decided to take up arms in 1976 (the LTTE was formed that year) since Sinhala remained the only official language.

Thus, the constitution-making process in Sri Lanka had several fundamental contradictions for the minority linguistic group of Tamils. First, it maintained the the larger idea that it was Sinhala that was suited to create a sense of nationhood among Sri Lankans, relegating, in consequence, Tamils to a secondary position. Second, the unitary presidential system meant that Tamil parties had no means to enforce even the special provisions that were put in place for the use of the language through the 1958 Act. As Uyangoda set it out, by 1981, even elections to the district councils, which had no consequential legislative power of any kind, was managed by the central government and its security apparatus directly, creating a situation that even administrative decentralisation, leave alone devolution of legislative powers to the Tamil areas, was not possible.⁸⁹ This strengthened the call for an armed struggle.

Things, however, escalated in the following years, culminating in the Black July anti-Tamil pogrom of July 1983 when hundreds of Tamils were killed, and their properties destroyed. Unlike in Malaysia where the UMNO doubled down in its policies favouring the Malay language and the indigenous Malays after the 1969 riots, the 1983 riots put the Sinhalese-dominated Sri Lankan government under regional pressure. Given the human and material devastation of the riots, the pressure on the Indian government from Tamils in India, and the Indian government's anxiety about the stability in the region, to effectively intervene in the Sri Lankan affairs grew, resulting in 1987 the signing of the Indo-Sri Lankan accord.⁹⁰ The agreement called for an amendment of

⁸⁹ For a comprehensive account of the factors that escalated the ethnic strife in Sri Lanka, see Uyangoda, Jayadeva, *Ethnic Conflict and Civil War in Sri Lanka*, in Brass, Paul R. *Routledge handbook of South Asian politics: India, Pakistan, Bangladesh, Sri Lanka, and Nepal*. (Milton Park, Abingdon, Oxon: Routledge, 2010).

⁹⁰ Rao, P. Venkateshwar. "Ethnic Conflict in Sri Lanka: India's Role and Perception." *Asian Survey* 28, no. 4 (1988). 421, 422.

the 1978 Constitution to set right the two central problems of the Tamil community mentioned above: parity of status for their language and autonomy in administration. This was supposed to be achieved by the 13th Amendment to the Constitution passed in 1987. The most consequential elements of the 13th Amendment, which inserted several new provisions in the 1978 Constitution, are two:

18. Official Language

- 1. The Official Language of Sri Lanka shall be Sinhala.*
- 2. Tamil shall also be an official language.*
- 3. English shall be the link language.*
- 4. Parliament shall by law provide for the implementation of the provisions of this Chapter.*

Thus, for the first time since Independence in 1948, Tamil formally became an official language in Sri Lanka and its position was constitutionally protected.

The second consequential part of the 13th Amendment was the creation of provincial councils, including in the North and East of the country. This was the heart of the devolution process which was to provide Tamils with a degree of autonomy in administration of territories in which the ethnic group formed the majority.

154A.

- 1. Subject to the provisions of the Constitution, a Provincial Council shall be established for every Province specified in the Eighth Schedule with effect from such date or dates as the President may appoint by Order published in the Gazette. different dates may be appointed in respect of different Provinces.*

On paper, the provinces so created had wide-ranging executive and legislative powers over a variety of subjects listed under Provincial Council List of the Ninth Schedule to the Constitution.

However, this does not mean Sri Lanka moved from a position of being a unitary state to a quasi-federal set up with full administrative autonomy to linguistic minorities. The Supreme Court of Sri Lanka in 2000 held that all laws made by the Councils are subject to national policies framed by the national government.⁹¹ The national government has consistently abused the instrument of national policy to undermine the autonomy of the provinces, with even ministerial decisions without a Parliamentary law being adopted as national policies.⁹² And under certain circumstances, Parliament is also allowed to make laws on subjects in the provincial list.

154G.

3. No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been referred by the President, after its publication in the Gazette and before it is placed in the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and -

(a) where every such Council agrees to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting; or

(b) where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82.

Further, the civil war meant the North Province, with the largest number of Tamils, did not have a proper elected government till 2013, partly because a major part was controlled by the LTTE till its defeat in 2009. But even with an elected government, the unitary structure means centralisation of resources that are necessary for enforcing Tamil as the second official language.

