

LANGUAGE IN INDIA

Strength for Today and Bright Hope for Tomorrow

Volume 12 : 9 September 2012

ISSN 1930-2940

Managing Editor: M. S. Thirumalai, Ph.D.

Editors: B. Mallikarjun, Ph.D.

Sam Mohanlal, Ph.D.

B. A. Sharada, Ph.D.

A. R. Fatihi, Ph.D.

Lakhan Gusain, Ph.D.

Jennifer Marie Bayer, Ph.D.

S. M. Ravichandran, Ph.D.

G. Baskaran, Ph.D.

L. Ramamoorthy, Ph.D.

Assistant Managing Editor: Swarna Thirumalai, M.A.

The Evolution of Language Laws in Post-Independence India A Monograph

B. Mallikarjun Ph.D.

Contents

Preface

Chapter 1 INTRODUCTION

1.1 Introduction

1.2 Linguistic Landscape of India

1.3 Important Concepts

1.4 What is Language in India?

1.5. Languages Listed in the Constitution of India

Chapter 2 MULTIDIMENSIONS OF MULTILINGUALISM

2.1 Indian Multilingualism

2.2 Sharing of Languages

2.3 Correlation of Multilingualism with Related Factors

2.4 Sharing of Scripts

2.5. Sharing of Linguistic Features

2.6 Shared Features

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Chapter 3 MANAGING LANGUAGES IN INDIA

3.1 Managing Languages

3.2 Linguistic Re-organization

Chapter 4 LANGUAGE AND LAW

4.1 Law

4.2 Language Law

4.3 Constituent Assembly Debates

Chapter 5 LANGUAGES IN THE CONSTITUTION

5.1 Post-Independence Period

5.2 Scheduled Languages

5.3 Purpose of the Schedule

5.5 Constitutional Assignment

Chapter 6 IMPLEMENTATION OF LANGUAGE PROVISIONS

6.1 Reports of the Minorities Commission

6.2 The Question of Advantages and Disadvantages

6.3 Schedule VIII, Literature and Creative Expression

6.4 Schedule VIII and Education

6.5 Acquiring Privileges and Recognition

6.6 Eighth Schedule and Administration

6.7 Eighth Schedule and Employment

6.8 Statutory Privileges

Chapter 7 LANGUAGE AND THE STATES

7.1 Status of English

7.2 Eighth Schedule and Language Development

7.3 Eighth Schedule and Criteria for Membership

7.4 Classical Languages

7.5 Official Languages

7.6 Union and States

7.7 Andhra Pradesh

7.8 Assam

7.9 Bihar

7.10 Karnataka

7.11 Kerala

7.12 Madhya Pradesh

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

- 7.13 Maharashtra
- 7.14 Orissa
- 7.15 Sikkim
- 7.16 Tamil Nadu
- 7.17 Uttar Pradesh
- 7.18 West Bengal

Chapter 8 LANGUAGE LITIGATION

- 8.1 Litigation in Indian Courts
- 8.2 Educational Languages
- 8.3 Defining Mother Tongue in Multilingual Context
- 8.4. Education and Language Choice-language as a Subject
- 8.5 Four Distinct Stages of Law

Chapter 9 LANGUAGE EDUCATION AND LANGUAGE MOVEMENTS

- 9.1 Linguistic Movements
- 9.2 Growth of English Medium Schools
- 9.3 Language Education in Tamil Nadu
- 9.4 Pedagogical Implications Ignored
- 9.5 Languages of Integration
- 9.6 Higher Education and Medium of Instruction

Chapter 10 MINORITIES AND LANGUAGE CHOICE

- 10.1 Minorities' Rights and Languages
- 10.2 Epicenter of Language Rights
- 10.3 Globalization and Language Rights
- 10.4 Majorities-Minority Relation
- 10.5 Notion of Minority
- 10.6 Linguistic Minorities in India
- 10.7 Cultural and Educational Rights
- 10.8 A Mosaic of Linguistic Minorities
- 10.9 Dynamic Elements
- 10.10 Clubbing Minority and Religion into One Bunch – Consequences

Chapter 11 MASS MEDIA, LANGUAGE AND EMPLOYMENT

- 11.1 Employment and Language
- 11.2 Mass Media and Language

References

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Preface

I started to think, write and consolidate my writing in this area in the year 2009. I gave an invited talk in the 31st All India Conference of Linguists held at Lucknow in Dec 2010. I hereby acknowledge the help of Prof. Peri Bhaskararao, the then President of Linguistic Society of India. I continued to work on the manuscript till the end of my service at the Central Institute of Indian Languages, Mysore where every facility needed for research on any aspect of languages is available.

Most unexpectedly I shifted to the Central University of Karnataka, Gulbarga in the month of March 2012. I am now involved in different kinds of academic activities at the Central University, and so I felt that it may be the time now to present the work I've done so far on language laws and hence I submitted the manuscript for publication in *Language in India*. I may do some rework on it and bring out an enlarged and revised version in due course.

B. Mallikarjun Ph.D.
Professor and Director
Centre for Classical Kannada
Central University of
Karnataka
Gulbarga-585 106
Karnataka, India
mallikarjun56@gmail.com

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Chapter 1 INTRODUCTION

1.1 Introduction

This monograph “Evolution of Language Laws in Post-Independence India” aims at informing the audience such as linguists, educationists, administrators, sociologists, lawyers, historians, political scientists, parliamentarians and legislators who like to know about legal issues that govern the use of language in different domains in India. It is an outcome of research by the author who is a linguist and thus the monograph brings a linguistic perspective to the issue in great measure. The monograph presents the information relating to language policy and law in India in one place and analyses the same in a rational manner. In the second part the monograph intends to examine the way they are related to the linguistic, social, political, legal and economic situation of the country. In the third part the monograph focuses on a comparison and contrast of Indian situation with other multilingual situations across the world, since in today’s world multilingualism is the rule and mono-lingualism is exception.

Since her independence, India is managing multilingualism through policies and laws of language use in administration, judiciary, education and other domains in a more effective manner as a model to other countries to emulate. The legislature makes policy, and the executive knows how best to implement the policy. The fluid and volatile linguistic situation that existed at the time of framing the Indian Constitution has become calm and peaceful to a large extent. Earlier multiple languages were considered as problems that need to be tackled. Now they are considered as resources to be utilized. This is an important turning point and is a significant contribution from India.

1.2 Linguistic Landscape of India

Understanding the existence and pattern of use of languages in a country helps in understanding the sociolinguistic position of it and the modalities followed to tackle the same through legislation. *Webster’s Dictionary* defines multilingualism as “... using or able to use several languages especially with equal fluency”. Wikipedia identifies multilingualism as “...the use of two or more languages, either by an individual speaker or by a community of speakers” and it also says that “...multilingual speakers outnumber monolingual speakers in the world’s population”. Today multilingualism is considered as the norm and mono-lingualism an exception (Peter Auer and Li Wei 2008).

The linguistic landscape of India in which there is coexistence of 1652 mother tongues (as per the Census of India 1961), is described as a melting pot, salad bowl, etc. Indian multilingualism is unique and also dynamic in nature; none of these terms captures the real texture of Indian multilingualism and this has no parallel anywhere in the world. Here is a nation

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

in which a language is written in many scripts and many languages are written in one script. Though they belong to different linguistic families they share many linguistic features.

The value of information on multilingualism was recognized even before independence. Hence from 1931 the information on ‘Other language in common use’ by the people was collected by the Census of India in its decennial operation. There is certainly some significant growth in multilingual patterns in India since independence in 1947. Formal education, media entertainment, and growing population dispersal across the states continue to make the multilingual patterns more dynamic than ever. This monograph provides an analysis of linguistic landscape of India and the people’s choice of language for ‘other language’, its inductive and intuitive multilingual mosaic in terms of bi/tri-lingualism and its sweep across age, gender, urban and rural population, etc. The major source to understand comes from the information offered by the decennial census from 1931 till 2001.

Reorganization of the geographical boundaries within the nation as linguistic states was a major step in the management of multilingualism and such reorganization empowered multilingualism further. Managing Indian Multilingualism formally got underway with the nation’s acceptance of its Constitution. It was in the form of inclusion of select languages in the Eighth Schedule, recognition of some language/s as official languages of the Union and providing for the States to do the same as their official languages, acceptance of languages for different levels of judiciary, use in parliament and state legislatures, and not recognizing any language/s as language/s for education but recognizing the rights of different kinds of linguistic minorities. In past decades, the judiciary too has played the role of language manager through interventions necessitated by legislation. In India, six decades ago multiplicity of languages was considered as a problem to be solved or resolved and now due to its language management initiatives, multiplicity of languages is considered as resource to be properly utilized.

1.3 Important Concepts

Important concepts that are to be understood in the Indian multilingual context are ‘mother tongue’ and ‘language’. Both are not officially same though sometimes people use them as synonyms. The official way of identifying mother tongue in 1881 Census was ‘... the language ordinarily spoken in the parental home of each person’; in 1891 it was ‘...parent tongue; in 1901 it was ‘Language which each person ordinarily uses in his own house’; in the year 1971 little elaboration of the concept was done ‘... the language spoken in the individuals home during his childhood or a near equivalent such as the language which individuals parents spoke or which he first learnt to speak’. Since 1991 and subsequent Census of 2001 and 2011 have consistently used the definition ‘The language spoken in childhood by the person’s mother to the person. If the mother died in infancy, the language mainly spoken in the person’s home in childhood will be the mother tongue. In case of infants and deaf mutes the language usually

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

spoken by the mother should be recorded. In case of doubt, the language mainly spoken in the household may be recorded’.

1.4 What is Language in India?

India is an abode of more than 1652 mother tongues spread over a vast geographic space. So what is language in India? It is a composite entity, a bundle of mother tongues. The Census of India enumerates the mother tongues and before releasing the population tables relating to language, rationalizes or groups ‘mother tongues’ into groups called ‘languages’. To give an example, the Census data of 2001 has Hindi language where it is a bundle of 50 different mother tongues where Hindi is one of the mother tongues. To illustrate this phenomenon further, Hindi language speakers amount to 41.03% of the population. Out of this 41.03 % only 24.51% of the speakers speak Hindi as their mother tongue. The rest of them speak a mother tongue subsumed under the language called Hindi. That is to say that Hindi is the mother tongue of 61.12 % Hindi language speakers and the rest 38.88% speak some other Hindi mother tongue.

According to 2001 Census mother tongues with 10,000 or more speakers are 234. Mother tongues of less than 10,000 speakers or mother tongues not possible to be identified on the basis of available linguistic information are grouped under ‘others’ under each bundle of mother tongues that is called language.

