



GOVERNMENT OF INDIA

LAW
COMMISSION
OF
INDIA

**NON-FEASIBILITY OF INTRODUCTION OF HINDI AS
COMPULSORY LANGUAGE IN THE SUPREME COURT OF
INDIA**

Report No. 216

December 2008



LAW COMMISSION OF INDIA
(REPORT NO. 216)

**NON-FEASIBILITY OF INTRODUCTION OF HINDI AS
COMPULSORY LANGUAGE IN THE SUPREME COURT OF
INDIA**

Presented to Dr. H.R.Bhardwaj, Union Minister for Law & Justice,
Ministry of Law & Justice, Government of India, by
Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on
the 17th day of December, 2008.

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D.O.No. 6(3)127/2006-LC(LS)
2008

December 17,

Dear Dr Bhardwaj ji,

I have great pleasure in presenting the 216th Report of the Law Commission of India on "NON-FEASIBILITY OF INTRODUCTION OF HINDI AS COMPULSORY LANGUAGE IN THE SUPREME COURT OF INDIA".

The Law Commission received a reference from the Department of Legal Affairs, Ministry of Law & Justice which has forwarded a copy of the note dated 29.3.2006 from Joint Secretary & Legislative Counsel, Legislative Department along with a copy of the recommendations of the Committee of Parliament on Official Language to obtain the views of Law Commission of India on the recommendations of the said Committee made in its Report at S.No.16.8(d) and 16.8(e) stated under Resolution No. 11011/5/2003-OL (Research) dated 13.7.2005 of the Department of Official Language, Ministry of Home Affairs.

Paragraphs 16.8(d) & (e) of the report of the said Committee envisage that Article 348 of the Constitution may be amended to enable the Legislative Department to undertake original drafting in Hindi. After the amendment of Article 348 of the Constitution, High Courts/Supreme Court should be asked to start delivering their judgments and decrees etc. in Hindi so that large number of Government Departments, who are carrying out judicial/ quasi-judicial functions, could be able to deliver orders in Hindi. At present, these departments are unable to pass orders in Hindi, because the appeal against their orders in High Courts/Supreme Court would have to be conducted in English.

The Law Commission addressed letters to some of the retired Chief Justices and Judges of the Supreme Court of India, Senior Advocates from different parts of India and also from the different Bar Associations in different States regarding recommendations of the Committee of Parliament on Official Language on the proposal to amend article 348 of the Constitution of India.

In response to the letter, the Law Commission has received written responses from former Chief Justices of the Supreme Court and Judges of the High Courts, Senior Advocates, High Court Advocates' Associations on the said proposal. These are extracted extensively under Chapter III of the report.

The Commission has deeply gone into the views so obtained and has unanimously recommended that –

i) Language is a highly emotional issue for the citizens of any nation. It has a great unifying force and is a powerful instrument for national integration. No language should be thrust on any section of the people against their will since it is likely to become counter-productive.

ii) It is not merely a vehicle of thought and expression, but for Judges at the higher level, it is an integral part of their decision-making process. Judges have to hear and understand the submissions of both the sides, apply the law to adjust equities. Arguments are generally made in higher courts in English and the basic literature under the Indian system is primarily based on English and American text books and case laws. Thus, Judges at the higher level should be left free to evolve their own pattern of delivering judgments.

iii) It is particularly important to note that in view of the national transfer policy in respect of the High Court Judges, if any such Judge is compelled to deliver judgments in a language with which he is not well-versed, it might become extremely difficult for him to work judicially. On transfer from one part of the country to another, a High Court Judge is not expected to learn a new language at his age and to apply the same in delivering judgments.

iv) At any rate no language should be thrust upon the Judges of the higher judiciary and they should be left free to deliver their judgments in the language they prefer. It is important to remember that every citizen, every Court has the right to understand the law laid down finally by the Apex Court and at present one should appreciate that such a language **is only English.**

v) The use of English language also facilitates the movement of lawyers from High Courts to the Apex Court since they are not confronted with any linguistic problems and English remains the language at both the levels. Any survey of the society in general or its cross-sections will clearly substantiate the above proposition which does not admit of much debate, particularly in the present political, social and economic scenario.

vi) It may, however, be admitted that in so far as legislative drafting is concerned, every legislation although authoritatively enacted in English may have a Hindi authoritative translation along with the same at the central level. Same analogy may be applied even in respect of executive actions at the central level, but the higher judiciary should not be subjected to any kind of even persuasive change in the present societal context.

Yours

sincerely,

(Dr. Justice AR.

Lakshmanan)

Dr. H.R.Bhardwaj,
Hon'ble Minister for Law & Justice,
Government of India,
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CONTENTS

Chapter	Page No.
Chapter I: Introduction	10
Chapter II: Relevant provisions of the Constitution of India	12-13
Chapter III: Views of Judges, Senior Advocates, High Court Advocates' Associations on the proposal to amend article 348 of the Constitution of India	14-71
Chapter IV: Conclusion and Recommendations	71-76

REPORT ON “NON-FEASIBILITY OF INTRODUCTION OF HINDI AS
COMPULSORY LANGUAGE IN THE SUPREME COURT OF INDIA”.

**CHAPTER I
Introduction**

This Report deals with the recommendations of the Committee of Parliament on Official Language made in its Report at S.No.16.8(d) and 16.8(e) stated under Resolution No. 11011/5/2003-OL (Research) dated 13.7.2005 of the Department of Official Language, Ministry of Home Affairs.

It is expedient to state briefly the genesis of this Report.

The Law Commission received a reference from the Department of Legal Affairs, Ministry of Law & Justice which has forwarded a copy of the note dated 29.3.2006 from Joint Secretary & Legislative Counsel, Legislative Department along with a copy of the recommendations of the Committee of Parliament on Official Language to obtain the views of Law Commission of India on the recommendations of the said Committee made in its Report at S.No.16.8(d) and 16.8(e) stated under Resolution No. 11011/5/2003-OL (Research) dated 13.7.2005 of the Department of Official Language, Ministry of Home Affairs. The Committee of Parliament on Official Language was constituted in 1976 under section 4(1) of the Official Languages Act, 1963. The said Committee submitted seventh part of its Report, inter alia, relating to

propagation of Hindi for official purposes, the position of Hindi in the field of Law, original use of Hindi in Government work, to the President. After considering the views of expressed by various Union Ministries/ Departments and the States/Union Territories Governments, the Ministry of Home Affairs, Department of Official Language conveyed under the said Resolution dated 13.7.2005, the Orders of the President made under section 4(4) of the Official Languages Act, 1963 on the recommendations made in the Report of the said Committee at S.No.16.8(d) and 16.8(e) as under:-

“16.8(d) Article 348 of the Constitution may be amended to enable the Legislative Department to undertake original drafting in Hindi.

16.8(e) After the amendment of Article 348 of the Constitution, High Courts/Supreme Court should be asked to start delivering their judgments and decrees etc. in Hindi so that large number of Government Departments, who are carrying out judicial/ quasi-judicial functions, could be able to deliver orders in Hindi. At present, these departments are unable to pass orders in Hindi, because the appeal against their orders in High Courts/Supreme Court would have to be conducted in English.”

On the above recommendations of the Committee, orders were issued by the President under Section 4(4) of the Official Languages Act, 1963, as under:-

“These recommendations may be referred to the Legislative Department with the directions to obtain the views of Law Commission of India and thereafter intimate their considered opinion on these recommendations. Final decision will be taken accordingly.”

In view of the above, the matter was placed before the Law Commission of India for its opinion and appropriate recommendation.

CHAPTER II

Relevant provisions of the Constitution of India

It is pertinent to extract the relevant provisions of the Constitution of India below:

Chapter : 3 - LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC.

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, authorise 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.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

Article 349 - Special procedure for enactment of certain laws relating to language

During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause

(1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

Chapter III

Views of Judges, Senior Advocates, High Court Advocates' Associations on the proposal to amend article 348 of the Constitution of India

The Chairman of the Law Commission addressed letters to some of the retired Chief Justices and Judges of the Supreme Court of India, Senior Advocates from different parts of India and also from the different Bar Associations in different States. In response to the letter regarding recommendations of the Committee of Parliament on Official Language, the Law Commission has received written responses from the following:-

Judges

- (1) Hon'ble Mr. Justice Y.V. Chandrachud, Former Chief Justice of India.
- (2) Hon'ble Mr. Justice S. Natarajan
- (3) Hon'ble Mr. Justice K.T. Thomas
- (4) Hon'ble Mr. Justice V.R. Krishna Iyer
- (5) Hon'ble Mr. Justice B.N. Srikrishna
- (6) Hon'ble Mr. Justice M.N. Venkatachaliah
- (7) Hon'ble Mr. Justice K. Jagannatha Shetty
- (8) Hon'ble Mr. Justice B.P. Jeevan Reddy
- (9) Hon'ble Mr. Justice A.M. Ahmadi
- (10) Hon'ble Mr. Justice N. Santosh Hegde
- (11) Hon'ble Mr. Justice SSM Quadri
- (12) Hon'ble Mr. Justice K.S. Paripoornan
- (13) Dr. Justice V.S. Malimath

Senior Advocates

- (1) Mr. P.P. Rao
- (2) Mr. T.L. Viswanatha Iyer
- (3) Mr. Vijay Hansaria
- (4) Mr. K.K. Venugopal
- (5) Mr. Aravind Datar
- (6) Mr. C. Lakshmi Narayanan
- (7) Dr. R.G. Padia
- (8) Mr. T.P. Kelu Nambiar

High Court Advocates' Associations

- (1) A.P. High Court Advocates' Association

- (2) Kerala High Court Advocates' Association
- (3) Bar Council of Tamil Nadu and Puducherry

President, Bar Association of India

Mr. Fali S. Nariman – The Bar Association of India

Hon'ble Mr. Justice Y.V. Chandrachud, Former Chief Justice of India

“I am in receipt of your letter dated 8th October, 2007 asking me to offer my views on the recommendations made by the Committee of Parliament on Official Language.

I am very stoutly opposed to the proposed amendment 16.8(d) and 16.8(e). I am of the firm opinion that the Constitution should not be amended to enable the Legislative Department to undertake original drafting in Hindi. I am even more stoutly opposed to the recommendation 16.8(e). neither the Supreme Court or the High Courts should be asked to deliver their judgements in Hindi. The judges of these courts are drawn from all over India and they are not all conversant with Hindi. The English language is now acquiring importance as the language of the world. We should not deny the new generation the benefit of English language.”

Hon'ble Mr. Justice S. Natarajan

“I am in receipt of your letter dated October 8, 2007 regarding the reference to the Law Commission of India for its view/opinion and appropriate recommendation regarding the original drafting by the Legislative Department in Hindi and the delivering of judgements and decrees etc., by the Supreme Court and High Courts in Hindi for the benefit of the authorities carrying out judicial/quasi-judicial functions to deliver orders in Hindi.

One can well understand the desire of the Hindi protagonists to seek replacement of English by Hindi in full measure on the ground that Hindi is being spoken by the majority of people in the Country. However genuine and laudable their desire may be, I am personally of

the view and I am sure a large number of people of India particularly in the Southern and Eastern parts will not be in favour of the original drafting of acts in Hindi and likewise the Supreme Court and the High Courts delivering judgments in Hindi. Many Judges of the High Courts and the Supreme Court as well as many lawyers do not know Hindi language and will have to depend on translations in English to know the Acts and Judgements.

English language has not only come to occupy an indispensable and irreplaceable status in the country but has also become a world language. Judgements of the Supreme Court and High Courts of India are read and sometimes quoted before High Courts and Supreme Courts of other countries in the world. Such being the case, if the Supreme Court and High Courts are to deliver judgements in Hindi, the people in the south and the eastern regions including the learned members of the Bar and the Judiciary will not be able to know the judgements delivered in Hindi by the Supreme Court and High Courts except through translations in English of those judgements.

Furthermore, the unity and integrity of the Country is bound to be affected by reason of the linguistic chauvinists.

Therefore in my considered view, the Law Commission should not give acceptance to the recommendation of the Parliamentary Committee for the proposed amendment of Article 348 of the Constitution as set out in recommendation 16.8(d) and 16.8(e).”

Hon’ble Mr. Justice K.T. Thomas

“Thank you for the letter dated 8.10.07. The recommendations of the Committee of Parliament on Official Language, as extracted in your letter suggest for change over of the language in the Supreme Court and the High Courts.

