CHAPTER XI

LANGUAGE OF LAW AND LAW COURTS—III

THE DYNAMICS OF THE CHANGE-OVER

1. It is now proposed to consider the phasing of the change-over of the linguistic media so far as legislation and law courts are concerned. As will be explained subsequently, a lot of preliminaries have to be completed before such a switch-over can at all be considered practicable. It has been our policy throughout this Report, for reasons elsewhere explained, not to indulge in gratuitous prognostication as to the date by which any particular change-over would become practicable. In pursuance of this general policy, we have not attempted to frame any estimates of the time-periods that would be required for the completion of any of the preliminaries of the various phases through which this transition must take place. We have however indicated wherever it is necessary to do so, the sequence and the manner in which the various phases must be articulated.

The difficulties of terminology are especially acute in the field of law and administration of justice. Besides, this is a field of national activity touching the daily existence of a vast number of people drawn from all walks of life. In the fields of law and administration of justice, certainty and precision are a *sine qua non* of an acceptable system. While this would be no reason for relaxing in our preparatory efforts—rather the contrary!—it must be recognised that nothing would be gained, and a great deal hazarded, if a wholesale change-over were to be precipitated in this sector before the ground-work has been fully prepared.

2. First, a word may be said about a contention that has been advanced before us, namely, that the English language may continue to be the language of legislation and our law courts indefinitely in the future. We consider any such exclusion from national policy of an important sector of national life, touching the common man so intimately at so many points, completely unacceptable and even untenable. It is laid down in the Constitution that the language for the purposes of the Union is to be the Hindi language, in substitution of English (except where English is specifically provided to be retained by law by Parliament), by 26th January 1965; and likewise that the official language for communication between one State and another or between a State and the Union is to be Hindi by the same date. In fact, as permitted by Article 346 of the Constitution, several States have already agreed amongst themselves that the Hindi language should be the official language for communication between such States and the language has been so adopted for this purpose. Some State Governments have already made considerable progress in the direction of switching-over the language of administration of the State to their respective regional languages. Although heretofore this has

principally been amongst the States where the regional language is Hindi, the trend is evident enough elsewhere also and we have no doubt that in course of time there will be considerable pressure in the non-Hindi-speaking States for replacement of the English language, especially in the lower formations of the administrative machinery, by the respective regional languages of those States. From the statement that we have given at Appendix VIII it would be evident that the large bulk of speeches in State Legislatures are being delivered in languages other than English. Already several States in Hindi areas are legislating on the basis of bills drawn up in Hindi, although according to the provisions of sub-clause (3) of Article 348 of the Constitution the English translations of such measures published under the authority of the Governor or the Rajpramukh count in law as the authoritative texts of those enactments. We do not think that it would be practicable, nor do we think it would be right, to sustain the latter position indefinitely. In the educational system as well there is a departing from English as the medium of instruction in the Universities although it is not quite clear in what form the position would settle down eventually as the trend is developing into two different streams—one in the direction of replacement of the English medium by the regional languages and the other in the direction of its replacement by the Hindi language. In any event it is impossible to stem the tide of change—nor do we consider it would be desirable to do so if it were possible—to go away from the English language as the medium both of instruction in the educational field and of administration in the fields of the Union and the State Governments. It is manifest that it would be wholly impracticable to 'cordon off' the judicial sector from this general trend and maintain for an indefinite period in the future the present position of the English language therein.

Nor do we see any good reasons for doing so. The same general arguments which we have elsewhere noticed would apply herein; namely, that the existence of a selected coterie of persons conducting their proceedings in a language unintelligible to the vast majority of the community, whose affairs they dispose in the course of such proceedings, would be wholly intolerable as a permanent arrangement. Such a position would isolate this class permanently and divide and estrange it from the rest of the people. It is both undesirable and unfeasible that the legal sector, in the processes of which the common man has such a direct and intimate interest, should be so cordoned off. We have no doubt whatever that in course of time the change in the linguistic medium will have to come over the field of legislation and the law courts in consonance with a similar change in the field of public administration to which we are already committed and a corresponding incipient trend in the educational system which is fast gathering strength.