1.5 Languages Listed in the Constitution of India

The Constitution of India today has 22 languages in its Eighth Schedule which are known as Scheduled languages which constitute 93 mother tongues. The rest 100 languages which are not in the Schedule are given nomenclature Non-scheduled languages. They subsume 141 mother tongues. This Schedule of the Constitution of India is treated as an open-ended list which has got additions whenever the socio-political conditions favored inclusion of a specific language. It had 14 languages: Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Sanskrit, Tamil, Telugu and Urdu when the Constitution came into existence in 1956. Subsequently in 1969 Sindhi was added and in 1992, Nepali, Manipuri and Konkani and in 2003 four languages Bodo, Dogri, Maithili and Santali were added through Constitutional amendments. Demands for inclusion from several other languages like Kodava (Coorgi), Tulu etc., are before the government for appropriate decision. The Census of India in 2001 reports that 96.56% of the population speaks Scheduled languages and the rest 3.44% speak Non-scheduled

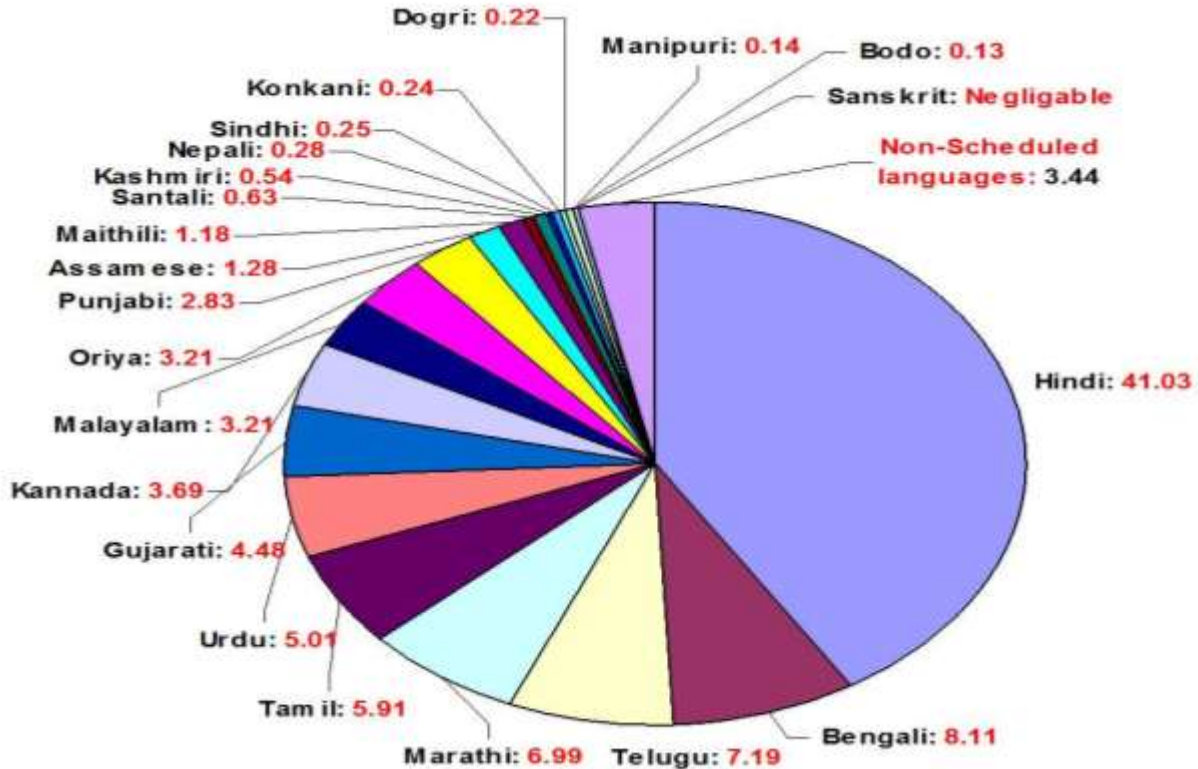
Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

languages. The following is the graphic description of the linguistic landscape of India.



Chapter 2 MULTIDIMENSIONS OF MULTILINGUALISM

2.1 Indian Multilingualism

The uniqueness of Indian multilingualism is in sharing various aspects of languages. This could be discussed in three parts of sharing of languages, sharing of linguistic features and sharing of scripts.

2.2. Sharing of Languages

Number of people speaking more than one language is very important and not the number of languages spoken in a landscape. In India, more people are bilingual and multilingual. The Census has been enumerating and registering information on bilingualism from 1901. Till the 1921 Census, the information was collected to know about the 'knowledge of English' only, since for governance and education British India wanted to know about the spread of English in India. Administration was mainly in English and it was essential to plan language education at that time, other languages were not so important. In 1931 and 1941 Censuses the information Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

about ‘Other language in common use’ was also collected, the Census tried to know the ‘name of language’ that the person knows in addition to his or her mother tongue. The subsequent Census in 1941 and 1951 the question was restricted to ‘only Indian language’ and in 1961 Census it was expanded to ‘any language’ and ‘number of such languages’ was also expanded to two languages. The 1971 Census information on ‘Other languages’ was again collected from each individual.

Changes in information elicitation reflect the linguistic concerns of the nation at that point of time. This is an official recognition of India as a multilingual nation. Hence, in 1981, information on the number and names of languages known to the person other than his/her mother tongue was collected. It is recorded in “...the order in which he/she speaks and understands them best and can use with understanding in communicating with others. He/she need not be able to read and write those languages. It is enough if he/she has a working knowledge of those subsidiary languages to enable him/her to converse in that language with understanding.” During the year 1981 it is reported as ‘Persons speaking a language additional to the mother tongue’, in 1991 as ‘Persons knowing three languages’ and in 2001 ‘First Subsidiary Language, Second Subsidiary language’. Whatever be the terminology used, the information on spread of languages across the speakers of other language speakers is available. It has to be carefully noted that Indian multilingualism is ‘self-declared’ by the language users and not a result of any evaluation of language competence against any set parameters. The present estimate is an underestimation of the ground reality.

Large number of speakers of Indian languages knows more than one language. Many times they know two languages in addition to their mother tongue. Bilingualism is often taken as a given fact. The other language is acquired from the context from the childhood. There is no need to go to school to learn to use two or more languages. The Census of 2001 has enumerated information on ‘first subsidiary language’ and ‘second subsidiary language’ known to the speakers which has to be understood as bilingualism and trilingualism. The following table gives the details of percentage of bilinguals and trilinguals to the total population speaking a particular Scheduled language.

Table 1 Multilingualism

SL. No.	Languages	% of Bilinguals	% of Trilinguals	SL. No.	Languages	% of Bilinguals	% of Trilinguals
1	Assamese	32.35	14.47	12	Manipuri	41.67	20.81
2	Bengali	20.40	6.52	13	Marathi	41.37	15.45

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

3	Bodo	57.38	18.64	14	Nepali	52.81	22.54
4	Dogri	59.44	26.49	15	Oriya	25.63	12.88
5	Gujarati	36.25	14.25	16	Punjabi	52.01	31.30
6	Hindi	11.25	2.13	17	Santali	51.43	7.35
7	Kannada	28.44	12.15	18	Sanskrit	73.60	30.80
8	Kashimiri	39.21	15.55	19	Sindhi	73.19	35.58
9	Konkani	74.38	47.18	20	Tamil	21.51	3.19
10	Maithili	33.03	9.25	21	Telugu	25.02	10.69
11	Malayalam	28.75	16.60	22	Urdu	51.03	18.37

It is important to know which language or languages other than their mother tongue people have reported that they know. Many speakers of the Scheduled languages report that they know Hindi and English. More bilinguals (74.38%) and trilinguals (47.18%) are from Konkani mother tongue and least bilinguals (11.25%) and trilinguals (2.13%) are from Hindi language. Similarly Urdu speakers since they are spread all over the country are more bilingual (51.03%) and trilingual (18.37%). Same is the case of another language Sindhi, which has 73.19% and 35.58% of bilinguals and trilinguals respectively. In the Indian context, English is learnt as second or third language due to schooling whereas Hindi is mainly learnt and partially acquired contextually since it is widely used in the media, as part of entertainment. Most of the other languages are learnt due to their coexistence. Speakers of Bengali, Kannada, Konkani, Malayalam, Manipuri, Oriya, Tamil and Telugu prefer English as the first subsidiary language. And speakers of Dogri, Gujarati, Maithili, Marathi, Nepali, Punjabi, Santali, Sindhi and Urdu prefer Hindi as the first subsidiary language. As second subsidiary language Assamese, Bengali, Bodo, Kannada, Konkani, Malayalam, Manipuri, Oriya, Telugu speakers prefer Hindi, whereas the speakers of Dogri, Gujarati, Kashmiri, Maithili, Marathi, Punjabi, Sindhi speakers prefer English.

Apart from the need based, essential, compulsory multilingualism, it is very important to note that other than Hindi and English, it is the neighborhood languages that are learnt by different mother tongue speakers as their second and third languages. Languages in the

neighborhood and the details of percentage of bilinguals and trilinguals are given below to illustrate this point.

Table 2 Neighborhood Multilingualism

SL.No.	Languages	Multi-Languages	% of Bilingualism	% of Trilingualism
1	Assamese	Bengali	9.54	0.99
		Nepali	0.19	0.10
2	Bengali	Assamese	2.49	0.21
3	Bodo	Assamese	46.44	2.41
		Bengali	3.92	2.33
		Nepali	0.21	0.42
4	Dogri	Urdu	3.33	0.68
5	Gujarati	Marathi	0.7	0.91
6	Hindi	Bengali	0.5	0.09
		Gujarati	0.24	0.03
		Marathi	0.93	0.09
		Urdu	0.9	0.11
7	Kannada	Konkani	0.15	0.04
		Tamil	2.4	0.57
		Telugu	6.66	0.69
		Malayalam	0.13	0.07
		Marathi	2.62	0.61

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

8	Kashmiri	Urdu	31.76	3.07
9	Konkani	Gujarati	3.89	0.14
		Kannada	20.78	3.29
		Malayalam	1.26	0.3
		Marathi	16.79	5.83
10	Maithili	Urdu	0.22	0.09
11	Malayalam	Kannada	1.45	0.29
		Tamil	1.59	0.56
12	Manipuri	Bengali	4.44	0.89
13	Marathi	Gujarati	0.36	0.28
		Kannada	1.67	0.27
		Telugu	0.56	0.14
14	Nepali	Assamese	11.35	2.07
		Bengali	2.01	1.98
15	Oriya	Bengali	0.53	0.26
		Telugu	0.85	0.07
16	Punjabi	Urdu	0.45	0.17
17	Santali	Assamese	1.22	0.09
		Bengali	26.92	1.86
18	Sindhi	Gujarati	19.1	3.28
		Marathi	1.6	3.43

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

19	Tamil	Kannada	2.11	0.39
		Malayalam	0.54	0.13
		Telugu	2.51	0.46
20	Telugu	Kannada	3.83	0.33
		Tamil	3.53	0.47
21	Urdu	Bengali	0.5	0.27
		Gujarati	0.47	0.31
		Kannada	5.52	0.73
		Marathi	1.94	1.78
		Tamil	1.24	0.22
		Telugu	5.64	0.85

2.3 Correlation of Multilingualism with Related Factors

Correlation of multilingualism with age, gender, urban and rural spread shows its depth. It is not specific to some geographic area but a pan Indian phenomenon. The following illustrates the same.

Age

People of all age groups are multilingual. Maximum number of multilingual persons in both the categories of bilinguals and trilinguals are found in the age group of 30-49 years. They are born in India after 1947, the year of her attaining independence. They are products of the new education system.

Urban, Rural and Gender

More bilinguals are in rural areas 53.59% than in urban areas 46.40%. However, in the case of trilinguals, it is reverse. More trilinguals are in urban areas 53.79% and less trilingual are in rural areas 46.20%. When it comes to gender wise distribution of bilingual and trilingual speakers, it is found that, in general, men outnumber women in being multilingual. Among

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

bilinguals, men amount to 59.40% and women 40.60%. In trilingualism also, it is men 62.43% who outnumber women 37.56%.

