

LST REVIEW

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Language

Rights

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Language Rights

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The ethnic problem in Sri Lanka has reached a crucial stage. The efforts of Norway have almost succeeded in bringing the government and the militants very near to the conference table. Once the last minute hurdles are crossed, hopefully, the talks will begin. One of the key issues that is bound to come up during the talks would be the violation of language rights of the Tamils. Though language by itself is not the only matter at issue, it is an important aspect of one's ethnic identity. It was the relegation of Tamil to a lower status with the enactment of the infamous Sinhala Only Act 1956 that offended the Tamils and inflamed their feelings. This contributed to the aggravation of the ethnic problem in the country which had been simmering since independence. The ethnic riots that took place in 1958, 1977 and 1983 were all the unfortunate consequences of this discord.

These riots proved that all the measures taken during the intervening years since the Sinhala Only Act, had failed to bridge the breach in the harmony that existed between the Sinhala and Tamil communities in Sri Lanka. The undesirable but inevitable consequence of these events was the steady growth of militancy among the Tamil youth, whose employment opportunities and educational prospects became bleak especially with the introduction of a change in the scheme of admissions to universities. This also promoted the migration of many Tamils to foreign countries to better their prospects. It is those who migrated who turned out to be the funders of the militants in Sri Lanka. They have now matured to be a force to be reckoned with.

Unfortunately the various provisions in the Constitution protecting the language rights of citizens, the statutes passed to ensure the 'Reasonable Use of Tamil', the establishment of the Official Languages Commission, the Official Languages Department, the Ombudsman and even the Human Rights Commission, failed to prevent violations and provide adequate relief to those whose language rights had been violated. Meanwhile avoidable violations continued in total disregard of the damage this was causing to the social fabric. Name boards of streets, government

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departments, notices in public places, traffic instructions on roads, all of which could easily have been in both languages, are but more often than not, only in Sinhala. More serious violations such as complaints to the Police by Tamils being recorded in Sinhala and official correspondence being sent to Tamils in Sinhala continue with blatant impunity. These indicate the persistent disregard by the officials concerned for the language rights of the Tamil speaking people. There had been hardly any instance of any public officer being taken to task for their callous attitude with regard to language rights. Successive Governments only gave lip service to the protection of the language rights of the Tamils and failed to bring about the required change in attitudes among state officials and others concerned. There was a problem of a dearth of personnel proficient in Tamil to staff the government departments. To overcome this, meaningful steps could have been taken to recruit an adequate number of Tamil speaking officers to meet these requirements. Even equipment such as Tamil typewriters, and professionals such as translators, are scarce. No serious attempts have been made to overcome these shortcomings.

The absence of determined efforts by the various governments to ensure that the language rights of people are not violated led to undesirable consequences. While the present government is taking every possible step to solve the problems that led to the militancy, it is the duty of the officers of state and others concerned to ensure that the factors that led to the demand for separation are not aggravated by non-compliance with the existing provisions of the law and other regulations regarding language. Such a step would deprive those seeking a separation of the country of a key issue that helps them to espouse their cause. It is hoped that the forthcoming peace talks would give adequate consideration to these matters.

It is to help this process that the Law & Society Trust organised a seminar on the 'Enforcement of Language Rights'. At this seminar which was held on the 15th of February 2001, presentations were made by Mr. V.T. Thamilmaran, Senior Lecturer in the Faculty of Law of the University of Colombo, Mr. A.M. Sameem, Retired Director Education, and Dr. Deepika Udagama, Senior Lecturer in the Faculty of Law at the University of Colombo.

In his presentation Mr. Thamilmaran set out the legal framework in place to protect language rights. In the course of his presentation he stated that '*language rights are*

part of human rights and the eroding one of these rights leads to the loss of others. One dares not ignore the human suffering that arises when persons are alienated from their personal and ethnic identity by language policies that do not safeguard individual language rights.' He then went on to trace the history of the erosion of language rights since independence and the efforts taken subsequently to make amends.

In the course of his presentation Mr. A.M. Sameem spelt out his own experiences as an administrator and the barriers he had encountered. He added that *'Section 29 was included in the Soulbury Constitution as a safeguard for minority interests. The Tamils felt that the Sinhala Only Act was a violation of this provision in the then Constitution. Sir Ivor Jennings, advisor and architect of the Constitution wrote in 1961, "if I knew then as much about the problems of Ceylon as I do now, some of the provisions would have been different." Nadesan a then Member of Parliament who had earlier voted for the Minister's Draft Bill in the State Council, resigned in 1956 stating that "the Tamils did not bargain that with the cessation of foreign rule there would be an imposition of another language on them in place of English."*

Mr. Sameem went on to say that the 16th Amendment to the Constitution made Tamil one of the National Languages of Sri Lanka and the language for administrative purposes. The absence of meaningful steps to implement this provision not only negates the spirit of this policy but also affects the trust citizens place in the government. A blatant violation of these provisions, is reflective of the indifference on the part of the bureaucracy.

Speaking on the legal remedies available, Dr. Deepika Udagama in a forthright presentation stated that *'there is an increasing tendency in our society to look at the law as the end all and be all of finding solutions to our problems. The law has to be a last resort. Laws have to be there to give protection. But looking at these as the only way of achieving a social or political goal, is flawed.'* She went on to say that the establishment of institutions such as the Official Languages Department, the Official Languages Commission, the Ombudsman's Office or even the Human Rights Commission, would not be adequate if they are not provided with the necessary resources. Persons appointed to these institutions should be dedicated to the task and have adequate time to give to the performance of their duties.

In this issue we publish the presentations made by Mr. Sameem and Mr. Thamilmaran. It is hoped that the views expressed at this seminar and the presentations made would serve as a useful source of information on the subject and could be used as a lobby document when the need arises. It is everyone's desire that the proposed peace talks will resolve all the thorny issues, including the language problem of the Tamils and usher in an era of peace and prosperity.

Barriers to the Implementation of Language Rights *

*A.M. Sameem***

Part I

Language has been identified as one of the basic factors, if not the most important factor pertaining to the ethnic identity of a community, especially in a post-colonial country. Language has been the core of the ethnic problem in Sri Lanka. This language problem has been the cause for the downfall of governments and the eruption of racial violence in Sri Lanka. 'Ethnicity' has been defined, as a group of people living in a particular area having a common culture, language and religion. When an ethnic group is mobilised for action to attain political ends then it becomes a 'nationality'. It takes the garb of 'a nation'. National consciousness forms the basis of nationalism. The analysis of ethnic tensions are often framed in terms of historical legacies in which language, culture and religion are the essential points of distinct identity. An awareness of a common identity is brought about by an awareness of the history of a country or people, whose religion, language and culture play a dominant part. The imposition of the language of an ethnic group on another ethnic group leads to tension between these two groups. When this happens, in a country where two major ethnic groups are diametrically opposed to each other in their religion, language and culture, it leads to instability in the country.

The passing of the 'Sinhala Only Act' has led to political instability resulting in violence and civil war. The root cause of the present dilemma the country is facing, could be traced to the passing of the Sinhala Only Act in 1956. The Tamils saw themselves as a minority Tamil speaking community in Sri Lanka, who would be disadvantaged if Sinhala became the only official language. The Sri Lankan Tamil minority, an achievement oriented, industrious group who enjoyed high status in society, with considerable influence on the economy is now relegated to a subordinate position with little or no role to play in the bureaucracy of the country due mainly to passage of this Act.

* Edited version of a presentation given at a seminar on "The Enforcement of Language Rights: Policies and Problems" organised by the Law & Society Trust on 15th February 2001.

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To the Tamils, the passing of the Sinhala Only Act, meant the betrayal of the Tamils by the Sinhala majority community and a breach of the promise given by the Sinhalese. The British Government insisted on the minority support for the Draft Bill of the Board of Ministers for Independence. Accordingly the Ministers' Draft Bill of 1946 made it a requirement that two-thirds of the members of the State Council should vote for the Bill for its adoption. Addressing the Tamil members of the State Council Mr. D.S. Senanayake said:

I put this question bluntly to my Tamil friends. Do you want to be governed from London or do you want as Ceylonese to help govern Ceylon?¹ Every time we ask for a Constitutional advance, we are met by the argument that we are not agreed. Let us show that we are agreed, by accepting this motion with a majority, so overwhelming that nobody dares to use the argument against us again. I am not asking for a majority. I am asking for a unanimous vote.²

Convinced, of the sincerity of the promise given by D.S. Senanayake that the minority interests would be safeguarded in an Independent Sri Lanka, three Tamil members, Nalliah, Nadesan and Thiagarajah voted for the motion and D.S. was jubilant that the motion for acceptance was carried by 94% of those present in the House.

