



Judicial Proceedings in Higher Judiciary and Use of Hindi and other Regional languages - need and Feasibility

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Judicial Proceedings in Higher Judiciary and Use of Hindi and other Regional languages- need and Feasibility Language is a medium of conversation, understanding and most importantly of spreading of information and knowledge. Language would serve this purpose only when it is easily understandable. As such no language is declared as national language by the Indian Constitution.

Abstract:

Language is a medium of conversation it would serve this purpose only when it is easily understandable. The freedom to specify their own official language(s) lies with the states within our country through legislation and therefore there are numerous officially recognized languages. The legislative framework to govern the official languages currently includes the "Constitution of India", the "Official Languages Act, 1963", "President's order 1960", "Official Languages (Use for Official Purpose of the Union) Rules, 1976", and different legislations of the state in addition to rules and regulations made by governments both at the central and state level. Use and importance of Hindi and other regional languages as instruments of understanding cannot be overstated. It must be understood that the citizens have a right to understand judicial proceedings In the present scenario it seems to be difficult to achieve this position in regards to Hindi in context of the Apex court or high courts even in Hindi speaking areas. Introduction of the respective regional language as compulsory language in high courts of a particular region also seems to be difficult due to various reasons like – transfer policy of judges, movement of lawyers across the country, uniform judicial system, availability of legal literature in English ,lack of infrastructure etc. we ought not to ignore the amazing cultural and linguistic diversity of our country. There is no easy solution .It seems imperative that hand in hand development of Hindi and regional languages with English is the only proper way to increase the understanding, acceptance and communicability of proceedings of higher judiciary.

Keywords :

Hindi and other Regional Languages, Official Languages Act, 1963.

Language is a medium of conversation, understanding and most importantly of spreading of information and knowledge. Language would serve this purpose only when it is easily understandable. As such no language is declared as national language by the Indian Constitution. The freedom to specify their own official language(s) lies with the states within our country through legislation and therefore there are numerous officially recognized languages in India. Other than Hindi and English languages like Assamese, Bengali, Konkani, Telugu, Gujarati, Tamil, Marathi, Malayalam, Kannada etc. are the official languages recognized in various parts of Indian sub continent.

“The number of native Hindi speakers range between 14.5 to 24.5% in total Indian population, however, other dialects of Hindi termed as Hindi languages are spoken by nearly 45% of Indians, mostly accounted from the states falling under the Hindi belt. Other Indian languages are each spoken by around 10% or less of the population”¹

I. The legislative framework for governing the employment of various languages for official purpose -

Such framework currently includes the “Constitution of India”, the “Official Languages Act, 1963”, “President’s order 1960”, “Official Languages (Use for Official Purpose of the Union) Rules, 1976”, and different legislations of the state in addition to rules and regulations made by governments both at the central and state level. Few of the main provisions are discussed below :

A. Relevant constitutional provisions relating to languages :

The provisions relating to official languages applicable in India find place in Part Seventeenth of the constitution. Article 343² lays down that Union of India would have Hindi as its official language. It further lays down about use of English to be continued for all official purposes for a period of fifteen years from the time of starting of the Constitution .However an option has been given to the president who may allow by an order, use for official purposes , employment of Hindi in addition to English and also of *Devnagari numeral form* in addition to already existing international form of Indian numeral system. Another important point laid down further in this Article it that even after fifteen years, the continual use of English for a specified object or purpose may be provided by the parliament through the law. Article 344³ Provides for establishment of a commission consisting of members representing myriad languages as laid down in the VIII schedule. The commission is required to pay attention to its most important duty i.e to make recommendations to the president, inter alia on increasing the employment of Hindi language for official purposes and to restrict the use of English either in all facets of official purposes or atleast in few of them. The Article also provides for constitution of a thirty member committee for consideration of the recommendations of the commission and then report its opinion to the president.

In fact the after consideration of the recommendations of the first official languages commission the committee in its report⁴ laid down regional languages must secure their due place and a change over needs to be made from English language, however it made clear that an inflexible date-line for the change-over cannot be set. Such switch over has to occur in a natural or a gradual way during a continued time period and it must come into effect smoothly with least possible difficulty or inconvenience. It further laid down that the principal official language to be employed should be English only and Hindi should act as the subsidiary Official Language till 1965. After 1965 the position should be converse.

The report also stated that a provision should be made in terms of Article 343, clause 3 for the

purpose of sustained use of English even after 1965 for requirements to be specified by law passed by the parliament for as long a time period as may appear to be necessary. The report emphasized on the Considerable importance of the provision in article 351 that Hindi must be developed in such a way that the different elements of the amalgamated culture of our country would be able to use it as their means of expression; moreover easy, simple and understandable diction should be encouraged.