Need for Redefining Bilingualism

Indian multilingualism demands redefining what bilingualism is. Actual use of two or more languages should come to guide us in defining such concepts. Mere knowledge or temporary and tentative seeking to learn and speak additional languages may not really reveal the underlying currents in a nation. As for India, one notices a continuing effort to cover more aspects of language identity for more than a century. There is some dynamism in this sense in understanding and appreciating the processes of bilingualism. There is certainly some significant growth in multilingual patterns in India since independence in 1947. Formal education, media entertainment extension, and growing population dispersal across the states continue to make the multilingual patterns more dynamic than ever. Bilingualism is also used as a denominator of movement of various populations from one region to another. Naturally evolved multilingualism coupled with the multilingualism evolving through schooling has become a rich language resource and it is exploited mainly by the mass media for enhancing its reach across the population. Patterns of Indian multilingualism have been analyzed in a detailed fashion by Mallikarjun (2010).

2.4. Sharing of Scripts

The scripts do not have language borders. Only languages have geographical boundaries due to creation of states on the basis of languages. Indian languages are written in more than 14 scripts. Normal convention regarding any script is that a language uses single and specific script to render itself in the visual medium wherever it is spoken. However, the pluralistic tradition of India has broken this kind of tradition for many centuries, and introduced the practice of using different scripts to write the same language and also using the same script to write different languages. This practice is not frowned upon, and it continues unabated.

The Devanagari script is used to write several languages like Hindi, Sanskrit, Nepali, Dogri, Marathi, Konkani, Rajasthani and many more tribal and minor languages. Kannada script is used to write Kannada, Kodagu, Tulu, Banjari, Konkani, Sanskrit, etc. Sanskrit is written using the Devanagari, Kannada, Telugu, Tamil, Malayalam and many other scripts. Similarly Kashmiri is written using the Perso-Arabic, Sharada and Devanagari scripts. Sindhi in India is written both in the Perso-Arabic and Devanagari scripts. Santali in Or Chiki, Assamese, Bangla, Oriya, Devanagari and Roman. Rabha uses Assamese in Assam and Roman in Meghalaya, Bangla in West Bengal. So, by tradition, script is not a boundary wall between Indian languages.

2.5 Sharing of Linguistic Features

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

One of the major linguistic discoveries of the previous century relating to Indian languages is the identification of common linguistic features across language families. Among others, we may cite Emeneau's monumental work 'India as a Linguistic Area' (Emeneau 1956). This sharing of linguistic features by the languages across the language families was facilitated by their coexistence for centuries together, and also by the continuing interaction of the people who speak these languages on a day-to-day basis. While Sir William Jones' declaration in 1786 of the genetic relationship between Sanskrit and other Indo-European languages revolutionized the philological studies, the fact that Indian languages (those of the Indo-Aryan and the Dravidian families) have some fundamental similarities among them was known to the Indian grammarians for centuries. A nineteenth century missionary to India, Rev. William Campbell, built his ideas of language planning and development for Indian vernaculars on this assumption. Campbell (1839) wrote that "Whatever may be the difference in the languages, they all belong to the same great family; similar laws regulate the idiom, construction, style, and various kinds of composition, which prevail in the dialects of the north and the south; when you describe one part of India, you have, in many respects, described the whole; the manners, the customs, and the habits of the people, with trifling variations, correspond from Cape Comorin to the Himalayas; and their superstition, in all its great lineaments, is exactly the same. Whether, therefore, their present literature was originally written in Sanskrit, or in some other languages, the Vedas, the Shastras, the Pooranas, and all their classical writings are to be found in all the principal tongues of India, and are as well understood in the one as in the other."

2.6 Shared Features

Some of the shared linguistic features across language families are as follows:

- a. Presence of a series of retroflex consonants that contrast with dentals sounds.
- b. Two to three degrees of 'you' 'inclusive and exclusive' etc.
- c. Widespread lexical borrowing.
- d. Presence of echo word constructions and onomatopoeic forms.
- e. Reduplication process of different grammatical categories such as nouns, verbs, adjectives, adverbs, etc.
- f. Compound verb forms.
- g. Conjunctive particle.
- h. Sentence structure - flexibility of word order though finite verb usually comes in the last position.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Another interesting aspect of this scenario is that the people, who live in villages and towns that lie in the political boundaries of two or more linguistically re-organized states, continue to use the same grammar of their own language with different vocabularies drawn from another language of the border to communicate among them and with the groups across the border.

=====

Chapter 3 MANAGING LANGUAGES IN INDIA

3.1. Managing Languages

Managing languages is through planning for their use in various domains and ascribing and providing appropriate space for each one or many of them in appropriate way. Language policy is all about choices. If one is bilingual or multilingual he or she has to choose which language to use and when. Even if one speaks only one language, he or she has choices of dialects and styles. Some of these choices are the result of management, reflecting conscious and explicit efforts by language planners to regulate the choices. Language management starts with the individual, while organized language management ranges from the micro (family) to the macro (nation-state) level.

The leaders of the freedom struggle of India were very much aware of the pluralistic nature of the country. And they were aware of issues that the nation has to face in her governance. India's Freedom Struggle was not merely a struggle for independence; it also laid the groundwork for nation building even when the people were under foreign yoke. The leaders did not postpone nation-building processes until freedom is given. The resolutions passed in the various conferences conducted by the Indian National Congress reveal that the national leadership while waging their battle against the British rule thought well ahead of time and prepared the nation with advance steps in the fields of administration, education etc., and language policies. One such step was the generously agreed upon principle to re-organize the British India provinces that were a product of the British tactics of accession for the administrative convenience of the rulers into somewhat linguistically cohesive states. Another resolution that was passed and partially implemented twenty-five years before independence was the policy on National Education that emphasized the use of the mother tongue as medium of instruction in schools.

3.2 Linguistic Re-organization

In the post-independence period the nation was reorganized into states on the basis of language that is predominant in a geographical area. Some of the principles that were kept in mind are interesting from the point of language management. They are (a) geographical

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

contiguity (b) linguistic and cultural homogeneity (c) common language to promote the growth of regional consciousness (d) administration in a language which the people can understand (e) administrative convenience (f) preservation and strengthening of the unity and security of India (g) financial, economic and administrative considerations and (h) scope of positive expression of the collective personality of a people in a state or region. The 'limiting factors' because of the multilingual situation were (a) not all the language groups are so placed that they can be grouped into separate states, (b) large number of bilingual belts between different linguistic zones and (c) existence of areas with a mixed population even within an unilingual area.

Chapter 4 LANGUAGE AND LAW

4.1 Law

The speakers of different languages speak more than one language reflecting the social, geographical and political realities. The language laws are codified to regulate the use of such diversity of languages. Law is known as "...a set of rules or norms of conduct which mandate, proscribe or permit specified relationships among people and organizations, provides methods for ensuring the impartial treatment of such people, and provide punishments of/for those who do not follow the established rules of conduct." Also, "...law is typically administered through a system of courts..." Thus "...law gives its subjects powers...rights...duties and empowers". This section discusses in brief history of law in India and the world.

4.2. Language Law

It is the regulation that controls the use of language(s) in general and specific domains in the society. Language law empowers a language and its speakers. The multiethnic, multi-religious country with a rich linguistic heritage has thousands of years of unwritten law practiced in the society. This section discusses the concept of language policy and language law.

Pre-British Period

Indian civilization is based more on oral traditions. As Indian populations were largely illiterate and formal literacy and education usually were privileges in the past, records of laws are not in plenty. It appears that kings and dynasties unfortunately did not leave any systematically codified law behind. But, history of language law in India can be traced back to the period of the Emperor Ashoka (BC 268-226). He was the first ruler to recognize the language rights of the people. He ordered that his edicts and directions relating to governance and righteous living be communicated to the people in their language and not in his language only. Hence one can see his inscriptions in the languages of the people in different parts of the country. At that time law

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

was not normally written, but was mainly conventional and practiced by the people as given tenets of life for both the individual and the community. The Ashokan edicts may not be considered law in the modern sense of the term but these edicts might have had some legal force. We gain some knowledge of code of conduct through our didactic literature. But it is not clear whether trespassing dictates found in such literature led to any punishments. Most of traditional legal sanctions are mostly oral and hardly written declarations.

British Period

Written law or codification of law as a body of literature, that is intended to be adhered to and interpreted in judicial proceedings is an innovation in our context. The systematic coding of the same is the contribution of British in India. It was intended for the convenience of the western model of governance. During these period major decisions about language use in education and administration stem from the famous Macaulay's Minutes. They found a direct link between language in education and administration of the country. They encouraged learning of English and through English. English entered the field of education in India in 1792. It became the official language in the country around 1830. At the same time, emphasis is laid on communication with the governed in their language. There are ample of official guidelines and suggestions issued by the British government relating to language use in education and administration.

Freedom Movement

The history of India's freedom movement generally for good or bad is equated with the history of Indian National Congress. The major contribution during this period from 1885 is laying of foundation for emergence of Hindi in its modern form respect for provincial languages as regional languages and formation of linguistic states. Though these evolutions look very simple to look at, language issues have played a major role in shaping the future and free India. This part discusses these issues.

4.3 Constituent Assembly Debates

The Constitution of India that we have today is the result of the Constituent Assembly debates. It debated the articles dealing with the question of language from Sep 12, 1949. A serious study of these documents troughs light on the concerns that the Constitution makers had about multilingual nation for which they were framing laws. Every bit of the country is considered and an attempt is made to protect its interest. This part records the ideas behind every article relating to language.

=====

Chapter 5 LANGUAGES IN THE CONSTITUTION

5.1 Post-Independence Period

The language laws framed by the Constitution are in vogue for more than five decades. They are available in the form of statutory law, language legislation and judicial precedents. These are also results of recommendations of various committees and commissions. There are hundreds of judicial pronouncements in different courts of the country relating to language use. They speak about to language use in (1) administration (2) education (3) mass communication (4) rights of linguistic minorities (5) language rights of individuals and (6) rights of languages themselves since like human beings languages also have a right to live and develop.

Allott (1965) had said that “Law and language are both organic in their mode of development.” In India, these are evolving through the process of accepting legitimate aspirations of the speakers of different languages. They are products of society and history. Indian language laws are not rigid but accommodative.

5.2 Scheduled Languages

“It would be appropriate to observe that it is the spirit and not the form of law that keeps justice alive.” - Justice J Balakrishnan

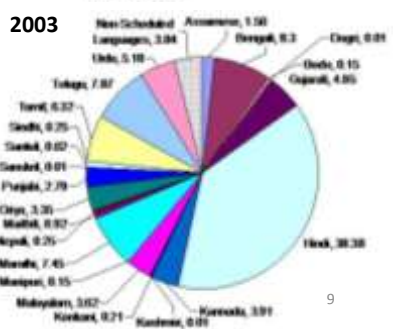
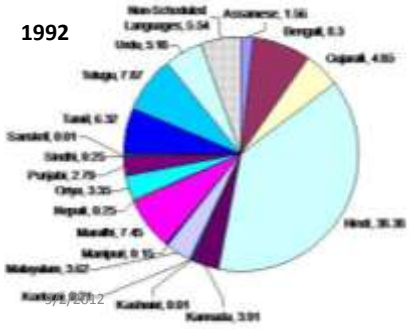
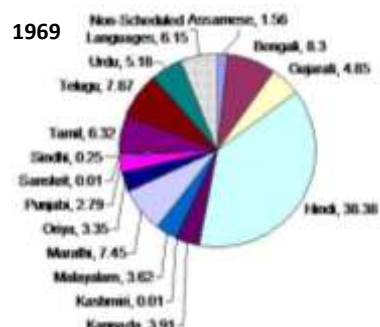
The makers of the Constitution of India created a list of languages and placed it in the Eighth Schedule of it. The languages in this Schedule are called Scheduled languages. As a consequence of this, languages used in India that are not in this list are popularly referred to as Non-Scheduled languages. This Eighth Schedule of the Constitution is cited in language related discussions more often than any other language related Articles of the Constitution and discussion on language related decisions. This indicates its importance as well as utility.