To allay the fears of the Tamils, Section 29 was included in the Soulbury Constitution as a safeguard of minority interests. The Tamils felt that the Sinhala Only Act was a violation of this provision in the then Constitution. Sir Ivor Jennings, advisor and architect of the 1948 Constitution wrote in 1961 "if I knew then as much about the problems of Ceylon as I do now, some of the provisions would have been different".³ Nadesan a Member of Parliament who had earlier voted for the Ministers' Draft Bill in State Council, resigned in 1956 stating that "the Tamils" did not bargain, that with the cessation of foreign rule there would be an imposition of another language on them in place of English.⁴ He said that the Tamil language had been relegated to the margin of the country's political scheme.

¹ Hansard Vol. 8 – 1945.

² Hansard Vol. 8 - 1945.

³ Quoted by J.A.L. Cooray – The Approach to Self Government.

⁴ Hansard Vol. 23 – 1956.

The crux of the problem is that the Tamil community felt that it had not only been betrayed but reduced to a position of inferiority in its own country. The feelings of the Tamils was represented by the following statement of S.J.V. Chelvanayagam, the leader of Federal Party. He denoted the absolute necessity:

“for a free people that they should be governed in their own language. If the people are not governed in their own language, then those people are not a free people. In Ceylon, Tamil should be to the Tamil speaking people what Sinhalese is to Sinhalese speaking people”⁵

This line of reasoning was not understood by the Sri Lankan elites. Thus, when the Tamils demanded a ‘parity of status’ for both languages, this concept was not understood by the Sinhala masses; and the Sinhalese politicians sought to distort the demand and mislead the Sinhalese people by making out that the Tamil claim meant that the Sinhalese population should become bilingual. The Tamil demand for parity of status, required that the Tamil people should be governed in their own language and transact business with the State in that language. Subsequent legislation to remedy this gross violation of fundamental rights did not satisfy the Tamils. In later years, legislation such as the Tamil Language (Special Provisions) Act of 1958, the Tamil Regulations of 1966 and provisions for the use of the Tamil Language in 1972 and 1978 Constitutions, were enacted, but these remain a dead letter. Furthermore, they were events after the fact and failed to repair the damaged relationship between these two ethnic groups.

As a result of the passing of the Sinhala Only Act, an important case came up for decision by the courts, which challenged Parliament’s capacity to pass laws infringing upon the rights of the minorities. Kodeeswaran, a clerk belonging to the Ceylon Tamil Community, refused to present himself for a proficiency test in the Sinhala language which was required of all public servants not proficient in that language under the terms of the Official Language Act of 1956. It was argued for Kodeeswaran that he was justified in his refusal because the requirement was a violation of Section 29(2)(b) and (c) of 1948 Constitution.

Kodeeswaran sued the Crown for the recovery of increments to his salary that were denied to him. The Supreme Court held, that the latter being a servant of the Crown had

⁵ Hansard Vol. 64 – 1966.

no right to sue the Crown. The Court did not examine the validity of the Official Language Act. The Judicial Committee of the Privy Council, however, reversed the decision of the Supreme Court in appeal, holding with Kodeeswaran in his claim, that he had 'an action against the Crown'. Earlier when this case was heard in the District Court, the District Judge held in Kodeeswaran's favour, but did not pronounce on the constitutionality of the Official Language Act merely stating, it was bad in law. This matter was remitted to the Supreme Court by the Privy Council, but it never saw the light of day. The 1972 Constitution did away with Article 29, which was supposed to safeguard minority interests. This case shows, that the Tamil community as well as an impartial foreign court felt, that justice has been denied to this community.

Riots broke out as a result of this Act and the Tamils who protested against this Act, through "Satyagraha" were mercilessly attacked and their houses and their business establishments burnt. In order to appease the Tamils, Bandaranaike secured Parliamentary approval for the Tamil Language (Special Provision) Act No. 28 of 1958. The Tamil Language Bill was debated in Parliament and approved. Soon after, Bandaranaike was assassinated and he did not live to introduce the regulations under this Act. wife, and successor Sirimavo Bandaranaike failed to introduce it, and finally, it was introduced and piloted through the Legislature by a UNP led coalition Government. This later led to its downfall.

The Tamil Language (Special Provisions) Act No.28 of 1958 provided for the following:

1. The use of Tamil language as a medium of instruction in education.
2. The use of Tamil as a medium of examination for entry to the public service.
3. The use of Tamil in official correspondence.
4. The use of Tamil for prescribed administrative purposes in the Northern and Eastern Provinces.
5. And for the making of regulations to give effect to the principles and provisions of the Act.

This Act required bilingualism in all activities pertaining to the State. It was seen in the use of Tamil Language in the national insignia, coins and currency, postage stamps, in road signs and in all official and semi-official documents at every level. Many of the documents were both in Sinhala and Tamil, or in Sinhala, Tamil and English. The right of the Tamil speaking citizens to correspond with State officials and with employees of

State owned corporations and public sector autonomous bodies, was protected, but the snag was that, quite often their right to receive a reply in Tamil was observed in the breach. Even when the Government had shown the political will to implement this policy, the lethargy of lower level bureaucrats in combination with a shortage of bilingual officials have proved to be formidable obstacles to giving the Tamil minority satisfaction on this sensitive issue. The result is that a sense of grievance continues with regard to language policy.

The next major event in the language policy is the passing of the new Constitution in 1972 creating the First Republic of Sri Lanka. Under the '72 Constitution, the earlier Acts, No. 33 of 1956 and No. 28 of 1958 were incorporated as part of the Constitution. However, the regulations passed were not included in the Constitution, but deemed to be subordinate legislation, continuing in force as existing written law. Also this Constitution did not have any special provisions spelling out the language of administration, although it contained provisions for legislation and the judiciary. Thus the 1972 Constitution unequivocally consolidated the 'Sinhala Only' policy of the 1950s and emphasized the 'essentially subordinate role of the Tamil language. In contrast, the 1978 Constitution by its Chapter IV, while maintaining the status of Sinhala as the official language, recognized Tamil as a National language, a significant modification of the 'Sinhala Only' policy. Chapter IV of the Constitution in Articles 14 and 27 guaranteed the freedom to use one's own language and lays down as a principle of State policy, that no citizen shall suffer any disability by reason of language. Moreover, all the rights enjoyed by the Tamil speaking people under the Tamil Language (Special Provisions) Act No. 28 of 1958 were incorporated in the Constitution and cannot therefore be changed, except by way of a constitutional amendment. Most of these language rights which existed and which were approved in 1966 was contained in ordinary legislation and could be overridden by any ordinary legislation with a simple majority in Parliament. No real remedy was available against a denial of these rights through regulations or even administrative decisions. The language provisions of the 1978 Constitution changed all that.

Subsequently the 13th Amendment to the Constitution in 1987 raised Tamil to the level of an official language, with English being given the position of a link language. The provisions of the 13th Amendment were clarified and indeed consolidated by the 16th Amendment in 1988. Article 25(A) introduced on that occasion, stated, that in the event of any inconsistency between the provisions of any law and the provisions of Chapter IV of the 1978 Constitution, the latter shall prevail. Thus the 16th Amendment is a landmark

in public administration. Tamil was made an official language throughout the country in accordance with this amendment. The maintenance of all public records in all the provinces in Sri Lanka other than the Northern and Eastern Provinces was to be in Sinhala while in these two provinces it was in Tamil. For all aspects of public administration, the use of the Tamil Language was ensured in the Northern and Eastern Provinces. In respect of minority populations concentrated in certain specific areas, provision was made in this amendment for the President to direct both Sinhala and Tamil, or a language other than the language hitherto used in that area, as the language of administration.

With the introduction of a new Constitution in 1978 and a new language policy, the Official Language Department was re-established, this time to implement a policy of bilingualism or trilingualism instead of 'Sinhala Only'.

A new phase in the implementation of the Language Policy began in 1979. In the 70s the Official Languages Department was reduced in importance and influence and its obligations and responsibilities were dispersed among other ministries and departments. The department itself was reduced in status to a mere division in the Ministry of Public Administration. Language policy in Sri Lanka had come a full circle, from English only, under colonial rule, to Sinhala and Tamil from 1944 to 1956, to 'Sinhala Only' from 1956 to 1978 and on to Sinhala and Tamil with English as well from 1978 onwards. Much of the ambiguity in the language law had been settled with the Constitution of 1978. An Official Language Commission was set up in 1989 with wide powers to oversee the implementation of the official language policy.

Theoretically, the Tamil speaking minority communities have been granted their language rights. But in practice, there is nothing they can be proud of. Implementation of the language policy has been a failure and if we delve into the problems and barriers to this implementation, we would find that Tamil speaking minority have been deceived and are in the same position as they were after the passing of the Official Sinhala Only Act in 1956.

