

THE MEDIUM OF LANGUAGE IS ENGLISH IN INDIAN JUDICIARY: ISSUES AND CHALLENGES

DR. BHADRESH A. DALAL

Dean, Faculty of Law, Sarvajani University
I/c. Principal, Sarvajani College of Law, Surat.

Abstract:

This article discusses non-English speakers and the legal system. The state high courts will likely adopt their respective official languages, which would be disastrous for the Indian judicial system. Language has always been a sensitive topic in India. The higher judiciary places a premium on the English language. Without a doubt, there is merit to the claim that district court litigants would benefit from hearing proceedings in their native tongue.

Keywords: English, Languages, Court

Table of Contents

1. Introduction
2. Research problem
3. Objective
4. Hypothesis
 - 4.1 Legislative approach
 - 4.1.1 Constitutional Provisions
 - 4.1.2 Legal Provisions
 - 4.2 Executive approach
 - 4.2.1 The Prime Minister Shree Narendra Modi
 - 4.2.2 Union Law Minister Mr.Kiren Rijju
 - 4.3 Judicial Approach
 - 4.3.1 N. V. Ramana - The Chief Justice of India:
 - 4.3.2 Former CJI S.A. Bobde and Justice Nageswara Rao:
 - 4.3.3 Various High courts and subordinate courts:
 - 4.3.4 The Gujarat High court:
 - 4.3.5 Case Law- SP Gupta vs President of India¹:
5. Advantages of common English language
6. Challenge
7. Conclusion
8. Suggestion

1. Introduction:

With the switch from Urdu to Persian and Farsi scripts during the Mughal Empire, which persisted in lower courts even during British Rule, the language used in courts in India has changed changes throughout judgment centuries. English is the official language of the codified legal system that the British built in India.

Postcolonial period, Hindi written in Devanagari would be the official language of the Union, conferring to Article 343 of the Indian Constitution. Though, it mandated that the English be used intended for all official Union resolves for a further fifteen years after the Constitution of India took effect. Additionally, The President of India may, for the date in question, mandate the use of Hindi language

¹Nishiket Dave, Law sista.com, 11 November, 2020

<https://lawsisto.com/legalnewsread/ODcxMw==/SP-Gupta-vs-President-Of-India-And-Ors-1981>

in its place of English language for any official Union purposes. The court hears cases involving a variety of people. However, not everyone is an authority in legal English.² There are two groups of individuals: Those who are subject to the law, as well as; Those who work in the legal field, such as lawyers, advocates and judges.

There are 5-dimensional communications in the field of law.

1. The first dimension is the legislators, followed by the judges who carry it out and legal counsel a contribute to the dissemination of the law's provisions.
2. The interaction between judges and legal counsel constitutes the second dimension. It could be professional or casual. There is a discussion between the judges and the attorneys in court.
3. The third dimension is the informal consultation or discussion between two or more attorneys in the office, as well as among legal professionals. Although informal, this manner of communication is technical.
4. The fourth dimension's language is uncomplicated. Ordinary people and legal counsel exchange information in this manner.
5. Ordinary citizens make up the final and fifth dimensions of communication, which are reflected in agreements, wills and information.

2. Research problem:

The Gujarat High Court ordered a journalist who was being sued for contempt of court in January 2022 to speak exclusively in English because that was the language of the higher judiciary. On the other side, Prime Minister Modi requested on April 30, 2022, to promote the use of regional languages in courts because a sizable population finds it challenging to comprehend the legal system and court decisions.

3. Objective:

India is a nation with a huge variety of tongues. There are 22 different languages recognized by the Constitution's Eighth Schedule. Whether you like it or not, English is the language that connects many states. There is no exemption in the legal system.

4. Hypothesis:

The following hypothesis has been constituted-

1. The judicial system is created, incorporated and standardized across the nation thanks to the use of English.
2. A common man cannot comprehend the court proceedings using English as the language of instruction.
3. It would be impossible for the judiciary to perform its duties without the usage of English.

