

CHAPTER XVI

OFFICIAL LANGUAGE

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A. THE ISSUES

India is a multilingual country having numerous languages. This creates various problems and tensions in the country. Federalism in India is subjected to a unique challenge, the like of which it has not been faced by any other country, for here it has to bind together a much larger number of linguistic and cultural groups than are to be found in any other federation. In the U.S.A. and Australia, there is lingual homogeneity, as English is the language of administration and education in these countries. Though in Canada racial and linguistic problems arise, yet even here there are only two language groups and both English and French languages are recognised as the official languages.

In Switzerland, there is polyglot population, and three official languages—German, French and Italian—but it is a small country both in territory and population as compared to India, economically very highly developed and the number of languages is much smaller than those prevailing in India.

The USSR has a multilingual population and has nearly 200 languages and dialects, but the Russian language enjoys a primacy over all other languages as it is the mother-tongue of nearly 100 million people, and has always been used as the only official language for politics, education and administration throughout the country since the Czarist period.

India thus faces a *sui generis* language problem as the situation here does not approximate to any other federal model mentioned above. India cannot, therefore, adopt any readymade solutions from outside for its linguistic problem but has to hammer out its own solutions consistent with the national perspective and regional pressures.

India has two major linguistic families:¹ Indo-Aryan² and Dravidian.³ The Indo-Aryan languages, eleven in number, are derived from Sanskrit, are spoken by nearly 75 per cent people, of whom Hindi is spoken by nearly 42 per cent people. The Dravidian languages, spoken by nearly 24 per cent people, prevail in the South of India and of these, Telugu is spoken by the largest group. Some of the Indian languages are very old and have a rich cultural and literary heritage. All these languages are prevalent in fairly compact areas.

The languages in both the groups have, in spite of their separate origins, a good deal in common in so far as one family is derived from Sanskrit while the other has been influenced by it. None of these languages occupied any important place during the British rule as English had been accepted as the language of administration, instruction and examination for the whole country. It was the sole medium of communication among the elite on the all-India level. The indigenous languages could not thus properly develop and prosper. Consequently, all the indigenous languages are presently deficient to serve as an adequate linguistic tool to fulfil the requirements of modern administration. But in spite of the pre-eminent position given to the English language in the past, it could never become the mass language in India.

The over-all literacy in the country itself being only about 8 to 10 per cent during the British period, the English language could be spoken fluently only by a microscopic minority of the people. Therefore, when India became independent and adopted the democratic form of government based on adult suffrage, retention of the English Language for purposes of administration appeared to be incongruous and anachronistic. A language which the vast majority of people do not understand could not be the language of administration in a democratic society, as it will cut off the masses from any real participation in the affairs of the country and thus denude democracy of much of its content. Only one of the Indian languages could be adopted as the language of the administration at the Centre.

At the time of the constitution-making, the language controversy came to the forefront. The debates of the Constituent Assembly reveal that there was a substantial amount of consensus on two basic points: (1) at some stage, the English language should be displaced from its pre-eminent position; and (2) its place should be taken by Hindi.

The major bone of contention, however, was regarding the time-limit within which this process should be culminated. There were many difficulties in the way

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1. There are two minor families as well, Austro-Asiatic and Tibeto-Chinese, spoken respectively by 1.5 per cent and 0.75 per cent people in the country.
 2. The following languages fall in this group: Assamese (1.39 per cent), Bengali (7.03 per cent), Gujarati (4.5 per cent), Hindi (42 per cent), Marathi (7.5 per cent), Oriya (3.68 per cent), Punjabi (1 per cent), Sanskrit, Urdu, Kashmiri and Sindhi (all 8 per cent nearly).
 3. This family consists of 4 languages, viz., Telugu (9.2 per cent), Tamil (7 per cent), Malayalam (3.7 per cent) and Kannada (4 per cent).

of adopting Hindi immediately. It was not so well developed as to replace English as the language of the administration and so it needed time to develop properly; the country's intelligentsia felt a genuine difficulty in taking to Hindi at once, accustomed as it was to thinking and speaking in the English-language for a long time; the non-Hindi-speaking people apprehended that adoption of Hindi would give to the Hindi-speaking people an edge over them in the administration and the Central services. How long should the period for the change-over be? This thus became a controversial question in the Constituent Assembly.⁴

B. CONSTITUTIONAL PROVISIONS

The Constitution contains detailed provisions regarding the language problem. These provisions represent a compromise between the conflicting views held by the Hindi enthusiasts and others. The Constitutional formula has a number of inter-related elements, *viz.*:

- (1) English would continue as the official language for 15 years;
- (2) Hindi is to take its place thereafter;
- (3) steps are to be taken to promote the growth of Hindi in the meantime;
- (4) any State may adopt any other language as its official language.

According to Art. 343(1), Hindi written in Devanagari script is to be the 'official' language of the Union. The reason for designating Hindi as the 'official', and not the 'national', language is that not only Hindi but all regional languages are regarded as the national, and not foreign, languages. Art. 343(1) lays down the ultimate goal to be reached in course of time.

As the Constitution makers did not want to institute Hindi immediately, but only after a period of transition, the Constitution specified a period of 15 years for this purpose. It was thus envisaged that from January 26, 1965, Hindi would be installed as the official language at the Centre and that, in the meantime, the English language would continue to be used for that purpose. Therefore, Art. 343(2), *inter alia*, provides for the continued use of English for all official purposes of the Union for a period of 15 years from the commencement of the Constitution.

