

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.435 of 2015

Arising Out of PS. Case No.-143 Year-2014 Thana- NARHATT District- Nawada

कृष्णा यादव, पिता-लाखन यादव, साकिन-नरहट, टोला-मदनपुर, वार्ड नं0-15, थाना-नरहट,
जिला-नवादा ।

... .. आवेदक

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11. कनीय अभियंता नवादा ग्रामीण ।
12. मन्दु यादव, पिता-राजो यादव, ग्राम-नरहट, टोला-मदनपुर, थाना-नरहट, जिला-नवादा
बिजली मिस्त्री, बिजली ऑफिस खनवों ।

... .. उत्तरवादियों

Appearance :

For the Petitioner : Mr. Indradeo Prasad, Advocate
Mr. Sanjay Kumar, Advocate
Mr. Subodh Kumar, Advocate
Mr. Vinod Kumar, Advocate

For the State : Mr. Lalit Kishore, Advocate General
Mr. Yogendra Prasad Sinha, AAG-07
Mr. Rakesh Ambastha, Advocate
Mr. Pankaj Kr. Singh, AC to GA-9

For the B.S.P.H.C : Mrs. Namrata Mishra, Advocate
Ms. Archana Jha, Advocate

For the Intervenors : Mr. Vishwa Ranjan Chaudhary, Advocate
Mr. Sunil Kumar Singh, Advocate
Mr. Rajesh Kumar, Advocate
Mr. Umesh Sharma, Advocate
Mr. Navin Kaushik, Advocate
Mr. Amit Srivastava, Advocate
Mr. Harpal Singh Rana (in person)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD



CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-04-2019

This petition under Article 226 of the Constitution of India prays for the issuance of a writ of habeas corpus for release of the petitioner from judicial custody and to declare the detention order dated 16th April, 2015 as invalid in proceedings arising out of the Bihar Electricity Act, 2003 in a matter relating to theft of electricity. The writ petition is drafted in Hindi Devnagari Script which issue stands referred herein to be resolved by a Full Bench.

2. The communicative language in Courts for navigating facts and law right from the common man upto the highest echelons involved in litigation and the concern for promotion of Hindi language in Courts is the vibrant issue that has been raised before us in the context of a Constitutional interpretation of the Notification promulgated by the State of Bihar wayback in the year 1972. The common use of communicative language and its barriers are dispelled when an ordinary citizen travels from north to south by road or by train and reaches his destiny comfortably. There is an assimilation of the common communicative language of different regions in a way that makes it easy for a common man to complete his pilgrimage of this vast nation either as a devout follower or as



a traveller or a professional adventurer. This unique blending of communication in this vast country in all directions therefore has promoted a commonality of communicative skills.

3. In today's specialized professional world the legal professionals and the litigants expect that their concerns are transported and transmitted through effective ideas and expressions before a Court of law in a language that fulfils the duality of communication and clarity of understanding. The brilliance of any human expression emanates from the spark that is ignited by ideas, whatever be the language employed to communicate the same. This freedom of expression in the language of one's choice is engrained in the Constitution. The concern about the growth, adaptation and convenient use of the Hindi Devnagari Script in the High Court is being canvassed that we have been called upon to delve into in the light of the constitutional provisions and the Rules of the High Court in this regard.

4. There is therefore a hidden compulsion which still continues to persist for the use of English language in all governmental spheres including Courts as a result of the global impact in the legal world. To strike a balance and to view the problem from this angle would in my opinion be an



appropriate way to arrive at a workable solution.

5. The petition upon being entertained was heard by a Division Bench and finding itself in disagreement with the view expressed by a Co-ordinate Division Bench in the case of **Binay Kumar Singh vs. Bihar State Electricity Board and Ors.** reported in **2010(3) BLJ (PHC) 83**, the Bench referred the matter as it felt that the issue had not been correctly decided in the case of **Binay Kumar Singh** (supra). The order dated 1st May, 2015 is extracted hereinunder:-

“The writ application has been filed in Hindi. In support of the right of the petitioner to file a writ petition also in Hindi, learned counsel for the petitioner relies upon a Division Bench Judgment of this Court in the case of Binay Kumar Singh Vs. Bihar State Electricity Board and Ors.:2010 (3) BLJ PHC –83 in which setting aside the decision of a learned Single Judge reported in 2003 (2) BLJ 419, it was held by the Division Bench that the State Government notification dated 09.05.1972 makes exception to permit writ petition under Articles 226 and 227 of the Constitution of India to be filed in English also and does not detract from the original provision providing for Hindi as an alternative language for presentation of applications supported by affidavits and which shall include writ petitions also.

We are unable to agree with the aforesaid conclusion of the Division



Bench, the effect of which would be obliterating the distinction made in the government notification dated 09.05.1972 with regard to alternative use of Hindi apart from English in arguments before the High Court in all civil and criminal matters and for filing applications with affidavit.

Having provided for the alternative use of Hindi apart from English for such purposes, an exception has clearly been carved out in the said notification that with regard to Articles 226 and 227 of the Constitution, the same shall continue to be presented in English. It further says that similarly for tax reference also the applications shall be presented only in English.

In our view the Division Bench in Binay Kumar Singh's case (supra) has failed to consider the said aspect of the matter. The purpose of the notification was firstly as a general rule to permit use of Hindi as alternative language in all criminal and civil proceedings in the High Court including for the presentation of applications with affidavit; thereafter, it specifically carved out an exception with regard to Articles 226 and 227 of the Constitution. If the writ petition were to be treated on the same footing as other applications in civil and criminal matters then there would have been no need to carve out an exception with regard to them.

The Division Bench has also not taken into account the use of the words "isi prakar" in the notification with regard to tax reference stating that they shall



also be continued to be presented only in English; but came to the conclusion that the notification basically provided for the tax reference permitting application in no other language except English. Since the word “isi prakar” for tax reference would obviously make them as having been categorized alongwith the applications under Articles 226 and 227 of the Constitution, thus, two separate conclusions could not have been drawn with regard to a writ petition and tax reference as the aforesaid Division Bench has done.

We are of the view that the issue aforesaid in Binay Kumar Singh’s case (supra) has not been correctly decided. The matter is accordingly referred to a Full Bench of this Court.”

6. Accordingly, a Full Bench was constituted but it appears that the matter could not be taken up earlier nor the Bench appears to have been constituted subsequently whereafter the matter was placed before the Chief Justice and a fresh nomination was made on 3rd of January, 2019.

7. This Bench heard the matter on 24th January, 2019 and keeping in view the impact of the issue raised the following order was passed:-

“Heard Shri Indradeo Prasad, learned counsel for the petitioner; and Shri Lalit Kishore, the learned Advocate General as well as Shri Yogendra Prasad Sinha, the



learned Additional Advocate General on behalf of the State of Bihar.

The issue raised before this Full Bench relates to the interpretation of the language employed in the Notification dated 09th of May, 1972 in the context of the reference made for being answered by this Full Bench.

On deliberations, we find that it would be more appropriate that if the said Notification dated 09th May, 1972 is revisited upon the advice by the learned Advocate General by the State Government in order to appropriately cater to the requirement in the present context after the advent of the Constitution of India keeping in view the fact that the State of Bihar is one of the States of Hindi heartland.

In our opinion, the option of the use of language in drafting petitions etc, without putting the Court proceedings in the High Court to any inconvenience, can be in optional languages insofar as presentation of petition is concerned, but it has to be in conformity with Article 348 of the Constitution of India read with the Official Languages Act, 1963 as well as the binding judicial pronouncements on the issue.

Thus, in order to resolve the said reference, it would be more appropriate that the matter is revisited by the Government and an appropriate information is made available to this Court for proceeding further in the matter. The learned Advocate General shall also provide an English version of the Notification dated 09th of May, 1972.



The learned Advocate General prays that four weeks' time be granted for the same.

Let the matter be adjourned for a period of four weeks. The Full Bench shall be notified on 07th of March, 2019.

The names of the learned counsel for all intervenors and the name of Shri Harpal Singh Rana, in person, shall also be shown in the cause list."

8. The matter was heard on previous occasions whereafter the judgment was reserved by the Bench.

9. To point out the conflict, at the very outset I may note the decisions and orders passed by different Benches of this Court that have been brought to our notice giving rise to this reference.

10. A writ petition CWJC No. 2825 of 1995 (**Swaran Singh Bagga vs. N.N. Singh, Registrar**) was presented in Hindi and when it came up before the learned Single Judge of this Court, the writ petition was dismissed in the absence of the petitioner noting that in view of the provisions of Article 348 of the Constitution of India the petition was totally misconceived and was accordingly dismissed. The order dated 05.05.1995 is extracted hereinunder:-

"None appears for the petitioner.

This petition is wholly misconceived and is liable to be dismissed in limine



inasmuch as as per mandates of Article 348 of the Constitution, until parliament by law otherwise provides all proceedings in every High Court shall be in English Language.

This petition is, accordingly, dismissed.”

11. The petitioner again appeared in person and mentioned the matter whereupon the Court on his mention again considered his request and rejected the same finding no reason to modify the order dated 05.05.1995. The order dated 15.05.1995 is extracted hereinunder:-

“On 5.5.1995 this petition was posted for orders on office note. It was pointed out by the office that the petition was defective inasmuch as no averment was made in the petition that the petitioner did not approach this Court earlier on the same subject matter.

None appeared on that date for the petitioner. The petition appears to have been filed by way of espousing public interest. The petition is in Hindi. The statements made are not supported by an affidavit. On that count alone the petition ought not to have been entertained.

On perusal of the petition, I found that the petition was, ex facie, misconceived and not maintainable inasmuch as as per mandate of Article 348 of the Constitution, the proceeding in every High Courts is to be in English



language unless and until Parliament by making law provides otherwise. No public interest is involved in the petition. As the petition is wholly misconceived, by the order dated 5.5.1995, I dismissed the petition.

On the prayer of the petitioner this petition has been listed today under the heading "To Be Mentioned" as the petition was not heard on 5.5.1995 before passing the order.

I have heard the petitioner in person.

Upon hearing the petitioner in person I do not find any reason to modify my order dated 5.5.1995."

12. The petitioner filed LPA No. 600 of 1995 assailing the aforesaid order that was dismissed on 21st July, 1995 which order is reported in **2003(1) PLJR 315 (Swaran Singh Bagga vs. N.N. Singh, Registrar)** and is extracted hereinbelow:-

"This Letters Patent Appeal is directed against the Judgment of a learned single judge dated 5.5.95 passed in C.W.J.C. No. 2825 of 1995, who has dismissed the same by referring to Article 348 of the Constitution of India.

2. The prayer of the appellant was that all proceedings in the High Court must be in Hindi, arguments should be advanced in Hindi and judgment should also be delivered in Hindi. This prayer



possibly cannot be granted. There is no bar for any person to file an application in Hindi nor is there any bar for any person to advance argument in Hindi and in fact in several cases this is being accepted by this Court.

3. In that view of the matter, we see no justification in entertaining this appeal. It, accordingly, stands rejected.”

13. This issue again cropped up when a writ petition was filed in Hindi Devnagari Script by one Binay Kumar Singh and a learned Single Judge of this Court in the judgment reported in **2003 (2) BLJ 418** after considering the judgment in the case of **Swaran Singh Bagga** (supra) and another judgment of learned Single Judge in **CWJC No. 1948 of 2002 (Lal Bihar Sao v. Bihar State through the Chief Secretary, Government of Bihar)** decided on 09.07.2002 and the dismissal of LPA No. 910 of 2002 in the same case, came to the conclusion that a writ petition under Article 226/227 of the Constitution of India can be presented in the Patna High Court only in English language. The said decision was taken up in appeal in LPA No. 475 of 2003 reported in **2010(3) BLJ (PHC) 83**. The Division Bench set aside the judgment of the learned Single Judge and came to the conclusion that there is no prohibition in the institution of an application under Article 226 and 227 of the Constitution of India in a language other



than in English. The Bench held that the Notification dated 9th May, 1972 reflects that Hindi shall be the alternative language in the High Court in Civil and Criminal matters and other applications supported by an affidavit. It further went on to hold that the provisos would not control the substantive provision of Clause (1) and Clause (2) of the Notification dated 9th May, 1972. The Division Bench also referred to the earlier Division Bench Judgment in the case of **Swaran Singh Bagga** (supra) and ruled accordingly.

14. Another Division Bench in the case of **Jai Prakash (Advocate) vs. State of Bihar & Ors. (CWJC No. 17101 of 2016)** decided on 30th March, 2017 specifically raising the issue of a writ petition under Article 226 being presented in Hindi held that there was no such bar and relying on the judgment in the case of **Binay Kumar Singh** (supra) and referring to the decision of **Swaran Singh Bagga** (supra) came to the conclusion that a petition can be filed in Hindi and arguments can be advanced in the same language. The judgment is reported in **2017(3) BLJ (PHC) 113** and is extracted hereinunder:-

“The grievance of the petitioner in the matter of use of Hindi for filing writ application and other proceedings has already been taken note of and similar



issues decided by Benches of this Court in the case of Binay Kumar. Singh vs. Bihar State Electricity Board & Ors., 2010 (3) BLJ 83 and Swaran Singh Bagga vs. N.N. Singh, Registrar, 2003 (1) PLJR 315 wherein, the issue has been taken note of and it has been held that any person can file an application or petition in Hindi and also advance arguments in Hindi.

2. That being the legal position, as is made out from the aforesaid judgments, liberty is already available to the petitioner for filing applications and petitions in Hindi and for advancing arguments also in Hindi. That being so, once the issue stands decided by the aforesaid judgments, no further directions are required to be issued in this petition.

3. The writ petition stands disposed of in terms of the order already passed as indicated hereinabove.

15. It appears that the said judgment was delivered on 30th March, 2017, in spite of the matter having been referred in this case in the year 2015 itself, and without noticing the referring order.

16. It is in this context that we find that issues relating to the freedom of speech and expression as guaranteed under the Constitution coupled with the use of Hindi Devnagari Script in filing of petitions to be recognized as an



official language of the Court is the gravamen of this reference. The right to avail a Constitutional remedy by filing a petition under Article 226 and 227 of the Constitution of India in Hindi Devnagari Script is the argument advanced on behalf of the petitioner and that is sought to be supplemented by the submissions of five intervenors who have filed their applications praying for intervention who have also been heard in the matter. I.A. No. 180 of 2017 has been filed by an Advocate of this Court Sri Vishwaranjan Choudhary raising his grievance in this regard. On a similar footing I.A. No. 265 of 2017 has been filed by another Advocate Sri Sunil Kumar Singh. This is followed by I.A. No. 3 of 2019 by individual Sri Harpal Singh Rana claiming himself to be espousing the cause of Hindi in public interest who has brought on record certain documents through his application in affidavits. Similar pleas have been raised by one Dr. Ajit Kumar Pathak claiming himself to be a convenor of propagation of Indian languages in the State of Bihar by filing I.A. No. 4 of 2019. The fifth application is by an office bearer of a registered society claiming himself to be espousing this cause namely Rajdeo Prasad Verma numbered as I.A. No. 5 of 2019. In essence, the applications pray for the same relief almost on the same grounds.



17. Apart from the other issues raised which displays passion in favour of the Hindi language being used in Courts, we find that in I.A. No. 265 of 2017 filed by Sri Vishwaranjan Choudhary and that by Sri Sunil Kumar Singh who are Advocates of this Court have gone to the extent of criticizing the resistance to Hindi language as a punishable offence categorizing it as sedition and also contempt. Encouraged by such affidavits a supplementary affidavit has been filed by the petitioner himself going to the extent of saying that this right to use Hindi as a language of any citizen of the country cannot be snatched away even by the Judges of this Court when most of the Judges very readily entertain applications drafted in Hindi. We find that sentiments and passion combined with the zeal to promote Hindi language may have impelled the said intervenors and the petitioner to have ventilated their ideas in the shape of criticism but we would advise that care should be taken while raising such issues to confine it to the Constitutional and legal contours within which the pleadings should be contained in a petition. Unnecessary submissions and slogans should be avoided as petitions are supposed to be drafted in a dignified language and any superfluousness should be avoided. We may aptly refer to the judgment of the Apex Court in the case of **Captain Virender Kumar vs. Union of India & Ors.** reported in **1993**



Suppl. (4) SCC 24 where the Apex Court observed that a petition should be drafted in a dignified language and should not abound in the use of unwarranted adjectives. Decency in presentation and precision in expression smoothens the receptivity of the issue raised and the Courts to have a quick grasp of the facts and the question of law raised. Utilization of surplusage also aids in unnecessary deviations on the issue and particularly in this matter where any political, religious and such like leanings should be avoided. The focus therefore has to be on the Constitutional aspiration which we have given to ourselves that is acceptable to the society at large, and may not be viewed as an imposition. The historical background in which the intervenors have raised their submissions complain of the deprivation of life and liberty of the freedom fighters on account of disallowance of such use the vernacular language in Courts during the colonial era. They have ventilated the huge disadvantages suffered by teeming millions while facing criminal trials during the freedom struggle and therefore they contend that the Constitution took special care in unifying the nation through one official language to be used by everyone obligated to look after the affairs of the Union and the State.

18. The petitioner prays, and rather insists, that the written language in writ petitions to be filed under Article 226



and 227 of the Constitution of India in the Patna High Court should be permitted to be filed using Hindi in Devanagari script as a language for seeking relief before this Court.

19. Spoken language in the Court has gradually included native vernacular expressions but the written language in the High Court continues to be governed by the practice and procedure as prescribed in Rule 1 of Part-II under Chapter III of the Rules of the High Court at Patna. The same is extracted hereunder:-

“1. Every application to the High Court shall be by a petition written in the English language.”

20. The contents of the affidavit and the manner of its presentation is provided for under the aforesaid Chapter-III. The affidavit to be filed in support has to be sworn before an Oath Commissioner under the provisions of the Indian Oaths Act, 1873 and Rule 18 of the same Chapter is extracted hereunder which requires the affidavit to be read and explained to the declarant in a language which he understands. Rule 18 is as follows:-

18. The Commissioner before whom any verification of a petition or any affidavit is about to be made shall, before the same is made, ask the person proposing to make such verification or affidavit if he has read the petition or affidavit, and understands its



contents, and if the person proposing to make such verification states that he has not read the petition or affidavit, or appears not to understand its contents, the Commissioner shall before allowing the verification or affidavit to be made, **cause it to be read and explained to the declarant in a language which he understands.**

Rule 23 of the same Rules reads as under:-

“23. No petition or affidavit shall be read or used in the High Court which does not comply with the provisions of this Chapter.

Provided that the affidavits of counter affidavits that are to be filed in the writ petitions or appeals arising therefrom to be filed in the High Court, may be sworn and subscribed by the Government Officers before the Government Pleader or Public Prosecutor who are hereby appointed as Oath Commissioner or before any Advocate so appointed by the High Court, in the district in which the officer who deposes the affidavit or counter affidavit, is working subject to any specific direction to the contrary.”

21. Under Chapter IV of the High Court Rules with regard to applications for certificate to appeal to the Supreme Court, the original records which are required to be transmitted provides for transcription of the records in English language as is evident from Rule 12 (a) (b) of Chapter IV which is extracted hereunder:-



“12.(a) Where the proceeding from which the appeal arises, had, in this Court or in the courts below, been in English language, the Registrar shall, unless otherwise ordered by the Supreme Court, transmit to the Court at the expenses of the appellant, the original record of the case including the record of the Court below, soon after the receipt from that Court, of the copy of the petition of appeal.

(b) Where the proceedings from which the appeal arises, had in this Court or in the courts below, not been in English language, the Registrar shall within six months from the date of the service on the respondent of the notice of the petition of appeal, transmit to the Court in triplicate, **a transcript in English, of the record proper of the appeal to be laid before the Court**, one copy of which shall be duly authenticated and no original record shall be transmitted until specifically requisitioned.”

22. The framers of the Constitution were conscious of the diversity of languages prevalent in the country and therefore, for the purpose of “Official” language Part XVII of the Constitution of the India incorporated Article 343 which provides as under:-

“343. Official language of the Union. – (1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the



international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of –

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in the law.”

