
| RESEARCH ARTICLE

Justice Beyond Language: Ensuring Legal Access for Linguistic Minorities in the Chattogram Hill Tracts

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| ABSTRACT

The linguistic minorities in Chattogram hill tracts are facing challenges to access to justice due to their language barrier. While discussing the challenges in Bangladesh, the terms like linguistic minority are hardly defined. For that reason, since they are not defined, fundamental obstacles they face, e.g., lack of interpreters. The status of minorities all over the world has become a matter of discrimination. Bangladesh holds the same situation. There are still some initiatives that need to be performed, even though the current government has made several significant advancements in mainstreaming the minority languages. In order to guarantee the equitable status of minority languages and the freedom to use and practice them in all spheres of public life, academic endeavor, and in legal proceedings, the Constitution may be amended to include them. Constitutional support for minority ethnic languages will contribute to the promotion and maintenance of underrepresented ethnic identity. Additionally, these actions will not only benefit the minority ethnic groups' languages but also help to integrate them into society as a whole. These initiatives will be crucial to Bangladesh's efforts to meet the Sustainable Development Goals (SDGs) and realize the vision 2040 established by the current government. Everyone has the right to a fair trial, which is an essential part of establishing the rule of law. The rule of law frustrates when the fundamental obstacle to get justice is 'language'. For the purpose of this paper, I will focus on linguistic minorities living in CHT, their obstacles to access to justice, and the necessity of an interpreter to ensure justice.

| KEYWORDS

Linguistic Minority, Access to Justice, Interpreter, Chattogram Hill Tracts.

| ARTICLE INFORMATION

ACCEPTED: 09 August 2025

PUBLISHED: 26 September 2025

DOI: 10.61424/ijlss.v2.i1.396

1. Introduction

The language barrier issues regarding linguistic minority people around the world are not new. The situation in Bangladesh is no exception. They are tormented long before the independence of Bangladesh. Curie (2009) discusses to establish the rule of law, it is essential to ensure access to *law* along with access to *justice*. In the traditional understanding of access to justice, the term means the availability of the formal legal system for the disadvantaged groups in a society (Ghai & Cottrell, 2010). In many indigenous societies, customary law is significant (Transparency International Bangladesh, 2019; UNDP Bangladesh, 2016). There are numerous indigenous communities in Bangladesh that have been following their own customary rules for many years (Chakma, 2020). Traditionally, the *karbari* is the first person to be consulted when any offence occurs. Any party may appeal against the *karbari*'s decision to the headman. Appeals decisions are typically made in writing. The King's Court hears complex cases, whilst the court of the circle chief conducts hearings. Written documents are used to issue final judgements or decrees.

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In 2006, a Writ Petition was filed by the Bangladesh Legal Aid and Services Trust (BLAST) and others, representing the peoples of three hill districts. As per the Judgment, the formal justice system of CHT has been changed from 1st July, 2008 (*Bangladesh Legal Aid and Services Trust & others v. Bangladesh & others*, 2009). In 2008, the High Court directed the government to set up three separate civil and criminal courts and Nari-O-Shishu Nirjatan Domon Tribunals in Rangamati, Khagrachari, and Bandarban districts in the CHT.] Now, the question that remain is: Which law should take precedence when there is a dispute between civil law and customary law? The issue has been resolved by rulings from the supreme court, and the court will now apply customary law principles that are constitutionally sound. However, in criminal situations, the court will adhere to state criminal law (Chakma, 2020). While conducting another research, it appears that when the rape victim from a linguistic minority provides her statement under section 22 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, before a magistrate, it becomes a piece of mockery (Baul, 2020). While she was describing the offence committed against her, neither the judge nor any lawyer was able to understand her statement properly due to her language. The judge, advocate, bench officer, none of them were from a linguistic minority group. During the research, we found that there is no use of a formal justice system which can ensure justice for the linguistic minority populace without giving the facilities to interpret in the trial. Similar difficulties are faced by an accused when he or she is providing a statement under section 164 of the Code of Criminal Procedure or by a witness while giving her oral testimonial in the trial. In this paper, I'll exclusively talk about the difficulties faced by linguistic minorities in court due to their language barrier and the necessity of an interpreter for court procedure.