The Constitution does not, however, regard the 15 year period as an absolute deadline; some flexibility has been introduced in the arrangement. Thus, Art. 343(3)(a) authorises Parliament to provide by law for the continued use of the English language for such purposes as may be specified in the law even after that period. Parliament could thus permit the use of the English language beyond the 15 year period for some or all official purposes of the Union.

Commenting on Art. 343(3), the Supreme Court has observed in *Murasoli Maran*:⁵

“Art. 343(3) provides merely for extension of time for the use of English language after the period of 15 years. The progressive use of the Hindi language is thereby not to be impaired. Extending the time for the use of the Eng-

4. For discussion on the language problem in the Constituent Assembly, see, AUSTIN, *THE INDIAN CONSTITUTION*, 265-307 (1966).

5. See, *infra*, footnote 22.

lish language does not amount to abandonment of progress in the use of Hindi as the official language of the Union.”

In respect of numerals again, the Constitution adopts a compromise formula. For the first fifteen years after the commencement of the Constitution, the international form of numerals are to be used for official purposes of the Union. But, thereafter, Art. 343(3)(b) authorises Parliament by law to provide for specific purposes for use of Devanagari form of numerals.

The adoption of the Hindi as the distant goal, and the period of transition of 15 years, raised two related questions for the Constitution framers to solve: (1) the use of Hindi during the period of transition, and (2) smoothening the process of change-over from the English to the Hindi language.

If Hindi were not encouraged and promoted during the transition period, then it could not be ready to replace English on the appointed date. Recognising the logic of the argument, the Constitution provided for a limited and optional use of Hindi during the transition period. According to the proviso to Art. 343(2), during the initial period of 15 years, the President could, by order, authorise the use of Hindi, in addition to the English language, and Devanagari form of numerals in addition to the international form, for any of the official purposes of the Union. Here the words ‘in addition to’ are significant as these clearly indicate that during the period of transition, Hindi would be used in *addition* to, and not in substitution of, the English language.

The scheme of the Constitution would thus appear to be that while Hindi was to be used in *addition* to the English language during the period of transition, English may be used in *addition* to Hindi thereafter. In this way, a reconciliation between the Hindi and non-Hindi views was sought to be established.

An interesting point to note in this connection is that while the use of English, after the transitory period, has been left to Parliament, prescribing the use of Hindi in the interim period in *addition* to the English language has been left to the executive. This indicates that greater significance was attached to the extension of the 15 year time-limit for continued use of English than to using Hindi during the interim period. Another explanation for this is that the Constitution has made a provision for the appointment of an Official Language Commission and on its advice the Central executive could decide the purposes for which Hindi should be used *additionally* to the English language during the 15 year limit.

(a) OFFICIAL LANGUAGE COMMISSION

Art. 344(1) provides for the appointment by the President of a Commission on Official Language after five years from the commencement of the Constitution, and thereafter at the expiry of ten years from such commencement. The Commission is to consist of a Chairman and such other members representing the various regional languages mentioned in the VIII Schedule to the Constitution as the President may appoint. According to Art. 344(2), the duty of the Commission is to make recommendations as to—

- (a) the progressive use of the Hindi language for the official purpose of the Union;

- (b) restrictions on the use of the English language for all or any of the Union official purposes;
- (c) the language to be used for proceedings in the Supreme Court and the High Courts, for Central and State legislation and delegated legislation made thereunder etc.;
- (d) form of numerals to be used for the official purposes of the Union;
- (e) any other matter which the President may refer to it regarding the official language of the Union and the language of communication between the Union and a State, or between one State and another.

In making its recommendations, according to Art. 344(3), the Commission is to keep in view the industrial, cultural and scientific advancement of India, and the just claims and the interests of the non-Hindi speaking people in regard to public services.

The constitutional provision shows plainly that the Commission was envisaged to facilitate the use of Hindi during the transition period in *addition* to English so that the process of change-over from English to Hindi on the appointed day could be smooth. A good deal of say was given to the non-Hindi speaking people in deciding upon the pace of progressive transition from the English to the Hindi language, because they were to be in a majority in the Commission. The directive to the Commission to keep in view the industrial and cultural advancement of the country and to recognise the claims of the non-Hindi speaking people in the services would rule out any hasty change-over from English to Hindi.

The Commission's recommendations were to be screened by a Parliamentary committee consisting of 20 members from the Lok Sabha and ten members from the Rajya Sabha elected by the system of proportional representation by means of a single transferable vote [Art. 344(1)]. This meant that all linguistic groups in Parliament would get representation on the committee. After examining the Commission's recommendations, the committee would make its report to the President [Art. 344(5)]. The President could then issue directions in accordance with the whole or any part of the committee's report, notwithstanding anything in Art. 343 *i.e.*, to restrict the use of English and to promote the use of Hindi during the 15 year period [Art. 344(6)].

There were so many built-in safeguards in favour of the non-Hindi speaking people that no precipitate action towards introducing Hindi during the interim period in *addition* to the English language could be taken. It may be seen that Arts. 343 and 344 deal with the process of transition. The ultimate aim is laid down in Art. 351. Art. 344(6) takes into account the objective laid down in Art. 351, and seeks to determine the pace of progress and to achieve the same.

The Supreme Court has emphasized that Art. 344(6) is not exhausted by using it once; the President can use it on more than one occasion. The Presidential order issued under Art. 344(6) is supreme because of the *non-obstante* provisions in Art. 344(6).