23. Article 344 provides for the Constitution of Commission and a Committee of Parliament on official languages to review the progressive use of Hindi language for official purposes and the restrictions on the use of English language for all or any of the official purposes of the Union including the language to be used under Article 348 of the Constitution of India. Chapter-II of Part XVII provides for regional languages and the Legislature of the State has been



authorised under the Constitution to adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of the State with a proviso that the English language shall continue to be used for those official purposes for which it was being used immediately before the commencement of the Constitution.

24. In contrast thereto the relevant provisions for the present purpose are Articles 348 and 349 of the Constitution of India that are extracted hereinunder:-

“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.

“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.”

25. Under the Chapter of Special Directives, Article 350-A provides for every State to endeavour to provide facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups.



26. An important directive is contained in Article 351 for the development of the Hindi language which is as follows:-

“351. Directive for development of the Hindi language.— It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.”

27. The languages that are included in the Eighth Schedule of the Constitution including Hindi are as follows:-

Eighth Schedule

1. Assamese.
2. Bengali.
3. Bodo.
4. Dogri.
5. Gujarati.
6. **Hindi.**
7. Kannada.
8. Kashmiri.



9. Konkani.
10. Maithili.
11. Malayalam.
12. Manipuri.
13. Marathi.
14. Nepali.
15. Odia.
16. Punjabi.
17. Sanskrit.
18. Santhali.
19. Sindhi.
20. Tamil.
21. Telugu.
22. Urdu.

28. Article 348 mandates that all proceedings in the Supreme Court and every High Court shall be in English language subject to sub-article (2) which categorically provides the authorization of the use of Hindi language or any other language for any official purposes in proceedings in the High Court provided that the same shall not apply to any judgement, decree or order passed or made by the High Court. Thus, the medium of written or spoken language in proceedings of the High Court can also be in Hindi subject to any such Notification to be promulgated by the Governor of the State.

29. In the instant case, the Notification dated 9th of May, 1972 exists, carving out an exception that the alternative use of Hindi apart from English is permissible for proceedings in the High Court except in relation to petitions under Articles



226 and 227 of the Constitution of India and references arising out of Tax matters. The Notification dated 9th May, 1972 is extracted hereinunder:-

मंत्रिमंडल (राजभाषा) सचिवालय

अधिसूचना

9 मई, 1972

सं० 31 हि 3-5043168.....185 रा० संविधान के अनुच्छेद 348 के खंड (2) एवं आफिसियल लैंग्वेज ऐक्ट, 1963 (अधिनियम 19, 1963) की धारा 7 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए बिहार राज्यपाल राष्ट्रपति की पूर्व सम्मति से, उच्च न्यायालय में निम्नांकित कार्यवाहियों के लिये हिन्दी भाषा का वैकल्पिक प्रयोग करने के लिये प्राधिकृत करते हैं :-

(1) पटना उच्च न्यायालय के समक्ष दीवानी तथा फौजदारी मामलों में बहस करने के लिये।

(2) शपथ-पत्रों सहित आवेदन प्रस्तुत करने के लिये :

किन्तु अपवाद स्वरूप भारतीय संविधान के अनुच्छेद 226 और 227 के अधीन प्रस्तुत किए जाने वाले आवेदनों के लिये अंग्रेजी का प्रयोग किया जाता रहेगा। आवेदनों से संलग्न अनुबंध का अंग्रेजी में होना आवश्यक नहीं होगा। इसी प्रकार कर निर्देश (टैक्स रेफरेंसेज) से संबंधित आवेदन भी केवल अंग्रेजी में प्रस्तुत किये जाते रहेगे। खास-खास मामलों में, पटना उच्च न्यायालय हिन्दी के कागजात का अंग्रेजी में अनुवाद कराने का आदेश दे सकेगा।

(3) पटना उच्च न्यायालय द्वारा पारित या दिए जाने वाले किसी निर्णय बिक्री या आदेश के लिये किन्तु जहां कोई निर्णय बिक्री या आदेश हिन्दी में पारित किया या दिया जाएगा, वहां पटना उच्च न्यायालय के प्राधिकार से निकाला गया अंग्रेजी अनुवाद साथ में दिया जायेगा।



30. The English translated version of the said Notification as filed along with the counter affidavit of the State, and not the official gazette, is extracted hereinunder:-

“Cabinet (Rajbhasha) Secretariat

Notification

09th May, 1972

No.3/Hi 3-5043/68-185-Ra- In exercise of the powers conferred under Article 348(2) of the Constitution and Section 7 of Official Languages Act, 1963 (Act 19, 1963) the Governor of Bihar with the previous consent of the President **authorises the alternative use of Hindi language in the High Court** in following proceedings:-

(1) **For arguments in civil and criminal cases before Patna High Court.**

(2) **For submitting application with affidavits:**
However **English shall continue to be used for applications submitted under Article 226 & 227 of the Constitution of India as an exception. Annexure attached to the applications shall not be required in English. Similarly, application connected with the tax reference shall continue to be submitted in English as well.** In Special cases the Patna High Court may make an order to translate Hindi papers into English.

(3) Where any decision, decree or order shall be passed or pronounced by the Patna High Court in Hindi, there English translation by the authority of Patna High Court shall be given together.”

31. At this stage, we may bring on record that as



per the provisions of Article 344 of the Constitution of India, the Committee and the Commission that was constituted that came to be debated before the Parliament culminated in the passing of the Official Languages Act, 1963. Section 2(b) thereof defines Hindi as follows:-

2 (b) “Hindi” means Hindi in Devanagari script.”

32. Section 3 of the Act provides for continuance of English language for official purposes of the Union and the Parliament. Section 4 provides for the establishment of a Committee after the expiry of ten years of the enforcement of the Act to review the progress made in the use of Hindi for official purposes. Section 5 provides that a translation in Hindi of any Central Act or an Ordinance promulgated by the President shall be deemed to be the authoritative text thereof in Hindi. It is also provided therein that all Bills to be introduced in the Parliament the authoritative text in English shall be accompanied by a translation of the same in Hindi and authorized in such manner as may be prescribed by Rules.

33. Section 7 in relation to any judgement, decree or order passed by the High Court provides as under:-

“7. Optional use of Hindi or other official language in judgments, etc., of High Courts. – As from the appointed day or any day thereafter, the Governor of a State may, with the previous consent of the President,



authorise the use of Hindi or the official language of the State, in addition to the English language, for the purposes of any judgment, decree or order passed or made by the High Court for that State and where any judgment, decree or order is passed or made in any such language (other than the English language), it shall be accompanied by a translation of the same in the English language issued under the authority of the High Court.

34. The use of language, therefore, in the High Court in the above legal background as a written and a spoken language also includes Hindi subject to the exception carved out in the Notification dated 9th of May, 1972. It is this frontier determined under the Notification issued under Article 348(2) of the Constitution of India that is sought to be questioned by contending that if the constitutional aspiration and intendment is to ensure the progressive use of Hindi language, then the High Court should not be lagging behind in enforcing the same and to that extent the petitioner prays that this barrier of language in respect of writ petitions under Articles 226 and 227 of the Constitution of India should be lifted and the bar of language of written language to be utilized for such purpose should be raised, and rather erased, so as to enable a complete freedom of filing of writ petitions in Hindi Devanagari script.



35. For this, various decisions of this Court and of the Apex Court have been cited at the Bar contending that such use has been made permissible and any conflict which has arisen on account of opposed judgements, the same should be resolved leaning in favour of allowing the use of the Hindi Devanagari script for the purpose of presenting applications and petitions tendered under the writ jurisdiction of this Court.

36. The thrust of the submissions lays stress on the progressive use of Hindi language under the Constitution particularly in this State which is part of the Hindi heartland of this Country. The common everyday use of language in the State by the public at large is a predominant feature that is sought to be directly connected with the system of dispensation of justice with an urge that this barrier under the Rules should be hoisted as it is a hindrance to the public at large, the legal profession and not in tune with the constitutional aspirations.

37. The legal impasse that was required to be cleared, for that we passed an order on 24th January, 2019 to the following effect:-

“Heard Shri Indradeo Prasad, learned counsel for the petitioner, and Shri Lalit Kishore, the learned Advocate General as well as Shri Yogendra Prasad Sinha, the learned Additional Advocate General on behalf of the State of Bihar.

The issue raised before this Full Bench relates to the interpretation of the



language employed in the Notification dated 09th of May, 1972 in the context of the reference made for being answered by this Full Bench.

On deliberations, we find that it would be more appropriate that if the said Notification dated 09th May, 1972 is revisited upon the advice by the learned Advocate General by the State Government in order to appropriately cater to the requirement in the present context after the advent of the Constitution of India keeping in view the fact that the State of Bihar is one of the States of Hindi heartland.

In our opinion, the option of the use of language in drafting petitions etc, without putting the Court proceedings in the High Court to any inconvenience, can be in optional languages insofar as presentation of petition is concerned, but it has to be in conformity with Article 348 of the Constitution of India read with the Official Languages Act, 1963 as well as the binding judicial pronouncements on the issue.

Thus, in order to resolve the said reference, **it would be more appropriate that the matter is revisited by the Government and an appropriate information is made available to this Court for proceeding further in the matter. The learned Advocate General shall also provide an English version of the Notification dated 09th of May, 1972.**

The learned Advocate General prays that four weeks' time be granted for the same.

Let the matter be adjourned for a period of four weeks. The Full Bench shall be



notified on 07th of March, 2019.

The names of the learned counsel for all intervenors and the name of Shri Harpal Singh Rana, in person, shall also be shown in the cause list.”

38. The State, however, filed a counter affidavit through the Principal Secretary, Cabinet Secretariat and paragraphs 8 to 11 are extracted hereinunder:-

“8. That in Article 348 of the Constitution of India, it is mentioned that the language be used in Supreme Court and High Court shall be English until Parliament may make law otherwise provide. In Article 348 (2) of Constitution of India, it is stated that the Governor of a State may with the previous consent of the President, authorized use of Hindi language or any other language for any official purpose of the state in proceeding in the High Court having its principal seat in that state.

9. That in the exercise of power conferred by Article 348(2) of Constitution of India and under section 7 of the Official Languages Act 1963 the Hon’ble Governor of Bihar with previous consent of Hon’ble President of India issued notification vide memo no. 185, dated 09.05.1972, whereby it provides the alternative use of Hindi language in the High Court in following proceedings:-

- (i) For arguments in civil and criminal cases before Patna High Court.
- (ii) For submitting application with affidavits.
- (iii) However, English shall continue to be used for applications submitted under Article



226 & 227 of Constitution of India. Annexure attached to the applications shall not be required in English. Similarly application connected with the tax reference shall continue to be submitted in English as well. In special cases the Patna High Court may make an order to translate Hindi papers into English.

(iv) Where decision, decree or order shall be passed or pronounced by the Patna High Court in Hindi, there English translation by the authority of Patna High Court shall be given together.

10. That, after perusal of said notification it can be said that in broader sense the purpose of the notification is firstly to provide a general rule to permit use of Hindi as alternative language in all criminal and civil proceedings for presentation of applications with affidavit in the High Court, **but it has been clearly carved out an exception in the said notification that with regard to Article 226 & 227 of the Constitution of India, the writ application shall continue to be presented in English.**

11. **That, the word 'isi parkar' mentioned in said notification dated 09th May 1972 has been clearly categoried along with tax references and applications under Article 226 & 227 on same footing that application shall be presented only in English."**

39. There is, therefore, no inclination on the part of



the State to alter its stand and to maintain status quo in spite of a long opportunity since January, 2019 provided by the Court.

40. A conspectus of the provisions referred to above would therefore establish that the constitutional ethos rests on the promotion of the use of a National language to be commonly used for official purposes, namely, Hindi. Thus, read with the constitutional provisions, the status of Hindi in the 8th Schedule places it at pedestal as an official disposition medium so as to unite the entire nation in its official work through a National official language, namely, the Hindi. This therefore is the preamble that focuses on the propagation and use of the Hindi language in Devanangari script. The constitutional battle that preceded the incorporation of Chapter XVII in the Constitution and its consequential impact and progress together with the criticism and the impediments have been discussed in usual scholarly style of the celebrated constitutional expert H. M. Seervai in Chapter XXIII of Volume -3 of the Fourth Edition of the Constitutional Law of India. Paras 23.1 to 23.15 deserve to be extracted for an immediate overall view as reflected in the thoughts of the author. The same is extracted hereinunder:-

“23.1. Part XVII of our Constitution deals with “Official Language”. Chapter I deals with the language of the Union (Arts. 343 and 344), Chapter II with regional languages (Arts.345 to 347), Chapter



III with the language of the Sup. Ct. and the High Courts, etc. (Arts.348 and 349) and Chapter IV with special directives (Arts.350 and 351). Art.343 (1) provides that the official language of the Union shall be Hindi in the Devanagari script, and although Art. 351 is a special directive it is generally agreed that it furnishes a definition of the word *Hindi* in Art.343(1). It may seem strange that Art.351 should indicate that new words should be chosen primarily from Sanskrit and secondarily from other languages but a history of this provision enables us to understand this definition even though it may not justify it. The reference in Art.351 to Sanskrit, and its inclusion in Sch. VIII as one of the languages of India, requires a brief explanation. Sanskrit is one of the most important Indo-European languages from which a large number of languages spoken in India have sprung. It has been said that:

“The classical Literature of India is almost entirely a product of artificial growth, in the sense that its vehicle was not the language of the general body of the people, but of a small and educated class.... But there is no reason why, even with the existence of local dialects, the literary language should not have kept in touch with the people in India, as elsewhere, save for the fact that from a certain time that language remained altogether stationary, allowing the vernacular dialects more and more to diverge from it.” (Encyclopaedia Britannica (1957) Vol. 19. pp. 961-2.)

With the advent of the Moghuls in India and the consolidation of their empire, Persian became the court language and the language of official business, Urdu developing as a language of the camp or the market place. With the advent of the English and the consolidation of their power, English became the



official language.

23.2 The provisions of our Constitution relating to language have raised no serious questions of legal interpretation, but they have raised serious political problems. It is outside the scope of this work to describe in detail the various phases of the controversy about language which resulted in the enactment of Part XVII of our Constitution. Nor is it necessary to do so, for a well documented and vivid account of the forces at play has been given by Austin (Granville Austin. The Indian Constitution- Cornerstone of a Nation, pp.264-307) in his chapter entitled “Language and the Constitution – the Half-hearted Compromise”. The chapter repays study, but its effect may be stated thus: in his struggle for political freedom, Mahatma Gandhi raised the question of a national language. He described it at times as Hindi, and at times as Hindustani, but he understood by both a language which was neither Sanskritised Hindi nor Persianised Urdu, but a happy blend of both, written either in the Devanagari or the Persian script. However the question of language did not receive much attention till it was forced upon the Constituent Assembly. On political and psychological grounds there was a general demand for a national language. But difficulties became apparent when that demand had to be translated into constitutional provisions. The need for unity among the Indian people was undisputed, and English had supplied that basic unity by uniting the people of the North, whose language was derived from Sanskrit or Persian, and the people of the South speaking Dravidian languages which were not so derived. Again, administration at



the higher levels, higher education, the legislature, the law courts, and the professions, all used English, and the question was which language should take the place of English and when? Till the partition of India, Hindustani in both the Devanagari and the Persian script held the field. With the partition of India the cause of Hindustani was lost, though Mahatma Gandhi held that the Indian National Congress ought to stand for a broad outlook and should stand firm on a language which was spoken by the largest group of people. Though Hindi was selected as the official language, it could not be described as the national language, for it was not the language generally spoken in all parts of India, and though spoken by the largest single group of people, that group did not constitute the majority of people in India. Besides, there were regional languages such as Bengali in Bengal, Tamil in Madras, Marathi and Gujarati in the erstwhile State of Bombay which were spoken by large populations and it was claimed for those languages that they were more developed than Hindi. Hindi was therefore described as the official languages. In the Constituent Assembly, the protagonists of Hindi were prepared to abandon the basis of consensus on which the Assembly had functioned; but their extreme methods provoked a reaction and some who had supported them earlier withdrew their support. The leaders of the Congress party, who formed the government of the day, counselled moderation, for they were brought in close contact with the difficulties involved in making the transition from English to an Indian language. It appeared at one stage that the unity which had existed in the Constituent Assembly would break down on



the provisions relating to language. But at the last moment, a compromise formula called the “Munshi-Ayyangar formula” was evolved and was accepted without dissent. It was a half-hearted compromise, for it gave to neither party what it wanted. Pandit Jawaharlal Nehru told the Constituent Assembly, that he would not have accepted Hindi as the official language if express provision had not been made that Hindi did not exclude Hindustani, that it was not to be the language of a learned coterie and that Hindi was to be based on the composite culture of India assimilating words from all languages. A period of 15 years was provided during which English was to continue but this was a flexible limit, for Parliament could extend it. The battle over numerals was settled in favour of “the international form of India numerals” – a euphemism for Arabic numerals, with a proviso that after 15 years Parliament might by law provide for the use of the Devanagari form of numerals for such purposes as may be specified.

23.3. Having regard to the place given to the Union in our Constitution, the importance of the official language of the Union cannot be overrated. It becomes the all- India language of public administration and necessarily of the Union Public Services. As it was conceded that Hindi was not immediately adequate to take the place of English, it became necessary to provide for its development and Art. 344 devised the machinery of a Commission on official language and a Committee of the two Houses of Parliament to ensure the development of Hindi and its progressive substitution for English. Art.344 (3) directed that in making recommendations:

“The Commission shall have due regard to the



industrial, cultural and scientific advancement of India, and the just claims and the interest of persons belonging to the non- Hindi speaking areas in regard to the public services.”

The qualifications contained in the sub-Article are many and point to the difficulty involved in the process of transition. Large industrial concerns operate all over India so that if the regional language ruled in each State, serious problems of communication between different branches of the same concern in different parts of India would arise. The transferability of the staff which, except for the lowest class of employees, is a feature of all-India Corporations, would be destroyed. As regards the cultural and scientific advancement of India, the impact of mind on mind, and the free inter-change of literary and scientific knowledge is essential, if a broad national outlook is not to be lost. Article 351 no doubt suggests that a language can be built up by resorting to Sanskrit lexicons and substituting a Sanskrit word for an English equivalent. But languages cannot be made to order, and unless the words used “come home to men’s business and bosoms”. (Bacon, in the Dedication to his *Essays*) they will secure no hold on the minds or the hearts of men. The task of providing a Hindi version of the Constitution of India proved unattainable and had to be abandoned. (Austin, op. cit. 281-3, 285-7. “By the summer of 1948, the Hindi translation as well as a Hindustani translation had been completed. Nehru saw a copy and wrote to Prasad ‘that he did not understand a word of it.’” *ibid.* p. 282). In the atmosphere prevalent at that time, it was not possible to learn the lesson furnished by Europe, namely, that a ruling language can be displaced by a native language only when it has reached sufficient development and receives general acceptance. For centuries Latin was the universal language of intellectual life in Europe. Later, French became the lingua Franca of Europe, but was



gradually displaced in Germany and Russia as soon as German and Russian became well-developed languages.

23.4 As the period of 15 years mentioned in Article 343 began to draw near, proposals to substitute Hindi in place of English were met by threats of violent disturbances in South India on the occasion of the proposed visit of the President of India to Madras. The Prime Minister, Pandit Jawaharlal Nehru, gave an assurance that English would not be replaced by Hindi and the status quo would be maintained till the non-Hindi speaking people desired a change. In 1963, the Official Languages Act, 1963, was enacted, which continued the use of English after January 26, 1965. The provisions of that Act will be considered later.

