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Language rights of Indigenous Tribal Minorities (ITM) and their protection under the ambit of human rights law*

Importância dos direitos linguísticos das minorias tribais nativas e sua proteção no âmbito do Direito dos Direitos Humanos

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Abstract

This paper argues that lack of due recognition to the role that language plays in accessing health care services and in crucial health care communications manifests not just in negligent legislative action but also as systemic discriminatory practices that denies the Indigenous Tribal Minorities[1] communities (ITM) their human right to life. Therefore, this paper begins by examining whether Language Rights (LR) are integral to Human Rights under various International Treaties & Conventions and the extent to which they are substantive in protecting the Linguistic Rights of Indigenous Tribal Minorities (ITM[2]) communities in general but with specific reference to case studies and case-laws from India. Given the articulation of language being 'basic' of basic human rights when it comes to health care and accessing health care[3], this paper examines whether non-recognition of LR of Indigenous Tribal Minorities, results in injustice and violation of their human rights. To address the questions raised, this study reviews relevant literature and then examines doctrinally several key judgments that have engaged with questions pertaining to LR as such, its connection with human rights and finally with specific reference to health spaces. This study concludes that language rights are first and foremost the rights of individuals; states do have a constitutionally built-in obligation to protect the linguistic rights of ITM as a basic human right to protect and promote justice, human dignity and ones right to life with respect. Following our findings, the paper studies various

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[1] ITM stands for Indigenous, Tribal, Minority and Minoritized communities. In this study, we adopt the understanding of ITM as conceptualized by Tove Skutnabb-Kangas, Robert Phillipson and Robert Dunbar in their writings but specifically in the Nunavut Report (2019). The authors argue that naming, recognizing and perpetuating a community as ITM in itself involves violence and is a manifestation of power-wielding institutional structures of the supra-national organizations and nations. In this paper, we are working with the tribes of Odisha, Telangan and Chhattisgarh, India. The term Minority is vaguely defined in law and is inclusive of ethnic, religious, immigrant and linguistic minorities. In LL research, minority is understood as a minoritized language, non-official language or as revitalised language. In this study minority languages will refer to the languages recognized as tribal languages or non-schedule 8 languages or as languages spoken by ITM communities.

[2] MOHANTY, A. K. *The multilingual reality*: living with languages. UK: Multilingual Matters, 2018.

[3] MANN, J. *et al* (1994). Health and Human Rights. Health and Human Rights review, 1, p. 1-25.

best practices followed in Linguistic Rights for Health spaces from which jurisdictions with ITM communities (irrespective of their numbers) can possibly adopt in order to ensure their right to health care.

Keywords: Indigenous Tribal Minorities (ITM); language rights; indigenous rights; access to health; human rights; linguistic discrimination.

Resumo

Este artigo começa com o argumento de que os direitos linguísticos são considerados como parte dos Direitos Humanos sob vários Tratados e Convenções Internacionais. Em caso afirmativo, até que ponto o reconhecimento é substantivo na proteção dos direitos linguísticos, especialmente com referência às comunidades de minorias tribais indígenas (ITM) em todo o mundo e com estudos de caso envolvendo a Índia. Além disso, esta pesquisa examina se a proteção do idioma ou dos direitos linguísticos abrange a importância do idioma no acesso à saúde, considerado um dos direitos humanos mais fundamentais, e como, devido ao não reconhecimento dos direitos linguísticos das minorias tribais indígenas, há é um grave erro judiciário e violação de seus direitos humanos. Este artigo também envolverá uma análise legal crítica de vários julgamentos sob várias jurisdições e como a questão dos direitos linguísticos foi considerada e até que ponto foi considerada instrumental na ligação com os direitos humanos, como o acesso a serviços de saúde. Este artigo, tomando como exemplo a não acessibilidade ao acesso à saúde devido à falta de reconhecimento linguístico, tenta desvendar como a linguagem desempenha um papel crucial, especialmente nas comunidades de minorias linguísticas, especialmente a de Tribal Indígena e resulta em discriminação devido à comunicação lacuna que foi criada devido à abordagem legislativa negligente. Por fim, o artigo estuda várias boas práticas seguidas por alguns dos países com as quais outros países podem aprender e implementar em suas respectivas legislações para proteger os direitos humanos das comunidades indígenas minoritárias tribais.

Palavras chave: Minorias tribais nativas, Direitos Linguísticos, direitos dos povos nativos, Acesso à saúde, Direitos Humanos, discriminação linguística.

1 Introduction

A single all-inclusive understanding for 'language' is elusive. Yet within the domain of language Policy and Planning (LPP) language is recognized a marker of identity, as a tool for emancipation/oppression/essentialist interests, as a right, as a problem, as a resources, as a neural faculty and as a potential trigger for conflict as well as peace. It is this enigmatic multi-dimensional nature of human capability called language that has been the subject of modalities of dominance through legislative actions vis-a-vis language policies (of nations and nation-states). With respect to demographics with ITM populations' language then becomes the 'good' for special accommodations and affirmative action's citing either the argument of access and inclusion or preservation politics or linguistic activism but often merging more than one. For example , India has ample instances of all three and hence language, as stated above is both a site for accommodation (in schools for ITM children in Chattisgarh/Odisha) and affirmative action (Tulu language reservations in higher education)[4].

Within the niche but crucial area of public policy on language, there is a consensus that a State can claim to be secular, but no State can claim to be language-less simply because of the need to communicate and the need for the communication to percolate up-down the channels of institutional mechanisms. Therefore, the choice of language for the purpose then becomes a natural advantage for its speakers and a matter of 'learning' for the non-speakers. It is the matter of language-related access for the second group of citizens who then are categorized as ITM communities that is the focus of this paper. Kymlika [5] points out that in demographic locations where ITM are in considerable numbers either a *territorial* or a *personality* principle is said to be operational, yet, not necessarily substantively operational for an advantage. For instance, it is possible that an ITM child will access primary education in her language in school yet, in the hospital, she may not have a translator/interpreter for language concordant communications with the medical practitioner. So, would this ins-

[4] CHIMIRALA, U. M. When teachers take notice of the schoolscape: a Q method study of teacher perception of schoolscape of Indigenous Tribal Minority (ITM) Schools of Chhattisgarh, India. *Journal of Multilingualism and Multilingual Development*, 2022.

[5] KYMLICKA, Will; PATTEN, Alan. Language rights and political theory. *Law and Politics Book Review*, v. 14, n. 8, p. 630–633, 2004.

tance then count as valuing the LR of the ITM person (as well as the child's right to language concordant communications)? Language then can be a source of power, social mobility, and opportunities [6] and equally the reason as to why the ITM communities are constantly denied their right of equality in every sphere of social and political life simply since their language rights are not recognized. Williams and Snipper[7] emphasize that "in some quarters, language is a form of power. The linguistic situation of a country's society usually reflects its power structure, as language is an effective instrument of societal control". According to Makoni and Trudell 'it is undeniably true that communities of speakers of smaller languages tend also to be the less politically empowered communities. May[8] contends that

> Language loss is not only, perhaps not even primarily, a linguistic issue – it has much more to do with power, prejudice, (unequal) competition and, in many cases, overt discrimination and subordination… Language death seldom occurs in communities of wealth and privilege, but rather to the dispossessed and disempowered.

Language Rights are often described as the right to speak one's own language in legal, administrative, and judicial spaces, the right to receive education in one's own language, and the right for media to be broadcast in one's own language - at par with the dominant language-speakers. Language policy in ITM dominant geographies often posits the need for ITM peoples to know the 'dominant' language at the cost of their own identity, capabilities, and control of their livelihood conditions[9]. The argument that Mohanty makes is that the language policy then creates a double divide between the 'natural' opportunity to access and the 'struggled' to access the very same state service. Linguistic rights protect the individual and collective right to choose one's language or languages for communication both within the private and the public spheres. Specifically, for ITM Communities the opportunity to use one's own language can be of crucial importance since it protects individual and collective identity and culture as well as participation in public life and which essentially engulfs the crucial development of human capabilities not just for democratic participation but for the fulfillment and attainment of well-being and freedoms (Nussbaum)[10]. It is with this conviction that the State must take legislative, judicial, and law enforcement steps to prevent egregious abuses of the linguistic rights of ITMs to protect, advance, and actualize their basic human rights of which we deem health is primary. Thus, with this proposition, that non-recognition of language rights for ITM communities impacts access to state services especially in health spaces and that such contexts operationalize systemic discriminatory standards towards their right to life, this paper is divided into the following subsections. The first section attempts to understand linguistic inequality as a systemic-institutional and agential mechanism rather than a case of 'natural death' of languages and hence presents the geopolitical context in which this paper is set in. The second section explains the role of language in accessing health space to underscore the place of language Rights as an integral part of human rights. The third section discusses how 'languages' are addressed in human rights discourses within the frame of International Law. The fourth segment examines the state obligations to language rights where we discuss the case of India. Finally, we examine judicial engagement with the question of access to health space with specific reference to ITM peoples and how language is implicated in these cases.

1.1 Understanding Linguistic Inequality: the case of India

Linguistic inequality is understood as a specific form of language contact which is a consequence of the unequal social valuation of languages, varieties, or dialects (by region, age, class and so on)[11]. For better understanding of this concept, reliance can be placed on Jonathan Pool's paper "Thinking about Linguistic Discrimination[12]". According to Pool, at least five language-associated inequalities appear in political discourse. They are:

[6] VAN DIJIK T. A. Social cognition and discourse. *Handbook of language and social psychology*, n. 163, 1990. p.183.

[7] WILLIAMS, James D.; SNIPPER, Grace Capizzi. *Literacy and bilingualism*. [S.l]: Longman, 1990.

[8] MAY, Stephen. Uncommon languages: The challenges and possibilities of minority language rights. *Journal of Multilingual and Multicultural Development*, v. 21, n. 5, p. 366-385, 2000.

[9] MOHANTY, A. K. *The multilingual reality*: living with languages. UK: Multilingual Matters, 2018.

[10] NUSSBAUM, M.; SEN, A. (ed.). *The quality of life*. Oxford: Clarendon Press, 1993.

[11] BONNIN, Juan Eduardo. New dimensions of linguistic inequality: an overview. *Language & Linguistic Compass*, v. 7, 2013.

[12] POOL, Jonathan. Thinking about linguistic discrimination. *Language Problems and Language Planning*, v. 11, p. 03–21, 1987.

1. unequal attributes of different languages,
2. unequal privileges granted to the users of different languages,
3. unequal linguistic skills of different persons,
4. unequal statuses conferred on different persons by linguistic rules and customs, and
5. Inequalities covered with language but not caused or motivated by language.

When a linguistic inequality is alleged, however, it is often unclear which kind it is and how it is defined. Discourses about linguistic inequality are discursively constructed in talk, but again it is not clear which kind of inequality a given action responds to. In complex situations there are many plausible ways to measure linguistic inequality, and one can modify or even reverse conclusions by changing measurement methods. Even when inequality derives from a single linguistic resource, a change in its allocation can be measured as both an increase and a decrease in linguistic inequality. However, when we define inequality in legal terms basically it is absence of rule of law or presence of arbitrariness and discrimination.

In case of India, tribal peoples are construed as minority in most Indian States, except in some States of the North East, where absolute majorities or relative majorities of the population belong to the tribal population. It has to be mentioned that many of the 623 Scheduled Tribes have shifted their traditional native language by adopting one of the major languages spoken in their area, district or State of residence. It is estimated by that about 50% of people in the ethnic groups do not claim an ethnic mother tongue, but normally have the dominant culture and language of the area or the language of another dominant group as their mother tongue[13]. Several small and relatively lesser-known tribal languages spoken in remote corners of India have shown a decline, as per the findings of the 2011 Language Census released by the government recently. These include the

> Sema language of the Naga tribe of the same name, which showed a decadal growth increase (between 2001-2011) of -89.57, the Monpa language of Arunachal Pradesh (-75.48), Nagaland's Phom (-55.58), Odisha's Jatapu (-49.08), Himachal Pradesh's Lahauli (-48.89) and Bhumij of Eastern India (-42.02).[14]

We can see the status of declination of various ITM languages as per the census in the following table:

LANGUAGE	STATUS	DECADAL PERCENTAGE INCREASE (2001-2011)	SPOKEN IN
Santali	Scheduled	13.81	Eastern India
Bodo	Scheduled	9.81	Assam
Sema	Non-Scheduled	-89.57	Nagaland
Monpa	Non-Scheduled	-75.48	Arunachal Pradesh
Phom	Non-Scheduled	-55.58	Nagaland
Jatapu	Non-Scheduled	-49.08	Odisha
Lahauli	Non-Scheduled	-48.89	Himachal Pradesh
Bhumij	Non-Scheduled	-42.02	Eastern India
Korwa	Non-Scheduled	-17.73	Chhattisgarh
Rabha	Non-Scheduled	-15.04	Assam
Maram	Non-Scheduled	-13.07	Manipur
Sangtam	Non-Scheduled	-9.82	Nagaland
Yimchungre	Non-Scheduled	-9.64	Nagaland
Lepcha	Non-Scheduled	-6.51	Sikkim
Nocte	Non-Scheduled	-6.43	North-eastern India
Tangsa	Non-Scheduled	-3.65	Arunachal Pradesh
Konyak	Non-Scheduled	-1.46	Nagaland
Ao	Non-Scheduled	-0.53	Nagaland

Further if we go by the definition given by the World Bank that terms, 'indigenous peoples', 'indigenous ethnic minorities', 'tribal groups', and 'scheduled tribes', describe social groups with a social and cultural

[13] PATTANAYAK, D. P. *Multilingualism and mother tongue education*. Oxford and Delhi: Oxford, University Press, 1981. p. 83

[14] DOWN TO EARTH. *Language census*: many tribal tongues now have fewer takers. Available at: https://www.downtoearth.org.in/news/environment/language-census-many-tribal-tongues-now-have-fewer-takers-61044 Accessed on: 8 out. 2022.

identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process[15]. Similarly if we refer to the district of Dantewada in the state of Chhattisgarh which has got comparatively a higher percentage of ITM community in terms of use of their language, as per 2011 census 64.16% of the population in the district spoke Gondi, 14.88% Halbi, 3.81% Duruwa, indicates that the majority of the population speaks all these Tribal languages but neither the same is recognized under the 8th schedule Tribal-language[16]. Further, the demographic majority is construed as an ideological minority by a demographic minority that acts like an ideological majority. The Constitution of India includes no definition of linguistic minorities. The Supreme Court of India has defined minority languages as separate spoken languages, even if the language does not have a separate script or has no script at all. Thus, although the Constitution does not mention the 'non-scheduled languages' and thus does not explicitly recognize them as minority languages; it does contain a general form of safeguard of the smaller languages to protect them from discrimination.

