



## **A Descriptive Study of Official Language in the Context of Constitutional Courts under the Constitution of India**

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### **ABSTRACT**

The relationship between the use of language and adjudication is sophisticated and inextricable. The process of adjudication or decision-making has its own consequences and to give it an effect, we need a clear set of expressions in the form of words. This is only possible when a State has an official language to be used by its judicial organ/decision making authority. The recognition and effectiveness of the official language for judicial administration, thus, becomes an important issue as it has its own social and legal consequences. But in the context of India, it also becomes too complicated as we have a multilingual society. We have a number of languages spoken in our country in its different regions and because of this, it sometimes becomes an extreme socio-legal issue to have a uniform language for our constitutional Courts, i.e., the Supreme Court and High Courts established under the Constitution of India under Articles 124 and 214, respectively. For long, since British rule, English as a language of the courts has been widely used in their daily judicial administration. But now, as we are independent, many times an issue has been raised by several stakeholders to include other regional languages also for the official purpose of the judicial adjudication process. This paper tries to chalk out the official language-based scenario for our constitutional courts in India.

**Keywords:** Official Language; Constitutional Courts; Supreme Court; High Court; Judicial Administration

### **1. Introduction**

“*Language*” is an ability (particularly the human ability to do so) to acquire and use

complex systems of communication, a mode or method to communicate. The scientific study of language is called ‘*linguistics*’.

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India, being a multilingual country, has multi-linguistic societies with numerous languages. Besides, official languages used in various organs of our government, many regional languages are also spoken by a number of people in different parts of India, like Assamese, Bengali, Gujarati, Punjabi, Urdu, Oriya and Marathi. This gives India a unique and complex feature of a “multilingual country” having numerous languages that are used in our country.

Different types of languages have created a problem and tension in the country regarding their status in the country. Thus, it is important to determine the status of these languages and also which language/languages are to be used by the different organs of the State in their day-to-day business. Judiciary is solely responsible for the “judicial administration and is the most important organ of the State because it is the sole organ with a pious and strong status as the last interpreter of the Constitution of India. As courts also deliver justice to subjects, it largely affects the day-to-day life of a common man.

But to fulfil this pious purpose, every court has to adopt a language in which it wants to perform its daily business of judicial administration. Thus, the use or adoption of language/languages by courts is also very important, as “language” is the only way to express our grievances, to claim our remedy or relief before the court of law and for courts to deliver their judgment. The uniform set and certainty in the use of language by the courts is

thus very helpful and necessary for clients and courts both.

Under **Part XVII** of our Indian Constitution, **Article 348 (1) (a)** says that all proceedings of the Supreme Court and High Court shall be in the English language. However, in the matter of State judiciary/High Court provision made under **Article 348 (2)**, is an exception to the provision of Article 348 (1) (a) by giving some limited power to Governors, which has now emerged as a big problem and difficulty regarding the status and fate of regional languages of India which have been recognised in Eighth Schedule of our Indian Constitution.

## **2. Constitutional Courts: Custodian of Judicial Administration and Constitution of India**

“Constitutional Courts”, generally refers to courts that deal primarily with constitutional law/matters. The U.S.A.’s Supreme Court is the world’s oldest constitutional court because it was the first to invalidate a law passed by the U.S. Congress as unconstitutional in *Marbury v. Madison*<sup>1</sup>, by Chief Justice John Marshall, even though it is not a separate constitutional court.

Here, the expression “Constitutional Courts” used refers to courts which have been established and constituted under the Constitution of India, 1950. These courts under our Constitution of India are the Supreme Court of India and High Courts of various States/U.T.s constituted under Article 124 and Article 214, respectively. The Supreme Court of India comprises the Chief

<sup>1</sup> 5 U.S. 137 (1803).

Justice and 33 other Judges, as the strength was increased in 2019 by an Act<sup>1</sup>.