While law is a specialised and an esoteric branch of knowledge the intrinsic difficulties in the change-over of medium, it seems to us, should be less insuperable in the field of law and jurisprudence, as compared to the field of advanced technology or research in the natural sciences. Law and the sciences both require an exact and precise language for the expression of concepts in their respective fields. However, the advance of science particularly in modern conditions depends vitally on certain availabilities of equipment and

experimental opportunities and large outlays of finance, as contrasted with the study of law or advance of jurisprudence. So far as the field of natural sciences is concerned, for a long time to come, the facilities available to Indian scientists might be considerably smaller than those available to their compeers in other countries. The maintenance of a strong direct link with scientific progress abroad and of a pipe-line of knowledge which would keep our scientists abreast of development in the advanced countries of the world, is therefore a *sine qua non* for this period. In the field of law however the matter is slightly different. Nobody would suggest that we do not have our share in this country of legal talent or capacity and inclination for the cultivation of legal subtleties and refinements. Apart from this, juristic speculation and the pursuit of legal studies are not dependent on the availabilities of expensive physical equipment in the way in which scientific research is so dependent.

It is true that our present system of law and jurisprudence is vastly different from the systems of laws in respect of which there is such abundant ancient lore in our country. Those systems of laws were devised in a climate of social organisation and conditions of trade, commerce and industry, vastly different from those which obtain today. Nevertheless, there has been civilized life in this subcontinent for at least four thousand years and there have been systems of law and law-giving of some sort or other throughout this period. While the present-day law court in this form may not have had a counterpart in the past, and while present-day laws may be substantively different from those of the previous centuries, there are bound to be considerable common elements, such as general notions of justice, equity, rules of relevance and proof in evidence etc., in respect of which diligent research would be repaid by discovery of corresponding terms, notions and concepts indigenous to the country. Surely there was some system of administration of justice before the advent of the British to this country and the general notions of justice and allied concepts could not be altogether novel and foreign to us.

We do agree at the same time that it would be an advantage, and indeed even necessary, that our jurists, judges and lawyers continue to be in a position to maintain touch with developments in the field of law in other countries of the world and, more especially the English-speaking countries, on whose systems of law, jurisprudence and political organisation so much of the corpus of this country's statute, legal procedure and constitutional organisation are founded. The provisions that we contemplate in respect of knowledge of English in the system of higher education are sufficient to take care of this aspect of the matter.

We have drawn greatly, in jurisprudence, on the Anglo-Saxon system of laws and judicial procedure; and in our constitutional structure also, on the systems and practices of Parliamentary democracy obtaining in the Anglo-Saxon countries which still furnish the best extant examples of this form of political organisation: it is sometimes argued that, therefore, we should keep for all time the medium of the English language especially in the fields of the judiciary and constitutional law. The argument is to our mind misconceived. Having regard to the changed circumstances of the

modern world as contrasted with the ancient times when Indian systems of jurisprudence and political and social organisation were evolved, it is only natural that our institutions should correspond to and be based not upon our ancient institutions but upon prototypes available contemporaneously in other countries of the world. Our long and recent association with Britain makes the correspondence between our judicial system and constitutional structures comprehensible. However, there is no warrant for the supposition that the system of parliamentary democracy cannot be worked in a language other than English; or that a system of laws, procedure and judicial organisation substantially founded on the British system must necessarily be conducted in the identical linguistic medium. One may quite consistently cherish the principles of justice and liberty embodied in Anglo-Saxon institutions along with a desire to conduct such institutions in our country in indigenous languages as they are conducted in their indigenous language by those Anglo-Saxon countries where they were developed.

We feel therefore that while there would be the same difficulties as in other fields in the evolving of legal terminology, there should be a great deal of material available indigenously on which we can draw for equipping the Indian languages with the terms necessary for expression in this field.

3. The following preliminaries appear to us to be prerequisite to the accomplishment of a change-over of the linguistic medium in the field of law and legislation:—

(1) The preparation of a standard legal lexicon;

(2) Re-enactment of the statute book in Hindi both in respect of Central legislation and in respect of State legislation.

We have the following observations to make in regard to these two subjects:—

4. So far as the question of terminology is concerned, the evolution and development of legal terminology is just one more instance in the field of terminology in general and all that we have said on this subject in Chapter V would be equally applicable *ceteris paribus* to legal terminology. We may resuscitate and adopt suitable terms found in ancient indigenous texts wherever they would be apposite; we may, in addition to this, find a lot of suitable legal terms in the terminology which was used in the regional languages in the earlier years of British Rule before English had completely displaced the regional languages at all significant levels of the judicial system. A certain amount of assistance may also be available from the terms and phraseology used in the former Princely Indian States like Baroda, Gwalior, Hyderabad, etc. where statutes used to be enacted in Indian languages and the law courts including the highest Tribunals functioned in the respective regional language of the territories. In addition to this, where a legal concept has no exact, easy, parallel term forthcoming from indigenous sources there would be of course no harm in such term being adopted bodily from English or the Greek or Latin expression describing the concept.

