

CHAPTER II

LANGUAGE OF LAW-MAKING AND LAW-COURTS UNDER THE CONSTITUTION

I

1. Among the official purposes of Government those of law-making and law-courts are obviously of special nature and importance, comparatively to those of the executive or civil administration. The Constitution of India (Article 348) has taken care to see that the language policy to be adopted in regard to these two categories of official purposes is well safeguarded from possible confusion or unsettlement during the transition from English to Indian languages.

2. The essence of such safeguarding lies in continuing to use English, wherever it is absolutely necessary to do so in the interests of accuracy and precision of language, till Indian languages and the Union Hindi are sufficiently developed to take over in their respective States and the Union respectively.

3. When considering the safeguards the Constitution of India makes a distinction between the needs of a language for what may be called the deliberative purposes of the Parliament and State legislatures and those of their actual work of enactment. Similarly, in the field of the judiciary, it distinguishes the needs of a language for the proceedings of a law-court from those for giving judgment or passing orders or decrees.

4. Article 348 amply demonstrates that the above distinction is made in order that full and legitimate use of the official languages of States in their respective spheres at the State level is guaranteed or provided for, consistently with the absolute or unquestionable requirements of using the common all-India and inter-State medium for the official purposes of the Union and inter-State communication.

II

5. The safeguard at the Union level is to see that the language of all the proceedings in the Supreme Court and of Bills in Parliament shall continue to be English only, until Parliament by law otherwise provides. That is, no action for providing for the use of English, as per Article 343(3), after 15 years is needed for these two purposes of the Union; English will continue automatically till Parliament decides to change it to Hindi, subject to Article 349.

6. Till 1965 Parliament cannot move in the matter, unless permitted or asked to do so by the President. The latter can do so only after taking into consideration the recommendations of the Official Language Commission and the report of the Parliamentary Committee under Article 344. The Official Language Commission has therefore to consider what to recommend, if anything, regarding amending Article 348 within 15 years from the commencement of the Constitution of India.

7. Parliament can think of going into changing English to Hindi only when it is reasonably satisfied that Hindi has enriched itself and developed well enough, as per Article 351, and has secured working competency, accuracy and precision so as to take over from or at least to be used as a tolerable alternative to English.

8. Such satisfaction can be possible to reach if High Courts and State legislatures in Hindi-speaking areas in particular begin to use Hindi and thereby develop it as a suitable instrument for these purposes. This development and enrichment they should do as per directive of the Constitution of India in Article 351. Working so, they should achieve a measure of development and linguistic competency of Hindi such as may arouse reasonable confidence to take it up for the purposes of Union law-making and proceedings of the Supreme Court.

9. In an earlier part of this note I have tried to show that Union Hindi is different in conception. The directive in Article 351 may not be acceptable to regional Hindi protagonists who, in the U.P., for example, hold that Urdu should not be recognised. There is going on a movement for 'Shuddha' or Sanskritized Hindi which aims to boycott words which are dubbed as 'foreign'*. Among such words occur such as वक्त, फकीर, जमाना etc. I may not go further into this painful matter. It is only to show that if the Hindi-speaking areas do not develop their regional language with the breadth and the catholicity of approach that is laid down in Article 351, they may fail to oblige the country with providing it with a pattern of Hindi under Article 351. This may retard and obstruct the progressive use of Hindi for the official purposes of the Union. And more—it may unwittingly allow the atmosphere of fears and suspicions that have unfortunately gathered round the idea of propagating Hindi since the commencement of the Constitution of India, to continue.

10. The Constitution of India also envisages that High Courts and legislatures in non-Hindi-speaking areas also will begin to use their respective official languages in a similar manner as Hindi-speaking areas. Naturally they will use their recognized regional languages for law-making and justice. The full growth and development of these languages require that they must be so used. Hindi should in no way be imposed in this sphere as well.

11. Like the Supreme Court, High Courts of non-Hindi-speaking areas also cannot resort to Hindi, the official language of the Union, alternatively or optionally much less compulsorily, so long as it is not evolved to be an efficient linguistic medium. The time to adopt Hindi by them would come when the Supreme Court changes over to Hindi by an act of Parliament. Till then they should also continue in English as required by Article 348, and also in the recognized official language or languages of the State, as permitted by the said Article 348.

*I am referring here to a dictionary (3rd edition) published in 1952 which gives as an appendix a list of about six thousand words mentioned as 'foreign' and thus requiring to be eschewed from the language. The instances of words are from that list.

III

12. Turning to consider what the safeguards are at the level of the States for their legislature and judiciary, we find that Article 348(1) provides that all proceedings in High Courts and authoritative texts of Bills, and all enactments shall be in English. However, a distinction noted in paragraph 3 above, is made in this case: viz. the use of the official language or languages of the State or Hindi is permitted in the deliberative proceedings in both the spheres—legislative and judiciary. [Vide Article 348(2) (3)]. But it is specified that the language of enactment and of High Court Judgment, decree, order, etc. shall be English, except that for enactment authorised English translation shall be gazetted officially for the purposes of Article 348(1).

13. The safeguard at the States level is of the same nature as at the Union level. What is noteworthy, however, is that at the latter level there is contemplated no provision or process for such negotiating of the change-over from English to Indian languages. This is apparently because the process can aptly begin at the States level almost simultaneously in all the scheduled languages of India. Obviously such beginning only will ultimately lead to and prepare the country for having Hindi at the Union level.

IV

14. It is to be noted that Article 348(3) provides that in case a State legislature prescribes a language other than English for use in Bills etc., an authorised translation in English to serve as the authoritative text thereof in the English language under 348(1) will do for the purpose. But such a provision for an authorised translation in English is not made in case of judgment, decree or order passed or made by a High Court, even if it might use the official language of the State in its other proceedings.

15. When English changes to Hindi eventually when Parliament so provides, it will be necessary to think out what should be done in this case of High Court judgments etc. As in the case of enactment, it may be provided for High Courts also that their judgments, decree, order etc. also be made or passed in the official languages of the State and their authorised translations in Hindi should be available for reporting or appeal purposes. A judge however may choose to do his work in Hindi. Hindi alone must not be the rule.

16. The largest bulk of the bar will be working in courts below the High Court. That is, they will be working through the medium of the regional languages. Therefore it is but proper that legal education also is conducted through them. Hindi and English will be compulsory languages of study. This will facilitate the use, during the transition, of English law books and enactment.

17. For the change-over from English to Indian languages it should not be felt necessary that as a pre-requisite to do it all laws, case law should be first translated into these languages or Hindi. Laws in English can well be used, as lawyers will be knowing English as a compulsory subject. Eventually laws in Hindi also will not cause difficulty as lawyers will have studied that language also as a compulsory subject and must also be using law books in Hindi also.