23.5 The literature on the subject of an all-India language is vast. The objection to the substitution of Hindi is based on the ground that it would put the non-Hindi speaking people at a great disadvantage in the field of education, in public services and in the professions. For, whereas Hindi would be the mother tongue of a large group which still constitutes the minority of India, non-Hindi speaking people would have to learn Hindi, in addition to the mother tongue, as a classical or foreign language. To meet the situation, the Ministry of Education has devised what is called the “three-language formula” involving a knowledge of the mother tongue, of Hindi, and of English as a language which maintains our contact with the outside world. For those whose mother tongue is Hindi the formula involves the learning of another Indian language, preferably a language of the South of India. There can be no doubt that a successful implementation of this programme might give us a common Indian language for the whole country, and would also enable us to draw on the resources of English, which is one of the richest and most widely spoken



languages of the world, in which our political, parliamentary, judicial and educational institutions are deeply rooted.

23.6 The provisions relating to language make no reference to education and the medium of instruction, but the co-ordination and determination of standards of higher education is a topic of exclusive parliamentary legislation and since 3.1.76 entry 25 in List III makes education a subject of concurrent legislation, (Entry 25, List III: Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64,65 and 66 of List I; vocational and technical training of labour) and the Sup. Ct. has already held that the imposition of a regional language as a compulsory medium of instruction is beyond the powers of the State legislatures. (Gujarat University v. Krishan Raghunath Mudholkar (1963) Supp. 1 S.C.R. 112, ('63) A.SC. 703.) It is submitted that in a University constituted for a big city like Bombay, when the Act governing the University requires every college in the city to be affiliated to the University in order to prepare its students for university degrees, it would not be possible to substitute a regional language as a compulsory medium of instruction in place of English without violating Art. 14. The distinction between English and Hindi on the one hand and the other languages mentioned in Sch. VIII is this: English was and is a *de facto* medium of instruction in various Universities. The Constitution and the Official Languages Act have continued its use for official purposes of the Union of India. Therefore, English stands in a class by itself, because of historical reasons and because of express constitutional and legislative provisions. Hindi also occupies a position by itself. It is the official language of the Union of India and the Constitution contemplates that it should gradually replace English. Therefore, Hindi is also in a class



by itself. But the other languages mentioned in Sch. VIII stand on a different footing. The retention of English as a medium is justified and the substitution of English by Hindi can be justified for reasons mentioned above. But the substitution of any other regional language for English cannot be justified because there would be other languages spoken by large groups of people which are capable of being the media of instruction in Universities. Since there are large numbers of people in the city whose mother tongue is Marathi, Gujarati, Hindi, Tamil, Malayalam, and Urdu, it would be difficult to justify the selection of one or more of these languages as a medium of instruction to the exclusion of the others, if the principle of selection is that University education should be in the mother tongue.

23.7 As regards minorities based on religion or language in a particular area a different question would arise, namely, whether any language can be made a compulsory medium of University education by compelling every affiliated college to adopt that medium on pain of such college being disaffiliated if the medium is not adopted. In *Shri Krishna v. Gujarat University*, [(63) A.Guj.88] a Full Bench of the Gujarat High Court held that neither the State nor the University had such power because to impose such a compulsory medium would be to violate Arts. 29(1) and 30. These Articles were meant to protect the cultural and educational rights of minorities. The Full Bench referred to the decision of the Sup. Ct. in *In re Kerala Education Bill*, 1957, [(1959) S.C.R. 995, ('58) A.SC.958] for the proposition that the right so conferred must mean the right to establish real institutions, which would effectively serve the needs of the community and the scholars who resorted to such education. It is submitted that the decision is correct. As we have seen, this view has been confirmed by the Sup. Ct.: see paras 13.21, 13.22 and 13.58, Vol.II of this edition.



23.8 In the first edition of this book (May, 1967) it was stated “As this book goes to press, a University Commission has recommended the use of regional languages as media of instruction, in place of the three-language formula, but the Ministry of Education looks upon the recommendation as a counsel of despair and holds that the three-language formula should be implemented. The problems thus raised are difficult because side by side with the strong desire for national unity, go the provisions of Arts. 345 to 347 for the use of regional languages in various States for official purposes, and what is more, under Arts. 1 to 5 the map of India has been re-drawn on a linguistic basis. This problem is further complicated because we have in India a common system of judicial administration and the introduction of regional languages in the High Courts would completely destroy that system and make the unifying task of the Sup. Ct. impossible. Therefore, Art. 348 contained special provisions for the language of the sup. Ct. and the High Courts, in order to ensure that uniform administration of the law is not rendered impossible by the use of regional languages.” On 31 Aug., 1967, Mr. M.C. Chagla, the then Foreign Minister of India, who had been a Minister of Education earlier, tendered his resignation on a Cabinet decision with regard to the educational policy involved in the proposed changeover from English to Hindi, which he regarded as a complete reversal of the policy which he had pursued as Minister of Education and which had been accepted by the Cabinet. (*M. C. Chagla, Roses in December: An Autobiography (1st ed.) at pp.430-31. His objections to the new policy are set out in his letter of resignation at pp. 504-506. ibid.*) As far as I have been able to ascertain, the policy in opposition to which Mr. Chagla resigned has made little or no progress.



23.9 Section 3 of the Official Languages Act, 1963, is as follows:

3. Continuance of English language for official purposes of the Union and for use in Parliament—“Notwithstanding the expiration of the period of fifteen years from the commencement of the Constitution, the English language may, as from the appointed day, continue to be used, in addition to Hindi, -- (a) for all the official purposes of the Union for which it was being used immediately before that day, and (b) for the transaction of business in Parliament.”

Section 4 of the Act provides for the constitution of a Committee on Official Language ten years after 26 Jan., 1965. The Committee is to consist of thirty members of Parliament of whom twenty are to be members of the House of the people and ten are to be members of the Council of State. The Committee is to review the progress of Hindi for official purposes and to submit a report with their recommendations to the President, who must cause it to be laid before the Houses of Parliament and sent to all the State Govts. The President, after considering the views, if any, expressed by the State Govts, may issue directions in accordance with the whole or part of the Committee's Report. Section 5 requires an authorized Hindi translation of Central Acts. Section 6 requires an authorized Hindi translation of State Acts in addition to an English translation where the Acts are passed in any other language. Section 7 provides for the optional use of Hindi or other official language in judgments or decrees of High Courts subject to the requirement that they must be accompanied by a translation of the same in English, issued under the authority of the High Court. This can be done only if the Governor of the State, with the previous consent of the President, authorizes such use. Section 4 corresponds to Art. 344(1), with the difference that



the Committee itself is to make recommendations, instead of making recommendations on the Report of the Language Commissions.

As regards the High Courts, Art. 348(1) provides that English shall be the language of all proceedings in the Sup. Ct. and the High Courts. Article 348(2) enables the Governor, with the previous consent of the President, to authorize the use of Hindi or of the official language of the State to be used in the High Courts of that State. However, the decrees and judgments of the High Court are required to be in English. Section 7 of the Act of 1963 abrogates this provisions as regards judgments and decrees and substitutes in its place a requirement that the judgments and decrees should be accompanied by an English translation authenticated by the High Court.

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 practice 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 practice throughout India. If the language of different High Courts is to be different, the right to practice throughout India becomes illusory in practice 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 Sup. Ct. and the



recruitment of judges to the Sup. Ct. must greatly suffer, for judges of the Sup. Ct. could not be recruited from High Courts where the language was different from that spoken in the Sup. Ct. The unifying influence of a Sup. Ct. on judicial administration would be seriously impaired, if not destroyed, and the quality of its judges and of its judgments must necessarily suffer.

23.11 How do the provisions of our Constitution and of the Official Languages Act, 1963, harmonize with the other provisions of the Constitution? We have said above that the use of different regional languages in the various High Courts would disrupt the unity of the administration of justice which has so far characterized judicial administration in India, and it would equally effectively destroy the all-India character of the High Courts and defeat the provision under which a judge of one High Court can be transferred to another. Our Constitution also contains provisions for all-India services which can function only if there is a common language of administration throughout the territory of India. The members of such services were, and are, transferable but such transferability would become illusory in practice, since no civil servant could be expected to know, much less to be proficient in, the fifteen languages of the Union of India. Recruitment to the all-India services would pose insoluble problems, since open competitive examinations conducted in 15 languages can only be looked upon as a gamble, for an evaluation of the performance of students in 15 different languages is a practical impossibility.



23.12 Our Constitution has established a single Indian citizenship throughout India. Article 19 guarantees to every citizen the fundamental right to move freely throughout the territory of India, and to settle, acquire, hold and dispose of property in any part of that territory. As the Sup. Ct. observed in Gopalan's Case, [(1950) S.C.R. 88, (50) A. SC.27] these provisions are meant to remove provincial barriers and to establish that the citizens of India are all citizens of one country, free to move, work, live and settle in any part of the country. The equality provisions of Art. 15 of our Constitution forbid discrimination against citizens on the ground of religion, race, caste, sex and place of birth. Language is not included in this list, but a discrimination on the ground of language is opposed to the basic concept of the unity of India to which a common Indian citizenship and a common country testify. It has been said many times that our Constitution is founded on an emphatic rejection of the two- nation theory from which Pakistan was born, namely, that a difference in race, religion and language is enough to support a claim to found a separate State. It would be strange indeed if after rejecting a two-nation theory, the language provisions, and their implementation, lead to the acceptance in substance of a ten or twelve-nation theory based only on language.

23.13. If the Constitution is to function in the spirit in which it was conceived, it is imperative that one common language should take the place which English occupied before Independence, and continued to occupy during the first fifteen years after the Constitution was enacted. Whether a common India



language takes the place of English in any specified period of time, large or small, is a matter of small moment. But it is a matter of the greatest moment that a common Indian language should replace English as the official language of the Union and of the States, as the medium of instruction in all the Universities, and in every field of scientific and industrial life, if the unity of India secured through the medium of English, is not to be lost. (The unifying force and the dividing force of language has rarely been portrayed more vividly than in the account of the Tower of Babel (Genesis, XI): Once upon a time all the world spoke a single language and men decided to build a city with a tower with its top in the heaven. And the Lord saw the city and tower they were building, and He said: "Here they are, one people with a single language, and now they have started to do this, henceforward nothing they have a mind to will be beyond their reach. Come, let us go down and confuse their speech, so that they will not understand what they say to one another." Their speech was confused: they did not understand one another, they were dispersed over the surface of the earth and their city and tower remained unbuilt.)

23.14. Chapter IV contains special directives designed to secure and safeguard the interest of minorities. Article 350 entitles a person to submit a representation for the redress of any grievance to any officer or authority of the Union or the State in any of the languages of the Union or the State. Article 350A contains a directive that every State and every local authority within the State should endeavour to provide adequate facilities for instruction in the



mother- tongue in the primary stage, for children belonging to linguistic minorities. Article 350B provides for the appointment of a special officer for linguistic minorities, to investigate on matters relating to the safeguards provided for linguistic minorities under the Constitution. Article 351 contains directives for the development of the Hindi language which has been already considered.

23.15 In *Dayabhai V. Natwarlal* [(‘57) A.M.P. 1] it was held that the effect of the proviso to Art. 345 was that even after the adoption by the State of any regional language or Hindi, English can continue to be used unless the legislature of the State otherwise provides by such a law, that is to say, expressly excludes the use of English. It was held that the M. B. Official Languages Act, 1950, did not otherwise provide within the meaning of the proviso. [Ibid. pp. 3-4. See also *Harihar Prasad vs. Dist. Magistrate* (‘61) A.A. 365, 368.]

41. The study of the said debate on the use of official language vis-a-vis the use of such language in the High Court, therefore, assumes importance as the right of lawyers to practice in all Courts throughout the country coupled with the transferability of the post of a High Court Judge under Article 222 of the Constitution of India cannot be lost sight of. The languages incorporated in the Eighth Schedule may be utilized as an alternative language subject to the fulfillment of the conditions under Article 348(2) of the Constitution of India, but



to replace English which still continues to be a common language utilized all over the High Courts of the country cannot be ignored. This has to be viewed from the angle that even though the propagation of Hindi as a National language has seen a growth and adoption in the official work of the Union as well as a large number of the States, but so far as the judiciary is concerned, the use of the English language in all the High Courts of the Country as well as the Supreme Court continues to be English. The wide availability of legal expressions in the English language has not yet been perfectly substituted in any other regional language including Hindi.

42. It should not be forgotten that the use of language is to be a matter of practice and to be inculcated from childhood to adolescence and beyond. This includes the use of language at home, in school and in the official curriculum. The executive in a federal structure has succeeded to a great extent in using the language of Hindi and enforcing its implementation in all matters of the Union, but in view of the federal structure ingrained in the Constitution, the respective States continues to use their local regional language which has a diversity and, therefore, is officially recognized under the Eighth Schedule where the number of languages placed therein is 22.

43. Coming back to the use of language in the High Court and with the recognition of the regional languages as a



mode of spoken communication in Courts throughout the country, will it be feasible for a lawyer proficient in the Hindi language to argue his case in Hindi efficiently and promptly, say in the High Court of Kerala where Hindi is not the official language of the Court. This can be viewed vice versa in respect of all the States that are divided into different regions. The Hindi in its usage does have a natural wide acceptance in a large region of Northern India comprising of various States, like Rajasthan, Madhya Pradesh, Himachal Pradesh, Uttrakhand, Uttar Pradesh, Chattisgarh, Jharkhand and Bihar, but the moment one crosses the boundaries of these States, this acceptability of communication as a Court language gets reduced and the local regional languages take over. This is not to say that the promotion of Hindi should be impeded and not promoted, but this is a practical outlook that was envisioned by the Constitution framers and appropriate provisions were made in order to achieve the objective of a National official language.

44. On the other hand, the pragmatic approach of allowing English to continue in one form or the other is also in aid of the prevalent common communication that is acceptable in all Courts throughout the country. Thus, the general acceptability of the English language, therefore, obligates its usage in one form or the other to be made available in order to maintain a uniformity of expression of ideas and the use of a



common accepted language particularly in legal matters. To illustrate this, a litigation say arising out of an All India Service or a challenge raised to the vires of the Central Act in different High Courts of the Country ultimately culminates into a final litigation before the Supreme Court where the views, the pleadings and the legal expression used are explained in one common language which is English. The arguments advanced before the Apex Court are all in English and one has to keep in mind what was expressed long ago by the Supreme Court. In the case of **Madhu Limaye and another v. Ved Murti and others** reported in **AIR 1971 SC 2608**, the Apex Court declined the request seeking permission to argue in Hindi by the following judgement:-

“Mr Raj Narain yesterday insisted on arguing in Hindi. He was heard for sometime with a view to see whether we could follow him, simply because this is a habeas petition involving the liberty of the citizen. Because of the importance of the case, we heard him for sometime but the Attorney-General, Mr Daphtary who is opposing him and some of the members of the Bench could not understand the arguments made in Hindi yesterday. In these circumstances, it is futile to permit Mr Raj Narain to continue his arguments in Hindi. He has a counsel Mr D.P. Singh already in attendance and helping him. We suggested the following three alternatives—

“(a) that he may argue in English; or

(b) he may allow his counsel to present his case;



or

(c) he may give his written arguments in English.

The language of this Court is English (*see* Article 348 of the Constitution). If Mr Raj Narain is not agreeable to these suggestions, and we understand, he is not, the only alternative for us is to cancel his intervention. We order accordingly.”

45. The aforesaid judgement is however, based on the aforesaid Rule of the Supreme Court, but this is a fact to be noted and kept in mind when such an issue arises before the High Court, the judgements whereof are subject to appeal before the Supreme Court. In this age of easy access to justice with the filing of writ petitions for almost every cause of enforcement of a right or a fundamental right, the frequent invoking of the writ jurisdiction in the High Courts throughout the country, therefore, should be viewed from the angle of uniformity of language keeping in view the fact that common questions do arise for consideration. Communication in a language that eases understanding and gives a smooth transition of ideas, therefore, has to be taken into account which is for the benefit of public at large.

46. There is a very important angle in the use of Court language particularly in higher judiciary where the Court has to interpret laws that have come into existence with a global participation between different countries throughout the world.



The framing of laws whether it be criminology, commercial laws or laws relating to human rights affecting the life of the citizens of the whole country does call for an adaptation and which has been implemented with the coming into force of International treaties and covenants that have found way in our local laws. There is therefore a global participation and which again is directly connected with communication in an appropriate language that is globally accepted.

47. We may not forget that the introduction of a language to be used in Courts is to be directly in tune with the opportunities given to the students of law to educate themselves in order to enable them to effectively discharge their duties in Court or even outside. It is for this reason that the curriculum prescribed by the Bar Council under the Bar Council of India Rules under Schedule II clearly defines the medium of instruction in all law courses whether of three years or five years as English. Clause 1 of Schedule II of Chapter VI in Part IV of the Rules is extracted hereinunder:-

“1. *Medium of instruction.*—English shall be the medium of instruction in both the integrated five year and three year courses. However if any University and its any CLE allows in full or in part instruction in any language other than English or allows the students to answer the test papers in the periodical and final semester tests in any regional language other than English, the students have to



take English as a compulsory paper.”

48. This prescription is authorized under Rule 8 where the standard of courses are to be prescribed by the Bar Council specified in the Second Schedule extracted hereinabove.

49. The language used in Courts in India has seen a transition over centuries shifting from the use of Urdu with Persian and Arabic scripts during the Mughal period that continued in Subordinate Courts even during the British Rule. The colonial era, however, saw a further transition of the introduction of the use of English language apart from the local vernacular with a cumbersome process of translation that have to be undergone for the purpose of daily use and it is for this reason that all Courts throughout India had to avail the facilities of translators. The medium of instruction also gradually altered and with the educational system, particularly the higher education coming under the control of the British Rule, the subject of law came to be taught in the English language. This medium of instruction continued for long and has been ingrained for centuries together.

50. Upon gaining independence and the promulgation of the Indian Constitution, the specific provisions with regard to use of official language were introduced and



incorporated in the Indian Constitution as referred to above. Specific provisions under the Official Languages Act, 1963 relating to the language to be used by High Courts and Supreme Court in tune with the Constitution saw the issuance of Notification, particularly by the States of the Hindi heartland. The prescription of the use of language in Courts also stood codified and Section 137 of the Code of Civil Procedure reads as follow:-

137. Language of subordinate Courts. – (1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the State Government otherwise directs.

(2) The State Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Court requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

51. The High Court was given the power to require evidence to be recorded in English under Section 138 of the



Civil Procedure Code.

52. Similarly, the use of language under the Code of Criminal Procedure is provided under Section 272 of the Code of Criminal Procedure extracted hereinunder:-

“272. Language of Courts. – The State Government may determine what shall be, for purposes of this Code, the language of each Court within the State other than the High Court.”

53. The language of record and judgement in criminal cases is governed by Section 265 Cr. P.C. which is extracted hereinunder:-

265. Language of record and judgment. – (1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorize any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

54. While recording evidence, the Cr. P.C. provides for recording of evidence under Section 277 which is reproduced hereinunder:-

277. Language of record of evidence. – (1) In every case where evidence is taken down under Sections 275 or 276, –



(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or Presiding Judge, and shall form part of the record;

(c) where under Clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.”

55. It may also be apt to mention that under Section 211 (6) Cr. P.C. while framing a charge, the same has to be in the written language of the Court. The words used in a charge shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable as per Section 214 Cr.P.C. It is the duty of the Court under Section 228 Cr.P.C. to read and explain to the accused the charge in order to enable him to respond to the same.

56. This being the general application of law on the



Civil and Criminal side in the Subordinate Courts, we may once again turn to the constitutional amendments brought in respect of the Constitution itself. Under Chapter XXII of the Constitution of India, the Fifty-eighth Amendment to the Constitution that was brought about in 1987 introduced Article 394A which is quoted hereinbelow:-

“394- A. Authoritative text in the Hindi language. – (1) The President shall cause to be published under his authority, –

(a) the translation of this Constitution in the Hindu language, signed by the members of the constituent Assembly, with such modifications as may be necessary to bring it in conformity with the language, style and terminology adopted in the authoritative texts of Central Acts in the Hindi language, and incorporating therein all the amendments of this Constitution made before such publication; and

(b) the translation in the Hindi language of every amendment of this Constitution made in the English language.