Article 348 of the Constitution mandates that all proceedings in the Supreme Court and in very High Court shall be in English language

until Parliament otherwise provides by law. The question is whether Parliament should provide a different language for the Supreme Court and the High Courts when English is being followed for the last 57 years. It is a historical advantage gained by the Indian judicial system to have the use of a language which is almost the language of the Judicial world now. That apart, when computers have adopted English as the medium of transmission, we should not divest ourselves of the benefit of that language. English language has now ceased to be a mere mother tongue of the small country of England.

If Supreme Court and High Courts are to switch over to Hindi, what advantage will such a change bring for Indian judiciary? I find none. On the other hand, the multiple disadvantages which it might bring forth would even paralyse the judicial system, because ninety percent of the advocates belonging to the High Court of southern states cannot transact any legal work in Hindi. Not even one stenographer is available in many states of the High Courts in southern states who can take down dictation in Hindi much less to transcribe them into manuscripts.

All the law books remaining in various High Courts including all the law journals are in English language and translation of all those books would involve crores of rupees. When we do not have sufficient money to meet the urgent needs of the poor people, it would be a waste of public money in spending whopping sum simply for satisfying a few of the linguistic jingoists.

That apart, a switch over from English to Hindi in the High Courts and the Supreme Court of India will create political and legal unrest throughout the country which is an avoidable exercise.”

Hon'ble Mr. Justice V.R. Krishna Iyer

The issue raised by the Central Law Commission is fraught with grave implications which affect the linguistic, semantic and federal dimensions of the freedom of expression and right to justice of the people of India who use, in different states and regions, sixteen or more

different languages. Hindi is not spoken or understood in many States nor for, that matter is English. If parliamentary bills and rulings of higher courts are written in Hindi originally, a large section of Indians will be denied the facility of getting directly to the original drawn up in Hindi, if the proposed suggestion is accepted. Perhaps this was one reason why the great patriot and first Indian Governor General Shri C. Rajagopalachari protested against Hindi being forced on the people. He gave an angry call: "Hindi never, English ever". Tamil Nadu will never accept Hindi judgments either of the Supreme Court or the Madras High Court. Hindi chauvinism has no national pragmatism. English and Hindi, even together, may not help the Indian millions even by legislative command. Indeed, many judges in many courts, including the Supreme Court, do not know Hindi and, therefore, cannot read or understand judgments if produced in Hindi. I feel the nationalist feeling behind the plea for Hindi, but I cannot ignore the realities on the ground in our multilingual country. The present system has also international import and our judges have to rely on judgments written in English in Supreme Courts of other countries. I am all for Hindi as a personal preference, but I am all against Hindi by compulsion, especially of judgments of the Supreme Court of India. I have many more reasons from a practical angle in support of the present system which I cannot elaborate here. Indeed when the great Lenin came to power in the Soviet Union he had warned against Russification in other states of the USSR which would have the flavour of imperialism. Wisdom is different from obscurantism. Let us give Hindi a high place in national expression and full facility for instant translation of every representation people wish to make to the higher courts as an integral part of free legal aid. The three-language formula which has some official status may well be considered for implementation, whatever be the cost it may involve. Linguistic militancy will alienate and divide but federal pluralism is democratic sensitivity."

Hon'ble Mr. Justice B.N. Srikrishna

"I am very sorry your letter dated 8th October, 2007 remained unanswered till now. This was on account of my constantly travelling away from Mumbai. Please pardon me for this lapse.

I have considered the issue raised in your letter. It appears to me that unless two generations of lawyers are trained to do legal transactions in Hindi, it would be suicidal to change the language of the High Courts and Supreme Court from English to Hindi. Further, the Supreme Court being composed of judges from different states, who may not be aware of Hindi at all, it would be next to impossible for them to conduct proceedings or write judgements in Hindi.

In my considered view, the proposal to require the Supreme Court and the High Courts to deliver judgments in Hindi would definitely result in chaos and adversely affect the administration of justice.”

Hon’ble Mr. Justice M.N. Venkatachaliah

“At the outset I must offer my apologies for not responding to your earlier letter. During October I was in and out of hospitals and I missed the letter. A word on telephone from you would have alerted me. Kindly accept my apology for the remissness on my part.

On the merits of the issue, one must acknowledge that Hindi as our national language must assert its rightful place in all areas of our national life and the higher judiciary should be no exception. The Committee of Parliament on Official Language has rightly emphasized the importance of this matter.

In the practical implementation of this philosophy, there may be some issues, arising out of circumstances that the legacy of the Common Law which we have inherited, the system of Public law, the International Human Rights regime, the International Intellectual Property regime and the increasingly integrating economic laws and trans-border transactions impose an integration with the legal systems of other countries and jurisdictions. All this may influence the policy of language in the superior courts.

However we should respect the parliamentary views and a beginning has to be made through circumspection requires that we should hasten slowly.

These are only my first impression and not the result of a deeper reflection. I shall be happy to convey to you any further or revised view after due and further consideration.”

Hon’ble Mr. Justice K. Jagannatha Shetty

“I am in receipt of your letter dated 8 October 2007 and also 30 November 2007.

Due to my travel outside, I could not respond immediately.

I am glad that you are now the Chairman of the Law Commission which has been devalued for sometime. I hope you will make it more effective and demanding.

I have perused the recommendations of the Committee of Parliament on Official Language.

I am wholly against the recommendations made by the said Committee.

The High Courts and the Supreme Court cannot be asked to start delivering their judgments and decrees in Hindi. This is a very very contentious issue which may have far reaching consequence.

The views of the Southern States on imposition of Hindi is well known. The State Administrations are generally passing the Orders in their respective regional languages and the High Courts in particular and the Subordinate Courts in general are delivering judgments in English.

Today, English cannot be regarded as a foreign language. It is more important for National and International communication.

Since the Supreme Court consists of Judges drawn from different parts of the country, it is impossible to impose Hindi on the Supreme Court.

It is, therefore, necessary that the language of the High Courts and the Supreme Court should be uniform and it should be only in English for all time to come.”

Hon’ble Mr. Justice B.P. Jeevan Reddy

“Thank you for your letter dated October 8, 2007.]

I have no opinion on the matter which has been referred to the Law Commission by the Government of India. So far as I am concerned, the matter be best left to the Executive.”

Hon’ble Mr. Justice A.M. Ahmadi

“Please find enclosed herewith a note containing my views on the recommendations of the Committee of Parliament on Official Language in paragraphs 16.8(d) and 16.8(e). I hope you find them useful.

I am sorry for the delay in writing to you.

Note on the recommendation of the Parliamentary Committee asking High Courts/Supreme Court to deliver Judgments/decrees etc, in Hindi

This has reference to the Law Commission’s letter seeking my views on the recommendations of the Committee of Parliament on

Official Language at, S.Nos.16.8(d) and 16.8(e). I assume that this Committee must have been constituted under Article 344(4) of the Constitution.

Article 343 of the Constitution mandates that the Official Language of the Union shall be Hindi in Devanagari script. Notwithstanding the same, Clauses (2) and (3) thereof permit the use of the English language for the extended periods specified therein.

Article 343 of the Constitution reads as under:

“Notwithstanding anything in the foregoing provisions of this Part, (which means Part XVII), until Parliament by law otherwise provides –

(a) all proceedings in the Supreme Court and in every High Court,

(b) all authoritative texts-

(i)

(ii)

(iii)

shall be in English language.”

It is therefore clear that Article 348(1) supersedes Article 343. Clause (a) of Article 348(1) posits that the language to be used in the Supreme Court shall be English until Parliament by law otherwise provides. Therefore, even pleadings and oral submissions shall be in the English language (Madhu Limaye v. Ved Murti AIR 1971 SC 2608).

Insofar as the High Courts are concerned the language shall be English until Parliament by law provides otherwise. However, Article 348(2) which begins with a non-obstante clause, empowers the Governor of the State, with the prior consent of the President, to 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. The proviso, however, makes it clear that nothing in the said clause shall apply to any judgment, decree or order passed or made by such High Court. It is, therefore, obvious that the power conferred by clause (2) of Article 348 to authorize the

use of Hindi is limited to pleadings, documents and perhaps oral arguments only.

The recommendation at S.No.16(8(d) speaks of amending the Constitution. Article 348(1) makes it clear that 'until Parliament by law otherwise provides', in respect of all proceedings in the Supreme Court and in every High Court as well as the authoritative texts enumerated at (i), (ii) and (iii), the language shall be English. It is therefore obvious that what is required is a Parliamentary legislation to alter the language from English to Hindi and not an amendment of the Constitution. It is therefore difficult to comprehend why the recommendation at No.16.8 (d) speaks of amendment of the Constitution unless the idea is to amend the Proviso to clause (2) of Article 348 with a view to remove the limitation incorporated therein.

The recommendation at S.No.16.8(e) states that 'High Courts/ Supreme Court should be asked to start delivering their judgments and decrees, etc. in Hindi' so that large number of Government Departments, who are carrying out judicial/quasi judicial functions, could be able to deliver orders in Hindi. The rationale for asking the High Courts/Supreme Court to deliver judgments in Hindi does not seem to be convincing. To say that these departments are unable to pass orders in Hindi because the appeal filed against their orders in High Courts/Supreme Court would have to be conducted in English, betrays want of complete information. In the first place appeals do not ordinarily come directly from such executive orders to the Supreme Court, except statutory appeals which are far and few. Such orders are sometimes questioned, though rarely, under Article 32 of the Constitution. So far as High Courts are concerned, such orders may be questioned before them, if the statute provides for an appeal, or else under Articles 226/227 of the Constitution. High Courts are already hearing appeals from judgments from lower courts in criminal cases where, under section 272 of the Criminal Procedure Code, judgments are permitted and written in regional languages as determined by the respective State Governments. It is also common knowledge that evidence is recorded in trial courts in regional languages. There would, therefore, be no such apprehended problem if orders are written in Hindi by officers in different departments of the Government. Therefore, the rationale put forth for change in language for High

Courts/ Supreme Court is perhaps based on lack of information and is far from convincing.

Over the years, because of insistence by every State Government to use the regional language as medium of instruction in schools/ colleges, with or without English, only those coming from the Hindi belt are well-versed in Hindi and not others. The duty cast by Article 351 has remained unfulfilled. The result is that a large body of legal practitioners are belonging to the Hindi belt would not be able to write their briefs or argue in Hindi nor would they be able to understand the ratio of judgments written in Hindi, assuming judges are equipped to do so. Besides, as a result of the transfer policy every High Court has judges from other States and they cannot be assigned cases with the record being in the regional language. Since the percentage of such judges is presently low, Chief Justices are able to manage, albeit with some difficulty, but when Hindi is applied across the board, the number of such judges will be far too many (because even judges knowing the regional language will not be conversant with Hindi) making it difficult for the Chief Justices to assign cases to such judges; necessitating the introduction of the expensive procedure of translating the records in English. This will also call for qualified translators, not easy to find. That apart, translations are far from satisfactory and do not bring out real nuance/essence.

To my mind, therefore, until Hindi spreads across the country and education is imparted in that language, it may not be advisable to ask High Courts/ Supreme Court to switch to Hindi. Replacing the regional language may not be easy because practically every State has adopted it under Article 345 of the Constitution. In the Supreme Court judges come from different States and quite a few of them would not be able to speak, understand and write in Hindi. I am, therefore, of the view that the base to take the hop is not available and it would, therefore, be wise to leave the matter of introduction of Hindi in the State High Court to the judgment of the Governor of the State under Article 348(2) of the Constitution. He would be the best judge to decide if the time was ripe to take the step in that direction.”

Hon’ble Mr. Justice N. Santosh Hegde

“I am extremely sorry for not responding to your request earlier. Please excuse me for the same.

I have carefully considered the recommendations of the Committee of Parliament on Official Language at Sl.No.16.8(d) and 16.8(e), in which they sought an amendment to Article 348 of the Constitution, in regard to language to be adopted by the Legislative Department as well as language to be used by the High Courts and Supreme Court, while delivering their judgments.