Yullan Bromley in his 'Ethnic Problems and Perestroika'⁶ referring to the Soviet Union says "in our view it is not granting a language the status of an 'official' or 'national' one

⁶ Bromly Yullan – Ethnic Problems and Perestroika Social Sciences Vol XXI No. 1 1990 – quoted by A. Theva Rajan in his book 'Tamil as Official Language'.

that matters, but the real meaning of these terms". The 16th Amendment to the 1978 Constitution, on paper, stated that the Tamil Language is one of the National Languages and is one of the languages for administrative purposes. It is not the mere constitutional provision that matters, but its translation into practice. The lack of implementation of these provisions not only negates the spirit of this policy, but also affects the trust people have placed in government's integrity vested by the citizens. A blatant violation of this Act, can be seen in the departments of health, posts, police, transport, social services and in A.G.A. offices. In short, the Tamil speaking minorities have been betrayed by the majority community and they have been reduced to the status of a subservient community in the affairs of the state

Part II

The Tamil Language Special (Provisions) Act of 1958, the regulations of which were finally passed in 1968 and the 1978 Constitution raised Tamil to the status of a National Language. The 13th and 16th Amendments to this Constitution subsequently elevated Tamil to the status of an Official Language on paper. It is in the implementation of this policy that we see discrimination against the Tamil speaking minority. More than the lethargy, it is the indifference and unwillingness on the part of the Sinhala officers that is the main barrier to the implementation of this language policy. The introduction of the mother tongue as the medium of instruction since 1945, divided the school system in the country into Sinhala medium and Tamil medium schools. There grew a new generation of educated youth in the two communities, ignorant and oblivious of the culture of the other community. In fact, they have been bombarded, especially in the case of the Sinhala children, with a curriculum based on a misinterpretation of history, which has sowed the seeds of communal hatred and depicted the Tamils as enemies of the Sinhalese, who came to this country as military adventurers and destroyers of temples, dagobas and viharas and other Buddhist places of worship. These children who grew up with this hatred against the Tamils, started occupying the higher echelons of the bureaucracy after the passage of the Sinhala Only Act. This Act not only provided better opportunities of employment for the Sinhalese but also denied entry to the Tamils into the Public Service. It is this generation of Sinhala educated Sinhala officers who are the main obstacle in giving the Tamils their language rights. However much the Sinhala politicians try to show the world that they are treating the Tamils as equal citizens and giving Tamil an official status, it is these officers in the Public Service who are nullifying the good intentions of the Government. In this scenario let us examine this problem more closely.

Let me quote the statements made by men no less than Bandaranaike and Jayewardena with regard to the intention of the then Governments. Mr. S.W.R.D. Bandaranaike, when speaking on the Sinhala Only Act of 1956 stated:

Any Tamil gentleman must have the right to correspond in the Tamil language, but the position of Sinhalese as the Official Language must be preserved.

J.R. Jayewardena, speaking on the Tamil Language Bill in 1966, stated:

... so we are making it law that an official must reply in Tamil. You cannot leave it to his whims and fancies He must write. It is imperative. If he does not he can be dismissed... no Tamil man should in any way be harassed or harmed by not being able to transact his business with the Government in Tamil...

The intentions of the legislators were very clear. But the bureaucrats who are occupying the seats of authority have no concern either for the views of their political masters or for the poor Tamil 'citizens'.

It took three years for the treasury to issue a circular, clarifying the policy of the Government with regard to the Official Language Sinhala and the reasonable use of Tamil. Treasury Circular No. 760 of February 28th 1969, Section 9.01 stated that "in deploying staff in Government offices, adequate consideration should be given to an officer's proficiency in Sinhala, (yet) care should be taken to ensure that transfers do not adversely affect the smooth working of the Department of Official Language", which means, that the implementation of the Official Language Policy should not be interfered with. There was no reference to the capacity of the staff to work in Tamil.

The Sinhala politicians while crowing on roof tops, for the world to hear that they were giving the Tamils their language rights, were undoing it in a subtle way. The 1972 Constitution passed by the United Front Government, stated that:

all laws written and unwritten, in force immediately before the commencement of the Constitution ...except as otherwise expressly provided in the Constitution, continues in force".

Article 8(1) and (2) of the Constitution said that the Tamil Language (Special Provisions Act 28, of 1958) and the regulations passed under this Act remained effective. But it added a proviso that they shall not in any manner be interpreted as being a provision of the Constitution but shall be deemed to be subordinate legislation continuing in force as existing in written law under the provisions of Section 8. This provision, in other words means, these regulations could be set aside by any ordinary legislation which could be passed with a simple majority in the Parliament.

These laws do not have the stamp of a constitutional law, which could be amended only by a two-thirds vote. The preamble to these laws specifically states that the original Act should not be infringed. These provisions give a blanket cover to any officer who discards the laws requiring him to implement the Tamil language, such officer could take cover under the stand that he merely continued to implement the Sinhala Only Law which is part of the Constitution.

As has been referred to earlier in Part I of this paper the 1978 Constitution tried to remedy this anomalous situation. Though this Constitution made certain provisions for the use of the Tamil Language, it however reaffirmed Sinhala as the Official Language.

The main problem in the implementation of the Tamil language is the lack of staff and equipment. Mr. Devanayagam, Minister of Home Affairs bemoaned that he was helpless as there is a shortage of Tamil speaking staff in the Public Service. The government's unwillingness to implement this policy is highlighted by A. Thevarajan in his book 'Tamil as Official Language'. Yet the genuine implementation of these provisions in the true spirit of the Constitution requires concrete changes in state infrastructure. Tamil stenographers, typists and translators would need to be trained and present throughout all areas of Government. To effect such change, governmental will and determination is critical.

The Provincial Council system which was introduced to solve the ethnic problem, did not address itself to the implementation of the Government's language policy with regard to the Tamil language. Quite often members of the Provincial Councils from all over the country complained about the non-implementation of the language policy. The Council's discussions were always in Sinhala language and even the circulars to the members of the Council were in Sinhala. Mr. A.L. Majeed member of the then North-Eastern Provincial Council appealed to the Minister, to rectify the situation in the Ampara District. Majeed

added what had become, obvious; though the Sri Lankan Government may content itself with enacting laws, it does not overly concern itself with the law's implementation.⁷

One of the reasons for the negative approach by the Sinhala officers is that, so far no Sinhala officer has been charged for this omission or neglect of duty. Although the Official Language Commission has the power to take action against such offending officers, the procedure involved makes it difficult for it to bring them to justice because it has to be proved that such officer has acted wilfully or intentionally.

Even if he is brought to court after an investigation, that officer could always plead in defence that he did not wilfully or intentionally violate the provisions of the Language Act. Further, to bring such matters to court, the approval of the Attorney General's Department must be obtained before filing a case against an officer and this approval is rarely given by the Attorney General. There is also no legal compulsion for the Sinhala officers to study Tamil.

The administrative procedures in a Government Department are such that no specific instructions are given by the staff officer to the clerk concerned to send a reply in Tamil. Further, the very staff officer is not proficient in Tamil language. Added to this is the fact that most officers recruited in Tamil are posted to the North-Eastern Provincial offices and their unwillingness to serve in Colombo due to security reasons aggravates this problem. It has been found that 98% of the officers attached to departments in Colombo are Sinhala speaking officers.

One of the departments where there is blatant violation of this Act is the Police Department. Entries made by Sinhala speaking officers on complaints made by Tamil citizens, have always been found to be wrong and judges have thrown such evidence out. Even if such an entry is made by a Tamil speaking officer, the superior officer who has to give an order, being a Sinhala officer, tends to ignore the contents of such entries.

The Postal Department is another department where language rights continues to be violated. For example, a telegram sent in Tamil from a Tamil speaking area to a Sinhala speaking area, there are no Tamil officers to receive.

⁷ A. Theva Rajan -- Tamil as official language -- p. 73.

Even in the departments in the North-Eastern Regions, correspondence between them are usually in English and even records are kept in English.

A recent study revealed the outstanding facts regarding the implementation of the Tamil language in Government Departments. It was found that the major areas where discrimination takes place is in relation to education and the medium of instruction, language of administration, language in courts and court records, language of official meetings and media, registration of marriages, births and deaths, language in Police Stations, and language in Name Boards.

Tamil medium education, except in the North and East has suffered greatly. There are not enough Tamil medium schools and teachers. Sinhala principals have sometimes been sent to Tamil medium schools eg:- Kurunegala Hindu Tamil School.

Education administration is completely in Sinhala. Sinhala circulars are sent to Tamil medium schools where the Tamil teachers have no knowledge of Sinhala whatsoever. In educational planning there is no Tamil representation at curriculum designing, except in the case of Tamil language. History, Social Studies and English books are written with the Sinhala student in view. Tamil books are not written with weightage to their cultural and environmental traditions. Direct translation from Sinhala Texts are insisted upon. No action is taken to provide any weightage to the Tamil medium. Of the various activities of the National Institute of Education, only a few are in Tamil. Most publications are in Sinhala while only 3 publications in Tamil have been made during the past 6-7 years. In some cases even the cultural traditions of the students are interfered with for example, Tamil students offering Art at O' level have nothing relating to their cultural tradition.