Within the Indian constitution, there are several provisions which even though do not explicitly prohibit discrimination based on language, they do ensure various safeguards and protection against linguistic discrimination in its various forms. Like, Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. It embodies the idea of equality expressed in the preamble. Similarly, Article 15(1) prohibits discrimination on grounds of religion, race, sex, caste, or place of birth. Further, Article 19(1)(a) of the Indian Constitution guarantees to all citizens the *right to free speech and expression*. Across scholarship and comparative law, a fair amount of consensus exists with respect to one proposition: the freedom of language is central to the freedom of speech. In other words, the right to free speech is meaningless without a concomitant right to speak in one's own language, for speech is impossible without language. Further if we refer to Article 21 of the Constitution of India guarantees a fundamental right to life & personal liberty. The expression 'life' in this article means a life with human dignity & not mere survival or animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic condition in workplace & leisure. So, as we have discussed earlier that how non-recognition of language rights directly leads to discrimination and creates a barrier in accessing the various public spaces like health care center. Which, therefore, also results in violation of Article 21 of the Indian constitution i. e. fundamental right to life and liberty. In Article 29 the Constitution provides explicit guarantees for the protection of minorities. But the same is yet to be used for providing linguistic protection to the ITM language.[17] Lastly, in the chapter of the Constitution relating to Directive Principles of State Policy, Article 46 mandates the State to "promote with special care the educational and economic interests of the weaker sections of the people [...] and shall protect them from social injustice and all forms of exploitation".

As, it can be observed from the above that the demographic distribution of ITM people along with the constitutional provisions expects individual states to create ITM specific accommodation wrt language. Yet Koos Malan[18] points that despite the substantive and statutory provisions in the language policy the use of *discretionary yet aspirational clauses such as* 'as far as practicable', 'as feasible as possible' or 'as much as possible' render any substantive benefit for the ITM community a myth since

> any provision for ITM languages in the living space is an affirmative action left to the state's discretion as mentioned in the *discretionary clause* requiring The President of India to issue such directions to any

[15] WORLD BANK. *The World Bank Operational Manual Operational Directive (OD) 4.20:* indigenous peoples. Available at: https://www.ifc.org/wps/wcm/connect/4da94701-07cc-4df3-9798-947704a738d4/OD420_IndigenousPeoples.pdf?MOD=AJPERES&CVID=jqewORB. Accessed on: 8 out. 2022.

[16] INDIA. *Census by Mother Tongue*. 2011. Available at: http://www.censusindia.gov.in/2011census/C-16.html. Accessed on: 8 out. 2022.

[17] Article 29(1) provides that, "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them." INDIA. [Constituicion (1950)]. *Constitución de India*. Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

[18] MALAN, K. Observations on the use of official languages for the recording of court proceedings: aantekeninge. *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg*, n. 1, p. 141-155, 2009.

> State *as he considers necessary or proper* for securing the provision of such facilities.[19]

If we refer to the above discussion where we cited Jonathan Pool and moved on to discuss the Indian constitutional provisions for languages, the notion of linguistic inequalities look different with reference to the ITM communities. And the same when applied to health care facilities then it becomes more evident, since there are no doctors who are trained with such language, no translators, not even the sign boards in the health care centers exist in any ITM language, rather it seems by imposition of bilingual approach by using only Hindi and English in public sphere, forcing the ITM communities to inequalities and thereby falling prey to unjust policy and endangering their basic right to health.

1.2 Conceptions of linguistic disadvantage

Speakers of different languages can be advantaged i.e., naturally privileged or disadvantaged depending on how their language repertoire 'fits' with their linguistic environment. On this ground, Andrew Shorten in his article "Four Conceptions of Linguistic Disadvantage"[20] points to how people could be disadvantaged:

1. To treat a person's language repertoire as a resource, whose value depends on the language skills of others
2. To know how satisfied people are with their linguistic environments whether they can avail the necessary services which demand linguistic proficiency
3. To equate linguistic disadvantage with diminished access to resources, and recommends comparing different language repertoires according to the share of external resources their holders have access to
4. To what a language repertoire equips a person *to be and do* within a given linguistic environment and equates linguistic disadvantage with capability deprivation.

Using Andrew Shorten's notion of '*Verbal independence*' & '*Q-Value*', all four versions can be seen to work in tandem In the case of ITM people in India. *Verbal independence* is basically defined as 'the functioning of being able to communicate, including being able to speak and understand the local language'. Not being verbally independent is frequently a source of disadvantage and may undermine a person's ability to live in a fully human way, it is unnecessary to treat it as a separate functioning. The case of instating (and then later dismantling) 'translators' in several key spaces within the hospital for language concordant conversations with medical professionals and caregivers[21]. Though the arrangement recognizes a major gap in the policy-wheel for ITM people (speakers of Gondi language, of Adilabad, Telangana, India), it was a policy initiative to plug the case of low *Q-value* in the language repertoire of the parties involved. The concept of *Q-value* has been provided by De Swaan[22], is understood as the ability to communicate in a language. The basis of De Swaan's model relies on economic concepts, as languages are perceived as hyper collective goods. Choosing to learn a language is an investment, the more users, the greater the investment. De Swaan estimates the worth or value of a language in terms of its Q-value. This gives an indication of its prevalence (the number of people within a language community who speak it) and its centrality (the number of people knowing another language who can use it to communicate). So, further referring to the Adilabad case, ITM people's disadvantage could be addressed in two ways: one by altering the ITM people's linguistic repertoires by way of bilingual educational opportunities and thus increasing the communicative value in her environment or by simply the public provision of translation services in the State health services. Yet when the need to formulate either of the above possibilities, we find that the discourses that use 'language' and ideologies that are couched in 'language' create conditions that discursively construct versions that favor negative differential treat-

[19] Official Languages Act INDIA, Art 350a,1963/1967. See also; CHIMIRALA, U. M. When teachers take notice of the schoolscape: a Q method study of teacher perception of schoolscape of Indigenous Tribal Minority (ITM) Schools of Chhattisgarh, India. *Journal of Multilingualism and Multilingual Development*, 2022. Towards a convivial tool for narrative assessment: Adapting MAIN to Gondi (Dantewada, India), Halbi and Hindi for Gondi- and Halbi-Hindi speaking bilinguals. ZAS Papers in Linguistics 64, 77-99.

[20] SHORTEN, A. Four conceptions of linguistic disadvantage. *Journal of Multilingual and Multicultural Development,* v. 38, n. 7, p. 607-621, 2017.

[21] THE BETTER INDIA. This Dynamic IAS Officer Has a Village Named in Her Honour. Here's Why. Available at: https://www.thebetterindia.com/228620/ias-officer-hero-gondi-divya-devarajan-adilabad-village-named-after-collector-inspiring-vid01/ Accessed on: 9 out. 2022.

[22] SWAAN, Abram de. *Words of the world*: the global language system. Cambridge: Polity Press and Blackwell, 2001.

ments which then construe discriminatory practices as legitimate and favorable to all while necessarily pushing the ITM peoples to verbal and participatory dependency that fringes on their human rights in addition to their privacy.

1.3 Language discrimination and its forms

1.3.1 Discursive discrimination

According to Kristina Boreus,[23] "discrimination is a violation of the ideal of a fair and equal society, a minimum requirement of which is that groups of people are not directly treated as inferior to the rest of the population". Further, Kristina Boreus describes '*Discursive discrimination'* which is vital from language perspective, which she states that appears when such treatment takes linguistic expressions (and not, for instance, the expression of physical violence). A group 'membership' might be alleged, the discriminating part might find similarities between people that these persons do not themselves consider as similarities, or not as similarities important enough to make them belong to the same group. The main types of discursive discrimination:

1. exclusion,
2. negative other-presentation,
3. discriminatory objectification,
4. arguing for unfavorable treatment of group members

So, if we go by the definition of *discursive discrimination* and the criteria provided under it completely fulfills the status of ITM speakers in India, due to their language they are excluded from availing public services like in health care spaces, further due to imposition of bilingualism in most of the health care spaces it results in an unfavorable treatment of ITM group members. In order to have in depth understanding of Linguistic Discrimination.

1.3.2 Systemic Discrimination

Reference can be made to Pavi Ganther's article on "*The Doctrine of Systemic Discrimination* and its Usability in the Field of Education"[24], Ganther states that the Discrimination can be defined as the sum of denial of these alternatives. According to the Ganther, 4Rs:

1. Rights
2. Recognition
3. Resources
4. Representation

Above four R's are essential in order to help professionals in minority education and their communities move from the margins towards the center, and to become subjects of their own lives. Päivi Günther concludes that discrimination can be structural, without any conscious intent on the part of the perpetrator. When discrimination has been built into a system, those who manage the system i.e. the 'perpetrators' need not themselves have discriminatory e.g., linguists ideologies or intentions, the system does the discrimination for them. Ganther distinguish between *systemic and structural discrimination* on criteria as intention or public authorities' involvement in discrimination. If these Rs' are not recognized and enforced then the education system itself continues to promote the segregation of ethnic minorities to the vicious circle of double divide that reinforces the self-perpetuating cycle of advantage, accelerated gains and privilege for the dominant while the opposite becomes a structural manifestation of discriminatory practices for the ITM people. If we apply the above theoretical concept to the linguistic discrimination faced by ITM, we can state that this form of Linguistic Discrimination has become structural in nature. Considering the fact that, the State is focusing mainly on promoting and using the majority or popular language in an universal manner, without accommodating the linguistic recognition of minority tribal communities, thereby endangering their right to access to health & welfare.

[23] BORÉUS, Kristina. Discursive discrimination a typology. *European Journal of Social Theory*, v. 9, n. 3, p. 405–424, 2006.

[24] GYNTER, Paivi. On the doctrine of systemic discrimination and its usability in the field of education. *International Journal on Minority and Group Rights*, v. 10, n. 1, p. 45-54, 2003.

1.3.3 Structural discrimination

Further, to understand how the linguistic inequality results into discrimination. We have to refer to the doctrine of *linguistic discrimination* as discussed by Van Dyke, which provides two major tenets, and these also constitute its two major weaknesses. According to Van Dyke first this doctrine presumes that discretion is the key to justice. Second, it presumes that inefficiency is a legitimate reason to deny all person's equal treatment by a state. Further Douglas[25] Rae provides the following criteria to categorize linguistic discrimination:

1. *Identical treatment of languages* would require that whatever the authorities do to one language they do to the others. For example, if English, Twi, and Ukrainian are treated identically, any traffic sign posted in English must be posted in Twi and Ukrainian
2. *Equal treatment of languages* would require that each language be treated as well as each other relevant language. Any inferior treatment of a language must be offset with some other kind of superior treatment of that language.
3. *Equal treatment of speakers* is a yet more comprehensive standard of linguistic non-discrimination.

2 Understanding the role of language in accessing health space

While much of the health care debate is being guided by how the arguments for or against reform are "framed," policymakers are paying scant attention to a more basic linguistic issue: many persons are deprived of adequate care because they are unable to communicate with their providers. Language barriers are very real and affect how care is provided and received. Communicating across language barriers is a challenge for clinicians and health systems as well as patients and when it comes to the speakers of ITM communities, then it becomes more critical. The greater the differences, the more likely the frames of reference drawn on will be different. Therein lies the potential for misunderstanding. Thus, in this section we will be discussing various types of linguistic barriers & its impact. As well as how there is a need for a change of approach from the side of Government in addressing this issue & how it can be addressed from a linguistic as well as legal perspective.

2.1 Language barriers in health space

Improving the health of the world's 370 million indigenous people is a crucial global health priority. Indigenous groups worldwide tend to have worse health outcomes than corresponding non-indigenous populations[26]. These disparities stem from structural forces of colonization, poverty, and marginalization, as well as from barriers to accessing health care. In this section, we discuss language as an example of a barrier to health care and advocate for greater consideration of indigenous languages when it comes to access to health. While healthcare systems often struggle to deliver quality care across a language barrier, in fact the fundamentals of providing linguistic access are simple. The first step is to identify who needs the service and in which language. Languages of lesser diffusion or languages spoken by relatively small populations in a given area pose a unique challenge to healthcare systems around the world. Language is considered as the key to communication, in case of India where we have a very rich and varied linguistic diversity, sometimes it is acting as a bane to linguistic minorities and acts as a barrier for them in order to access different facilities and benefits. There is compelling evidence that language barriers have an adverse effect on initial access to health services. These barriers are not limited to encounters with physician and hospital care. Patients face significant barriers to health promotion/prevention programs; there is also evidence that they face significant barriers to first contact with a variety of providers. In spite of a growing recognition of the importance of doctor-patient communication, the issue of language barriers to healthcare has received very little attention in India. The Indian population speaks over 22 major languages with English used as the lingua franca for biomedicine. Addressing language barriers to healthcare in India requires a stronger political commitment to providing non-discriminatory health

[25] RAE, Douglas. *Equalities*. Cambridge: Harvard University Press, 1981.

[26] UNITED NATIONS. *State of the world's indigenous peoples*: indigenous peoples' access to health services. New York: United Nations Department of Economic and Social Affairs, 2015.

services, especially to vulnerable groups such as ITM population.

As Kymlicka and Patten have pointed out, "not even liberal states have been neutral towards language"[27]. While Kymlicka argues that a liberal state cannot be neutral, Patten suggests that this is an achievable goal. The history of nation-building has traditionally involved the promotion of the official language and the repression of others, even in liberal states.[28] States have explicitly or implicitly assumed that the linguistic minorities should accommodate to the majority language. In general, one of the main factors influencing language policy decisions and their linguistic and social outcomes is that these decisions are often complicated by local political concerns and often overlooked when it comes to ITM languages if we consider our Indian context. Language acclimatizes the individual and the community to the surrounding environment by equipping them with the necessary knowledge, which has been accumulating and evolving together for centuries. As stated by Pattnayak[29], in India, linguistic diversity is taken as 'a fact of life' and, by extension, is considered not only unproblematic but as integral to the rich texture of living. Which further he has epitomized in the following remark:

> In the developed world […] two languages are considered a nuisance, three languages uneconomic and many languages absurd. In multilingual countries, many languages are facts of life; any restriction in the choice of language is a nuisance; and one language is not only uneconomic, but also absurd.

2.2 Impact of linguistic barriers on right to access health spaces

Conversation is central to nearly every human endeavor, yet few people have a full appreciation of the complex intricacies associated with linguistic behavior, or potential sources of miscommunication when people from different linguistic backgrounds speak with one another. Some of the most basic and central tenets of linguistic science are taken for granted by nearly every normal speaker because their use of language in day-to-day life is ubiquitous. For example, every normal child learns their first language without the aid of formal instruction, and they have no memory of the enormity of this magnificent accomplishment. This is a universal fact pertaining to all normally developing children anywhere on earth, regardless of the society into which they are born.[30]

2.3 Linguistic marginalization and health disparities

As in the above section of this paper we have discussed about how language inequality and disadvantage leads to linguistic discrimination. We can say that this linguistic discrimination results into a *snow-ball effect* which can be equated with the types of discursive discrimination as provided by Kristina Boureus. Basically, the *snowball effect* is a function of complexity. It happens when an issue of minor significance builds up and grows larger. As the minor issue continues to grow, it becomes more and more serious until it snowballs out of control forming a vicious circle of chaos and confusion created by the parties who encouraged it in the first place. In systems language, the vicious circle created by the snowball effect is a reinforcing loop that tightly wraps around itself and negatively drives behavior in one direction, usually a bad one. So, with this another important snowfall effect caused due to linguistic discrimination is Linguistic marginalization, (also referred to as *linguistic minoritization*), is commonly recognized as a major barrier to access to health services and health information, yet its contribution to health disparities remains largely under-theorized and under-researched. In clinical practice, the 'LEP' (Limited English Proficiency) marker is frequently tied to global assumptions about proficiency and deficit views of language that position minority language speakers as deficient. For example, during patient intake processes, the default measure of English proficiency is spoken English proficiency, and literacy level is regarded as literacy in English[31].