(b) DEVELOPMENT OF HINDI

At the time of the Constitution-making, an argument used for having a long transitory period for change-over from the English to the Hindi language was that

it was an underdeveloped language and that it needs to be developed before it could be ready to take the place of the English language. Therefore, Art. 351 places the Central Government under an obligation to take steps to promote the spread and development of Hindi.

Art. 351 also lays down the future form which Hindi should take, *viz.*, Hindi should be developed so that it may serve as a medium of expression for all 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 mentioned in the VIII Schedule to the Constitution, and by drawing for its vocabulary, wherever necessary or desirable, primarily on Sanskrit and secondarily on other languages.

This provision contains too many compromises and seeks to draw a balance between the purists and the liberalists as regards the development and enrichment of Hindi. The purists desire to draw upon Sanskrit, and Sanskrit alone, for new words necessary to develop Hindi as a language of administration and education, while the liberalists want to use all regional languages and Hindustani for the purpose.

There is no doubt however that Hindi developed on the lines laid down in Art. 351 would be very different from its present form. The idea of assimilating terms from regional languages into Hindi is expedient as it would allay apprehensions and misgivings of those linguistic groups whose languages do not have a Sanskrit base.

(c) REGIONAL LANGUAGES

The framers of the Constitution were also faced with the important question regarding the future role of the regional languages. They took the view that these languages should be promoted and developed so as to be able to play a meaningful role in the future set-up in the country. Articles 350A and 350B were inserted by the Constitution (7th Amendment) Act 1956 to ensure the protection of linguistic minorities.⁶ To achieve these objectives, the Constitution lists in the VIIIth Schedule twenty-two regional languages, *viz.*, Assamese, Bengali, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu.

There appears to be two purposes underlying this enumeration of the regional languages:

(1) These are the languages to be represented on the Official Language Commission to be appointed under Art. 344(1); and

(2) From these languages, words are to be drawn for developing Hindi as envisaged in Art. 351.

An unstated idea underlying the VIII Schedule may be that the languages named therein need to be developed. The mention of these languages in the Con-

6. See further under Ch.XXXV (*infra*).

stitution however gives a psychological and emotional satisfaction to the proponents of these languages.⁷

Further, Art. 345 authorises a State to adopt, by making a law, any regional language or languages in use in the State, or Hindi, for its official purposes. The choice of the State is not limited to the languages mentioned in the VIII Schedule. Till such a law is made, the English language is to continue to be the official language of the State.

Art. 345 is permissive. It does not say that, after adoption of Hindi or any other language by a State, use of the English language would be barred altogether so as to render void an order made, or any other official proceedings done, in the English language. That can happen only if the State Legislature makes a specific provision barring the use of the English language altogether.⁸

(d) INTERGOVERNMENTAL COMMUNICATION

Another problem, peculiarly a federal problem, faced by the Constitution-makers was to devise a formula concerning the language to be used in inter-governmental communications. This became necessary in view of the possibility of different States adopting different official languages.

Art. 345 therefore lays down that for purposes of communication between two States, or between the Centre and a State, the official language of the Centre should be used, although two or more States may agree to use Hindi for the purpose.

(e) LANGUAGE OF LAW & COURTS

Difficult problems arise when the question of language is considered in the context of law and the courts. The English common law is the basis of the Indian legal system and, to this end, the English language has been a very useful medium of thought and expression. India has a unified judicial system; there exists a basic unity in the laws prevailing in the country, and decisions of one High Court are freely cited in the other High Courts. The problem of the language of the law thus assumes a special significance. If a High Court adopts the local language, then it would be difficult to cite precedents from this Court in other High Courts. Difficulties would also arise in the functioning of the Supreme Court if the High Courts were to adopt different languages.⁹

7. The rights of linguistic minorities assumed special significance and the coercive imposition of Hindi as a 'unifying language' led not to unity but to an assertion of differences. States were formed on linguistic bases showing the apparent paradox that allowing for and protecting differences leads to unity and integrity and enforced assimilation may lead to disaffection and unrest.

8. *Dayabhai v. Natwarlal*, AIR 1957 MP 1; *Harihar Pd. v. District Magistrate*, AIR 1961 All 365.

9. Quoted with approval in *Shri Satish Dattatray Nadgauda v. The State of Maharashtra*, 2007(109) Bom LR1089. This extract is taken from *Usha Mehta v. State of Maharashtra*, (2004) 6 SCC 264, at page 274.

A policy decision made by the Maharashtra State Government whereby Marathi language study was made compulsory throughout the schools in that State. As a result, the English-medium schools run by Gujarati linguistic minorities were compelled to teach four languages (Hindi, English, Marathi and mother tongue Gujarati) as against the accepted "three-language formula".

Similar problems arise in regard to the language of legislation. How would the law enacted in one State in its own official language be known in other parts of the country, and how would the Supreme Court interpret the same? The compulsions of the situation therefore demand that so far as possible there exists a basic unity in the language of the law and the courts throughout the country. Accordingly, the Constitution makes special provisions concerning the language problem in the areas of judicial and legislative processes, the idea implicit therein being that the question of the courts' language should take its own time to settle.

As regards the language of the courts, Art. 348(1) lays down that until Parliament otherwise provides, proceedings in the Supreme Court and in a High Court are to be in the English language.¹⁰

As an exception to the above-mentioned general rule, however, Art. 348(2) provides that the Governor of a State, with the previous consent of the President, may authorise the use of Hindi, or any other official language of the State, in proceedings in the High Court, but not with respect to the judgements, decrees and orders passed by it, which shall be in the English language as required by Art. 348(1).¹¹

The effect of Art. 348(2) has been explained by the Supreme Court in *Vijay Laxmi Sadho v. Jagdish*.¹² The M.P. High Court rules required that the election petition to be filed in the Court should be drawn up in the English language. Accordingly, the High Court dismissed an election petition drawn up in Hindi. The Supreme Court has ruled that the High Court could not do so. The High Court rules are only of a procedural nature and do not constitute "substantive law". The rules have to be read subject to Art. 348(2).