The Constitution of India adopted on November 26, 1949 in the Constituent Assembly listed 14 languages in the Eighth Schedule. The same in the last 60 years is amended thrice through Constitution Amendment Bill No.21 in 1967, to include Sindhi, Bill No.71 in 1992 to include Konkani, Manipuri and Nepali and Amendment Bill No.100 in 2003 to include Bodo, Dogri, Maithili and Santali. Thus at present there are 22 languages in the Eighth Schedule. As on today requests from the speakers of 38 other languages are pending before the Government of India for inclusion in to the Schedule.

Eighth Schedule of the Constitution of India 1949-2011

1949

Assamese	Marathi
Bengali	Oriya
Gujarati	Punjabi
Hindi	Sanskrit
Kannada	Tamil
Kashmiri	Telugu
Malayalam	Urdu



The languages listed in this Schedule have in due course acquired different nomenclature of significance. They are identified as national languages by the Congress party. Jawaharlal Nehru had said that ‘the makers of our Constitution were wise in lying down that all the 13 or 14 languages’ were to be national languages. There is no question of any one language being more a national language than the others... Bengali or Tamil or any other regional language is as much a national language as Hindi’ (Kumaramangalam 1965). While addressing Parliament in 1963, he had described the language of the Eighth Schedule as national languages 1. The Congress Working Committee meeting of April 5, 1954, had recommended that progressively the examinations for the all-India services should be held in Hindi, English and the principal regional languages, and candidates may be given option to use any of the language for the purpose of examinations’ (Kumaramangalam 1965). And the Congress Working Committee meeting of June 2, 1965, has said that “The Union Public Service Commission (UPSC) examinations will be conducted in English, Hindi and other national languages mentioned in the Eighth Schedule of the Constitution” (Prasad 1986). Recently the Gujarat High Court has said that there is no national language in the Constitution.

The report of the Deputy Commissioner of Minorities, popularly known as Minorities Commission Report and The Official Language Resolution of 1968 consider languages listed in the schedule as major languages of the country. The Program of Action 1992 on National Policy on Education, 1986, considers them as Modern Indian Languages and in the official contexts they are identified as Scheduled languages.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

All these terms are not arbitrary. They have gained specific meanings and applications in the linguistically reorganized multilingual nation.

5.3 Purpose of the Schedule

At present this list of languages is used as a select list of Indian languages for various purposes. But it is essential to know why this list was originally thought for. (a) The reported intention of the (first) author of the list (b) The functions that the members of the Constituent Assembly desired for these languages (c) The Constitutionally assigned role and function of the Schedule Extension of the role by the Official Language Resolution 1968 and (d) Some of the purposes for which the Schedule is utilized since the adoption of the Constitution; and Consequences of the same in terms of advantage and disadvantage.

Reported Intention

At the time when the Constitution was framed, the language situation was fluid in the country. There were rivalries between languages. In order to provide a list of languages in the Constitution which are to be developed for administrative work as well as for science and technology, M. Satyanarayana, a member of the Drafting Committee on the Language Resolution, with the permission of Jawaharlal Nehru, prepared a list of 12 languages – Hindi, Gujarati, Marathi, Kannada, Malayalam, Tamil, Oriya, Bengali, Assamese, Punjabi and Kashmiri. Nehru added Urdu as the 13th name to the list (Tayabji 1977). Thus, the original aim was a list of languages to be developed for administration, expression of science and technology in independent India.

Aim and Scope Envisaged by the Members

The draft provisions on language prepared by K.M. Munshi and N. Gopaldaswamy Ayyangar for discussion by the Indian National Congress outside of the Constituent Assembly (discussed by the party and revised by the Drafting Committee on August 24, 1949) relating to the Schedule under 301(B)(1) has made provision for the constitution of a Commission with the Chairman and representative members of different languages of Schedule VII-A for the progressive use of Hindi, restrictions on use of English, etc. The Schedule at this juncture had (1) Hindi, (2) Urdu (3) Punjabi (4) Kashmiri (5) Bengali (6) Assamese (7) Oriya (8) Telugu (9) Tamil (10) Malayalam (11) Canarese (12) Marathi (13) Gujarati (14) English, (Thirumalai Mss). Also having a separate schedule listing languages was found unnecessary by R.S. Shukla because representatives of many languages cannot solve the problem of official language of the Union. However, the draft of Part XIV – A of the Constitution of language taken up for discussion by the Constituent Assembly on September 12, 1949, had Schedule VII-A with (1) Assamese (2) Bengali (3) Canarese (4) Gujarati (5) Hindi (6) Kashmiri (7) Malayalam (8) Marathi (9) Oriya (10) Punjabi (11) Tamil (12) Telugu (13) Urdu.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

The aim of this Schedule of languages was to provide representatives for the constitution of the Commission and Committee of Parliament on Official Language according to Article 301-B. At that time the Special Directive Article 301-1 stated that “It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment assimilating, without interfering with its genius, the forms, style and the expression used in Hindustani and in the other languages of India, and drawing, wherever necessary or desirable, for its vocabulary, primarily from Sanskrit and secondarily from other languages” (Constituent Assembly Debate [CAD], p.1323).

It was also proposed by Naziruddin Ahmad that the States be reorganized on the basis of these principal languages (CAD, Amendment 277). This amendment too was not agreed to.

5.4 Constitutional Assignment

The Constitution vide Articles 344 and 351 has assigned two specific functions for the Eighth Schedule.

Language of the Union

Article 344. Commission and Committee of Parliament on official languages:

- (1) The president shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.
- (2) It shall be the duty of the Commission to make recommendations to the President as to –
 - (a) The progressive use of the Hindi language for the official purposes of the Union;
 - (b) Restrictions on the use of the English language for all or any of the official purposes of the Union ;
 - (c) The language to be used for all or any of the purposes mentioned in article 348 ;
 - (d) The form of numerals to be used for any one or more specified purposes of the Union ;
 - (e) Any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

Special Directives

Article 351. Directives 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 interfacing 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.

As seen above the Article 344 relates to the constitution of the “Commission and (committee of Parliament on official language”, popularly known as Official Language Commission. This Commission will have a “Chairman and such other members representing the different languages specified in the Eighth Schedule” This Commission, in addition to other matters relating to the official language of the Union, will make recommendations on the progressive use of the Hindi language for the official purposes of the Union, language to be used in the Supreme Court and the High Courts and for Acts, Bills etc., and language for communication between the Union and a State or between one State and another and “restrictions on the use of the English language for all or any of the official purposes of the Union”.

Similarly, the Special Directive in Article 351 wherein another reference to the English Schedule is made relates to the development of Hindi. Here, (a) it is the duty of the Union to promote the spread of Hindi, (b) it should develop to serve as a medium of expression for all the elements of the composite culture of India, (c) it has to enrich by assimilating the forms, style and expressions used in Hindustani and in other languages of the Eighth Schedule without interfering with its genius, (d) and also it should enrich itself by drawing vocabulary primarily from Sanskrit and secondarily from other languages.

Thus the Constitutional assignment is for the development of official Hindi, Hindi for communication across different languages and spread of Hindi across the States and the Union Territories. May be as indicated by Raghuveera it was important to evolve a language “... which will bridge the gulf between Hindi, Bengali, Gujarati, Marathi, Telugu, Tamil, Assamese, Oriya, Punjabi – all the languages of India. We have to find a language which will serve the needs not only of Hindi and Urdu but also of all the regions of the North and the South” (CAD, p. 1461).

Article 344(1) is considered as ‘inoperative’ and Article 351 as ‘recommendatory’. However, consciously or unconsciously attempts are made to enlarge the scope of the Schedule to make it relevant. One such attempt is the Official Language Resolution, Jan 18, 1968 adopted by both Houses of Parliament. It extended the functions of Article 351.

“Whereas under article 343 of the Constitution Hindi shall be the official language of the Union, and under article 351 thereof it is the duty of the Union to promote the spread of the Hindi Language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India.

This House resolves that a more intensive and comprehensive programme shall be prepared and implemented by the Government of India for accelerating the spread and development of Hindi, and its progressive use for the various official purposes of the Union and an annual assessment report giving details of the measures taken and the progress achieved shall be laid on the Table of both Houses of Parliament and sent to all State Governments;

Whereas the Eighth Schedule to the Constitution specifies 14 major languages of India besides Hindi, and it is necessary in the interest of the educational and cultural advancement of the country that concerted measures should be taken for the full development of these languages.

The House resolves that a programme shall be prepared and implemented by the Government of India, in collaboration with the State Governments for the coordinated development of all these languages, alongside Hindi so that they grow rapidly in richness and become effective means of communicating modern knowledge...

This House resolves-

- a. that compulsory knowledge of either Hindi or English shall be required at the state of selection of candidates for recruitment to the Union services or posts except in respect of any special services or posts for which a high standard of knowledge of English alone or Hindi alone, or both as the case may be, is considered essential for the satisfactory performance of the duties of any such service or post ; and
- b. that all the languages included in the Eighth Schedule to the Constitution and English shall be permitted as alternative media for the All India and higher Central Services examinations after ascertaining the views of the Union Public Service Commission on the future scheme of the examinations, the procedural aspects and the timing”

Accordingly, it became the “...duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a median of expression” Simultaneously, “... the English Schedule to the Constitutional specifies 14 (now 22) major languages of India besides Hindi, and it is necessary in the interest of the educational and cultural advancement of the country that

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

concerted measures should be taken for the full development of these languages”; and “... a programme shall be prepared and implemented by the Government of India in collaboration with the State Governments for the coordinated development of all these languages, alongside Hindi, so that they grow rapidly in richness and become effective means of communicating modern knowledge”. The responsibility for the compliance of this is mainly with the Department of Education of the Central Government. Since the Constitutional assignment was looking biased towards Hindi, the development of languages of the Eighth Schedule for educational and cultural advancement also was added as the/responsibility of the Union Government.

Chapter 6 IMPLEMENTATION OF LANGUAGE PROVISIONS

6.1 Reports of the Minorities Commission

The Reports of the Minorities Commission [RCLM], on different occasions and while considering the requests of different languages for their inclusion in the Eighth Schedule, have stated that: (a). Article 344 and 351 do not confer any special status, privilege or benefit on speakers of these languages (b). It is an erroneous impression that the 15 languages mentioned in the Eighth Schedule of the Constitution are the only recognized languages (c).No benefit or disability accrues to a language by its inclusion or otherwise in the Eighth Schedule and the endeavors of the Government is to encourage the development of cultural and literary heritage of all languages irrespective of their inclusion in the Eighth Schedule (d).In the Provision of the Constitution relating to the safeguards for linguistic minorities, no mention has been made of the Eighth Schedule (e). Non-inclusion of a language in the Eighth Schedule does not preclude the speakers of such a language from the benefits provided for linguistic minorities (f). No additional benefits to the concerned language in the matter of safeguards available to linguistic minorities (g).Inclusion of a language in the Eighth Schedule leads to the unending demand for addition of more and more languages, and (h).The number of languages in the country is too large for inclusion in the Eighth schedule, etc.