[27] KYMLICKA, Will; PATTEN, Alan. Language rights and political theory. *Law and Politics Book Review*, v. 14, n. 8, p. 630–633, 2004.

[28] ARCHIBUGI, Daniele. The language of democracy: vernacular or esperanto?: a comparison between the multiculturalist and cosmopolitan perspectives. *Political Studies,* v. 53, n. 3, p. 537-555, out. 2005. p. 4.

[29] PATTANAYAK, Debi Prasanna. Multilingualism in India. *Language in Society*, v. 24, n. 4, p. 608-611, 1995.

[30] MEUTER, Renata F. I. Overcoming language barriers in healthcare: a protocol for investigating safe and effective communication when patients or clinicians use a second language. *BMC Health Serv Res.*, v. 15, n. 371, 2015.

[31] SHOWSTACK, Rachel *et al*. Language as a social determinant of health: an applied linguistics perspective on health equity. *American Association for Applied Linguistics*, 2019. Available at: https://www.aaal.org/news/language-as-a-social-determinant-of-health-an-applied-

Interdisciplinary research collaborations between applied linguists and public health researchers demonstrate the ways that a patient's language interacts with her health and health care, as well as other aspects of her life and background, to lead to particular health outcomes. Wide-ranging studies on language concordance, or the provider's use of the patient's preferred language, have uncovered that a shared language shapes health care encounters on multiple levels. It has been shown that language concordant providers ask more questions and are less concerned about medical malpractice complaints than providers who work through an interpreter. Patients with language concordant providers display greater trust, show more agreement and are more likely to follow doctor recommendations, although research has shown that this depends on clinician proficiency. As per a research, Patients with type 2 diabetes, moreover, have been found to have better health outcomes when their provider speaks their language.[32]

Martínez argues for a '*syndemic sensibility*' when considering the relationship between language and healthcare. This sensibility accounts for the complex interactions between proficiency in the dominant language and other social factors embedded within multiple health conditions; he points out that language researchers, who understand communication as a process of inter subjectivity, or shared experience in interaction that leads to understanding, are needed to better understand this relationship. To determine how implementation practices function in specific communities, there is a need to include community voices in the conversation. Language is as basic as food & shelter but the same has often been ignored and the plight of ITM because of linguistic barriers is the major reason for their under development. We try to impose a foreign language in the name of integration, thereby endangering their basic identity and their fundamental rights. We can frame it as '*Linguistic Colonisation of Tribals*', as it has been researched and been proved whenever it comes to protection of an endangered entity, it may be an animal, plant, human or here in our study ITM, then the best way to protect is by providing them with a familiar scenario without any external imposition or influence. But the action of the state & policies especially in terms of Language is rather highly arbitrary and acting as an eraser instead of being a protector or retainer.

3 Understanding 'language rights' as an integral part of 'human rights'

Language rights have a more disputed character than what some seem to suggest, as there is no universal understanding of language rights. They are not essentially given and do not exist prior to positive enactment. Further the misrepresentation of the actual status and significance of language rights in the context of human rights law, international law and constitutional law. The claim to linguistic human rights sharply contrasts with the demands of positive law, both international and domestic.[33] The linguistic human rights approach oscillates between, on the one hand, considering linguistic human rights as international law norms and, on the other, considering them as abstract ideals or claims; between, the one hand, sweeping affirmations of massive violation and deprivation of linguistic human rights and even linguistic genocide and, the other, the quest for what should be regarded as inalienable, fundamental linguistic human rights.

Language rights are local, historically rooted claims, not fixed universals. In fact, this does not differ very much from the actual status of many human rights: for instance, property rights are the object of extensive restriction and regulation everywhere. International law does not offer credible and working models or a set of unambiguous principles and rules to accommodate linguistic diversity. Human rights with a linguistic dimension apply to the individual, as the language is merely the medium through which individuals enjoy their rights. On the other hand, linguistic rights as such imply a notion of *collectivity* since they are exercised with other members of a minority; in this sense, they should be regarded as group rights, that is rights which apply to a community.

In terms of combining language rights and human rights, the United Nations Special Rapporteur on minority issues defined linguistic human rights as:

> Obligations on state authorities to either use certain languages in some contexts, not interfere with the

linguistics-perspective-on-health-equity. Accessed on: 10 out. 2022.

[32] MARTÍNEZ, G. *Engaging language professionals for patient-centered outcomes research for latino communities*. Ohio and Kansas: Patient-Centered Outcomes Research Institute, 2018.

[33] ARZOZ, Xabier. The nature of language rights. *Jemie*, n. 6, jul. 2007.

> linguistic choices and expressions of private parties and may extend to an obligation to recognize or support the use of languages of minorities or indigenous peoples. Human rights involving language are a combination of legal requirements based on human rights treaties and guidelines to state authorities on how to address languages or minority issues, and potential impacts associated with linguistic diversity within a state. Language rights are to be found in various human rights and freedoms provisions, such as the prohibition of discrimination, freedom of expression, the right to private life, the right to education, and the right of linguistic minorities to use their own language with others in their group.[34]

The fundamental link between individuals, their language and their identity can be explained by the fact that each language has its own distinct way of conceptualizing the world. To clarify the linkage between language and identity, it is necessary to mention the hypothesis of linguistic relativity by Edward Sapir and Benjamin Lee Whorf. The main idea in this hypothesis is that every person views the world in her/his own native language. This hypothesis suggests that there exists a relationship between language and thought. Moreover, it suggests that the language "determines and resolves the thought and perception of its speakers"[35]. Consequently, the languages, which are entirely different in their vocabulary and structure, "convey different cultural significances and meanings." Therefore, it may be concluded that "the way people view the world is determined wholly or partly by the structure of their native language" and that a language is a manifestation of the minority's "spirit or mind". In some cases, speakers of minority languages have a certain degree of knowledge of the official language.[36] For them the use of the minority language is therefore not a practical necessity. It is more a voluntary exercise which can be explained by the satisfaction a person feels in speaking his/her language and the desire to make room for it in dealings with public bodies. For example, in the case of *State v. Tinno37* provides a textbook example of how linguistics has been used to interpret treaties.

The Idaho Supreme Court in *Tinno* was considering the meaning of Article IV of the Treaty of Fort Bridger with the Shoshone Bannock Tribes. That treaty included the promise that the Tribes "shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts." The question posed was whether 'to hunt' includes fishing. The court turned to the "expert testimony of Dr. Sven S. Liljeblad, a professor of anthropology and linguistics at Idaho State University, relating to the term 'to hunt' as the term was generically used in the languages of the signatory Indians." The expert testified that neither the Shoshone Tribe nor the Bannock Tribe separated hunting and fishing in their language; instead, the Shoshone verb, tygi, and the Bannock verb, *hoawai*, both refer to the process of obtaining wild food, whether fish, game, or plants. This shows how important language is for minority tribes and their most of the human rights are linked to it.

3.1 Analyzing 'language' in human rights frameworks

The evolution of international jurisprudence also allows us to make the connection between human rights and language rights. The recognition and status accorded to language rights is a political matter. Language rights are primarily constructed at the national level. The slippage between the lofty ideals of language rights and the concrete, judicially developed meanings of these rights confuse the real impact of our international language protection regime. In practice, case law has consistently favored linguistic assimilation rather than the robust protection of linguistic diversity that is espoused. Instead of strong language guarantees, only transitional accommodations are offered in the public realm for those individuals or groups yet unable to speak the majority language. For, example under institutional bilingualism, public services are offered in two different languages and public services can be conducted in either language whereas the minority languages are hardly accommodated, even if they are accommodated like in the form of translation services, they don't cover all the basic public services and are very limited in their scope. Thus, jurisprudence and state policies treat indi-

[34] SKUTNABB-KANGAS, T. Linguistic human rights. *In:* TIERSMA, Peter M.; SOLAN, Lawrence M. (ed.). *The oxford handbook of language and law*. Oxford: Oxford University Press, 2012.

[35] WHORF, Benjamin Lee. *Language, thought, and reality*: selected writings of Benjamin Lee Whorf. Cambridge: MIT Press, 2012.

[36] ULASIUK, Iryna; LAURENTIU, Hadirca. OSCE High Commissioner on national minorities on the use of languages in relations with the public administration, and on the supervision and enforcement of linguistic requirements. *International Journal on Minority and Group Rights*, v. 23, n. 2, p. 237-249, 2016.

[37] State v. Tinno, 497 P.2d 1386 (Idaho 1972).

genous language not as a valuable cultural asset worthy of perpetual legal protection, but as a temporary obstacle or disadvantage that individuals must overcome to participate in society.[38] The legal decisions take a narrowly utilitarian approach to language. Even, our international linguistic rights regime leans in the direction of assimilation on fair terms, not accommodation, and indigenous languages are structured as a disability, not an asset for cultural and social diversity.

3.2 Language in United Nations Conventions

Although a great number of international human rights instruments have come to light since the Universal Declaration of Human Rights (UDHR) in 1948, the nature and extent of language rights granted by them all proves to be very limited. International human rights instruments provide a basic regime of linguistic tolerance, that is, protection against discrimination and various forms of assimilation (compulsory, degrading, etc.). This protection is not granted through specific language rights, but through general human rights such as a right to anti-discrimination measures, freedom of expression, of assembly and association and rights to respect for private and family life.[39] These protections are granted to any individual, whether she is a member of indigenous or not. The Human Rights Committee (HRC) is the treaty body assigned with the supervision of the state-parties' compliance with the International Covenant on Civil and Political Rights (CCPR). In a case dealing with the right to commercial advertising in English language in Francophone Quebec, the HRC declared: *"*A state may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one 's choice.*"*

For the HRC, English speaking citizens of Canada could not be considered linguistic indigenous as they constitute a majority in the state. However, this does not mean that their linguistic behavior is not protected by general human rights. The legal situation absolutely changes when we move from the area of tolerance to the area of use and promotion by public Shelties. Here, legal obligations imposed on states are scarce and lack legal bite. As a matter of fact, there is no cogent obligation to positively support indigenous language maintenance or revitalization. The key and isolated provision in this regard is Article 27 of CCPR, which states

> those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Those few words constitute the only specific provision of binding international law about the protection of speakers of indigenous languages.[40]

It is obvious that this clause leaves many issues unresolved. For instance, there is some controversy on the extent of the rights granted by Article 27 CCPR: "Whether they are exclusively of a negative character (protection against interference)?" or include a state obligation to take positive measures on behalf of the members of indigenous groups. It clearly shows that states are not obliged to give effect to any specific activity or measure. Article 27 of the Covenant on Civil and Political Rights is a weak article. Its lack of specificity means that, even though it may impose positive obligations on states to support indigenous or minority identity, the article leaves a wide discretion to states on the modalities of its applications.[41] Article 27 protects individual rather than collective rights, even though these rights are rights held by individuals by virtue of their minority group memberships. So, at this point, the pressing question is how membership is interpreted, but article 27 does not appear to offer any guidance. According to Thornberry, "there is no indication as to how 'membership' of a group is to be defined." Additionally, as Thio points out, "the question whether an individual belongs to a group also raises the problem of the identifier, whether this is the individual, the group in question or the state".[42]

[38] PAZ, Moria. The failed promise of language rights: a critique of the international language rights regime. *Harv. Int'l LJ*, v. 54, n. 157, 2013.

[39] PATTEN, Alan; KYMLICKA, Will. Introduction: language rights and political theory: context, issues, and approaches. *In:* PATTEN, Alan; KYMLICKA, Will (ed.). *Language rights and political theory*. Oxford: Oxford University Press, 2003. p. 1-51.

[40] UNITED NATIONS. *Language rights of linguistic minorities*: a practical guide for implementation. 2017. Available at: https://www.ohchr.org/en/special-procedures/sr-minority-issues/language-rights-linguistic-minorities Accessed on: 20 mar. 2022.

[41] DUNBAR, Robert. Minority language rights in international law. *International & Comparative Law Quarterly*, v. 50, n. 1, p. 90-120, 2001.

[42] THORNBERRY, Patrick. *The UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities*: background, analysis and observations. London: Minority Rights Group, 1993.

In many human rights instruments language is mentioned as one of the characteristics based on which discrimination is forbidden, together with race, color, sex, religion, political or other opinion, national or social origin, property, birth, disability, age or sexual orientation. For instance, Articles 2 and 7 of the Universal Declaration of Human Rights, Article 1.3 of the Charter of the United Nations, Article 2.2 of the International Covenants on Economic, Social and Cultural Rights, Articles 2.1 and 26 of the International Covenant on Civil and Political Rights, Article 2 of the Convention on the Rights of the Child, Article 1.1 of Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms,[43] Analogous commitments appear in non-binding documents, such as paragraphs 5.9 and 25.4 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. The right to freedom of expression includes the right to freely choose the language of speech. It is the right to use one 's own language both in speech and writing, and to be "free of interference in one's linguistic affairs and identity." The freedom of language is "one of the most basic and immutable human rights that everyone should be able to have".

Sometimes, international organizations contribute to creating a false image of an extended level of protection of language rights. For instance, if one visits a United Nations Educational, Scientific and Cultural Organization (UNESCO) webpage and consults the international legal instruments dealing with linguistic rights listed there, one gets the impression that "linguistic human rights 'are a consolidated category with a sound basis in contemporary international law". Forty-four documents relevant for linguistic rights are gathered there, including UN and UNESCO Declarations and Conventions, UN and UNESCO Recommendations, European Declarations and Conventions, Inter-American Declarations and Conventions and African Conventions. But a review of the content of these instruments reveals that the set of linguistic human rights is less abundant, and their scope of protection less extensive, than what appears at its surface.

3.3 Language rights as measures of linguistic tolerance: the principle of non-discrimination

Language rights as expressions of a regime of linguistic tolerance are most closely associated with instruments such as the ICCPR and the ECHR. The most basic means of protection for speakers of minority languages is the principle of non-discrimination. This principle is expressed in Article 2 of the Universal Declaration[44]Essentially the same guarantee is provided in Article 14 of the ECHR and in Article 2(1) of the ICCPR. Article 26 of the ICCPR contains a wider guarantee of non-discrimination; unlike Article 14 of the ECHR, it applies not only in respect of the rights set out in the instrument itself but for all purposes and has therefore been described as a "stand-alone" guarantee of non--discrimination. The principle of non-discrimination has been reiterated and reinforced in the various instruments relating to minorities which have been developed in the 1990s. Article 4(1) of the Framework Convention is typical.[45]

While the term "national minority" is not defined in the Framework Convention, it should certainly include linguistic minorities. Similar provisions are contained in Articles 31 and 32 (especially 32.6) of the Copenhagen Declaration, Articles 3(1) and 4(1) of the UNGA Minorities Declaration, and in Article 2(1) and 2(2) of an Additional Protocol to the ECHR on the Rights of Minorities (the Minorities Protocol).[46] While the principle of non-discrimination seeks to ensure that speakers of minority languages are not subject to discrimination at the hands of the State, it does not ensure that such persons obtain governmental services through the medium of their language-measures which provide 'difference aware' equality. Furthermore, the principle of non-discrimination may give rise to difficult questions where

[43] FERRARO, Giulia. *Linguistic rights of minorities*: a comparative analysis of the existing instruments for the protection of the linguistic rights of minorities at international and european levels. 2018. Thesis (Doctorate in Modern Languages for Communication and International Cooperation) – Università degli Studi di Padova, Padova, 2018.