Under Art. 348(2), the State Governor, with the previous consent of the President, may authorise the High Court to use Hindi or any other language in its proceedings, save that any judgment, decree or order passed or made by the High Court shall be in the English language as required by Art. 348(1). Under Art. 348(2), the State Governor by a notification has authorised the use of the Hindi language in all proceedings of the High Court except for drawing up decrees, orders and judgments. Accordingly, under the said notification, appeals, petitions etc. could be presented in the High Court in the Hindi language. The High Court rules could not override Art. 348(2). The High Court rules must be read along with the notification issued by the Governor. When so construed, it follows that an election petition may be filed in Hindi.

The rules framed by the High Court in exercise of powers¹³ under Art. 225 are only rules of procedure and do not constitute substantive law. These rules cannot effect the import of constitutional provisions contained in Art. 348(2). Therefore, as an election petition in Hindi could be presented in the M.P. High Court, it

10. In *Madhu Limaye v. Ved Murti*, AIR 1971 SC 2608 : (1970) 3 SCC 738, the Supreme Court asserted that the language of the Court is English.

11. For language in Parliament and a State Legislature, see, *supra*, Chs. II and VI.

12. AIR 2001 SC 600 : (2001) 2 SCC 247.

13. *Supra*, Ch. VIII, Sec. C(b).

could not be dismissed by the Court at the threshold on the ground of non-compliance of the High Court rules.¹⁴

The important point to note in this connection is that the time-limit of 15 years for change-over from the English to the Hindi language in case of the Union official language was not to apply to the proceedings in the Supreme Court and the High Courts. The matter is to be regulated by Parliamentary legislation. Parliament can make a law prescribing the language of the Supreme Court and the High Courts.

The Constitution adopts a cautious approach as regards the language of the Supreme Court and the High Courts. Even if Hindi were to become the official language of the Centre after January 26, 1965, it would not become the language of the Supreme Court and the High Courts *ipso facto*. To effectuate such a change-over, Parliament would have to make a law, otherwise, English would continue to be the language of these courts till such time as Parliament sees it fit to change the *status quo*.

As regards the language of legislation, Art. 348(1)(b) provides that until Parliament by law provides otherwise, the authoritative texts of all Bills introduced and all Acts passed by Parliament, or a State Legislature, and of all ordinances promulgated by the President, or a State Governor, and all rules made thereunder, shall be in the English language. The main purpose of this provision is to prescribe an authoritative text of the law.

Art. 348(3) provides an exception to Art. 348(1)(b). Art. 348(3) provides that a State Legislature can prescribe use of any language, other than English, for purposes of legislation—Bills, Acts, Ordinances and delegated legislation, but a translation of the same in the English language is to be published in the official gazette under the authority of the State Governor and that would be the authoritative text in English.

The idea of having English translations of Acts enacted in Hindi, or the regional languages, by the States, and to treat their English versions as authoritative, is a sound one. India is a federal country; there is a diversity of languages but there is unity of law; for quite sometime English is to remain as the language of the Supreme Court and the High Courts and, therefore, it is necessary to keep one language of the law even when the State Legislatures opt for various official languages. Therefore, in a non-English State, legislation will be made in a regional language but its English translation is the authoritative one. This means that there are two versions of the same law. The Courts have held that though they can use both versions, and even use one to remove ambiguities in the other,

14. It is difficult to understand how Rules framed by a State under Article 348(2) could override the provisions of Article 348(1). The reasoning of the Bombay High Court on the issue in *Shri Satish Dattatray Nadgauda v. The State of Maharashtra*, 2007 (109) Bom. L.R.1089 is unexceptionable.

yet in case of conflict between the two versions, the English version must prevail over the other.¹⁵

Reading Arts. 348(1) and 348(3), it becomes clear that, as regards the language of legislation, a State Legislature is free to adopt a language other than English. A few problems have arisen out of the interpretation of Arts. 348(1) and 348(3). Art. 348(1), it has been ruled, means that the authoritative text of a law enacted by a State Legislature has to be in English unless Parliament by law otherwise provides. "The power to declare that the authoritative text of any bill, Act or ordinance of a State Legislature shall be in a language other than the English language has been vested exclusively in Parliament." But it does not mean that a State Legislature cannot adopt any language other than English without a parliamentary law. Under Art. 348(3), a State Legislature is entitled to prescribe any language other than English as the language of legislation though the authoritative text of the law will be in English.¹⁶

The Bihar Legislature has prescribed Hindi in Devanagari Script as the language of legislation as provided in Art. 348(3). An ordinance was issued in Hindi but no English translation thereof was published. It was argued that in the absence of the English translation of the ordinance, there was no authoritative text and so the Hindi version must be deemed to be *non est*. But the High Court rejected this extreme contention. The Court ruled that the ordinance made in Hindi was a valid piece of legislation even without the English translation.¹⁷ The Court observed:

"Under the scheme of Article 348 of the Constitution, all ordinances made in Hindi where the Legislature has so authorised will be a valid piece of legislation even without its English translation and where an English translation has been published as laid down therein, the said translation shall also be considered to be a valid piece of legislation and both can be looked into as the authorised versions of the Ordinance".