4.1 Legislative approach:

The various State governments like Tamil Nadu, Karnataka, Chhattisgarh and Gujarat all requested The President of India's consent to practice provincial languages in High Courts, according to a written response to the Law Minister provided in Parliament in 2016. The plan was rejected by the Supreme Court's full court, nevertheless.

It's remarkable that laws requiring the practice of local languages in courts, counting the Supreme Court, have also proposed in the Parliament. The Supreme Court, High Courts, and District Courts (Use of Official Languages) Bill of 2018 and the High Court's (Use of Official Languages) Bill of 2016 have not yet been implemented.

4.1.1 Constitutional Provisions:

1. According to Article 348(1)(a), Unless if not specified by legislation from the Parliament, all proceedings before the SC and in each HC must be conducted in English language.

² Page No 1018, V.N. Shukla's, Constitution of India, EBC Explorer 13th Edition



2. Article 348(2) further states that notwithstanding the limitations of Article 348(1), the State Governor may authorize the practice of Hindi language or any other language practiced for any official purpose, with prior consent of President, in proceedings before the High Court.

3. The Official Language Act of 1963, the Authorized Translation (Central Laws) Act of 1973, and new Article 394A, which was added to the constitution in 1987, have modified the aforementioned constitutional requirements.³

The English translation of any verdict, decision or order that is issued in one of these languages is essential, though.

4.1.2 Legal Provisions:

1. As per Section 7 of the official languages Act of 1963, the State Governor may, through the prior permission of the President of India, approve the use of Hindi language, the state's official language in addition to English language for any judgment or order issued by the HC.⁴

2. According to Section 272, the CrPC 1973, the language of all courts additional than the HC shall be determined by the State administration. This typically means that the district courts have to use the regional language that is mandated by the state government.⁵

3. As per Section 137 of the CPC the language used at the start of CPC is that of any court secondary to a HC and will remain so until the other party specifies otherwise. The State Government establishes the court's language as well as the format in which applications and court proceedings must be prepared.⁶

Even under this Act, when taken into consideration the basic clauses, English is given precedence. The Official Languages Act does not make any reference to the SC, English is the only language utilized during hearings.

4.2 Executive approach:

4.2.1 The Prime Minister Shree Narendra Modi:

On April 30, 2022, the 11th Joint Summit of CM and Chief Justices of all HC was initiated. PM Shree Narendra Modi stated that a large population finds the judicial process and court rulings difficult to understand. This needs to be accessible and made simpler. Simply put, we support the use of regional languages in courts. This will ensure that the common man has faith in the judiciary and can feel part of the system.⁷

The majority of citizens of the country find it difficult to understand the legal process and decisions of the court, according to a study underscoring the need to promote the practice of regional languages in courts.

4.2.2 Union Law Minister Mr.Kiren Rijju:

In response to a question from The Sunday Express, Union Law Minister Mr. Kiren Rijju, who was present at the news conference with CJI Ramana, stated that we are quite positive about supporting the practice of local languages in the courts. The judiciary must be more thoroughly consulted during this process. We need the Chief Justice of India's permission to use other languages in court, including for orders and decisions as well as for arguments. Wider consultation is necessary because of this, and we will give this issue a lot of thought.⁸

4.3 Judicial Approach:

The Supreme Court heard testimony in *Madhu Limaye v. Ved Murti* about the difficulties of speaking a language other than English. One of the parties contended on speaking in person to the SC, which the opposing lawyers objected to because they couldn't understand. The man declined to present written

³ Page no 453, D.D.Basu, LexisNexis, 22nd Edition

⁴ Page no 454, D.D.Basu, LexisNexis, 22nd Edition

⁵ Page No 441, S.N. Misra, The Criminal Procedure Code, 1973, Central Law Publications, 20th Edition

⁶ Page no 567, MULLA, The code of Civil procedure abridged, LexisNexis, 15th edition

⁷Prime Minister Narendra Modi's inauguration speech at Joint Summit of Ministers and Justice of the higher judiciary.

⁸Apurva Vishwanath, Ananthkrishnan G, The Indian Express, 1st May 2022, New Delhi.

arguments in English language, to argue in person in English before the court, or even to allow his attorney to do so. In response, the Supreme Court invoked Article 348, declared English to be the official language of the court, and barred his intervention.

