
Use of Local Languages in Courts: Assurance of Accessibility to Law

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Background

In medieval society, and even today, in many of the tribal cultures that prevail in the country, law is mainly based on customs which prevail in the tribal community, law is not dependent upon the symbolic language and its meaning. With the emergence of the industrial revolution, the rational-legal approach made law reliant on its interpretation. A paradigm shift has been witnessed in making, understanding and practicing the law. This shift has aided a few elites in monopolizing the interpretation of law. In the modern era, lawyers now have effectively controlled the meaning and interpretation of law because of which it becomes difficult for the masses to get easy access to law.

The nation has witnessed many movements with respect to access to justice, and they have at times failed, however, with respect to access to law not much attention has been given by the Indian intellectuals and the institutions of democracy.

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Constitutional Provisions with Respect to Language

Article 343(1) of the Indian Constitution states that the official language of the Union shall be Hindi however, a perusal of clause (2) of Article 343 would show that English language was to be used for all the official purposes

of the Union for 15 years from the date of commencement of the Constitution. But at present we see that English has become so dominant that it is still used as an official language in the country. Article 348(1) & (2) of the Constitution reads as:-

“348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc. – (I) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provide-

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- (a) All proceedings in the Supreme Court and in every High Court,
- (b) The authoritative texts-
 - (i) Of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,
 - (ii) Of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and

(iii) Of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State, shall be in the English Language.

(2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor of a State may, with the previous consent of the President, authorise the use of the Hindi Language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.”

Article 348 mandates the use of ONLY English as the language to be used in the Supreme Court and the High Courts of the country. The clause (2) of Article 348 provides that the Governor of a State may, with the previous consent of the President authorize the use of Hindi or any other language used for any official purpose, in proceedings in the High Court. However, it further states that nothing in the said clause would apply to any judgment, decree or order made by the High Court. Therefore, English is considered to be the primary language in Indian High Court and Supreme Court Courts.

The Constitution of India was adopted in the year 1950 in English language however, its Hindi version was adopted in the year 1987. Earlier, it was presumed that the use of English language would fade away with the passage of time and Hindi alongwith the other regional languages will attain popularity over the period of time however, that has not been the case. Article 345 of the Constitution states that the State may adopt of one or more languages in use in the State for the official purpose. Article 351 requires that:-

“It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India”

These provisions clearly portray the intent of the Constituent Assembly to promote the use of Hindi and the other regional languages for the official purpose. However, over the period of time English has become the dominant language and its overuse has diminished the use of other languages thereby, denying the common man access to law.

Other Legislations on Language

The Official Languages Act, 1963 is an act to provide for the languages which may be used for the official purposes of the Union, for transaction of business in Parliament, for Central and State Acts and for certain purposes in High Courts. The provisions of the Act are in consonance with the word and spirit of Article 348 of the Constitution of India and therefore, the act also gives

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primacy to the English language when it comes to delivery of the orders in High Courts and Supreme Court because the Act states that where any judgment / decree / order is passed in any such language it shall be accompanied by a translation of the same in English.

In India the Section 137 and Order 18 Rule 5 of Code of Civil Procedure gives the liberty to all the subordinate courts to use the language as the State Government determines. The state government has the power to declare any regional language as an alternative for the proceeding of the court. Section 272 of the Code of Criminal Procedure empowers the State Government to determine the language of all courts other than the High Courts, meaning thereby, that the language used in the

proceeding of the district courts shall be the regional language as the state government directs.

Use of Local Language : Need of the Hour

India is a country of diversity. Different regions have different languages. People from different societies have their own ways of communicating to each other. In India only 10.5 percent of people can speak English. Therefore, it becomes difficult for the common masses to interpret the court orders and judgments. The Supreme Court as the entire nation has witnessed, has at times delivered lengthy judgments on relevant issues of National importance, be it the Ayodhya Ram Mandir Case, Keshavanand Bharti, Indra Sawhney (Mandal Commission Case) etc. and all these judgments have been delivered in the English language. Now, because of this linguistic barrier it becomes difficult for the rest 90 percent of the population to understand the spirit of the judgments. It is only the media that interprets and make the people aware of the issues decided in the landmark judgments. This raises the concern that, Is law to be confined to only those who are well-verse with the language? If people are paying taxes to run the country then are they not entitled to get access to the law and justice of the country?