Again, in Bihar, the Hindi version of an ordinance was published on 5-12-75. Action under the Ordinance was initiated on 8-12-75, and the English translation of the Ordinance was published only on 22-12-75. The argument was that the Ordinance could not be deemed to have come into force until its English version

15. *Sagir Ahmed v. State of U.P.*, AIR 1954 All 257; *Jaswant Sugar Mills v. Presiding Officer, I.T.*, AIR 1962 All 240; *Govindram Ramprasad v. Assessing Authority*, AIR 1958 MP 16; *J.K. Jute Mills Co. v. State of U.P.*, AIR 1961 SC 1534; *Ram Rati v. Gram Samaj*, AIR 1974 All 106. This extract is taken from *Usha Mehta v. State of Maharashtra*, (2004) 6 SCC 264, at page 280:

Policy decision is not violative of the linguistic minority rights guaranteed under Articles 29 and 30 or any other provisions of the Constitution. *Nityanand Sharma v. State of Bihar*, 1996 3 SCC 576; *Prabhat Kumar Sharma v. U.P.S.C.*, (2006) 10 SCC 587; (2006) 10 JT 587.

Difficulties often arise as a result of discrepancies (due to clerical mistakes or for any other reason) between Hindi and English versions. In *Medical Officer of Health v. Gulzari*, AIR 1965 All 170, the English version was followed. In *Asghar Ali v. State of U.P.*, AIR 1959 All 792, the English version of a notification was ignored in favour of the Hindi version because it was published under the authority of the Collector. These cases show that some confusion in the law and even in the administration is bound to arise when a State adopts Hindi, or a regional language, because of the Constitutional provision making the English version of the law as authoritative.

16. *Raichand Amichand v. Sanchalak Gramodhar*, AIR 1957 MB 26.

17. *Mathura Prasad Singh v. State of Bihar*, AIR 1975 Pat 295.

was published and, therefore, no proceedings thereunder could be instituted before 22-12-75. But the High Court rejected the argument holding that the Ordinance came into force on 5-12-75.¹⁸

Reading Arts. 345, 348(1) and (3) together, the High Court argued that a State has discretion to adopt by law Hindi as the language to be used for all or any of the purposes of the State. If that is done, it becomes the official language of the State. It cannot be argued that the publication of the English translation is a condition precedent for the enforcement of any Act or ordinance made in the State language. The High Court clarified the implications of Arts. 348(1) and (3) as follows:¹⁹

“The only consequence of the absence of an English translation will be that there will be no authoritative text, but on that account it cannot be held that in the absence of the publication of the authoritative translation, the ordinance itself will not be effective.... It is, no doubt, true that if the English translation is published, then in case of any conflict between the State language and the English translation, the latter will prevail, and if the English translation is published, it will be considered as a valid piece of legislation and both the Hindi and the English publication can be looked into. In my judgment, what is meant by clause (1) of Article 348 in making a law by Parliament is that unless the Parliament by law otherwise provides, the authoritative texts of all Bills, Acts or Ordinances of a State Legislature cannot be in a language other than the English language. The power to declare that the authoritative text of any bill, Act or ordinance of a State Legislature shall be in a language other than the English language has been vested exclusively in Parliament but it does not mean that the authority of a State Legislature to adopt any language other than the English language can be given only by a law made by the Parliament.”

It will also be clear from the above that the Constitution seeks to give a place of importance to the regional languages in several ways, *viz.*:

- (1) The States can adopt these languages as their official languages as well as for purposes of legislation;
- (2) These languages can also be used in the High Courts;
- (3) Representatives of the regional languages are to sit on the Official Language Commission²⁰ to decide the pace of change-over from the English to the Hindi language at the Central level; and (4) these languages are to be used for purposes of assimilation of their words and phrases in the Hindi of the future.

C. FURTHER DEVELOPMENTS

The Constitutional provisions, mentioned above, failed to solve the language problem once and for all, and controversies have arisen from time to time in this regard.

The Official Language Commission, as envisaged by Art. 344(1) of the Constitution, was duly appointed on June 7, 1955. The Commission reported in 1957. The Commission emphasized that English could not remain as the official language of the Union for very long as that would be against national self-respect

18. *Alok Kumar v. State of Bihar*, AIR 1976 Pat 392.

19. *Ibid.*, 394.

20. *Supra*.

and that only through an Indian language could there be a massive resurgence of the national life. The main thrust of its recommendations was that effective steps should be taken forthwith to ensure a change-over to Hindi on the appointed day, *i.e.*, January 26, 1965.

The Commission was of the opinion that if experience showed that no adequate results were forthcoming under the arrangements made by the Government of India for training of its employees on a voluntary basis in Hindi, then necessary steps should be taken by the Government making it obligatory on government servants to qualify themselves in Hindi within the requisite period, to the extent requisite for the discharge of their duties.

The recommendations of the Commission were placed before a Parliamentary Committee as envisaged by Art. 344(4), mentioned above.²¹ The Committee was of the opinion that the Government should prescribe obligatory requirements on the Government servants to qualify themselves in the Hindi language.

After considering the report of the Committee, the President issued an order on April 27, 1960.²²

The report of the Commission raised a controversy in the non-Hindi speaking area. To assuage the feelings of these people, Prime Minister Nehru gave an assurance that the English language would continue to be the “associate” official or link language of the Union for as long as they wanted.

(a) THE OFFICIAL LANGUAGES ACT, 1963

The recommendations of the Commission, after being examined by a Parliamentary Committee, led to the enactment by Parliament of the Official Languages Act, 1963, in exercise of the powers conferred on the Parliament by Art. 343(3).