2. Literature Review

Access to justice is a fundamental human right, yet linguistic minorities around the world often remain excluded from formal legal systems due to language barriers. In Bangladesh's Chattogram Hill Tracts (CHT), where multiple indigenous communities speak languages other than Bangla, this issue is particularly severe. However, access to justice is widely recognized as a fundamental human right under international law, particularly within instruments such as the International Covenant on Civil and Political Rights (ICCPR), which mandates that legal systems must be accessible, fair, and equitable for all individuals regardless of language or ethnicity (ICCPR, Article 14). Furthermore, multiple studies have identified language as a major barrier preventing marginalized groups from accessing justice in multicultural and multilingual societies (UNDP, 2013; Ghai, 2008)

In the context of Bangladesh, the Chattogram Hill Tracts (CHT) region presents a unique legal and cultural landscape, where over a dozen indigenous communities live with their own languages and customary legal systems. Scholars like Barkat et al. (2009) have extensively documented how the karbari based customary justice system plays a central role in conflict resolution among these groups, often conducted in indigenous languages and outside the purview of state institutions. However, with the establishment of formal state courts in Rangamati, Khagrachari, and Bandarban (following the 2008 High Court directive), indigenous people have increasingly encountered systemic barriers, especially due to language mismatch between the court and the litigants.

A study by Chakma (2020) highlights that indigenous victims, particularly women, struggle to present their narratives in court due to the absence of interpreters. This results in procedural unfairness, especially during sensitive stages like giving statements under Section 22 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, or Section 164 of the Code of Criminal Procedure. Moreover, Kabir and Ahmed (2021) emphasize that the lack of institutional interpreter mechanisms undermines the right to a fair trial, contributing to a broader pattern of exclusion.

Despite these findings, there remains a significant research gap regarding how linguistic barriers specifically affect the quality and outcome of justice in CHT courts. This paper aims to fill that gap by critically examining the lived experiences of linguistic minorities in the legal process, with a focus on the urgent need for interpreter services and language-sensitive reforms.

3. Methodology:

This study employs a qualitative research approach to explore the challenges faced by linguistic minorities in accessing justice within the formal legal system of Bangladesh, specifically in the Chattogram Hill Tracts (CHT). Data were collected through a combination of primary and secondary sources.

Primary data were gathered via semi-structured interviews with key stakeholders, including members of indigenous communities, victims of criminal offenses, legal practitioners, court officials, and human rights activists operating in the CHT. These interviews aimed to capture firsthand experiences related to language barriers during court proceedings and the availability of interpretation services.

Secondary data involved a comprehensive review of relevant legal documents, court rulings, government directives, and academic literature regarding customary law, state law, and language rights in Bangladesh. Additionally, reports from NGOs and human rights organizations provided contextual insights. Data analysis was conducted using thematic coding to identify recurring patterns and critical issues concerning linguistic obstacles in judicial processes. Ethical considerations, including informed consent and confidentiality, were strictly observed throughout the research.

This mixed approach enabled a nuanced understanding of how language affects access to justice for linguistic minorities and informed recommendations for improving interpreter services and legal inclusivity.

4. Linguistic Minorities: The Concept

There is no international legal instrument that defines the term 'Minority' (United Nations Development Programme [UNDP], 2005). Different UN bodies, academics, institutions, and organizations have attempted to define the term 'minority'. 'Minority' means an ethnic group which shares a common sense of identity and common characteristics such as language, religion, tribe, nationality, race, or a combination thereof (Office of the United Nations High Commissioner for Human Rights, n.d.). Bangladesh can be considered as a multiethnic, multi religious, and multilingual pluralistic society (Mandal, 2004). Particularly in the tribal areas, distinct languages are spoken in various parts of the nation (Sastri, 2012, p.25). An appreciable number of ethnic groups live in the north and northeastern part of the country (Office of the United Nations High Commissioner for Human Rights, 2017). As a result, there are four categories into which Bangladesh's minorities can be divided (Timm, 1991): Religious Minorities; Ethnic Minorities; Linguistic Minorities; and other minorities.