The need for having the maximum degree of identity in the new terms and expressions coined or adopted for making good the existing deficiencies of terminology in Hindi and in the regional languages is even greater in the field of law than any other fields. The juridical and judicial unity of the country is one of the most important elements of the Indian Constitutional structure and it is essential that legal terms and expressions should be understood in the same significance in all parts of the country, for the maintenance of this unity.

Legal terminology should be adopted after a process of consultation in like manner as in respect of terminology in general. Thereafter, a legal lexicon duly authorised should be prepared and published. We have had suggestions made that such a lexicon fixing the precise meaning of legal phrases and terms should in fact be *enacted* by Parliament. We do not however consider it necessary or even advisable. Even if such a legal lexicon is enacted as a law, in respect of any meanings that may be given against particular terms or expressions in it, in the actual consideration of such terms or expressions in the context of cases in real life, there would still be room for argument as to the precise shade of meaning to be adopted for a word or expression in a particular context, since all such situations can never be foreseen. We therefore do not see what particular advantage would be gained by having such a lexicon enacted by Parliament like a statute. If such a lexicon were to be published under the 'imprimatur' of an authority like, say, the Ministry of Law of the Government of India, the terms and expressions would come to be used in practice as standard terms with the intended connotation, without imparting to them the degree of inviolability or inelasticity associated with a Parliamentary enactment. As in the case of other technical terms, we anticipate that there may have to be in due course a process of 're-standardisation' in the light of specialised meanings that may come to be attached to particular terms or expressions consequential to decisions of law courts.

So far as the other prerequisite, namely, translation of the statute book into Hindi is concerned, we have the following observations to make:—

All the un-repealed statutes, Central as well as State, will have to be rendered into Hindi and authoritative texts in that language made available eventually. It may be noted that a mere 'popular' translation, in the way in which translations are sometimes made of Bills or Acts by the Central or State Governments for public information in the regional languages, would not do for this purpose as we intend that the Hindi version of the statute should in course of time, when duly enacted, become the authoritative text of the law. We contemplate that the renderings of the statutes into their Hindi versions would have in due course to be re-enacted, by the legislative authority in the respective field, *i.e.*, by Parliament in respect of Central legislation and by the different State legislatures in respect of the State laws.

In addition to this, State Governments may want to translate into the respective regional languages some or all of the Central and

States' enactments. These however would be translations for popular information and would not be the authoritative texts of the statute.

5. We are informed that so far as the unrepealed Acts are concerned, the work amounts to some 8,500 pages. Further to this, the turn-over of new legislative enactments each year at the Centre is approximately 500 pages. The Commission was informed that the Law Ministry started the work of translating unrepealed Central Acts about seven years ago and that they have up to now done about 3,000 pages comprising 183 unrepealed Acts and 45 Amending Acts. The work apparently is done in a separate section of the Ministry of Law and we were informed that since 1953 a special officer of the rank of Deputy Secretary has been appointed to be in-charge of the Hindi translations.

Further inquiries from the Law Ministry elicited that these renderings of the unrepealed central Acts into Hindi may be said to be 'Hindi translation of the laws for popular use' and the Law Ministry was 'not in a position to say that the translation done in Hindi so far can be regarded as adequate to serve as authoritative texts of the laws in that language'. These translations therefore would not be capable of being used for the purpose of enacting the law in Hindi in course of time when it is resolved to enact the statute book in the Hindi language. It is not apparent that the translations were undertaken with a clear objective in view and in the reply of the Law Ministry, it is stated that it has not been possible for any senior officer of the said Ministry either to supervise the work of the translating section or to judge of the merits of the translations done and that under the circumstances, the Ministry is not in a position to state whether the translations done up-till now would stand the test of being used for replacement of the original texts in English. In the opinion of that Ministry, such translations may be taken as being meant for popular use. The correspondence between the Commission and the Law Ministry in this respect is reproduced in Supplementary Paper XII*.

So far as the evolving of legal terminology is concerned, there would seem to be the same lack of co-ordination as between different agencies to which we have adverted in Chapter V in respect of terminology in general. We were advised on 9th March, 1956, that the Law Ministry had until then prepared about 1,000 legal terms which they had brought into use in the translations of the laws that they had made although until then only 75 words had been finalised after the prescribed process of scrutiny and finalisation in the Ministry of Education.

It would therefore seem that many of the legal terms employed in the translations of statutes so far made have not yet been finally adopted; it would seem necessary that the translations are reviewed and revised both because some of the terminology is still to be finalised and as the original translation as it stands does not appear to have been made with a view to serve eventually as the authoritative and duly enacted text of the law in Hindi. Some translation of the State laws into the regional languages and even in Hindi has been made by the State Governments purporting presumably to assist

*Not printed.

eventually the change-over from English; but if similar considerations apply in respect of these renderings also, the Hindi translations would not be fit for being adopted as statutory enactments until they have been reviewed from this point of view.