The Act enacts that the English language may continue to be used, in *addition* to Hindi, even after Jan. 26, 1965, *i.e.*, after the 15-year deadline, for all official purposes of the Union for which it was being used before, and for transaction of business in Parliament.

Two points need be noted with respect to this crucial provision. First is the use of the word “may”, and the second is that the English language is to be used ‘in addition to’ Hindi. These words denote that English is to enjoy the status of an “associate” official language. The Act therefore makes a very clear change in emphasis. While before 1965, Hindi could be used in *addition* to English, now English is to be used in addition to Hindi.

To reconsider the language problem at a future date, the Act provides for the appointment of a Parliamentary committee on official language after Jan. 26, 1975, on a resolution to that effect being moved in either House of Parliament with the previous sanction of the President and passed by both Houses. The committee consisting of 20 members from the Lok Sabha and 10 members from the Rajya Sabha is to be elected on the basis of proportional representation by means of single transferable vote by the two Houses of Parliament. After re-

21. *Supra*.

22. The Order was challenged in *Union of India v. Murasoli Maran*, AIR 1977 SC 225 : (1977) 2 SCC 416, see, *infra*, Sec. D.

viewing the progress made in the use of Hindi for the official purposes of the Union, it will submit its report to the President who, with his recommendations, would cause it to be laid before each House of Parliament and to be sent to all State Governments. After considering the views of the State Governments on the report, the President would issue directions in accordance with the whole or any part of the report.

The Act also makes provisions for the language of the law. It provides for making of Hindi translation of laws enacted in English, and English translation of laws enacted in the regional languages. A Hindi translation published in the official gazette, under the authority of the President, of any Central Act, by-law, rule etc., is to be regarded as the authoritative Hindi text thereof. The authoritative text in the English language of all Bills to be introduced in Parliament should be accompanied by a Hindi translation authorised in such manner as may be prescribed by rules made under the Act. This provision is to come into force from a day to be fixed for the purpose by the Central Government. This provision in the Act is to be read along with Art. 348 which lays down that authoritative texts of Central legislation are to continue to be in the English language unless Parliament provides otherwise.

Parliament has not said unequivocally in the Act that all legislation in Parliament is to be in Hindi, or the authoritative texts of all Central Acts are to be in Hindi. There is a lot of built-in vagueness and difficulty of interpretation in this provision as it uses the term 'authoritative text' both in relation to the Hindi version, as well as the English version. Perhaps, what is implicitly envisaged is a three stage process of change-over as follows.

First, for the time being, legislation is to continue at the Centre in English and the English texts of laws are to be treated as the authoritative texts.

Second, at some later stage, steps will be taken to have both English as well as Hindi versions of all Bills, but legislation and authoritative texts of laws would still continue to be in English.

Lastly, from a date in the distant future, the authoritative text would be the 'Hindi' version of the law even though legislation in Parliament may continue to be in English or Hindi.

India has now reached the second stage.

Coming to the State Legislation, the Act says that where a State has prescribed a language, other than Hindi, for purposes of legislation, translations of the Acts in Hindi as well as in the English languages, as envisaged in Art. 348(3), may be published in the State Gazette under the authority of the Governor and the Hindi version would be deemed to be the authoritative Hindi text of the law.

It still is not made clear whether in case of discrepancies, which of the texts—English, Hindi or regional language—are the Courts to go by. This is bound to create difficulties in interpreting the law. For, the lower courts, in practice, would take into consideration the text in the regional language, while the Supreme Court would go by the English (or the Hindi) version of that law, and the differences in language may result in differences of interpretation of the same law creating a good deal of confusion and generating a good deal of litigation.

As regards the language of the courts, the Act provides for the use of Hindi, the State official language, and English at the High Court level. Art. 348(1)(a) read with Art. 348(2) provides for the language of the High Courts to be English; change to any other language for proceedings of the High Court may be effected by the Governor with the consent of the President; the judgments of a High Court may be delivered in any language other than English only when Parliament so provides by law. So, the Official Language Act provides that the Governor of a State, with the previous sanction of the President, may authorise the use of Hindi, or the State official language, in *addition* to English, for purposes of judgments etc., delivered by the High Court. A judgment delivered by a High Court in a language other than English, is to be accompanied by an English translation issued under the High Court's authority.

This provision again raises the conundrum that in case of a disparity, which of the versions of the judgment—English, Hindi or the State language—would be recognised by the Supreme Court. As the English version is only a translation, perhaps, the basic judgment will be treated as the one in the State language or in Hindi, as the case may be. The Centre is to decide finally whether or not a change-over from English to Hindi or a State language is to be permitted in a particular High Court. The Act effects no change regarding the Supreme Court where the English language would continue.

All the provisions of the Official Languages Act, 1963, were not to come into force at once. Only Section 3 which permits use of the English language even after the 26th January, 1965, became operative immediately and other provisions would be effective as and when the Central Government notifies. This means that the change-over in the language of law and courts would take place sometime in future and not immediately.

Even the effects of Section 3 have not been visible so far and the work of the Government of India proceeds much in the same way as before, *i.e.*, primarily in the English language. The key-note of the Official Languages Act, 1963, is caution. Its basic provision (S. 3) may be said to be favourable to the non-Hindi speaking people in so far as it provides for the continuous use of the English language for an indefinite period after January 26, 1965. It does, however, set the distant goal of promoting Hindi along with English at the Central level and gradually replacing English by the regional languages or Hindi at the State level.