It is stipulated that the administration in the North and East should be in Tamil. Outside the North and East it is stipulated that if an AGA division has more than 12.5% of its population which is Tamil, then by a directive from the President, an administrative area could be declared as an area for the use of Tamil as the administrative language. It is estimated that there are 58 AGA divisions where the Tamil linguistic community exceeds 1/8th of the total population and of these 5 in Nuwara Eliya and 7 in Badulla were gazetted. But even after that gazette notification birth certificates and death certificates are not issued in Tamil. Even registration of marriages is done in Sinhala.

A recent study revealed the following anomalies:⁸

- (i) 543 offices were surveyed in 1995, of them 437 did not have even a single Tamil speaking officer.

(ii) Translators	English/Tamil	Sinhala/Tamil
Approved cadre	88	22
Translators available	17	10
Additional Translators	} 192	22
Required		

- (iii) Tamil typewriters Nil

(iv) **Central Ministries and Public Institutions**

Total No. of approved cadre - 300,993

Existing - 304,363

Vacancies - 18,408

(v) **Ethnicity - Central Government Employees**

Sinhala 93.75%

Tamil 3.89% } 6.24% Tamil speaking

Muslim 2.35% }

(vi) No. needed immediately

Tamil speaking Clerks - 2500

Tamil speaking Typists - 750

Steno- Typists - 50

Tamil – English Translators - 350

Tamil – Sinhala Translators - 350

Tamil – English (graduates) - 300

Tamil – Sinhala graduates - 10

Total 4000

⁸ The facts were supplied by Prof. K. Sivathamby.

The above facts prove, the bureaucratic indifference to this whole subject of implementation of the Tamil language. For the consumption of the international community and for the aid giving countries, it is made out that Sri Lanka is a model country which has given equal rights to the minorities in preserving their language, religion and culture. Official status has been given to the language of the minority community in the Constitution and through various Acts passed by the Parliament. Unfortunately, the real position is different.

The only way this problem could be solved is for the Sinhala majority community – politicians, intellectuals, officers, and public – to change its attitude and accept the minorities as equals and as an integral part of this country's body politic.

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The Legal Framework for the Promotion and Protection Of Language Rights *

*V.T. Thamilmaran***

“Knowing more languages makes available to you more ways of looking
at things, more ways of relating to things, to others”

- William S.Y. Wang

Introduction

Haguen reminds us that ‘each language has its shortcuts and its circumstances’ (Haguen 1987: 141). Many of these unique perspectives we call languages can be viewed as products of persons having unique rights within the ‘politicalization of the environment.’ The increasing spread of politicalization in this regard, locally and internationally creates tensions among societies and to some extent within a society itself. It is from such political vantage point we might profitably examine the question of why we shall be concerned about language rights.

My brief sketch today will try to address this concern from three different angles or at three stages. Firstly, I would like to say a few words about the importance of this right. It will be followed by a short description of the legal framework in this country and some underpinning issues related to it. Finally, I would like to give you an overview of the constitutional arrangements put in operation in certain other countries.

Why are we concerned of Language Rights?

Now, let us focus our attention on the importance of this right. The interrelationship between language and identity has been explored extensively. Language functions as one of the primary means for creating personal and group identity (Edwards, J., 1986). Language also functions in society as the means for creating **power relationships**, and

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the control of this linguistic creative process offers the possibility for the manipulation and the potential of amassing power, either personal or collective (Fairclough, 1989).

From this perspective, language rights become highly important. First, they are part of human rights, and the erosion of one right endangers other rights. Second, they are an extension of intellectual purpose, for how we treat people is also how we treat ideas.

There is a general belief that the use of language by a section of community is related to public administration and therefore to be addressed from a practical and cost concerned standpoint. However, sociologists and psychologists are of the view that the use of a particular language by a certain group of people is something which goes to the root of their very existence, the denial of which would lead to social calamities with psychological implications

A human being finds identity in the group and fulfils personal authenticity through language (Edwards, J., 1986). Denying a person's language rights can have the effect of creating social situations in which that person questions personal identity and feels alienation in family, ethnic, and national identification. An example or two might point out how this process creates a form of human suffering through intense emotional distress.

A native American boy, sent to a boarding school, lost contact with his family. He was not allowed to speak his own language Navajo and finally ended up as a non-lingual – a man without a language. By the time he was 16 he was an alcoholic, uneducated and despondent without identity (Skuntnabb-Kangas, T. and Phillipson, R.). Another case illustrates the frustration that arises when a person is prevented from speaking his/her mother tongue and force to adopt an alien language as the mother-tongue. A sami boy in Sweden was sent to a town school and compelled to adopt a hitherto strange language to him. He complains of his plight (Skuntnabb-Kangas, T. and Phillipson, R.):

It had forced a new 'mother-tongue' upon me. I had been robbed of my language, my own history and my own culture. The school had substituted something that was now well known to me. What was foreign to me was I, myself. I felt cheated.

Almost anyone would recognize that this complaint describes a situation where governmental educational policy and the disregard for language rights leads to a person's

intense emotional distress. The same story with different settings can be found a round the world.

Many nations do not recognize the language rights of minorities for various reasons. Language rights are not currently clear in many countries, including developed countries such as the USA. This ignoring of language rights seems tragic when we realize, as Deutsch said, that language is an automatic signalling system second only to race in identifying targets for possible privilege or discrimination (Deutsch, 1975).

In this context, stressing language rights can enhance the 'quality of human life'. Language rights are part of human rights, and the eroding of one of these rights leads to the loss of others. We dare not ignore the human suffering that arises when persons are alienated from their personal and ethnic identity by language policies that do not safeguard individual language rights; we cannot do so without facing up to the concomitant loss in our own "quality of life" and the resultant loss each person faces by such loss, which leaves a less diversified and less colourful culture, less pluralistic and, therefore, a more drab world.

In addition, it cannot be forgotten that nationalist approach is forcing assimilation through language, can come into conflict with the concerns of the various nationalities which find their individual languages authenticating, and those who feel relative deprivation from non-participation in the nation's governance. The people often mobilize either politically or, sometimes regrettably, militarily (Fisherman, J.A., 1989).

It is within the premises of both the concerns expressed above that I would proceed to the next stage i.e. issues pertaining to language policies adopted in Sri Lanka and the resultant legal framework shaped by those policies.

The Language Policy of the 'Masters'

According to the available records, all three colonial masters of the Island had used their respective languages for administrative purposes. But there is little evidence to support the argument that they had adopted discriminatory policies between the nation's two indigenous languages, Sinhala and Tamil. Also, it is observed that during the British period, Sinhala and Tamil were used in government notifications throughout the country.

People were able to communicate with the government in either of the two indigenous languages.

However, the phrase of 'language rights' came to the forefront when the issue of representative governance surfaced. When the State Council was introduced as a second step towards self-government, notice was given in July 1932 for a motion, by a member from Matara, Mr. G.K. Perera, that Sinhala and Tamil be made official languages of the country. The second person to bring a motion but in a different tone in the State Council was none other than Mr. J.R. Jayewardene. In June 1943 he proposed that the country should adopt a single language policy. When it was taken up for debate in May 1944, Mr. Jayewardene argued for a single language policy (Hansard, State Council, 22nd June 1943024):

*... the official language is English, and that is why this country is always in danger of being governed by a small coterie who go through those English schools, whereas the vast majority who go through the Sinhala and Tamil schools must always be in the position of hewers of wood and drawers of water ... as two-thirds of the people of this country speak Sinhalese, I had the intention of proposing that only Sinhalese should be the official language of this Island; but it seems to me that the Tamil community and also the Muslim community, who speak Tamil, wish that Tamil **also** should included on equal terms with Sinhalese.*

When an amendment was proposed to this motion, notable personalities reacted in two different ways. Mr. Dudley Senanayake voted against and Mr. S.W.R.D. Bandaranaike abstained from voting. As I mentioned earlier one may observe the beginning of 'the politicalization of the environment' at this early stage. Later on, the Select Committee of the State Council under the chairmanship of Mr. J.R. Jayewardene recommended that from 1st January 1957, English should be replaced with Sinhala and Tamil as official languages. However, this recommendation was not adopted by the Council as it was dissolved in 1947. For the people of this country, a representative democracy was in the making.

Language Rights under the Soulbury Constitution

The drafters of the new independent Constitution had placed their highest hope in Section 29, which provided protection against discriminatory legislative practices. But, what

took place afterwards under this Constitution disproved and shattered their hopes. Legislation passed by the independent legislature time and again introduced discriminatory legislation and did away with the parity of status for Sinhala and Tamil promised by the leaders of the country just before independence. In fact, some writes maintain that Section 29 was a condition on which independence was granted and as such it was not possible to do away with that section (Amerasingne C.F., 1970:53).