Even after 76 years of Independence it is saddening to see that one alien language has captured each and every institution in the country. It becomes difficult for the common citizens coming from different classes of the society for instance, the Bonded labours, the fishermen, farmers, class-IV employees etc. to interpret the law because of the barrier imposed by English language. Some of the Sessions Judge in the metropolitan Cities have started to conduct the trials in English language as a consequence of which it becomes difficult for the accused to understand the offences which are levelled against him. English is just merely a language and in the present scenario people are being forced to be proficient in it. The Supreme Court and the High Courts of the country by delivering the judgments for adjudicating the rights of the parties are not delivering justice to those who have no understanding of the language. It is to be understood that it is the litigants who pay for the court proceedings and therefore, to

maintain their faith in law language of their convenience should be used to conduct the proceedings of the court.

In India there are 17,000 judges in the District Courts, 1100 judges in the High Courts and 34 judges in the Supreme Court. By the virtue of Section 272 of CrPC, Section 137 and Order 18 Rule 5 of CPC, the lower court proceedings are conducted in the local language as the State determines. Therefore, this fact raises the question that if 17,000 judges can conduct the court proceedings in the local language then is it difficult for the rest 1134 judges to conduct the court proceedings in local language? Also, Article 21 of the Constitution guarantees access to justice to the citizens of India but the language barrier makes it difficult for the layman to understand word and spirit of the law existing.

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If a person desires to practice law in the High Courts and the Supreme Court he is forced to learn English language. Article 19 of the Constitution ensures that every citizen has freedom of speech and expression however, Article 348 of the Constitution curtails this right of a person because of the mandate to use the alien language in the court proceedings. In *Madhu Limaye v. Ved Murti*, one of the counsels insisted on arguing in Hindi, but no heed was paid to the request made by the advocate and the Supreme Court refused his request. Eighth schedule of the Constitution enlists 22 languages to be used for official purpose and it is pertinent to point out here that English finds no place in those 22 languages still, in the present scenario it has dominated the entire system which is deeply saddening.

Way Forward

It is to clarified that authors are not against the use of English language but are of the view that law should be accessible to the common masses. Therefore, to make it accessible to the layman the authors in this sub-head have an attempt to remove this linguistic barrier. Firstly, a perusal of article 348(1) of the Constitution states that “(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides” an interpretation of this provision clearly states that English language is to be used until the Parliament by law decides meaning thereby, that it is upon the desire of the legislature upto when they desire to keep it operative, therefore, the authors suggests that the parliament by amending the said provision by the virtue of Article 39A will ensure that the common masses of the country are getting access to the law and justice. Secondly, it is relevant to mention here that in International Court of Justice court proceedings are conducted in English and French however, the rules provide that if any of the parties desire the proceedings to be conducted in the language of their choice then a translator is provided to them therefore, the same thing can be implemented in the court functioning of our country as well.

Concluding Remarks

In the light of the above discussion the authors are of the view that use of local languages in the court proceedings is the need of the hour considering the social strata of the country. Some of the Indian states like Uttar Pradesh, Madhya Pradesh, Bihar, Chattisgarh and Rajasthan have made the use of Hindi language in the court proceedings, but the main barrier still gets imposed where the people neither understand Hindi nor English for example the Southern India region has its different languages and therefore, it becomes most important to make the law accessible to them by translating the orders and the proceedings to be made in regional language.

The use of English language imposes barrier in respect to accessing law, court, procedure and adjudication. The parties to a proceeding remain unsatisfied in the current adjudicatory mechanism because the final culmination is not properly communicated to them. The judiciary as well

as the other institutions of our democracy however, must mirror the social and geographical diversity of the country. The law before the constitutional courts should be based on one's intelligence and understanding of law and not mere proficiency in language. Article 348 of the Constitution is a temporary provision and henceforth, it should be amended by the Parliament. As stated above also that only 10.5 percent of the population can speak English in the country therefore, it becomes much difficult for the common masses to understand the legal terminologies in English. Following things should be allowed in the court proceedings considering the diverse culture of the country:-

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- (1) Pleadings should be allowed in the local language of the parties.
- (2) Evidence should be recorded in the local language of the region where the matter is adjudicated.
- (3) Arguments should be allowed to be done in the local language if the party so desires.
- (4) Judgments should be delivered in the local language so that the parties can develop faith in the Indian Legal System.

Prime Minister Narendra Modi highlighted the issue of language barrier and therefore, in the direction to make law accessible for the layman the Supreme Court has directed that the operative part of the judgments to translated in different languages.

The term access to justice is much broader in India despite of having free legal aid services law and justice is not accessible to each and every citizen in India therefore, there is need for Indianisation to increase the accessibility by shaping the system in accordance with the needs and sensibilities of the Indian Population. 