(2) The translation of this Constitution and of every amendment thereof published under clause (1) shall be construed to have the same meaning as the original thereof and if any difficulty arises in so construing any part of such translation, the President shall cause the same to be revised suitably.

(3) The translation of this Constitution and of every amendment thereof published under this article shall be deemed to be, for all purposes, the authoritative text thereof in the Hindi language.”



57. The authoritative text of the Constitution in Hindi was in tune with the constitutional indicator about the use of Hindi as an official language throughout India for which a switch over had to be attempted. It is for this reason that the aforesaid constitutional amendment was brought about by the Parliament with powers to the President of India to revise the authoritative text of the Constitution in Hindi and sub-article (3) of Article 394A mandates that the translated version of the Constitution and every amendment thereof shall be deemed to be for all purposes the authoritative text thereof in the Hindi language. This will facilitate the Court to interpret and deliver judgements on the basis of authoritative text and not on the basis of a mere translation. The emphasis, therefore, is on the authoritative text of the document which the Courts may have to interpret.

58. In the said background, the pleadings before a Writ Court in written language have to be understood in the authoritative language for an additional reason because the High Court under Article 215 of the Constitution is a Court of record. The High Court is a superior Court having inherent and plenary powers with almost unlimited jurisdiction, including jurisdiction to determine their own powers. This wide nature of powers exercised by the High Court can be invoked under the writ



jurisdiction by a person for the enforcement of his rights as provided for under the Constitution. This, therefore, engulfs within itself the entire canvas of the population which may not include those which are yet to acquire any proficiency in the Hindi language. Thus to allow the language of English to continue as an official language in the High Courts which are Courts of records still continues to be in vogue throughout the Country. The maintenance of records in the English language therefore was incorporated in the High Court Rules that have been referred to hereinabove.

59. The question, however, is about the facilitation of pleadings in the writ jurisdiction in the Hindi language. The permissibility of the use of the Hindi language being prohibitory in nature may not be in tune with the Constitution, but its alternative use can equally be permissible and it is this minimal area of the pleadings of writ petitions and Tax matters being in English only has given rise to this reference.

60. There is yet one other very important factor which has to be noticed, namely, the medium of instruction used in the institutions imparting courses in law, the standards whereof are fixed by the Bar Council of India and the Rules framed thereunder. We have already extracted hereinabove the rule prescribed by the Bar Council of India which enjoins upon every recognized institution to adopt the medium of instruction



as English. It cannot be lost sight of that with the growth of educational institutions imparting courses in law through various degrees, English is currently in use as the medium of instruction. The language of English, therefore, as prescribed by the Bar Council to be the only medium of instruction also cannot be lost sight of. The practicality of the issue has also to be judged from the point of view of the adaptability of a language which in the case of Hindi to be envisioned to be a gradual transition to be made by following it even in the course of law through appropriate notifications. It is for this reason that while having undertaken the hearing of this reference earlier, we had requested the learned Advocate General to get this matter discussed at the highest level of the Government as the Notification issued in the present case is by the State Government.

61. To interpret the Notification dated 9th May, 1972, the task before this Court is to gather its true intent and purpose together with its legality and validity. The Notification has been issued in the exercise of powers under sub-article (2) of Article 348 of the Constitution of India. There was, therefore, full confidence available with the State Government to issue such a Notification which was of course way back in the year 1972. The State Government with changed circumstances, therefore, could have assessed the viability of the continuance of



such a Notification, but this also has to be looked into from the point of view as to whether all legislative documents, legal precedents and the use of legal terminology in all Government functions have adopted Hindi as convenient form of expression or not. This assessment of switching over to pleadings in Hindi, therefore, has to be assessed in the aforesaid background when the Judges have to deliver judgement in the language of the Court.

62. It is, no doubt, true that a litigant would obviously prefer to understand the judgement in his own vernacular and for which there is a machinery of translation. This device is also available for documents being sent to the Apex Court in the light of the High Court Rules that have been referred to hereinabove. The exercise, which may have to be undertaken therefor, for translating proceedings, would be a huge cumbersome exercise and subject to availability of efficient translator. This background has, therefore, to be assessed before the Notification receives another interpretation by us. As noted above, the State Government has not come up with any such proposal for introducing such transition. This has to be understood that the maximum filing in the High Courts today is in the writ jurisdiction and it is at times the most complex questions of enforcement of rights and fundamental rights that the Courts are called upon to interpret and



understand. We would, therefore, proceed to test the validity or the legality of the Notification dated 9th May, 1972 in the light of the above propositions.

63. The law as understood in relation to this subject matter depending upon the Notification issued by State Government in exercise of the powers conferred under Article 348(2) of the Constitution of India saw an exposition in a judgment of the Allahabad High Court in the case of **Prabandhak Samiti and Ors. vs. Zila Vidyalaya Nirikshak, Allahabad and Ors.** reported in **AIR 1977 All 164**. The State Government by Notification in the official gazette dated 19th February, 1968 issued directions for use of Hindi in Devnagari Script to be used in respect of official purposes of the State. This was followed by a Notification dated 28th October 1970 in exercise of the powers under Section 7 of the Official Languages Act, 1963 authorizing the use of Hindi in addition to the English language even for the purpose of any judgment, decree or order passed by the High Court. This was however accompanied by a caveat that if any judgment was passed in Hindi it was to be accompanied by translation of the same in English language under the authority of the High Court. The issue in the aforesaid judgment arose with regard to the use of Hindi for purposes of conducting proceedings in the High Court



including the presentation of petitions. In this regard, a Notification was issued on 5th September, 1969 under Article 348 (2) and Paragraph 4 of the said Notification is as follows:-

“4 The question of progressive use of Hindi in the proceedings of the Allahabad High Court was again considered. Now, under Article 348(2) of the Constitution of India, the Governor of Uttar Pradesh is pleased to order with the prior consent of the President, that the Hindi may be used in the affidavits to be filed and in the statements and documents to be included in the paper books prepared for the use of the Allahabad High Court, subject to the following conditions:-

(1) If the Bench so desires, it may take special order that the affidavits, statements and documents in Hindi be translated into English, and

(2) If some extract of pleadings, statements and documents in Hindi is incorporated in any judgment, English translation thereof may be made immediately thereafter.”

64. The judgment therefore recorded that the said clause clearly permitted the use of Hindi in Devnagari Script in the proceedings of the Court and then the Court proceeded to examine as to whether the said Notification brings within its fold the writ petition itself and other pleadings presented to be



transcript in Hindi. The said Notification was interpreted to mean that it clearly intended to make possible the use of Hindi in the proceedings before the High Court which was in consonance with the constitutional aspirations. The Court further went on to take notice of the Rules of the High Court of Judicature at Allahabad and then finally held that a writ petition having been drafted in Hindi in Devnagari Script was permissible and could be filed for adjudication in the High Court in the State of Uttar Pradesh. It is thus evident that in view of the language of the Notification the aforesaid contributions were drawn. However, what is worth noting in the said judgment is the historical transition of use of Court language as expressed in Paragraphs 1 to 8 of the aforesaid judgment that is extracted hereinunder:-

"1. A preliminary point has arisen in this case as to whether a writ petition drafted in Hindi in Deo Nagri script and presented in this Court can be entertained and adjudicated upon. The present writ petition was drafted in Hindi, so also the accompanying affidavit and the rejoinder affidavit and the petitioner insists on the writ petition being heard and decided as it stands. Since it is a question of law of general importance, we propose to decide the same and we cannot refrain from observing that we received valuable assistance on this point from Sri S. N.



Kacker, who appeared for the petitioner and who entered, if we may say so, a vigorous defence in favour of Hindi.

2. The transition from one official Court language to another whether it be under the impact of political freedom or the efflorescence of nationalist sentiment or both, is often preceded by grave misgivings, apprehensions, and even open or veiled hostility. The traditionalists feel aggrieved by what they regard as an invasion into entrenched territory. The reformers, on the other hand, are intolerant of what they are prone to regard as the tyranny of a foreign language. They are only too eager to hail the dawn of a new linguistic era. The history of the world bears witness to this precarious phenomenon of one Court language being replaced by another. The battle for supremacy of the English language in England was waged for nearly five centuries. The Saxon invaders of England obliterated nearly every trace of the Roman occupation but though their language triumphed at first, it was eventually affected in the profoundest way by Latin influences. When the French nation actually came into existence among the ruins of the Roman civilization in Gaul, a new language, viz., the French, was at the same time slowly evolved, but the genius of the French language was descended from the Latin stock. Nearly every word in the French vocabulary came straight from Latin. Little wonder, therefore, that the law Courts in England were for several



centuries dominated by the Latin and French languages. The "Common Law" of England Administered by the royal Court was in form chiefly a French law. French was the language of the Norman and Angevin sovereigns and their courtiers, and French continued to be the language of the common law courts long after it had ceased to be the language of the upper classes. The written records of the Common Law Courts were kept in Latin but the oral pleadings were in French. English supplanted French as the language of the ruling classes in the later fourteenth century, but French continued to be used in legal literature until the seventeenth century. (See "The English Legal System" by Radcliffe and Cross, (Third Edition) page 15).

3. Latin was the legal language of the twelfth and thirteenth centuries. It was, therefore, the official language of such branches of the Curia Regis as the Chancery and the courts of Common Law which had begun to keep the plea Rolls at this period. In the thirteenth century learned clerks may have thought and spoken in Latin; ordinary persons of the upper classes thought and spoke in French, while the lower classes spoke in various dialects of English. But the common law was the law made by the king's courts. It was the law originally of the upper classes; and even when it had become the law of all classes, it was still administered by the upper classes. Therefore, although the formal records of these courts were drawn up in Latin,



the cases were pleaded, showed, and judged' in French. Naturally the law books and the reports which lawyers made for themselves or for one another were in the same language. The Latin of Bracton gave place to the French of Britton, "A History of English Law", by W.S. Holdsworth, Vol. II, Third Edition, page 479. In the 14th century an Act was passed superseding French for ordinary purposes, but for legal purposes the language remained French. As early as 1362 there was a famous statute which enacted that pleas should be pleaded in English and not in French, though the records were to be maintained in Latin. But so firm was the hegemony of French that the statute of 1362 failed to achieve the purpose for which it was passed. The reasons were twofold. Firstly, the task of adjudicating of law had fallen on a class of professional lawyers who, as Fortescue pointed out "could not plead or judge or read their books or reports in anything but French". Secondly, the technical terms were nearly all in French. "So many ancient terms and words" said Coke, "drawn from the legal French are grown to be vocabulary artis... ..so apt and significant to express the true sense of the law, and are so woven in the laws themselves, as it is in a manner impossible to change them, neither ought legal terms to be changed". To Roger North, who died in 1734, it seemed, as it seemed of Fortescue and Coke, that the rules of English law were "scarcely expressible properly in English" and that "a man



may be a wrangler, but never a lawyer without a knowledge of the authentic books of the law in their genuine language". When we proceed to deal specifically with the problem as it has arisen in our country, it will become apparent that the situation in India is almost identical and the remarks of the English lawyers and jurists quoted above can be adopted verbatim to express the reactions of those Indians in whom the habit of using English has become so ingrained that they feel greatly perturbed over the prospect of a change over to Hindi for purposes of the court work.

4. But the language of the people ultimately replaced the language of the upper class even in the law courts of England. The language which had entered into the life of the British people was English and none could resist it entirely. Law, as Maitland has said, is the point where life and logic meet. Therefore, French had at last to give way to English in spite of the former's superiority in the qualities of precision and richness of technical terms. Ultimately by the Act of 1731, which was passed in the period of the complete supremacy of Walpole, the use of Latin in the law courts was abolished in England,

5. In India we are witnessing a somewhat similar spectacle. The traditionalists contend that "English has today become a part of the warp and woof of Indian thought and language



and of the culture of a considerable number of Indians". A member of the Parliament recently stated that "English is the language of the Constitution, the language of many of the lower Courts, the High Courts and the Supreme Court, the only authoritative language of the Legislature and the only language in administrative, judicial, and educational spheres." On the other hand, the protagonists of the divine Sanskrit and its beautiful daughter Hindi declare that Hindi is the language in which their prophets, bards and writers have unraveled the mysteries of the earth and heaven and taught them to scorn the fleeting objections of the senses and grow into that spiritual oneness which is the Divine Life. For them Hindi is the language in which Meera Bai sang her ecstatic songs, Tulsi and Surdas invoked their blessed Masters and Jaishanker Prasad wove his immortal fantasies. The issue, however, must be decided on a rational basis, on objective factors, shorn of the subjective element or the personal inconvenience inevitable in a process of radical change. For a generation accustomed to the use of an exotic tongue like English, though with little pretension to proficiency therein, the adoption of Hindi must appear irksome and involving great difficulty of mental readjustment. But that is no answer to the arguments advanced on behalf of Hindi. Mahatma Gandhi stated the truth thus: "Our masters chose the wrong way for us and have made the wrong appear as right".



6. *It cannot be doubted that the proceedings of the Courts functioning for the benefit of the inhabitants of any place must on principle be conducted in a language understood by them. It does not appear to be sufficiently realised that the employment of an indigenous language is essential for maintaining the democratic character of the Courts. They can be linked with the people only by using their language; it is a necessary democratic feature of the Courts and one of the foundations of socialist justice. Even Communist thinkers like Lenin attached great importance to the democratic form of the functioning of the Courts. Lenin said that:*

"Courts will be able to ensure, through democratic form conforming to the principles of the Soviet system, that aspirations for discipline and self-discipline do not remain vain aspirations" (V. I. Lenin "Collected Works" Vol. 27, p. 218).

Mahatma Gandhi downright rejected the slavish adoption of a foreign language. He said:

"I must not be understood to decry English or its noble literature. The columns of the Harijan are sufficient evidence of my love of English. But the nobility of its literature cannot avail the Indian nation any more than the temperate climate or the scenery of England can avail her. India has to



flourish in her own climate and scenery and her own literature, even though all the three may be inferior to the English climate, scenery and literature. We and our children must build on our own heritage. If we borrow another, we impoverish our own. We can never grow on foreign victuals. ("Life and Thoughts of Mahatma Gandhi" edited by Krishna Kriplani, page 154.)

7. Hindi is undoubtedly the most widely understood language in India. It is spoken by about eight crores of people inhabiting the State of Uttar Pradesh alone, besides those residing in the States of Bihar, Rajasthan, Haryana and a major part of Madhya Pradesh. A survey of the various steps taken in the realm of law would reveal that now there are no legal hurdles to the use of Hindi as the language of the High Court and other Courts in the State of Uttar Pradesh. The matter may be examined in the context of the various provisions of the Constitution under three heads;

(a) What is the official language of the Union?

(b) What is the official language of the State ? and

(c) What is the language to be used in the High Courts?

Article 343 of the Constitution declares that the official language of the Union shall be Hindi in Devanagri Script It appears that the framers of the



Constitution were alive to the difficulty of an abrupt change-over to Hindi and therefore they provided the following safeguards in Article 343:

"(2) Notwithstanding anything in Clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagiri form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union."

8. At the same time the Constitution makers were very clear that the time spent in achieving this target with respect to the official language of the Union should not hold up or delay the evolution and development of the regional languages of the States. Therefore, separate provisions were incorporated in the Constitution with regard to the official language or languages of the States. Accordingly, Article 345 of the Constitution provided :

"Subject to the provisions of Articles 346 and 347, the Legislature of a State



may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of the Constitution."

65. In matters relating to educational institutions and medium of instruction and issue with regard to the omission of Sanskrit as an elective subject it was held by the Apex Court that the Central Board of Secondary Education should include Sanskrit as an elective subject as held in the case of **Santosh Kumar and Others vs. Secretary, Ministry of Human Resources Development and Another** reported in (1994) 6 SCC 579. In a matter relating to a direction issued for writing answers in English only came up for challenge before a learned Single Judge of the Allahabad High Court in the case of **Balraj Misra and Another vs. Hon'ble Chief Justice of High Court, Allahabad and Others** reported in 2000 (1) AWC 296. The Court drew a delicate balance but at the same time emphasized on the constitutional vision to promote Hindi as a language and while tracing out the transition which was required to be enforced noted as follows:-



"4. Hindi has not only been given pride of place in our Constitution but is also the State language of Uttar Pradesh as well as some other States in India. There can be no question of any rivalry between Hindi and English. Hindi necessarily occupies the dominant position in such States. In the mid-September this year. Hindi has completed half a century of recognition as the official language of India. The irony is that the year, in fact, means the Golden Jubilee of its failure to become the official language. The failure is much more discernible in the cow-belt where the Hindi is derisively described as lingua franca.

5. The Constitution and the Official Languages Act both give Hindi the status of the official language. However, in reality, this has not come about due to a variety of factors including the absence of political will, the eluding consensus in favour of Hindi and the stubborn unwillingness of the system of governance to abide by the democratic character and the statutes. The elite believe that India can be governed, held together and modernised only through English, a language known to not more than five per cent of the people of India. It has even succeeded in having politics, media and other sectors accept this anomaly without any question. The Governments, both at the Centre and in the States, had, by and large, ignored the issue of language. Not only that, Hindi has hardly become the official language even of the Hindi-speaking States, by the



same token the other Indian languages have also not attained the proper and true status of official languages in their respective States. There would be very few languages in the world to have traversed such a vast range in so short a time. The scintillating vision of a Nirala, the Premchandian grasp of ordinary life, the sophistication of an Agyaeya, the rootedness of a Renu, the classical sweep of Hazari Prasad Dwivedi, the moral fibre of Jainendra Kumar, the horrific agonies of a Muktiboth, the passion and sensuousness of a Shamsheer, the relentless questioning of the power discourse by a Raghuvir Sahay, the epic geography of the fictions of a Krishna Sobti, the anger of a Shrikant Verma, the quiet ironies of a Vinod Kumar Shukla, etc. are but a few examples of the very wide human, moral and intellectual range covered by Hindi during this period.

6. It would be apposite to mention the following words of Pt. Jawahar Lal Nehru about the magnificence of Sanskrit language, published in an article captioned as "The Question of Language" published in National Herald dated 13.2.1949 :

"Though I am not a scholar in any language, I have loved the beauty of a language, the music of its phrases, and the magic and power that lie in words....."

If I was asked what is the greatest treasure that India possesses, and what is her finest heritage, I would



answer unhesitatingly that it is the Sanskrit language and literature. This is a Magnificent inheritance and so long as this endures and influences the life of our people, so long will the basic genius of India continue. Apart from its being a treasure of the past..... it is a living tradition."

The above observations would apply with equal force to Hindi which has been termed as beautiful daughter of Sanskrit. In the decision of the Apex Court dated 4.10.1994 in Civil Writ Petition No. 1184 of 1989, U. P. Hindi Sahitya Sammelan and others v. Ministry of Human Resources Development and another, the Court was faced with a question whether Sanskrit is required to be included in the syllabus of the Central Board of Secondary Education as an elective subject so far as teaching in Secondary Schools is concerned. The Apex Court observed that the learning of Sanskrit was must to decipher the Indian philosophy, on which our culture and heritage was based. The Court concluded the matter, by saying that in view of importance of Sanskrit for nurturing our cultural heritage, because of which even official educational policy has highlighted the need of study of Sanskrit, making of Sanskrit alone as an elective subject, while not conceding this status to Arabic and/or Persian, would not, in any way, militate against the basic tenet of secularism. A direction was issued



to include Sanskrit as an elective subject in the syllabus under consideration.

7. The protagonists of the divine Sanskrit and its legitimate heir Hindi declare that "Hindi is the language in which their prophets, bards and writers have unravelled the mysteries of the earth and heaven and taught them to scorn the fleeting objections of the senses and grow into that spiritual oneness which is the Divine Life. For them, Hindi is the language in which Meera Bai sang her ecstatic songs. Tulsi and Surdas invoked their blessed Masters and Jai Shankar Prasad wove his immortal fantasies."

8. The human geography is changing radically. The hope for Hindi lies in its continuing to manage, in spite of the odds, to handle with maturity and patience the dynamics of change and continuity in its remaining the voice of plurality, of openness, of innovation, of racial memory ; in its being rooted and yet resilient ; in its persistent resistance to parochialism of any kind and in its acquiring greater confidence in speaking not only for the Hindi belt but for the whole nation.