It is a wrong perception to look at the requests from the point of view of linguistic minorities and their rights only. A clear picture will emerge only when these demands and their relation to the Constitutional provisions are assessed independently. Actually, the language movements for inclusion are for recognition and privileges and to merit special attention for development (Annamalai 1986). This is the conventional view of disadvantage and does not give a clear picture of the disadvantage encountered. Preference leads to discrimination and discrimination to disadvantage.

6.2 The Question of Advantages and Disadvantages

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

In this context it is intended to examine the question of advantage or disadvantage created by the use or non- use of the Eighth Schedule of languages as a list of select languages for different language and literary purposes. Here, disadvantage is looked at from the point of view of (a) its functionality to the mother tongue speakers, and (b) language and its development

6.3 Schedule VIII, Literature and Creative Expression

The Government and private literary bodies use the Eighth Schedule as a select list of languages for literary awards and other purposes, The National Sahitya Akademi recognizes 24 languages as literary languages, whereas, the National Book Trust treats the languages of the Eighth Schedule and English as the major Indian languages for preparing the source-books in English for highlighting about 600 ancient and modern classics in the project 'Masterpieces of Indian literature'⁷. Similarly the Bharatiya Jnanapith also restricts its literary awards to literature in the Eighth Schedule languages.

The Central Institute of Indian Languages in its scheme of assistance provides assistance for improvement of language teaching and materials production to the voluntary organizations and state agencies. This scheme defines the term 'Indian Languages' to include all the languages (other than Hindi and Sanskrit) as set out in the Eighth Schedule of the Constitution and other languages. This Institute has another scheme to award prizes to authors writing books or manuscripts in Indian languages other than Hindi, Sanskrit, English and the mother tongues mentioned in the Eighth Schedule and the tribal and non-tribal languages having literature of merit. Similarly the Department of Education, Ministry of Human Resource Development, has programmes for promotion and development of languages. It also provides financial assistance for the publication and purchase of books in Indian languages and English; it defines Indian languages as "languages as specified in the Eighth Schedule of the Constitution of India, including their recognized dialects and other recognized tribal languages".

The discrimination of scheduled and non-scheduled languages encompasses the field of films too. The Government of India has the National Film Festival Regulations aiming at "encouraging the production of films of aesthetic excellence and social relevance contributing to the understanding and appreciation of the cultures of different regions of the country and promoting integration and unity of the nation. This has two competitive sections-feature films and non-feature films, produced in India and certified by the Board between January 1 and December 31, of the previous year. Apart from the general awards in 28 categories given irrespective of the language for feature films, each of the languages specified in the Eighth Schedule gets awards for the best director and the best producer. Every year most of these languages get the awards. The award for producer and director in the category of best feature film in each of the languages other than those specified in the Eighth Schedule goes to one language only.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

6.4 Schedule VIII and Education

The Eighth Schedule has played the important role of an arbitrator in deciding the medium of instruction in secondary schools because "The mother tongue formula could not be fully applied for use as the medium of instruction at the secondary stage of education. This stage gives a more advanced education to enable students to follow a vocation after school leaving stage and also prepares them for higher education in universities. The languages used should be modern Indian languages mentioned in the Eighth Schedule of the Constitution as well as English."

Since Konkani was only a spoken language without script and is not in the Eighth Schedule (at that point of time), the Kerala Government had not recognized it as a minority language in 1970 (13 RCLM 1971). But on the representation of the Konkani Bhasha Prachar Sabha and the recommendation by the Commissioner for Linguistic Minorities the Kerala Government, vide GO MS 130/G 1/Edn. of July 4, 1974 declared the Konkani community in Kerala as a linguistic minority in the State entitled to the protection guaranteed under Article.

The Government of Madhya Pradesh too had extended facility of instruction in their mother tongue to the children of speakers of languages mentioned in the Eighth Schedule (16 RCLM 1974), thus denying facility of instruction in their mother tongue to speakers of minority languages including tribal languages like Madia, Bhili, Korku, Gondi, and Halbi.

In Uttar Pradesh also, the rules framed by the Board of High School and Intermediate Education had not provided facilities for instruction in minority languages except English in a few cases. In 1968 the Minorities Commission advised providing of instruction through the media of modern Indian languages mentioned in the Eighth Schedule (9 RCLM 1980). In 1981 too, the Commissioner for Linguistic Minorities recommended that "facilities for instruction at the secondary stage of education through the mother tongue/minority languages mentioned in the Eighth Schedule of the Constitution should be provided if not made available at all or in full" (21 RCLM 1981).

6.5 Acquiring Privileges and Recognition

A language gets not only a different status after its inclusion in the Eighth Schedule, but also certain specific privileges. It becomes a modern Indian language. If spoken in a specific geographic region, it is called a regional language also. These get opportunities which other languages are deprived of. Automatically they become eligible along with English to get the benefit of assistance to authors, publishers producing books to serve as textbooks, discipline-oriented supplementary reading material and reference books of an 'acceptable standard' at reasonable prices for the students and teachers of Indian universities and technical institutions in

the scheme of National Book Trust. The language and literacy development programmes undertaken in the nation become easily accessible to languages of the Schedule and not to others.

Thus the market value of a language increases after its inclusion in the Schedule. The all-India level competitive examinations are conducted for entrance into higher and technical education and employment by different organizations. The Eighth Schedule languages are used by them in selected spheres.

The CBSE had excluded Sanskrit from the syllabus. This was challenged. The court said that study of Sanskrit as an elective subject is not against secularism, since the Article 351 intends to promote the development of Hindi, it has to draw vocabulary primarily from Sanskrit and also it is part of the Eighth Schedule. The Court emphasized the importance of the study of it and directed the board to include it. At the same time the same status is not conceded to Arabic, Persian since they are not in the Eighth Schedule. (*Santosh Kumar and Others vs Secretary, Ministry of Human Resource Development, Govt of India. 1994. 6SCC 579*).

Under the provisions of the Article 344 of the Constitution, Commission for Scientific and Technical Terminology was set up in 1961 to - evolve and define scientific and technical terms in Hindi and in other modern Indian languages; ensure that the evolved terms reach the target user groups; attain uniformity of terminology in Hindi and other Indian languages in coordination with all the state governments universities etc. As a result, volumes of technical terminology have been created in many Indian languages that are to be used in education. But the technical terminology thus produced, to a large extent, are not in use in the text books. And the popular conception is that the science textbooks in Indian languages many times are not readable and communicative even to the teachers, forcing them to fall back on English versions to understand the concepts. People observed the gap between what is done and what is practiced.

Through a public interest litigation in the Supreme Court of India ‘... the failure of various Government organizations, including the NCERT to utilize Hindi Terminology, as approved by the Standing Commission for Scientific and Technical terminology’ was questioned. This application brought out ‘...instances of deviations between the technological terms, as decided by the Commission and the utilization of the terms by NCERT’. The NCERT accepted the ‘...marginal variations with the terminology evolved by the Commission’ and asserted that ‘...the terminologies of the Commission were not binding it and that it was free to evolve its own terminologies using the Commission’s terms as reference points’.

The Supreme Court opined ‘That uniformity is necessary in the use of technical terms..., the setting up of the Commission and the expenditure incurred in connection there with would be meaningless if the terminology evolved by the Commission were not in fact used by the Government and bodies under its control. If bodies such as NCERT are already evolving and have the wherewithal in terms of expertise to evolve technical terminologies, then the duplication

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

of effort by and the continued expenditure on the Commission would be unjustifiable unless the effort of the Commission is enjoined. Therefore as long as the Commission operates, it is directed that the technical terminology evolved by the Commission be adopted in connection with the text books being produced by the NCERT and other such bodies under the Union of India'. [W.P.(CIVIL) No.401 of 2001]

6.6 Eighth Schedule and Administration

In the use of languages in administration too, the Eighth Schedule has played the role of controller of recognition of languages. There are many districts where a majority of the population of the district uses a language other than the official language of the State, since "the language of the minority group should be recognized as an official language in that district in addition to the State official language. Recognition for this purpose may, however, be given ordinarily only to major languages of India specified in the Eighth Schedule of the Constitution." Though this goes contrary to the Constitutional provisions this almost bars any other language from being recognized as an official language.

6.7 Eighth Schedule and Employment

The Union Public Service Commission for its Civil Services Examination allows the candidates to use any one of the languages of the schedule to write the examination. They other than the residents of the NE (only in English) are also required to qualify in a paper in one of these languages. One of these languages could be the medium of interview. The UPSC conducts many more examinations than CCS; this language facility is extended for all those examinations.

6.8 Statutory Privileges

The Eighth Schedule languages have many statutory privileges like printing of denominational value on the currency notes. The Union Public Service Commission has to add the language into the civil services examination, an optional paper in the language has to be there and it should be possible for the candidates to be interviewed in the concerned language. They are the preferred languages for educational and administrative purposes. They are not ignored or left out in most of the language-related decision-making process.

The Government of Tamil Nadu had granted pension to the anti-Hindi agitators. The Supreme Court expressed the view that the Scheduled Languages, more specifically Hindi were necessary for the maintenance of unity and integrity of the nation, this scheme of pension is unconstitutional [R.R.Dalavai vs State of Tamil Nadu. AIR 1976 SC 1559].

These instances of the use of the Eighth Schedule or non-use of the same in the area of literature and other creative expressions, education, administration, and employment, help to identify layers of language and disadvantage. The pattern of layers is as follows : (a) English

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

and Indian languages; (b) English, Hindi, and other Scheduled Indian languages; (c) English, Scheduled languages with State and Stateless languages; (d) English, Scheduled languages and non-Scheduled languages.

=====

Chapter 7 LANGUAGE AND THE STATES

7.1 Status of English

English is serving independent of other languages and also it is serving sometimes as a substitute for the non-Scheduled languages, and sometimes as a substitute for all other Indian languages excluding Hindi. It is seen above that English is at an advantage for its users, but from the point of view of language Hindi is in an advantageous position. The national level competitive examinations for employment with 'power', though held on all-India basis to provide equal chances for the eligible candidates, actually do not keep all regional language candidates on par. English is a compulsory language in most of the all-India level employment opportunities. It is the sole medium of instruction in Technical education and a majority offers it as a medium for higher education. Most of the all-India jobs go to the Hindi and English medium students of the Hindi speaking States and English medium students are at a disadvantage to compete with others who have their education from pre-primary till qualifying examination in English or in Hindi.

This inclusion and exclusion creates surplus man power in one region and scarcity of the same in another, leading to migration in visible numbers. Thus, the excluded population, in order to retain their hold on the local employment market, attempts to exclude all other mother tongue groups and try to define the 'son of the soil' on the linguistic basis as, 'Who is Kannadiga?' And in Karnataka only Kannadigas should get employment, etc. When the employment gates are closed at the national level based on language competence, at the regional level too, the regions try to close their employment gates for the people of languages of other regions. The disadvantage for one language group at one level creates disadvantage for all other groups at another level.

