



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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AN ANALYSIS OF MULTILINGUALISM AND MULTILINGUAL ORDER IN SRI LANKA

AUTHORED BY – BARKHA SINGH,
IV YEAR STUDENT,
NALSAR UNIVERSITY OF LAW, HYDERABAD

ABSTRACT

INTRODUCTION

Sri Lanka is a multilingual and multi-ethnic island nation off the southern tip of India. I have come across the civil war and the ethnic divide between the Buddhist- Sinhalese and the Tamil minority, multiple times over the past few years in my political science courses. And thus, the language issue which has a political spectrum to it has been part of my imagination since a long time. The principal reason for choosing this topic, was that subsequent to my introduction to how big and complex and nuanced the issue of language can be, through the courses offered to me in the past two years of University, I realised that Sri Lanka would be the perfect case study for me to explore language rights and apply conceptual frameworks to draw parallels to perhaps understand the Indian situation in a better manner.

Language rights have undoubtedly played a major role in the struggle of resources and power between the Buddhist-Sinhalese and the Hindu-Tamil and Muslim-Tamil communities in post-colonial independent Sri Lanka. This paper attempts to explore the language history and the current language policy through multiple angles, through four main themes. Firstly, it would delve into the colonial history of language policy formation of Sri Lanka and the reasons behind the colonial impetus to make English the official language of the land. Second, it would provide a brief post-colonial history and understanding of language policy of the land. Thirdly, this paper will provide an analysis of the 'language' of the language policy of Sri Lanka. The fourth aspect, this paper will focus on, is the analysis of implementation of language policy and language rights in legal spaces like that of public service and courts. While discussing these themes, this paper will draw upon multiple conceptual frameworks to understand the issue at hand in a more nuanced manner.

COLONIAL HISTORY OF THE LANGUAGE

POLICY OF SRI LANKA

A brief history of Sri Lanka is pertinent to understand the colonial and post-colonial language policy of the land. At the beginning of the sixteenth century, there were three native centres of political control in Sri Lanka: the Tamil kingdom of Jaffna and the two Sinhalese kingdoms of Kotte and Kandy.

THE PORTUGUESE

The Portuguese arrived in 1505 and founded towns on the island's west and south shores. The Kandyan kingdom stayed autonomous despite Portuguese attempts to enslave the entire island. During the Portuguese rule, the local languages – Sinhala and Tamil, came into contact with Portuguese language. Though the Portuguese was the language of administration, the officials had to employ interpreters for communicating with the local population.

THE DUTCH

The monarch of Kandy made an alliance with the Dutch in 1612, and by 1656, they had defeated and driven out the Portuguese. Unfortunately, Kandy exchanged one European colonial overlord for another by dismissing the Portuguese. For nearly a century and a half, Sri Lanka remained subordinated to Dutch interests. The Dutch dealt with the language issue differently from the Portuguese. They were not successful in establishing their language as the official language and nor were the successful in establishing their policy to use Dutch in combination with other local languages.¹

BRITISH AND ENGLISH DIFFUSION

In 1796, British economic interests in Sri Lanka led to the Dutch being driven out. In 1815, with the fall of the last Sinhalese kingdom- the kingdom of Kandy, the British brought the whole island under their political control. The British thereafter embarked on a policy based on introducing English, and this eventually brought significant sociolinguistic changes. The merger of the island's three kingdoms

¹ Sannasgala, P.B., *A Study of Sinhala Vocables of Dutch Origin*. Colombo: The Netherlands –Alumni Association of Sri Lanka, 1976.

under British authority began in 1815 and lasted until 1948, when Sri Lanka gained independence. The introduction of English may be traced back to the early nineteenth century, and it is strongly linked to the presence of British colonial authority and missionary instructors. The colonial administration emphasised the importance of English and Christianity from the beginning of British rule. The 'civilising' mission and the promotion of English were likewise seen as inextricably linked by British officials. The colonial administrators recognised the relevance of English in developing a class of English-educated officials who would act as a vital link between the British rulers and the people. They appear to have expected English to develop gradually and eventually become the country's official language.