⁹¹ *Kamalawathi and Others v the Provincial Public Service Commission, North Western Province and Others* (2000), at pages 4 and 5, available at <https://www.lawnet.gov.lk/wp-content/uploads/2016/11/001-SLLR-SLLR-2001-V-1-KAMALAWATHIE-AND-OTHERS-V.-THE-PROVINCIAL-PUBLIC-SERVICE-COMMISSION-NORTH.pdf>

⁹² Belser, Eva Maria, Lawrence Zünd, Thea Bächler, and Sandra Egli. *The Principle of Equality in Diverse States : Reconciling Autonomy with Equal Rights and Opportunities*. Leiden; Boston: Brill | Nijhoff, 2021. 169.

As we will see in the next chapter, independent organisations have documented how even 13 years after the end of the civil war, Tamils still struggle to access government services, much of which functions exclusively in the Sinhala language.

To sum up, while the civil war and international pressure, especially from India, forced the Sri Lankan government to provide *de jure* parity of position for Tamil with Sinhala, the centralising logic of the Sri Lankan Constitution means that *de facto* Tamil struggles for actual, meaningful parity on the ground.

Malaysia

Given the constraints of time and space, this thesis will focus on the 1957 Constitution of Malaysia that is still in force and not on agreements and documents that were the basis of the legal framework of Malaysia that came before. However, keeping in line with the larger narrative of the thesis that looks at linguistic minority rights through the prism of federalism, it is important to note, as discussed in Chapter 2, that federalism in Malaysia has an inconsistent history through the colonial period, with the British rulers oscillating between a position where they did not want to disturb the traditional mechanisms of governance of the society and at times adopting an extreme position of centralisation culminating in the formation of, for a brief period between 1946 and 1948, a unitary state that totally undermined the powers of the Sultans and turned them into symbolic heads of the regional governments.⁹³ However, this unitary model was unsustainable and, in the run up to Independence and after, Malaysia adopted a federal system with a high degree of centralisation.

⁹³ Harding, Andrew. *The Constitution of Malaysia: A Contextual Analysis.*: Hart Publishing (Oxford, 2012). 12-19.

While commentators have questioned the very utility of calling such an arrangement a federal system given the nature of the centralised government, it nevertheless, as Harding points out, served a purpose. The structure supplies a great deal of cultural meaning for Malaysians, given the extraordinary diversity of regional identities within the majority Malay community.⁹⁴ Further, even considering the problem of centralisation, the federal system provides a form of political ventilation for competing forces, in that it allows for the possibility of different political groups accessing power, both at the state level and the national level, through the federal institutions. Nevertheless, this centralisation has had more of a deleterious effect on linguistic minority rights, allowing for the Malay-dominated national government to ram through policies advantageous to the majority. It is questionable whether a stronger federal arrangement, in the form of empowering the states more in the legislative and executive spheres, will lead to a better position for linguistic minorities in protecting their identity since, as explained earlier, except for Penang, no other region has a linguistic majority other than Malay speakers. However, this problem will be attended to in the concluding chapter of this thesis.

The Malaysian Constitution has two seminal provisions that affect the position of ethnolinguistic minorities. First is Article 152 (1), which accords Bahasa Malaya, the language of the majority, the position of the national language:

152. National language

1. The national language shall be the Malay language and shall be in such script as Parliament

may by law provide:

Provided that-

⁹⁴ *ibid* (n93).

- *no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and*
- *nothing in this Clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.*

Often, the narrative around the constitution-making process in Malaysia had been that the document reflected a consensus arrived between the leaders of the major ethnic groups through negotiations, first between themselves as part of the grand alliance that Malays, Chinese and Indian parties formed for contesting elections in 1955 and which received overwhelming support at the hustings.⁹⁵ Second, the British-moderated Reid Commission that was set up to device the legal framework for an Independent Malaysia produced a draft Constitution that was accepted with minimum changes, again reflecting the consensus already arrived at between the political parties. Thus, Malaya becoming the national language and its privileged position is seen as a consensual compromise between the ethnic groups. The minority ethnolinguistic groups, in a trade-off, managed to ensure wider citizenship rights that were opposed by native Malays in the years running up to Independence.⁹⁶

However, it is to be noted that Malaysia, unlike India, did not have a Constituent Assembly that debated these provisions. In India, even though the INC had stupendous electoral support which helped the party dominate the Assembly, the forum nevertheless provided scope for expression of contesting ideas of linguistic identities and was not driven by the party elite alone. Thus, not only were linguistic minorities able to resist Hindi imposition, but they also managed to postpone the very problem of choosing a national language to a later date and in the meantime

⁹⁵ Harding (n93). 16-18.

⁹⁶ Harding (n93).

wrested the concession of keeping English as a link language for official purposes.⁹⁷ It could be argued that the context of Constitution framing in India helped linguistic minorities a great deal. Fresh out of violence of Partition of British India into India and Pakistan, the INC had the dual responsibility of ensuring a Constitution to complete the Independence process and keep India from balkanisation.