High Courts which are 25 in India are constitutional courts under Part VI, Chapter V, Article 214 of our Constitution. The Calcutta High Court is the oldest High Court in the country, established on 1 July 1862 under the Indian High Courts Act, 1861 (Act 104 of 1861)<sup>2</sup> whereas Allahabad High Court is the largest, having sanctioned strength of 160 Judges<sup>3</sup>.

### 3. Official Language: Meaning and Concept

Before moving ahead with the research problem, it would be pertinent to discuss the meaning, concept and basics of the official language. India having numerous languages gives it a unique and complex feature of a “multilingual country”. The official language is one designated as having a special and unique legal status in the State. It is a language that is given a special legal status by way of some legal enactment or even the Constitution. A country’s official language is often referred to as the language used within and by the government or its various organs.

English is the most common official language used worldwide. Some countries have more than one official language; like Ireland has ‘Irish’ as its first official language and ‘English’ is recognised as a second official language<sup>4</sup>.

Afghanistan also has two official languages, i.e. Pashto and Dari<sup>5</sup>. But Namibia has one official language i.e., ‘English’<sup>6</sup>. Austria under its Constitution recognises ‘German’ as its official language<sup>7</sup>. In India under the Constitution of India the official language of the Union (Article 343) and States (Article 345), Union Legislature (Article 120) and States Legislatures (Article 210) and Union Judiciary (Article 348) and State Judiciary (Article 348) is Hindi or English or to be opted by the respective States concerned in case of a State or U.T.

But the expression “mother tongue” is all different as our Indian Constitution makes special provision under Article 350-A<sup>8</sup>. In *State of Karnataka v. Associated Management of P. and S. Schools*<sup>9</sup>, the Supreme Court held that:

*“Mother tongue in the context of the Constitution means the language of the linguistic minority in a State and it is the parent or guardian of the child who will decide what the mother tongue of the child is.”*

### 4. Research Problem

India being a multi linguistic society having different types of numerous languages creates a problem and tension in the country as regards the status of the various languages in the country. It is important to declare the status of various languages and which language is going

<sup>1</sup> The Supreme Court (Number of Judges) Amendment Act, 2019 (Act 37 of 2019).

<sup>2</sup> *History*. The High Court at Calcutta. <https://www.calcuttahighcourt.gov.in/#specials>

<sup>3</sup> *About us*. High Court of Judicature at Allahabad. <https://www.allahabadhighcourt.in/intro.htm>

<sup>4</sup> The Constitution of Ireland, 1937, art. 8.

<sup>5</sup> The Constitution of Afghanistan, 2004, art. 16.

<sup>6</sup> The Constitution of the Republic of Namibia, 1990, art. 3.

<sup>7</sup> The Constitution of Austria, 1920, art. 8.

<sup>8</sup> The Constitution of India, 1950.

<sup>9</sup> AIR 2014 SC 2094.

to be used by the different organs of the State. There must be some provisions in this regard as to clear the status.

Article 348 (1) (a) says that all proceedings of the Supreme Court and High Court shall be in English. However, in case of State judiciary provision made under Article 348 (2), is an exception to and relaxes the provision of Article 348 (1) (a), which has now struck a great deal of problem and difficulty in the smooth working of various High Courts of the States.

The problem of this study is to know what is or should be the, “Official Language of Constitutional Courts” in our country. The words, “Constitutional Courts” used to refer the Supreme Court and High Courts constituted under Article 124 and Article 214, respectively interpret the law and the Constitution of country and deliver justice to subjects. To perform this duty Courts have to adopt a language in which they want to perform their task of administration of justice. However, there may be a case where the Court may adopt more than one language to perform its various tasks. The use or adoption of language by Courts is very crucial, as “language” is the only way to express grievances, to claim remedy or relief before the Court of law and to Courts to deliver their judgement and make clients understand their verdict.

According to 2001 census 29 individual languages have been recorded as having more than 1 million native speakers (0.1% of total population). Hindi as a scheduled language has got the highest number of speakers i.e., 422,048,642 (41.1%). If we compare the number of speakers of English language with scheduled “regional languages”, then we find that only

2,26,449 people speak or know English language which represents 0.022% of the total population as per 2001 census, which is not even 1% of total population.