The Official Language Act (No. 33 of 1956) was enacted amidst much disappointment for the minorities. The unfortunate situation that would follow was correctly predicted by Dr. Colvin R. de Silva (Hansard, Parliament of Ceylon, 5th June 1956, 24:735):

Parity, Mr. Speaker, we believe is the road to the freedom of our nation and the unity of its components. Otherwise two torn bleeding States may yet arise of one little State, which has compelled a large section of itself to treason, ready for the imperialists to mop up that which imperialism only recently disgorged.

A leading Tamil Member of Parliament, Mr. Nadesan who defeated the leader of the Federal Party in Kankesanthurai electorate and served in the opposition United National Party rendered his resignation from the party in protest over the language policy it adopted at that time. Another pro UNP Member of Parliament, Mr. C. Suntharalingam uttered in frustration (24:1939) that the country would be divided with God's grace.

Following the agitation carried out by the Federal Party the government decided to introduce a Bill 'to make provision for the use of the Tamil language'. When this was taken up for debate, rejecting the Bill, Dr. N.M. Perera made the following statement (31:1938):

We reiterate that the only solution for the language problem is one that will give proper official status to the Tamil language. This alone will ensure the unity of this country.

But the Prime Minister was not deferred, that the Tamil Language (Special Provisions) Act (No. 28 of 1958) came into force. But in order to steer it through the Parliament, Mr. Bandaranaike by way of commenting on the Bill promised the majority community that nothing would happen to disturb them. He rhetorically assured the majority electorate:

What does this self-do? Every one of its clauses is subject to the proviso that it does not conflict the position of the Sinhala Language as the Official Language of the country....

At least he was honest in what he was telling. According to Section 6(1) of the said Act 'the Minister may make regulations to give effect to the principles and provisions of the Act'. It took eight years to pass those Regulations to give effect to the provisions of the 1958 Act. On the eve of Parliament adopting these Regulations, Mr. S.J.V. Chelvanayagam, the then leader of the Federal Party, reiterated the importance of language rights in his typical style of measuring the words (Vol. 64:130):

... for a free people that they should be governed in their own language. If the people are not governed in their own language but in some other language, then those people are not a free people. In Ceylon, Tamil should be to the Tamil-speaking people what Sinhalese is to the Sinhala-speaking people.

He further argued that the 1944 State Council resolution had accepted the principle of equality of status for Sinhala and Tamil, on this basis independence had been granted to the country. He was stressing the point that the use of the Tamil language should be extended throughout the Island.

It must be remembered that it was after the adoption of the above regulations only that Mr. Kodeeswaran went up to the Privy Council alleging discrimination against him. It was unfortunate that the validity of the Sinhala Language Act was not judicially interpreted either by the Privy Council or by the highest court of the land.

Language Rights Under the Republican Constitutions

Under the first Republican Constitution of 1972, it was reconfirmed that the official language of Sri Lanka should be Sinhala as provided by the Official Language Act, No. 33 of 1956. Article 8 of the Constitution further provides that the use of the Tamil language should be in accordance with the Tamil Language (Special Provisions) Act, No. 28 of 1958. Section 29 of the Soulbury Constitution was not found in the Republican Constitution. Appeals to the Privy Council had been abolished in the previous year.

As compensation, Article 11 of the Constitution provided for the use of Tamil in the courts of pleading and applications. On a positive note the United Front government passed the Language of Courts (Special Provisions) Law, No. 14 of 1973. Regulations under this Law were also passed and gazetted to provide for the use of Tamil courts in the North and Eastern Provinces.

Under the Second Republican Constitution, originally, Article 18 provided that the Official Language of Sri Lanka shall be Sinhala and in Article 19 provision was made that the National Languages of Sri Lanka shall be Sinhala and Tamil. By the 13th Amendment Article 18 was amended by making Tamil also an official language and English the link language. The amendment also stated that Parliament should by law provide for the implementation for the provisions of Chapter IV (related to language rights).

It was followed by the establishment of the Official Languages Commission (Act No. 18 of 1991). According to Article 20 of the Constitution, a member of Parliament or a member of Provincial Council or a local authority is entitled to perform his duties and discharge his functions in Parliament or in such Provincial Council or local authority in either of the National Languages. While Article 22 deals with language of administration, Article 23 speaks of the language of legislation. These provisions warrant a detailed discussion in respect of their scope and application. In the above context, reference will be made to chapter 1 of the Constitution as well.

With the introduction of the 16th Amendment to the Constitution, many people believed that the language issue in this country was over. But, the ground situation proves that everything is not so rosy. Tamil speaking members of Parliament and local authorities continue to complain that nothing has changed as far as the use of Tamil language is concerned. The remedies lie somewhere else. Let us now move on to the third arena of our discussion.

What Others Do is Our Business!

At the international level, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) requires the States in which ethnic, religious or linguistic minorities exist, to refrain from denying the rights of persons belonging to such minorities, in community with other members of their group to use their own language. Under the

Optional Protocol 1 to the ICCPR, an individual can complain to the Human Rights Committee for alleged violations of any of these rights and freedoms guaranteed by the ICCPR. Since Sri Lanka has ratified the Optional Protocol it is possible to make a complaint to the Committee if other requirements are satisfied.

The recently adopted UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) reiterates a State's obligation to protect the existence of minorities and to promote their identity. Article 4 of the Declaration proclaims that States shall take measures to create favourable conditions to enable minorities to develop their language and appropriate measures to make them to learn their mother tongue and to have instruction in their mother tongue. However, these provisions should be considered as supplementary to the already existing human rights instruments promoting international human rights. As such, in the context of language issues the scope of application of these provisions cannot be stretched beyond a certain level.

The Indian, Canadian, Swiss, South African and U.S. Constitutions also contain relevant provisions.

Articles 29 and 30 of the Indian Constitution provide special protection to minorities particularly in the area of education. According to Article 343, Hindi is the Official Language of the Union of India. But the same Article allows English to be used for official purposes for 15 years from the commencement of the Constitution. Even after this period it may be allowed to continue within the same status (Article 343:3). The Official Language Act, 1963 provided for continuous use of English for official purposes indefinitely, notwithstanding the expiration of the period mentioned in Article 345. While the states are free to adopt any language to be used for official purposes (Art. 345) the language of courts (Supreme Court and High Courts) is English (Art. 348).

In Switzerland, which is probably the best governed country in the world, there are three official languages (French, German, and Italian) and four national languages (Romanash added). Article 107 of the Swiss Constitution ensures that all three official language groups are represented in the Swiss Supreme Court. All three official languages are legally and constitutionally equal in all respects. Legislation is considered and enacted in all three languages, and the three resulting texts are considered of equal authenticity. In this country, certain programmes and institutions provide more, proportionally speaking,

to the smaller and culturally weaker language communities than to the larger ones (supplementary federal grants). Another remarkable feature of the Swiss arrangement is the attention paid to appropriate linguistic proportionality in all federal appointments. There is an inherent mistrust of solutions based on the straight majority rule, which promotes pluralism to the maximum.

The South African Constitution of 1996 recognizes 11 languages as official languages and according to Article 6 all official languages have a parity of status. There is a statutory body, which promotes and ensures respect for all languages used by communities in South Africa, including German, Greek, Hindi and Tamil. The same Article provides for regulating and monitoring the use of constitutionally recognized languages by the national and provincial governments. In contrast to the arrangements in the Sri Lankan Constitution, the South African Constitution includes language rights as one of the fundamental rights under the Bill of Rights. Article 174 maintains a racial and gender balance in the appointments to the judiciary. In order to promote and protect the rights of minorities including the linguistic minorities there is a Commission set up under Article 181(1) of the Constitution.

In Canada. Protection of language right is envisaged by the Charter of Rights, 1982 and the Official Languages Act, 1988. Under Article 27 of the Charter, not only the bilingual nature of the country but also its multicultural character has been guaranteed and granted constitution protection. Here, it has been argued that denial of language rights would amount to a denial of the right to life and the right to privacy. (Gall, G.L. 1987).

Conclusion

It is observed that there is an interface between language rights and good governance. It is also to be concluded that multilingualism in a nation is extremely beneficial for that nation's political climate. It also helps to provide a prophylactic against ethnic mobilization around questions of language and the manipulations of these groups. Such a policy of enhancing multilingualism also creates a political atmosphere for greater participation by all citizens in that nation's benefits.

**PARLIAMENT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

**OFFICIAL LANGUAGES COMMISSION
ACT, NO. 18 OF 1991**

[Certified on 27th March, 1991]

AN ACT TO ESTABLISH THE OFFICIAL LANGUAGES COMMISSION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA; AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title and date of operation.