“The state legislature may adopt any language or Hindi as language to be used for any official purposes of the state”⁵.

“English shall be the official language for communication between one State and another State and between a State and the Union Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication”⁶.

The present article is mainly dealing with Proceedings in higher judiciary and regional languages. Article 348⁷ specifically deals with Language of courts. It lays down that the English language shall be employed in Higher Judicial i.e the Apex Court and High courts. English language would also be used for Authoritative texts Bills, Acts, orders, rules, regulations and bye laws until parliament through a legislation provides otherwise. The governor may allow the use of Hindi or any regional language for official use in the judicial proceedings of the High court of that state, with the previous consent of the President, However a proviso has been laid down which makes it amply clear that if a high court has already passed any judgment, decree or order then the above situation shall not apply.

It is clear that the constitution has clearly provided that English language shall be used in all judicial proceedings in higher judiciary. Though the power to change the prevailing situation lies with Parliament, but it has not yet done so.

The constitution accords the Governor, the power give to sanction the use of Hindi, or the state's official language in High Court's proceedings to the Governor, Use of such power however requires the consent of the president of India to be acquired by the Governor of the State.

The Constitution does contain an integrated and inclusive scheme or design of Official Languages and reflects a flexible and pragmatic approach to the issue which admits of suitable adjustments being made within the scheme's layout.

B. Important Provisions of “The Official Languages Act, 1963” :

“It 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”. It was thought that the continued use of English shall be made for official purposes for a time period of fifteen years only, after the Constitution came in to force. However such prospect of change, led to an uproar in those parts of India where Hindi was not spoken particularly in the states whose languages were not linked to Hindi at all. As a result, Parliament enacted “The Official Languages Act, 1963”, (The Act).

“In late 1964, an attempt was made to expressly provide for an end to the use of English, but it was met with protests from states such as Maharashtra, Tamil Nadu, Punjab, West Bengal, Karnataka, Puducherry and Andhra Pradesh”⁸.

The Act provided for the continual use of English alongside hindi for official purposes, even subsequent to 1965⁹. As regards the language to be used in high courts it provides that “the Governor of a State may, with the previous consent of the President, authorize the use of Hindi or the official language of the State, in addition to the English language, for the purposes of any judgment, decree or order passed or made by the High Court for that State and where any judgment, decree or order is passed or made in any such language (other than the English language), it shall be accompanied

by a translation of the same in the English language issued under the authority of the High Court”¹⁰.

The Act further lays down that Hindi translation shall accompany the authoritative text in the English language of all Bills which shall be introduced and amendments thereto to be moved in Parliament¹¹. “Where the Legislature of a State has prescribed any language other than Hindi for use in Acts passed by the Legislature of the State or in Ordinances promulgated by the Governor of the State, a translation of the same in Hindi, may be published and in such a case, the translation in Hindi or any such Act or Ordinance shall be deemed to be the authoritative text thereof in the Hindi language”¹².

The Act also provides for constitution of a thirty member committee whose main duty would be to review and report on the progress of employment of Hindi as the language to be used for the official purposes of the union. Such report would be made to the president who may issue directions on it¹³.

C. Key Provisions of President’s order 1960 relating to language used in higher judiciary :

The President issued specific directions on the report by the committee constituted under Article 344 which made the report after considering recommendations of official languages commission.

Inter alia different directions, specific direction regarding the language to be used in higher judiciary lays that the Apex(Supreme)Court should eventually function in Hindi and to achieve this apposite action would be required when the time for switch over would arrive. While talking about the language of proceedings in High courts ,the directions talk about undertaking the required legislative action by the law Ministry ,with the previous consent of the president, to provide for the optional use of Hindi and other official languages of States for purposes of judgments, decrees and orders.¹⁴.

As regards preliminary measures for change-over in the field of law it was directed that the law ministry must put in place a proper translation program of Acts, Statutes in Hindi as well as for preparing standard legal terminology(as far as possible in all the languages) and glossaries. For this purpose a Standing Commission of legal experts for the proper planning, execution of the entire program may be constituted.¹⁵

It was reinforced that to facilitate the increased use of Hindi in union administration suitable action must be taken to do a proper groundwork and appropriate implementation with an object to ensure correct preparatory measures, attention must also be paid to promote the use of Hindi in addition to English for the various purposes of the Union. It was also directed that the above plan for the use of Hindi, in addition to English, requires reviewing and adjustments periodically which would be clear only with actual implementation of the program and experience gained by it.

The Presidential Order while keeping in view the final objective of making the Hindi language as official language, also takes into account the prevailing realities of the country and considers it desirable that there should be a gradual change with proper regard to be given to the fair and just entitlements ,claims and the interests of people belonging to the non Hindi speaking areas¹⁶.