6. It seems to us necessary to adopt the following plan of action and to pursue it steadily to its completion:

(1) The process of evolving and adopting the necessary common terminology for the Indian languages in the field of law must be greatly accelerated.

(2) Steps must be taken for the publication of books on such terminology from time to time as they get ready as standard and recognised glossaries under the *imprimatur* of a suitable authority at the Centre.

(3) A rendering of the statute-book, both Central and State, into Hindi must be projected. It should be decided as to whether such Hindi versions of the law should not be enacted by the appropriate legislative authorities and a programme of action in respect of the Central as well as the State laws should be drawn up and pursued.

It seems to us that to start with at any rate, until drafting in Hindi becomes sufficiently well-established and until competent draftsmen who can undertake original drafting of laws in Hindi are available in sufficient numbers, it might be advisable that the entire rendering of the statute book including the provincial laws into Hindi, might be undertaken by, or under the authority and auspices of, the Centre.

We have also given some thought to the detailed arrangement that would be necessary for the 'enactment' by the appropriate legislative authority of the Hindi versions of the Central laws. This could be achieved in one of two ways; namely, either the Hindi text of the Central laws prepared for the purpose might be directly enacted by Parliament going through its usual legislative procedure or a general Act may be passed by Parliament giving the force of law to the Hindi versions of the statutes to be published under prescribed authority, say, in the Gazette of India. Considering that the volume of Central legislation requiring to be re-enacted in its Hindi version runs into 8,500 pages, and further considering that the Parliament normally is able to put through during a year only about 500 pages of legislative enactment, it would appear that it would be impracticable for the Parliament itself to go through the process of enacting of the Hindi versions of the 8,500 pages of the existing Central statutes. It would appear therefore that the alternative will have to be adopted whereunder, by virtue of a general enactment, the force of law would accrue to Hindi versions prepared and published according to a prescribed form and procedure. It has been suggested in this connection that a convenient way of achieving this would be to provide for the creation of a body—which may perhaps be called the Hindi Law Commission—who would be charged with the duty of preparing Hindi versions of the existing Central laws. It would be provided that the versions authenticated for this purpose

by the Commission should on publication in the Gazette of India be deemed to be the authoritative text of the particular laws in the Hindi language. Since these enactments in Hindi would be merely translations of already existing statutes and would not involve the exercise of legislative authority in a substantive way, it would appear that some such device—which alone it seems to us would make the task practicable—could be adopted without objection. We are concerned merely to point out the need and urgency of the task and to indicate a possible way in which provision could be made for its accomplishment: it will be for Parliament itself to decide the issue finally and settle the details of any such arrangement.

A similar issue will arise in connection with the unrepealed statutes in the States and perhaps some analogous arrangement would need to be made for the purpose.

In August 1955, the Government of India appointed a Law Commission, one of the terms of reference of which is 'to examine the Central Acts of general application and importance and recommend the lines on which they should be amended, revised, consolidated or otherwise brought up to date.' Of course, to the extent to which it may be practicable to do so without imposing an undue delay on the process, the rendering of the enactments into Hindi might be so programmed as to follow, rather than precede, the recasting of an enactment following the labours of the Law Commission so as to obviate the necessity of a second rendering soon after the first. The same consideration would apply in respect of any particular statute where a codification or other considerable re-casting of the law is in contemplation.

7. Is it necessary to translate any of the 'case law' which is at present available in English and to which frequent references are made in the law courts? It would be of help, we imagine, if nothing else at least as an exercise in legal composition in the new linguistic medium, if the more important parts of the case law are also likewise rendered into Hindi, using therefor standardised terms and expressions from the authorised law lexicon: we would however not postulate this as a prerequisite to the general change-over of the medium. For one thing, the entire case law is far too vast to be translated. Besides, under the system that we envisage, a law graduate, and of course also a judge at the levels of the judicial system at which reference to such case law would normally arise, will have received in the course of his educational career sufficient instruction in the English language to impart to him, at any rate, adequate comprehending knowledge to enable him to look up case law available originally in English. While therefore the publication of the more important portions of case law in Hindi would be a facility and an advantage, the translation of the entire case law is neither practicable nor necessary as a preliminary to the change-over.