9. As regards the official language of the States. Article 345 authorises the Legislature of a State to make a law adopting any one or more of the languages in use in the State, or Hind, as the official language of the State. The official language of Uttar Pradesh Government is Hindi written in Devnagari script. An enactment to this



effect was passed in 1951 and is entitled 'The U. P. Official Language Act, 1951'. But even prior to that, in 1947, the State Government had declared Hindi as the official language of Uttar Pradesh.

10. The Constitution contains a special directive entitling a person to submit a representation for the redress of his grievance to any officer or authority of the Central Government or a State Government in any of the languages used in the Union or in the State, as the case may be (see Article 350).

11. The Constitution also provides for the setting up of a "Language Commission" at the expiration of five years from the commencement of the Constitution and thereafter another Commission at the expiration of ten years from such commencement, to report on the progressive use of Hindi for the official purposes of the Union and other connected matters (See Article 344). These commissions had been set up at the due time and in pursuance of their recommendations, which were accepted for the most part, considerable progress has been made in the use of Hindi for the official purposes of the Union. Separate provisions have been made in Article 348 prescribing the language of the Supreme Court and High Courts, which shall be considered presently. A reference may also usefully be made to the law applicable in Uttar Pradesh regarding Hindi and the connected executive instructions to augment the cause of Hindi. After the



attainment of independence, the State Government in October, 1947, declared Hindi as the State language of this Pradesh. From time to time, administrative orders were issued for the progressive use of Hindi in the official work of the State. The main object of these orders was that the changeover from English to Hindi should be gradual so that the transaction of business may not be impeded.

12. After the Constitution of India came into force, the Uttar Pradesh Language (Bills and Acts) Act, 1950, was passed by the State Legislature, whereby all the Bills introduced into, or Acts passed by, the State Legislature, were to be in Hindi written in Devnagari script.

13. Thereafter, pursuant to Article 345 of the Constitution, the Uttar Pradesh Official Language Act, 1951, was also passed by the State Legislature, whereby Hindi was adopted as the language to be used for all or any of the official purposes of the State. Under Section 2 of it, a notification was issued on October 30, 1952, whereby all the Bills introduced into, or Acts passed by, the State Legislature, were to be in Hindi written in Devnagari script.

14. Thereafter, pursuant to Article 345 of the Constitution, the Uttar Pradesh Official Language Act, 1951, was also passed by the State Legislature, whereby Hindi was adopted as the language to be used for all or any of the official purposes of the State. Under Section 2 of it, a notification was issued on October



30, 1952, whereby November 1, 1952, was appointed as the date with effect from which Hindi in Devnagari script was to be the language in respect of:

(i) ordinances promulgated under Article 213 of the Constitution and

(ii) orders, rules, regulations and bye-laws issued by the Government under the Constitution or under any law made by Parliament or the Legislature of the State.

Later, the State Government decided for complete switchover from English to Hindi in all official work of the State. For this purpose Section 2 of the U.P. Official Language Act, 1951, was amended by the U.P. Official Language (Supplementary Provisions) Act, 1968. Further, under the said section, a notification was issued whereby the Government appointed January 26, 1968, as the date with effect from which Hindi in Devnagari script was to be used in respect of all the official purposes of the State, not covered by the earlier notification of October 30, 1952. Under the amended Section the Government has also permitted the use of the international form of India 'numerals' in respect of all the official purposes of the State.

15. Not only the use of Hindi was made essential in all the official purposes of the State, but executive instructions were also issued on 22.4.1972 that violation of the orders for the compulsory use of Hindi for all official work would be



treated as an act of indiscipline. Again, on 19.3.1973, heads of Departments and heads of Offices were instructed to ensure that the orders for the use of Hindi were being strictly complied with and that there was no relaxation of any kind on this score. In December, 1972, instructions were issued that all official telegrams should be sent in Hindi, where such facility exists, in April, 1973, it was reiterated that Hindi should always be used in correspondence with the Government of India. In technical and legal matters also, letters are to be sent in Hindi and, wherever, it is considered necessary an English translation should be enclosed with it. But in every case the original letter should be in Hindi.

16. Under Section 3 of the Central Official Language (Amendment) Act, 1967, which amended the Central Official Language Act, 1963, it has been provided that where Hindi is used for the purpose of communication between one State which has adopted Hindi as its official language, and another State which has not adopted Hindi as its official language, such communication in Hindi shall be accompanied by a translation of the same in the English language. The State Government has issued instructions that letters which are to be sent to such non-Hindi adopting States with which an agreement to correspond in Hindi has not been made under the proviso to Article 346 of the Constitution, should be in Hindi, but an English translation should also be invariably enclosed. Under the above



proviso the State Government has made agreements to correspond in Hindi with several State Governments and Union territories. It will thus be seen that the State Government has made compulsory the use of Hindi for all the official work of the State.

17. There is a separate provision under Article 348 of the Constitution prescribing for the language of the Courts. In view of the provisions of Article 348(1)(a), Hindi cannot be used in any High Court until a law on the subject is enacted by the Parliament. For the interim period, therefore, the language of the High Court continues to be English for most part, but certain executive decisions have been taken for the use of Hindi in the High Court also in certain matters. In the year 1961. the State Government directed that in a criminal case before the High Court, the Advocate could, at his option, address argument in Hindi. This provision was repeated for civil cases in 1966. Thereafter, towards further progress in the use of Hindi in High Court, the State Government in the Language Department issued a notification in September. 1969 (No. 1608/XXI-11/59-67 dated 5.9.1969) providing for the under noted documents being cast in Hindi at the option of the party concerned subject to certain conditions ;

(a) affidavits submitted to the Court :

(b) statements and documents included in paper books of cases



before the Court.

Then a further important step was taken on 24.1.1972 by which a Judge of the High Court could use Hindi in the judgment or decree subject to certain conditions. A Hindi version of the Supreme Court Reports, known as Supreme Court Journal as well as reports of each High Court are also being published in Hindi under the authority of Union Ministry of Law. A Lexicon of Hindi legal terms has been issued under the authority of the same Ministry, As regards subordinate courts in U. P., Hindi was declared as official language of U. P. in October, 1947. Provision was made for the use of Hindi in subordinate Civil, Criminal and Revenue Courts. In respect of civil courts, a notification was issued under Section 137 of the Code of Civil Procedure and for criminal courts, another notification was issued under Section 558 of the Code of Criminal Procedure, as it then stood. In pursuance thereof, work in these Courts was conducted in Hindi generally, though, for some time judgments continued to be written in English. As for revenue courts, the relevant rules were amended so as to provide for the use of Hindi in the Court of Board of Revenue and the Courts subordinate to the Board.



Subsequently in 1970, the U. P. Official Language (Subordinate Courts) Act, 1970, was passed with a view to providing greater use of Hindi in subordinate courts of the State. Notifications issued under it provide for judgments and orders being written exclusively in Hindi in the following classes of cases:

(a) cases in which a Magistrate could award a sentence of imprisonment up to one year ;

(b) original cases for the recovery of amount up to Rs. 2,000.

In addition, orders have also been issued that all other authorities dealing with judicial or quasi-judicial matters, such as officers of the departments of Revenue, Consolidation of Holdings, Sales-tax should write all their adjudication's in Hindi. In 1960, the State Government suggested by writing a letter No. 1217/XXI-98-1960m dated 3.6.1960 to the High Court that if there was no objection, instructions be issued to all the civil courts, subordinate to the High Court that those Courts should, as far as possible, write their judgments in Hindi in non-complicated cases not likely to go before the High Court. This suggestion was accepted by the High Court which issued the



necessary instructions on the suggested lines. Matching instructions were also issued to the Board of Revenue for similar action in respect of revenue cases and to District Magistrates in respect of magisterial and Panchayat Courts. In regard to Panchayat cases the suggestion was that all judgments be written in Hindi. By and large, the entire judicial work in the subordinate, civil, criminal and revenue courts is being transacted in Hindi.”

66. The judgment being authentic in text and in analysis also deserves reproduction while dealing with the status of Hindi language in the Constitution and its applicability as expressed in Paragraph 18 to 24 as follows:-

“18. Sri D.S. Misra. Advocate, a strong protagonist of Hindi, entered a vigorous defence in favour of Hindi for being used in this Court at least, to begin with, on the administrative side. He referred to the provisions of Article 350A of the Constitution which contained a special directive that it shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups : and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.



Emphatic reliance was also placed in directive contained in Article 351 of the Constitution, which casts a duty on the Union :

"to promote the spread of Hindi language to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genus, the forms, style and expression, used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages."

This directive has, for one reason or the other, remained an empty formality. If the salutary directive which finds a prominent place in Chapter XVII of the Constitution of India had received due consideration and weightage, the questions which, more often than not, crop up for decision by the Courts with a view to emancipate and to put the mother tongue on a higher pedestal in the heart land of Hindi would not have arisen.

19. Sri Sunil Ambwani, learned counsel for the respondents repelled the submission made by Sri D.S. Misra and urged that the direction to write answers in English only does not run counter to the provisions of Article 351. He referred to unreported Division Bench decision of this Court in Ajai Kumar v. Union of India and others



1990 Lab IC (NOC) 84 (All). There was an option given to use Hindi as medium to answer General English paper in the departmental examination. Subsequently, the option was withdrawn as it did not yield satisfactory results. It was held that the policy decision taken by the Government did not contravene Articles 351, 14 or 16 of the Constitution of India. It was observed that proficiency in language other than Hindi, if needed for efficiency and discharge for official business, would not offend against directive principles contained in Article 351 or the same could not be questioned as infringing any right vested on any citizen. Further in the absence of any distinction being made between one candidate and another appearing for the General English paper there could be no discrimination.

20. In Sunil Kr. Sahastra Budhey v. Director IIT, Kanpur. AIR 1982 All 398, an ordinance framed under Section 38(c) of the institutes of Technology Act (Act No. 59 of 1961) laid down English as medium of instructions in the IIT. The petitioner insisted to submit his thesis for Ph. D in Hindi. The claim of the petitioner was tested with reference to provisions of Article 351. It was held that such a claim is not borne out from the provisions of the Constitution. Whether or not the petitioner ought to have been permitted to submit a thesis in Hindi when the same had been accepted as national language was a political question. It was further held



that the right of expression conferred under Article 19(1)(a) of the Constitution cannot be extended to the conferment of right on a citizen to read and study in a particular language that he wants. The right of expression has a different meaning and is not open for being adopted in the language other than that which is medium of instructions in the institution where admission is sought. To the same effect is the decision of Rajasthan High Court in the case of Umid Singh and others v. Jodhpur University AIR 198} (NOC) 204. An amendment in the Ordinance No. 35 framed under Section 34 (1) of Jodhpur University Act (Act No. 17 of 1962) was made. making English language compulsory for Intermediate Examination Certificate in order to obtain admission in IInd year T.D.C. of Jodhpur University. It was held that such an amendment is not violative of Article 351 as there was no Constitutional requirement for having education in Hindi and Hindi only and the University should stop studies in other languages.

21. Certain anti-Hindi activities were held to be violative of Article 351. In R.R. Dalavai v. State of Tamil Nadu, AIR 1976 SC 1559, a pension scheme was devised by Tamil Nadu Government granting pension to anti-Hindi agitators. This scheme was challenged and ultimately the Apex Court held that the scheme contained vice of disintegration and fomenting fissiparous tendencies and also was



without legislative sanction and violative of Article 351. In the case of Union of India v. Murasoli Maran, AIR 1977 SC 225, a Presidential order had been issued for the purpose of promoting spread of Hindi language and to provide Central Government employees the facility to take training in Hindi language when they are in service. The petitioner in that case challenged the validity of the Presidential order which challenge was upheld by the High Court. But on appeal preferred against the said decision, the judgment of the High Court was reversed and it was said that the Presidential order did not take away anything from the Government employees. The prizes offered were merely incentives. Those incentives were in consonance with Article 344. Again in the V. R. V. Sree Rama Rao v. Telgu Desam, a political party and others, the provisions of Article 351 came to be interpreted. It appears that an objection was taken for the registration of a political organization in the name of Telgu Desam. Telgu is one of the 15 official languages recognised under Articles 344(1) and 351, read with Eighth Schedule to the Constitution. Any appeal for all round development of Telgu language, it was observed, could not be deemed to be anti-national or an endeavour calculated to disrupt the integrity and sovereignty of India, as envisaged under Article 19(2) of the Constitution. On the other hand, all round



development of official language and the culture in the time spirit may, in fact, go a long way to integrate these various culture, which may be projected as Indian culture. The argument that the activity of promotion of a particular language as intended was calculated to promote fissiparous tendencies or resulting in disruption of the sovereignty and integrity of India is the product of frustrated mind.

22. Sri Sunil Ambwani made a pointed reference to the celebrated and illuminating Division Bench decision of this Court in the case of Prabandhak Samiti and another v. Zila Vidhyalaya Nirikshak and others, AIR 1977 All 164, as well as to the decision of Rajasthan High Court in the case of Narendra Kumar v. Rajasthan High Court and Others, AIR 1991 Raj 33. I have thoroughly studied both these cases and find that they do not run counter to the point which Sri D.S. Misra for the petitioners in attempting to make out. In Narendra Kumar's case (supra), the question was whether Section 47 of the Rajasthan High Court Ordinance 1949 will continue to apply after coming into force of Part XVII of the Constitution of India. It was observed that so far as Part XVII of the Constitution of India is concerned, it is relevant part, insofar as official language of the Union, including language to be used in the Supreme Court and the High Courts is concerned. After coming into force of the Constitution of India, the provisions of the Constitution of India shall prevail



and all provisions of any existing law, insofar as they are inconsistent with the provisions of the Constitution of India, will have no application. Use of Hindi as optional language is not unconstitutional. It is in accordance with Section 7 of the Official Language Act, which is not inconsistent with the Presidential Order under Article 344B. The Presidential order and the Official Language Act cover different fields. Clause 12 of the Presidential Order with regard to the language of the Supreme Court and the High Courts made certain provisions. In respect of the language of the High Courts, the Presidential order provided that the Ministry of Law may in due course undertake necessary legislation to provide for the use optionally of Hindi and other official languages of States for purpose of judgments, decrees and orders with the previous consent of the President, as suggested by the committee in modification of the recommendation of the Commission. It appears that in order to give effect to the aforesaid Presidential order the Official Language Act was made by the Parliament in the year 1963 and Section 7 which was enacted, reads as under :

"As from the appointed day or any day thereafter the Governor of a State may with the previous consent of the President authorise the use of Hindi or the Official language of the State in addition to the English language, for the purposes of any judgment, decree or



order passed or made by the High Court for that State and where any judgment decree or order is passed or made in any such language (other than the English language) it shall be accompanied by a translation to the same in the English language issued under the authority of the High Court"

23. In the case of Prabandhak Samiti (supra), a petition had been drafted in Hindi in Devnagari script and presented before this Court under Article 226 of the Constitution of India. A question arose whether such a petition could be entertained and adjudicated upon by the High Court. In that case, the question was not in respect of passing of judgment or decree or order in accordance with the Government Order made under clause (2) of Article 348 of the Constitution but the question was only in respect of adjudication of the petition presented and written in Hindi. The Court posed a question as to whether language can be employed for the use of the Courts and that the matter cannot rest on Articles 343 and 345 of the Constitution and must ultimately be decided on the basis of provisions of Article 348. The Court examined the scope of clause (2) of Article 348 of the Constitution of India and said that it is clear from its terms and until the Parliament enacts a contrary law, the proceedings in the Supreme Court and High Court are enjoined to be in English language. The Court said that as regards the High Court, clause (2) empowers the



Governor to permit use of Hindi in pleadings and arguments and the documents filed and once a Governor issues such notification, an individual can file such petition written in Hindi under Article 226 of the Constitution of India. Under clause (2) of Article 348 of the Constitution of India, therefore. Governor of a State with the previous consent of the President could authorize the use of Hindi language in the proceedings in High Court but this power of Governor was not extended to any judgment and decree passed or made by the High Court, and, therefore, it is only in accordance with the provisions of Official Language Act and more so, its Sections 6 and 7 for the optional use of Hindi written in Devnagari script has been permitted.

24. The field which Hindi occupies in its historical retrospect came to be surveyed in the decision of Prabandhak Samiti (supra) in which it was said that the transition from one official Court language to another whether it be under the impact of political freedom or the efflorescence of nationalist sentiment or both, is often preceded by grave misgivings, apprehensions, and even open or veiled hostility. The traditionalists feel aggrieved by what they regard as an invasion into entrenched territory. The reformers, on the other hand, are intolerant of what they are prone to regard as the tyranny of a foreign language. They are only too eager to hail the dawn of a new linguistic era. The history of the world



bears witness to this precarious phenomenon of one Court language being replaced by another. The other observations are highly revealing and valuable and clinch the issue. I cannot but do better to reproduce paragraphs 12 and 16 of the decision which are likely to reverberate and guide the destiny of Hindi as a Court language :

"12. The progress of Hindi in its march towards the goal of becoming the language of the Courts in the State of Uttar Pradesh synchronizes with the various steps taken in pursuance of Art. 348(2). It may be noticed that whereas clause (1) of Article 348 contemplates some law to be enacted by the Parliament, clause (2) of the same Article achieves its object through the instrumentality of orders issued by the Governor of the State. The proviso to that clause is to the effect, that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court. In other words, barring the items mentioned in the proviso, the use of Hindi language in proceedings in the High Court can be authorised by means of an order passed by the Government of the State concerned under Article 348(2). This provision vividly reflects the foresight and policy of the framers of the Constitution which was not to let the use of Hindi in the law courts in the States be delayed or deferred until Parliament by law provided that all proceedings in the High Courts should be in Hindi or any other official



language of the State. Thus, the intention of an expeditious substitution of Hindi for the English language for use in all proceedings in the High Court in the State of Uttar Pradesh can be clearly culled from the provisions of Article 348(2).

13.....

14.....

15.....

16. Thus, on a proper interpretation of the notification dated 5th September, 1969, made under Article 348(2), there can be no manner of doubt as to the legality of a writ petition being drafted in Hindi in Devnagri script and filed for adjudication in the High Court in the State of Uttar Pradesh. In fact, the language of the notification is wide enough to cover all pleadings, including plaints, written statements, writ petitions, and also other documents which are required to be filed in such proceedings. It is also clear from the various measures already taken to which we have referred in our judgment that the law as it now stands does not empower a Judge of our High Court while hearing a case to stop a litigant or his Advocate from making the arguments in Hindi, if he so desires. It is also equally clear that it is open to a Judge of the High Court hearing a case to pass his judgment or decree or order in Hindi, if he so chooses, but he cannot be compelled to do so. In case,



however, he passes an order or decree, etc., in Hindi, the only limitation still imposed upon him is that it must be accompanied by a translation of the same in the English language issued by the authority of the High Court. This sums up the present legal position with regard to the use of Hindi in proceedings in the High Court."

24. The misfortune of Hindi is that on the one hand, it has been by-passed by the State, on the other. It has been betrayed by its own evergrowing champions. In spite of the decision in the case of Prabandhak Samiti (supra), by which it has been firmly laid down that in view of the notification issued by the Governor of Uttar Pradesh under Article 348(2) of the Constitution, use of Hindi with certain limitation is permissible, Sri Sunil Ambwani urged that Section 7 of the Official Language Act abrogates the provision of Article 348(1) as regards the judgment and decrees and substitute in its place a requirement that the judgement and decrees should be accompanied by English translation authenticated by High Court. Placing reliance on paragraph 23. 10 of HM Seervai's Constitutional Law of India, 1996 Ed, Vol. III, page 2585, which 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."