I have no comment to make in regard to the proposed amendment in Sl.No.16.8(d) since it refers to original drafting being in Hindi, which I presume will be officially translated in English. However, I have very strong objections to the proposed amendment at Para 16.8 (e) to Article 348, which would compel the High Courts and Supreme Court throughout the Country to deliver judgments and decrees in Hindi. The reason given therein that large number of Government Departments are carrying out judicial/ quasi judicial functions, can deliver consequential orders in Hindi of judgments of the superior courts are in Hindi, is fallacious. There may be some Departments in some States, in which official language of the State is Hindi. But it is necessary to be borne in mind that all the States in this Country do not have Hindi as its official State language nor do they have Hindi as their official language of communication. In this country where the States are divided on linguistic basis and each State has its own State Language, the recommendation made would only disturb peace in this Country. Every one knows that as it is, there is no shortage of conflict between the States not only with reference to Language, but also with reference to boundaries and sharing of water. In this background I have great apprehension that the recommendation made by the Committee of Parliament on Official Language would certainly give raise to ultimate disintegration of the Country. I am not a language fanatic, but the above apprehension of mind is a genuine feeling having noticed over the years how regional influences are playing vital role in the politics and culture of respective States. Hence, this move is neither politically wise nor constitutionally correct. The assurance given by Constitutional framers to protect linguistic culture of various States

and sections of the Society will be deprived by this proposal. Hence, I strongly oppose this move.

At this juncture I may bring to your kind notice that various States have started making demands that the judiciary should follow and adopt regional language in their respective High Courts and subordinate Courts. I am against such moves also, which would in my opinion would isolate the State High Courts from other Courts and ultimately the representation of the States in the Apex Court of the Country is bound to be seriously affected.”

Hon’ble Mr. Justice SSM Quadri

“I thank you for your letter of November 30th, 2007 enclosing a copy of an earlier letter and seeking my opinion on the recommendations of the Committee of Parliament on Official Language, extracted therein.

I have carefully gone through these recommendations and thought over the same with great concern. Though the recommendations are commendable and are long desired, I feel that giving effect to them, would give rise to not only practical difficulties, but will also make conditions in India more volatile.

Insofar as the recommendation of the said Committee at serial No.16.8(d) is concerned, there can of course be no problem in amending Article 348 of the Constitution of India to enable the Legislative Department to undertake original drafting in Hindi.

However, the recommendation contained in S.No.16.8(e), which deals with requiring the High Courts/Supreme Court to start delivering judgments and decrees etc., in Hindi, is beset with various difficulties – practical as well as political having ramifications of uphill task not hard to guess and not easy to get over.

First, it is of common knowledge, Legislative enactments and Rules are not available in Hindi to all the Judges, members of the Bar and litigant public in all parts of the country. Secondly, the authoritative text books, commentaries and law journals are not being printed in Hindi. Thirdly, the plethora of case law both before and after independence is still in English and has not been translated into Hindi. Fourthly, the required number of Hindi Stenographers are not available. Fifthly, the southern States are not well equipped to accept delivery of judgments, decrees and orders in Hindi. Sixthly, it is also common knowledge that after reorganization of States on the basis of regional languages, certain southern States have sharply reacted to implementation of Hindi as national language on non Hindi speaking States and it is apprehended that the requirement to deliver judgments, orders and decrees etc., in Hindi will be treated in no better way.

With the policy of transfer of Judges and Chief Justices from one High Court to another, Judges of the southern States functioning in a northern State will not be able to cope up with the work in the northern States where as delivering judgments and order sin Hindi will present no problem to the Judges of the northern States. Under the conditions prevailing in some of the States in India, it will add to the unrest existing in some parts of the country by giving scope to agitations against such a requirement.

In my view, the conditions in our country are not ripe to make such amendment and to issue directions requiring the High Courts/Supreme Court to start delivery of judgments and orders in Hindi and therefore, for these and many other reasons switching over to dictating judgments, orders, decrees etc., in Hindi will be entirely an exercise in futility.”

Hon'ble Mr. Justice K.S. Paripoornan

“With reference to your communication dated 8.10.2007, in the first instance, I have to apologize to you, for not sending a reply earlier. The reason is that my wife was hospitalized for over two weeks and I

had no proper help to attend to many of my matters. Please excuse me for the delay.

2. The crux of the recommendation of the Committee of Parliament on Official Language is that article 348 of the Constitution may be amended, for a change over to “Hindi” as the language for legislative drafting and that, later, the High Courts and the Supreme Court should be directed to deliver their judgments etc. in Hindi.

3. Let me at once state that this is impractical and unwise, at least for a good many years to come. Even in 1949, when the said article was discussed in the Constituent Assembly, there was sharp difference of opinion and, notwithstanding the passage of time; things and events have not changed to take a deviation. Briefly stated, English today is an international language; even Russians, Germans, Americans, French, Japanese, Chinese and other nations greatly and in a large measure adopt and freely use the language, the reason being that the scientific, technological, cultural and other global advancements have compelled the people all over the world to accept English as the medium of expression, thought and communication in all such fields. In India, Pakistan, Bangladesh also the case is the same. In the circumstances, can ‘India’ alone stand apart and lose the benefit of such great learning and expertise? That apart, innumerable persons belonging to all nationalities and castes have pursued “education” in foreign countries (in English) and a good number of Indians are employed in many foreign countries which have adopted English language in all aspects of life, academic, professional, scientific, cultural etc. – and is it wise to ignore such realities in life at this distance of time, except at peril?

4. More at home, as an experienced Judge, you need not be told that many laws in India have adopted and imbibed English common law to a great extent and the decisions rendered on various such laws not only by English courts, but also by American, Australian, Canadian, and South African courts, have influenced our judicial decisions and continue to do so, since it is only commonsense and natural to accept pleasingly ‘light and wisdom’ from whatever quarter it comes. Will it be possible, feasible and in any manner conducive for a proper growth of law, to forsake or abandon such approach without causing detriment

to the very roots of the Rule of Law, which India has adopted and accepted from English? Is it not a suicidal policy which will cost the nation heavily?

5. Kindly have a look at the debates of the Constituent Assembly of India which took place on 12th, 13th and 14th September 1949 – details can be seen from pages 1265 to 1462 of the book (Official Report) “The Constituent Assembly Debates – Volume 9”. When the bill for article 348 was moved, there were heated and learned discussions of the Honourable Members on many aspects and Shri N. Golapaswamy Iyengar finally persuaded the Assembly to adopt article 348 retaining English as the language for drafting bills and for use in High Courts and Supreme Court. I am not dealing exhaustively about the same since it is a matter which appears in the book officially published and in detail.

6. I am candidly against the proposal to amend article 348 of the Constitution, regard being had to the world events since 1949 and the totality of circumstances by which we have accepted, adopted and been substantially benefited by the English language.

7. Before concluding, I may bring to your attention the fact that the well-informed and experienced members of the Bar are also against the proposal for amendment as proposed at present. In this connection, please refer to an erudite but short article in 2008(1) K.L.T. Journal Section, pages 18-21 by Shri T.P. Kelu Nambiar, MA, ML, Senior Advocate, High Court of Kerala, a lawyer of repute who has standing for over 50 years or so.”

Dr. Justice V.S. Malimath, Former Chief Justice of Karnataka & Kerala; Chairman, Central Administrative Tribunal; Member, National Human Rights Commission; Chairman, Committee on Reforms of Criminal Justice System

“ Dear Dr. Justice Lakshmanan,

Delighted to receive your letter dated 30-9-2008 inviting me to offer my views/opinion on the recommendation made by the Committee of Parliament on use of Hindi in original drafting of Bills, Acts, Rules, etc., by the Legislative Department and use of Hindi in delivering Judgments and decrees by the Supreme Court and High Court. I am sorry for the delay. I have formulated my views on both the recommendation as follows:-

OPINION

Article 351 of the Constitution provides that it shall be the duty of the Union to promote the spread of Hindi Language so that it may serve as a medium of expression for all elements of composite culture of India. Article 343 declares Hindi to be the official language of the Union. Article 344 provides that switch over from English to Hindi may not be achieved immediately on the commencement of the Constitution and this should be a gradual process. Schedule VIII to the Constitution contains the list of Eighteen languages including Hindi. Article 344 contemplates Constitution of a Commission consisting of members representing different languages specified in VIII Schedule to make recommendations for the progressive use of the official language and also for the purposes mentioned in Article 348 namely, the language to be used in the Supreme Court and the High Courts for drafting Bills, Acts, Rules etc., by the legislative Department. The recommendations of the Commission are then considered by the Joint Parliamentary Committee constituted for the said purpose under Article 344(4). That

Committee has to consider the recommendations of the Commission and report to the President their opinion thereon. The President can after considering the report issue directions in accordance with the whole or any part of that report.

The ultimate aim as provided in Article 351 is the spread and development of Hindi language and enrichment of the composite culture of India. Articles 343 and 344 deal with the process of transition to the use of Hindi for all official purposes of the Union and to determine the pace of progress to achieve the same. The overriding concern of the founding fathers of the Constitution as can be discerned also from the Constitution assembly debates is, not to impose the use of Hindi on the peoples speaking other Languages against their wishes.

2. The same concern is discernable from Article 348 (1)(a) & (b) of the Constitution which deals with switch over from English to Hindi as regards the Language to be used in the Supreme Court and the High Courts and the authoritative text of Bills, Acts, Orders, Rules, Regulations and bye-laws. Until the Parliament otherwise provides by law, the proceedings in the Supreme Court and in every High Court and the Authoritative text of all Bills, Acts, etc., shall be the English. Article 349 provides special procedure for enacting laws contemplated by Article 348(1). No Bill for enacting a law contemplated by Article 348 (1) can be introduced without the sanction of the President which can be accorded after the President considers the recommendation of the

Commission and the report of the Committee constituted under Article 344(4).

The Committee constituted under Article 344 has made two recommendations 16.8(d) and 16.8(3) under Article 348 and sought the opinion of the Law Commission of India. They are as under:-

"16.8(d) Article 348 of the Constitution may be amended to enable Legislative Department to undertake original drafting in Hindi.

16.8(e) After the amendment of Article 348 of the Constitution High Courts/Supreme Court should be asked to start delivering their Judgments and decrees etc., in Hindi so that large number of Government Departments, who are carrying out judicial/quasi-judicial functions, could be able to deliver orders in Hindi. At present these Departments are unable to pass orders in Hindi because the appeal against their orders in High Courts/Supreme Court would have to be conducted in English."

3. The recommendation of the Committee 16.8(d) is that Article 348 be amended to undertake drafting in Hindi Bills, Acts, Rules, etc. I must point out that the question of amending Article 348 does not arise at all.

What Article 348(1)(b) contemplates is enactment of law by Parliament in this behalf and not amendment of Article 348 itself.

Drafting laws is a very difficult and complicated work. It needs a very rich and specialised legal vocabulary to enact precise and unambiguous laws. English language has a very rich vocabulary of legal terms. Until Hindi Vocabulary of legal terms and maxims, improves it cannot be made the Language of Legislation. I am therefore not in favour of making a law to mandate that the authoritative text of Bills, Acts, Rules etc., should be in Hindi.

4. Another reason against the recommendation is that this will unnecessarily give rise to opposition and controversy. There are as many as 17 constitutionally recognised non-Hindi Languages. Imposition of Hindi on non-Hindi speaking citizens against their wishes is likely to affect the unity and integrity of the country. We have seen how in the State of Maharashtra people very recently revolted against influence of Hindi and went to the extent of boycotting Hindi films in which Amitabh Bachan has acted. The non-Hindi people are not yet in the mood for accepting Hindi as common medium for Legislation. There is no great urgency or direct necessity to introduce Hindi in the field of legislation. Large number of members of Parliament from non-Hindi speaking States will not be able to read or understand the laws drafted in Hindi. It will therefore become very difficult for such M.Ps to effectively contribute to law machinery process.

It serves the purpose if, along with the English text a text in Hindi is also annexed. This will satisfy the needs of the Hindi speaking M.Ps also.

In my opinion attempt must first be made to persuade the non-Hindi speaking M.Ps and people to accept the switch over to Hindi. It would be detrimental to National Unity and Harmony to introduce Hindi for drafting of laws etc., without the concurrence of non-Hindi speaking people of India. Hence, the recommendation deserves to be rejected.

5) Re:16.8(e): The recommendation of the Committee is that High Courts and Supreme Court should be required to deliver Judgments and decrees etc., in Hindi.

The reasons given for this recommendation in the words of the Committee are as follows:-

"So that large number of Government departments, who are carrying out judicial, quasi-judicial functions could be able to delivery orders in Hindi. At present these Departments are unable to pass orders in Hindi, because the appeal against their orders in High courts/Supreme Court would have to be conducted in English".

These are not at all substantial reasons to compel the Judges of the Supreme Court and High Courts to deliver their Judgments and decrees in Hindi.