MISSIONARIES AND COLEBROOKE – CAMERON REFORMS, 1832-1833

Christian missionaries created English language schools in an attempt to anglicise the indigenous population. While these missionaries believed that teaching English would help to "civilise" the population, they also recognised the value of English for administrative purposes and as a language of enlightenment values. Until 1831, missionaries controlled the majority of English educational institutions in the country. These schools taught in both English and Local languages, with a few private schools for the social elite teaching only in English. Following the Colebrooke-Cameron Commission's recommendations, missionary control of these schools was handed up to local government authorities.²

The Colebrooke Report on the Administration of the Government of Ceylon, 1831, is the first formal proclamation on language policy in colonial Sri Lanka. It made clear that English is the official language of the government, recognising the necessity for a common language for administrative purposes. As a result, the British resolved to promote the use of English as the language of government, education, and the courts of law during the years 1832-1833.³

RESTRICTING ACCESS TO COLONIAL ENGLISH

Sri Lankans have a strong motivation to communicate in English. Prior to the colonial period, one's

² Sandagomi Coperahewa, *Colonialism and problems of language policy: formulation of a colonial language policy in Sri Lanka*, Sri Lanka Journal of Advanced Social Studies, 2011.

³ Corinne Wyss, *Language Policy In Sri Lanka Critical Junctures And Resistance Factors Reverting Successful Implementation*, University of Ottawa, 2020.

caste controlled one's vocation, and shifting social status was extremely difficult. As a result, learning English provided significant financial benefits to Sri Lankans. Non-Europeans of the island's multiracial population began learning it in addition to their native languages because it helped them to move away from hereditary caste-based systems and establish themselves in more prominent vocations based on education. English was a ticket to high-paying, privileged jobs, and the English school system spawned a specialised professional class. Because Sri Lanka's economic development during the colonial period was mainly reliant on a large agrarian labour force, many colonial officials argued that access to the social mobility given by English education should be restricted. A colonial education panel in 1906 claimed that imparting English education to all Sri Lankans was neither appropriate nor desirable since it would drive them to desire a life other than agrarian labour.

Most Sri Lankan pupils were taught in vernacular schools that only employed Sinhala or Tamil by the late eighteenth century. During the colonial time, there were around 4000 vernacular schools in operation, but only 255 English schools at their peak.⁴ Primary education was handled in vernaculars, with English instruction reserved for upper secondary and tertiary schools. As a result, only a small percentage of students were ever educated in English schools.

The English language was the preserve of the Sri Lankan elite until the enactment of the Free Education Bill in 1944, and the general public had little awareness of it. The predominantly Tamil-speaking north had a disproportionate number of English-language schools. As a result, English-speaking Tamils held a higher percentage of desirable Ceylon Civil Service jobs that required English fluency than their demographic share.

After a mostly nonviolent independence campaign, Ceylon was granted dominion status in the British Empire in 1948, with a peaceful transfer of authority from Britain to the Sri Lankans. During the early years of independence, an attempt was made to balance the interests of the primary communities' elites: Sinhalese and Tamils. Most Sinhalese, on the other hand, believed that the Tamils had a special status under the British and accused them of taking advantage of the colonial administration's favour.

⁴ Brutt-Griffler, Janina. "Class, Ethnicity, and Language Rights: An Analysis of British Colonial Policy in Lesotho and Sri Lanka and Some Implications for Language Policy." *Journal of Language, Identity, and Education*, 2002.

POST-COLONIAL HISTORY OF LANGUAGE

POLICY OF SRI LANKA

Sri Lanka gained independence in 1948, after more than four centuries of colonization. The island nation's population is composed of majorly two ethnic groups, the Sinhalese majority group and the Tamil minority group, tracing their origins to North India and South India respectively. Sinhalese are predominantly Buddhists who speak Sinhala. Tamils are majorly settled in the Northern and Eastern part, and are predominantly Hindus.