To define the term 'linguistic minority', in an international perspective, it is difficult to define the concept of minorities. The definition of linguistic minority faces the same situation (Petričušić, 2005). By analyzing the definition of the United Nations, a "linguistic minority" is a group that differs from the other groups on the basis of language within the territory of a sovereign State.

5. International Legal Framework for the Protection of Linguistic Minority Rights

Language can be considered an essential element and expression of the identity of linguistic minorities (Shelley, 1992). However, like the other people, linguistic minority people has the same rights, such as the fair trial, equality before the law, the prohibition of discrimination, freedom of expression, etc (Kabir & Ahmed, 2021).

There are some specific provisions which talk about linguistic minority rights in articles 2(1), 14 (3)(f), 19(2), 27 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, Article 2 (2) of the International Convention on Economic, Social and Cultural Rights (ICESCR) of 1966, Article 30 of the Convention on Rights of the Child (CRC) OF 1989.

Apart from these, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) of 1992 enumerates the rights of minorities, which includes the language as well (Kibbee, 2020). Article 1, 2 (1), 4(2-3) of the Declaration can be considered as particular important provisions. However, Article 27 of ICCPR and Article 30 of CRC contain the most widely accepted binding provisions

on minorities. On the other hand, UNDM has its non-binding nature but can be considered as the first document that dealt solely with the minority rights issues. It also fixes the fundamental international norms and standards on the enforcement of minority rights.

6. National Legal Framework for the Protection of Linguistic Minority Rights

There was no recognition of minority people in Bangladesh. After the independence of Bangladesh in 1971, the Constitution of Bangladesh contains the provision of State language as- 'The State language of the Republic is Bengali'. Thus, it is clear that the Bengali language prevailed over the minority languages. The Constitution of Bangladesh defines the term 'Nationalism' as the unity and solidarity of the people that come from a shared language and culture. Part III of the Constitution ensures equality before the law and the equal protection of the law. The term 'equal protection of law' has its widespread effect that it means every person should be treated in the same way (*Sheikh Abdus Sabur v. Returning Officer and Others*, 1987).

As per the case of *Dr. Nurul Islam Vs. Bangladesh R. Islam (1981)*, the doctrine in the same way means- 'the principle on which the doctrine of equal protection of laws is founded is that persons in similar circumstances must be governed by the same laws'. Therefore, to ensure the rule of law, every person in the country has the same right to get proper protection under the law. However, these bookish talks attract the peoples without any doubt, but the actual scenario is quite different. Everyone is talking about the equal protection of law, even the constitution is no exception, but linguistic minorities are facing the same problem till now due to their language barrier.

6.1 Barriers for Linguistic Minorities in the Formal Criminal Justice System

There are three groups of people involved in a criminal case, i.e., i) Victim, ii) Witness, and iii) Accused. Now, the common struggles that any victim, witness, or accused from a linguistic minority group face in the formal justice system need to be discussed.

6.1.1 Victim

For many years, the victims of crime have been considered a forgotten party in the world's criminal justice system (Azola,2006). The rights of victims can be categorized into eight different categories as- right to be treated with dignity, respect and sensitivity; right to be informed about the proceeding of the case; right of protection for the victim and his or her family, right to apply for compensation; right to restitution, right to prompt return of personal property, right to a speedy trial and the enforcement of his or her rights as a victim (Roberson,2017).