(b) THE OFFICIAL LANGUAGES (AMENDMENT) ACT, 1967

As January 26, 1965, drew near, a controversy erupted again centring around the issue whether the Act of 1963 was categorical enough regarding the continued use of the English language for an indefinite period as Nehru had assured. The use of the word 'may' in S. 3 appeared to be too weak, and it did not specify as to how long would the English language continue to be used at the Centre.

A demand was, therefore, made that Nehru's assurance regarding the continued use of English as an 'associate' language at the Centre should be given a specific and unequivocal statutory recognition, or rather a constitutional guarantee by amending the Constitution. To meet this demand, Parliament passed the Official Languages (Amendment) Act, 1967, to give statutory recognition to the assurance held out in 1963. The Amendment Act enacts as follows:

- (1) The English language may continue to be used after January 26, 1965, in addition to Hindi, for all official purposes of the Union for which it was being used immediately before this date and also for the transaction of business in Parliament;
- (2) The English language is to be used for the purpose of communication between the Centre and a non-Hindi State;
- (3) If Hindi is used for communication between a Hindi and a non-Hindi State then an English translation of the communication is to accompany the Hindi version;
- (4) A non-Hindi State is not prevented from using Hindi for purposes of communication with the Centre or a Hindi State, or by agreement with any other State, and in such a case, the English language need not be used;
- (5) Where Hindi or the English language is used for purposes of interdepartmental communication at the Centre, a translation of the communication in the other language is to be provided;
- (6) Both Hindi and the English languages are to be used for:
 - (a) resolutions, general orders, rules, notifications, administrative or other reports or press communiques issued by the Central Government;
 - (b) administrative and other reports and official papers laid before Parliament;
 - (c) contracts and agreements executed, licences, permits, notices, etc., issued, by the Central Government or by a corporation or a company owned or controlled by the Central Government;
- (7) Without prejudice to the foregoing, the Central Government can frame rules to provide for the language or languages to be used for the official purposes of the Centre.

In framing the rules, due consideration is to be given to the quick and efficient disposal of business and interests of the general public and the rules have to ensure that the Central Government servants having proficiency either in Hindi or in the English language may function effectively and are not placed at a disadvantage because of their lack of proficiency in both the languages;
- (8) The foregoing provisions would remain in force until resolutions for the discontinuance of the use of the English language have been passed by all the non-Hindi State Legislatures and also by the two Houses of Parliament.

The last provision is of the greatest significance, as it furnishes a statutory guarantee for the continuance of the English language at the Central level as an 'associate' language so long as the non-Hindi States desire. The decision to continue English has now been left not to the legislatures of the Hindi-speaking States but to the legislatures of other States which have not adopted Hindi as their official language.

The Act also seeks to make use of the English language obligatory for certain purposes in addition to Hindi so as to protect the interests of the non-Hindi or non-English speaking servants of the Central Government and it ensures smooth communication between the Centre, the Hindi and the non-Hindi States.

Detailed provisions for intergovernmental communication became necessary because the Centre was adopting two official languages, Hindi and English; under Art. 346, any of them could be used for intergovernmental communication, but while the non-Hindi States were apathetic to using Hindi, the Hindi States did not want to use English for that purpose. A careful reading of these provisions shows that they are weighted in favour of the non-Hindi States which can correspond in English, but a Hindi State has also to send an English translation of a Hindi communication.

A resolution passed by the two Houses of Parliament along with the Official Languages (Amendment) Act, 1967, requires the Government of India to accelerate the spread and development of the Hindi language, as well as of the regional languages mentioned in the VIII Schedule, to implement the three languages formula so as to teach one of the Southern languages to the Hindi-speaking students and Hindi to the non-Hindi Speaking students along with the English language.

The resolution also says that compulsory knowledge of Hindi would not be required at the stage of selection to the Central Services, and that all the VIII Schedule-languages along with English would serve as the media for the competitive examinations for the Central Services.

On the basis of a review of the compliance of the section 3(3) of the Official Languages Act, the Committee submitted the eighth part of its Report to the President on 16-8-2005 making several recommendations. One of the recommendations was that Art. 348 of the Constitution may be amended to enable the Legislative Department to undertake the original drafting in Hindi. After the amendment of Art. 348 of the Constitution, High Courts/Supreme Court should be asked to start delivering their judgments, decrees etc in Hindi. This recommendation was accepted by a Presidential Order with the modification that the Department of Official Language may take appropriate decision after consulting the Legislative Department and the 18th Law Commission of India. The Centre then passed a resolution on 2 July, 2008 communicating this to *inter alia* the Supreme Court. The matter is now pending consideration before the Law Commission.

(c) MEDIUM OF EDUCATION

A difficult question arises regarding the medium of education at various levels. The Constitution prescribes no policy or principle, and makes no provision, in this regard.

To begin with, the matter was left to the legislative power of the States as 'Education' was a State subject. The States enjoyed full right to prescribe the media of instruction at the primary and the high school levels. But, their right to prescribe the media of instruction at the university level was not unrestricted, as has been discussed earlier.²³

Education is now a concurrent subject.²⁴ However, in the prevailing atmosphere in the country, it is doubtful if the Centre would lay down conditions to be fulfilled before a switch-over to the regional languages takes place at the university level. In fact, the Centre is itself encouraging the switch-over, and a policy

23. *Supra*, Ch. X, Sec. G(iii).

24. *Supra*, Ch. X, Sec. F.

decision has been taken that regional languages should replace English at all levels of education.