There were many critical junctures in the evolution of the language policy in Sri Lanka since 1948. By 1833, the entire island had been united under British authority, and English had been designated as the country's functioning official language and as the medium of secondary and higher education.⁵ This raised English to a higher prominence than Sinhalese and Tamil. In the 1880s, British changed its focus to vernacular education, resulting in a major growth in literacy among the indigenous populace. Ceylon's governmental institutions remained relatively unchanged between 1833 and 1912.⁶ The over-representation of non-Buddhist and ethnic minorities, mostly Tamils, in the bureaucracy, civil service, and primary and secondary educational institutions was a major consequence of British colonial rule and its policies, which aimed to marginalise the Sinhalese Buddhist majority in order to better control them.⁷

With rising calls for nationalism in the 1900s, there was pressure to replace English as the official language of Ceylon with Sinhala and Tamil, which only around 10% of the people spoke fluently. These pressures were a protest not only against the "frustrations of vernacular speaking Sri Lankans being governed in a language they could not comprehend"⁸ but also against the privileges enjoyed by the small and exclusive English-educated elite and the lack of opportunities available to the vernacular-educated.⁹

⁵ Gazala Anver, *The Politics of English in Sri Lanka: Perspectives from Postcolonial Anglophone Literature*, University of Sydney, 2019.

⁶ Herath, Sreemali, *Language Policy, Ethnic Tensions and Linguistic Rights in Post War Sri Lanka*, *Language Policy* 14.3: 245–261, 2015.

⁷ DeVotta, N., *Ethnolinguistic Nationalism and Ethnic Conflict in Sri Lanka*, *Politics of Conflict and Peace in Sri Lanka*. Manak, 30-69, 2006.

⁸ Coperahewa, S, *The language planning situation in Sri Lanka*, *Current Issues in Language Planning* Vol. 10, 69-150, 2009.

⁹ Kearney, R. *Language and the Rise of Tamil Separatism in Sri Lanka*. *Asian Survey*, 18(5), 521-534, 1978.

By the 1930s and 1940s, language policy had become a major national political issue. While Sinhalese and Tamils first advocated for the substitution of Sinhala and Tamil as official languages, Sinhalese MPs controlled over 80% of parliamentary seats and nothing stood in the way of Sinhala being Ceylon's sole official language.¹⁰ In 1943, a vote seeking for the adoption of Sinhala as Ceylon's sole official language demonstrated the country's contempt for Tamil. It was thought that the Sinhala language needed to be protected from Tamil influences from South India. After the proposal was defeated, the State Council decided to make both national languages, Sinhala and Tamil, official languages of the country.

OFFICIAL LANGUAGE ACT OR THE SINHALA ONLY ACT OF 1956

The Official Language Commission was established to carry out the 1944 policy on official languages, which declared Sinhala and Tamil to be official languages and it issues five interim and one final report between 1951 and 1953. Though the government began to implement the recommendations of the commission's reports, the 1956 elections and subsequent adoption of the Sinhala-only Act put an end to these efforts.

Until 1954, the major political parties were united in their belief that Sinhala and Tamil should replace English as the official languages. However, some politicians believed it would be easier to replace English with Sinhala because Sinhalese accounted for over 70% of the population, and opportunistic politicians took advantage of the language issue for political gain. Ceylon established a hegemonic language regime with the 1956 Sinhala-Only Act, which made mastery of Sinhala a requirement for entering the public service and gaining a promotion, thus shutting off Tamil admission into the public service.

TAMIL LANGUAGE (SPECIAL PROVISION) ACT, 1958

Following the 1956 Sinhala-Only Act, Tamils mobilised against the state, leading to peaceful protests in various parts of the country and the Federal Party, the main Tamil political party, demanding the establishment of a new federal principles-based constitution, devolution of regional autonomous powers to Tamils in their traditional Tamil-speaking homelands, and parity status for Tamil as an

¹⁰ DeVotta, N, *From ethnic outbidding to ethnic conflict: the institutional bases for Sri Lanka's separatist war*. Nations and Nationalism, 11(1), 141–159, 2005.

official language of Ceylon alongside Sinhala.