[44] Article 2, which read as "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". UNITED NATIONS. *Universal Declaration of Human Rights*. Available at: https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf Accessed on: 20 mar. 2022.

[45] EUROPEAN UNION. *Framework Convention for the Protection of National Minorities*. 1995. Available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdac. Accessed on: 20 mar. 2022.

[46] DUNBAR, Robert. Minority language rights in international law. *International & Comparative Law Quarterly*, v. 50, n. 1, p. 90-120, 2001.

such measures of 'difference aware' equality are offered to one group only.

There is a strong argument in favor of legislative intervention where speakers of minority languages suffer discrimination based on their language, or, where their language is closely associated with ethnicity or national origins, discrimination based on ethnicity or national origins. For example, in the United Kingdom there is evidence of prejudice towards Gaelic and the other autochthonous languages. In the case of *Mandla v. Dowell Lee*,[47] the House of Lords set out several factors to be considered in determining whether an ethnic group within the meaning of section 3(1) of the RRA exists, one of the `relevant characteristics' (though not an `essential' characteristic) of which is a common language. While speakers of minority languages in the United Kingdom will generally be members of ethnic groups within the meaning of the RRA, this is not necessarily the case. Further, the decision in *Gwynedd County Council v. Jones*,[48] speakers of autochthonous minority languages cannot assume that they will benefit from the RRA's protection. The appellants were refused employment because they did not speak Welsh, and hence claimed to have suffered discrimination. However, the EAT ruled against them on the basis that,

> although the Welsh may have constituted a racial group based on nationality, English- and Welsh--speaking Welsh people were not separate ethnic groups, and therefore not separate racial groups, because differences in language alone were not sufficient to create separate ethnic groups within the meaning of the RRA.

The above discussion evidence that despite United Kingdom being a party to ECHR and RRA, an explicit reference to language-based discrimination is not made but indirectly refers to it and is decided on case-to-case basis.

3.4 Ensuring freedom of expression to linguistic minorities

For the individual to be an individual, to be a unique human being with dignity and with rights and freedoms, the right to freedom of expression is an essential right. Our identities, in significant part, arise from having the right to express our ideas and opinions, and to be able to do so in the language of our choice and by means of the form of expression which we choose - to be able to communicate this information to others by the medium of our choice. When the United Nations developed the Universal Declaration of Human Rights in 1948, it stressed the importance of freedom of expression. In the preamble to the Declaration, we find enumerated four rights of particular importance: "freedom of speech and belief and freedom from fear and want". The right to freedom of speech was elaborated in Article 19 of the Universal Declaration of Human Rights. This in turn led to Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights. The same that is true for any individual is true for minority groups: to have an identity means to be able to express that identity through the medium of one's choice. However, the international instruments weigh heavily in favor of individual rights over group rights. They do nevertheless recognize language rights and the right is not discriminated against.

Freedom of expression extends to the right of persons belonging to minorities (as to all other persons) to use their own language in *private* activities, including in the private display of signs, posters etcetera, of a commercial nature. This does not, however, exclude the possibility for the State to require some use of an official language in private commercial enterprises where a legitimate public interest may be invoked such as the furtherance of workplace health and safety or consumer protection or in dealings with the public authorities in accounting, taxation, or other processes. However, such a requirement may only ever stipulate the additional use of an official language: it may never expressly or in effect prohibit the use of another language(s). Thus requirements must be both pursuant to a legitimate public interest and be proportionate to the specific aim sought such that, for example, a requirement would be in violation of international standards should it require all employees (without distinction, or without specific justification) of a private enterprise to speak an official language.

For example, the Constitution of India does not specifically define the term linguistic minority. However, Articles 29 and 30 of the Constitution treat linguistic minorities to be collectivities of individuals residing in the territory of India or any part thereof having a distinct language or script of their own and under ar-

[47] Mandla v Dowell-Lee [1982] UKHL 7

[48] Gwynedd County Council v Jones [1986] ICR 833

ticle 19 provides the fundamental right of freedom of speech & expression. Giving the most progressive interpretation of Article 27 of the ICCPR, the UN Human Rights Committee (HRC) observed thus:

> The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, is distinct from other language rights protected under the Covenant [ICCPR]. In particular, it should be distinguished from the general right to freedom of expression protected under article 19. The latter right is available to all persons, irrespective of whether they belong to minorities or not. Further, the right protected under article 27 should be distinguished from the particular right which article 14.3 (f) of the Covenant confers on accused persons to interpretation where they cannot understand or speak the language used in the courts.[49]

Also, the HRC made it clear that,

> Although article 27 is expressed in negative terms, that article, nevertheless, does recognize the existence of a 'right' and requires that it shall not be denied. Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.

Accordingly, the Government of India and also the Governments of States/UTs have an obligation to adopt all necessary measures not only for the promotion and protection of minority languages but also against all possible governmental and nongovernmental violations of minority language right which also includes freedom of speech & expression which is being violated cause of ignorance of ITM languages in public sphere where they are restricted to express their grievances like in Health Space their health related aspects .

3.5 Language as right to development and self determination

When governments make policies and laws or undertake projects that could affect indigenous peoples (such as the use of sacred sites for road construction or national park delineation, or the promulgation of a new constitution or state-language policy), they have an obligation to obtain free, prior, and informed consent (FPIC) from indigenous peoples, through their chosen representatives. More than just an obligation to simply provide information or consult, this right entails an honest, open negotiation with indigenous peoples in good faith, without pressure (free), before the activity begins or the policy is implemented (prior), with all up-to-date information available (informed). 'Consent' means that all parties involved in this negotiation process will be equal and that the indigenous groups' traditional decision-making processes must be allowed to be used.[50] The requirement that consent from concerned indigenous peoples is obtained prior to the use of ancestral land and natural resources is provided for by ILO Convention 169[51]and in UNDRIP[52]. FPIC also applies to use and copyright of traditional knowledge and skills (International IDEA 2014: 48), and to the use of traditional indigenous medicines and knowledge. FPIC also means that indigenous peoples should be involved in the design, development, implementation, monitoring and evaluation of all programmes, policies and legislation that affect them, importantly; this extends to constitutions and any constitutional reform.[53]

3.6 Language Rights and Right to self-determination

A fundamental principle of international law and the central right in UNDRIP, self-determination can be defined as:

[49] UNITED NATIONS. *General Comment No. 23, UN Doc. A/2929*. July 1, 1955.

[50] Working Group on Indigenous Populations 2005, para. 56

[51] INTERNATIONAL LABOR ORGANISATION. ILO Convention 169 ILO 1989, Article 6 which read as:

In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

[52] UNDRIP (United Nations 2007: articles 10, 11, 19, 28, 29, 32)

[53] AUSTRALIAN HUMAN RIGHTS COMMISSION. *The Community Guide to the UN Declaration on the Right of Indigenous Peoples*. Sydney: Australian Human Rights Commission, 2010.

1. The act or power of making one's own decisions and determining one's own political status; or
2. The state of being free from the control or power of another.

The right to self-determination is a fundamental tenet of international law, influencing relationships between states and amongst the subunits and peoples who make up those states' The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, in their common article 1 (para. 1), provide that: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[54]"

The International Court of Justice, "has defined self--determination as the need to pay regard to the freely expressed will of peoples."[55] The internationally recognized right to self-determination has two dimensions:

1. Internal
2. External

Internal refers to the exercise of self-determination within an existing state; external refers to the right of peoples to define their place within the international community. The UN Committee on the Elimination of Racial Discrimination's General Recommendation No. 21, on the right to self-determination, is critical in defining these two dimensions. It defines internal self--determination as the rights: "of all peoples to pursue freely their economic, social and cultural development without outside interference; linked with the right of every citizen to take part in the conduct of public affairs at any level".

In 2007, a specific right to internal self-determination for indigenous peoples was codified in article 3 of the UN Declaration on the Rights of Indigenous Peoples. 'Practices for implementing this right are still evolving but have included autonomy arrangements, the recognition of collective rights to language and culture, and the right to free prior informed consent and consultation'. Exercise of the indigenous right to self-determination is constrained by the national constitution and usually limited insofar as the exercise should not contravene the rights of other communities. Self-determination is a collective right for indigenous peoples that protect their autonomy to govern their affairs and to participate meaningfully in the decisions affecting them. An explicit link between indigenous peoples' right to self-determination and autonomy is made in UNDRIP Article 4: "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions".

This does not equate to a right to independent statehood but, at a minimum, represents a right to devolved autonomy and self-government arrangements, as well as the entitlement to meaningful representation in decisions and processes that affect indigenous peoples and their rights. Governments, in recognizing this right, must recognize the collective and group identities of indigenous peoples (nations, language groups, clans, family alliances, etc.) and enter into relationships with them in good faith and on the basis of equality, respect and dignity. Exercising the right to self-determination means, for example, local self-government through community-controlled councils, having ownership over traditional lands and territories and choosing how to use and develop them, control of the provision of basic services such as health services, and the legal recognition of group identities and rights including through constitutional recognition. Importantly, these rights mean little unless indigenous peoples are guaranteed resources and funding from governments to effectively exercise self-government.[56] Hence, based on this important international law requirement even special provisions for linguistic access can be formulated in order to meet the need of self-determination of ITMs and language being one of the most important constituents of the same.

[54] UNITED NATIONS. These provisions affirm that: 'Indigenous peoples have the right to self-determination' and '. . . in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs' (United Nations 2007: articles 3 and 4).

[55] Western Sahara, Advisory Opinion 1975 I.C.J. 12 (Oct. 16)

[56] United Nations General Assembly 2011: Para. 78

4 Operationalizing the UN Framework for Language Rights

The purpose of linguistic rights is to enable speakers of the minorities to use their language rather than the language of the majority. The fact that minorities' rights form an integral part of the international protection of human rights[57] and the fact that linguistic rights are part of minorities' rights raise the question about whether linguistic rights can be considered as an integral part of human rights. The recognition of linguistic rights as human rights is based on some of the international legal obligations found in international and human rights treaties, such as the right to anti-discrimination, the right to freedom of expression and the right to a fair trial.[58]The right to anti-discrimination raises when speakers of a given language are discriminated because of their language preferences. The prohibition of discrimination prevents states from "unreasonably disadvantaging or excluding individuals through language preferences in the provision of any of their activities, services, support or privileges."

The 'Universal Declaration of Linguistic Rights[59]' is a document framed in line with the 'Universal Declaration of Human rights' and signed by UNESCO, the PEN clubs, and several non-governmental organizations in 1996 particularly to protect linguistic rights of the indigenous people to save endangered languages. Universal declaration of Linguistic Rights, which came into being as a consequence of imposition of the alien tongues on the natives by the colonial powers, to check linguistic discriminations, to save and develop endangered languages from the hegemony of standard languages, to remove linguistic inequalities, to preserve linguistic and cultural diversity, to allow indigenous people to use their mother tongues in education, offices, media and other domains which have been monopolized by the users of the dominant languages, recommends the linguistic rights to be regarded among the fundamental rights of all the individuals and communities.

In many states, there are significant numbers of people who have no or only a limited command of the language or languages of wider communication of the state. This typically excludes them from full participation in economic, political, and social life. Thus, state language policy can have an impact on equality of opportunity and access to services. However, international law is not particularly clear about states' obligations in this regard. There is a significant difference between protection of minority languages and promotion of minority languages, the former being a negative restriction and the latter being a positive obligation. There are hardly any legally binding obligations for promotion of languages, but its importance is undoubted. For example, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in its preamble, states:

> [T]he constant promotion and realization of the rights of persons belonging to […] linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States.

While language promotion puts a strain on the infrastructure to set up a separate system of translation,

[57] SAUSSURE, Ferdinand de. *Course in general linguistics*. New York: Philosophical Library, 1959. p. 116.

[58] UNITED NATIONS. *Language rights of linguistic minorities*: a practical guide for implementation. 2017. Available at: https://www.ohchr.org/en/special-procedures/sr-minority-issues/language-rights-linguistic-minorities Accessed on: 20 mar. 2022. p. 6.

[59] UDLR comprises of 52 articles. It takes into cognizance violation of linguistic human rights in different situations and areas. Some of the important provisions of UDLR are as follows:

All language communities have equal rights.

Everyone has the right to learn any language.

Everyone has the right to acquire more than one language.

Everyone has the right to be recognized as a member of a language community.

Everyone has the right to use one's language both in private and in public.

Everyone has the right to maintain and develop one's own culture.

All the language communities have the right for their own language and culture to be taught.

Everyone has the right to use one's language in the personal and family sphere.

All language communities have the right to codify, standardize, preserve, develop and promote their linguistic system, without induced or forced interference.

All language communities are entitled to the official use of their language within their territory.

All language communities have the right to obtain in their own language all the official records and documents.

All language communities have the right to receive education through their mother tongues.

All language communities have the right to preserve their linguistic and cultural heritage.

All language communities have the right to use their language in all types of socio-economic activities within the territory.

All language communities have the right to use, maintain and foster their language in all forms of cultural expression.

All language communities have the right to obtain documents – forms, cheques, contracts, receipts etc. in their own language.

lack of infrastructure has seldom been a justification at all for protection and promotion of human rights. Linguistic inclusivity enables outreach to a large number of people who are comfortable reading in their own language. Article 1 of the Universal Declaration of Human Rights famously states, "All human beings are born free and equal in dignity and rights". The Oslo Recommendations Regarding the Linguistic Rights of National Minorities interprets this as including linguistic rights through the following passage:

> [E]quality in dignity and rights presupposes respect for the individual's identity as a human being. Hence, respect for a person's dignity is intimately connected with respect for the person's identity and consequently for the person's language.

An example is *Diergaardt v. Namibia*[60]. Under the constitution, English was the only official language. Staff members in local public offices were instructed by the government not to communicate with the public in any language other than English, notwithstanding that public servants could speak the minority language in question a form of Afrikaans and that at least some members of the community allegedly could not speak English. The United Nations Human Rights Committee (UNHRC) found this to be, "a violation of Article 26 of the ICCPR. As the grounds for this conclusion were not spelled out, its basis is not clear." This shows that the denial of minority-language public services to members of a linguistic minority who cannot speak the language of the state constitutes a violation of the right to the equal protection of the law. Similarly, in the case of *Cyprus v. Turkey*[61] the Court found that, "the discontinuance of Greek-medium education and the denial of minority language education could now arguably constitute a violation of Article 2 of Protocol One in those circumstances as it restricts access and equality".