At the beginning of the proceeding, if a victim wants to file a FIR concerning the commission of an offence at a police station, for a language barrier, it would not happen properly (Matras & Sakel, 2019). FIR includes the information of the offence committed, but if the aggrieved person is from a linguistic minority group and does not have sufficient knowledge about the language used in the FIR, then the aggrieved person will not be able to give information properly (Paul et al., 2025). This results in vagueness in filing the FIR, which is an essential document for starting the case (Grabau & Gibbons, 1996). Again, if someone wants to complain to the magistrate in writing regarding the commission of a non-cognizable offence, the magistrate, having received such information, can examine the complainant upon oath (Rahman, 2020). Here, the aggrieved person from the linguistic minority group will suffer due to the lack of a court interpreter. There is a myth that it's easy to file a FIR with the help of the police or other staffs in the police station or submitting a complaint in the magistrate court with the help of Advocates, but the actual scenario is quite different (Guhathakurta et al., 2007). The staffs in the police station and the staffs of the magistrate court are not from the linguistic minority group. However, without appointing a formal interpreter, there will always be a vagueness in the whole proceeding.

This scenario affects the women victims from religious minority the most. Women continue to be the most vulnerable groups in society despite much discussion about their empowerment (Orthy,2018). We need to be mindful that an attack on a minority woman is seen as an attack on the community.

Before 2010, if any issues the Headmen or *Karbaris* had the authority to solve the problem on their own. This had been followed for the cases of serious crimes, like rape, grievous hurt, or domestic torture. They used to resolve these matters in their own way without giving any kind of punishment. In most cases, they instructed the family of the accused to arrange a 'voj ceremony' to the elders of the village. Apart from this, most of these headmen and karbaris are male, and for this reason, they used to skip or disregard the pain of the female victims. In the maximum cases, the female victim found guilty by the headmen and karbaris.

After 2008, due to their fear of future consequences, the women victims in many cases were unable to seek legal help. Even after a case has been filed, it is frequently threatened that it will be withdrawn or suffer serious penalties from the dominant group. Beyond all else, a woman victim who is prepared to pursue formal justice endures significant hardship due to the linguistic barrier. In another research with Ain o Salish Kendra, it appeared that a female victim from a linguistic minority group is unaware of any legal provision pertaining to the offence at the institution of the case or while filing a FIR (Baul, 2021). Additionally, sometimes without her knowledge or consent, the FIR contains inaccurate or irrelevant elements that serve to lessen the penalty. She must believe the court employees without any doubt or the staffs at the police station because she does not speak the language using in the proceeding. Most of the police officers, advocates, and judges do not understand the language of the victims and witnesses of linguistic minorities. Due to this, most of the judges fail to record their oral evidence correctly, which results in a gross violation of the rule of law. When victims find that their statement is not correctly recorded, then they get discouraged from appearing before the court again. The Constitution guarantees that the right to protection of law is an inalienable right of every citizen, but the circumstance is quite different here.

6.1.2 Witness

There is no specific definition of the term 'witness' in any enactments of Bangladesh. However, A witness must be legally competent to testify. As per the Evidence Act, 1872, in criminal cases, a basic test of competence is whether the person is able to (i) understand questions put to him as a witness, and (ii) give answers to them which can be understood. Nonetheless, a witness cannot be considered as a witness if he comes from the linguistic minority group for not fulfilling these aforementioned criteria of being a witness (Hale, 2014). Without an interpreter, it's difficult and almost impossible to understand the question and response to them properly. The proceeding will be considered vague because of this enormous gap.