The protests and the following anti-Tamil riots caused the government to reach an agreement with the Federal Party's Tamil political leaders, which became known as the Bandaranaike-Chelvanayagam accord in 1957. The Tamil Language (Special Provisions) Act was introduced to allow the use of "Tamil in prescribed administrative activities in the Northern and Eastern provinces, without infringing on the position of the Official Language Act," as well as the transfer of powers to regional units and the recognition of Tamil as the national language of a minority.¹¹

The Federal Party, disappointed by the revocation, started a civil disobedience campaign, resulting in another round of ethnic rioting in 1958. Shortly thereafter, the government passed the Tamil Language (Special Provisions) Act No. 28 of 1958, allowing the use of Tamil as a "medium of instruction," "medium of examination for admission to the public service," "use of Tamil for correspondence," and "use of Tamil for prescribed administrative purposes" in the Northern and Eastern provinces, "without prejudice" to the use of Sinhala.¹² However, because the Sinhala Buddhist clergy and Sinhala opposition parties refused to give force to the 1958 Act's implementing regulations, the Act's provisions were never implemented.

1972 CONSTITUTION OF SRI LANKA

The previous constitution, the Ceylon Constitutional Order in Council 1946, was drafted by British colonial authorities, and the ruling party argued that it was time for the country to move away from colonial authority by adopting a new constitution. The fact that article 29(2)¹³ stated that no laws could be enacted to 'confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions,' is said to have influenced this decision, as it led a Tamil civil servant to challenge the 1956 Official Language Act.¹⁴

The government of the time placed a specific clause in the new constitution of 1972 that upheld the

¹¹ A. Suresh Canagarajah, *Dilemmas in planning English/vernacular relations in post-colonial communities*, *Journal of Sociolinguistics*, vol. 9/3, 418-447, 2005.

¹² Tamil Language (Special Provisions) Act No. 28 of 1958.

¹³ The Ceylon (Constitution) Order in Council.

¹⁴ *Kodeeswaran v. Attorney General*, 1969.

Official Language Act's constitutional legality. "The Official Language of Sri Lanka shall be Sinhala as established by the Official Language Act No. 33 of 1956," according to Article 7 of the new constitution (The Constitution of the Republic of Sri Lanka, 1972). Furthermore, while the Constitution of 1972 upheld the validity of the Tamil Language (Special Provisions) Act No. 28 of 1958, it gave Tamil a secondary status, stating in article 8(2) that "any regulations enacted earlier under the Tamil Language (Special Provisions) Act were to be deemed as subordinate legislation and 'shall not in any manner be interpreted as a provision of the Constitution". Furthermore, the Tamil Language (Special Provisions) Act was not included in the new constitution, essentially allowing the legislation to exist only on paper.¹⁵

The continuous undermining of minority rights and the constitutional entrenchment of majority preferences polarised Sri Lanka, providing the necessary impetus for the Tamil militancy movement, which resulted in the formation of the Liberation Tigers of Tamil Eelam (LTTE) in 1975 and the Tamil United Liberation Front (TULF) in 1976, calling for the formation of a separate Tamil state called Tamil Eelam.¹⁶

1978 CONSTITUTION

Despite the fact that the 1978 Constitution essentially equalised Sinhala and Tamil, Tamil was still "fundamentally inferior to Sinhala".¹⁷ Article 18 reaffirmed Sinhala as Sri Lanka's official language, while Article 19 recognised Tamil as a national language that could be used in Parliament and local governments¹⁸, as a medium of instruction¹⁹, and as the administrative language in the Northern and Eastern provinces. The Tamil Language (Special Provisions) Act No. 28 of 1958 was incorporated into the Constitution, ensuring that its provisions are constitutionally protected.²⁰

¹⁵ Dilanka Kamali Ratnayake, *Language Planning Situations in Sri Lanka and Singapore: A Comparative Study*, Manipal International University, 2017.