In Malaysia, like Sri Lanka, there was no overarching Independence movement that sought to unite people of different ethnicities under one umbrella. This “unity” happened through the political alliance the three ethnic parties put together in the run up to Independence. But this alliance had a problematic power asymmetry in its dominance by the UMNO, reflected in what transpired later following the riots of 1969. This aside, it is also to be noted that the most significant part of the Reid Commission proposals that the Malays resisted was the idea of a “democratic citizenship,” whereby a liberal non-discriminatory clause was proposed.⁹⁸ The final “compromise” that the ethnic parties reached undermined this idea of democratic citizenship by awarding the Malays a special position that was supposed to have been temporary. But this turned into an entrenched provision following the 1969 riots.⁹⁹ The special position was pursued through enabling quotas for the Malays under Article 153 (1), which reads thus:

153. Reservation of quotas in respect of services, permits, etc., for Malays and natives of any of the States of Sabah and Sarawak

1. It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.

⁹⁷ Guha (n78).

⁹⁸ Gomez, Edmund Terence. *The new economic policy in Malaysia: affirmative action, ethnic inequalities, and social justice*. (NUS Press, Singapore, 2013). 237, 238.

⁹⁹ *ibid* (n98), 239.

Sub-articles 153 (2) to 153 (8) flesh out the way this special provision will operate in the realm of quotas, encompassing every aspect of governance, from civil service to education and training. In combination with Article 152, which made Malay the national language, Article 153, and its extension beyond the temporary period it was envisaged for, entrenched the idea of other ethnicities being second-class citizens or citizenship itself being “racial” instead of “democratic.”¹⁰⁰ Further, even though every state in Malaysia has its own constitution, the state governments and legislatures have no power to deviate from this national policy given the repugnancy clause under Article 4.

Thus, it could be argued that what became of the constitutional scheme in Malaysia after the riots of 1969 was a system that was primed to widen the special position of the Malays, pushing linguistic minorities to a position where access to rights were demands for concessions from the majority rather than based on any idea of democratic equal citizenship.

Language in policies

As mentioned earlier, what seemed like the settlement of the language problem at the time of Independence from British rule in all three countries of India, Sri Lanka and Malaysia were in reality postponement of the problem. The truce between the linguistic groups was precarious, and conflicts emerged immediately after the constitutions came into force. Political parties that represented majority interests went about enforcing skewed language-based policies for which the constitutional provisions that privileged the majority language and ethnicity supplied legitimacy.

¹⁰⁰ Gomez (n98).

It is also important to mention here that in all three countries, language is intricately linked to ethnicity. Thus, policies that place one language over the others also benefit one ethnic group over others. And two areas that are of particular significance in the context of how homogenising laws operate are education and administration.

Of the three countries under focus in this thesis, Malaysia presents the starkest picture of how such language policies have been undertaken, bulldozing concerns of the minorities. It was found necessary at the time of Independence to have a common language to construct the Malaysian national identity. This special position of the Malay language had to be molded in such a manner that it served the other objective of improving the economic standards of the majority Malay population, seen at Independence as lagging behind minority ethnic groups. Thus, education became a primary area of focus.

As Shamshul Haque notes, the first Education Act passed in 1961 eventually resulted in the large-scale conversion of schools teaching in the other two languages of Chinese and Tamil into Malay-medium schools.¹⁰¹ This was enabled through a policy where government assistance was provided only to Malay and English language schools. The minority schools first shifted to English. But by 1970s, the support for English too stopped, making conversion to Malay-medium the only option for secondary education. While primary school education was allowed in the minority languages, many such vernacular schools, especially those of Tamil-medium, shut due to poor infrastructure and lack of funding.¹⁰² Progressively, Malay preference was extended to higher education as well. All such policies were justified using Article 152 of the Constitution that made Malay the only official language.

¹⁰¹ M. Shamsul Haque, 'The Role of the State in Managing Ethnic Tensions in Malaysia' (2003) 47(3) American Behavioral Scientist. 240- 250

¹⁰² *ibid* (n101).