1. This Act may be cited as the Official Languages Commission, Act, No. 18 of 1991 and shall come into operation in respect of all or any of its provisions on such date or dates as the Minister may appoint by Order published in the Gazette.

PART I

ESTABLISHMENT OF THE OFFICIAL LANGUAGES COMMISSION

Establishment of the Official Languages Commission.

2. There shall be established an official Languages Commission (hereinafter referred to as the "Commission") which shall consist of the persons who are for the time being members of the Commission under subsection (1) of section 5.

The Commission to be a body corporate.

3. The Commission shall by the name assigned to it by section 2, be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

Seal of the Commission.

4. The seal of the Commission may be determined and devised by the Commission, and may be altered in such manner as may be determined by the Commission.

Members of the Commission.

5. (1) The Commission shall consist of six members to be appointed by the President, one of whom shall be nominated by the President to be the Chairman of the Commission (hereinafter referred to as the "Chairman").

(2) The Commissioner of the Official Language Department shall be the Secretary to the Commission.

Objects of the Commission.

6. The general objects of the Commission shall be-

- (a) to recommend principles of policy relating to the use of the official languages, and to monitor and supervise compliance with the provisions contained in Chapter IV of the Constitution;
- (b) to take all such actions and measures as are necessary to ensure the use of the languages referred to in Article 18 of the Constitution (hereinafter referred to as "the relevant languages") in accordance with the spirit and intent of Chapter IV of the Constitution;
- (c) to promote the appreciation of the Official Languages and the acceptance, maintenance, and continuance of their status, equality and right to use;

- (d) to conduct investigations, both on its own initiative, and in response to any complaints received, and to take remedial action as provided for, by the provisions of this Act.

Powers of the Commission.

7. The Commission shall have the power to --

- (a) initiate reviews of any regulations, directives, or administrative practices, which affect, or may affect, the status or use of any of the relevant languages;
- (b) issue or commission such studies or policy papers on the status or use of the relevant languages as it may deem necessary or desirable;
- (c) undertake such public educational activities, including, sponsoring or initiating publications or other media presentations, on the status or use of the relevant languages as it may consider desirable;
- (d) acquire, by way of purchase or otherwise, and to hold, take or give on lease or hire, mortgage, pledge, sell or otherwise dispose of, any movable or immovable property; and
- (e) do all such other things as are necessary for, or incidental to, the attainment of the objects of the Commission or necessary for or incidental to, the exercise of any powers of the Commission.

Appointment of Committees.

8. (1) The Commission may from time to time, appoint such Committees as may be necessary to assist the Commission in the performance of its duties consisting of such number of members as may be determined by the Commission, provided that the Chairman of any such Committee shall be a member of the Commission.

(2) The Commission may delegate to a Committee appointed under subsection (1) such of its powers (other than the power conferred on it by this subsection) as it may deem fit, but may notwithstanding such delegation, exercise any such power.

Term of office of the members of the Commission.

9. (1) Every member of the Commission including the Chairman shall unless he vacates office earlier, by death or resignation hold office for a term of three years from the date of his appointment, and shall be eligible for reappointment:

Provided, that a member appointed in place of a member who had vacated office by death or resignation, shall hold office for the unexpired term of office of the member whom he succeeds.

Resignation and temporary absence from Sri Lanka.

10. (1) A member of the Commission may at any time resign from his office by letter under his hand to that effect addressed to the President, and such resignation shall take effect upon it being accepted by the President in writing;

(2) If the Chairman, or any other member of the Commission, is by reason of illness, infirmity or absence from Sri Lanka or other cause is temporarily unable to perform the duties of his office it shall be the duty of such member to inform the President in writing of such inability. The President may thereupon appoint another member to act for such Chairman, or a fit person to act in the place of such other member, as the case may be.

Remuneration.

11. The Chairman and other members of the Commission may be paid such remuneration and allowances as the Minister, in consultation with the Minister in charge of the subject of finance, shall determine.

Meetings.

12. (1) The Chairman, if present shall preside at all meetings of the Commission. In the absence of the Chairman from any such meeting, the members present shall elect one of the members present, to preside at such meeting.

(2) The quorum for a meeting of the Commission shall be four members.

(3) The Commission shall meet as often as necessary, and in any case, at least once in each month, at such time and place as the Commission may determine, and shall, subject to the provisions of this section, regulate the procedure in regard to the meetings of the Commission and the transaction of business at such meetings.

PART II

STAFF OF THE COMMISSION

Chief Executive Officer.

13. (1) The Chairman shall be the Chief executive officer of the Commission.

(2) The Commission may by resolution, delegate to the Chairman any of the powers, conferred, on it by this Act other than the power conferred on it by this subsection, and in the exercise of such powers delegated to him, the Chairman shall be subject to the general or special direction of the Commission.

(3) The Chairman shall, notwithstanding that he is the chief executive officer of the Commission, be deemed not to be a member of the staff of the Commission.

(4) The Chairman may designate a member or any officer of the Commission to be in control of the day-to-day administration of the affairs of the Commission.

Appointment &c. of the staff of the Commission.

14. (1) The Commission may appoint such officers and servants as the Commission may deem necessary for the proper and efficient conduct of its business.

(2) Subject to the other provisions of this Act, the Commission may –

- (a) exercise disciplinary control over or dismiss, any officer or servant of the Commission;
- (b) fix the wages or salaries or other remuneration of such officers and servants in consultation with the Director of Establishments and the Director (Budget) of the General Treasury;
- (c) determine the terms and conditions of service of such officers and servants; and
- (d) establish and regulate a provident fund and any other welfare schemes for the benefit of the officers and servants of the Commission and may make, contributions to any such fund or scheme.

Appointment of public officers to the staff of the Commission.

15. (1) At the request of the Commission, any officer in the public service may, with the consent of that officer and the Secretary to the Ministry by or under which that officer is employed and the Secretary to the Ministry of the Minister in charge of the subject of Public Administration be temporarily appointed to the staff of the Commission for such period as may be determined by the Commission with like consent, or be permanently appointed to such staff.

(2) Where any officer in the public service is temporarily appointed to the staff of the Commission, the provisions of subsection (2) of section 13 of the Transport Board Law, No. 19 of 1978, shall, mutatis mutandis, apply to, and in relation to, such officer.

(3) Where any officer in the public service is permanently appointed to the staff of the Commission, the provisions of subsection (3) of section 13 of the Transport Board Law, No. 19 of 1978, shall, mutatis mutandis, apply to, and in relation to, such officer.

(4) Where the Commission employs any person who has entered into any contract with the Government by which he has agreed to serve the Government for a specified period, any period of service to the Commission by that person shall be regarded as service to the Government for the purpose of discharging his obligations under such contract.

Government to provide adequate funds.

16. The Government shall make available to the Commission, adequate funds for the purpose of enabling the Commission to exercise its powers and discharge its functions under this Act.

Financial year and the audit of accounts.

17. (1) The financial year of the Commission shall be the same as the financial year of the Government.

(2) The Commission shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Commission.

(3) The provisions of Article 154 of the Constitution relating to the audit of the accounts of public corporations shall apply to the audit of the accounts of the Commission.

PART III

INVESTIGATION OF COMPLAINTS BY THE COMMISSION

Investigation of complaints by the Commission.

18. Subject to provisions contained in this Act, the Commission shall investigate every complaint submitted to it, arising from any act done or omitted to be done in the administration of the affairs of any public institution, relating to the status and use of any of the relevant languages and in particular, where such complaint discloses that –

- (a) the status of an official language is not, or was not being recognized; or
- (b) a right to the use of, or a duty to use, any of the relevant languages in the manner set out in Articles 20 to 24 (both inclusive) of the Constitution, is or was not, being recognized or complied with; or
- (c) any provision of any Act of Parliament or any regulation, rule, order, notification or by-law made thereunder, relating to the status or use of any of the relevant languages or any directive given by a public institution or any administrative practice thereof, in compliance with Chapter IV of the Constitution, is not, or was not being, complied with; or
- (d) the objectives and intent of chapter IV of the Constitution, is, or was not being, respected or complied with.

Commission may refuse or cease to investigate.

19. (1) The Commission in the exercise of its discretion, may refuse to investigate or cease to investigate any complaint if it is satisfied that –

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious, or its not made in good faith;

- (c) the subject matter of the complaint does not, for any reason fall within its powers; or
- (d) the initiation of an investigation, or its continuation would for any reason, be unnecessary.

(2) In the event that the Commission decides to refuse to investigate or to cease investigating any complaint, the Commission shall within fourteen days of the making of such decision inform the complainant of the decision and provide a written copy of the reasons therefore.

Procedure to be followed in carrying out investigation.