In continuation of the above discussion, the next section will examine how through judicial intervention the state obligations under national and international legal instruments to ensure linguistic justice has been granted and how the same can be adopted for ITM people by linking language within the sphere of human rights.

5 Judicial engagement with question of access to health space for ITM community

In this section the concept of right to access to health care and how health qualifies to be a fundamental right, through various international legal instruments and judicial pronouncements will be discussed. The approach taken by various international jurisdictions in defining access to health care as a fundamental right and how the state is under an obligation to ensure the same will be studied in synchrony with the states language policy and provisions for language rights for the ITM community. In addition, judicial engagement with questions of health access in a global and an Indian jurisdiction is attempted. The objective in this section is to attempt linking the status of right to access to health and health care under Indian legal context specifically for the ITM communities and how the same is denied to the ITM communities due to language barriers. Essentially the two-prong attempt in the section is to highlight the missing link of language as an intrinsic part of the right to access health that we have discussed in the last section and then to articulate how it can be recognized and implemented as a legal obligation by the state through Judicial Engagement. Thus, to discuss these propositions this section is divided into the following sub-parts for more critical understanding of the issue in hand:

1. Judicial engagement with Access to Health Space (significant case laws)

2. Judicial engagement with the question of Access to Health Space: Indian context

5.1 Judicial engagement with Access to Health Space (significant case laws)

In this part, a qualitative comparative analysis of judicial approach taken in various jurisdictions has been analyzed about:

1. Judicial engagement with Linguistic Discrimination
2. Right to equal access to health care
3. The right to equitable access to health care
4. The right to access to health care on a non-discriminatory basis

[60] Diergaardt v. Namibia Judgment of 23 July 1968, Series A, no. 6

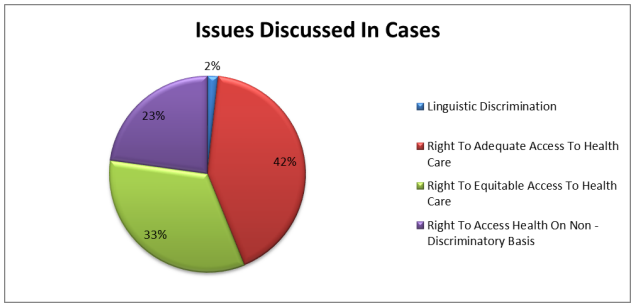
[61] Cyprus v. Turkey Judgment of 10 May 2001, application no. 25781/94.

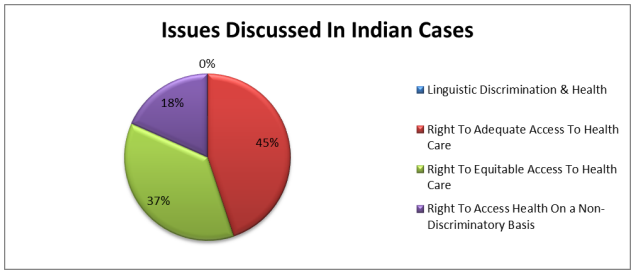
In identifying the relevant case laws, we adopted the following procedures. "Pearl Searching" method has been applied for identifying the cases from relevant literatures i.e., UN Documents, International Organizations & Country Specific Reports relating to "Health Rights" & "Language Rights". Further Cases have been divided based on various jurisdictions to have a representative analysis. It is to be noted that no direct case with respect to health space access and language was found during the identification process, but majority of the cases covered here are exclusive to indigenous tribal communities including in some cases with respect to ITM communities. Aim of analysis of the cases is to identify how the various jurisdiction have addressed concerns with access to health rights based on various parameters; further what relevant legislative regulations have been referred by them along with that what has been the impact of the judicial decisions on policy of Government i.e., whether the respective Governments have adopted the necessary changes as pointed out by the courts? This analysis will be helpful in identifying aspects when comparing the stand of India with respect to access to health space especially by ITM and the same can work as a model for positive policy approach by the Government in formulating policies for ITM communities to accommodate their linguistic needs in ensuring complete access to health space. A brief overview of the cases analyzed is given below in the table.

Table 1 - Brief Overview of Cases Analysed

Sl.No	Jurisdiction	Total Number of cases	Linguistic Discrimination	Right To Adequate Access To Health Care	Right To Equitable Access To Health Care	Right To Access Health Care On Non-Discriminatory Basis
1.	European Court of Human Rights	7	1	5	2	2
2.	European Committee of Social Rights	2	0	2	1	1
3.	Inter-American Commission of Human Rights (IACHR)	1	0	1	1	1
4.	Argentina	4	0	4	2	3
5.	Canada	3	1	1	2	2
6.	Bolivia	1	1	1	0	0
7.	Colombia	1	1	1	1	1
8.	Costa Rica	1	0	0	1	1
9.	UNHRC	1	0	0	1	1
10.	India	22	0	22	18	9
11.	Ireland	1	0	1	1	0
12.	Egypt	1	0	1	1	1
13.	Chile	1	0	1	1	0
14.	Italy	1	0	1	1	1
15	Hungary	1	0	1	0	1
16.	Ukraine	1	0	1	1	0
17.	Brazil	2	0	1	1	0
18.	Peru	1	0	1	1	0
19.	Mexico	1	0	1	1	1
20.	Uganda	2	0	2	1	1
TOTAL		**55**	**2**	**48**	**38**	**26**

Fig 1 - Judicial Engagement with Respect to the issue of Discrimination, Access To Health Space & Equality





The international understanding of discrimination maps closely with the domestic, including concepts of direct and indirect discrimination as well as affirmative action.[62] International human rights law strives for equality broadly, but antidiscrimination law plays out differently depending on the jurisdiction and the court. Indirect discrimination happens when there is a policy that applies in the same way for everybody but disadvantages a group of people who share a protected characteristic, and you are disadvantaged as part of this group. If this happens, the person or organization applying the policy must show that there is a good reason for it. A 'policy' can include a practice, a rule or an arrangement. It makes no difference whether anyone intended the policy to disadvantage you or not.

To prove that indirect discrimination is happening or has happened:

1. There must be a policy which an organization is applying equally to everyone (or to everyone in a group that includes you)
2. The policy must disadvantage people with your protected characteristic when compared with people without it
3. You must be able to show that it has disadvantaged you personally or that it will disadvantage you
4. The organization cannot show that there is a good reason for applying the policy despite the level of disadvantage to people with your protected characteristic

As, our core issue i.e. denial of access to health care facilities due to language barrier some -what falls under the scenario of indirect discrimination due to bilingual state policy. Moreover, the most vital aspect is the protected characteristics of the ITM community. Thus, by adapting a bilingual policy which is acting as a disadvantage for the ITM community. It is important to see how different jurisdictions have approached in the cases of indirect discrimination, how they have defined it and demarcated the state obligations in ensuring preventing indirect discrimination related to basic core rights. Now let us investigate the judicial approach taken by various jurisdictions while analyzing the issue of indirect discrimination and how the right to health have been recognized along with a constructive judicial methodology. In the previous section we have mentioned the case of *Mandla (Sewa Singh) and another v Dowell Lee*[63] while discussing the issue of discrimination. In this case, the *Mandla* complained to the Commission for Racial Equality that they had been racially discriminated against. The Commission adopted the case and sought a declaration that the defendants had acted contrary to the Race Relations Act 1976 (the Act) by unlawfully discriminating against Gurinder Singh. The main question in this appeal is whether Sikhs are a 'racial group' for the purposes of the Race Relations Act 1976 ('the Act of 1976'). For reasons that will appear, the answer to this question depends on whether they are a group defined by reference to 'ethnic origins'. The discrimination was only contrary to the Race Relations Act 1976 if the *Mandla's* could be considered members of a "racial group" "defined by reference to ethnic origins as provided by s. 3 (1) of the Act". In defining the term Lord Fraser took inspiration from the definitions offered by Richardson J. in the New Zealand case of *King-Ansell v Police64, Richardson J.*

[62] FREDMAN, Sandra. Emerging from the shadows: substantive equality and article 14 of the European Convention on Human Rights. *Human Rights Law Review*, v. 16, n. 2, p. 273–301, jun. 2016.

[63] Mandla (Sewa Singh) and another v Dowell Lee and others [1983] 2 AC 548

[64] King-Ansell v Police [1979] 2 N.Z.L.R. 531, The conditions which were laid down are:
[a] long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive;
[a] cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious ob-

in setting out criteria for establishing member of a racial group has observed that a common language is also an essential criterion for defining a racial group. Court categorically held that,

> Parliament intended to exclude the Sikhs from the benefit of the Race Relations Act and to allow discrimination to be practiced against the Sikhs in those fields of activity where, as the present case illustrates, discrimination is likely to occur.

This case is important with the aspect of Language being a vital part of identifying a racial group and when discuss ITM they indeed belong to a distinct racial group and if they are facing discrimination by denial of any form of access due to a distinct language, it can be constructed to be a form of discrimination against.

In the case *Viceconte, Mariela Cecilia vs State of Argentina (Health Department)*[65], Argentine inhabitants in certain areas of the country are exposed to *Argentine hemorrhagic* fever, an infectious disease for which a vaccine named "Candid 1" has been shown to be effective. Nevertheless, the quantity of vaccine doses stocked within and outside the country was limited (approximately 400,000 doses). The plaintiff filed a public interest litigation seeking protection of the right to health of people threatened by this fever. The applicant sought to compel the Government to produce (as this disease only exists in Argentina), and to provide Candid 1 vaccine to all inhabitants threatened by the fever, and also to improve the ecological system that was facilitating the spread of the disease.

Considering the petition court issued a declaratory order that required the State to fulfill its duty to protect the health of its population by manufacturing and providing this vaccine. Regarding the justifiability of this right in Argentina, the Court noted that any individual could bring complaints concerning the right to health due to the constitutional incorporation of international treaties referring to it. The Court delivered a consistent interpretation of the Constitution with its preamble objectives of social justice and collective welfare. Hence, in this case we can see how the court asked the government to fulfill its obligation by producing the vaccine even if it's required by a certain group of population. Thus, this decision is quite remarkable in the sense of widening the obligation of the state when it comes to the health rights of citizens. Even if it's for a minority small group of inhabitants, the state does have the obligation to formulate policies and take necessary steps to ensure the health & hygiene of the citizens. The need for exclusive measures for vulnerable groups is highlighted by this decision, which in our scenario of ITM population can also be adopted by the state by ensuring exclusive health care services in ITM language, which can ensure them full access to their health care facilities.

Further, in the case of *Eldridge v British Columbia (AG)* the appellants, Robin Eldridge and John and Linda Warren were deaf residents of British Columbia. They had experienced problems within the provincial health care system because of their inability to communicate with health care providers in the absence of sign language interpretation services. In an application commenced by the appellants in the British Columbia Supreme Court, the appellants claimed that the failure to provide sign language interpretation services under the province's Medical and Health Services Act and Hospital Insurance Act violated their rights to equality based on disability under section 15 of the Charter of Rights and Freedom. In the context where access to health care has been perceived as a fundamental human right in Canada, the inability to access medically necessary services have constituted the bulk of Canadian case law in health care related litigation under the Charter of Rights and Freedom. In most of these cases, the courts have invoked sections 15(1)[66] of the Charter of Rights and Freedoms to determine whether health care is an entitlement under the right to equality under section and the right to "life, liberty and security of the person" respectively. Deciding on this application, the equality rights claim, which had been rejected at trial by the British Columbia Court of Appeal, was granted in a unanimous decision by the Supreme Court of Canada. The Supreme Court therefore held that failure to provi-

servance. In addition to those two essential characteristics the following characteristics are, in my opinion, relevant:
either a common geographical origin, or descent from a small number of common ancestors; a common language;
a common literature peculiar to the group;
a common religion different from that of neighboring groups or from the general community surrounding it;
being a minority or being an oppressed or a dominant group within a larger community;

[65] Viceconte, Mariela Cecilia vs State of Argentina (Health Department) Federal Administrative Court, File No31.777/96, 2 June 1998.

[66] CHARTER OF RIGHTS AND FREEDOM. 15 (1) states that: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability"

de the appellants with sign language interpretation where this was necessary to ensure equal access to health care was in breach of the equality provisions in section 15 (1) of the Charter of Rights and Freedom.

As we can see from this decision, the importance of language and its importance in health care service has been discussed and how denial of a particular language to the patients led to breach in equal access to health care and which is further in breach of the equality. This provision of section 15(1) is even quite similar to our Constitutional provision of Article 14[67] which provides for equality, if we go by the ratio of this judgment, it clearly establishes that denial of health care service especially in the case of vulnerable groups in their own language results in denial of equal access to health care and in breach of the right to equality.

In the case of Indigenous Community *Yakye Axa v. Paraguay*[68], the Yakye Axa community, a Paraguayan indigenous community belonging to the Lengua Enxet Sur people, filed a complaint with the Inter-American Commission of Human Rights (IACHR) alleging Paraguay had failed to acknowledge its right to property over ancestral land. The Court considered Paraguay had failed to adopt adequate measures to ensure its domestic law guaranteed the community's effective use and enjoyment of their traditional land, thus threatening the free development and transmission of its culture and traditional practices. Furthermore, the Court understood that the State had failed to adopt necessary positive measures to ensure the community lived under dignified conditions during the period they had to do without their land. While they stayed on the side of a road across from the land they claimed, the community lacked adequate access to food, health services and education. Sixteen persons died due to the said living conditions.

The Court concluded, "the State had the obligation to adopt positive measures towards a dignified life, particularly when high risk, vulnerable groups were at stake, whose protection became a priority." In this case also we can see how, the Inter-American Court has given a wide interpretation of the right to life taking into account health, education and food standards set forth in the Protocol of San Salvador.[69] In its interpretation, the Court also considered General Comments by the Committee on Economic, Social and Cultural Rights, the supervisory body of the International Convention on Economic, Social and Cultural Rights and gave a very constructive interpretation of right to health of vulnerable communities and obligated the state to come up with positive measures in order to ensure the rights of the vulnerable tribal community.

The European Committee of Social Rights decision as it is mainly known for its cases on indirect discrimination. In one of its early cases, Autism Europe v. France,[70] (Refer Annexure Sl.no.8) the European Committee of Social Rights set out that it considered Article E[71] to not only prohibit direct discrimination but also all forms of indirect discrimination. Also, here it referred to the ECtHR and cited the ECtHR's approach in the case of *Thlimmenos v. Greece*[72]:

> The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated if States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.

Thus, by failing to take due and positive account of all relevant differences or by failing to take adequate

[67] Article 14 of the states that: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." INDIA. [Constituicion (1950)]. *Constitución de India.* Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

[68] Indigenous Community Yakye Axa v. Paraguay, IACHR Series C no 125, IHRL 1509 (IACHR 2005), 17th June 2005

[69] Protocol of San Salvador under Article 10 provides that:

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.