Nothing prevents Government Officers from passing orders in Hindi. When such orders are challenged in the High Courts and the Supreme Court the practice presently followed is to produce the English translation of the orders and the work is going on quite smoothly in the Courts. In order to enable the Officers of Government who know only Hindi and can't read or understand the Judgments of Courts given in English is concerned, they may be provided Hindi translation of Judgments of Court which are in English. This would solve their problem.

In some States, Government Officers write their orders in their respective State languages. For their benefit Courts orders may be translated into the respective State languages and provided to the Officers concerned.

Hence none of the reasons stated in support of the recommendation are tenable.

We should not forget that Lawyer and Judges have been using English Language for centuries. Their legal education is mostly in English. Thousands of laws are in English. It is not easy to find precise

equivalent legal terms, maxims and principles in Hindi. Most of the text books on laws are in English. Journals and law books of other countries which are helpful to decision making process are in English. They cannot be used if Hindi is used.

In my opinion time is not ripe to switch over from English to Hindi for delivering Judgements in Hindi. Switching over to Hindi will further add to delay in disposal of cases.

Eminent Lawyers from other countries cannot appear in our Courts if Hindi is introduced. The entire legal community consisting of Lawyers and Judges would be against introduction of Hindi in High Courts and Supreme Court. Thus introduction of Hindi in the superior Courts will bring in more problems than benefits.

It is enough if provision is made to translate the decisions of the Supreme Court and High courts into Hindi and other State languages. If the real object is to enable the litigant to understand the decision in his case it would serve the purpose if a translation is provided to him.

I therefore see no good reason whatsoever to interfere with the present use of English in the Supreme Court and the High Courts. The country is facing enough number of other problems. Let us not add some more problems and disturb the smooth functioning of the Supreme Court and

the High Courts. I am quite against the recommendation 16.8(e) of the Committee.

I strongly urge you to oppose the two recommendations of the Committee.”

Mr. P.P. Rao, Sr. Advocate

This is in response to your kind letter dated October 8, 2007 regarding the recommendations of the Committee of Parliament on Official Language. I am not in favour of implementation of the recommendations at Sl.No.16.8(d) and (e) made by the Committee at present for the following reasons:

Conditions are not ripe for switching over from English language to Hindi in the Supreme Court and in the High Courts. In several parts of the country even now people are not fully conversant with Hindi, notwithstanding the mandate of Art. 351 to the Union to promote the spread of the Hindi language. The Judges of the Supreme Court and of all High Courts belong to Hindi speaking states as well as non-Hindi speaking States. Therefore, it is necessary to continue English, which is a common language for all Indians, in the Supreme Court and in the High Courts. As you are aware, Section 7 of the Official Language Act, 1963 permits the use of Hindi as the official language of a State in addition to the English language for the purpose of any judgment, decree or order passed or made by the High Courts for that State, provided the Governor of a State with the previous consent of the President authorizes such use. There have been a very few instances where judgements of High Courts were written in Hindi. In these cases when the aggrieved party had to approach the Supreme Court the entire judgement had to be translated into English which involves time and additional expenditure for the litigant, which are avoidable. Till such time as all the Judges of Supreme Court and High Courts are fully conversant with Hindi and are proficient enough to write judgments in Hindi, it is not at all advisable to amend the Constitution.

So far as legislative business is concerned, in the Hindi speaking States already Bills are prepared in Hindi language and debates take place in Hindi language. Likewise Government Orders are passed in Hindi language. Noting on files also done in many cases in the Hindi language. Section 3 of the Official Languages Act, 1965 provides for continuation of English language for official purposes for Union and for use in Parliament in addition to Hindi and for the transaction of the business in Parliament.

For the successful implementation of the recommendations, it is necessary to prepare the ground first by propagating Hindi all over the country to such an extent that no inconvenience is felt by anyone by switching over from English language to Hindi language with respect to proceedings in the Supreme Court and in all High Courts. In the past, there was a large scale violence resistance to making Hindi a compulsory language in schools in the South. Prime Minister Nehru gave an assurance that English would not be replaced by Hindi against the will of the people and that status quo will be maintained till the non Hindi speaking people themselves desire a change. Language is a sensitive issue which can easily arouse emotions of the people. In the interest of national integration and maintaining the unity and solidarity of the country, it is not desirable to rake up this issue at a time when several fissiparous and divisive forces are at work. Every effort should be made to promote fraternity among all citizens of the country in the interest of the unity.

I am apprehensive that any attempt to implement the recommend-dations of the Parliamentary Committee at this juncture may spark off violent protests and agitations in some parts of the country.”

Mr. T.L. Viswanatha Iyer, Sr. Advocate

“Your letter dated October 11, 2007 regarding amendment to Article 348 of the Constitution of India. I am giving below my views on the proposed amendments.

a. Regarding Original drafting of enactments in Hindi:-

I do not think this is either welcome or advisable. Whatever be the status awarded to Hindi as one of the official languages, the fact remains that all the High Courts transact their judicial business in English. This includes the Supreme Court also. Interpretation of statutes is one of the common matters which occurs day in and day out in our courts. Draftsmanship in English has reached a level of advancement with its own nuances and inflexions which I do not think drafting in any other language has so far reached. Case law in the interpretation of statutes in English is rich and legion. We have in addition the abundant treasure of comparable statutes in U.K. and the Common Wealth countries as also in the United States.

All this will become unavailable and useless while interpreting statutes in other languages. The common medium of understanding such statutes especially in the vast chunk of Southern India is English. This cannot be upset by giving up the drafting in the English language. Nothing is gained by drafting the original enactments in Hindi except perhaps satisfying an ego.

We may also lose in the process the benefit of comparison with statutes in other States on the same subject in the concurrent list (e.g. Rent Control Legislation) with the plethora of case law from the various High Courts. This will be an added disadvantage and loss to the legal knowledge available in the country.

Regarding the second query that the High Courts/Supreme Court should start delivering their judgments in Hindi, I am emphatically of the view that this will be a retrograde step. English has been the language of the judgements, since the Superior Courts were established in this country about a century and a half back or even earlier. The Court language of the common law countries of which India is one is also English. The doctrine of precedents still holds sway in the country and is one of the mainstay principles of the judicial system. Our Courts draw freely on English, American and commonwealth precedents which are all in English. If judgements were to be in Hindi, in view of the

inevitable quotations from the precedents, they will be partly in Hindi with all the quotations in English. The judgement will look grotesque.

The idea of a uniform Judicial system for the whole country is necessarily to have a uniform set of legal principle applicable in every part of the country, by the courts drawing upon the Judicial wisdom in other parts of the country through their judgements. The advantage will be lost if Judgements are to be drawn in Hindi instead of English.

If Judgements are to be written in Hindi, it will require an enormous amount of literature by way of glossary of legal terms. Delivery of Judgements which are already getting delayed in many courts if judges who are not trained to write in Hindi are constrained to write the Judgements in Hindi, will get further delayed.

Add to this, the non availability of the latest technological advancements in the communications field particularly the computers, which may take their own time to seep through our system.

Let us also analyse what will be the advantage of Judgements in English. It is not as if these Judgements will not be understood by the Departments concerned. Nor will they be precluded from passing their orders in Hindi or the regional language. In fact most of the Government orders touching the common man are already being made in the regional language. Even the file notings are very often in the regional language.

There is therefore no special gain or advantage to government departments by the language of the courts being in Hindi.

The judgements of our courts are nowadays being quoted in foreign courts, just as our courts lean heavily on foreign judgements to sustain their reasoning. The access and the respect which our courts earn by such reliance by the foreign courts will be totally lost by our judgements being in Hindi.

The advantage, if any gained by adopting Hindi as the court language will be far outweighed by retaining English as the court language.”

Mr. Vijay Hansaria, Sr. Advocate

“You were kind enough to write the aforesaid letter seeking my views on the proposed amendment in Article 348 of the Constitution regarding official language of High Courts/Supreme Court.

I have examined the matter and also discussed with my colleagues. In my opinion that there is no justification for accepting the recommendation of the Committee of Parliament of Official Language on the aforesaid subject for the following reasons:

1. The recommendation of the Parliamentary Committee appears to be on the basis that because of the judgments of the High Courts/ Supreme Court being in English, various Government Departments are not able to pass orders in Hindi. This is not a valid reason since in almost all the States throughout the country, official orders are passed either in English or in respective official language of the State which may be Hindi, Telugu or Assamese. Whenever, these orders are challenged in the High Courts they are translated in English and then filed in the High Court. However, some High Courts permit filing of documents in the regional languages of the State as well.

So also whenever there is any direction by the High Courts/ Supreme Court, they may be carried out by the respective Governments by passing an order in the official language of the respective State which need not necessarily be in English.

2. Since India is a multi-lingual country, a large section of population of our country and also a large number of judges of the High Courts/ Supreme Court are not conversant with the Hindi language. If the judges of the High Courts/ Supreme Court are asked/permitted to deliver their judgments/orders in Hindi, those judges who are not conversant with the Hindi language would not be able to

understand the same. Our judicial system is governed by the principle of the *stare-decisis*, if the judges are not able to understand the judgments of their own court or of the superior court, it would cause lot of confusion and ambiguity and may result in delivery of conflicting judgments.

Further, in our judicial system, judgment of one High Court is relied upon and referred to in a case in another High Court. Though judgment of one High Court does not have a binding precedent value in another High Court, they do have persuasive value. If judgments are pronounced in Hindi, they cannot be understood in non Hindi speaking States.

3. If Hindi is permitted to be the official language of High Courts, similar demand may come from non Hindi speaking States that in their High Courts, the regional language of the State should be used.
4. Further the judgments of the High Courts are appealable to the Supreme Court and the Apex Court comprising of judges many of whom have no knowledge of Hindi language at all. Writing of judgment in Hindi would create problems in this regard as well.
5. In our Constitutional Scheme, judges of the High Courts are transferable and we have many judges in the Hindi belt area who are not conversant with the Hindi language. Judgments delivered in Hindi may not be understood by the transferee judges from non Hindi belt area. Consequently there would be judges in the High Courts who would not be able to understand judgments of their own court.
6. Under Section 7 of the Official Language Act, 1963, the Governor with the previous consent of the President may authorize use of Hindi or the official language of the State for the purpose of judgments/order of the High Court for that State. However, in such a case the section further requires that such judgments/orders “shall be accompanied by a

translation of the same in the English Language issued under the authority of the High Court.” Thus even if the judgment / order of the High Court is permitted to be delivered in Hindi, it will require simultaneous translation of the judgment in English. This will increase the workload of the courts which are already over burdened.

In view of the aforesaid reasons, it is my humble opinion that the Law Commission of India may give its opinion that it is not desirable to permit delivery of judgments by the High Courts/Supreme Court in Hindi language.”

Mr. K.K. Venugopal, Sr. Advocate

“Thank you for your letter of October 8, 2007.

I am expressing my brief views on the recommendations of the Committee on Official Language as follows:

- 1) The proposal will be disruptive of the unity of the country. Schedule VIII to the Constitution of India contains as many as 22 languages, which are recognized by the Constitution. Language, as all of us are aware, is a very emotive issue which has resulted in redrawing the map of India by dividing it into linguistic States. Even after six decades of the Constitution, Hindi is not spoken by an overwhelming section of the population in a large number of the States in the country. Carrying out the recommendations of the Committee of Parliament would be highly destructive of the harmony which now exists between the people of the different States. I seriously apprehend that language riots may break out in many States in the South against the imposition of Hindi, as we have seen in the past. Why does one want history to repeat itself?
- 2) Today we have in the higher judiciary judges from different parts of the country, some of whom do not understand Hindi. If the language of the Supreme Court of India were

to be Hindi, perhaps, no judge from the southern States could possibly be on the Bench and participate intelligently and effectively in the deliberations of the court. So too would be the position if judges from the High Courts of some States who would not have the proficiency in Hindi to be able to understand the arguments and write judgments in Hindi are to the High Courts of Hindi-speaking States. The lawyers from the non-Hindi speaking States would be at a tremendous disadvantage.

- 3) I see one more problem. The cost of translation is prohibitive. If the Government and other documents are in English, as is the case in many of the States, they would all have to be translated. So too the evidence and judgments which are in English. Today English is the language in which judgments are written in the South-Asian countries except Nepal. Our judgments will no more have any influence and force in, say Bangladesh or Sri Lanka. Nor will they be read and understood in the other parts of the English-speaking world consisting mainly of Common Law countries. It is in the larger interests of the country that matters are left where they stand.