67. The Court then went on to letter its opinion to raise therein of allowing the use of Hindi as a medium of



answering questions in the departmental promotion examinations of the High Court where also the judgment is illustrated as to why English also is a necessary language. The knowledge whereof is purposeful for Court work. The use of a particular language English as a medium of instruction depending upon the curriculum also came up for consideration before the Apex Court in the case of **Ms. Aruna Roy and Others vs. Union of India and Others** reported in **(2002) 7 SCC 368**. The debates relating to religious instruction that was discussed in the Constituent Assembly and in the Parliament vis-à-vis the recognition and acknowledgment of religious languages has been considered in the said judgment.

68. I had the occasion to deal with this issue directly as a Puisne Judge of the Allahabad High Court when this issue cropped up when judicial order was passed directing the Registry of the High Court not to accept writ petitions with Annexures in Hindi unless a translated copy is also attached with it in future in view of the Division Bench judgment in the case of **Prabandhak Samiti** (supra) which had not been noticed by the learned Judges who had issued the said direction and without being there discussion on constitutional provisions as well as the High Court Rules I had to hold that the said direction was not binding in the case of **Smt.**



Rajeshwari vs. State of U.P. & Others (Civil Mis. Writ Petition No. 54488 of 2012) decided on 16th October, 2012. While doing so the Court also referred the judgment of the Apex Court in the case of **Dr. Vijay Laxmi Sadho vs. Jagdish** reported in **(2001) 2 SCC 247**. That was a case arising out of an election petition where it was written in Hindi instead of English before the High Court of Madhya Pradesh. An objection was raised by the returned candidate that the election petition should be dismissed *in limine* on several grounds including the ground that it had not been presented in English as per the High Court Rules of Madhya Pradesh. The said objection was rejected by the Madhya Pradesh High Court against which an SLP was filed and the Apex Court upheld the view of the Madhya Pradesh High Court in the aforesaid judgment. What is noticeable in the said judgment is that it was categorically held that the High Court Rules which provided for the Election Petition to be written in English would not override the Notification issued under Article 348(2) of the Constitution of India. There was a difference of opinion between the two learned Single Judges of the Madhya Pradesh High Court on this issue the later judgment declaring the earlier one to be *per incuriam*. This was not appreciated by the Supreme Court and it was held that the matter ought to be referred to a Larger Bench if a Co-ordinate Bench is



disagreeing with the earlier judgment but while doing so the

Apex Court in Paragraph 27 held as follows:-

“27. The interpretation placed on rule 2 of the High Court Rules, giving it almost primacy over Article 348(2) of the Constitution, in Jai Bhansingh's case to our mind is fallacious. The learned single Judge appears to have lost sight of the position that Rules framed by the High Court in exercise of powers under Article 225 of the Constitution of India are only rules of procedure and do not constitute substantive law and those rules cannot effect the import of constitutional provisions contained in Article 348(2) of the Constitution. The high pedestal on which Rule 2(b) of the High Court Rules has been placed in Jai Bhansingh's case, not only violates clear constitutional provisions but also introduces a clause in Section 86 of the Act which does not exist. The entire approach to consideration of the effect of the notification issued under Article 348(2) appears to be erroneous. That apart, the defect of not filing an election petition in accordance with Rule 2(b) of the Rules is not one of the defects which falls either under Sections 81, 82 of 117 of the Act so as to attract the rigour of Section 86 of the Act as rightly held in Devilal's case (supra). Whether any other consequences may follow on account of the alleged defects would depend upon other factors to be determined at the trial of



the election petition but to hold that Section 86(1) of the Act would be attracted for non-compliance with Rule 2(b) of the High Court Rules is not correct. The learned Single Judge of the High Court was right in rejecting application, I.A. No. 5957 of 1999 and holding that an election petition filed by the respondent could not be dismissed under Section 86(1) of the Act for alleged non-compliance with Rule 2(b) of the High Court Rules relating to presentation of election petitions.”

69. It is therefore clear that the Apex Court while dealing with this issue has categorically held that even though the High Court Rules are framed in exercise of power under Article 225 of the Constitution of India yet they do not occupy a higher pedestal than the Constitutional mandate under Article 348 (2) and the Notification issued thereunder. I am referring to this particular paragraph as in the present case also the Rules of the High Court at Patna which require the presentation of the pleading in English as per the Rule quoted hereinabove and in respect of present issue the Notification dated 09.05.1972 also supports the same to the extent of writ petitions filed under Article 226 and 227 of the Constitution of India as well as tax references.

70. I had the occasion to reiterate the view expressed in **Smt. Rajeshwari** case (supra). In **Committee of**



Management Kanya Vidhyalaya Kisrauli and Ors. vs. State of U.P. and Ors. reported in **2013 4 AWC 3479** where I had taken notice of several other decisions of the Apex Court. Paragraphs 5 to 7 of the said judgment are extracted hereinunder:-

"5. So far as the States are concerned sub-article (2) of Article 348 of the Constitution of India clearly empowers the State Government to issue notifications in this regard. This issue has already been discussed by me in the order passed yesterday in the case of Smt. Rajeshwari (supra) but the Court has also been able to lay its hand on the Full Bench judgment of the Bombay High Court in writ petition No. 6597 of 2007, Vinayak Hari Kulkarni v. State of Maharashtra and others and Thane Bar Association, Thane and another v. State of Maharashtra, decided on 7.5.2010 that stands 2010(4) All MR 355 : 2010(4) Mah LJ 868, which was a dispute rendered on a reference made by a Division Bench on account of a rule under the Bombay High Court Rules providing for the acceptance of writ petitions with annexures in vernacular language Marathi. The said rule was struck down by a Division Bench and, therefore, the occasion for reference arose before the Full Bench. The majority opinion of two Judges of the full bench found that not entertaining a writ petition in Marathi would be too harsh for the litigants of Maharashtra and they opined as herein under:



25. *Notwithstanding the above observations, it may not be difficult to explore some alternative mechanism at the institutional level administratively. The Hon'ble Chief Justice and all other Hon'ble Judges may be requested to address to the enormous difficulties that the litigants are likely to face before all the Benches of this Court in the State of Maharashtra and with the cherished goal of providing easy access to the justice delivery system at affordable costs, in mind. There have been number of instances where the litigants and even the advocates appearing for the parties are allowed to address in Marathi or the Marathi documents/orders impugned have been explained by one Judge to another while sharing the Bench. At times, we have noticed that the original Marathi copies of the impugned orders are more reliable than their English translated versions. It is ultimately the urge to do Justice, that matters and not the semantic technicalities. We cannot, as the judges committed to our adjudicatory role, allow ourselves to be arrested in the cobweb of these technicalities. At the same time, the Bar and the Bench must join hands in exploring an alternative mechanism in place of Rule 2(i) in Chapter XVII of the Appellate Side Rules. Refusing to accept the petition for registration solely on the ground that the English translation of the impugned order in Marathi has not been annexed to the petition will be too harsh an action and resulting in denial of the very entry and access to seek justice. What would happen if the Governor of Maharashtra invokes his powers under Article 348(2), with the*



previous consent of the President of India, in the near future? All the Benches of this High Court, in the State of Maharashtra shall have to adopt the proceedings in Marathi in that eventuality. It is, therefore, for all of us to address to these serious and staring issues as early as possible, rather than merely asking the petitioners and litigants to approach the appellate forum. It cannot be said that the Full House does not have the necessary powers to find out an administrative mechanism, even in the absence of Rule 2(i) of the Appellate side Rules, so as to allow the registration of the writ petitions with the impugned order, G.R. or Rule copy being in Marathi language and to leave further choice to the Bench concerned to issue directions to file the English translation, before granting any relief to the petitioner.

6. The third Hon'ble Judge partly deferred with the said view and went further to approve of the reasoning of the Division Bench judgment of the Allahabad High Court in the case of Prabandhak Samiti and another v. Zila Vidyalaya Nirikshak, Allahabad and others, AIR 1977 All 164. The learned Judge after traversing the entire constitutional provisions, the Bombay High Court Rules came to the conclusion that documents in Marathi deserve to be accepted in the following words:

72. In Nadgauda's case with respect, the relevant provisions of the Constitution have not been adverted to. The Division Bench also did not notice the presence of identical provisions in



the same Rules. Further, the attention of the Division Bench was not invited to the fact that Article 348 falls under Chapter II of Part XVII of the Constitution of India which is entitled as "official language". Chapter I of the same deals with language of the Union and in it sub-article 343 appears which states that the official language of the Union shall be Hindi in Devnagari script. Notwithstanding anything contained in Article 343(1) for a period of fifteen years from the commencement of this Constitution, English language shall be continued to be used for all official purposes of the Union, for which it was being used immediately before such commencement. The proviso to Article 343(2) states that the President may during the said period of 15 years by an order authorise use of Hindi language in addition to English language. Thereafter, Articles 343 and 344 appear in the same chapter. In a decision Union of India v. Murasoli Maran, AIR 1977 SC 225, the Supreme Court held that these articles deal with the process of transition to Hindi for all official purposes of Union. The ultimate aim is provided in Article 351 viz., spread and development of Hindi language and enrichment of composite culture of India. [Article 344(6)]. (See paras 30 and 31 to 36 of this decision).

73. Then comes Chapter II which deals with "Regional language". Article 345 states that subject to the provisions of Articles 346 and 347, the



Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as a language to be used for all or any of the official purposes of that State. The proviso to Article 345 states that until the Legislature of the State otherwise provides by law, English language shall be continued to be used for those official purposes within the state for which it was being used immediately before the commencement of the Constitution. Articles 346 and 347 speak of official language for communication between one State and another or between State and the Union. In this Article also there is no compulsion and Hindi language could become the official language for communication between States.

74. Chapter III which contains Article 348 sub-article 1, sub-clauses (a) and (b), at the same time contains sub-article 2 which enables the Government of the State, with previous consent of the President, to authorise use of Hindi language or any other language used for any official purpose of the State in proceedings in the High Court having its principal seat in that State, provided that nothing in Article 348(2) shall apply to any judgment, decree or order passed or made by such High Court. Therefore, it is not as if there is compulsion that the proceedings ought to be In English language and no departure can be made therefrom in future. A departure can be made insofar as proceedings in



High Courts and use of English language can be discontinued after compliance with Article 348(2). If such is the wording of the Article itself, then, one fails to understand as to how proviso below Rule 2(i) is unconstitutional and violative of Article 348(1)(a) of the Constitution.

75. *Even in the decision of the Supreme Court to which reference is made in Nadgauda's case all that has been held is that pleadings or arguments in the Supreme Court in Hindi or any other language is not permissible. [See Madhu Limaye v. Ved Murthi, AIR 1971 SC 2608). Therein, the intervenor insisted on arguing in Hindi by stating that he does not know English. The Court gave several alternatives to the intervenor but he did not avail of the suggestions and alternatives given to him. It is in such circumstances that the intervention was cancelled. With deepest respect and begging to differ, how this judgment lays down that there cannot be any presentation or if presented non acceptance by the High Court of a writ petition under Article 226 of the Constitution of India, which is in English language but having a Marathi annexure with it, is not clear to me at all. The majority opinion rightly does not, therefore, uphold the correctness of the view expressed in Nadgauda's case.*

76. *In Prabandhak Samiti and another v. Zila Vidyalaya Nirikshak*



Allahabad and others, AIR 1977 All 164, the Allahabad High Court held that once Government issues notification under Article 348(2), an individual acquires legal right to use the language prescribed by the notification for writing petition under Article 226 of the Constitution of India. In such circumstances, I am of the opinion that judgment in Nadgauda's case does not lay down the correct position.

77. Therefore, I proceed to answer the question No. 1 by holding that the said judgment insofar as it strikes down the proviso is required to be overruled. I am supported in this conclusion by the very process of reasoning by which the Division Bench proceeded in Nadgauda's case. Chapter XVII of the A.S. Rules and particularly Rule 2(i) which is entitled "Accompaniments".

78. Now, merely striking down the proviso is not enough because the substantive rule permits furnishing of typed copies of translation in English language of all documents which are not in English language. Accompaniments to the petition need not necessarily be in English language and documents other than in English language can be filed, provided their translations are furnished. The decision in Vinayak's case takes note of the fact that Nadgauda's case does not declare Rule 2(i) of Chapter XVII of A.S.



Rules to be ultra vires Article 348(1) of the Constitution but only strikes down the proviso by declaring it as ultra vires this Article. Once the proviso alone is declared to be ultra vires and not the substantive Rule, then, all the more the conclusion reached cannot be sustained.

7. Applying the reasoning of the Bombay High Court referred to hereinabove, this Court finds itself in full agreement with the ratio quoted above and, therefore, over rules the objections of the Registry of the High Court whereby it has proposed not to accept writ petitions with annexures in Hindi.

Committee of Management Kanya Vidhyalaya Kisrauli and Ors. vs. State of U.P. and Ors. (17.12.2012- ALLHC):”

71. On a conspectus of the aforesaid precedence, I may now refer to the judgments in the case of **Swaran Singh Bagga vs. N.N. Singh, Registrar** reported in **2003(1) PLJR 315** and the judgment in the case of **Binay Kumar Singh vs. Bihar State Electricity Board and Ors.** reported in **2003(2) BLJ 418** coupled with the Division Bench judgment in the same case reported in **2010(3) BLJ (PHC) 83** that has given rise to the present reference.

72. From a perusal of the said judgments, it is evident that the judgment in the case of **Swaran Singh Bagga** (supra)



while proceeding to interpret the Notification dated 9th May, 1972 has rightly come to the conclusion that the phrase “Ishi Prakar = in the same way = similarly” has been rightly construed in conjunction with the word “Kewal = Only” to mean that the Notification is categorical in its application with a clear exception in respect of writ petitions under Article 226 and 227 of the Constitution of India and tax references. I do not find any reason to disagree with the same as the golden rule of interpretation is to read the statutory provision with its literal exposition for the purpose for which it has been framed. In my opinion, Hindi has not been provided as an alternative language in respect of these three categories namely writ petitions under Article 226 and 227 of the Constitution of India and tax references. According to the plain meaning of the words used in the Notification dated 9th May, 1972 such pleadings presented for official use have to be necessarily in English according to the said Notification and which is fortified by the Rules of the High Court.

73. In my considered opinion, it would not be appropriate to construe that there was no prohibition in the Notification dated 9th of May, 1972 for using the Hindi Devnagari Script. The Notification only recites not that petitions under Article 226 and 227 of the Constitution of



India as well as tax references will be presented “only” in English. This does not expressly prohibit the use of Hindi to the exclusion of English. It is open to a litigant to present his pleadings in Hindi but the authoritative text of it has to be in English to the extent as provided for in the Notification. This is a matter of procedure where the same Notification does not prevent the oral argument to be advanced in Hindi as in the case of **Madhu Limaye** (supra).

74. The question herein is not of conflict of the supremacy of any language but its viability and purpose as a use of Court language in certain classes of written petitions. From that point of view, the Constitutional mandate has been always interpreted to treat Hindi as an official language. For Court proceedings Hindi is practically parallel language and is also spoken in the Patna High Court. There is no statutory or Constitutional bar for advancing oral submissions in Hindi. Thus, Hindi is not an alternative language but a language available as an elective option at the privilege of the user in Court proceedings subject to the limitation as contained in the Notification dated 9th May, 1972. This prescription of limitation is of the year 1972 and after a passage of more than half a century the same has come to stay without any practical inconvenience in Court proceedings with the use of English



language in presenting writ petitions and tax references in English. The desire that Hindi should not stand ignored from such usage may be a matter of concern but here two aspects have to be clearly looked into. The first is the medium of instruction as prescribed for students of law. I have already referred to the 2nd Schedule of the Bar Council of India Rules which provides exclusively for the medium of instruction to be English in respect of courses taught in Law Schools. This therefore clearly lays the foundation that the English language is being primarily used for training legal brains not only because of its historical past but also because of the global impact of the language of English in today's context when laws from all over the world are being referred to in courses of study including International Law, Commercial Law and the like the translation of this massive global information into Hindi Devnagari Script may not be possible in the near future nor such effective translation is available to the extent it is required for training legal minds in Hindi Devnagari Script. The existence of legislations in English, documents of contract, service rules, laws relating to personal life, liberty and employment, laws relating to environment and the like and a large field of curriculum cannot be translated overnight with exactitude for the use in educational institutions or even in Courts of law. This therefore will have a direct bearing on



the drafting of pleadings particularly in writ petitions which find heavy institution in all High Courts. This prescription of medium of instruction in Hindi therefore appears to have been carefully introduced in the Bar Council of India Rules which cannot be ignored while championing the cause of Hindi which definitely one of the constitutional aspirations to be fulfilled.

75. The second reason is that our country has diverse languages and Lawyers in today's context travel far and wide to address Courts and assist them to arrive at a correct conclusion which is necessarily a display of expression today in common in the English language. They can therefore also plead and present petitions in the English language more conveniently to express the concern of the litigants. The possibility of litigant getting involved in a case in State where the language is entirely different would therefore make it different not only for the litigant but also for the Lawyer and the Court. In the event an over emphasis is led on the use of Hindi language while transcribing petitions but at the same time if petitions are filed in Hindi Devnagari Script and may have to be dealt by Court which may require a translation thereof then to that extent a provision can be made that in the event a petition or tax references is presented in Hindi then it



could be accompanied by an authoritative text of the same in English language as that would be the officially recognized language as per the Notification dated 9th May, 1972.

76. The Notification is neither unconstitutional nor it can be said to be suffering from any infirmity for being read down by this Court as held by the Division Bench in the case of **Binay Kumar Singh** (supra). There is no infringement of any legal rights either of the litigant or of any Lawyer nor is there any infringement of fundamental right which is always subject to reasonable restrictions permissible under the Constitution. The impugned Notification is yet within the said parameters of law. The litigants or the Lawyers do not lose their right of judicial review before this Court which is not jeopardized in any manner and if at all a litigant seeks for any such problem arising out of the use of a particular language to ventilate his grievances there is an entire machinery of the Legal Aid Services Authority with its branch in the High Court itself for proceeding such aid to any litigant.

77. Another dimension which is also a very important factor in the administration of justice throughout the country, be it the subordinate Courts or the higher judiciary, is the existence of a large voluminous material available as a source of law namely precedents. The best law journals in India that



have been published in the past and present are all in English. The authoritative text on almost every branch of law by authors of repute and scholars of jurisprudence are all in English. It will not be possible for this Court to predict as to when and how this entire material will get translated into Hindi Devnagari Script for its utilization and understanding by those who are espousing cause of the introduction of the Hindi language in the pleadings which are normally and to a great extent drafted by Lawyers and legal experts, and not by individuals. At the moment, the huge source of law in the shape of precedents is also one of the areas of concern as this forms a substantial basis of both legal education and continuing legal education.

78. Thus, the use of material in English for advancing the cause of justice cannot be substituted overnight which should be the larger concern of those who seek for the enforcement of the constitutional directives of the use of Hindi as an official language at all levels of the judiciary throughout the country. This issue is not confined therefore only to the Hindi heartland of the nation but it encompasses the cause of the entire nation particularly in matters of administration of justice. One should not forget that this nation is like a beautiful carpet woven in a design that has a language of diverse



cultural representations woven by knots tightly holding the entire fabric of the nation. The basic philosophy of unification of the nation in order to justify the cause of the use of Hindi Devnagari Script in official matters of the judiciary therefore has to be blended with the same expertise that has held the nation together without a feeling of imposition but at the same time a genuine honest endeavour towards the Constitutional goal of a National Integrated Cultural Society. This, in my opinion, would advance the cause of the smooth administration of justice without disturbing the concept of a unified nation and nationhood. Viewing Hindi or English as the only language does not seem to be the Constitutional mandate and it is with this end in view that our Constitution framers chiselled and shaped Article 348 of the Constitution of India. The preservation of the federal structure which is an essential part of our democratic system and federalism being a basic structure of our Constitution. Article 348 was also woven while supporting the cause of propagating Hindi language in the nation as an official language that has resulted in the prescriptions contained in the Constitution as discussed hereinabove. The cause espoused is therefore worth-appreciating but the justiciability of the cause is limited by Constitutional provisions itself. The changing social needs and to make the ideals enshrined in the Constitution meaningful



and leaving reality the approach of introducing the practice of entertaining petitions and tax references in Hindi may also be feasible and necessary. It has been noted by us earlier that an attempt was made by the Court calling upon the executive to initiate and resolve the issue through an executive or legislative intervention but the counter affidavit on behalf of the State does not seem to express any such willingness. I have therefore confined my views to the extent that in my opinion is permissible within the Constitutional limits and as far as the horizon of this issue can be envisioned for the time being. To cater to the wishes of the promoters of this cause beyond the law prescribed by the Legislature in this matter therefore has to rest at this stage so long as the Notification dated 9th of May, 1972 remains intact. I would therefore hold that the Notification dated 9th of May, 1972 is valid and is not capable of any other construction except what it recites and not what can be read into it by a tool of interpretation on the basis of what the law ought to be. The job of the Court is to define what the law is and it is for the Legislature or the executive to modify any express provisions as this is not a case of *cassus omissus* that can be filled by judicial interpretation.