2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:

a. Primary health care, that is, essential health care made available to all individuals and families in the community;

b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;

c. Universal immunization against the principal infectious diseases;

d. Prevention and treatment of endemic, occupational and other diseases;

e. Education of the population on the prevention and treatment of health problems, and

f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

[70] Autism Europe v. France. Case No. 13/2002

[71] Article E of European Social Charter provides that: The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

[72] Thlimmenos v Greece (Application no. 34369/97)

steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all', indirect discrimination may arise. Consequently, court also stated that merely guaranteeing identical treatment as a means of protection against discrimination is not sufficient. For example, in the case of ITM community it is true that, government is providing identical medical treatment which is also provided to other general masses but when it comes to the means of availing those medical treatment i.e., by language, the same is not ensured under the Bilingual policy.

In *Powell v. the United Kingdom*[73] the ECtHR recognized that acts and omissions of the authorities in the field of health care policy may in certain circumstances fall under their responsibilities under Article 2 ECHR.[74] Consequently, Article 2 ECHR enjoins Member States to refrain from intentional and unlawful taking of life. Moreover, it also imposes on States to take appropriate steps, i.e., positive measures to safeguard the lives of those within its jurisdiction. Similarly in the case of *Calvelli and Ciglio v. Italy*,[75] was also discussed and stated that, this positive obligation requires States to e.g., make regulations compelling hospitals, whether public or private, to adopt appropriate measures for the protection of their patients' lives.

Similarly, in the case of *Cyprus v. Turkey*[76] the applicant Cyprian Government claimed that the restrictions the enclave Greek Cypriots and Maronites living in the northern part of Cyprus encountered when seeking medical treatment in the southern part of Cyprus gave rise to a violation of Article 2 ECHR. In reaction to the claim of the Cyprian Government, the ECtHR noted that a case may be brought under Article 2 of the Convention, "if the authorities of a Contracting State are shown to put an individual's life at risk by denying him health care that is available to the population in general".

In many of its cases on equal treatment and non-discrimination, the European Committee of Social Rights dealt with the circumstances of vulnerable and marginalized groups. Most of these cases concerned the systematically disadvantaged Roma communities. The substantive equality that is emphasized and aimed at by the recognition and application of the prohibition of indirect discrimination serves as an important protection for this vulnerable group. The corresponding positive obligations of the Member States are important for an effective enjoyment of their economic, social, and cultural rights guaranteed by the ESC and RESC.[77] In many of these cases on the affected Roma communities, the European Committee of Social Rights found that their specific differences and needs were not or not sufficiently considered, which resulted in indirect discrimination. For example, in *European Roma Rights Centre (ERRC) v. Bulgaria*[78], the complainant organization alleged that Bulgaria discriminated against Roma as regards housing, with the result that Roma families were segregated in housing matters, were living in substandard housing conditions with inadequate infrastructure, lacked legal security of tenure, and were subject to forced evictions. In this case, the European Committee of Social Rights found that, "the simple guarantee of equal treatment as the means of protection against any discrimination did not suffice." It was reiterated that Article E RESC[79] imposes an obligation of considering the relevant differences and to act accordingly. Therefore, positive measures were needed to secure the integration of an ethnic minority such as the Roma into mainstream society.

In another case of, *European Roma Rights Centre (ERRC) v. Bulgaria*[80], constituted a case relating to the right to access to health care for the Roma community

[73] Powell v. the United Kingdom, [2000] ECHR 703

[74] Article 2, ECHR states that: Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

[75] Ciglio v. Italy, [2002] ECHR 3

[76] Cyprus v. Turkey, [2001] (No. 25781/94)

[77] UNITED NATIONS. Article 2 (1) the International Covenant on Economic, Social and Cultural Rights that States "to take steps" to the maximum of their available resources to achieve progressively the full realization of economic, social and cultural rights.

[78] European Roma Rights Centre (ERRC) v. Bulgaria. Complaint No 48/2008

[79] EUROPEAN SOCIAL CHARTER. Article E of European Social Charter provides that : "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

[80] European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No 48/2008

in Bulgaria under Articles 11[81] and 13[82] and Article E RESC. The ERRC claimed that the State did not ensure universal access to health insurance coverage and that the existing Bulgarian health insurance legislation discriminated against the most vulnerable individuals, amongst which the Roma community. It set out that although Bulgarian legislation provided State-subsidized health insurance for socially vulnerable individuals, this was made conditional on being eligible for the right to social assistance or being registered as unemployed. As the majority of the large number of Roma did not receive social assistance nor were registered as unemployed, they could not benefit from this type of public health insurance coverage. Moreover, it was also held that government policies did not adequately address the specific health risks and living conditions of the Roma communities.

Subsequently, the European Committee of Social Rights dealt with the allegation of unequal access for Roma to health care services which resulted in their specific health risks not being adequately addressed, thus amounting to indirect discrimination. In reference to its own Conclusions, the European Committee of Social Rights reiterated that Article 11 RESC *'imposes a range of positive obligations to ensure an effective exercise of the right to health'*. In addition, it set out that it *'assesses compliance with this provision paying particular attention to the situation of disadvantaged and vulnerable groups*. Thereby it indicated to focus on substantive equality and indirect discrimination in case of a lack of compliance with the positive obligations a Member State has. Moreover, the European Committee of Social Rights considered that there was sufficient evidence that showed that Roma communities did not live in healthy environments and that their health status was inferior to that of the general population. It based its findings on various studies referred to by the ERRC and other sources such as a report on Bulgaria of the European Commission against Racism. This situation was in part attributed to the failure of prevention policies by the Bulgarian State. The European Committee of Social Rights stated that:

> Bulgaria failed to meet its positive obligations to ensure that Roma enjoyed adequate access to health care, especially as it did not take reasonable steps to address the specific problems faced by Roma communities. Consequently, as they did not benefit from appropriate responses to their health care needs.

Article 11 to ERESC was found to be violated. From this case of the Roma community, we can see how the ECtHR sensitively dealt with the issue of a vulnerable community and directed the state to implement positive measures and ensure access to health care. The gravity with which the judicial consideration has been made considering various provisions and the interpretation that has been provided by court is indeed quite a landmark approach that something which can be squarely apply to the scenario of ITM community in our country and their plight of discrimination in health care access can be curbed by making state to bring in positive measures.

In the *Belgian Linguistics case*[83], the ECtHR set out several criteria for the assessment of a complaint under Article 14 ECHR[84]. It stated that 'the principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim and effects of the measure under consideration, regarding the principles which normally prevail in democratic societies. A difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim, Article 14 is likewise violated

[81] Article 11 of RESC provides that: With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:
1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

[82] Article 13 of RESC provides that: With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:
1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2 to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3 to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;

[83] The Belgian Linguistic case (No. 2) (1968) 1 EHRR 252

[84] Article 14 of ECHR states that , The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

if it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.' These criteria formed the basis of the assessment model, which was later completed with another assessment criterion.

In the case of Marckx[85] the ECtHR included, as a first phase, the assessment of whether individuals are placed in similar situations. The use of these criteria in the assessment of alleged violations of Article 14 ECHR is now well-established case law. Its assessment model can be formulated as follows:

1. Phase 1: Are the individuals concerned placed in similar situations?
2. Phase 2: Does the distinction have an objective and reasonable justification by assessing whether:
3. 2a: the difference in treatment pursues a legitimate aim;
4. 2b: there is a clearly established reasonable relationship of proportionality between the means employed and the aim sought to be realized.

Further, in the case of *Thlimmenos v. Greece*[86], the ECtHR expressly recognised that substantive inequalities also fall within the scope of Article 14 ECHR: 'The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated if States treat differently persons in analogous situations without providing an objective and reasonable justification. However, the Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated if States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.

Moreover, as set out in *Kelly and others v. the United Kingdom*[87] judgement: 'Where a general policy or measure has disproportionately prejudicial effects on a particular group, it is not excluded that this may be considered as discriminatory notwithstanding that it is not specifically aimed or directed at that group'. Consequently, a claim of indirect discrimination can also be brought under Article 14 ECHR. Now, that we have discussed the approach taken by European Human Rights court while dealing with methods of indirect discrimination , we will discuss it further in the next section when we discuss the concept of " intelligible differentia" under article 14[88] of Indian constitution and try to establish the link how situating the ITM communities denial of linguistic rights in health care access results in discrimination and the same can be recognized under Article 14 of Indian constitution and the judicial approach taken by European Human Rights Court can be referred for a constructive approach.

5.2 Judicial engagement with the question of access to health space: Indian Case-laws

Now, that we have seen how the courts in International scenario especially the European Committee of Social Rights played a vital role in defining forms of indirect discrimination against the vulnerable people and directed states for a constructive approach to rectify and prevent various forms of indirect discrimination which also included right to access health care facilities. If we refer to our Indian Constitution, first of all it does not expressly recognize the fundamental right to health. However, Article 21[89], of the Constitution of India guarantees a fundamental right to life & personal liberty. The expression 'life' in this article means a life with human dignity & not mere survival or animal existence. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in workplace & leisure. The right to health is inherent to a life with dignity, and Article 2 should be read with

[85] Marckx v. Belgium [ECHR](application No. 6833/74)

[86] Thlimmenos v Greece (Application no. 34369/97)

[87] Kelly and Others v. United Kingdom (Application no. 30054/96)

[88] Article 14 states that: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." INDIA. [Constituicion (1950)]. *Constitución de India*. Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

[89] Article 21 provides for "protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law. "The Article prohibits the deprivation of the above rights except according to a procedure established by law. INDIA. [Constituicion (1950)]. *Constitución de India*. Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

Articles 38,[90] 42,[91] 43,[92] &47[93] to understand the nature of the obligation of the state in order to ensure the effective realization of this right.

There are numerous contributing factors and causes for the poor health condition of the tribes in India. The inadequate health personnel, inaccessibility to healthcare, and poor health infrastructure are among the few reasons for the poor health status of tribes in the country. The right to healthcare is one of the essential aspects of the broad framework of the right to health. The scope of the right to healthcare includes various entitlements, including the right to healthcare services, screening, hospitalization, if necessary, care for elderly, family planning services, including maternal and child healthcare, and provision of essential drugs. The core content of the right to healthcare includes primary healthcare and the provision of essential drugs. Moreover, an important criterion for the provision of this core content is that these elements have to be ensured on a non-discriminatory basis. Access to healthcare on a non-discriminatory basis is a recurring element of the right to health care and it is part of the right to equal access to health care.

The Supreme Court has in various judicial pronouncements enshrined the right to health as envisaged under the Indian constitution. Some of the initial judicial pronouncements are related to public interest litigation. Compared to some of the other social rights, the Right to Health has been articulated and recognized as an integral part of the right to life only from the mid-nineties by the Indian Supreme Court. The recognition of the right to health has emerged out of a gamut of different petitions and public interest litigations in the Supreme Court, ranging from PILs concerning workers health hazards to petitions filed by individuals seeking rights of public health.

5.2.1 Indian judicial approach to right to health

In 1987 a very important decision of the Supreme Court came out in public interest in the case of *Vincent Panikurlangara vs. Union of India & Ors*[94],in this case it was held that in a welfare State, it is the obligation of the State to ensure the creation and maintaining of conditions congenial to good health. The right to enjoy life as a serene experience, in quality far more than animal existence is thus recognized. Personal autonomy, free from intrusion and appropriation is, thus a constitutional reality. The right to live in peace, to sleep in peace and the right to repose and health are part of the right to live. Thus, this judgment signifies the importance of the right to health and how the state is under an obligation to create such a scenario which can help in ensuring good health to the citizens.

Further, if we refer to another landmark judgment of *Paschim Bangal Khet Mazdoor Samity & Others V State of West Bengal & Others*[95], it was held that in a welfare state, the primary duty of the government is to secure the welfare of the people and moreover it is the obligation of the government to provide adequate medical facilities for its people. The government discharges this obligation by providing medical care to the persons seeking to avail those facilities. Hence, this judgment

[90] Article 38 provides that: "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life." INDIA. [Constituicion (1950)]. *Constitución de India.* Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

[91] The objective of Article 42 of the Constitution is to significantly contribute to the formation of the rule of law that will be based on the principles of supremacy of the law, where protection of human rights will be guaranteed. It states that: Provision for just and humane conditions of work and maternity relief The State shall make provision for securing just and humane conditions of work and for maternity relief

[92] Article 43 provides that:The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or co operative basis in rural áreas. INDIA. [Constituicion (1950)]. *Constitución de India.* Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

[93] Article 47 provides that: Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. INDIA. [Constituicion (1950)]. *Constitución de India.* Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

[94] Vincent Panikurlangara vs. Union of India & Ors, AIR 1987 SC 990

[95] Paschim Banga Khet Mazdoorsamity v. State of West Bengal and Anr. 1996 SCC (4) 37

clarifies that Article 21 imposes an obligation on the state to safeguard the right to life of every person, preservation of human life and is thus of paramount importance. The government hospitals run by the state are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under art 21. Again, the position of obligation on the state at ensuring medical facilities to the citizens was very well highlighted in this case.

Similarly, in the case of *Pramand Katara V Union of India & others*[96], it was ruled that every sector whether at a government hospital or otherwise has the professional obligation to extend his services with due expertise for protection life. No law or state action can intervene to avoid or delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute, and paramount, laws or procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained, and must, therefore give way. This case is also vital in defining and expanding the horizons of state obligation when it comes to ensuring health care facilities.

It was in 1995 in the case of *Consumer Education and Research Centre vs. Union of India*[97], that the Supreme Court for the first time explicitly held that 'the right to health is an integral fact of a meaningful right to life.' Reading Article 21 with the relevant directive principles guaranteed in articles 39 (e)[98], 41[99] and 43, the Supreme Court held that the right to health and medical care is a fundamental right, and it makes the life of the workman meaningful and purposeful with the dignity of person. This recognition established a framework for addressing health concerns within the area of public interest litigation and in a series of subsequent cases, the Court held that it is the obligation of the State not only to provide emergency medical services but also to ensure the creation of conditions necessary for good health, including provisions for basic curative and preventive health services and the assurance of healthy living and working conditions. Very significantly, while adjudicating on the social right to health, the Supreme Court has specifically considered the issue of availability of resources and has rejected the argument that social rights are non--enforceable due to shortage of resources. This, case somewhat also relevant when we discuss the principle of indirect discrimination, especially this case very well establishes that the state is under a serious obligation in ensuring health services and shortage of resources can't be considered as a justification for non-availability. Even this case raises the importance of Article 41 which provides that the state shall ensure public assistance and language being a vital part of ensuring the public assistance which may be in the form of health care service which is also a public assistance. Therefore, when we apply the principle laid down in this case law to our core issue of non-availability of health facilities to ITM communities in their mother tongue resulting in a form of indirect discrimination, since language is very vital in health care and state can't take the defense of shortage of language proficiency or resources and just because we have a bilingual policy we can't deny the right to health of ITMs.