These are a few of my thoughts which certainly represent the point of view of a very large section of the population of this country. I have no doubt that any attempt to implement the recommendations of the Parliamentary Committee would bring about divisiveness among, and confrontation between the people of India.”

Mr. Arvind Datar, Sr. Advocate

“1. The Parliamentary Committee on Official Language has made the following recommendations at Sl.Nos.16.8(d) and 16.8(e):

“16.8(d) Article 348 of the Constitution may be amended to enable the Legislative Department to undertake original drafting in Hindi.

16.8(e) After the amendment of Article 348 of the Constitution, High Courts/Supreme Courts should be asked to start delivering their judgments and decrees, etc. in Hindi so that large number of Government Departments who are carrying out judicial/quasi-judicial functions, could be able to delivery orders in Hindi. At present, these departments are unable to pass orders in Hindi, because the appeal against their orders in High Courts/Supreme Court would have to be conducted in English”.

2. Historical background: Article 348(1) requires that all proceedings of the Supreme Court and High Court shall be in English language until Parliament by law otherwise provides. Article 348(2) enables the Governor of a State to authorize the use of the Hindi language or any other language used for official purpose in a particular State in proceedings in that High Court. Clause (2) enables a language other than English to be used in a particular High Court. But the proviso thereof categorically states that the judgment, decree and order will not be affected by such a proviso. In other words, the judgments of the High Courts shall continue to be in English. [It must be noted that the previous consent of the President is required under Article 348(2)].

3. Section 348 is based on Sections 214(5) and 227 of the Government of India Act, 1935 which prescribed English as the language to be used in all proceedings of the Federal Court and the High Courts.

4. Constituent Assembly debates: (to verify and add)

xxxxxxx

5. **Difficulty in implementing the recommendations:**

Para (d) is difficult to implement. The original draft of a statute cannot be in Hindi with regard to several English laws. For example, the new Income Tax Act is expected to be announced next year. It will be very difficult for the Act to be drafted in Hindi. A vast majority of tax payers speak the English language. The community of tax practitioners, auditors, investors are all conversant with the drafting of the statute in English. Any enactment in Hindi will be virtually useless.

6. India has signed several Double Taxation Agreements with various countries. If the Indian tax statutes are going to be in Hindi, then it is bound to lead to grave difficulty.

7. Apart from Revenue laws, several new subjects like information technology, stem cell development, telegraphic laws and laws relating to cyber crime can be provided for only in English. Many of the phrases and expressions which are used in English language. It would be difficult and, indeed a complete waste of public time and money, to prepare them in Hindi.

8. **Judgments of High Courts/Supreme Court:**

8.1 It is virtually impossible to implement the recommendation in Clause 16.8(e). In several non-Hindi speaking States, Judges will find it impossible to deliver their judgments in Hindi.

8.2 Any amendment to this effect is bound to generate tremendous resistance and lead to further allegations of Hindi domination.

8.3 Even judges whose mother tongue is Hindi will find it difficult to deliver judgments in Hindi. The legal education of all the High Court and Supreme Court judges has been in English. Judges who have been members of the Bar have all dealt with cases only in English. In all the High Courts, the arguments advanced mainly in English. Therefore, it will be impossible to deliver judgments in Hindi.

8.4 Several Central statutes have all India applicability. It is difficult to understand how a judgment can be delivered in Hindi with regard to tax laws, intellectual property and so on. A judgment has to be clear and its *ratio discidendi* should be easily discernible. Delivering it in Hindi is bound to lead to confusion and chaos as several legal expressions do not have a meaningful Hindi equivalent.

8.5 The object of such a far-reaching recommendation is not clear. An analysis of the Clause 16.8(e) indicates that this recommendation is made on the following grounds:-

- a) *Large number of Government Departments who are carrying out judicial and quasi-judicial functions would be able to deliver the orders in Hindi;*
- b) *At present, these Departments are unable to pass orders in Hindi because the appeal against their order are in High Courts/Supreme Court would have to be conducted in English.*

8.6 Both these grounds cannot be the basis for all judgments to be delivered in Hindi by the High Courts and Supreme Court.

- a) In several Government Departments the orders of quasi-judicial nature are passed only in English.
- b) Maximum number of quasi-judicial orders are passed in revenue and service matters. The appellate authorities under various under various Central enactments pass their orders only in English.
- c) It is not clear how a judgment in English will cause any handicap to any Government Department from delivering its order in Hindi. If the concerned Government Officer or authority is unable to understand English, the simpler mechanism would be to have a particular judgment translated in Hindi.
- d) As regards ground (b), it is not clear as to why the appeal being conducted in English would handicap or disable Departments to pass orders in Hindi. If any Department wants to pass an order in Hindi, it is at liberty to do so. The aggrieved party while challenging the order will enclose an English translation thereof. Frequently, orders passed by the State Governments or the Central Government in the local language or in Hindi is translated in English and taken up for consideration by the respective High Courts/Supreme Court.
- e) The Supreme Court judges deliver more than 10 to 15,000 judgments per year. The reported cases alone run to 12,000 pages. It is impossible to expect the Supreme Court judges who

come from various States to deliver their judgments in Hindi. Even if they deliver it in Hindi, there would be a Herculean task of having it translated in English for the understanding of the legal and accounting professions and for various industries. (This problem will be multiplied 20 times for various High Courts)

- f) The implementation of such a recommendation will lead to a further delay in the disposal of cases. Merely because some Government Department wants to deliver its orders in Hindi cannot be a ground for all High Courts and the Supreme Court being required to render their judgments in Hindi.
- g) At present juncture, such a recommendation will lead to serious friction, particularly between the Northern and Southern States. English has been a unifying language and any attempt to substitute English with Hindi is fraught with grave consequences. It may not be out of place to mention that China is taking extraordinary efforts to ensure that the country is English literate. Our major advantage in the global economy is fluency in English language. Let us not destroy that advantage. The judgments of our courts are being cited in the different Commonwealth countries and also in the US and Europe. Requiring the High Court and Supreme Court to deliver judgments in Hindi would be a retrograde step.
- h) It must be recognized that several attempts to substitute English with Hindi or regional languages in the High Courts have been a colossal failure.
- i) **Recommendations:**
 - (i) It is therefore recommended that High Courts and the Supreme Court should continue to deliver their judgments in English. Wherever a particular judgment is required for passing of orders in Hindi, that judgment can be translated in Hindi.
 - (ii) In the vast majority of cases, there has been no need for judgments to be in the Hindi language. There has been no analysis of specific instances where judgments in English have

created a severe handicap in the functioning of the Government. Unless a scientific study is made, such a recommendation should not be implemented.”

Mr. C. Lakshmi Narayanan, Advocate

“As you are aware, I have been practicing in the Madras High Court from 1956 onwards and I am shocked to see that the Department of Legal Affairs, Ministry of Law and Justice by its letter dated 29-3-2006 has sent to various Legislative Departments with the copy of the recommendation of the Committee of Parliament on Official Language, seeking their views on

“No.16.8(d) Article 348 of Constitution proposing Legislative Department to undertake original drafting in Hindi and 16.8(e) proposing ‘after such amendment of High Courts/Supreme Courts should be asked to start delivering their judgments and decrees, etc in Hindi.

I am totally against “16.8(e) After the amendment of Article 348 of the Constitution, High Courts/Supreme Courts should be asked to start delivering their judgments and decrees, etc. in Hindi so that large number of Government Departments, who are carrying out judicial/quasi-judicial functions, could be able to deliver orders in Hindi. At present, these departments are unable to pass orders in Hindi, because the appeal against their orders in High Courts/Supreme Court would have to be conducted in English”.

If such orders are passed by the High Court and Supreme Court in Hindi, it will cause virtual chaos in the judicial system. India is a country with several states having their own official language and imposing Hindi on the litigants and the Courts especially High Courts and Supreme Court is unwarranted and will cause great harm to the litigants and Courts in non-Hindi states. In a federal set up of the Government, the rights and convenience of each state has got to be respected and taken note of.

Though in these states upto the District Court level, legal proceedings including judgments are delivered in their local languages, the proceeding before the High Courts and Supreme Court are carried on in English language which is most convenient for the litigant public and the advocates arguing those cases. English being universal language, the Judgment of the High Courts and Supreme Court in English are of great importance. Though Hindi is declared as National Language all other languages are given importance and cannot be thought as inferior than Hindi. It is only a small percentage of cases reach the High Courts and Supreme Court compared to several lakhs of cases at the lower level. Moreover, the Judgment of the High Court and Supreme Court are binding on all subordinate Courts and after the judgments are delivered in Hindi, it will cause havoc in other states where Hindi is not official language. I will involve huge expenses for translation and cause delay in delivering judgments, thus negative the rights of litigants for speedy justice. The present system of judgments being delivered in English at the High Courts and Supreme Court is the most suitable in the interest of litigant public and the advocates hailing from non-Hindi states. Further the present system of the post of Chief Justice of High Court being held by a senior judge from different Court particularly from non-Hindi region will cause great hardship to such appointees.

Moreover, this kindly of recommendation will create ill-feeling among various states in India which have their own language for administration and revive the much forgotten anti Hindi agitations which is healthy for a federal country like India.

I request your Lordship to kindly reject the proposed amendment in the interest of unity of the country.”

Article 348 of the Constitution of India reads thus:-

“Art. 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.

(3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor of the State in the Official Gazette of that State shall be

deemed to be the authoritative text thereof in the English language under this article.”

Dr. R.G. Padia, Senior Advocate

**“REPORT REGARDING RECOMMENDATION NO. 16.8(d) & 16.8(e)
OF THE PARLIAMENTARY COMMITTEE**

In any country, democratic or otherwise, language is a vehicle of great importance not only emotionally for its people, but also as a very formidable means of the process of thinking as well as its communication to others. In a democracy, however, its importance becomes of particular importance, since one of the basic rights in a democracy conferred on every citizen is the Freedom of Speech and Expression in any way and in any manner that a citizen desires to express. In those democracies, which are based on the concept of Federalism, its role is still more vital since there are divergent and different views of the people belonging to different regional entities and their conflicting claims have to be reconciled in various fields including their languages. Federalism demands its own price to be paid and one of such relevant factors is the problem of finding out consensus in respect of recognition and use of a common language. In a Federal Constitution, the political structure in various States may be entirely heterogeneous, i.e, one region may opt for its political institutions, the concept of liberal democracy, while another may opt for the principles based on marxism, and yet another region may opt for the system based on a particular religious faith and the policies emanating from the same. Populations comprising in such diverse regions may have their own distinct language, spoken as well as in script. Thus, there may be not only a case of bilingualism, but, in fact, even a case of multilingualism, and balancing of such conflicting interests is a major difficult task. Experience has taught us that in India with a very huge population and with 28 States and 7 Union Territories, such task of making a delicate balance is rather difficult. The great author, Granville Austin in his classic Treatise ‘The Indian Constitution – Cornerstone of a Nation’ has rightly observed that the solution that has been evolved after marathon discussion in the Constituent Assembly is the half-hearted compromise.

2. While drafting the Constitution itself, there was a massive debate over the question of language to be adopted in the country and the proceedings of three dates, i.e, 12th September, 1949, 13th September, 1949 and 14th September, 1949 are duly reported in Volume No. IX, Book No. 4 of the Constituent Assembly Debates running from pages 1314 to 1491, i.e, more than 175 pages and only thereafter the new Part XIV-A containing Articles 301-A upto Article 301-I was duly accepted and adopted by the Members of the Constituent Assembly.

3. It is of great significance to recall that, while adopting the Preamble, inter alia, Unity of the Nation was solemnly proclaimed and thus the Founding Fathers had in their mind the greater goal for the country, namely, to maintain the Unity of the Nation, in spite of the serious difficulties in finding a total consensus over the language issue. It is also worthwhile to note that, while the Preamble lays great emphasis on various fundamental concepts, like justice, liberty, equality and fraternity, it does not refer to the language at all, but it refers to the ultimate end and that is the Unity of the Nation.

4. Under the Indian Constitution in Article 343, the official language of the Union is declared to be Hindi in Devanagari script, but the same Article has also provided that for a period of 15 years from the commencement of the Constitution, the English language shall continue to be used for all the official purposes of the Union.

5. In this connection, it is not, really speaking, necessary to recall in great detail the extremely difficult political situation that emerged in the year 1965, particularly in the Southern States when the English language was sought to be given a subordinate status and the events are well-known on account of which the status quo was permitted to be continued under the Constitution which obtains even today.