Measures in the school system to compensate the disadvantage at a regional level include giving grace marks in the concerned language. And in employment, giving time and providing facility to learn the language. The first one gives concession to the people who are the real residents of the State and the second one aims at preventing the entry of people from other language regions.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

7.2 Eighth Schedule and Language Development

In pursuance of the Parliament Resolution of Jan 18, 1968 adopted by both houses of the Parliament the Department of Education of the Government of India has to take steps for the full development of these languages in collaboration with the state governments. As per the Authorized Translation Act of 1973 (Central Laws) the translation of any Central Act, Ordinance bye law etc., in any language of the schedule is deemed to be authorized translation. The development of the languages of the Eighth Schedule to become effective means of communicating modern knowledge as desired in the Constitution and the Official Language Resolution needs to be assessed. Though precise assessment is needed, it is not possible without quantified research in each language. If and when language development parameters are evolved like human development index one can quantify the language development.

The Stateless Scheduled languages do not find a place as regional languages for this assistance for language development. The main language development activities for expanding their functions are planned in Scheduled languages with States only, whereas language development for non-Scheduled languages is normally for their preservation. In the natural process, majority of them may not be developing or expanding the range of their registers. In Karnataka, the majority of Tulu and Kodagu speakers have become bilinguals in Kannada. So the regional language functions as their language for absorption and expression of modern knowledge. These languages do not find any need to expand their vocabulary and registers for expression and dissemination of contemporary knowledge. From the point of view of advantage and disadvantage of Indian languages, four groups emerge in the order of decreasing advantage: (a) Hindi, (b) other Scheduled languages with State, (c) other Scheduled languages without State, and (d) all other non- Scheduled languages.

In the context of majority and minority relations the official recognition of a language in India is at Union level, State level and inclusion in Schedule VIII (Chaklader 1987). But this Schedule is used for the purposes for which it was not intended. The list of languages prepared for the development and spread of Hindi is functioning as a list of Scheduled languages used arbitrarily for formulating and implementing language related decisions. It is also not used uniformly in similar contexts. This is causing disadvantage to other languages and their speakers. The majority and minority are to be seen in terms of their access to the resources through language. Hence, in order to avoid advantages to some and disadvantage to some others, while formulating the language policy, a re-look at the concept of language recognition is necessary. At the Union and State levels, languages have to be recognized for specific purposes rather than for expanding the role and amending the existing list at the Union level.

7.3 Eighth Schedule and Criteria for Membership

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

It is very well known that there are no criteria set to include a language in the schedule. But the scholars have attempted to reason out the criteria by examining various factors. According to Bh. Krishnamurti (1995) they are:(a).Literary traditions and scripts of their own (b).Spoken by the largest number of people in large contiguous geographical zones as dominant languages of certain regions(c).Being recognized as official languages in newly formed States (Konkani, Manipuri).(d).Being an ancient language of culture and heritage and also a resource language in modernizing the major literary languages (Sanskrit) and (e) Being spoken by a large population, geographically distributed and dispersed, but with own script and literature (Urdu).

I understand that there was one committee namely Ashok Pahwa Committee (1967?) which had suggested the following as criteria for inclusion in the schedule: (a) One official language of a State may be included in the Eighth Schedule (b). It should be spoken by a substantial proportion of the population of a particular state (c). It should be an independent language and not dialect/derivative of a language included in the Eighth Schedule (d). Recognition by Sahitya Akademi and (e) It should have a well-defined literature of a fairly advanced level of development.

During 2004 there was an attempt to delineate criteria to consider the requests of different languages for inclusion in the Eighth Schedule and I understand that they were: language (a). Should be spoken by at least one lakh persons, (b). Is part of school education (c). Has rich literary heritage (d). Has recognition of the Sahitya Akademi for literary awards etc.

In 2009 the Union Home Ministry reported that requests from 38 languages are pending for their inclusion in the Schedule. The UPSC and RBI have reservations about the feasibility of including them in the realm of activities if additional languages are included. The Minister of State for Home said that "...Centre was committed to giving due recognition to all the languages through a proper mechanism of evaluation. The most important part is to differentiate between a language and a dialect. There should be proper guidelines to determine a language's status..." [The Hindu: Aug 11, 2009]

7.4 Classical Languages

The Government of India created a new class/category of languages called Classical Languages in 2004 through a Gazette Notification.

The background is that the Ministry of Culture, Government of India requested the Central Sahitya Akademi to look into the question of according classical language status to some languages like Tamil since the Common Minimum Programme declared by the UPA Government carries the promise of giving classical status to Tamil. The Central Sahitya Akademi on Sep 2, 2004 suggested to the government while according classical language status to any language, the following criteria could be used since no criteria were there till then:

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

- a. High antiquity of its early texts/recorded history (may be 1500-2000 years).
- b. A body of ancient literature/texts, which is considered a valuable heritage by generations of speakers.
- c. The literary tradition is original and not borrowed from another speech community.
- d. The classical language and literature being distinct from modern, there may also be a discontinuity between the classical language and its later forms or its offshoots.

The Government of India vide their Notification No.IV-14014/7/2004-NI-II, dated October 12, 2004 issued a Notification relating to creation of a new category of languages as classical languages and also notified that Tamil be classified henceforth as classical language.

- a. High antiquity of its early texts/recorded history over a thousand years.
- b. A body of ancient literature/texts, which is considered a valuable heritage by generations of speakers.
- c. The literary tradition is original and not borrowed from another speech community.

Further the Government of India issued a corrigendum to this Notification on October 29, 2004 added a fourth clause which states:

- a. The classical language and literature being distinct from modern there may also be a discontinuity between the classical language and its later forms or its offshoots.

The Government of India vide its Notification No.2-16/2004-US (Akademies), of November 1, 2004 decided to set up a Committee of Language Experts to consider future demands for categorization of languages as classical languages and also the Government vide this Notification set out the criteria to declare a language as one of the classical languages. They are:

- a. High antiquity of its early texts/recorded history over a thousand years.
- b. A body of ancient literature/texts, which is considered a valuable heritage by generations of speakers.
- c. The literary tradition has to be original and not borrowed from another speech community.
- d. The classical language and literature could be distinct from its current form or could be discontinuous with its later forms or its offshoots (like Latin Vs. Roman, Sanskrit – Pali Vs. Prakrit and Modern Indo Aryan).

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Also in the same Notification the benefits that will accrue to the classical languages are elucidated. They are:

- a. Two major international awards for scholars of eminence in Classical Indian languages are awarded annually.
- b. A 'CENTRE OF EXCELLENCE FOR STUDIES IN CLASSICAL LANGUAGES' is set up.
- c. The University Grants Commission be requested to create, to start with at least in the Central Universities, a certain number of Professional Chairs for Classical Languages for scholars of eminence in Classical Indian languages.

The Government of India vide its Notification No.IV-14014/7/2004-NI-II of November 25, 2005 decided to amend para 2 of the Notification of October 12, 2004 to be read as "High antiquity of its early texts/record history over a period of 1500-2000 years". Also the same Notification said that "Sanskrit language satisfies the above criteria and will be classified as a classical language". The awards component was modified on November 1, 2007 communicated on Nov 23, 2007 through the Office Memorandum F.No.8-44/2004 D-IV (L). Accordingly the awards are as follows:

1. One Life time achievement award for Indian scholar-A certificate of honor, a memento (a shawl) and onetime cash award of Rs. 5 lakh, to be presented by the President of India.
2. Two International awards for Life time achievement (one each for person of Indian and non Indian origin)- A certificate of honor, a memento (a shawl) and onetime cash award of Rs. 5 lakh, to be presented by the President of India. In addition, the international travel and local hospitality will also be offered.
3. Five Young Scholars Awards- Young scholars in the age group of 30-40 to be given a certificate of honor and a memento and onetime cash award of Rs. 1 lakh to be presented by the President of India.

Demands, representations, documentary evidences from other Indian languages indicating that they fulfill the criteria notified by the government to obtain this new status of the Classic Language were made by the people, respective state governments. Two such demands from Kannada and Telugu were considered by the expert committee and positive recommendation was made by the Committee of experts after holding two meetings on June 10, 2008 and Aug 8, 2008. The recommendation was that since both Telugu and Kannada fulfill the criteria for the classical status both languages be recognized as classical languages. However, R. Gandhi filed public interest litigation before the High Court of Madras and challenged the legality of the constitution of the expert committee, undue influence in the grant of classical

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

language status for these two languages etc., and sought that the fresh committee of experts be constituted with the retired Chief justice of High Court or retired judge of Supreme Court as its chairman. The Madras High Court issued an interim order on Aug 5, 2008 which said “In the meantime, any decision taken by the committee [set up by the Government of India] to consider grant of classical language status] is subject to the final decision of the High Court”.

This order was challenged in the Supreme Court through a special leave petition by the Andhra Pradesh Official Language Commission and Deepak Thimmaiah. They requested the court to intervene in the matter and expedite the matter in the High Court. The Supreme Court rejected the SLP and the Chief Justice said that “We do not believe that the High Court is reluctant to hear this matter. You go to the High Court.” The Government (Ministry of Culture) vide Notification No.2-16/2004-Academis of Oct 31, 2008 classified Kannada and Telugu as Classical languages. Also, this notification was subject to the decision of the writ petition in the Madras High Court. However, the Union cabinet on May 9, 2009 approved ex-post facto the proposal of according classical status to Kannada and Telugu subject to the further orders of the High Court of Madras. The author understands that the requests from other languages like Malayalam are pending with the competent authority for appropriate decision.

7.5 Official Languages

A nation is historically evolved and hence it is essential to know about the languages that the rulers of a country used for administration of their region. Many Indian rulers ruled territories in which different languages were used for communication by their subjects. Often the language of the king and the language of those whom he ruled were different. In order to have a total picture of language used by the rulers for various administrative purposes, it is essential to have a synchronic and comparative study about the language spoken by the king, language or languages spoken by his subjects in various regions, languages used by his poets in their works, languages used in treaties and inscription written during that particular period. An attempt is made here mainly on the basis of writings on history to identify the languages used for administrative purposes by various dynasties. In these historical writings in most of the cases the terms 'court language' and 'official language' are used co-terminously.

Before Independence of India

Historically the language of the people and the language or languages used to govern them used to correspond with each other. Asokan inscriptions are in Prakrit, Greek, and some other languages. The court language of Asoka is assumed to be Prakrit (Magadhi). Though at that time Sanskrit was the language used for cultural purposes, most of the inscriptions are in Prakrit, the language spoken by the common people. The letters in the inscriptions of Asoka in Mysore and Kurnool vary from those used in the north Indian inscriptions. The variety used in the latter is identified as a special southern variety of Brahmi script. Some of the inscriptions a

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

few decades after Asokan period, found in Bhattiprolu near the mouth of Krishna river, use the southern variety of the script. And also the language reflects peculiarities of the local speech. Communication of the message of the rulers to the people seems to be the basic reason for these differences.

During Mourya rule, Magadhi was the court language. Wherever the local speech forms differed from it, while publishing, the inscriptions were rendered into the local speech forms (Mansehra, Girnar inscriptions). In places where the official language (the ruler's language) was found to be not difficult to follow, the official speech form is retained (Kelsi, Siddapura, and Maski inscriptions).

For Gupta kings Sanskrit was both the court language and the language of culture. Prakrit was believed to be the official language of Satavahanas. In their inscriptions the script used is Brahmi with local variations.