We might here briefly notice a point which is sometimes sought to be made in this connection. We have heard it suggested by witnesses that provided the laws were codified, the need for reference to case law could be obviated altogether. Some witnesses suggested, presumably in search of a simplification of the administration of

justice, that it should be enacted that 'decisions of law-courts before a certain date shall not be considered as valid for the interpretation of current laws thereafter.' These suggestions would appear to flow from a misconception. Apart from instances where there is a statutory provision as in Article 147 of the Constitution relating to the Supreme Court, stating that the law declared by the Supreme Court shall be binding on all Courts within the territory of India, the validity of case law proceeds mainly from the merits of the reasoning advanced therein. So long as questions of interpretation of law arise, it is obvious that advocates will quote decisions in other cases in support of the views they advocate. One could not in any case altogether obviate reference to case law and thus dispense with the incubus of the legal lore represented by the accumulated case law. In the same way, codification of laws would not in itself remove all occasion for reference to the case law, as such codified enactments could no more foresee every conceivable situation and legislate unambiguously with reference to each, than could be so done in uncodified enactments.

9. We would now like to consider the phasing of the various preliminaries which are, in a greater or less degree, necessary before a general change-over of the medium in the language of law and legislation can take place.

While the obvious sequence, so far as evolving of terminology and enacting of renderings of the law into Hindi is concerned, would be for the former to precede the latter, it does not mean of course that all such rendering of extant laws into Hindi can commence only after the last term or expression is finalised. In fact both jobs should proceed simultaneously and in close consecutive sequence. At the same time some of the other elements in the system must be set in motion. It seems to us necessary to allow those States, which may want to do so and may be adequately equipped for the purpose, to undertake drafting and enactment of new legislation originally in Hindi itself. So far as the enactment of the legislation in Hindi is concerned, the Hindi text would not have the validity of law unless clause (3) of Article 348 of the Constitution is amended. We must caution here that probably original drafting in Hindi has not yet made adequate progress even within those States wherein the legislature of the State has prescribed Hindi as the language for use in Bills, Acts, etc. We understand that very often the Hindi text is only a translation made subsequently of the English text originally drafted by the draftsmen. We are inclined to feel that unless drafting can be attempted originally in Hindi by persons competent to do so, there would inevitably be present in the Hindi text the blemishes unavoidable in a translation.

If the Hindi texts of some of the State enactments come upon the statute book hereafter and if furthermore as we suggest below, the judgments of High Court judges start being delivered in some cases in Hindi, we would commence to create for the Hindi terms and expressions a general climate of reality and practical use which is necessary for the purpose of such terms and expressions acquiring definite connotation and becoming standardised. It is only by the process of its actual use that we can hope to establish the legal

terminology and impart to the different Hindi terms and expressions precise connotations and shades and nuances of thought. A Hindi case law will presently start developing in this fashion; wherever Hindi terms are not yet sufficiently fixed or texts are not yet available, the situation could be eked out in the meantime by using original English terms or texts, either in Roman or in a Devanagari transliteration.

10. It seems to us inevitable that there should be a transitional period of time during which the statute book as well as the case law would be partially in English and in Hindi, the Hindi language progressively assuming a larger proportion of the whole. During the transitional stage the High Court judges who exercise the option to deliver their judgments in Hindi should be requested to authenticate authorised translations of the same judgments in English for the use and reference of others. During the transitional period when the statute book and the case law would be partly in Hindi and in English, English authorised translations should be available both of the Hindi parts of the statute and the Hindi decisions, so that no inconvenience would be caused to the High Courts and other Courts in the country wherein Hindi may not yet be known by the judges.

As in respect of certain sectors of the administrative field so also in respect of the judicial system and the statute book, we envisage two or indeed more cycles of development in the change-over from the existing medium of English to the medium of Hindi. There will be first of all a fast-moving cycle so far as the Hindi-speaking States are concerned wherein circumstances are favourable to a more rapid change-over; there would be a slower moving cycle so far as the other States are concerned wherein again there may be differences of speed depending upon the 'distance' of the Hindi language from the regional languages of the States and the extent to which they have been able to complete the preparation for initiating the change-over. The States in which the Hindi medium is thus optionally in use first will blaze the trail, so to say, and gain valuable experience in the meantime which should benefit the rest wherein owing to their greater difficulties the change-over will occur subsequently. With the aid of the English language which would be available for a long time to come as a common linguistic medium amongst judges and advocates who are most concerned in this segment of national life, we ought to be able to initiate and carry out these various cycles and in course of time, like a man shifting his burden from one leg to another, change over in the main from the common English linguistic medium to the common Hindi linguistic medium. We should eventually be able to change over the general system and dispense with the English medium altogether, save by way of individual exceptions. Provided there is no derogation in the change-over of the system as a whole, individual exceptions may be liberally allowed for as long as necessary.