4.3.1 N. V. Ramana - The Chief Justice of India:

Responding to Prime Minister's request, Chief Justice of India N. V. Ramana stated that it would not happen "overnight," but rather "over some time, I suppose." The use of regional languages in High Courts is a serious matter that will take longer to resolve and is beset by numerous obstacles.⁹

4.3.2 Former CJI S.A. Bobde and Justice Nageswara Rao:

"To some extent, it manifested," they claimed. It takes time to get into the additional complexities. I'm hoping that technology will take care of this in the future. One day, all of a sudden, we are unable to undertake any reform. I believe it will eventually happen.¹⁰

4.3.3 Various High courts and subordinate courts:

The Eighth Schedule of the Constitution lists 22 official languages, 29 States, 25 high courts, and the Republic of India. The list will undoubtedly grow as more languages compete for a position in the Eighth Schedule.

Following in their footsteps, Tamil Nadu is seeking approval for the use of Tamil in High Court of Tamil Nadu. Rajasthan, Uttar Pradesh, Madhya Pradesh and Bihar have already permitted to use of Hindi language in High Court proceedings. Haryana's government recently mandated the use of Hindi language in all courts of Haryana.

4.3.4 The Gujarat High court:

The Gujarat High Court ordered a journalist facing contempt of court charges to only speak in English because it was the language of the higher courts. On January 8, 2022, a contemnor who was appearing as a party-in-person before the Gujarat High Court offended a division bench by choosing to address the court in Gujarati rather than English.

A 2014 contempt petition against the local daily "Samna Brashtachar Ka" and its editor Vishal Chandrakant Vyas was being heard by the division bench. Despite Chief Justice Aravind Kumar's prompt denial, Mr. Vishal announced that when he appeared before the division bench following the execution of bail from a lower court at a personal bond of Rs 5,000, he would address the court in Gujarati. High court language is English, so you should only talk English, he stated and said that if required, the court may supply an interpreter or a lawyer. The Gujarat State Legal Services Authority would provide a lawyer for him if he cannot afford one, the court further declared.

However, Vishal persisted in speaking in Gujarati and Hindi while adding that "it is Gujarat," which infuriated the judge. According to the bench's ruling, the contemnor claims he will only speak in Gujarati and not in any other languages.¹¹

The Court has therefore taken action to overcome this language barrier. It committed to translating decisions into the common languages of litigants in its 2018-19 Annual Report. It specifically identified 14 categories of situations where the litigants are frequently from the "lower or intermediate strata of society," who would be less "well-versed in the English language." These cover eviction, consumer protection, and labor issues.¹²

4.3.5 Case Law- SP Gupta vs President of India¹³:

The issue of the judges in practicing high court Practicing before other high courts all around the nation. On December 30, 1981, the issue was raised and debated by the first judges trendy the case of SP Gupta vs. President of India. We must consider the CJI's recommendation in one seminar that near

⁹Apurva Vishwanath, Ananthakrishnan G, The Indian express, 1st May 2022.

¹⁰Apurva Vishwanath, Ananthakrishnan G, The Indian express, 1st May 2022, New Delhi.

¹¹ Express news service, Ahmedabad, 8th January 2022

¹² Indian Judiciary Supreme_High_Court_AR_English_2018-19.pdf

¹³Nishiket Dave, Law sista.com, 11 November, 2020

<https://lawsisto.com/legalnewsread/ODcxMw==/SP-Gupta-vs-President-Of-India-And-Ors-1981>

relatives of the judge or the CJ practice in the similar court and are gain an unfair benefit. Because every judge has a strong sense of justice, the concerned judge should choose to be transferred to another high court, the Hon. Supreme Court stated. But the problem and the worries are still there. According to established policy and practice, the CJ of a HC must be a judge from other states. Transfers of judges are crucial internal controls that keep the system's checks and balances in place. When we add the language component to the problems and obstacles of the aforementioned transfer issues, everything starts to come apart.¹⁴

5. Advantages of common English language:

The Supreme Court's judges and attorneys come from all over India, and it hears cases from all over the country. It is rarely reasonable to expect judges to read all papers and listen to influences from which with they are not friendly.