Early Pallavas used Sanskrit in their inscriptions and then switched to Tamil. Cholas, in the beginning, used Sanskrit for certain portions and Tamil for certain other portions in their inscriptions (Raja Raj's Ledan inscription). The latter inscriptions are totally in Tamil (Rajendra's Thirukkular inscription). When the Cholas won the regions speaking other languages, they used the language of that region in inscriptions of that area. Likewise Rajendra I's Balamari inscription is in Kannada and in Kannada script. Some inscriptions are in Tamil language but have used Kannada script (Rajendra I's Kottashivara inscription).

After Cholas, Hoysalas occupied this region and they used Tamil for their inscriptions because it was the language of the people of this region. In the present Tamil Nadu region, maximum inscriptions found are in Tamil.

Sanskrit and Kannada were used by early Chalukyas for inscriptions. Both languages had the status of official languages under them and were used in records. Later Chalukyas used Kannada for inscriptions. The Kadambas during their early period gave Prakrit the status of official language. But later Kadambas preferred Sanskrit for official documents. As already stated, Pallavas preferred originally Sanskrit as sole official language for documents. The inscriptions of the later period are bilingual using Sanskrit in the beginning and local speech of the people like Kannada, Telugu, Tamil for the body of the document. From about 10th century A.D. onwards inscriptions are in popular speech form. At the same time Sanskrit remained the cultural language.

The rulers of the Vijayanagar Dynasty, in their kingdom, used the language of the concerned region for administration. They used Tamil in the Tamil region, Kannada in the Kannada region and Telugu in the Telugu region. Out of nearly 5350 inscriptions 2500 are in Kannada, 1300 are in Tamil and 1000 are in Telugu. On many occasions the kings of this empire

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

have signed on copper plate inscriptions in Kannada irrespective of the inscription being in Nagari script, Sanskrit or in Tamil region. The education system devised was suitable for people to join the Government service. Here the people were educated in mathematics, etc., it was essential for them to acquire the knowledge of several scripts.

Haidar Ali Khan and Tipu Sultan who ruled the Mysore region used both Persian and Kannada as court languages. Also during their period treatises written in Dakhni were available to public. Until the rulers from outside the country entered to rule Indian Territory Indian languages were used in administration.

In 1175 A.D. Mughals rule began in India. The official language of Mughals was Persian. Since Persian language was not the language of this country, but it became the official language, Sanskrit remained as the medium of social and cultural interaction. Also in certain regions most of and the Muslim Governments have used Persian and Hindi in their public orders. It is essential to note one aspect of Mughal public service that 'Akbar evolved a policy of India for Indians'.

However there were a great number of foreigners to man various departments and offices created by Akbar. These high officials were mostly Persians, Afghans and others ... that 70% of these officials belonged to foreign ... 30% being Indian Mohamedens and Hindus ... Akbar gave equal opportunities to the Hindus and Muslims. Jahangir and Sahjahan continued to maintain the policy but Aurangajeb reversed with disastrous results.

During the Britishers' rule English was the official language and for nearly a century Persian continued in some of the regions, because British succeeded Mughals. Though in 1837 Persian lost its status, Urdu continued in certain parts of North India. Macaulay's Minute of February 2, 1835 changed the course of language use in India. It is to be carefully noted that during the British period though English became the Official Language, the Indian languages were not completely removed from their usage in administration. In 1900 A.D., in the N-W Government a decision (Resolution 18-4-1900) was taken. According to that decision: (1) All persons may present their petitions or complaints either in the Nagari or in the Persian character as they shall desire. (2) All summons, proclamations, and the like in vernaculars issuing to public from the courts or from revenue officials shall be in the Persian and the Nagari characters and the position in the latter shall invariably be filled up as well as that of the former .

In the southern part of the country, in present Karnataka region Kannada was in use for official purposes. In 1837 A.D., John A. Dunlop, the Collector and Magistrate of Belgaum, vide his letter No.121 of 1837 dated April 20, 1837 addressed to D. Greenhill, Esq., Judicial Visiting Commissioner, Dharwar, wrote that 'the Kanarese has already been introduced in the judicial criminal branch of my office and has apparently made a considerable progress. Orders have however been issued for its being made the language of business throughout the jillaas from the 1st November.'

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

In the history of pre-independence India, though there are instances after instances wherein only one language was the Official Language, it is very difficult to find a point of time where only one language was used as the sole language of administration in a specific region. It seems that the official language was used for the purposes of rules and other interrelated activities. And used within the setup of the Government to a large extent. However languages of the people were used for all the necessary communicative purposes. The public have shown interest to learn Sanskrit or Persian or English with the aim that the knowledge of it will open up avenues for jobs in the Government. This had created a set of people, who would always join the Government service. All these happened in different type of administrative structures wherein the common man had a very little say.

After Independence of India

Now, terms like official language, language used in administration, lingua franca, common language, regional languages and provincial languages are discussed. In India, sometime in the academic circles and most of the time in the media circles the discussions treat official language, lingua franca, national language and common language as synonyms. But from the point of view of their utility, each one of them has different functions to perform in the society. Also I would like to draw a distinction between the ‘Official Language’ and ‘Language Used in Administration’.

To illustrate this point an example can be cited here. Though the Official Language Act of Andhra Pradesh, 1966 recognizes Telugu as the Official Language for use in its territory, it also permits the use of English, Urdu, Kannada, Tamil and Oriya in certain specified situations and regions for administrative activities. Hence these later ones are the Languages Used in Administration in Andhra Pradesh though only Telugu is the Official Language. Precisely speaking, Official Language is ‘a language used in the business of Government, legislative, executive and judicial’; Lingua Franca is ‘a language which is used habitually by people whose mother tongues are different in order to facilitate communication between them’; Regional Language is ‘a language which is used as a medium of communication between people living within a certain area who have different mother tongues’. Vernacular Language is ‘a language which is the mother tongue of a group which is socially or politically dominated by another group speaking a different language ... Do not consider the language of a minority in one country as a vernacular if it is an official language in another country’; and National Language is “the language of a political, social and cultural entity”.

The Constitution of India provides for the use of one or two or more languages in the administration of the Union and States, sees that the provisions for use of languages of all sections of people are made depending on the genuineness of the claim. Also, the interests of all the people of all the regions are in principle, accommodated in relevant ways.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Article 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 authorize the use of the Hindi language in addition to the English language and of the Devanagari form of 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 the Devanagari form of numerals, or such purposes as may be specified in the law.

Article 120. Language to be used in Parliament.

(1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English;

Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.

(2) Unless Parliament by law otherwise provides, this articles shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words “or in English” were omitted there from.

Article 210. Language to be used in the Legislature

(1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or persons acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

(2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words “or in English” were omitted there from:

Provided that in relation to the Legislatures of the States of Himachal Pradesh, Manipur, Meghalaya and Tripura this clause shall have effect as if for the words “fifteen years” occurring therein, the words “twenty-five years” were substituted.

Article 346: Official language for communication between one State and another or between a State and the Union

The language for the time being authorized for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

Article 350. Language to be used in representations for redress of grievances

Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

In pursuance of these Constitutional provisions the Union government as well as various state governments has promulgated Official Language Acts. This clearly indicates that declaration of official language and making provision for use of other languages in administration are attempts to keep harmony among their population.

7.6 Union and States

The Official Languages Act, 1963 enacted to 'provide for the languages which may be used for the official purposes of the Union, for transacting the business in Parliament, for Central and State Acts and ...' makes provision for the continuation of the use of English in addition to Hindi for all the official purposes of the Union for which it was being used immediately before that day, and for the transaction of business in Parliament, use of English for communication between the Union and a State which has not adopted Hindi as its official language, communication in Hindi to be accompanied by its English translation if the receiving State of the concerned communication has not adopted Hindi as the official language.

Even if a State has not adopted Hindi as the official language it can communicate with the Union or a State that has adopted Hindi as its official language in Hindi for communication between one Ministry and another: one Ministry and Company, etc., of the Central Government;

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

between any Corporation or Company, etc., of the Central Government, communications will be in English or Hindi. The Hindi communications shall be accompanied by English translation. Both Hindi and English shall be used in resolutions, general orders, etc., in administrative and other reports and official reports laid in the Houses of the Parliament; contracts, agreements executed etc., by the Central Government.

7.7 Andhra Pradesh

The Legislative Assembly Bill, 1964 of Andhra Pradesh published in Gazette Extraordinary, 1969 recognizes Telugu as the Official Language of Andhra Pradesh. Accordingly Telugu may be used by Notification for '(i) the Bills introduced in or amendments thereon to be moved in or Acts passed by the Legislature or in ordinances promulgated by the Governor; (ii) Orders, Rules, Regulations and Bye-laws issued by the State Government under any law of the Parliament or of the Legislature; (iii) in appeals, affidavits, summons or judgments or documents, awards, etc., in the courts, or tribunals: (iv) the medium of instruction in the schools, colleges and other educational institutions'.

The Andhra Pradesh Official Language Act, 1966 recognizes Telugu as the Official Language of Andhra Pradesh. It will be used (a) in all Bills to be introduced or amendments to be moved, in either House of the Legislature of the State and in all Acts passed by the Legislature of the State; (b) in all ordinances promulgated by the Governor of the State under Article 213 of the Constitution and in all the Regulations made by him under paragraph 5 of the Fifth Schedule to the Constitution; (c) in all orders, rules, regulations and bye-laws issued by the State Government or other authority or office of the State Government under the Constitution or under any law made by Parliament or the Legislature of the State. And 'until the State Government otherwise direct by notification under Section 3(i) the English language shall continue to be used for these official purpose within the State for which it was being used immediately before the commencement of this Act, and (ii) the English language may continue to be used for the transaction of the business in the Legislature of the State'.

The Act also has made special provision for use of Urdu or any other language or languages in addition to Telugu in certain areas of the State for specific purposes. The Notification issued in 1967 in pursuance of the above cited Act makes provision for use of Oriya, Tamil, Kannada, Marathi and Urdu languages in specific regions for specific purposes in addition to Telugu.

7.8 Assam

According to the Assam Official Language Act of 1960, Assamese is the Official Language in the Brahmaputra Valley Districts, Bengali in the Cachar District and English in the Autonomous Districts of Assam.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

7.9 Bihar

In Bihar, Hindi is recognized as the Official Language. The Bihar Official Language (Amendment) Act, 1980 declared Urdu as second Official Language for specified areas and purposes. Hence, in addition to Hindi, in 15 districts, Urdu is recognized as second official language for the following purposes: (i) Receipt of applications and memoranda in Urdu language and a reply thereto in the same language; (ii) Acceptance by the Registration Officer for registration of documents scribed in Urdu; (iii) Publication of important Government rules and notifications in Urdu; (iv) Publication of important Government orders and circulars of public importance in Urdu; (v) Publication of important Government advertisements in Urdu; (vi) Translation of Zilla Gazette in Urdu and its publication; and (vi) Display important sign boards in Urdu.

7.10 Karnataka

The Mysore Official Language Act, 1963 recognizes Kannada as the Official Language of the State. It makes provision for continued use of English for official purposes and for the transaction of business in the Legislature. As per the Notification of 1972 “if the population of linguistic minority in any Taluk is not less than 15 per cent: (i) Petitions shall continue to be accepted in the minority language concerned and replies given in that language as far as possible. (ii) Hand-outs and publicity materials shall continue to be given in such a minority language”.