6. I would like to add in this connection one vital feature of our Constitution that the question of language is not included in Part IV, i.e, Directive Principles of State Policy. Although under Article 37 the Directive Principles are declared to be Fundamental in the governance of the country and the duty has been imposed on the State to apply these principles in making law, yet that mandate is conspicuous by its absence as far as language is concerned. It should, however, be conceded that the implementation of various Directive Principles has

been very slow like Article 45 relating to compulsory and free primary education and in respect of certain Directive Principles like Uniform Civil Code under Article 44, no progress has been made as yet. The point that I wish to emphasise is that like the Directive Principles, which are Fundamental in the governance of the country, it is likely to take substantial time in evolving consensus in finding a compromise formula to the language problem facing our country, but the delay should not be regarded as very startling or disastrous for the implementation of the Constitutional provisions.

7. It must be vehemently emphasized that the language is a very potent force for National Integration in any country, but at the same time, it is also a very potent force for National Dis-integration. In a really working and functional society, no imposition should be attempted against the will of a substantial number of people of the society and any such imposition, even in respect of language, is likely to be counter-productive, especially when the issue also involves hugely potential weapon for evoking emotional out-bursts. An atmosphere has to be created over a very long period of time, in the mind, psyche and ethos of the people to move towards the adoption of a uniform language for their own welfare as well as for the welfare of the entire people. The development and growth of any language in any Nation is bound to be very slow and the process cannot be abrupt imposition of any particular language creating an artificial vacuum. I must admit that our efforts for the promotion of the officially declared language of the Union, i.e, Hindi have not been fully and satisfactorily substantiated over such a long period of time, but the redeeming feature is that it does not necessarily have any serious adverse consequences. A reference can be made to a country like Canada which has two declared Official languages, namely, English and French, or a very small country like Switzerland which has three declared Official languages, namely, English, French and Italian. Basically, one of the important elements is the internal and implicit strength of the language itself depending upon its quality and speed of growth and once it is so developed in its vocabulary and use, it by itself offers solutions to the people by making general use of the same and this aspect is Fundamental.

8. It may also be pointed out that under our own Constitution in Schedule VIII, at present, we have as many as 22 recognized languages and apart from this, under Article 347 there is also a provision that in a particular State if there is any other language which is being used by a substantial portion of the population of that State, and a demand is made on their behalf by the State concerned, then even such other language could also be officially recognized by the President as the official language of that State.

9. A mandate contained under Article 351 to strengthen the vocabulary of Hindi language based primarily on Sanskrit, and secondarily on other languages has yet to be fulfilled and we have not enriched Hindi language by incorporating a very large number of commonly used words of all other 22 languages contained in Schedule VIII. This assimilation of making other words of other languages as part of Hindi, is really vital for the growth, development and use of Hindi throughout the country and this mandate has to be effectively implemented and also expeditiously.

Now I come to the two specific queries. As regards the first recommendation, being recommendation no. 16.8(d) :

10. Clause (1) of Article 348 is quoted below :

“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.”

11. Under Clause (2) of the said Article, the Governor of the State may authorize the use of Hindi language or any other language either for the official purposes of the State or in proceedings in the concerned High Court subject to the previous consent of the President. Clause (3) of the said Article provides that, where in any state, its Legislature has prescribed any language other than the English language for use in the Bills being introduced in the Legislature or the Acts passed by the Legislature of that State or the Ordinances, promulgated by the Governor of that State or has made any other subordinate legislation made in the State, a translation in the English language shall also be published in the official gazette and the same shall be deemed to be the authoritative text contained in the English language.

12. Analysis of the aforesaid provisions clearly indicates that it starts with a non-obstante clause, i.e., irrespective of what has been stated under Articles 343, 344, 345, 346 and 347. Thus, in other words, this Article has been given a pre-dominant importance.

13. The most vital part of Clause (1) of this Article is “until Parliament by law otherwise provides”. Thus, the entire Article is based on the assumption that anything to the contrary could be provided by Parliament by law. It is also clear that, no special majority has been provided for Parliament, and, in fact, any ordinary law made by the Parliament will supersede all the provisions of the three Clauses of this Article. Thus, the Parliament has been given the over-riding rights under the Article.

14. In view of the scheme of the said Article, as stated above, in my considered view, there is absolutely no necessity for amending Article

348 to enable the Legislative Department to undertake original drafting in Hindi. The Legislative Department, in fact, is subsidiary wing of Parliament and thus even without amending the Constitution, the desired result may be obtained. However, whether even Parliament should undertake such an exercise is an altogether different matter and regarding that I have already made my submissions in the earlier part of my report, which may kindly be perused.

15. Moreover, our political system is based on the British Model of Cabinet Form of Government and there is a total cohesion between the two wings of the Government, namely, the Legislature and the Executive. Assuming without admitting that the Legislative Department belongs to Executive Wing, it presents no difficulty whatsoever, since the Executive can make a recommendation to the Parliament to make such a law under Article 348 and the advice of the Cabinet would be binding on the President and a law will have to be made by the Parliament on the basis of the said advice. Thus, even this hypothesis creates no fetters for the Parliament to make the intended law.

16. A closer look at various Articles contained under Part XVII, namely, Official Language, clearly reveals that the aforesaid power of the Parliament is not circumscribed by any other subsequent Article of the said Part.

As regards the Recommendations of the Parliamentary Committee being Recommendation no. 16.8(e), my respectful submissions are as under :

17. The Fundamental premise of the said recommendation is, in fact, non-existent. As submitted above, Article 348 does not require any amendment as proposed by the Committee under its recommendation 16.8(d).

18. In my preface to the present report, I have already emphasized the importance of the language as also the fact that English language has continued throughout in the same role and capacity since 1950.

19. As stated above, we have not been able to enrich Hindi language as mandated under Article 351 even for the use of the common man

throughout the country. I must immediately admit that we have already undertaken the task of translating various Acts, ancient as well as modern in Hindi language, but the translated vocabulary is not very workable since Hindi language itself has not been made sufficiently rich enough for its common use. The mere textual translation of the laws, ancient as well as present, does not sub-serve the necessary purpose for delivering judgments either for the Judges or the lawyers, who are the necessary limbs for the justice delivery system. Delivery of judgment depends upon not merely the textual translation of the provisions of law, but it contains many other necessary and integral component parts like pleadings at all levels including subordinate level, evaluation of evidence, efficacy and strength of arguments at all levels in the hierarchy of the Courts. In my personal view, the Judges of various High Courts as well as of the Supreme Court are sufficiently well-versed in the use of English language and it must be remembered that the process of delivering a judgment at the High Court or the Supreme Court level is not a mechanical process. Today, English language is very well written, spoken and received well at the High Courts and the Supreme Court by the lawyers and Judges and in my considered view, there is likely to be a complete consensus among them for the continued use of English language in the justice delivery system.

20. At present, the working system in the Supreme Court consists of submitting English translations of the pleadings, the evidence and the judgments of the authorities or the Courts below and this facilitates the Supreme Court to render its judgment. Under our Constitution, it is the Supreme Court and the High Courts which have a unique sense of importance and not departmental authorities working as quasi-judicial Tribunals. Under the constitutional scheme of things, independence of judiciary consists of independence basically of the High Courts and the Supreme Court and not of any quasi-judicial authority or Tribunal. Moreover, it is the judgment of the quasi-judicial Tribunal or of a government authority or of the Government Department which is subject to judicial review under the Indian Constitution and not vice versa. Thus, the ultimate authority is not these Departments or the authorities, but the higher Courts. In my view, therefore, the suggestion should be just the reverse, i.e, in order to enable these Government Departments which are carrying out the judicial/quasi-judicial functions,

an authoritative text/translation of the language of their choice should be furnished to them of the judgments delivered by the Supreme Court or the High Courts. It is for the concerned Government to develop a mechanism for such authoritative translations, particularly in the kind of language that these authorities could understand and thereafter they should be able to understand the merit and the impact of the judgments of the Supreme Court and the High Courts and act accordingly. If somehow, they are unable to appreciate the translated version of the judgments, their judgments can always be corrected by the High Courts and the Supreme Court and this is the scheme of things under our Constitution.

21. It should also be remembered that the function of a judgment of the Supreme Court or the High Courts is not merely its binding force on the concerned parties or even on all others, not merely the declaration of law of the land by these Courts, but basically it serves as a pronouncement of the law applicable to govern the relationships of all people throughout the country in their future relations and in regard to which their lis is to be decided. Thus, it is of utmost importance and for the strengthening of the rule of law and for the advancement of public interest that this important value-orientation impact of a judgment should not be affected needlessly by the language controversy.

22. In my considered opinion, the most serious objection to the Recommendation would be based on the doctrine of violation of the basic structure of the Constitution. Justice delivery system by the Supreme Court and the High Courts is the basic structure of the Constitution and this necessarily includes the manner, mode and the expression of that judgment by the particular Court. No linguistic imposition of any kind could be made upon any Judge of the Supreme Court or the High Courts obligating him not to deliver his judgment in English. Use of language, whether Hindi or English is not a basic feature or part of fundamental structure of our Constitution, but the concept of judicial review is indeed such a part and this aspect cannot be over-emphasized and has to be kept in mind throughout. At any rate, in my well considered view, before any final decision is taken, the views of the Courts including the Judges of the Supreme Court must be taken before any action is taken towards the implementation of the Recommendations. It is particularly so, because the Recommendation

in a circuitous way imposes the study, the knowledge and use of Hindi on the Judges of the High Courts and the Supreme Court. Further, the transfer policy regarding the judges of the High Courts has not been finally given up and, in fact, is fully applicable in respect of the transfer of the Chief Justice. He normally stays for a brief time and during his stay he is already obligated to understand and use the language of his transferred State.

23. That, moreover, it is common knowledge that our Indian Supreme Court uses the judgments delivered by various foreign Courts and vice versa. The judgments delivered by our Courts are being increasingly referred to and relied upon throughout the world by the Courts of various countries. It is common knowledge that by and large, English is the language used throughout the globe in the justice delivery in the democratic world and nothing should be done which affects the relevance and the efficacy of our judgments to be used by other Courts throughout the world. Nothing should be done to undermine the international value and utility of the judgments of our Courts, particularly the Supreme Court. Further, present is the age of globalization and there is an unfettered growth of trade and commerce, attempts to make common universal policies regarding customs and excise, removal of trade barriers and uniform investment policies. More particularly, reference must be given to the fast growing concept of Arbitration where Arbitrators decide the disputes of high stakes of the parties belonging to different countries of the world. All these matters including the awards of the Arbitrators ultimately come to the higher Courts, i.e., High Courts or Supreme Court in India in many situations depending upon territorial operations and it will be highly inequitable and anomalous to burden our Courts not to deliver their judgments in English.

24. If the Judges are ordaining not to deliver their judgments in English, the quality of the judgments is liable to be gravely and adversely affected. One of the basic infrastructures for delivering judgments, namely, reliance on the foreign text books and foreign jurisprudential concepts delivered by jurists would be missed by our Courts.

25. Finally, I might add that present political situation is not very conducive to the implementation of the Recommendation. The

language issue should not be precipitated into a kind of political rivalry in order to gain political advantage. Already there is a great deal of debate going on regarding the scope of judicial review by the High Courts and the Supreme Court pertaining to the legislative and the executive acts of the governmental authorities and the debates remain inconclusive in spite of taking place at regular intervals, very frequently and in a highly emotive way. Any precipitate action although taken in great earnest and with strong national feeling, may result into the kind of agitations that the country has already faced long back in the year 1965 and ultimately the remedy may turn out to be worse than the disease.”

Mr. T.P.K. Nambiar, Senior Advocate

“Respected Dr. Justice Lakshmanan,

I received your letter, of October 8, 2007, in re: Article 348 imbroglio, at a time when I was worried by lack of worries. The subject-matter of your query is as sensitive and important today as it was in 1949, when Article 348 was born.

Whenever I am to study an aspect relating to any provision in the Constitution of India, my mind travels back to the Constituent Assembly for the discussion on the corresponding Draft Article. Turning the pages of the Constituent Assembly Debates, I found that the Debates on the corresponding draft Articles took place on 12th, 13th and 14th September 1949.

When the Constituent Assembly re-assembled in the afternoon “at Four of the Clock”, on 12th September 1949, Mr. President (The Honourable Dr. Rajendra Prasad), took up Part XIV-A – ‘Language’. Dr. Rajendra Prasad started:

“We have now to take up the articles dealing with the question of language. I know this is a subject which has been agitating the minds of Members for sometime..... There is no other item in the whole Constitution of the country which will be required to be implemented from day

to day, from hour to hour, I might even say, from minute to minute in actual practice..... I have found that there are some three hundred or more amendments to these articles. If each one of the amendments is to be moved I do not know how many hours it will take....”