In all the above judgments, we see the Supreme Court carving out a Right to Health from the various judicial pronouncements which came before the court and thus incorporated this right within Article 21 of the Indian Constitution. The scope of the right has also been very broad encompassing several different aspects of health care and services. With the recognition that both the Preamble of the Constitution and the fundamental right to life in Article 21 emphasize the value of human dignity, the Supreme Court began to address the importance of health as a fundamental right to Indian citizens. In the Directive Principles in Part IV of the Constitution, Article 47 declares that the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of

[96] PramandKatara V Union of India & others, 1989 AIR 2039

[97] *Consumer Education and Research Centre vs. Union of India, 1995 AIR 922*

[98] Article 39(e) states that: that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. INDIA. [Constituicion (1950)]. *Constitución de India.* Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

[99] Article 41 provides that: Right to work, to education and to public assistance in certain cases The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. INDIA. [Constituicion (1950)]. *Constitución de India.* Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

public health as among its primary duties. In addition to Article 47, the right to health also has its genesis in Articles 38 (social order to promote the welfare of the people), 39(e) (health of workers, men, women, and children must be protected against abuse), 41(right to public assistance in certain cases, including sickness and disability), and 48A (the state's duty to protect the environment) of the Directive Principles. In a series of cases dealing with the substantive content of the right to life the Court has found that the right to live with human dignity includes the right to good health.

The movement of judicial view from the early discussions on health to the late nineties clearly shows that the right to health and access to medical treatment has become part of Article 21. A corollary of this development is that while so long the negative language of Article 21 was supposed to impose upon the State only the negative duty not to interfere with the life or liberty of an individual without the sanction of law, judges have now imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of his life and dignity. In the Paschim *Banga case*, the State has been placed, despite financial constraints, under an obligation to provide better-equipped hospitals with modernized medical technological facilities. The substantive recognition of the right to health as essential to living with human dignity has thus allowed the judiciary to directly address human suffering by guaranteeing the social entitlements and conditions necessary for good health, now when we say conditions necessary for good health, there is another very important judgment and which is somewhat directly related to our study i.e., *Mahendra Pratap Singh v. State of Orissa.*[100]

In *Mahendra Pratap Singh v. State of Orissa*, The Government of Orissa had failed to open a health facility in a rural tribal village, despite meeting several prescribed conditions. The first condition concerned the minimum provision of land by the local people, within a prescribed timeframe. The second requirement was the provision of adequate buildings for the facility and staff. The Petitioner claimed that though the necessary staff had been appointed, and a piece of land for constructing the building had been purchased, the primary health center was not functioning, and the Government was not taking the necessary steps to run the center. The Petitioner filed a petition in the Orissa High Court under Article 226[101] of the Constitution of India claiming there was an infringement of the right to health as derived from Article 21 of the Constitution of India.

The Court held that the Government is required to assist people and its "endeavor should be to see that the people get treatment and lead a healthy life." Primary health centers should thus be of principal concern, and it would be at odds with public health if a government caused hindrance to the establishment of such centers. The Court ordered the Government of Orissa to comply with the established requirements and procedures by the end of December 1996. Court also stated that, "great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life". Thereby, there is an implication that the enforcing of the right to life is a duty of the state, and that this duty covers the providing of right to healthcare. This would then imply that the right to life includes the right to health care.

6 Interim findings: towards a way forward

International law asserts that the protection of linguistic rights is based on two basic principles, the prohibition of discrimination on the one hand and measures intended to protect and promote the separate identity of the minority groups on the other hand. The former is termed as *tolerance rights* and are needed to ensure that a minority is placed on a footing of perfect equality with the majority; while the latter are called as *promotion rights* and are needed to respect the cultural and linguistic diversity of the minority. On this matter, case law is particularly important. In 1953, the Permanent Court of International Justice in its Advisory Opinion No. 64 regarding the minority schools of Albania expounded this double approach to minority protection for the first. The Court stated that minority protection consists of these two main components, these words:

> The first is to ensure that nationals belonging to racial, religious, or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State. The second

[100] Mahendra Pratap Singh v. State of Orissa, AIR 1997 Ori 37

[101] Article 226, empowers the high courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari or any of them.

> is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions, and their national characteristics. These two requirements are indeed closely interlocked[102].

The first principle requires that minorities be granted all rights set forth by legislation without regard to the language they use. However, the application of the non-discrimination measures merely guarantees formal equality, which is not sufficient to achieve real equality. To realize real equality, states are required to take special measures so that minorities are in an equal footing with the majority. According to the principle of equality, indeed, different situations must be treated differently. It may also be regarded as discrimination against the minority to treat a minority and a majority alike.[103] Promotion oriented rights are not intended to confer a privileged status on minorities; they should rather be considered as special rights aimed at guaranteeing equal conditions. Issues surrounding language rights can be highly charged since they link up with matters of identity, sovereignty, and public life. Until quite recently, there was not much attention paid by international law to language rights. The entry into force of the Council of Europe's Charter for Regional or Indigenous Languages on 1st March in 1998 marked the first international human rights instrument "directed solely at the question of language".

The second justification for the increased interest in language rights is connected to the fear of the depletion of linguistic diversity. Concerns have been raised about language endangerment. In view of this threat, some scholars like Skutnabb-Kangas, Phillipson, and Dunbar[104] are of the view that language rights have the capacity to check the depletion of linguistic diversity. Thirdly, language rights have become very prominent in countries where the democratization process is gaining ground. For example, The Sámi Language Act, passed in Finland in 1992, gave Sámi people the right "[…] to use the Sami language before authorities, orally and in writing, and to receive a reply in the same language".[105]The Sámi thus have the right to interact with authorities in their native tongue, meaning it is expected that non-Sámi have sufficient knowledge of the language. The rights, including those of language, the Sámi Act have given in the Finnish constitution are an effort to raise the status of the Sámi language to that of Finnish.

Further, language rights and other human rights have now become part of the criteria for assessing entry into regional blocs such as the European Union (EU) and the North Atlantic Treaty Organization. Certain standards in the observance of language rights are demanded before a state can be accepted into the European Union. Fifthly, it has been argued that the enjoyment of certain human rights is dependent on language rights. de Varennes has argued that language is linked to the enjoyment or the non-enjoyment of a number of rights, for example, the right to non-discrimination, the right to fair trial, the right to access to information, and the right to freedom of expression, right to public utility which also involves right to health.[106] As ,the right to non-discrimination in access to public services such as health care is dependent on language policies and practices that can ensure that linguistic barriers are broken down. These barriers can be broken down by the provision of appropriate language services.

The question of whether language rights are an integral part of human rights is crucial. As de Varennes observes, "it is sometimes mistakenly believed that the rights of minorities or language rights in general, are part of a new generation of rights, or are collective in nature." For de Varennes, such a view is both unfortunate and erroneous. It is unfortunate since it considers language rights as less deserving than the so-called real human rights. It is wrong since it fails to understand the actual sources of these rights. de Varennes' argument is that language rights are not an exception to, or a weaker type of human rights. That language rights are sometimes treated as a weaker form of human rights is linked

[102] Permanent Court of International Justice, Greece vs. Albania, Advisory Opinion No. 64 regarding minority schools in Albania, Series A/B, 6 April 1935.

[103] Thlimmenos v. Greece, Application no. 34369/97, ECHR, Judgment of 6 April 2000.

[104] SKUTNABB-KANGAS, T.; PHILLIPSON, R.; DUNBAR, R. *Is nunavut education criminally inadequate?*: an analysis of current policies for inuktut and english in education, international and national law, linguistic and cultural genocide and crimes against humanity? 2019. Available at: https://research.cbs.dk/en/publications/is-nunavut-education-criminally-inadequate-an-analysis-of-current. Accessed on: 10 out. 2022.

[105] THE FINNISH SAMI PARLIAMENT. Land rights, linguistic rights, and cultural autonomy for the finnish sami people. *Indigenous Affairs*, n. 33/4, jul./dez., 1997.

[106] VARENNES, Fernand de. The linguistic rights of minorities in Europe. *In:* TRIFUNOVSKA, Snezana. *Minority rightsin Europe:* European minorities and languages. Netherlands: T.M.C. Asser Press, 2001.

to the tendency to create a hierarchy of international human rights.[107] According to Meron, "the quest for a hierarchy of international human rights continues unabated." Meron further observes that

> claims of hierarchical status are also raised as to the relationship among rights belonging to the so-called first generation (civil and political rights), second generation (economic, social and cultural rights, e.g., the rights to peace, development and protected environment).[108]

Also observes that it would appear that some human rights are more important than others. But except in a few cases (e.g. the right to life or to freedom from torture), to choose which rights are more important than other rights is exceedingly difficult. It is fraught with personal, cultural, and political bias.

This choice of a human rights vocabulary to regulate matters bearing on languages serves a specific function; it endows a language claim with unconditional normative value and immediate applicability irrespective of local distributional consequences. Louis Henkin, widely considered one of the most influential human rights scholars of the twentieth century, writes that "human rights enjoy prima facie, presumptive inviolability, and will often 'trump' other public goods." The "trumping" power of language rights lies in their universal and factoid (i. e. fact-like) properties. According to Henkin, human rights are universal, in the dual sense that they are:[109]

1. Widely recognized and the only political-moral idea that has received universal acceptance
2. That they impose external standards on states that apply to all to whom they are relevant across geography or history, culture, or ideology, political or economic system, or stages of societal development.

Human rights are, moreover, also fact-like in the sense that both their application and its consequences are self-evidently good. This means that "once you acknowledge the existence of the right, then you have to agree that its observance requires x, y and z."Judge Rosalyn Higgins, the former President of the International Court of Justice, describes this property of human rights:

> It is sometimes suggested that there can be no fully universal concept of human rights, for it is necessary to take into account the diverse cultures and political systems of the world [...], but I believe, profoundly, in the universality of the human spirit. Individuals everywhere want the same essential things [...][110]

Philip Alston, another leading human rights scholar, writes:

> the characterization of a specific goal as a human right elevates it above the rank and file of competing societal goals, gives it a degree of immunity from challenge and generally endows it with an aura of timelessness, absoluteness and universal validity.[111]

Our existing international rhetoric makes sense of language claims by analogizing linguistic identity to cultural identity and speaks about a legalistic structure of language rights. International law is underdeveloped and misdirected in the field of linguistic human rights. The view of language in international law is as a dependent right rather than as an independent one. The right to speak one's own language is miscast as a cultural, collective, and/or minority right, whereas linguistic rights should be viewed independently, individually, and globally. Worse than a narrow or partial view of linguistic human rights is a view of such rights that remains merely idealistic. At the present, international law contains some idea of linguistic human rights within its broad covenants and non-binding declarations. Therefore, a regime of mere linguistic *tolerance*, namely the rights that protect the speakers of a minority from discrimination and assimilation, is not enough. What has to be granted by law is a regime of linguistic promotion, which includes positive rights. Positive measures by states which require institutional use of the minority languages in spaces pertinent to their human rights, participation in democratic processes, state services and other insti-

[107] KAMWENDO, Gregory Hankoni. *Language policy in health services*: a sociolinguistic study of a malawian referral hospital. Helsinki: University Printing House, 2004. Available at: https://helda.helsinki.fi/bitstream/handle/10138/19198/language.pdf.txt;jsessionid=A18C1594B61121BBC1F09AA8D42BE10D?sequence=4. Accessed on: 10 out. 2022.

[108] MERON, Theodor. *Human rights in international law*: legal and policy issues. Oxford: Clarendon Press, 1984.

[109] HENKIN, Louis. Human rights and state "Sovereignty". *Georgia Journal of International & Comparative Law*, v. 25, n. 1, 1996.

[110] LAPAYESE, Yvette V. *Language as human right chapter*: a humanizing dual language immersion education. Leiden: Brill Publication, 2019.

[111] STOKKE, Hugo; TOSTENSEN, Arne. *Human rights in development*: yearbook 1999/2000. The Hague: Kluwer Law International/ Nordic Human Rights Publications, 2001.

tutional mechanisms is the need of the hour[112]. Given below are some recommendations.

7 Recommendations: towards safeguarding ITM linguistic rights

7.1 Restructuring the concept of linguistic rights under the ambit of human rights

The major problem lies with the danger of misrepresenting the actual status and significance of language rights in the context of human rights law, international law and constitutional law. This is an area where excessive expectations lead to disappointment. The claim to linguistic human rights 'sharply contrasts with the demands of positive law, both international and domestic.[113] The linguistic human rights approach oscillates between, on the one hand, considering linguistic human rights as international law norms and, on the other, considering them as abstract ideals or claims, between, the one hand, sweeping affirmations of massive violation and deprivation of linguistic human rights and even linguistic genocide and, the other, the quest for what should be regarded as inalienable, fundamental linguistic human rights. For sure, the approach is well-intentioned: it aims to secure intergenerational continuity of indigenous languages and to redress part of the existing inequalities. However, it should be clarified that linguistic human rights must be interpreted along these lines as, above all, ideals and aspirations, and not as entitlements already recognized by international binding rules and whose effective implementation can be demanded of states.[114]

Skutnabb-Kangas through her perspective of Language as a Human Right, claims that "an individual's right to use and learn his or her native language is as basic a human right as that to the free exercise of religion, or the right of ethnic groups to maintain their cultures and beliefs" for instance, "the right to use one's mother tongue happens to be a fundamental, socially expressed human right". According to Skutnabb-Kangas,

> Linguistic Human Rights should be respected at two levels, namely: the individual and the collective. At the first level, what it entails is an individual's positive identification with his/her mother tongue, and the acceptance and respect on the part of others.[115]

In her view, "it means the right to learn the mother tongue, orally and in writing and to receive at least basic education through the medium of the mother tongue, and the right to use it in many (official) contexts". On the other hand, Skutnabb-Kangas claims that respect for Linguistic Human Rights at a collective level implies, among others, the indigenous groups right to exist, to be different, to enjoy and develop their languages.

Hence, LHR have emerged as an influential paradigm in resisting language shift and language death. The notion of linguistic human rights arises from a marriage of language rights with human rights such that language rights are so fundamental and so inalienable that no state or any other person is allowed to violate them. Human rights are supposed to be the rights that every individual has, simply by being human. In a similar view, Phillipson has also argued that: "Universal rights represent a normative standard, an inherent right which the state cannot be justified in restricting. In this sense they do not need arguments to legitimate them. They are absolute or inalienable rights."

Further, Skutnabb-Kangas advocates for the marriage of language rights with human rights to obtain binding, codified, enforceable LHRs (Linguistic Human Rights) support from the human rights system and international law. Skutnabb-Kangas, makes an important distinction between language rights and LHRs.

> Language rights are a much broader concept that includes individual and collective enrichment-oriented rights that: have to do with 'extras' for a good life, above basic needs. LHRs, on the other hand, are concerned with the needs of speakers of dominated indigenous languages for protection to ensure their survival and basic justice.

For Skutnabb-Kangas LHRs are necessary rights which fulfil basic needs and are a prerequisite for living a dignified life and necessary for linguistic, psychologi-

[112] Paragraph 5.2 states: "the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria." UNITED NATIONS. Human Rights Committee. *General Comment 23 on Article 27* (Rights of Minorities). 8 April 1994.

[113] GREEN, Leslie. Are language rights fundamental? *Osgoode Hall Law Journal,* v. 25, n. 4, p. 639-669, 1987.