79. Having said so and having traversed the entire background when it comes to interpretation of the



Notification, I do not find any legislative will to undo the Notification but at the same time the aspirations to be fulfilled and the constitutional mandate has to be given a direction. I, therefore, find that the Notification having been issued in exercise of the powers under Article 348 (2) of the Constitution of India does not suffer from any infirmity. The correctness of the judgment in the case of **Binay Kumar Singh** (supra) therefore has been rightly referred to be answered by this Full Bench and to that extent we find ourselves in agreement with the view expressed by the learned Judges in the referring order dated 1st of May, 2015. The distinction drawn by carving out an exception in respect of petitions to be presented under Article 226 and 227 of the Constitution of India as well as tax references cannot be erased on the basis of the reason given in the case of **Binay Kumar Singh** (supra). I, therefore, do not approve of the reasoning given in **Binay Kumar Singh** case or cases in line with the same and to that extent I find that the view expressed in the case of **Swaran Singh Bagga** (supra) to be the correct view, but at the same time in the light of the discussions made hereinabove I find it necessary to provide that so long as the Notification dated 9th of May, 1972 is not modified, rescinded or substituted in any form, a petition under Article 226 and



227 of the Constitution of India or a tax reference can be filed in Hindi but it will have to be accompanied by an English version as well which shall be the authentic version of the petition for all legal purposes so long as the Notification dated 9th of May 1972 stands.

80. The reference is answered accordingly.

(Amreshwar Pratap Sahi, CJ)

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

The issue under reference is whether a writ petition under Article 226 and 227 of the Constitution of India could be filed in Hindi language and Devanagari script.

2. The occasion for this bench to decide the aforesaid question has arisen because of a Division bench of this Court in the present case not being in agreement with another Division bench judgment of this Court in case of *Binay Kumar Singh Vs. Bihar State Electricity Board and Ors.*, 2010 (3) BLJ PHC 1983, wherein and whereby, the decision of a learned Single Judge of this Court in the same case viz. *Binay Kumar Singh Vs. Bihar State Electricity Board & Others* reported in 2003 (2) BLJ, 419, holding that a writ petition



under Articles 226 and 227 of the Constitution of India could be filed in Patna High Court only in English language, has been set aside.

3. The reason for the difference of opinion is the terminology/language used in the notification dated 9th of May, 1972 issued by the Hon'ble Governor of Bihar, invoking the provisions under Article 348 (2) of the Constitution of India and Section 7 of the Official Languages Act, 1963 providing, as an option, the use of Hindi language with respect to advancing arguments in civil and criminal matters before the High Court of judicature at Patna and for presenting affidavits along with the memo of petition and carving out exception for writ petitions under Articles 226 and 227 of the Constitution of India as well as for Tax references.

4. The Division bench in Krishna Yadav, while referring the matter to the full bench, has opined that the exception which has been carved out with respect to petitions under Articles 226 and 227 of the Constitution of India has been likened with Tax references, which are only to be made in English language.

5. For resolving the aforesaid difference/conflict of opinion, it would be necessary to reproduce the notification dated 9th of May, 1972 by the Cabinet (Official Language)



Secretariat :

मंत्रिमंडल (राजभाषा) सचिवालय

अधिसूचना

9 मई, 1972

सं० 31 हि 3-5043168.....185 रा० संविधान के अनुच्छेद 348 के खंड (2) एवं आफिसियल लैंग्वेजेज ऐक्ट, 1963 (अधिनियम 19, 1963) की धारा 7 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए बिहार राज्यपाल राष्ट्रपति की पूर्व सम्मति से, उच्च न्यायालय में निम्नांकित कार्यवाहियों के लिये हिन्दी भाषा का वैकल्पिक प्रयोग करने के लिये प्राधिकृत करते हैं :-

(1) पटना उच्च न्यायालय के समक्ष दीवानी तथा फौजदारी मामलों में बहस करने के लिये।

(2) शपथ-पत्रों सहित आवेदन प्रस्तुत करने के लिये :

किन्तु अपवाद स्वरूप भारतीय संविधान के अनुच्छेद 226 और 227 के अधीन प्रस्तुत किए जाने वाले आवेदनों के लिये अंग्रेजी का प्रयोग किया जाता रहेगा। आवेदनों से संलग्न अनुबंध का अंग्रेजी में होना आवश्यक नहीं होगा। इसी प्रकार कर निर्देश (टैक्स रेफरसेज) से संबंधित आवेदन भी केवल अंग्रेजी में प्रस्तुत किये जाते रहेगे। खास-खास मामलों में, पटना उच्च न्यायालय हिन्दी के कागजात का अंग्रेजी में अनुवाद कराने का आदेश दे सकेगा।

(3) पटना उच्च न्यायालय द्वारा पारित या दिए जाने वाले किसी निर्णय बिक्री या आदेश के लिये किन्तु जहां कोई निर्णय बिक्री या आदेश हिन्दी में पारित किया या दिया जाएगा, वहां पटना उच्च न्यायालय के प्राधिकार से निकाला गया अंग्रेजी अनुवाद साथ में दिया जायेगा।

(emphasis provided)

6. It may however be noted that when the full



Bench had assembled to hear the reference, it was initially found that it would have been more appropriate if the notification dated 9th of May, 1972 was revisited by the State Government for bringing about necessary changes in the aforesaid notification, may be by way of another notification, keeping in view the general mandate of the Constitution and of the State of Bihar being a Hindi speaking State.

7. Since no response was received from the State Government, the reference is being answered accordingly.

8. Part XVII, Chapter III of the Constitution of India deals with the language of the Supreme Court, High Courts etc. Article 348 of the Constitution of India reads as hereunder:

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.

(emphasis provided)

9. By virtue of the aforesaid Article viz. Article 348(2), the Governor of a State, with the previous consent of the President of India, has the authority to recommend/authorize the use of Hindi language in proceedings in the High Court having its principal seat in the State.

10. Section 7 of the Official Languages Act, 1963 reads as hereunder :

7. Optional use of Hindi or other



official language in judgments, etc., of High Courts.- As from the appointed day or any day thereafter, the Governor of a State may, with the previous consent of the President, authorise the use of Hindi or the official language of the State, in addition to the English language, for the purposes of any judgment, decree or order passed or made by the High Court for that State and where any judgment, decree or order is passed or made in any such language (other than the English language), it shall be accompanied by a translation of the same in the English language issued under the authority of the High Court.

11. It would also be necessary to examine the provision contained in Article 1/Rule 1, Chapter III, Part II of the Patna High Court Rules which *inter alia* states that “every application to the High Court shall be by a petition written in the English language”.

12. As noted earlier, the only reason for the Division bench, while referring the matter to a larger bench in Krishna Yadav (supra), to differ with the Division bench judgment in Binay Kumar Singh (supra) is the language employed in carving out the exception to the notification providing Hindi as an optional language for arguments in civil and criminal cases in Patna High Court and for applications along with affidavits. The literal translation of the exception provided in the notification referred to above is that as an exception, a petition under Articles 226 and 227 of the Constitution of India shall continue to be filed in English



language but the enclosures to such petition need not be in English. Thereafter, it reads, that “likewise” (*isi prakar*) Tax references shall only be filed in English. It was therefore interpreted by the Division bench in Krishna Yadav (*supra*) that with the insertion of the word “likewise” (*isi prakar*) in the context of Tax references, which are compulsorily to be made in English language, the writ petitions under Articles 226 and 227 of the Constitution of India would also be filed in English language only or else there was no necessity of carving out an exception with use of the word “likewise”.

13. In the opinion of the Bench in Krishna Yadav (*supra*), the aforesaid aspect was not noticed by the Division bench in Binay Kumar Singh (*supra*).

14. Hence the reference.

15. It may also be noted that the judgment of the learned single Judge in Binay Kumar Singh (*supra*) which was upturned by the Division bench, took note of the provisions contained in Articles 350 and 351 of the Constitution of India, which are in the nature of special directives for permitting every person to submit a representation for redressal of his grievance before any officer or authority of Union or a State in any of the languages used in the Union of India or in the State as the case may be and obligation upon the Union of India to promote the spread of



Hindi language for its development so that it may serve as a medium of expression for all the elements of the composite culture of India and also to enrich it by assimilating and without interfering with its genius, the forms, style and expressions used in Hindustani and in other languages of India specified in the Eighth Schedule and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages but held in obedience to *generalia specialibus non derogant and generalibus specialia derogant* that if a special provision is made with respect to a certain matter, that matter is excluded from the general provisions. The exception therefore with respect to petitions under Article 226/227 of the Constitution of India and Tax references were put on the same pedestal and seen as in the same category where only English language could be used.

16. In appeal, the Division bench was of the view that the learned single Judge proceeded on a premise based on a myopic reading of the notification in question (9th of May, 1972) and if it were read in its entirety, the only inference which could have been drawn is that a petition under Articles 226 and 227 of the Constitution of India could be filed in English also. Such reading of the notification would only be in consonance with the spirit of the notification, providing



alternative language of Hindi also in presentation of applications supported by affidavits and use of Hindi language in advancing arguments in civil and criminal matters. The other reason for the Division bench to disagree with the opinion of the learned single Judge was that the proviso (exception) would not control the substantive provision of clause I and II of the notification. Had it been the intention of the Hon'ble Governor that for writ petitions to be filed in the High Court, only English language would be permissible, the notification would have clarified the same as it has clarified with respect to the use of only English language in Tax references.

17. The Division bench in Krishna Yadav, on the contrary, lays stress on the use of the word "likewise" (*isi prakar*), bringing writ petitions under Articles 226/227 of the Constitution of India and Tax references as an exception where use of only English language is permissible.

18. There appears to be some ambiguity in the matter because of the use of the word "likewise" (*isi prakar*) while referring to Tax references, for which only English language is to be used, but in our opinion, the use of the word "likewise" (*isi prakar*) appears to be superfluous.

19. If the notification is read as a whole, it would, for sure, reflect the necessity of permitting the use of Hindi as



an alternative language, in terms of Article 348(2) of the Constitution of India, imbued with the spirit and in obedience to the directives in Articles 350 and 351 of the Constitution of India. If the notification is seen in this perspective, it can admit of two exceptions viz. writ petitions under Articles 226 and 227 of the Constitution of India and Tax references. For the writ petitions under Articles 226 and 227 of the Constitution of India, the language employed in the notification is that the English language shall continue to be used, leaving a silent option to a litigant/lawyer to present those petitions in Hindi language as well. With respect to Tax references, the notification clearly spells out that those shall be made only in English language. Such proscription for usage of Hindi language as medium, as has been prescribed for Tax references, is conspicuously absent with respect to petitions under Articles 226/227 of the Constitution of India.

20. I, therefore, would like to lay more stress on the use of the word only (*Kewal*) with respect to use of English language in Tax references rather than treating Tax references to be similar to writ petitions under Articles 226/227 of the Constitution of India because of the use of the work “likewise” (*isi prakar*).

21. While leaning in favour of the aforesaid interpretation, I have given anxious consideration to the



provisions contained in Articles 350 and 351 of the Constitution of India and Hindi being the language of the multitude, especially in the State of Bihar.

22. The answer to the reference thus is that a writ petition under Articles 226/227 of the Constitution of India can be filed in Hindi language also.

23. As a digression, I deem it appropriate to remind myself that supremacy of a language has been the bone of contention between people using different languages and despite one language, for sometime, having attained supremacy over other languages, is seen to have drawn references and has necessarily been affected and influenced by other languages. As an illustration, the Saxon invaders of England, though tried to remove all influence of Latin language but the English language could not remain untouched. There was influence of a new language called Gaul (predecessor of French language) on English language also. However, as empirical study would show, the language of people ultimately replaced the language of the superiors. In the present day scenario, with the growth of education and the impact of globalization, it can hardly be said that English is not intelligible to the masses but this observation has constantly been met with a rebuff of being the observation from the ivory tower sans the realistic position of society.



24. It is however clarified that the reference has been answered purely on the issue of constitutionality and nothing else.

(Ashutosh Kumar, J)

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

I have the benefit of going through the erudite and clearly expressive judgment of my brother Justice Ashutosh Kumar. While answering the reference brother Ashutosh J. has opined that a writ petition under Articles 226 and 227 of the Constitution of India can be filed in Hindi Language also in Patna High Court.

2. With utmost respect, I regret my inability to agree with the aforesaid view for the reasons stated hereinafter.

3. In the present case, we are looking to interpret the notification dated 9th May, 1972 issued by His Excellency, the Hon'ble Governor of Bihar in exercise of his powers under Clause (2) of Article 348 of the Constitution read with Section 7 of the Official Language Act, 1963 (hereinafter referred to as the Act of 1963), with prior approval of Hon'ble President of India. Before Venturing into interpretation of the aforesaid notification, I would briefly refer the language debate of the constituent assembly. I am also conscious of the



on going debate that if India has a national anthem and a national flag why cannot there be a national language, but having said so I would also keep in mind that the India is a multi-lingual nation as about 1600 languages and dialects flourish in this country.

4. The father of the nation Mahatma Gandhi was one of the proponents of the Hindi. The constituent Assembly was apparently divided as to which language may be taken as one national language. In the Constituent Assembly Debates which took place on 14th September, 1949 the Members of the Constituent Assembly discussed about the official language of the Union. Article 343 of the Constitution of India is what Article 301A was there in Part XIV-A Chapter-I under the head Language of the Union in the Draft Constitution. Similarly Articles 344, 345, 346, 347 were Articles 301B, 301C, 301D and 301E respectively in the Draft Constitution. Chapter III falling under Part XIV –A in the Draft Constitution was what Chapter III is under Part XVII of the Constitution of India. Chapter IV contained the Special Directives. Article 301-I was what Article 351 is in the Constitution of India.

5. The unity which existed in the Constituent Assembly was on the verge of breaking down during the language debate.



6. After a lot of discussions and deliberations, Munshi-Ayengar formula was adopted without dissent. According to this formula English continued as the official language of India along with Hindi for a period of fifteen years. Schedule VIII of the Constitution of India is thus a fruit of Munshi-Ayengar formula. In 1963, the Official Languages Act was enacted with one of its reasons behind to pacify the non-Hindi speakers. Section 7 of the Official Language Act 1963 came into force on 07.03.1979 (see Gazette of India, 7.3.1970, P II, S. 3(ii) P.1195. By virtue of Section 7, the Governor of a State may with the previous consent of the President, authorize the use of Hindi or the official language of the State, in addition to the English language, for the purposes of any judgment, decree or order passed or made by the High Court for that State and where any judgment, decree or order is passed or made in any such language (other than the English language), it shall be accompanied by a translation of the same in the English language issued under the authority of the High Court. The State of Bihar has also enacted “The Bihar Language of Laws Act, 1955.” It has been published with the assent of the President of India. Section ‘2’ of the Act of 1955 reads as under:-

“2. Language to be used in Bills Etc.- The Language to be used in-

(a) All bills to be introduced or amendments



there to be moved in either House of the Legislature of the State;

(b) All Acts passed by the State Legislature;

(c) All ordinances promulgated under Article 213 of the Constitution; and government under the Constitution or under any law made before or after the commencement of the Constitution; shall be Hindi in 'Devangari' script;

Provided that Bills introduced prior to the commencement of clause (a) may be passed as Acts by the State Legislature in the English language."

7. Article 348 of the Constitution of India has been reproduced by my brother Ashutosh, J. After going through Article 348 (1) (a) of the Constitution of India it becomes crystal clear that all proceedings in the Supreme Court and every High Court shall be in English, however, Clause(2) empowers the Governor to permit the use of Hindi in pleadings or arguments and the documents filed in the High Court.

8. In the case of **Madhu Limaye VS. Ved Murti 1973 SCC 738: AIR 1971 SC 2608** the Hon'ble seven Judges Bench of the Supreme Court although initially allowed Mr. Raj Narain to address the Court in Hindi but when it was noticed that the learned Attorney General and some of the members of the Bench could not understand the argument in Hindi, the Hon'ble Bench on the next day did not agree to



hear Mr. Raj Narain in Hindi and gave him options either to argue in English or he may allow his counsel to present his case or he may give his written argument in English. The Hon'ble Apex Court reminded him that Article 348 clearly stipulates that language of the Court must be in English.

9. The learned author M.P. Jain in his book Indian Constitutional Law (6th Edition-2010) Volume 1 at page 1107 wrote thus:- “problem arise in regard to language of Legislature. How would be the law enacted in one stage in its own official language be known in other parts of the country and how would be the Supreme Court interprets the same; the compulsions of the situation, therefore, demand that so far as possible there exists a basic unity in the language of law and the Courts through out the country. Accordingly, the Constitution makes a special provision concerning the language problem in the areas of judicial and legislative processes, the idea implicit therein being that the question of the Courts language takes its own time to settle.”

(Refer Commenlay on the Constitution of India by Durga Das Basu, 8th Edition, Vol.9 page 1086).

10. According to learned author Sri M.P. Jain, difficult problems arise when the question of language is considered in the context of law and the Courts. English common law is the basis of Indian legal system and, to this



end, the English language has been very useful medium of thought and expression. India has a unified judicial system, as there exists a basic unity in the laws prevailing in the country, and the decisions of one High Court are freely cited in other High Court. The problem of the language of the law thus assumes a special significant. If the High Court adopts the local language, then it would be difficult to cite distinct from this Court in other High Courts. Difficulty would also arise in the functioning of the Supreme Court if the High Court were to adopt different languages. Professor (Dr.) M.C. Jain Kagaji in his book on Constitution of India, 6th Edition Volume 2 at page 1847 said- “ the Law Commission while emphasizing this aspect (i.e., the importance of English language) noted benefits of English as the legal language. It is not an exaggeration to say that but for english country-wide uniformity system of law and an integrated judiciary would have been impossible. Therefore, it must be admitted that change over from English to Hindi in the courts of law must necessarily be slow. However, it should come with the fuller development of Hindi as the law language. The Hindi Law Lexicon should be prepared and practiced in the State in the first instance for the purposes of bye-laws of the local bodies and for the business of lower courts. Where necessary for the sake of decision and smooth change over, current legal terms



should be retained.

(Refer Commenlay on the Constitution of India by Durga Das Basu, 8th Edition, Vol.9 page 1087).

11. In the aforementioned background it may be found that while Article 348(1) (a) provides that all proceedings in the Supreme Court and High Courts shall be English language, Clause (2) of Article 348 of the Constitution of India is in the nature of exception to the general Rule. Clause(2) starts with non-obstante clause which provides that Governor of a State, with the previous consent of the President may authorize the use of Hindi or any other language in proceedings in the High Court having its principal seat in that State, save and except that judgment, decree or order passed or made by such High Court, shall be in English language as required by Article 348(1).