¹⁶ Birgit Brock-Utne, *Language policy and science: Could some African countries learn from some Asian countries?*, Springer, 2012.

¹⁷ De Silva Wijeyeratne, R., *Sinhalese revolutionaries, linguistic nationalism and Buddhism reimagined*. In Nation, Constitutionalism and Buddhism in Sri Lanka (pp. 133–150), 2014.

¹⁸ Article 20.

¹⁹ Article 21.

²⁰ DeVotta, N. *Ethnolinguistic Nationalism and Ethnic Conflict in Sri Lanka*, Politics of Conflict and Peace in Sri Lanka, 30-69, 2006.

THIRTEENTH AMENDMENT TO THE CONSTITUTION IN 1987

The Indo-Lanka Accord, which aimed to stop Sri Lanka's full-fledged civil war, resulted in the 13th amendment to the 1978 Constitution. By altering Article 18 of the Constitution, the amendment not only created Provincial Councils and a power-sharing structure between the central government and the country's nine provinces, but also elevated Tamil to the status of an official language.

ANALYSIS OF THE 'LANGUAGE' OF THE LANGUAGE POLICY OF SRI LANKA

Today, Tamil and Sinhala are Sri Lanka's national and official languages, with English serving as a link language. As a result, national languages are employed as a medium of education, as well as languages of administration, legislation, and courts in Parliament, Provincial Councils, and Local Authorities. The Official Languages Policy and the Official Languages Act apply to all levels of government in Sri Lanka.

Tamil was declared an official language of the state by the 13th Amendment to the Sri Lankan Constitution in 1987, and the legal basis for parity between Sinhala and Tamil was clearly established by law. 'Parliament shall by law provide for the implementation of the provisions of this Chapter,' says Article 18 (4) ²¹. Furthermore, both languages were designated as 'national languages,' with English serving as the 'link language.' Currently, Chapter IV of the Constitution covers all provisions relating to language and language-related subjects.

Article 18 of the constitution provides that: 18. (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. Through this provision, a dispensation of equality between the two official languages was sought to be achieved. Article 18(4) provided that the parliament shall by law provide for the implementation of the provisions of this chapter. And Section 25 provided that the State shall be responsible for providing sufficient facilities for the use of the languages, both Sinhalese and Tamil. These provisions acknowledged that it would be impossible to treat all the three languages equally, without government

²¹ The Constitution Democratic Socialist Republic of Sri Lanka, 1987.

actions as it would require time and resources to undo the past enactments that subjugated and violated minority rights, in this case -Tamil. Actual equality was thus not provided for as a principle that governed the treatment of the official languages, but equality was posited as a constitutional aspiration.

Article 25(a) provided that, Provision of any law inconsistent with this Chapter will be deemed to be repealed, this can be said to be a non-diminishment clause. In essence that according to this provision, legislative enactments both future and past enactments, will have to respect the existing rights and status of official languages.

A number of sections under the constitution now provide that the state will have to create necessary conditions within the state administration under Article 22, and the courts under Article 24, to make it possible for the people to exercise their rights. It implies, that a human resource policy had to be followed that would enable members of the public to communicate and be communicated with in their preferred language

Official status of a language suggests that such language is used in the legislative, executive and judicial business of government. However, it is clearly claimed that a language is only truly official if it is actually and moreover routinely employed for carrying governmental tasks, according to a socio-legal viewpoint. It should be obvious that official status may serve no more than symbolic objectives.²² This is because using so many languages on a national scale for the majority of government tasks is not financially or administratively practical, if not altogether impossible. Two additional characteristics must be evaluated in order to determine whether a language having constitutionally granted official status is indeed official:

- Firstly, determine whether there are any extra constitutional (or other) rules that govern the actual usage of the languages in official capacities. (For the period 1910 to 1994, the official language sections in the three South African constitutions are good examples of provisions that governed the actual usage of the official languages.)
- Second, whether there is the actual application of such languages or not.