20. (1) Subject to the provisions of this section, the Commission may determine the procedures to be followed in carrying out any investigation under this Act.

(2) A complaint may be made to the Commission by any person or groups of person, who may be directly affected by the act or omission to which the complaint relates or who may be parties acting bona fide in bringing to the attention of the Commission, an act or omission which in his or their opinion, requires investigation by the Commission.

(3) The complaint shall be treated as a confidential communication and the investigation shall endeavour to protect the privacy of the individuals concerned.

(4) Before investigating a complaint under this Act, the Commission shall notify the head of the public institution to which the complaint relates of its intention to conduct such an investigation and the Commission shall not divulge to any person, the identity of the complainant, unless the Commission has the complainant's prior consent therefor.

(5) The Commission may delegate the conduct of an investigation of an individual complaint, to the Secretary of the Commission.

Powers of the Commission in relation to the conduct of investigations.

21. In relation to the conduct of an investigation or review under this Act, the Commission shall have the power to –

- (a) summon witnesses and compel the production of all documents that it may deem necessary;
- (b) administer oaths, and compel witnesses to give oral or written evidence under oath;
- (c) receive, accept and consider any other form of information or evidence, as the Commission may in its discretion see fit regardless of the evidentiary value of such information or evidence in a court of law;
- (d) conduct such investigations in the premises of any public institution as it may deem fit.

No right to be heard as a matter of right.

22. (1) In the conduct of an investigation or review or study under this Act, the Commission, shall not be required to hold any hearings, and no individual or public institution shall be entitled to be heard as a matter of right.

(2) If, during the course of any investigation or review the Commission finds that sufficient grounds exist to make a report or recommendation which may adversely reflect upon, or adversely affect, any individual or public institution, the Commission shall, before completing the investigation, take all reasonable measures as may be necessary to afford such individual and institution an opportunity to respond effectively to any comments on, and criticisms of such individual or public institution.

Commission to make a report of its investigation.

23. (1) If after carrying out an investigation under this Act, the Commission is of the opinion that –

- (a) the act or omission which was the subject matter of an investigation should be referred to the public institution concerned for consideration and action; or
- (b) any directive of a public institution should be reconsidered or any practice that leads or is likely to lead to a contravention of Chapter IV of the Constitution, should be altered or discontinued; or
- (c) any other action should be taken,

the Commission shall report that opinion and the reasons therefore to the head of such public institution.

(2) If after carrying out an investigation under this Act, the Commission is satisfied that the complaint is not made out it shall report that opinion, and the reasons therefor, to the complainant.

(3) The Commission shall make its report within sixty days of the making of the complaint, and if the investigation cannot be concluded for reasons beyond the control of the Commission, the Commission shall file an interim report within sixty days outlining the reasons for the delay.

(4) Notwithstanding the provisions of subsection (3) the final report shall be available within one hundred and twenty days of the making of the complaint, and the Commission shall make available forthwith, a copy of such report to the complainant.

(5) The Commission may in the report to be filed under subsection (3), make such recommendations as the Commission thinks fit, and direct the head of the public institution concerned, to notify the Commission within a specified time of the action, if any, that the institution purposes to take, to give effect to, those recommendations.

Petition to be made to the Supreme Court in certain circumstances.

24. (1) Where any person has made a complaint to the Commission under this act and the Commission has –

- (a) not informed him of the results of the investigation within one hundred and twenty days of the making of the complaint; or
- (b) informed him of its decision to refuse to investigate, or ceasing to investigate, under subsection (2) of section 19; or
- (c) informed him under subsection (2) of section 23 that the complaint is not made out to the satisfaction of the Commission,

he may apply to the Supreme Court within thirty days of the expiry of the period referred to in paragraph (a) or after the receipt of the communication referred to in paragraphs (b) or (c), as the case may be, for relief or redress under section 27.

(2) Every such application shall be made by petition in writing addressed to the Supreme Court in accordance with such rules as may be in force, praying for relief or redress. Such petition may be proceeded with only with leave to proceed first had and obtained from the supreme Court.

Application to be made to the High Court of the Province in certain circumstances.

25. (1) Where a person has made a complaint to the Commission under this Act and the Commission has in a report made recommendations under subsection (5) of section 23 in relation to such complaint and the head of the public institution concerned has not given effect to such recommendations within a period of ninety days on receipt by him of such report, then such person or the Commissioner of the Official Languages Department, after informing the Attorney-General in writing, may apply within ninety days of the expiry of the period within which the recommendations were required to be given effect to, for a direction under section 27, to the High court established under Article 154P of the Constitution for the Province in which the person making the complaint resides.

(2) Every such application shall be made by petition in writing addressed to such High Court and shall be heard and determined in accordance with the procedure laid down in chapter XXIV of the Civil Procedure Code.

Supreme Court to direct High Court of a Province to transfer any application to it.

26. The Supreme Court on the application of the Attorney-General or the Commission, may, where the public interest so requires, direct any High Court established for a Province to transfer to the Supreme Court, any application which has been made to such High Court under this Act and which is pending before it. The application shall upon such direction, be transferred to the Supreme Court which shall thereupon hear and determine such application.

Court to grant relief, as it considers just and equitable.

27. Where in proceedings instituted –

- (a) In the Supreme Court under section 24 or 26, the Supreme Court determines that a public institution has failed to comply with Chapter IV of the Constitution or the provisions of any law implementing the provisions of Chapter IV of the Constitution, the Supreme Court may grant such relief or make such directions as it considers just and equitable or appropriate in all the circumstances of the case; or
- (b) In the High Court under section 25 and the High Court determines that the head of a public institution has not given effect to the recommendations of the Commission, the High Court shall direct the implementation of the recommendations contained in the report of the Commission.

Public officers required to perform official duties in any relevant language to be guilty of an offence in certain circumstances.

28. (1) where a public officer who is required in the performance of his official duties to transact business relating to such duties, or to receive or make any communication, issue any copy or extract from any register, record, publication or other document, in any particular relevant language, wilfully fails or neglects to transact such business, receive or make such communication, or issue such copy or extracts in such relevant language, shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one thousand rupees or to

imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(2) No prosecution under subsection (1) shall be instituted except with the prior sanction of the Attorney-General.

PART IV

MISCELLANEOUS PROVISIONS

Provisions of this Act not to prejudice a right of action in any Court or forum.

29. (1) Nothing contained in this Act, shall prejudice, or derogate from, any other right of action a person may have, in any court of law or any other forum, in relation to any act or omission in respect which a complaint may be made to the Commission under this Act.

(2) The Commission, with the permission of the court, may appear in any judicial or similar hearing relating to the status or use of any relevant language in any public institution as an independent body, if the Commission considers that such an appearance would serve the public interest.

Commission to have power to undertake investigation on its own initiative.

30. (1) The Commission shall have the power on its own initiative to undertake periodic investigations or reviews to monitor the compliance by public institutions with the provisions of Chapter IV of the Constitution and may further undertake follow up investigations or reviews to monitor the implementation of its recommendations made in relation to such earlier investigation.

(2) The conclusions and recommendations made under the Provisions of Part III of this Act may be included either in the annual reports of the Commission, or in its special reports, or issued in special publications whichever form the Commission considers most appropriate.

Commission to issue policy papers on any matters relating to use of either official languages.

31. Nothing in this Act shall be read or construed as restricting the Commission from preparing, or commissioning or issuing policy papers or studies on any matter relating to the status or use of either of the official languages which it may consider necessary or desirable, and in particular nothing in this Act shall be read or construed as restricting the Commission, where the public interest so requires, from addressing, and making recommendations on, any matter relating to Chapter IV of the Constitution and its application or extension to institutions which do not fall within the definition of public institution.

Commission to submit an Annual Report.

32. The Commission shall, at the end of each financial year submit a report containing, *inter alia*, the recommendations made by such Commission under subsection (5) of Section 23 during that year to the Minister who shall cause such report to be laid before Parliament.

Members, officers and servants of the Commission deemed to be public servants.

33. All members, officers and servants of the Commission shall be deemed to be public servants within the meaning and for the purposes of the Penal code.

Commission deemed to be a Scheduled institution within the meaning of the Bribery Act.

34. The Commission shall be deemed to be a Scheduled institution within the meaning of the Bribery Act, and the provisions of that Act shall be construed accordingly.

Protection of members and officers of the Commission, for action taken under this Act on the direction of the Commission.

35. (1) No suit or prosecution shall lie against the Commission or any member of the Commission or any officer or servant thereof for any act which in good faith is done

by him under this Act or on the direction of the Commission.

(2) Any expense incurred by the Commission in any suit or prosecution brought by, or against, the Commission before any court shall be paid by the Commission, and any costs paid to, or recovered by, the Commission in any such suit or prosecution shall be credited to the Consolidated Fund.