6.1.3 Accused

An accused person possesses some specific rights. Every person has a right to get a free and impartial trial process. If any trial is made without following the principles of the 'rule of law' and natural justice, it cannot be said to be fair. The constitution ensures that it is the right of an arrested person to know the reason for his detention. Furthermore, in case of preventive detention, the police must have some 'reasonable suspicion' unless the police will be punished (*Saifuzzaman (Md.) v. State and others*, 2004) even if he has done it bona fide (*Alhaj Md. Yusuf Ali v. State*, 2002). Here, knowing the reason of the arrest is the earliest right of an accused. Over and above that, every person has the right to defend themselves. This right follows the principle of *Audi Alterum Partem* (*Legal Study Material, n.d.*). That means no one shall be condemned unheard. The constitution gives an accused person the right to consult with a legal practitioner to defend himself (*Moslem Ali Sikder v. Chief Secretary*, 1956). A formal trial starts with the framing of a charge. Here is another stage where the accused from the linguistic minority group face difficulties. When the charge is framed, the accused are going to be asked whether or not he admits that he has committed the offence with that he's charged. If the accused person cannot understand the charges against him, then it will not possible for him to defend. When the magistrate doesn't convict the defendant on plea or if the defendant doesn't build admission, the magistrate shall proceed to listen to the case on the idea of proof and will start examination of the prosecution witness. It is the right of the accused to understand the statements of the witnesses, which is almost impossible without an interpreter. Therefore, in the absence of an interpreter, all the aforementioned right will be violated if the accused is from a linguistic minority group who has no sufficient knowledge about the language using in the court proceeding.

7. The Interpreter: Define the Undefined

There is no universal definition of an Interpreter. However, as per the words of Roseaan and Gonzalez, an interpreter is a "language mediator" (*González et al., 1991*) or "language conduit" (*United States v. Cordero, 1994; United States v. Nazemian, 1991; State v. Chyo Chiagk, 1887*) whose presence and participation allow an individual who does not speak or understand the language using in the court proceeding to meaningfully participate in the judicial proceeding (Minnesota State Court System, 1995). There might be three types of interpreters: i) Proceeding Interpreters, ii) Defense Interpreters iii) Witness Interpreters.

7.1 Proceeding Interpreters

A criminal case can be started by filing an FIR in the Police Station or by complaining in the magistrate court. In the proceeding of filing FIR, it is almost impossible to give proper information by the informer who speak a language other than the language using in the FIR filing. He/she would be unable to read the FIR form, or they would not have a sufficient idea what information are crucial for filing the FIR properly. For this reason, an informer needs an interpreter in times of filing of the FIR. Furthermore, on the other hand, a complaint may be filed in the magistrate court. The magistrate, having received such information, can examine the complainant upon oath. Here, the complainant needs an interpreter during the examination by the magistrate.

7.2 Defense Interpreters

As previously described, a person who is accused has some particular rights, such as a fair trial, know the ground of arrest, the right to self-defense, etc. An accused or a person who wants to defend himself understand a language other than the language used in the proceeding, needs an interpreter at the police station to fulfilling the basic rights of the arrested person (i.e., know the ground of the arrest). It is essential that the interpreter at the police station or on the course of investigation is not engaged to interpret in the court proceeding for the same case. However, if any circumstance arises that it is not possible to find another interpreter because the language is rare, then the court may notify the intention of using the same interpreter for the court proceeding to all the parties (*Regina (Bozturk) v. Thames Magistrates' Court, 2001*). In the trial stage, a different interpreter will assist the defendant in the proceeding.

7.3 Witness Interpreters

A witness who faces difficulty in speaking or understanding the language using in court proceeding may give evidence at court through an interpreter. It is the responsibility of the prosecution and defense to arrange interpreters for their own witnesses at the court proceedings (*R v. Sharma, 2006*). The interpreter must play an impartial role in the proceeding. In the case of *Mitchell (1970)* 114 S.J. 86, the Court of Appeal held that the employment of an interpreter who was a waiter at the restaurant where the offences were alleged to have taken place was inappropriate.

7.4 Recommendations

From time to time, the availability of the formal justice system for the people of linguistic minority is decreasing. Although there are some bookish rules that talks about the protection of minority rights in Bangladesh but most of them are insufficient, ineffective, or less effective. People from minority group don't seek help from the formal legal justice system in Bangladesh till today. If anyone knocks on the door of the court, they comeback with huge disappointment. Subsequently, the fundamental rights of the linguistic minority people (i.e., protection of law, fair trial) are being hampered. Nonetheless, to ensure justice for the people from linguistic minority, the following steps may be taken into consideration:

7.5 Constitutional Amendments Needed

Even though the present government has made several significant advancements in minority language promotion and growth, more has to be done. Minority languages may be included in the Constitution through an amendment, ensuring their status and the freedom to be used and practised in all spheres of public life and court procedure. The development and preservation of marginalized ethnic identity will be significantly furthered by constitutional recognition of minority ethnic languages.