²² Koss Malan, The discretionary nature of the official language clause of the Constitution, South African Public Law, Vol. 26, No. 3, 2011.

The various sections provided under Chapter IV of the constitution and the separate legislation called the Language of the Courts Act (No. 3 of 1961) showcase that there are extra constitutional and legislative protections that govern the actual usage of the languages in official capacities. Although the second aspect, dealing with actual application of these language provisions in Sri Lankan reality, remains contested.

The requirement of parity of esteem, according to Rautenbach and Malherbe,²³ prohibits the use of only one official language as a "anchor language," that is, the consistent use of only one language for legislation (or other official purposes), as opposed to others that are used only rotationally or sporadically. It's important to distinguish parity of esteem from equality of treatment. The way a language is perceived, or the opinion that is held about it, is referred to as its esteem. As a result, it is concerned with a language's reputation. An official language that does not receive the same attention as another and is not used as frequently in government activity as another may yet be held in the same regard as the one that is used more frequently or consistently.

In the provisions of the present constitution, one can see parity of esteem been made constitutionally possible for the first time since independence, as apart from Sinhala, the business of the government has been mandated to be conducted in Tamil and English too. And in the case of Sri Lanka, the reading and interpretation of the constitutional provisions provides that both the 'parity of esteem' and 'equality of treatment' has been established.

Language-related rights in constitutions place specified duties on the state to respond positively, either explicitly or implicitly. The exercise of the language rights in question requires state action in accordance with such provisions. The various sections under the 1978 constitution like Article 22, Article 24 etc create a right, for a person to use and to be addressed in the official language of his or her choice in his or her dealings with any public administration. This places corresponding duties on the state to make the exercise of the right possible. This corresponding impacts directly the human resource policy of the state, which needs to respond to the language demographics and language preferences of the various communities served by the public administration.

²³ Rautenbach and Malherbe Staatsreg (2009).

Furthermore, a member of Parliament, Provincial Council, or local authority is entitled to 'perform his duties and discharge his obligations' in either of the national languages, according to Article 20 of the 16th Amendment to the Constitution (Democratic Socialist Republic of Sri Lanka 1987). Section 16 of the 16th Amendment also makes Sinhala the administrative language in the south's seven provinces, while Tamil has the same status in the north and east.

The Constitution further provides that an administrative division in any region of the island where there are significant concentrations of both Sinhala and Tamil speakers must retain records and administer in both languages. Furthermore, the President has mandated that both Sinhala and Tamil be used as administrative languages in the 29 Divisional Secretariat Divisions.

Furthermore, Article 23 of the 16th Amendment stipulates that legislation would be written in Sinhala and Tamil, with an English translation of these enactments and laws available. Furthermore, Article 24 of the same Amendment stipulates that the country's courts will operate in Sinhala and Tamil, ensuring that justice is available in the people's native tongues. "The State should provide suitable facilities for the use of the languages called for in this Chapter," says Article 25 of the Constitution. Many multilingual legal regimes include complete structures that accommodate language-related interests by providing for individual rights, linguistic community institutions, and government language-related responsibilities. Legal systems that protect language-related claims and interests might be based on either the territoriality or the personhood concept in principle. In a multilingual state, a comprehensive bundle of language-related interests is protected within a defined area, which is usually populated in high concentration by a specific linguistic population. A personality-based approach, on the other hand, safeguards a limited set of language-related rights for persons regardless of their location within the national territory. The case of Sri Lanka is that of a combination of territoriality- approach and personhood-approach.

According to the Sri Lanka constitution's Chapter 4: Language of Legislation, Article 23 (1), previously written acts must be interpreted in Sinhala to avoid misinterpretation. In the case of a new act, parliament has the ability to decide which version of the legislation prevails in the event of contradictions at the time of enactment.