Thus, what is and what should be the language of the judgements, proceedings and pleadings of the Constitutional Courts is the question which is needed to be settled with immediate effect in the light that we are multilingual country. India being a multilingual country has numerous languages spoken and read. Our country therefore, faces a *sui generis* language problem which does not matches with any other federal model in the world. Other federal country such as in United States and Australia, there is a lingual homogeneity because English is used in administration and education. Thus, India cannot adopt any readymade solution from other countries and it has to find out its own solution consistent with the national perspective, character and regional pressures<sup>1</sup>.

The difficult problem is the question of the use of language in the law and the courts. The common law of England is the foundation of our legal system and due to this, English has been a popular medium. Besides, we have a unified judicial system and there is homogeneity among laws prevailing in India and therefore the decision of Supreme Court or one High Court is freely cited in other High Courts. If a High Court adopts the local or official language of a State, then it becomes difficult to use judgement from such Court in other High Courts. Acute problem will also exist for the Supreme Court if High

<sup>1</sup> Jain, M. P. (2025). *Indian Constitutional Law*. Gurgaon: LexisNexis.

Courts adopt different languages<sup>1</sup>. Therefore it is a problem of legal as well as social relevance that what should be the ‘official language’ of the ‘Constitutional Courts’.

### 5. Research Findings and Observations

The Constitution of India has all the ingredients of being a federal Constitution. It establishes a dual polity (Central Government at one level and State Government at another level) along with the distribution of powers between the Centre and State.<sup>2</sup>

Thus, we can see that three different organs of the Government are divided into the Union level and the State level as we have a ‘Federal’ form of Constitution. And this is one of the reasons why we have different language-based provisions at different levels for different organs of the Government.

The Constitution establishes a Supreme Court under Article 124 at the Union level and a High Court under Article 214 at the State level to decide disputes between the parties and to interpret the Constitution. Therefore, when we talk about the official language of the constitutional courts, i.e., the Supreme Court and High Courts, we find “two different provisions for these two different Constitutional Courts.”

For the Supreme Court under Article 348 (1) (a)<sup>3</sup> it is declared that all proceedings shall be in the English language unless a law made by the parliament provides otherwise and this provision has been made without any exceptions.

Therefore, unless the Parliament, by enacting a law, provides otherwise, the official language of the Supreme Court shall continue to be the English language. The Official Languages Act, 1963 speaks nothing about the language of the apex Court. This means that the sole provision regarding language of the Supreme Court is only under Article 348 of the Indian Constitution.

In view of the use of language in the Supreme Court, 216<sup>th</sup> Report of the 18<sup>th</sup> Law Commission of India is of great significance and importance. The Commission submitted its report on December 17, 2008 titled, “*Non-Feasibility of Introduction of Hindi as Compulsory Language in the Supreme Court of India*”, with the following relevant recommendations<sup>4</sup>:

1. Language is not only a medium of thought and expressions. For a Judge at higher court language is an intrinsic element in decision making process. A Judge has to hear, understand and apply law and equity upon both parties. Arguments and submissions are made in English language and the basic legal literature is also available in English language. Therefore, at higher level Judges should be left free to adopt their own pattern of delivering judgments.

2. In the light of the national transfer policy of Judges of High Court if a Judge is asked to deliver judgment in a particular language with which he is not familiar with then it will obviously become near impossible for him to

<sup>1</sup> Jain, M. P. (2025). *Indian Constitutional Law*. Gurgaon: LexisNexis.

<sup>2</sup> Pandey, J. N. (2015). *Constitutional Law of India*. Prayagraj: Central Law Agency.

<sup>3</sup> The Constitution of India, 1950.

<sup>4</sup> Law Commission of India. (2008). 216<sup>th</sup> Report on Non-Feasibility of Introduction of Hindi as Compulsory Language in the Supreme Court of India. Government of India.

work judicially. In the event of a High Court Judge's transfer it is unreasonable to expect from him to learn a new language and use it in delivering judgment at this stage and age.