The main speaker of the day on the subject was the Honourable Shri N. Gopaldaswamy Ayyangar. Shri Ayyangar started with a bang:

“Opinion has not always been unanimous on this question. There was, however, one thing about which we reached a fairly unanimous conclusion that we should select one of the languages in India as the common language of the whole of India, the language that should be used for the official purposes of the Union..... I for one did not easily reach the conclusion that was arrived at the end of these discussions, because it involved our bidding good-bye to a language (meaning, English) on which, I think, we have built and achieved our freedom. Though I accepted the conclusion at the end that that language should be given up in due course and in its place, we should substitute a language of this country, it was not without a pang that I agreed to that decision”.

Shri Gopaldaswamy Ayuyangar went on to say that we could not afford to give up the English language at once. “We had to keep the English language going for a number of years until Hindi could establish for itself a place, not merely because it is an Indian language, but because as a language it would be an efficient instrument for all that we have to say and do in the future and until Hindi established itself in the position in which English stands today for Union purposes”. Shri Ayyangar continued:

“We then proceeded to consider the question of the language that should be used in our Legislatures and the highest courts of justice in the land and we came to the conclusion after a great deal of deliberation and discussion that while the language of the Union ‘Hindi’ may be used for

debates, for discussions and so forth in the Central Legislature, and where while the language of the State could be used for similar purposes in the State Legislature, it was necessary for us, if we were going to perpetuate the existing satisfactory state of things as regards the text of our laws and the interpretation of that text in the courts, that English should be the language in which legislation, whether in the form of Bills and Acts or of rules and orders and the interpretation in the form of judgments by Judges of the High Court – these should be in English for several years to come. For my own part I think it will have to be for many many years to come. It is not because that we want to keep the English language at all costs for these purposes. It is because the languages which we can recognize for Union purposes and the languages which we can recognize for State purposes are not sufficiently precise for the purposes that I have mentioned, viz., laws and the interpretation of laws by Courts of law”.

The Honourable Member concluded, with a whimper:

“I would only appeal to the House that we must look at this problem from a purely objective standpoint. We must not be carried away by mere sentiment or any kind of allegiance to revivalism of one kind or another. We have to look at it from the stand point of practicability. We have to adapt the instrument which would serve us best for what we propose to do in the future and I for one agree with you, Sir, that it will be a most unhappy thing, a most disappointing illustration of our inability to reach an agreed conclusion on so vital a matter if on this point we have to divide the House. I am sure that good sense will prevail”.

I should think that even at present the apprehension voiced by Shri Gopaldaswamy Ayyangar has not ceased to exist. According to me, we have not still reached the stage at which Hindi language could substitute English. The position as on today has to be continued for a long time. It is not yet time to amend Article 348 of the Constitution as recommended by the

Committee of Parliament on Official Language. It is not yet time at all to ask the High Courts/Supreme Court to start delivering their judgments and decrees, etc. in Hindi.

What is the position of Hindi language now. What is today's standard of education in Hindi. How much has Hindi grown up to stand up to face the situation involved in the recommendations of the Committee. I do not find any scholarly allure in the suggestion. It would be too hasty to agree with the suggestion. The question is not one concerning filling up the blank pages of the law. The question is a loaded one. I regret my embarrassment, but I have to say, with humble apologies to the Committee though, that there should not be any amendment on the lines suggested by the committee in a hurry, only for the reason that the Legislature/Parliament suffers from Constitutional impatience. One fault leads to the next. Serious thought should be bestowed on the question of constitutional amendments in relation to "Language", especially when legislation is not a pastoral letter; and, further, English language is an enticing treasure. The situation in 1949 is different from that in 2007. Technology has changed our brains, in this clicking, bleeping, flashing world of screens. These are days of E-learning, and globalization. Even Russia and China have changed their views on language. There is change on all fronts – social, political, educational, regional etc. India does not consist only of Hindi-speaking areas. The Constitutional corridor is not the preserve of Hindi. Regional languages have grown; in fact, over-grown. Here, States re-organisation based on language, has played a great part, and that, against the Hindi language. The situation of the Constitutional Courts delivering their judgments, is unimaginable, in these days. Anybody concerned with the administration of justice by High Courts and the Supreme Court, would be prepared, with little hesitation, to release his opposition to the suggestion. When we take note of the constitution, organisation, and method of appointment of judges, of the High Courts and the Supreme Court, we may have no difficulty to perceive the utter impossibility of judges delivering judgments in Hindi, especially judges with honourable ignorance of the

language. Let not the inhabitants of the Constitutional Courts disturbed.

At the end of the day, I could formulate only one conclusion; and that is, it is not yet time to act on the lines of the recommendation of the Committee of Parliament on Official Language, in regard to “Language”, especially Article 348 of the Constitution. The period of 15 years stipulated in Article 343 of the Constitution can never be adhered to in the changed situation, making it impossible for a long time from now to adhere to the said stipulation. Times have changed against the stipulation. Situation has not improved in favour of the stipulation. The soft sobs of forgotten statesmen/politicians on the question of language will not abate for a long time to come.

Mr. Fali S. Nariman, President, Bar Association of India

“Dear Dr. Justice Lakshmanan,

I am receipt of your letter of 30th September, 2008.

2. I may be old fashioned but I would earnestly request both Parliament and the Government of India not to tinker with the legal system as it has existed – principally because the entire legal system in India is based on, and has much in common with, the English-language: both were originally imported from abroad. Over the course of over 300 years, each has become distinctively Indian. The language of our law, in more senses than one, is English. It is true that the English language as spoken and written in India has the same alphabet and conforms to the same rules of grammar – but the idioms, the expressive phrases and even the pronunciation of words are vastly different. Many new words have

crept in. We have institutionalized and localized the English language; as some with said, it has become English – so it is with the legal system. Originally an English transplant with Anglo-Saxon roots, the legal system in India has grown over the years, nourished in Indian soil; it has become indigenized; what was intended to be an English Oak, has turned into a large sprawling Banyan tree whose serial roots have descended to the ground to become new trunks.

3. To change the language in which Acts are drafted and to require Courts to deliver judgments in Hindi is at present something impossible to conceive – unless we throw out our legal system and adopt a new one by consensus. Indians would then all have to speak and think in Hindi in a new indigenous system of law that is truly Indian (and not Anglo Saxon): this requires a major surgical operation and at the present time I would earnestly suggest that we postpone this exercise till India has become what it was always meant to be: a unified, united and pluralistic society of peace loving citizens.”

A.P. High Court Advocates’ Association, Hyderabad

“The A.P. High Court Advocates’ Association unanimously resolved that the proposed amendment to Article 348 of the Constitution of India enabling the Legislative Department “to undertake original drafting in Hindi which is expected to pave way for delivery of judgments in Hindi by the Hon’ble High Courts and the Supreme Court of India” should be dropped as it would have ominous consequences to

the federal and pluralistic structure of Indian Society as well as the body polity. The members of the Association strongly feel that any such attempt to disturb the existing arrangement would only strengthen the forces of fissiparous tendencies. Fortunately the judiciary has been free from linguistic jingoism though the presence of the same is ominous elsewhere in the democratic institutions of Independent India. The present move would open the Pandora's Box leading to multitude of claims and counterclaims across the nation. Besides, such a move would divide India into two invisible Nations.

The members of the Association also opine that the rest of the society is fast evolving towards emancipation taking advantage of cutting edge information technology and assimilating the mind-boggling technological avalanches taking place elsewhere in the world because of widespread use of English language.

The members of the Association further feel that the proposed amendment to Article 348 would give leverage to the reactionary forces in the body polity. Besides, the Indian Judiciary would have a disconnect with world thought. Reforms in Indian judiciary are already overdue which are possible when English alone is allowed to be used for the higher judiciary besides availing the emerging advancements in science and technology.

It is myth to think bringing in Hindi would serve the purpose of the Indian masses. The founding fathers of the Constitution have rightfully preserved the domain of the Constitution for English language to the exclusion of all vernacular languages.

The members of the Andhra Pradesh High Court Advocates' Association hereby adopt an unanimous resolution to oppose the proposed amendment to article 348 of the Constitution of India in the larger interests of Indian judiciary and people of India.”

Kerala High Court Advocates' Association

“The General Body Meeting of the Kerala High Court Advocates' Association convened on 28.1.2008 to elicit the opinion of the members of the Association about the proposed Amendment of Article 348 of the

Constitution of India. The members of the Kerala High Court Advocates' Association hereby adopt a unanimous resolution to oppose the proposed Amendment to Article 348 of the Constitution of India, in the larger interest of people of India and the Indian Legal System.

I hereby enclose a copy of the resolution of the Extraordinary General Body meeting held on 28.1.2008.

RESOLUTION

The Kerala High Court Advocates' Association unanimously resolved that all the proposed Amendments to Article 348 of the Constitution of India enabling the Legislative Department to undertake original drafting in Hindi which is expected to pave way for delivery of Judgments in Hindi instead of English language by the Hon'ble High Courts and the Supreme Court of India should be dropped. Further, members of the Association strongly oppose that the original drafting of Bills introduced in and Acts passed by the Parliament or State Legislatures, Ordinances promulgated by the President or Governors, all Orders, Rules, Regulations and Bye Laws issued under the Constitution or under any law in Hindi instead of English language should be dropped.”

“Article 348 Imbroglio

(By T.P. Kelu Nambiar, Sr.Advocate, High Court of Kerala)

Article 348(1) of the Constitution of India says:

“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”.

It was at a time when I was worried by lack of worries, I noticed the recommendation of the Committee of Parliament on Official Language that “Article 348 of the Constitution may be amended to enable the Legislative Department to undertake original drafting in Hindi; and after such amendment, High Courts/Supreme Court should be asked to start delivering their judgments and decrees etc. in Hindi so that large number of Government Departments, who are carrying out judicial/quasi-judicial functions, could be able to deliver orders in Hindi; at present, these departments are unable to pass orders in Hindi, because the appeal against their orders in High Courts/Supreme Court would have to be conducted in English”. The subject-matter of this recommendation is as sensitive and important today as it was in 1949, when Art. 348 was born.

Whenever I am to study an aspect relating to any provision in the Constitution of India, my mind travels back to the Constituent Assembly for the discussion on the corresponding Draft Article. Turning the pages of the Constituent Assembly Debates, I found that the Debates on the corresponding draft Articles took place on 12th, 13th and 14th September 1949.

When the Constituent Assembly re-assembled in the afternoon ‘at Four of the Clock’, on 12th September 1949, Mr. President (The Honourable Dr. Rajendra Prasad) took up Part XIV-A-‘Language’.

Dr. Rajendra Prasad stated:

“We have now to take up the articles dealing with the question of language. I know this is a subject which has been agitating the minds of Members for sometime..... There is no other item in the whole Constitution of the country which will be required to be implemented

from day to day, from hour to hour. I might even say, from minute to minute in actual practice..... I have found that there are some three hundred or more amendments to these articles. If each one of the amendments is to be moved I do not know how many hours it will take.....”

The main speaker of the day on the subject was the Honourable Shri N. Gopaldaswamy Ayyangar. Shri Ayyangar started with a bang:

“Opinion has not always been unanimous on this question. There was, however, one thing about which we reached a fairly unanimous conclusion that we should select one of the languages in India as the common language of the whole of India, the language that should be used for the official purposes of the Union.... I for one did not easily reach the conclusion that was arrived at the end of these discussions, because it involved our bidding good-bye to a language (meaning, English) on which, I think, we have built and achieved our freedom. Though I accepted the conclusion at the end that that language should be given up in due course and in its place, we should substitute a language of this country, it was not without a pang that I agreed to that decision”.

Shri Gopaldaswamy Ayyangar went on to say that we could not afford to give up the English language at once. “We had to keep the English language going for a number of years until Hindi could establish for itself a place, not merely because it is an Indian language, but because as a language it would be an efficient instrument for all that we have to say and do in the future and until Hindi established itself in the position in which English stands today for Union purposes”. Shri Ayyangar continued:

“We then proceeded to consider the question of the language that should be used in our Legislatures and the highest courts of justice in the land and we came to the conclusion after a great deal of deliberation and discussion that while the language of the Union ‘Hindi’ may be used for debates, for discussions and so forth in the Central Legislature, and where while the language of the State could be used for similar purposes in the State Legislature, it was necessary for us, if we were going to perpetuate the existing satisfactory state of things as

regards the text of our laws and the interpretation of that text in the courts, that English should be the language in which legislation, whether in the form of Bills and Acts or of rules and orders and the interpretation in the form of judgments by Judges of the High Court – these should be in English for several years to come. For my own part I think it will have to be for many years to come. It is not because that we want to keep the English language at all costs for these purposes. It is because the languages which we can recognize for Union purposes and the languages which we can recognize for State purposes are not sufficiently developed, are not sufficiently precise for the purposes that I have mentioned, viz., laws and the interpretation of laws by Courts of law”.