Such policies faced little resistance given a network of repressive laws that were put in place to clamp down on any criticism.¹⁰³ This meant even legal challenges in the courts were few, and the judiciary upheld the laws. For example, in 1982, the Malaysian Federal Court held that teaching at the Merdeka University in Chinese was unconstitutional as the university was a public university, hence a public authority, and the teaching there was considered as teaching for an official purpose, which can only be done in Malay. Such logic continued with the passing of a new Education Act in 1996.¹⁰⁴

In Sri Lanka, the Sinhala Only Act, 1956 made the majority language Sinhala the only official language of the government. The law meant knowledge of Sinhala became necessary to obtain jobs in the government administration. Even existing Tamils in the civil service were mandated to learn Sinhala. This immediately put the Tamil population at a disadvantage.¹⁰⁵

The insistence on knowledge of Sinhala was extended to the education sector within just over a decade. By 1971, new education policies regulated entrance to universities based on language, forcing Tamil students to earn higher grades to obtain admissions to the universities.¹⁰⁶ The 13th Amendment to the Sri Lankan Constitution in 1987 made Tamil too an official language and education policies as they stand today promote the learning of both Tamil and Sinhala, something that became the core recommendation of the Lessons Learnt and Reconciliation Commission formed following the end of the civil war in 2009.¹⁰⁷ But as the committee noted, the

¹⁰³ Gomez, Edmund Terence. (n98).

¹⁰⁴ Rei Tiah, *The Constitutionality of Vernacular Schools in Malaysia*, Durham Asian Law Journal (Oct 2021), accessed on May 24, 2022, available at <https://www.durhamasianlawjournal.com/post/the-constitutionality-of-vernacular-schools-in-malaysia>

¹⁰⁵ Anuzsiya, S. "Standardization in the University Admissions and Ethnic Crisis in Sri Lanka." *Proceedings of the Indian History Congress*, 57, (1996). 799–807.

¹⁰⁶ *ibid* (n105).

¹⁰⁷ Report of the Lessons Learnt and Reconciliation Committee, accessed on June 7, 2022, available at <https://reliefweb.int/report/sri-lanka/report-commission-inquiry-lessons-learnt-and-reconciliation>. 365.

impact of the discriminatory policies and the civil war it led to has left a deep imprint on the socio-economic levels of the Tamils. State capacity to fulfil the dual official language policy remains grossly adequate and Sinhala continues to be the only language used at several levels of governance.¹⁰⁸

In India, the central government in 1965 assured all states that English would continue as an associate official language if they wanted it to. However, this did not stop successive central governments from attempting to push Hindi through multiple policies.

As mentioned in the last chapter, the Indian Constitution was amended during the Emergency in the 1970s, expanding the powers of Parliament. One such expansion was shifting the subject of education from the states' list to the concurrent list, giving Parliament powers to legislate and the central government executive powers to formulate policies in an area which the states held exclusively. The tension between the central and state policies over language in education revolves primarily around what is termed the “three language formula.”¹⁰⁹ Under this formula, students are expected to learn three languages at the school level: their mother tongue, English and a third language. This third language requirement is often used to promote Hindi, leading to confrontation with states like Tamil Nadu which countenance such policies as “Hindi imposition” rather than “Hindi promotion.”¹¹⁰

As recently as 2019, the central government produced a new education policy that doubled down on Hindi as the third language, though it was termed as a completely voluntary choice left to the respective state governments to choose.¹¹¹ However, this “choice” of the state governments,

¹⁰⁸ *ibid* (n107).

¹⁰⁹ LaDousa, Chaise. “Disparate Markets: Language, Nation, and Education in North India.” *American Ethnologist* 32, no. 3 (2005). 461

¹¹⁰ John J. Vater and Ronojoy Sen. *The Three Language Formula Revisited: ‘Hindi Imposition’ Stokes Protests*. ISAS Brief No. 703. Institute of Asia Studies (September 30, 2019).

¹¹¹ Ministry of Human Resource Development, India, Draft National Education Policy, 2019. 81-84.

which are linguistically organised, must be politically contextualised. The party that rules at the centre in India, the BJP, also rules several states. Ideologically, Hindi promotion is part of its core agenda, as also the emphasis on the nature of the Indian nation as a Hindu nation. This means, the preference of the central government for the third language is often pushed in the states ruled by the central party. Often, Hindi is projected by political party spokespersons as the national language, exhorting everyone in the country to learn the language. This apart, the central government in recent times has widened the use of Hindi in government communication, exhorting ministers, and other officials, to use Hindi as a matter of policy.¹¹²

On the other side, states like Tamil Nadu not only see Hindi imposition as language imposition, but they also fear those North Indian cultural traits, marked by a particular form of conservative Hinduism, would piggyback on Hindi, and upset socio-political equations in the states.¹¹³

Such fears are not confined to India alone. In Malaysia, the Malay language is linked to Islam, the religion of the majority. In Sri Lanka, Sinhala nationalism is inextricably intertwined with Buddhist nationalism, often denoted by the hyphenated term of Sinhala-Buddhism. Thus, the majority languages carry threat of cultural and religious assimilation for the minorities.