[114] PAZ, Moria. The tower of babel: human rights and the paradox of language. *European Journal of International Law*, v. 25, n. 2, p. 473–496, 2014.

[115] SKUTNABB-KANGAS, Tove; PHILLIPSON, Robert. Language in human rights. *Gazette,* Leiden, v. 60, n. 1, p. 27-46, fev. 1998.

cal, cultural, social, and economic survival for minorities and for basic democracy and justice. Phillipson, Rannaut and Skutnabb-Kangas, observe that in as much as individuals can have their human rights violated through arbitrary imprisonment and torture, individuals and groups are unjustly treated and suppressed by means of language. They argue that individuals and groups

> who are deprived of LHRs may thereby be prevented from enjoying other human rights, including fair political representation, a fair trial, access to education, access to information and freedom of speech, and maintenance of their culture which also include the right to access Health Care. Where such LHRs deprivations occur, Phillipson, Rannut and Skutnabb-Kangas identify language and ethnic conflict as the ultimate result.

7.2 Proposed legal approach for safeguarding ITM linguistic rights

7.2.1 Proportional approach for safeguarding ITM linguistic rights

The UN Human Rights Committee has indicated in its decision in *Ballantyne, Davidson, and McIntyre v. Canada*[116] that the guarantee of freedom of expression in Article 19 of the ICCPR[117] protects not only the content of the communication, but also the linguistic form which it takes, with the result that prohibition on the use of a particular language in advertisements aimed at the public offends the ICCPR. The issue of the extent to which measures taken to promote linguistic minorities should be permitted to encroach on the right to freedom of expression (or other freedoms) of speakers of majority languages is a challenging one. For example, in the Ballantyne, the Human Rights Committee used the concept of proportionality to resolve this issue; it considered whether the sign provisions in dispute were necessary to achieve a legitimate purpose. While, for example, the protection of the vulnerable position of the franco-phone minority in Canada was legitimate, the Committee found that it was not necessary to prohibit commercial advertising in English to accomplish this objective. Protection of French could be achieved in other ways that do not limit freedom of expression in fields such as trade; the law could, for example, have required the advertising to be in both French and English. The recent minority instruments contain provisions which generally guarantee to persons belonging to linguistic minorities the right to enjoy their own culture and to use their own language in private and public life, freely and without interference.

So, with the above judicial decisions in hand we can say that the prohibition of discrimination on the ground of language and similar equality-based provisions lead to an obligation for the state to have in place reasonable and non-arbitrary language preferences. This does not affect a state's ability to determine its own official language, but entails that any language policy, preference or prohibition must conform with international human rights obligations. This human rights approach focuses on the differences in treatment between individuals, not languages. It is therefore the potential negative impacts, such as disadvantage or exclusion, on individuals rather than languages that are considered in assessing the reasonableness of any language preference in the policies, support or services provided at all levels by state authorities and actions. A basic approach to determining reasonableness is to use as a starting point the Principle of Proportionality, as far as is practicable given local circumstances, in all language matters related to public services.

Issues of disadvantage, exclusion and reasonableness are central to the basis for a proportional approach to the use of minority languages in a state's public services and other activities. Using a minority language results in better, more efficient, and more inclusive communication and exchange of information by public authorities. Employment and economic opportunities are also increased by making a minority language a language of public service to a fair and proportionate degree, and service delivery including in critical areas such as public health reaches individuals more directly and effectively in their own language. Individuals understand better information provided to them in their own language.

Within the linguistic human rights paradigm, there is the general assumption that mother tongue education

[116] BALLANTYNE, Davidson and McIntyre v Canada. Communications Nos. 359/1989 and 385/1989. 18 October 1990.UNHRC.

[117] Article 19 Provides that, "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." INDIA. [Constituicion (1950)]. *Constitución de India.* Available at: https://www.bcn.cl/procesoconstituyente/comparadordeconstituciones/constitucion/ind. Accessed on: 8 out. 2022.

is an empowering process. Yet history has evidence that mother tongue education can be used for disempowering certain people. For example, the apartheid regime in South Africa used the mother tongue education policy in the black homelands to restrict Africans' access to the socio-economically and politically empowering English language. Brookes and Heath give an example of economic exploitation that can be assisted by the use of the right to mother tongue: Economic rights and land tenure issues, as well as mineral and oil rights, may lead nations to grant linguistic rights and even encourage education in indigenous languages in order to ensure lack of access to information and legal rights by particular groups.[118] Therefore, there is nothing inherently empowering or disempowering in any language - it all depends on what one intends to achieve with the use of a language. In his critique of the linguistic human rights paradigm, Blommaert provides, about the importance of looking not only at inter-language inequalities but also intra-language inequalities. The latter become very conspicuous when the process of standardization is conducted. Standardization is obviously a way of giving power and prestige to one language variant amongst many. It thus creates inequalities and hierarchies amongst variants of language. By granting a group the right to function in their mother tongue in public domains, one has not only to think about the language but the variant that goes with that public recognition. Inability to use that variant of power and prestige can be disempowering. Thus, it has been argued that lack of linguistic rights can prevent equality, but full linguistic rights cannot lead to full equality either. Like here in our study, since more emphasis is given on English and Hindi at Public places resulting in inability to access the health services by ITM. Proponents of linguistic human rights call for the revitalization of indigenous languages to check the depletion of linguistic diversity. They, therefore, call on states to ensure that all languages are maintained.

[118] RAMLAN. Language standardization in general point of view. *Budapest International Research and Critics Institute-Journal*, v. 1, n. 1, p. 27-33, fev. 2018.

7.2.2 Importance of constructive approach in including language as a basic constituent of human rights

7.2.2.1 Access to health care with respect to ITM communities

Now, it is very clear from the judicial pronouncements and constitutional obligations that, indeed, the Government is under an obligation to ensure the right to health care. Further the question arises then why such a vital issue of language, which has been recognised as a part of accessibility to health care, is being ignored. Discrimination on the basis of language does qualify as a substantive inequality. If we refer to the case of Thlimmenos v. Greece, in which ECtHR expressly recognized that substantive inequalities also fall within the scope of Article 14 ECHR and stated that

> the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated if States treat differently persons in analogous situations without providing an objective and reasonable justification.

Even though India is not a party to ECtHR but we are party to many international treaties and which clearly states that there should not be any discrimination on the basis of language. Since, the gravity of issues further deepens when we consider the case of a minority vulnerable group i.e. in our study ITM communities, who are already deprived due to many discriminatory policies and considering the fact that health being a very fundamental aspect of life and the same due to language barriers is denied to them and the Government is failing in fulfilling its obligation by turning a blind eye to such a fundamental aspect of the community.

7.2.2.2 Learning from best Legislative practices from around the World With respect to Indigenous Linguistic & Health Rights

According to international standards, states should take active measures to protect indigenous languages, and associated rights to use languages or access interpretation, as a part of indigenous peoples' rights. Providing constitutional recognition to indigenous languages should be part of those measures. Recognition of the multilingual nature of the state can go far in symbolizing a state's recognition of diversity and the existence of indigenous peoples. In addition, recognition of the equal value of languages can be a way of showing

respect for indigenous cultures and indigenous peoples' dignity. For example, Norway's Sami Act explicitly states: 'Sami and Norwegian are languages of equal worth. They shall be accorded equal status'[119]. Countries can also establish institutions to protect and promote indigenous languages efforts which should always engage indigenous communities themselves and respect the right of these communities to govern the study, use and representations of their own languages. In New Zealand, the Maori Language Act establishes a Maori Language Commission.

If we consider the case of Nunavut of Canada. On June 4, 2008, Nunavut's new Official Languages Act (OLA) was approved by Nunavut's Legislative Assembly and received concurrence from the Federal Parliament on June 11, 2009. The new Act established the Inuit Language ("Inuktitut"), English and French as Nunavut's Official Languages. NOLA's preamble recalls that, under Article 32 of the Nunavut Land Claims Agreement, there is an obligation for territorial institutions "to design and deliver programs and services that are responsive to the linguistic goals and objectives of Inuit." Besides embedding the official status of the Inuit language, English, and French there are a few interesting points concerning the advancement of linguistic rights for the Inuit, like:[120]

- Section 1 states that the purpose of NOLA is "to advocate for and to achieve the national recognition and constitutional entrenchment of the Inuit Language as a founding and official language (ILPA) of Canada within Nunavut. ILPA can be regarded as consolidating rights which had been enacted in NOLA, nevertheless ILPA specifically focuses on the importance of the Inuit language at all levels of Nunavut's society.
- In its preamble, ILPA recalls that the Inuit language is "foundation necessary to a sustainable future for the Inuit of Nunavut as a people of distinct cultural and linguistic identity within Canada." Rights to use Inuktitut and Inuinnaqtun in communications and services to and from Nunavut's government and public agencies are ensured through ILPA. The wording of the Act could not be clearer; services shall be provided in the Inuit language.
- Furthermore, there are translation requirements for the Government of Nunavut to meet; under section 7, "documents, including notices or guidelines, directed to a municipality by the Government of Nunavut for public circulation, review or comment at the municipal level, shall be provided with Inuit Language translations."

States are major actors in the context of international law. Many states deny the existence of minorities within their jurisdiction or oppose the notion of indigenous protection in so far as the protection of language minorities is considered to adversely affect, or to risk, the state 's internal cohesion and national unity.[121] For many states (as well as for supporters of nation--state ideology), indigenous rights contribute to maintenance and to perpetration of indigenous groups as distinct groups. Prohibiting discrimination and intolerance against linguistic minorities corresponds with most states 'interest, in so far as it helps to avoid the outbreak of internal conflicts that can affect other states 'and international security. Therefore, states can agree on a regime of linguistic tolerance, but a regime of linguistic promotion does not correspond with most states' interest; at least, it can legitimately be doubted whether international peace and security can be better safeguarded by far-reaching indigenous language rights in international law.[122] The question arises as to whether, beyond the animosity or the lack of political will on the part of states, there is any reason inherent to the nature of language rights as rights. First, the number of languages in the world is around 6,000, the world population around 6 billion and the number of states almost 200, most states have many languages within their boundaries. These figures give a first impression

[119] GOVERNMENT OF NORWAY. The Sami Act 1987, section 1(5) read as: Sami and Norwegian are languages of equal worth. They shall be accorded equal status pursuant to the provisions of Chapter 3.

[120] OFFICIAL LANGUAGES ACT. *SNu 2008, c 10*. Available at: https://canlii.ca/t/535vj. Accessed on: 14 mar. 2022.

[121] UNIVERSITY OF MINNESOTA HUMAN RIGHTS CENTER. *The rights of indigenous peoples*. 2003. Available at: http://hrlibrary.umn.edu/edumat/studyguides/indigenous.html. Accessed on: 20 mar. 2022.

[122] UNESCO. The Human rights of linguistic minorities and language policies. *International Journal on Multicultural Societies*, v. 3, n. 2, 2000. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000145796 Accessed on: 20 mar. 2022.

of the difficulty of state management of linguistic diversity. Kibbee has rightly reminded us that, "a human rights approach is inherently universalistic and assumes a uniform set of circumstances which trigger application of corrective measures, but that circumstances are hardly universal."[123] Thus, the problems of establishing universal rules of fairness in the interaction of people from different linguistic communities call into question the extent to which a human rights approach offers a solution to the inevitable problems faced by minority or indigenous linguistic groups.

8 Conclusion

According to the research presented in this paper, the right to be treated equally regardless of one's language is an integral part of the law against discrimination and, as such, should be recognized as a fundamental human right. First and foremost, the right of non-discrimination based on language concerns the private and public linguistic rights of members of linguistic minorities. The former is universally recognized, whereas the latter must be granted by each individual state under the appropriate conditions. To protect minority languages effectively, the United Nations Human Rights Committee and the European Court of Human Rights have adopted a minimalist approach. Neither the UNHRC nor the ECtHR's rulings on linguistic issues can be grounded on a human rights framework. Finally, the linguistic dimensions of the rights to a fair trial, to liberty and security, to non-discrimination, and to access public services are all part of language rights, which are universal human rights.

The research also demonstrated the importance of examining violations of the linguistic dimension of freedom of expression as a form of discrimination and the connection between the right to freedom of expression and the right to receive public services like health care institutions etc.

Insight into the essence of linguistic rights reveals that they are, first and foremost, personal liberties. In the context of protections afforded members of linguistic minorities, language rights can be understood as collective rights. The question of whether or not linguistic rights should be recognized as universal human rights under international law remains open. There is currently an ongoing scholarly discussion on the topic of whether or not language rights should be recognized as human rights (May, Philipson, SkutnabbKangas, De Varennes). Whereas, t he critics (Paz, Arzoz) argue that human rights cannot be universally addressed in international law. They offer rules at the regional and state levels to determine whether or not a specific right is fundamental.

In addition, research into the status of ITMs' linguistic rights in India has revealed that these rights remain in jeopardy despite the existence of constitutional and judicial safeguards. However, the state has not accorded the language rights of ITMs the respect they deserve. It has always been government policy not to interfere with the cultural lifestyle of the indigenous communities, but very little has been done to reform the language policy to create a conducive environment to respect their linguistic rights, especially in countries like India where there is a considerable population of ITMs reside. Therefore, the state has not fulfilled its responsibility, which is indicative of weak democratic leadership. In this context, Foucault's discussion of the "art of governance" in Governmentality is relevant. The issue of Governmentality, he says, centres on questions such as how rigorously to be regulated, by whom, for what purpose, and using what techniques. According to Foucault, the art of governance is analogous to the job of the family patriarch in controlling the household. He argues that the government's responsibility to care for its citizens is analogous to that of a father or other senior family member. Upward continuity and Downward continuity are two of the most essential ideas in Governmentality, both of which he has explored in his discussion. According to the theory of Upward Continuity, a person who aspires to be a good state leader must first master the art of leading himself, his possessions, and his legacy. Whereas Downward continuity holds that when a state is well-run, the head of the family will know how to care for his family, his property, and his patrimony, and therefore people will act responsibly. Importantly, Foucault argues that the Government should only govern in a way that they think and behave as though they were in service of people who are governed. This line of reasoning proves that the State's method of governing the ITMs, in particular with regard to protecting

[123] KIBBEE, Douglas A. *For to speke frenche trewely*: the French language in England, 1000 1600: its status, description and instruction. Amsterdã: John Benjamins Publishing, 1991.

and promoting their language rights, has been a dismal failure, negatively impacting a number of fundamental rights and making it difficult for them to access necessary services.

Finally, the ITM community is so large and varied that an unbiased conclusion on the research's findings is impossible. To develop a complete picture of the linguistic rights scenario of ITMs as a whole, a study based on the limited doctrinal research will not be adequate. Further, the expectations that the debate raises could not be fully examined in the current work. The research does shed light on the trend, but it does not provide any definitive conclusions. As a result, the study's findings are circumstantial and within its own confines and could be termed as suggestive. As such, there is need for further empirical research, as well as doctrinal legislative and judicial evaluation, to provide greater weight to the argument for ITMs' linguistic rights.

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