(3) Any expense incurred by any such person as is referred to in subsection (1) in any suit or prosecution brought against him before any court, in respect of any act which is done or purported to be done by him under this Act or on the direction of the Commission, shall, if the court holds that the act was done in good faith, be paid by the Commission, unless such expense is recovered by him in such suit or prosecution.

No writ to issue against person or property of a member.

36. No writ against person or property shall be issued against a member of the Commission in action brought against the Commission.

Offences.

37. Any person who –

- (a) without sufficient reason, publishes any statement or does anything that brings the Commission or any member thereof into disrepute, during the progress or after the conclusion, of an investigation or review under this Act;
- (b) interferes with the process of the Commission;
- (c) resists or obstructs a member, officer, or servant of the Commission in the exercise by such member, officer or servant, of any power conferred on him by this Act;
- (d) in the course of any investigation or review under this Act –

- (i) without cause, which in the opinion of the Commission is reasonable, to appear before the Commission at the place and time mentioned in any summons issued by the Commission;
- (ii) refuses to be sworn, or having been duly sworn, refuses or fails without cause, which in the opinion of the Commission is reasonable, to answer question put to him touching the matters being investigated by the Commission;
- (iii) refuses or fails without cause which in the opinion of the Commission is reasonable, to produce and show to the Commission any document or other thing which is in his possession or power and which is in the opinion of the Commission necessary for arriving at the truth of the matters being investigated by the Commission,

shall be guilty of an offence under this act and shall on conviction, after summary trial before a Magistrate, to a fine not exceeding ten thousand rupees or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(2) In any prosecution for an offence under this Act, a certificate under the hand of the Secretary to the Commission, setting out the facts alleged to constitute such offence shall be received in evidence and deemed to be such certificate without further proof, unless the contrary is proved, and shall be *prima facie* proof of the facts stated therein.

Offences by bodies of persons.

38. In the case of any offence under this Act committed by a body of persons –

- (a) where such body of persons is a body corporate, every director, secretary and officer of that body corporate shall each be deemed to be guilty of that offence.
- (b) where that body of persons is a firm, every partner of that firm shall be deemed to be guilty of that offence:

Provided that no such person shall be deemed to be guilty of an offence under this Act if he proves that the offence was committed without his knowledge or that he exercised all diligence to prevent the Commission of the offence.

Interpretation.

39. In this Act, unless the context otherwise requires –

“local authority” means by Municipal Council, Urban Council, or Pradeshiya Sabha and includes any authority created or established by, or under, any law to exercise, perform and discharge, powers, duties and functions corresponding to, or similar to, the powers, duties and functions exercised, performed or discharged by any such Council or Sabha;

“public institution” means –

- (a) any Ministry and any department under such Ministry;
- (b) any public Corporation, or statutory institution;
- (c) any Provincial Council or local authority; and
- (d) any business undertaking, firm, company or other institution vested in the Government or owned wholly by, or on behalf, of the Government.

Sinhala text to prevail in case of inconsistency.

40. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

**CONSTITUTION OF SRI LANKA PROVISIONS
ON LANGUAGE RIGHTS**

CHAPTER IV

LANGUAGE

Official Language.

18. The Official Language of Sri Lanka shall be Sinhala.

National Language.

19. The National Language of Sri Lanka shall be Sinhala and Tamil.

Use of National Languages in Parliament and local authorities.

20. A Member of Parliament or a member of a local authority shall be entitled to perform his duties and discharge his functions in Parliament or in such local authority in either of the National Languages.

Medium of Instructions.

21. (1) A person shall be entitled to be educated through the medium of either of the National Languages;

Provided that the provisions of this paragraph shall not apply to an institution of higher education where the medium of instruction is a language other than a National Language.

(2) Where one National Language is a medium of instruction for or in any course, department or faculty of any University directly or indirectly financed by the State, the other National Language shall also be made a medium of instructions for or in such course, department or faculty for students who prior to their admission to such University, were educated through the medium of such other National Language;

Provided that compliance with the preceding provisions of this paragraph shall not be obligatory if such other National Language is the medium of instruction for or in any like course, department or faculty either at any other campus or branch of such University or of any other like University.

(3) In this Article "University" includes any institution of higher education.

Language of administration.

22. (1) The Official Language shall be the language of administration throughout Sri Lanka:

Provided that the Tamil Language shall also be used as the language of administration for the maintenance of public records and the transaction of all business by public institutions in the Northern and Eastern Provinces.

(2) A person, other than an official acting in his official capacity, shall be entitled—

- (a) to receive communications from, and to communicate and transact business with, any official in his official capacity, in either of the National Languages;
- (b) if the law recognizes his right to inspect or to obtain copies of or extracts from any official register, record, publication or other document, to obtain a copy of, or an extract from such register, record, publication or other document or a translation thereof, as the case may be, in either of the National Languages; and
- (c) where a document is executed by any official for the purpose of being issued to him, to obtain such document or a translation thereof, in either of the National Languages.

(3) A local authority in the Northern or Eastern Province which conducts its business in either of the National Languages shall be entitled to receive communications

from and to communicate and transact business with, any official in his official capacity, in such, National Language.

(4) All Orders, Proclamations, Rules, By-laws, Regulations and Notifications made or issued under any written law, the Gazette, and all other official documents including circulars and forms issued or used by any public institution or local authority, shall be published in both National Languages.

(5) A person shall be entitled to be examined through the medium of either of the National Languages at any examination for the admission of persons to the Public Service, Judicial Service, Local Government Service, a public corporation or statutory institutions, subject to the condition that he may be required to acquire a sufficient knowledge of the Official Language within a reasonable time after admission to any such service, public corporation or statutory institution where such knowledge is reasonably necessary for the discharge of his duties;

Provided that a person may be required to have a sufficient knowledge of the Official Language as a condition for admission to any such Service, public corporation or statutory institution where no function of the office or employment for which he is recruited can be discharged otherwise than with a sufficient knowledge of the Official Language.

(6) In this Article –

“Official” means the President, any Minister, Deputy Minister, or any officer of a public institution or local authority;

“public institution” means a department or institution of the Government, a public corporation or a statutory institution.

Language of legislation.

23. (1) All laws and subordinate legislation shall be enacted or; made, and published, in both National Languages together with a translation in the English Language. In the event of any inconsistency between any two texts, the text in the Official Language shall prevail.

(2) all laws and subordinate legislation in force immediately prior to the commencement of the Constitution, shall be published in the Gazette in both National Languages as expeditiously as possible.

(3) The law published in Sinhala under the provisions of paragraph (2) of this Article, shall, as from the date of such publication, be deemed to be the law and supersede the corresponding law in English.

Language of the courts.

24. (1) The Official Language shall be the language of the courts throughout Sri Lanka and accordingly their records and proceedings shall be in the Official Language.

Provided that the language of the courts exercising original jurisdiction in the Northern and Eastern Provinces shall also be Tamil and their records and proceedings shall be in the Tamil Language. In the event of an appeal from any such court, records in both National Languages shall be prepared for the use of the court hearing such appeal:

Provided further that –

- (a) the Minister in charge of the subject of Justice may with the concurrence of the Cabinet of Ministers, direct that the record of any such court shall also be maintained and proceedings conducted in the Official Language; and
- (b) the record of any particular proceeding in such court shall also be maintained in the Official Language if so required by the Judge of such court, or by any party or applicant or any person legally entitled to represent such party or applicant in such proceeding where such judge, party, applicant or person is not conversant with the Tamil Language.

(2) Any party or applicant or any person legally entitled to represent such party or applicant may initiate proceedings, and submit to court pleadings and other documents, and participate in the proceedings in court, in either of the National Languages.

(3) Any judge, juror, party or applicant or any person legally entitled to represent such party or applicant, who is not conversant with the Language used in a court, shall be

entitled to interpretation and to translation into the appropriate National Language, provided by the State, to enable him to understand and participate in the proceedings before such court, and shall also be entitled to obtain in either of the National Languages, any such part of the record or a translation thereof, as the case may be, as he may be entitled to obtain according to law.

(4) The Minister in charge of the subject of Justice may, with the concurrence of the Cabinet of Ministers, issue directions permitting the use of a language other than a National Language in or in relation to the records and proceedings in any court for all purposes or for such purposes as may be specified therein. Every judge, shall be bound to implement such directions.

(5) In this Article –

“court” means any court or tribunal created and established for the administration of justice including the adjudication and settlement of industrial and other disputes, or any other tribunal or institution exercising judicial or quasi-judicial functions or any tribunal or institution created and established for the conciliation and settlement of disputes;

“judge” includes the President, Chairman, presiding officer and member of any court; and

“record” includes pleadings, judgments, orders and other judicial and ministerial acts.

Provision for adequate facilities for use of languages provided for in this Chapter.

25. The State shall provide adequate facilities for the use of the languages provided for in this Chapter.

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