Holding that there is no inconsistency between the Official languages Act and The President’s order the Apex Court observed that the “Official Languages Act is to continue the use of English language after the expiry of 15 years, but Presidential Order on the other hand is, to provide for the progressive use of Hindi language. It held that the Presidential Order which was issued in 1960 continues to be in force and cannot be said to have exhausted itself at the end of fifteen years from the commencement of the Constitution because what is said to be a switch over from English to Hindi has not been possible and Parliament provided by law for the continued use of the English”¹⁷.

D. Key provisions of The Official Languages Resolution, 1968 :

The official language resolution as adopted by the both houses of parliament resolved that a more meticulous and comprehensive program would be made and executed by the Government of

India with a view to accelerate the reach and growth of Hindi and its increased use for the different official purposes of the Union. For answering the requirement of the development of languages provided in eight schedule as necessary in the interest of the educational and cultural advancement of the country it resolved to adopt a program which shall be put into being and then properly implemented with the help of Central and the State governments in collaboration with each other for the purpose of synchronized progress of all these languages, alongwith Hindi so that they grow speedily and become efficient means of communication of Knowledge.

II. Feasibility of introducing Hindi/ regional languages as a compulsory language in higher judiciary at present :

Despite such a legal framework, why is it so that still English remains the main language in higher judiciary? Lately we have witnessed a raging debate specially about introducing Hindi as an compulsory or essential language in the Apex Court. In the present scenario it seems to be difficult to achieve this position in regards to Hindi in context of the Apex court or high courts even in Hindi speaking areas. Introduction of the respective regional language as compulsory language in high courts of a particular region also seems to be difficult. The “18th law commission” report specifically talks about “non feasibility of introduction of Hindi as compulsory language” in Supreme Court of India. In 2008 again the 216th report of Law commission of India on “Non Feasibility of introduction of Hindi as compulsory language in the Supreme court of India” unanimously recommended that introduction of Hindi is not feasible mainly on following points :

- No language can be forced on any section or of persons against their will as it would become counter productive
- For judges at the higher judiciary, English language is an integral part of their decision making. Basic legal literature as is based on foreign jurisprudence(mainly that of England and America) as available in form of text books and case laws are in English language.
- National transfer policy of judges
- Currently English can be considered as the only common language moreover no language can be thrust upon the judges of the higher judiciary.
- Movement of the lawyers across different courts throughout the country
- Uniform judicial system and deprivation of support from foreign judgements, moreover judgements of our higher judiciary are being quoted by the foreign courts ,such reliance of foreign courts would totally be lost

We need to understand the reasons which point at non feasibility in detail :

A. Transfer policy of judges across the country :

Under the current scenario the judges can be transferred from any part of the country to the Apex court and can also be transferred between various High courts inter se. In view of this, making Hindi or any other regional language compulsory seems to be a difficult preposition as a judge coming from a state where Hindi language is not spoken or coming from a state speaking different regional language would find it extremely difficult to deliver judgments. Judgments delivered in Hindi may not be understood by the judges who come from non Hindi speaking states. Consequently there might be a situation where in a High Court there would be judges who would not be able to understand judgments of their own court. Even judges whose mother tongue is Hindi might find it difficult to deliver judgments in Hindi as the legal education of most of the judges belonging to higher judiciary has been in English.

B. Availability of literature in English :

Legal knowledge is basically available in English. The fundamental text under the Indian system is primarily based on foreign jurisprudence. Mainly the focus has been on English and American text

books and case laws. Currently Majority of books, authoritative commentaries, journals, reporting of cases is in English. Arguments are generally made in higher courts in English. Many Judges of the Higher judiciary as well as many lawyers do not know Hindi language and will have to depend on translations in English to know the Acts and Judgments. English has not only become an indispensable in our country but it is also a global language.

C. Uniform Judicial System :

A uniform Judicial system for the whole country is basically to have a uniform set of legal principles applicable in every part of the country, by the courts drawing upon the Judicial wisdom in other parts of the country through their judgments. The advantage will be lost if Judgments are to be drawn in Hindi instead of English. It will also lose the help to be derived from judgments of other Courts, and the desirable situation of having uniform interpretation of Central laws, would be almost unattainable

Movement of lawyers from various states to the Apex court and High courts inter se- Today there is a wide movement of lawyers intending to practice law at different places throughout the country. A lawyer is entitled to practice anywhere in India. If the language of different High Courts would be different, this right to practice throughout India becomes only an illusion. Lawyers from various states including non Hindi speaking states also move to apex court. A scenario where Hindi is introduced as a compulsory language in Apex court would be non feasible for such lawyers.