¹¹² See policy circular of the Ministry of Home Affairs, Government of India, March 31, 2017, available at <https://rajbhasha.nic.in/sites/default/files/policy31mar17eng.pdf>

¹¹³ Pandian, M. S. S. "Towards National-Popular: Notes on Self-Respecters' Tamil." *Economic and Political Weekly* 31, no. 51 (1996). 3323–29.

CONCLUSION

The motivation behind this thesis was to delve into the way the rights of Tamils as linguistic minorities have been subverted in India, Sri Lanka, and Malaysia. However, the position of Tamils is only illustrative. The same logic affects other minority linguistic groups in these countries, and in other jurisdictions in South and South-East Asia, given the similarities in their positionality and the impact of colonialism.

The common thread in these three countries constitutes several aspects. First, the position of linguistic minorities highlights the tension between two elements that are common to many federal systems. There are competing identities of nationalities at play.¹¹⁴ In South and South-East Asia, language has, in many cases, become the primary mover of these identities, inextricably linked as they are to ethnicity. The ability of one linguistic group, through brute majority political power, to subvert the other and attempt to homogenise the larger national identity sits precariously on the canvas of liberal constitutionalism.

Second, the colonial legacies of the three countries have contributed to a contradiction. They self-ascribe as federal systems or unitary systems with devolution. But the systems are undermined by the countervailing factor of centralisation. This provides the majority linguistic group, often the holders of power in these polities, the ability to enforce discriminatory and homogenising policies without attracting the condemnation of illegitimacy. Constitutions and laws are altered at will and are then used to fulfil the criteria of legality for discriminatory policies to supply a semblance of legitimacy. The Sinhala Only Act in Sri Lanka, the quota system for Malays in Malaysia and wresting of control by the central government over subjects like education in India

¹¹⁴ Burgess, Michael. *Comparative federalism: Theory and Practice*. London: Routledge (2006). 103-107.

serve as prime examples of this trend. Even when the constitution provides autonomy for provinces, the instrument of national policies, as in the case of Sri Lanka, are used to undercut autonomy.

Third, depending on the context, such constitutional provisions and laws both explicitly and implicitly affect the idea of democratic citizenship, where equal participation of the minority groups in the linguistic sphere is threatened with its implication stretching to multiple areas of the state. This brings us to the subsidiary research question that this thesis sought to answer. Does a higher degree of federalism protect linguistic minority rights better? Even when shared rule principles are adopted, political power asymmetry means majority groups constantly attempt to dilute federal autonomy. The federal logic as it exists in the three countries are not strong enough to counter linguistic majoritarianism, more so in Malaysia and Sri Lanka than in India, where the linguistic reorganisation of federal units has provided a higher level of autonomy to minority linguistic groups. Nevertheless, this does not entail that federalism has failed in accommodating linguistic diversity. Rather, it remains, as a large corpus of literature in this field vouch, the most viable system to balance the interests of multiple nationalities within a common national framework.¹¹⁵

However, the political systems in these countries would require reimagination. While specific prescriptions for remodeling are impossible in a thesis of such narrow scope that does not provide any empirical evidence, where changes may be necessary could be indicated. This is done with an acute awareness that transplanting ideas from one jurisdiction to another is fraught with dangers, given the vast diversity of political and social contexts in the region studied.

¹¹⁵ Smith (n24).

First, the core problem of political power asymmetry between linguistic groups needs to be addressed. There needs to be a larger representation of linguistic minority groups at the national level in political decision-making, even if not a determinative role, which is impossible given the majoritarian logic inherent in the democratic principle. This larger role should at least facilitate substantial coalitions between linguistic minorities in multilingual societies. The Indian model provides a framework. But even India needs strengthening of the element of political representation given the recent turn the country has taken towards electing single political parties with big majority in Parliament that has the power to dismantle linguistically organised federal units.

Second, the colonial legacy meant some communities started from a position of relative privilege in the post-Independence nations and required proactive measures to help others left behind. While these measures are necessary, there needs to be gradual reconsideration of such provisions as outcomes improve. This links up with the first problem. Unless linguistic minorities have the political capital to influence policies, this reconsideration of policies that privilege one group would not be possible.

I end this thesis by quoting the wise words of Lord Acton, emphasising the need to accommodate and celebrate diversity to ensure real democracy for all:

“A state which is incompetent to satisfy different races condemns itself; a state which labours to neutralise, to absorb, or to expel them destroys its own vitality; a state which does not include them is destitute of the chief basis of self-government.”¹¹⁶

¹¹⁶ Burgess (n114), 106.

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