The Honourable Member concluded, with a whimper:

“I would only appeal to the House that we must look at this problem from a purely objective stand point. We must not be carried away by mere sentiment or any kind of allegiance to revivalism of one kind or another. We have to look at it from the stand point of practicability. We have to adapt the instrument which would serve us best for what we propose to do in the future and I for one agree with you, Sir, that it will be a most unhappy thing, a most disappointing illustration of our inability to reach an agreed conclusion on so vital a matter if on this point we have to divide the House. I am sure that good sense will prevail”.

I should think that even at present the apprehension voiced by Shri Gopaldaswamy Ayyangar has not ceased to exist. According to me, we have not still reached the stage at which Hindi language could substitute English. The position as on today has to be continued for a longtime. It is not yet time to amend Art. 348 of the Constitution as recommended by the Committee of Parliament on Official Language. It is not yet time at all to ask the High Courts/Supreme Court to start delivering their judgments and decrees, etc. in Hindi.

What is the position of Hindi language now. What is today's standard of education in Hindi. How must has Hindi grown up to stand up to face the situation involved in the recommendations of the Committee. I do not find any scholarly allure in the suggestion. It

would be too hasty to agree with the suggestion. The question is not one concerning filling up the blank pages of the law. The question is a loaded one. I regret my embarrassment, but I have to say, with humble apologies to the Committee though, that there should not be any amendment on the lines suggested by the committee in a hurry, only for the reason that the Legislature/Parliament suffers from Constitutional impatience. One fault leads to the next. Serious thought should be bestowed on the question of constitutional amendments in relation to 'Language', especially when legislation is not a pastoral letter; and, further, English language is an enticing treasure. The situation in 1949 is different from that in 2007. Technology has changed our brains, in this clicking, bleeping, flashing world of screens. These are days of E-learning, and globalization. Even Russia and China have changed their views on language. There is change on all fronts – social, political, educational, regional etc. India does not consist only of Hindi-speaking areas. The Constitutional corridor is not the preserve of Hindi. Regional languages have grown; in fact, overgrown. Here, States reorganization based on language, has played a great part, and that, against the Hindi language. The situation of the Constitutional Court delivering their judgments in Hindi is unimaginable, in these days. Anybody concerned with the administration of justice by High Courts and the Supreme Court, would be prepared, with little hesitation, to release his opposition to the suggestion. When we take note of the constitution, organization, and method of appointment of judges, of the High Courts and the Supreme Court, we may have no difficulty to perceive the utter impossibility of judges delivering judgments in Hindi, especially judges with honorable ignorance of the language. Let not the inhabitants of the Constitutional Courts be disturbed.

At the end of the day, I could formulate only one conclusion; and that is, it is not yet time to act on the lines of the recommendation of the Committee of Parliament on Official Language, in regard to "Language", especially Article 348 of the Constitution. The period of 15 years stipulated in Article 343 of the Constitution can never be adhered to in the changed situation, making it impossible for a long time from now to adhere to the said stipulation. Times have changed against the stipulation. Situation has not improved in favour of the stipulation. It

remains Joseph Heller's Catch-22. The soft sobs of forgotten statesmen/politicians on the question of language will not abate for a long time to come.

It is not virtuous to be obstinate.”

The Bar Council of Tamilnadu And Puducherry

Resolution No.189 of 2007 dated 24.11.2007

“It is unanimously resolved to strongly oppose the recommendations of the Committee of Parliament on Official Language to amend the Art. 348 of Constitution of India as appeared at Page No.112 in Madras Law Journal (2007) Part 5. The proposal for delivering the Judgments of the Supreme Court and High Courts in Hindi will certainly jeopardise the rights of the people, various Government Officers and Members of Bar and Bench in the non-Hindi speaking areas. This move may be dropped immediately and the existing system of delivering judgments in English should continue. It is further resolved to send a detailed memorandum to the Chairman, Law Commission, Ministry of Law and Justice, Government of India with a copy to Bar Council of India and all State Bar Councils.”

“With reference to the appeal of the Law Commission to the Bar regarding amendment of Art. 348 (d) and (e) of the Constitution of India, we have already forwarded to you a copy of the unanimous resolution passed by us in respect of the above subject.

In continuation of the same, we are hereby furnishing a Memorandum on the subject for your perusal and consideration:-

- (a) The proposed amendment to the Constitution suggested by the Committee of Parliament on Official Languages is not accepted by the Bar Council of Tamil Nadu and Puducherry.
- (b) The proposed amendment will impose an unknown language on a large section of Indian population much against their wish.

- (c) This will lead a lot of practical problems in concluding cases in the High Courts as most the Judges, Advocates and almost all the litigant public are not conversant with Hindi language.
- (d) Enforcing propagation of an unknown language on a large section of the population may disturb the common fabric of India and may result in social disturbances as well as law and order problems.

In the circumstances, we, the Bar Council of Tamil Nadu and Puducherry strongly oppose any move to replace English with Hindi language in High Courts and Supreme Court.”

Though opinions have been sought from Dr. Justice A.S. Anand, Justice R.C. Lahoti, Justice S.N. Variava, Justice Ruma Pal, Shri Arun Jaitley, Shri K. Parasaran, Shri Soli Sorabjee and Shri Rajiv Dhawan, there was no response. Likewise, there was no response from the Supreme Court Bar Association, Supreme Court Advocates-on-Record Association, Karnataka High Court Advocates’ Association, and the High Court Association of Madras, Mumbai, Calcutta, New Delhi, Himachal Pradesh, Madhya Pradesh, Orissa, Patna, Punjab and Haryana, Rajasthan.

Conclusion

I have given my anxious and thoughtful consideration to the question at issue. All the retired Hon’ble Judges of the Supreme Court and Chief Justice of the Supreme Court and Judges of High Court and

lawyers are of the uniform view that the Constitution should not be amended to enable the Legislative Department to undertake original drafting in Hindi and that the proposal was stoutly opposed. The learned Judges are also of the opinion that since the Judges of the Supreme Court and High Courts are drawn from all over India, and they are not all conversant with Hindi, they should not be asked to deliver their judgments in Hindi. Furthermore, the unity and integrity of the country is bound to be affected by the linguistic chauvinists and that the switch over from English to Hindi in the Supreme Court and High Courts will create political and legal unrest through out the country, which is an avoidable exercise.

Justice V.R. Krishna Iyer was of the opinion that he is all for Hindi as a personal preference, but all against Hindi by compulsion, especially of judgments of the Supreme Court of India. He also suggested giving Hindi a high place in national expression and full facility in instant translation of every representation people wish to make to the higher courts as an integral part of free legal aid.

Justice B.N. Srikrishna is of the considered view that the proposal to require the Supreme Court and the High Courts to deliver judgments in Hindi would definitely result in chaos and will affect the administration of justice.

The former Chief Justice of India Mr. Justice M.N. Venkatachaliah says that one must acknowledge that Hindi as our national language

must assert its rightful place in all areas of our national life and higher judiciary should be no exception. However, he said that the parliamentary views should be respected and a beginning has to be made though circumspection requires that we should hasten slowly.

Justice Jagannatha Shetty, former Judge of the Supreme Court is of the opinion that the Supreme Court and High Courts cannot be asked to start delivering their judgments and decrees in Hindi and that the same is a very very contentious issue which may have far reaching consequences.

Mr. Justice A.M. Ahmadi, former Chief Justice of India is of the opinion that it may not be advisable to ask the Supreme Court and High Courts to switch to Hindi. He was of the opinion that the base to take the hop is not available and it would be wise to leave the matter of introduction of Hindi in the State High Court to the judgment of the Governor of the State under Article 348(2) of the Constitution and that he would be the best judge to decide if the time was ripe to take the step in that direction.

Justice Santosh Hegde, former Judge, Supreme Court of India is of the view that this move is neither politically wise nor constitutionally correct, and hence he strongly opposed this move.

Mr. Justice S.S.M. Quadri, former Judge, Supreme Court of India, is of the opinion that the conditions in our country are not ripe to make

such amendment and to issue directions requiring the High Courts and Supreme Court to start delivery of judgments and orders in Hindi and, therefore, for these and many other reasons switching over to dictating judgments, orders, decrees, etc. in Hindi will be entirely an exercise in futility.

Mr. Justice K.S. Paripoornan, former Judge, Supreme Court, has also expressed his opinion against the proposal to amend Article 348 of the Constitution, regard being had to the world events since 1949 and the totality of circumstances by which we have accepted, adopted and been substantially benefited by the English language.

Mr. K.K. Venugopal, Senior Advocate, has expressed the view that any attempt to implement the recommendations of the Parliamentary Committee would bring about divisiveness among, and confrontation between the people of India.

Only three High Court Advocates' Associations have responded to our request to offer their opinion. The Andhra Pradesh Advocates' Association, Kerala High Court Advocates' Association and Pondicherry Advocates' Association have passed resolution opposing the proposal.

Language is a highly emotional issue for the citizens of any nation. It has a great unifying force and is a powerful instrument for national integration. No language should be thrust on any section of the people against their will since it is likely to become counter-productive.

It is not merely a vehicle of thought and expression, but for Judges at the higher level, it is an integral part of their decision-making process. Judges have to hear and understand the submissions of both the sides, apply the law to adjust equities. Arguments are generally made in higher courts in English and the basic literature under the Indian system is primarily based on English and American text books and case laws. Thus, Judges at the higher level should be left free to evolve their own pattern of delivering judgments.

It is particularly important to note that in view of the national transfer policy in respect of the High Court Judges, if any such Judge is compelled to deliver judgments in a language with which he is not well-versed, it might become extremely difficult for him to work judicially. On transfer from one part of the country to another, a High Court Judge is not expected to learn a new language at his age and to apply the same in delivering judgments.

At any rate no language should be thrust upon the Judges of the higher judiciary and they should be left free to deliver their judgments in the language they prefer. It is important to remember that every citizen, every Court has the right to understand the law laid down finally by the Apex Court and at present one should appreciate that such a language is only English.

The use of English language also facilitates the movement of lawyers from High Courts to the Apex Court since they are not confronted with any linguistic problems and English remains the language at both the levels. Any survey of the society in general or its cross-sections will clearly substantiate the above proposition which

does not admit of much debate, particularly in the present political, social and economic scenario.

Paragraph 23. 10 of HM Seervai's Constitutional Law of India, 1996 Ed, Vol. III, page 2585, runs as follows ;

"23.10. If the unity of the judicial administration, and of the Bench and the Bar is to be preserved. It is to be hoped that such permission will not be given. Entry 78, List I expressly confers on Parliament the power to legislate In respect of persons entitled to practise before the High Courts. The Advocates Act, 1961 has created a unified autonomous Bar of India. Today the legal profession is one united profession entitled to practise throughout India. If the language of different High Courts is to be different, the right to practise throughout India becomes illusory in practise and each High Court will be isolated by the barrier of its own language. It will also be deprived of the assistance to be derived from judgments of other Courts, and the uniform interpretation of Central laws, so desirable in judicial administration, would be unattainable. The work of the Supreme Court and the recruitment of Judges to the Supreme Court must greatly suffer, for Judges of the Supreme Court could not be recruited from High Courts where the language was different from that spoken in the Supreme Court. The unifying influence of a Supreme Court on judicial administration would be seriously impaired, if not destroyed, and the quality of its Judges and of its judgments must necessarily suffer."

It may, however, be admitted that in so far as legislative drafting is concerned, every legislation although authoritatively enacted in English may have a Hindi authoritative translation along with the same at the central level. Same analogy may be applied even in respect of

executive actions at the central level, but, as submitted above, the higher judiciary should not be subjected to any kind of even persuasive change in the present societal context.

(Dr. Justice AR. Lakshmanan)
Chairman

(Prof. Dr. Tahir Mahmood)

Member

(Dr. Brahm A. Agrawal)

Member-Secretary

Dated: 14.12.2008