3. A Judge in a higher judiciary should be given liberty to deliver judgment in a language he/she is comfortable with and a particular language should not be imposed upon. Every citizen and court has right to know and understand law lay down by the Supreme Court and presently the language used for such is English.

4. As lawyers move from a High Court to Supreme Court, the use of English language is particularly useful because in such a case they will not face language barriers since English remains medium in both levels or Courts

Therefore, now it can be said that the one and only official language of Supreme Court of India is "English", with no exception.

For High Courts under Article 348 (1) (a)<sup>1</sup> provision is that in every High Court all proceedings shall in English language unless by law made by the parliament otherwise is provided. However, this provision is subject to provision laid under Clause 2 of Article 348. Accordingly, the power of the parliament to make law in respect to official language of the High Court is not absolute and Governor of a State may with the consent of the President can allow the use of Hindi language or any official

language of the State in proceedings of the High Court.

This means that the Governor has the power besides the Parliament to permit the use of any other language besides English, but with the consent of the President who is bound to act in accordance with the Council of Ministers with the Prime Minister at the head to aid and advise the President under Article 74.<sup>2</sup>

Here, the question arises is that which are those languages that Governor of a State can authorise to use them in the proceedings of the High Court, besides 'English'. One such language which is named under Article 348 (2) is 'Hindi' and the expression, "any other language used for any official purposes of the State", connotes the theory that "other languages" are those languages which have been officially used by the States or more properly they are the designated as the official languages of the respective States. For instance, official language of State of Punjab is Punjabi (in Gurumukhi Script)<sup>3</sup>, thus the Governor of Punjab can authorise the use of Punjabi language in High Court of Punjab's proceedings besides English language. So far only four States, namely, Rajasthan in 1950; Uttar Pradesh in 1969; Madhya Pradesh in 1971 and Bihar in 1972 have been authorised to use their official language which is "Hindi" for all of them in their respective High Court's proceedings.<sup>4</sup>

<sup>1</sup> The Constitution of India, 1950.

<sup>2</sup> The Constitution of India, 1950.

<sup>3</sup> The Commissioner for Linguistic Minorities in India (2014). 50th Report on Linguistic Profile. Government of India.

<sup>4</sup> Press Release. Press Information Bureau. <https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2042983&reg=3&lang=2>

The proviso to Article 348 (2) says that, nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court. This means that a Governor with the consent of President may authorise Hindi or any other language only with respect to High Court's proceedings but not for judgment, decree or order passed or made by High Court which shall be done in English language as mandated under Article 348 (1).

Now the question arises that what will happen if any High Court frames any rule under Article 225<sup>1</sup>. The effect of this situation has been dealt in *Vijay Laxmi Sadho v. Jagdish*<sup>2</sup>. In this case rules made by the High Court of Madhya Pradesh required filling of election petitions in English only and thus, it dismissed an election petition drawn in Hindi. It was held that:

*"The High Court could not do so. The High Court rules are only of a procedural nature and do not constitute "substantive law". The rules have to be read subject to Article 348 (2)."*

Thus, the effect of Article 348 (2) is that, where the Governor by notification has authorised the use of Hindi or any other language in proceedings of the High Court then appeals, petitions, etc. can be presented in Hindi or any other language. The rules of High Court cannot override Article 348 (2) and they should be read with notification issued by the Governor. The rules are only procedural in nature and not a substantive law if any made by a High Court under Article 225 and they cannot affect constitutional provisions of Article 348.

The Official Languages Act, 1963 under its Section 7, lays down provision regarding "Optional use of Hindi or other Official language in judgements etc. of High Courts"<sup>3</sup>. This Section also empowers Governor that with the consent of the President he may authorise Hindi or official language of a State besides English for judgement, decree or order passed or made by the High Court. However, if any judgement, decree or order is passed or made in Hindi or official language of a State other than in English then it shall be accompanied by its English translation.