12. Power under Section 7 of the Official Languages Act has been exercised by the government of Uttar Pradesh. The relevant notification dated 05.09.1969 issued by the Hon'ble Governor of Uttar Pradesh which came for consideration in the case of Prabhandhak Samiti and Anr. Vs. Zila Vidyalaya Nirikshak, Allahabad and Ors.reported in AIR 1977 Allahabd 164 is quoted hereunder for a comparative discussions vis-a-vis the notification dated 9th May, 1972 issued by the Hon'ble Governnor of Bihar:-



“ उच्च न्यायालय, इलाहाबाद की कार्यवाहियों में हिन्दी का प्रयोग और आगे के प्रश्न पर फिर से विचार किया गया । अब भारत के संविधान के अनुच्छेद 348 के खण्ड (2) के उपबन्धों के अधीन उत्तर प्रदेश के राज्यपाल राश्टपति की पूर्व सम्मति से यह आदेश देते हैं कि उच्च न्यायालय, इलाहाबाद के समक्ष दायर किये जाने वाले भापथ पत्रों में और उसकी कार्यवाहियों में प्रयोग करने के लिये वाद पुस्तिकाओं (पेपर बुक्स) में सम्मिलित किये जाने वाले बयानों और दस्तावेजों में हिन्दी का प्रयोग निम्नलिखित भातों के अधीन किया जा सकता है

(1) यदि बेंच चाहे तो वह विशेष रूप से यह आदेश दे सकती है कि हिन्दी के भापथ पत्रों, बयानों और दस्तावेजों का अंग्रेजी भाशा में अनुवाद किया जाय और,

(2) यदि किसी निर्णय (जजमेंट) में हिन्दी के अभिवचनों (प्लीडिंग्स), बयानों और दस्तावेजों आदि का कोई उदाहरण सम्मिलित किया गया हो तो अंग्रेजी भाशा में उसका रूपान्तर उसके तुरन्त बाद किया जाय”

Translated into English paragraph 4 read as under:-

“4. The question of progressive use of Hindi in the proceedings of the Allahabad High Court was again considered. Now, under Article 348(2) of the Constitution of India, the Governor of Uttar Pradesh is pleased to order with the prior consent of the President, that the Hindi may be used in the affidavits to be filed and in the statements and documents to be included in the paper books prepared for the use of the Allahabad High Court, subject to the following conditions:-

(1) If the Bench so desires, it may make special order that the affidavits, statements and documents in Hindi be translated into English, and

(2) If some extract of pleadings, statements and documents in Hindi is incorporated in any judgment, English translation thereof may be made



immediately thereafter.”

13. In the case of Prabhandhak Samiti (supra), the Hon'ble Allahabad High Court held inter-alia in paragraph 16 as under:-

“Thus, on a proper interpretation of the notification dated 5th September 1969 made under Article 348(2) there can be no manner of doubt as to the legality of a writ petition being drafted in Hindi in Deo Nagri script and filed for adjudication in the High Court in the State of Uttar Pradesh. In fact, the language of the notification is wide enough to cover all pleadings, including complaints, written statements, writ petitions and also other documents which are required to be filed in such proceedings.”

14. Keeping in mind the aforesaid judgment when I go through the Division Bench judgment of this Court passed in LPA NO.600 of 1995, **Swaran Singh Bagga Vs. N.N. Singh, Registrar** reported in **2003(1) PLJR 315**, I find that in the said case prayer of the appellant was that all proceedings in the High Court must be in Hindi, arguments should be advanced in Hindi and judgment should also be delivered in Hind. The Hon'ble Division Bench held that the prayer made by the appellant cannot be granted but while saying so the Bench observed that “there is no bar for any person to file an application in Hindi nor there is any bar for any person to advance argument in Hindi and in fact in



several cases this is being accepted by this Court.”

15. The aforesaid judgment of this Court in the case of **Swaran Singh Bagga** (supra) was relied upon in course of hearing of the writ petition in the case of **Binay Kumar Singh Vs. Bihar State Electricity Board and Ors.** Reported in **2003(2) BLJ 418**. The learned Single Judge considered the preliminary objection raised on behalf of the respondents that in view of the laws governing the issue, a writ petition under Article 226 of the Constitution of India can be filed in the Patna High Court only in English. The learned Single Judge referred Rule 1, Chapter III, Part II of the Patna High Court Rules which lays down that every application to the High Court shall be by a petition written in the English language. The learned Single Judge went through the notification dated 9th May, 1972, discussed the case laws and came to a conclusion that the writ petition under Articles 226 and/or 227 of the Constitution of India can be presented in the Patna High Court only in English Language. The learned Single Judge in paragraph 9 of the judgment held as under:-

“It is thus, manifest on a consideration of the relevant provisions of law governing the issue that the petitions and affidavits can also be presented in the Patna High Court in Hindi, as an alternative to English language, except writ petitions under Articles 226 and/or 227 of the Constitution which must be in English. The annexures thereto can be in Hindi and, in appropriate



cases, the High Court can give direction for translation of the same (the annexures) in English. All petitions relating to tax references can be presented only in the English language.”

16. The judgment of the learned Single Judge in the case of **Binay Kumar Singh** (supra) came to be challenged before the Hon'ble Division Bench of this Court, the judgment is reported in **2010(3) BLJ (PHC) 83**. The Hon'ble Division Bench held in paragraph 4 of the judgment as follows:-

“The judgment impugned proceeds on the premise that this notification which otherwise provides for use of Hindi as an alternative language in this Court carves out an exception with regard to petitions under Articles 226 and 227 of the Constitution of India. Having given our anxious consideration to the same, we find it difficult to hold that it prohibits the institution of applications under Articles 226 and 227 other than in English. To our mind, the notification read in its entirety reflects that Hindi shall be the alternative language in this Court in Civil and Criminal matters and other applications supported by affidavits. It, however, makes exception to permit writ petitions under Articles 226 and 227 to be filed in English also. It does not detract from the original provision providing for Hindi as an alternative language for presentation of applications supported by affidavits and which shall include writ petitions also. The proviso would not control the substantive provisions of clause 1 and 2 of the notification. If it was intended that writ petitions under Articles 226 and 227 could not be specifically provided as it does in the case of Tax References cases prohibiting applications in any other language except English. The language of the



notification being clear and it containing no ambiguity, we cannot read into it more than what it plainly provides for.”

17. In my considered opinion while delivering its judgment in the case of **Binay Kumar Singh** (supra), the Hon'ble Division Bench did not go into the niceties of the discussions made by the learned Single Judge, the Division Bench as it appears got impressed with the earlier Division Bench judgment of this Court in the case of **Swaran Singh Bagga** (supra) which reflects from a reading of paragraph '5' of the judgment of the Hon'ble Division Bench.

18. In the aforesaid circumstance when this writ application came to be considered before another Division Bench of this Court, the Hon'ble Bench noticed that the notification dated 09.05.1972 provides for an alternative use of Hindi apart from English in arguments before the High Court in all civil and criminal matters and for filing applications with affidavits but an exception has been carved out to the alternative use of Hindi inasmuch as the notification dated 09.05.1972 states that with regard to the applications under Articles 226 and 227 of the Constitution of India, use of English for such applications shall continue. It further says that annexures to the applications will not be required to be essentially in English. The word 'Isi prakar' which is the bone



of contention while interpreting the notification has been introduced to say that the applications related to tax references shall also be continued to be presented 'only' in English.

19. The Hon'ble Division Bench vide its order of reference dated 01.05.2015 doubted the correctness of the Division Bench judgment in the case of Binay Kumar Singh (supra).

20. On going through the notification dated 09.05.1972, I am of the considered opinion that two words 'isi prakar' followed by words 'only' are significant and are required to be read in consonance with each other. In first part of the notification an alternative has been provided by saying that for the proceedings in the civil and criminal matters in Patna High Court, for arguments, Hindi language is authorized to be used alternatively (emphasis supplied). With regard to filing of applications with affidavits, again the first part of the notification clearly provides use of Hindi language as alternative language. To this extent, there is no ambiguity in the notification. It is the second part of the notification whereunder by way of proviso to Clause (2) of the notification again somethings have been taken out from Clause(2) of the first part. Now the proviso to Clause (2) of the notification carves out an exception by saying that the



applications under Article 226 and 227 of the Constitution of India shall be continued to be presented in English.

21. To me it appears that if the intention of the author of the notification was to allow filing of the applications under Article 226 and 227 of the Constitution of India in the alternative language of Hindi also, it was fully covered under the first part of the notification itself and there was no need to place proviso under Clause (2) of the notification. It amounts to creating an exception to the choice of alternative language. The proviso also says that annexures to the applications would not be essentially in English. Again if the intention of the author of the notification was to allow Hindi language as alternative language for filing applications under Articles 226 and 227 of the Constitution Of India, there was no need to say that filing of annexures/enclosures in English would not be essential. This only strengthens my belief that author of the notification was conscious of a situation where by virtue of the first part of the proviso one could have taken a view that even the annexures/enclosures to the applications would be in English. To avoid such a situation it was made clear that annexures/enclosures would not be essentially in English.

22. Further the use of word '**Isi prakar kar nirdesh (tax referneces) se sambandhit awedan bhi kewal**



angreji me prastut kiye jate rahenge' goes a long way to show that the applications of tax references and the applications under Articles 226 and 227 of the Constitution of India have been put in one class of cases in respect of which the applications will be kept on being presented in English only.

23. I am therefore in agreement with the views expressed by the Hon'ble Division Bench in this case in the order of reference dated 01.05.2015.

24. To me it appears that the Hon'ble Division Bench in it's judgment in the case of Binay Kumar Singh (supra) has taken the first part of the notification dated 09.05.1972 as a substantive provision but did not notice that the substantive provision in first part was brought to introduce an alternative language i.e. Hindi Language for filing application with affidavit; soon thereafter under proviso to Clause (2) an exception was carved out. In paragraph '4' of its judgment the Hon'ble Division Bench took a view that proviso would not control the substantive provisions of Clause (1) and (2) of the notification. At this stage, in my opinion, the Hon'ble Division Bench could not notice the real nature of the proviso. **"The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the**



purview of the enactment (Kedarnath Jute Manufacturing Co. Ltd. V. Commercial Tax Officer, AIR 1966 SC 12). As stated by Lush J., “When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.” In the words of Lord Macmillan: “The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.” The proviso may, as Lord Macnaghten laid own, be “a qualification of the preceding enactment which is expressed in terms too general to be quite accurate.” The general rule has been stated by Hidayatullah, J., in the following words: “As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule”. (Shah Bhojraj Kuverji Oil Mills and Ginning Factory V. Subhash Chandra Yograj Sinha, AIR 1961 SC 1596)” (Refer Chapter III, Syn 9 page 185-186 of the Principles of Statutory Interpretation by Justice G.P. Singh, 10th Edition). Thus, in my considered opinion, the views expressed by the learned Single Judge in the judgment reported in 2003(2) BLJ 418 is laying down the correct law.

25. Before I part with this judgment, I must record my willingness to agree with the views expressed by my brother Justice Ashutosh that there are critics of the views hereinabove saying that these are the observations from the ivory tower sans the realistic position of the society. Some of



the critics have in past discussed their opinion criticizing the Court as snobbish and elite, but then in my opinion those who take that view would understand that as a Judge I have to perform my duties to uphold the Constitution of India and the laws.

26. Having said so, I would briefly state that after the motion was adopted and Part XIV –A in the Draft Constitution was passed and added to the Constitution Dr. Rajendra Prasad, the Hon'ble President of the Constituent Assembly in his closure speech before adjourning the house stated thus:

“This brings the proceedings of this evening to a close but before adjourning the House I desire just to say a few words of congratulation. I think we have adopted a Chapter for our Constitution which will have very far reaching consequences in building up the country as a whole. Never before in our history did we have one language recognised as the language of rule and administration in the country as a whole. Sanskrit was the language in which all our religious literature and lore was enshrined and in which other literature was enshrined. That was studied no doubt in all parts of the country but it was never the language which was used for administrative purposes throughout the country as a whole. Today it is for the first time that we have got a Constitution, we are going to provide in our Constitution a language which will be the language of administration for the Union and that language will have to develop itself to suit the exigencies of time.

I do not claim to be a scholar of Hindi or any other



language. I do not claim to have made any contribution to literature but this much I can say as a layman that it is not possible today to foresee what form this language, which we have adopted as the language of administration of the Union, is going to take in the future. As it is, Hindi has undergone change in the past an many many occasions and we have several styles of it, we have had literature written in Braj Bhasha. Khari Boli is now the prevalent style in Hindi. I think its contact with all the other languages In the country will give it opportunities for further development. I have no doubt that Hindi will benefit rather than lose by absorbing as much as it can of the best that is to be found in the other languages of the country.

We have now accomplished political unification of the country, such as it is. We are now going to fore another link which will bind us all together from one end to the other. I hope all Members will go home with a feeling of satisfaction and even those who have lost in voting will take it in a sportsman like spirit and will help in the work which the Constitution will now impose upon the Union in regard to language.

I want to say one word about South India. It was in 1917 when Mahatma Gandhi wits in Champaran and I had the privilege of working with him that he thought of starting Hindi Prachar in the South and he decided to request Swami Satyadev and his dear son Devdas Gandhi to go and start the work which they did. Subsequently, in 1918 at the Indore Session of the Hindi Sahitya Sammelan, this Prachar work was accepted as one of its primary functions by the Sammelan and the work progressed. It has been my privilege to be associated although I cannot claim to be associated very intimately- with the work throughout this period of nearly 32 years no. I have gone to the South from one corner to the other and it has pleased my heart to see how the people



of the South responded to the call of Mahatma Gandhi in respect of this language. I know the difficulties that they had to face, but the enthusiasm which they brought to bear upon this was simply marvellous. I have been associated with prize distributions on several occasions and it may amuse Members to hear that I have distributed the prizes to two generations at the same time if not three on some occasions; that is to say, the grand-parent, the Parent, and the grand-child-for having studied the language, having passed the prescribed examination and having come for the prizes and for their diplomas. The work has progressed and it has been adopted by the people of the South as their work. Today I do not know how many lakhs (they are) spending over this Hindi Prachar work and I do not recollect the figures, how many examinees are sitting at the examinations from year to year. This means that the language has been recognised by a large section of the people in the South as the language for All-India purposes and the enthusiasm which they have exhibited in this deserves congratulation, deserves recognition, deserves gratitude from the people of the North.”

27. It is because of the Special Directives contained in Article 351 of the Constitution, we had in our order dated 24.01.2019 passed in the present writ application recorded as under:-

“Heard Shri Indradeo Prasad, learned counsel for the petitioner and Shri Lalit Kishore, the learned Advocate General as well as Shri Yogendra Prasad Sinha, the learned Additional Advocate General on behalf of the State of Bihar.

The issue raised before this Full Bench relates to the interpretation of the language employed in the



Notification dated 09th of May, 1972 in the context of the reference made for being answered by this Full Bench.

On deliberations, we find that it would be more appropriate that if the said notification dated 09th May, 1972 is revisited upon the advice by the learned Advocate General by the State Government in order to appropriately cater to the requirement in the present context after the advent of the Constitution of India keeping in view the fact that the State of Bihar is one of the States of Hindi heartland.

In our opinion, the option of the use of language in drafting petitions etc, without putting the Court proceedings in the High Court to any inconvenience, can be in optional languages insofar as presentation of petition is concerned, but it has to be in conformity with Article 348 of the Constitution of India read with the Official Languages Act, 1963 as well as the binding judicial pronouncements on the issue.

Thus in order to resolve the said reference, it would be more appropriate that the matter is revisited by the Government and an appropriate information is made available to this Court for proceeding further in the matter. The learned Advocate General shall also provide an English version of the Notification dated 09th of May, 1972.

The learned Advocate General prays that four weeks' time be granted for the same.

Let the matter be adjourned for a period of four weeks. The Full Bench shall be notified on 07th of March, 2019.

The names of the learned counsel for all intervenors and the name of Shri Harpal Singh Rana, in person, shall also be shown in the cause list.”

28. We were expecting some developments during



the given period but when the matter was taken up on 7th March, 2019, neither the English Version of the Notification dated 9th May, 1972 was placed before us nor we got any feedback with reference to any discussions or deliberations at the end of the State Government in light of our order.

29. For the reasons stated in my judgment hereinabove, I have interpreted the notification dated 9th May, 1972 so as to reach to a conclusion that an application under Article 226/227 of the Constitution of India may be filed in Patna High Court only in English language but then I wish the State Government shall still look into the Special Directives as contained in Article 351 of the Constitution of India and may come out with an appropriate notification.

(Rajeev Ranjan Prasad, J)

Post Script

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

The opinions rendered by all of us are substantially different so far as the conclusion of the respective opinions are concerned, necessitating a consultation between my esteemed brother Justice Rajeev Ranjan Prasad and me.

2. In order to catalogue the drift and thrust of the opinions drafted by all of us, it may be stated, for ready



reference, that Hon'ble Justice Prasad, after delving into the constitutional debates over the language of the courts, case laws and after interpreting the notification of 1972, which is the fulcrum of the present dialectics, has come to the conclusion that an application under Article 226/227 of the Constitution of India can be filed only in English language, till the time the State Government, by following the special directives contained in Article 351 of the Constitution of India, may come out with a modification in such notification or an appropriate notification afresh.

3. My view over the issue, as noted above, is substantially different from the opinion arrived at by brother Prasad, J. The touchstone on which I have based my opinion is the pursuit of development of language, culture and patrimony of the Nation, which has been very well echoed in the directive principles of State policy as also in other provisions of the Constitution of India as well as on a reading of the notification of 1972 in such a manner that it does not exclude the use of Hindi language in filing writ petitions in the High Court, which were and are being filed in English language in majority. The use of the word '*isi prakar*' in the proviso to the notification has been held by me to be superfluous for the reason of absence of the preceding word '*kewal*' (only) which has been, in my estimation, consciously



used before the phrase “Tax References”. English and Hindi languages therefore remain elective for the litigants and lawyers for preferring writ petitions in the High Court of Judicature at Patna. While saying so, I have taken a view, which has the concurrence of brother Prasad, J. as well, that every citizen, nay every person, ought to be given the freedom of expressing his grievance in the language in which he is most comfortable, making such channel of communication effective, easy and unimpeded.

4. We have had the occasion to go through the brilliant exposition of Hon’ble the Chief Justice over the issue, which to our minds, is not only multifaceted and kaleidoscopic but also includes, in its sweep, the neat constitutional interpretation of some of the provisions of the Constitution and the basis for framing such provisions.

5. The opinion delivered by Hon’ble the Chief Justice is too multilayered to be epigrammatically and pithily put in few sentences; nonetheless it would be necessary to cull out the conclusion. Hon’ble the Chief Justice, after discussing the law over the subject, has given an incisive look at the wordings of the notification of 1972; assayed the aspirations of the forefathers of the Constitution and has come to the conclusion that the notification in question, in strictest



legal terms, is within the permissible legal parameters in proscribing the use of Hindi language in Devanagari script for writ petitions and “Tax References”. The reasons assigned by him are not aimed towards resolving the conflict of supremacy of any language but of looking at the entire legal system from a pan-India view point and not with a subaltern/micro approach of looking at the notification of 1972 in special/limited context of the State of Bihar, which is primarily Hindi speaking.

6. With great dexterity, however, Hon’ble the Chief Justice has read the notification in such a manner that the proviso in the said notification has been indented, providing an inglenook for interpreting it to mean that Hindi has not been prohibited to the exclusion of English. The gloss which has been put over the interpretation given by brother Prasad, J. and me is that in the absence of any prohibition of the use of Hindi language in Devanagari script, especially with reference to writ petitions, Hindi can be accepted as an elective language for preferring such petitions, but with the caveat that along with the Hindi version, authoritative English translation shall also be provided.

7. We, after having revisited our respective opinions, have come to the conclusion that the interpretation



of the notification of 1972 given by Hon'ble the Chief Justice serves the twin purposes of pandering to the aspirations of preserving and promoting Hindi language and at the same time maintaining the exclusivity of the court language to English, for the benefit of the accessibility to an ever-burgeoning case materials, case laws and research works in the area of law, which is mostly in English language and which is necessary in the background of the diverse, multicultural and multi linguistic country that we are in.

8. We therefore endorse our approval to the opinion delivered by Hon'ble the Chief Justice.

9. The reference is thus answered in the manner as held forth by Hon'ble the Chief Justice.

(Ashutosh Kumar, J.)

(Rajeev Ranjan Prasad, J.)

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