The 13th and 16th Amendments to the Constitution, in particular, publicly acknowledge prior language policy problems caused by Sinhala nationalism's cultural hegemony, and give detailed and legally obligatory alternatives. In effect, Chapter IV ensures that Sinhala and Tamil are used equally in all social and political activities. In that respect, the Constitution is both a historical text of errors and a point of departure for the execution of the Language Policy, which has been so thoroughly articulated. The problem is no longer with the Constitution, but with how it is put into practise.

IMPLEMENTATION OF THE CURRENT LANGUAGE POLICY IN SRI LANKA

According to the 2011 Census,²⁴ Sinhala is spoken by 80% of the population, Tamil by 26%, and English by 31%. Only 8% of the population can read and write in all three languages, and only 10% can read and write Sinhala and Tamil. Only 10% of the population is literate in both Sinhala and English, compared to 28% in both Sinhala and English.

While the Official Languages Commissions is responsible for policy recommendation, use of official languages and monitoring and supervising its compliance, it has had little impact on the country's sociolinguistic reality and has struggled to meet its purpose. 2000 (Laitin) Government institutions still provide services in Sinhala only; forms in public offices in the North and East are available in Tamil only or in Sinhala only elsewhere in the country; police issue parking fines in Sinhala only; Tamils who are not proficient in Sinhala are prosecuted in Sinhala only before courts; signs in hospitals or government offices do not provide signboards in Tamil; and Tamil students lack educational opportunities because government institutions still provide services in Sinhala only. Because the government only favours the teaching of Tamil to Sinhala pupils and vice versa, bilingualism in the country's official languages is uncommon in Sri Lanka. Despite the fact that the trilingual policy consisting of Tamil, Sinhala and English, has been formally adopted in Sri Lanka, the Official Languages Commission's execution of the language regulations is still insufficient.

²⁴ Census, Government of Sri Lanka 2011.

LANGUAGE RIGHTS AND PUBLIC SERVICES

Sri Lanka on paper uses both Sinhala and Tamil as its languages of administration in its public institutions. This language choice is in keeping with Sri Lanka's 'district bilingualism.' That is, except in the north and east, where Tamil is used instead, Sinhala is utilised in public transactions and documents in all provinces. A Tamil-speaking individual in a Sinhala-dominated province (or a Sinhala-speaking person in the Northern or Eastern province) has the right to converse with officials in their own language or in English.²⁵

People applying for jobs in the public sector have the option of taking their admission exam in whatever language they want. However, one may be obliged to acquire a sufficient understanding of Sinhala or Tamil, as the case may be, where such knowledge is reasonably necessary for the fulfilment of his duties, according to Article 22(5) of the constitution.²⁶ The previous Constitutional provisions on administrative languages imply that, depending on the province, knowledge of Tamil in the east and north, and /or Sinhala in the rest would be required.²⁷

These statutory provisions set a high bar for minority access to public services and employment in the public sector. However, it is uncertain whether they have been executed consistently. There is evidence to show that the Tamil-speaking people receives insufficient services in Tamil, at least in the Sinhala-dominated areas. The absence of properly qualified Tamil public personnel, as well as limited resources, such as trained Tamil translators, stenographers, and typewriting equipment, may be blamed for the failure to effectively use Tamil as the language of administration.²⁸

LANGUAGE RIGHTS IN COURTS

The issue of access to justice is raised by language rights in the legal system. Certain language rights are recognised by international law as part of the right to a fair trial.²⁹ An arrestee has the right to be told why they were arrested and charged in a language that they understand. While parties to a case

²⁵ Article 22(2) –(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

²⁶ Article 22(5)

²⁷ Abayasekara, Sadhana, *A Dog Without a Bark: A Critical Assessment of the International Law on Language Rights*, [2010] 17 *Australina International Law Journal*, (2010).

²⁸ MCM Iqbal, 'Securing Language Rights: Key Elements in the Peace Process' (2002) *Law & Society Trust Review*.

²⁹ Art 14(3) of ICCPR.

have the right to participate in a language that they understand, the Breton Cases highlighted that they cannot choose to speak in their mother tongue if they can comprehend and speak the court's official language.³⁰ The essential premise is that they must be able to take part in the legal proceedings. This provision applies only to criminal cases, while it has been suggested that it may be extended to civil cases by referencing the ICCPR right to equality before courts and tribunals.