Section 7 of the Official Languages Act, 1963 and Article 348 (2) of the Indian Constitution are similar in the sense that they empower Governor to authorise the use of Hindi or official language of State besides English with the consent of the President in a High Court. The only difference between these two provisions is that Section 7, deals with the authorization by Governor of a State in the context of any judgement, decree or order passed or made by the High Court, while Article 348 (2), deals with the authorization by Governor of a State in the context of proceedings in the High Court. However, it is important to note down here that Section 7 is not in contrary with the Proviso to Article 348 (2), but in fact it supplements Article 348 (2) in the sense that it is mandatory under Section 7, that where a judgement, decree or order has been passed in language other than English, then it shall be accompanied by its English translation. This mandatory requirement

<sup>1</sup> The Constitution of India, 1950.

<sup>2</sup> AIR 2001 SC 600.

<sup>3</sup> The Official Languages Act, 1963 (Act 19 of 1963), sec. 7.

of Section 7 upholds the mandatory provisions and spirits of the Proviso to Article 348 (2).<sup>1</sup>

Thus, it can be said that the official language of High Courts is English language, but with certain exceptions. One cannot absolutely say that the official language of High Courts is only or can be English as exception to it is available under Article 348 (2).

The final findings and observations in this research problem is that due to the unified judicial system prevalent in our Indian judiciary uniformity has been tried to maintain at the Centre and the State level by making provision that the official language of the Supreme Court and High Court will be the English language under Article 348 (1). However, in the light of the federal character of our Indian Constitution where the Centre and the State are free and supreme in their own sphere, State judiciary has been given an option to choose their own official language for the proceedings in their respective High Courts under Article 348 (2) but with limitations in the form of proviso added to Article (2).

## 6. Conclusion and Suggestions

Language has a great uniting force and it is a powerful medium for national integration but no language shall be compelled upon any section of the people against their will because it may result into loss of public tranquillity. Every language irrespective of its status shall be given an upper hand in any State somehow for its development, promotion and protection and it is urgent and seminal in our country where we have a multilingual society. It can only be achieved by

recognising their role and use in the organs of the State/government.

The task of identifying different languages of our country has been well observed by the Constitution of India. On one side where it makes mandatory the use of English as the official language of the Union judiciary, on the other side it gives an option to States, to choose their own official language for their respective High Courts promoting the different regional languages of our country. This shows the spirit of “federalism”, where under the dual polity system the central and state organ of the government are free in their own sphere. Out rightly, declaring that the official language of the Supreme Court and the High Courts is the English language seeks an objective of unifying the judicial system of the country. This is right in my opinion in the sense that uniformity in the law and the language of the Courts is necessary so as to give a certain level of certainty to the law and the language of these Constitutional Courts. Differences in the judicial system of a State among the various Courts would lead to a state of confusion and multiplicity of litigations.

Therefore, I would like to suggest that States must try to maintain the authenticity of a unified judicial system in the country in cooperation with the Union judiciary i.e., the Supreme Court. A uniform set of language in the form of the official language of these Constitutional Courts should be established, which will definitely help out the lawyers, Judges, law scholars, law teachers and even clients in letting them know the law laid down by the apex Court. In the light of the federal character of our nation, Governors

<sup>1</sup> The Constitution of India, 1950.

should be given more freedom in respect of choosing language for his respective State judiciary, i.e. High Court, because the compulsion that he can only do so after the consent of the President of India limits his power and makes him less effective. The right of the client to know and understand his proceedings in a courtroom should be observed by the Indian Judiciary and Legislature because after all, he is the ultimate object for whom such a large judicial arrangement is made at the national and state level.

Lastly, it is an irony that English has not been declared as regional language and scheduled under the Constitution, yet the Courts have always kept aside and avoided the recognised and scheduled regional languages of Indian origin and instead have always promoted English language in their working. Besides, under the provisions of the Constitution of India, the Official Language Act and Rules, courts don't lose single opportunity to side-line Indian regional languages at the option of English language.

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