7.6 Appoint Qualified Interpreters

There might be a committee under The Supreme Court of Bangladesh for recruiting and monitoring the Interpreters. Generally, there are no formal "qualifications" *per se* to be a court interpreter (Kansas Judicial Branch, 1994). At a bare minimum, a court interpreter should be able to (i) understand "the terms used in court proceedings"; (ii) "explain these terms in the language and the foreign language which will be used"; (iii) "interpret these terms into the foreign language being used"(National Center for State Courts, 1995) and (iv) be disinterested in the proceedings.

7.7 Arrange Frequent Training for the Interpreters (Belenkova, 2016)

The government should arrange a training program for the interpreters at least once in a year. The training may introduce the interpreters to the basic ethics, skills, protocols, and requirements of community interpreting. This training will help interpreters to build knowledge, skills, and insight through practice, activities, video vignettes, role plays, case studies, and much more.

7.8 Campaign in the linguistic minority community

The government should campaign about the facility of interpreters through posters or through some other local NGOs in the ethnic group area. It is better if the campaign program can be carried on by the ethnic people and their local NGOs. It will create credibility among the linguistic minority people.

7.9 Monitoring and Facilitating

Frequent monitoring is important to identify the actual outcome of the interpreter facility. As mentioned earlier, the appointment proceeding of the interpreters and frequent monitoring should be done by the Supreme Court of Bangladesh. The interpreters may maintain individual case files (Proceeding interpreters/Defendant Interpreters), and it will be monitored by the Committee.

7.10 Promote Legal Education in CHT

In the present time, the minority people are trying to depend on the criminal laws of Bangladesh. For this reason, the legal education for indigenous people should include the criminal laws of Bangladesh, the Constitutional laws, International Human Rights Laws covering the rights of women, the Rights of linguistic minority people, which make the Bangladesh government obliged. The rights of linguistic minority people should be made simplified which can be easily understandable. The Bengali people should also know the rights of linguistic minority people so that they can respect them and their language. To choose the trainer of the legal education training, priority should be given to the ethnic identity and community. Overall, the legal education in CHT should be promoted to reduce the language barrier in case of court proceeding.

7.11 Workshop with Bangali and Advocates from Linguistic Minority, Judges and Indigenous Elites and Educated Person (Naomi et al., 2011)

Communication can be considered an important tool for seeking rights. Communication between Advocates, Judges, Headman, Karbari, Local elites, and educated people may reduce mutual mistrust for the sake of justice. Some primary issues like ethnic tension, mistrust, language barriers, are very common for linguistic minorities regarding the formal justice system in CHT. But still, the people from linguistic minorities feels that these problems are related to their ethnic identity, which is not true at all. It they can feel that Bangali people are also aggrieved on some points like them, then their feelings of discrimination may be mitigated to an extent. At the same time, these workshops may facilitate communication between the staffs of the formal justice system and the justice seekers.

8. Conclusion

The human rights of linguistic minorities are being violated in Bangladesh due to their language barrier. It is clear from examining the evolution of linguistic minorities that language should not be a barrier to ensuring justice. To be fair to them, occasionally, all the governments haven't been all that helpful (UNDP Bangladesh, 2016). It has become necessary and fair to speak up for justice for linguistic minorities in the current situation in Bangladesh. It is essential to understand their present circumstances and the consequences of their rights to abdicate the gaps in the

existing justice system. This study may appear to be little more than an attempt to address such a weighty problem. The lack of state acknowledgment of linguistic minority rights and minority existence portrays Bangladesh as a country dominated by Bengalis, which reduces the room for linguistic minorities to exist as separate communities with their own customary rights, beliefs, cultures, and ways of life. It is high time for our lawmakers to recognize the linguistic minorities in the Constitution to ensure their rights and justice.

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