C. Deprivation of the support to be taken from courts of other countries :

The present system has also international import and our judges can draw analogies through judgments written in English in Supreme Courts of other countries. The judgments rendered by courts of our country are increasingly being quoted in courts of other countries, such reliance would be totally lost if the judgments are not in English,

D. Lack of support system :

Apart from the cost of translation being prohibitive, there is a huge shortage of stenographers well versed in Hindi, moreover proper infrastructure relating to translation is not in place.

III. Need of use of Hindi and regional languages :

Use and importance of Hindi and other regional languages as instruments of understanding cannot be overstated. It must be understood that the citizens have a right to understand judicial proceedings. Many a times decisions which have a direct impact on the stakeholders are not understood by them as they do not have proper understanding of English language .Lawyers too need to be given an option to argue in the language they are comfortable in.

IV. Suggestions :

- A. Compulsory and proper translation framework :** Currently a plausible solution seems to develop a compulsory and proper translation framework in place. Jobs of specialized translators must be created so that the decisions of the higher judiciary can be translated in understandable Hindi language and other languages. Moreover sustained efforts must be taken to translate the Statutes in simple understandable Hindi. Challenge of computerization to Hindi and other languages needs to be met
- B. Arguments to be allowed in respective regional languages in High courts :** Currently only four states -Uttar Pradesh, Rajasthan, Madhya Pradesh and Bihar have granted the right to conduct the proceedings in high court in Hindi which is an official language for all the above states. Tamilnadu is only non Hindi speaking state which has allowed Tamil to be used in proceedings in the High Court.

C. Improvement in education of Hindi language : Sustained efforts is required to implement the use and familiarization of Hindi extensively. It is the duty of the Union to promote the spread of the Hindi Language and to develop it. Special focus needs to be put on making legal Hindi simple, readable and understandable.

While there is a nationalist argument behind the plea for Hindi but we ought not to ignore the amazing cultural and linguistic diversity of our country. History suggests that language is a sensitive issue in India. The realities of our multilingual country cannot be ignored. It seems imperative that hand in hand development of Hindi and regional languages with English is the only proper way to increase the understanding, acceptance and communicability of proceedings of higher judiciary.

Reference :

1. www.wikipedia.com (official languages in india) visited on 22.2.16
2. (1) *The official language of the Union shall be Hindi in Devnagari script. The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals. (2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement: Provided that the President may, during the said period, by order authorize the use of the Hindi language in addition to the English language and of the Devnagari form of numerals in addition to the inter-national form of Indian numerals for any of the official purposes of the Union. (3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of- (a) the English language, or (b) the Devnagari form of numerals, for such purposes as may be specified in the law.*
3. **Article 344. Commission and Committee of Parliament on official language :**
 - (1) *The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.*
 - (2) *It shall be the duty of the Commission to make recommendations to the President as to-*
 - (a) *the progressive use of the Hindi language for the official purposes of the Union;*
 - (b) *restrictions on the use of the English language for all or any of the official purposes of the Union;*
 - (c) *the language to be used for all or any of the purposes mentioned in article 348;*
 - (d) *the form of numerals to be used for any one or more specified purposes of the Union;*
 - (e) *any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.*
 - (3) *In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims*

and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

- (4) *There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.*
- (5) *It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.*
- (6) *anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.*
4. *Report to the president on 8th feb 1959, <https://rajbhasha.gov.in> visited on 10.3.2017*
5. *Article 345*
6. *Article 346*
7. *Article 348. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc. - (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides :*
- (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, authorize 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.*
8. *Supra note 1*
9. *Section 3. Continuation of English Language for official purposes of the Union and for use in Parliament :*
- (1) *Notwithstanding the expiration of the period of fifteen years from the commencement of the Constitution, the English language may, as from the appointed day, continue to be used in addition to Hindi,*
- (a) *for all the official purposes of the Union for which it was being used immediately before that day; and*
- (b) ***for the transaction of business in Parliament :*** *Provided that the English language shall be used for purposes of communication between the Union and a State*

which has not adopted Hindi as its Official Language :

*Provided further that where Hindi is used for purposes of communication between one State which has adopted Hindi as its official language and another State which has not adopted Hindi as its Official Language, such communication in Hindi shall be accompanied by a translation of the same in the English language :
Provided also that nothing in this sub-section shall be construed as preventing a State which has not adopted Hindi as its official language from using Hindi for purposes of communication with the Union or with a State which has adopted Hindi as its official language, or by agreement with any other State, and in such a case, it shall not be obligatory to use the English language for purposes of communication with that State.*

10. *Section 7 of the Act*
11. *Section 5 of The Act*
12. *Section 6 of The Act*
13. *Section 4 of the Act*
14. *Direction 12 of the president's order 1960*
15. *Direction 13 of the president's order 1960*
16. *Union Of India vs. Murasoli Maran 1977 SCC (2) 416*
17. *Ibid*