1. India currently has a highly developed, integrated, and consistent legal system that applies to the entire nation.
2. Both attorneys and judges gain from having ready access to other high courts' opinions on related legislation and other legal and constitutional issues.
3. Judges are effortlessly lifted to other high courts from one high court.
4. The Indian legal system now has a cohesive structure because of this. Any strong legal system must have clear, exact, and predictable laws, and in India, we are very close to achieving that.
5. We owe a lot to English, which has helped as a bridge between 22 official state languages.

6. Challenge:

The legal English language is very broad, and there is a prevalent misconception that because it deals with a technical subject, the average person cannot understand it. Only legal professionals who have the necessary skills can comprehend the legal English language's technicalities.

The flaws in the legal English language are vagueness, ambiguity, length, verbosity, and complexity, which result from linguistic incompetence and stylistic flaws. This demonstrates how closely related, or rather how inextricably linked, language and law are.

In addition, a lot of legal documents are overwritten, repeated, unnecessarily long, and self-conscious. They include sentence building and are composed of long sentences. They are inadequately organized and created. They have complex and frequently pointless cross-referencing.

7. Conclusion:

As a result, the decision by various states to make their official language the link language in place of English in their respective high courts without engaging in any kind of discussion or making even the slightest attempt to reach even the slightest semblance of consensus will only result in the creation of legal compartment with the judiciaries of any state unable to communicate by judiciaries of other states. There will be a breakdown in communication between various governments' judiciaries. Linguistic chauvinism and narrow-minded regional politics could bring down more than just the country's unified judicial system in that scenario.


8. Suggestion:

The higher judiciary will employ comparable technologies for a variety of use-cases, beyond only judgment translation, if Artificial Intelligence (AI) software is a success. The expense of creating in-house translation software is high, but the courts might consider it worthwhile considering that it will most likely make their services far more accessible. We'll need to wait and see how people react to the judgment translation software first.

References:

- [1] MULLA, *The code of Civil procedure abridged*, LexisNexis, 15th edition.
- [2] V.N. Shukla's, *Constitution of India*, EBC Explorer 13th Edition
- [3] S.N. Misra, *The Criminal Procedure Code, 1973*, Central Law Publications, 20th Edition

¹⁴ Amit Jaiswal, *The Indian express*, Chandigarh 29 June 2020

- 
- [4] Durga Das Basu, *Introduction to the Constitution India*, LexisNexis, 22nd Edition
- [5] https://www.business-standard.com/article/government-press-release/use-of-hindi-language-in-courts-116042801074_1.html
- [6] Subs. For “Provincial Government’ by AO 1950.
- [7] <https://www.drishtiiias.com/daily-updates/daily-news-analysis/language-of-courts-in-india>.
- [8] Inauguration of the 11th Joint Conference of Chief Ministers and Chief Justices of High Courts, New Delhi. Date: 30th April 2022
- [9] Apurva Vishwanath, Ananthakrishnan G, *The Indian Express*, 1st May 2022, New Delhi.
- [10] <https://indianexpress.com/article/india/pm-narendra-modi-cji-n-v-ramana-local-language-court-7894688/>
- [11] *Madhu Limaye vs. VedMurti*, (1970) 3 SCC 378
- [12] Rohan Thawani, *Bar and Bench*, 3rd June 2020.
- [13] <https://www.barandbench.com/columns/official-languages-in-district-courts-a-case-to-increase-the-use-of-english>
- [14] Express news service, Ahmedabad, 8th January 2022
- [15] Annual report 2018-19, Indian Judiciary
- [16] https://main.sci.gov.in/pdf/AnnualReports/Supreme_High_Court_AR_English_2018-19.pdf
- [17] Nishiket Dave, *Law sista.com*, 11 November 2020
- [18] <https://lawsisto.com/legalnewsread/ODcxMw==/SP-Gupta-vs-President-Of-India-And-Ors-1981>
- [19] Amit Jaiswal, *The Indian Express*, Chandigarh 29 June 2020