This change-over to, and too much stress on, regional languages as media of instruction may create a kind of isolationism in the country and weaken the channels of communication between the various language groups. To mitigate this difficulty, a three language formula has been evolved according to which each student has to study three languages—the regional language, Hindi and an international language, *i.e.*, English, and the students whose mother-tongue is Hindi should study some other regional language.

The language problem may be contained a great deal if the three language formula is implemented sincerely but there remains a question mark whether all the States will act in the right spirit. Some State Governments devalue the English language by declaring that failure therein in the examination would not affect their results; some devalue Hindi while others devalue other regional languages by promoting Sanskrit.

Sometime back, the University Education Commission has gone into all facets of the university education including the question of media of instruction and has supported the three language formula.

In a controversial decision,²⁵ the Supreme Court upheld a policy decision made by the Maharashtra State Government making the study of Marathi compulsory in all schools in that State. As a result, the English-medium schools run by Gujarati linguistic minorities were compelled to teach four languages (Hindi, English, Marathi and mother tongue Gujarati) as against the accepted “three-language formula”.

It may also be pointed out that the prescription of medium of instruction at the university level also raises the question of “maintenance of standards”—a matter which falls under entry 66, List I, and is thus a matter for exclusively Parliamentary legislation.²⁶

D. JUDICIAL RESPONSE

The Government of Tamil Nadu granted pension to anti-Hindi agitators. In *R.R. Dalavai v. State of Tamil Nadu*,²⁷ the Supreme Court held the scheme unconstitutional as it contained “the vice of disintegration and fomenting fissiparous tendencies.” If any State engages in exciting emotions against Hindi, or any other language, “such provocation has to be nipped in the bud because these are anti-national and anti-democratic tendencies.” The State had set aside the fund to meet the pension scheme through an executive order without any legislative sanction. The Court ruled that the government could not authorise payment of pension by an executive order.

25. *Usha Mehta v. State of Maharashtra*, (2004) 6 SCC 264, at page 280 : (2004) 5 SCALE 800. See *supra*. See also *Associated Managements of Primary and Secondary Schools in Karnataka v. The State of Karnataka*, ILR 2008 KAR 2895; 2008 (4) KarLJ 593 which holds that the Government policy compelling children studying in non-aided Government recognized schools to have primary education only in the mother tongue or the regional language is violative of Article 19(1)(g), 26 and 30(1) of the Constitution of India.

26. *Supra*, Ch. X, Sec. G(iii).

27. AIR 1976 SC 1559 : (1976) 3 SCC 748.

A Presidential order made training in Hindi compulsory for employees of the Central Government below the age of 45 years. The order emanated from the recommendations of the Parliamentary Committee (Art. 344)²⁸ appointed to consider the recommendations of the Official Language Commission. The constitutional validity of the order was challenged, on the ground that it was inconsistent with Section 3 of the Official Languages Act, 1963, as amended in 1968, in as much as the order placed the non-Hindi speaking people at a disadvantage.

The Central Government supported the order on the ground that it was aimed at promoting the policy of the constitutional provisions making Hindi as the official language of the Union, and that the order placed no one at a disadvantage even if one failed to qualify in Hindi because no penalty was attached thereto. On the other hand, those who completed the training were given incentives.

The Supreme Court upheld the order in *Union of India v. Murasoli Maran*.²⁹ The order had been issued on the recommendation of the Parliamentary Committee appointed under Art. 344(4) and it kept in view the ultimate object to make Hindi as the official language, and also took into account the circumstances prevailing in the country and, therefore, sought to provide for a gradual change. The order was not inconsistent with the Official Languages Act, 1963, which merely continues the use of the English language in addition to Hindi. The Act places no limitation on the power of the President to issue directions under Art. 344(6).³⁰

The Act and the order operate in different fields and have different purposes. The Act continues the use of the English language after the expiry of 15 years and, thus, extends the transitional period of 15 years. The Presidential order provides for the progressive use of the Hindi language. It keeps in view the steps to replace the use of the English Language.

The Court also pointed out that the training in Hindi was being provided free of cost and during office time and no penalty was attached for failing to complete the training and so it placed no one at a disadvantage.

E. VIII SCHEDULE TO THE CONSTITUTION

Reference has been made to the VIII Schedule in Arts. 344(1) and 351.³¹

At present, the following 18 languages are mentioned in this Schedule *viz.*: Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu and Urdu.

Sindhi was added to the VIII Schedule by the Constitution Twenty-first Amendment Act, 1967.³²

Konkani, Manipuri and Nepali languages were added by the Constitution Seventy-first Amendment in 1992.³³

28. *Supra.*

29. AIR 1977 SC 225 : (1977) 2 SCC 416.

30. *Supra.*

31. See, *supra.*

32. *Infra*, Ch. XLII.

33. *Infra*, Ch. XLII.

Bodo, Dogri, Maithili and Santhali were introduced by the Constitution (Ninety-second Amendment) Act, 2003.

The Supreme Court has ruled in *Kanhaiya Lal Sethia v. Union of India*³⁴ that to include or not to include a particular language in the VIII Schedule is a policy matter of the Central Government and the Court cannot interfere in the matter. Further no one has any Fundamental Right to compel the Centre to include any particular language in the Schedule.

F. HINDI TRANSLATION OF THE CONSTITUTION

The Constitution (Fifty eight Amendment) Act, 1987 has made provisions for publishing a Hindi Translation of the Constitution.³⁵

34. AIR 1998 SC 365 : (1997) 6 SCC 573.

35. For provisions of the Amendment Act, see, *infra*, Ch. XLII, at pp. 1987-1988.