The right of parties to participate in judicial proceedings in either Sinhala or Tamil is protected by the Sri Lankan Constitution. Submissions can be made in either of the national languages by legal representatives.³¹ A judge or party who is not 'fluent' in the court's language is entitled to translation services in order to participate in the proceedings. A Tamil person capable of speaking Sinhala will not be able to obtain a Tamil translation when standing before a court in a Sinhala majority district, as per the Breton ruling.

The court's business is performed in the administrative language, hence Tamil is used in the Northern and Eastern regions, where Tamil is spoken by virtually everyone. At first look, the court system appeared to have adequately accommodated monolingual Tamil speakers. However, the reality of a long-running ethnic war may have harmed the scheme's effectiveness, such as the possibility of biased interpreters.³² When a defendant is unable to defend oneself in their mother tongue and is forced to rely on faulty translations, a miscarriage of justice may occur.

CASES ON LANGUAGE RIGHTS IN SRI LANKA

CASE- 1

The Supreme Court decided in *Mallawarachchige Kanishka Gunawardena vs. H.K. Sumanasena* that a variety of rights, including language rights, can be enforced through the agency of international covenants such as the ICCPR (International Covenant on Civil and Political Rights) when the law fails to provide certain rights, such as rights of appeal or language rights.

³⁰ *Dominique Guesdon v France*, UN GAOR, 45th sess, UN Doc A/45/40 (1990).

³¹ Article 24(2).

³² Llewellyn Joseph Gibbons and Charles Grabau, 'Protecting the Rights of Linguistic Minorities: Challenges to Court Interpretation' (1996), *New England Law Review*.

The relevant judgement portion reads: Because Sri Lanka is a dualist state, it is necessary to incorporate the ICCPR into domestic law, which was done in 2007 with the passing of the ICCPR Act. The covenant's purpose is to establish worldwide human rights standards and to require member countries to take steps to enforce such rights. The ICCPR's rights are considered essential human rights, and they should be understood as limitations (against derogation) on the governments of member states. The International Covenant on Civil and Political Rights (ICCPR) is binding on all signatory governments.

CASE- 2

It was held in the matter of Kotuwila Kankanamalage Premalal Leonard Perera vs. OIC Police Station Buttala (SC Appeal 220 of 2014) that Section 4(1) of the ICCPR Act No. 56 of 2007 refers to an alleged offender's entitlement as follows:Section 4(1): A person accused with a criminal offence under any written law is entitled to an opportunity to be heard if the case is tried in his presence ; To defend himself in person or with legal assistance of his choosing, and to be notified of that right if he does not have such assistance; To have legal help given to him in relevant circumstances where the interests of justice necessitate it and he lacks the financial means to pay for it ;To cross-examine or have cross-examined the witnesses against him, and to have witnesses called on his behalf under the same conditions as witnesses called against him, and to have the assistance of an interpreter where such a person does not understand or speak the language in which the trial is being conducted.

The right to use an interpreter when the language of the court cannot be understood is a fundamental right guaranteed by the ICCPR, but courts have repeatedly held that it must be sufficiently proven in court that the language of the court cannot be understood by the litigating party who requests an interpreter.

CONCLUSION

Language policies are political and have social and political consequences. Language policies can be instruments of inclusion as well as exclusion. They can have a significant effect on people's lives from schools, public services, courts, economy to daily life. Language policies can determine who belongs to a community and who does not. The above case study of language policy of Sri Lanka showcases many aspects related to a nuanced understanding of language policy. One of the foremost

aspects brought out through this paper is that there remains vast difference in according official status to a language and that of ensuring that language becomes an official language in practicality. Another dimension discussed was that of language rights of an individual in a multilingual order, and how even after legislative and constitutional backing of rights, the lack of resources can impact the actual enjoyment of an individual's or a group's linguistic rights.