7.11 Kerala

With effect from 1st November 1965, the Government of Kerala ordered that Malayalam shall be the Official Language for some of the offices in the Panchayats. The Kerala Official Languages (Legislation) Act, 1969 recognized Malayalam and English to be the official language of Kerala. They shall be the languages to be used for all or any of the official purposes of the State. The Act has also made special provisions for linguistic minorities of Kerala. Accordingly (a) The Tamil and Kannada minority people in the State may use their respective language for their correspondence with the State Government in the in the Secretariat and the Heads of Departments and also with all the local offices of the State Government situated in those areas which are declared by the Government to be linguistic minority areas for the purpose and the replies sent in such cases shall also be in their respective minority languages and (b) The linguistic minorities other than Tamil and Kannada in the State may use the English language for their correspondence with the State Government offices and in such cases the replies sent to them shall be in the English language'.

7.12 Madhya Pradesh

The Madhya Pradesh official Languages Act, 1957 recognizes Hindi as the Official Language in the Devanagari script for "all purposes except such purposes as are specifically

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

excluded by the Constitution and In respect of such matters as may be specified by Government from time to time". The Madhya Pradesh Rajbhasha (Anupurak Upabandha) Adhiniyam, 1972 makes provision "for the publication of authoritative texts in Hindi of laws passed originally by the State Legislature in English ...". The Madhya Pradesh Official Languages (Amendment) Act 1972 inserts a clause for "The form numerals to be used for the official purposes of the State shall be the Devanagari form of numerals: provided that the State Government may, by notification, authorize the use of the international form of Indian numerals in addition to the Devanagari form of numerals for any of the official purposes of the State". In order to avoid difficulties from sudden switchover to Hindi from English, the English was also permitted for use in some matter. However, the scope of the use of English was minimized from 1977. Except in (a) Medical Prescription, Postmortem reports in medico-legal cases, and (b) Correspondence (including agreements) with newspapers, transacting their business in English, Hindi was made compulsory.

7.13 Maharashtra

The Maharashtra Official Languages Act, 1964 recognizes 'Marathi shall, as from the appointed day, be the language to be used for all official purposes referred to in the Article 345. of the Constitution, as respects to the State of Maharashtra except such purposes as the State Government may, by rules issued from time to time in the Official Gazette specify, and Hindi may be used as the official language for such expected purposes'. Also '... the English language may, as from the appointed day, continue to be used, in addition to Hindi and Marathi, for the transaction of business in the Legislature of the State'. Here it is Marathi in Devanagari script.

7.14 Orissa

The Orissa Official Language Act, 1954 recognizes Oriya "to be used for all or any of the official purposes of the State of Orissa". The Orissa Official Language (Amendment) Bill, 1963 makes provision for the continuance of English language "in addition to Oriya for transaction of business in Legislature of the State of Orissa". In the Orissa border district bordering Andhra Pradesh "... State Government have issued a notification which makes Telugu the Court language beside Oriya in some of these areas".

7.15 Sikkim

This state has a unique distinction of having 11 languages in its Official Languages Act. The Sikkim Official Languages Bill, 1977 specified that Nepali, Bhutia and Lepcha shall be the languages to be used for all official purposes of the state. In 1981 it was amended to include Limbu. In 1995 it was amended to include Newari, Rai, Gurung, Mangar, Sherpa and Tamang. It was further amended in 1996 to include Sunuwar. It has to be noted that it has not declared any

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

one language as official language but identifies 11 languages which can be used for all official proposes.

7.16. Tamil Nadu

The Madras Official Language Act, 1956 recognizes Tamil as the Official Language of the State. Also "the English language shall continue to be used for all the official purposes of the state for which it was being used before the commencement of the Act ...".

7.17 Uttar Pradesh

In Uttar Pradesh, Hindi is the' Official Language. The Uttar Pradesh Ordinance No.20 of 1982 which came into force from 21st April, 1982 provides for the use of Urdu in addition in addition to Hindi for the following purposes. (1).Entertaining applications in Urdu presented by members of public.(2) Receiving documents in Urdu presented for registration with a Hindi copy thereof. (3).Publication of important Government rules, regulations and notifications.(4) Publication of important Government advertisements, etc. (5).Translation of Gazette in Urdu.

7.18 West Bengal

The West Bengal Official Language Act, 1961 recognizes "(a) in the three hill subdivision of the district of Darjeeling, namely, Darjeeling, Kalimong and Kurseong, the Bengali language and the Nepali language, and (b) elsewhere, the Bengali language shall be the language or languages to be used for the official purposes of the State of West Bengal ...". The West Bengal Official Language (Amendment) Act, 1964 makes provision for the "continuance of English language for official purposes of the State and for use in the State Legislature". The Language Act of 1961 was amended in 1973 in West Bengal Official Language (Amendment) Act 1973 for the insertion of the Section 3A which reads that "the Nepali Language may, in addition to Bengali language, be used for (a) rules, regulations and bye-laws made by the State Government under the Constitution of India or under any law made by the Parliament or the Legislature and (b) notifications or orders issued by the State Government under the Constitution of India or under any laws made by Parliament or the Legislature of West Bengal, as apply to the three hill sub-divisions of the district of Darjeeling, namely, Darjeeling, Kalimpong and Kurseong". In Meghalaya, Nagaland, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, English is the official language. And in Jammu and Kashmir, Urdu is the Official Language.

=====

Chapter 8 LANGUAGE LITIGATION

8.1 Litigation in Indian Courts

In multilingual India, language or language related issue invokes emotional, sentimental and legal responses among the people affected due to policy formulations, implementation, and envisaged minor or major policy changes. Since 1956, after adoption of the Constitution, Indian Courts have faced litigations of various types by the people affected in the natural process of language policy formulation and implementation. These litigations have questioned the abridgement of or curtailment various rights of the citizens' rights. The courts have also examined them at length and delivered Judgments. Sometimes, these Judgments have made the Governments to look at their language policy afresh taking into consideration the aspirations of the aggrieved peoples and the ground realities.

The Madhya Pradesh Government had made Hindi and Marathi as Official language of the state. This was challenged in the High Court and the contention was that Hindi is the national language and no more a regional language. So, either Hindi or Marathi could be adopted and not both. The court rejected this argument and said "What Articles 343 and 344 prescribe is the official language of the Union, which is not the same thing as the national language of the country. At the same time it said that Hindi to be developed as directed in Article 351 "...will, bear no analogy with the Hindi language to be used for official purposes, which, by the way, finds a place among the regional languages specified in the Eighth Schedule of the Constitution and cannot, therefore, be deemed to be taken out of the category of the regional language contemplated by article 345." [L.M.Wakhare vs The State. AIR 1959.MP.208]

Hindi training for the Central Government Employees who are below the age of 45 was made compulsory and the same was challenged. The Court upheld order of the government- that since Hindi has to be promoted as per the constitutional provisions and it has to be made Official language and no penalty is there even if someone failed [Murasolimaran vs Union of India.AIR 1967 SC 225]

The Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 states that "The State government may, by Notification, declare its intention of regulating the marketing of such agricultural produce, in such area, as may be specified in the Notification. The Notification may also be published in Kannada in a newspaper circulating in such area." The government in order to disseminate its intention issued a press note and it was published in an English news paper. The aggrieved party sought justice citing that their right to have the information in their language. The word 'may' in the sentence is to be understood as 'shall' since it is intent of the legislation. The government maintained that "Notification in Kannada is only directory and not mandatory." The court observed that "...the publication in Kannada is meant for local

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

consumption through the medium of the official language of the state. The publication in Kannada is also for the purpose of enabling the concerned trading community of the area to prefer objections and offer suggestions. Such publication in Kannada is also to enable the authorities to consider the objections and suggestions so offered and to take a decision to issue a Final Notification...right to information ...right to be heard... The special safeguard is publication in the Kannada newspaper circulating in such area...it cannot be construed that such a publication is permissive and not obligatory...The legislative intention for communication of intention in the spoken language of the masses which is Kannada and which is also the official language of the state cannot be ignored". Hence 'may' in the clause is to be construed as 'shall'. Since it was not published in Kannada there was adverse effect on the rights of the petitioners. *Katwe Jaggery Traders vs State of Karnataka* (ILR 1990 KAR 1882).

Similarly in the case the Supreme Court had said that "It is a matter of common knowledge that publication in a newspaper attracts greater public attention than publication in the Official Gazette. That is why the legislature has taken care to direct that the Notification shall also be published in Gujarati in a newspaper." This requirement is observed as mandatory. *Govindlal vs P.M. Committee* (AIR. 1976.SC.263)

The petitioner had contended that the detention under COFEPOSA Act is illegal. The contention was that "...the petitioner only knows Kannada; that the copy of the order of detention in Kannada which was served on the detune is not in conformity with the English version of the order of detention; that the Kannada version gives the idea that the detention has been made to prevent the petitioner from concealing and transporting smuggled goods...the order has to be passed with a view to preventing a person from engaging in transporting, concealing and keeping smuggled goods; that in Kannada version the words 'engaging in' are completely missed...the order of detention cannot be legally sustained. The court obtained the opinion on translation and said that "whether the Kannada version of the order conveys requisite idea has to be gathered from the language used and not the number of words used. The sentence in Kannada certainly conveys the idea that the order was made to prevent the petitioner from engaging in the activity of transportation and concealment. There is no ambiguity about this. The structure of Kannada language is not the same as the English language and therefore, it is possible to convey the idea with less number of words." *C. Seetharama Setty vs State of Karnataka and Superintendent of Prison, Bangalore* WP No.68 of 1987 in HC, Karnataka.

8.2 Educational Languages

A Multi-ethnic and multi-lingual pluralistic nation needs to evolve education and language policies in such a way that all the segments that constitute that nation develop a sense of participation in the progress of governance and nation-building. In addition, the specific

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

aspirations of the individual segments of the nation need to be met to the satisfaction of the various ethnic, religious, and linguistic communities.

Before independence of India: It is researched and said that in ancient India the learning and teaching were mainly confined to the priestly class and these were more of religious significance. During the Muslim period of ruling, the same situation continued.

Education was part of effort of preservation and transmission of cultural traits from generation to generation rather than that of economic development of the individual or the society. “ There was no state-controlled and state-financed system of education ... Education depended partly on private effort motivated by philanthropic considerations, partly on the benefactions of wealthy people, who were religiously inclined, and partly on royal patronage, which varied, of course, with individual rulers... pre-British period was either educationally obscurantist or indifferent to the educational needs of the people.” English Education in India is traced back to 1792 and the debate of East India Company to send school teachers to India. In this context Charles Grant in 1798 had said that “...the propagation of English education is desirable because it would eradicate the superstitions and falsehoods inherent in the religious thought and philosophy of the Indian people and consequently impress upon them the superiority of Western culture and religion.” He is believed to be the first person to formulate scheme of English education in India. This was preceded by pressure from Christian missionaries and private enterprise for such an education system. The Committee of Public Instruction was set up in 1823. Ram Mohan Roy requested the Governor General to encourage advancement of modern scientific knowledge. But the Committee said “...that knowledge of English was not among the sensible wants of the people.” However in 1830 it was concluded that “... higher English education was deserving of all the encouragement which the Government could give it, because it was calculated to raise up a class of persons qualified by their intelligence and morality for high appointment in the civil administration of India...English was of greater cultural value and greater practical use than Sanskrit or Arabic, or even Persian;...spoken languages were too crude and undeveloped to be suitable vehicles for the communication of modern knowledge.” Macaulay’s Minutes of 1835 emphasized that “In India, English is the language spoken by the ruling class. It is spoken by the higher class of natives at the seats of government... We have to educate a people who cannot at present be educated by means of their mother-tongue.” The Government decided in 1844 that “...young men educated in English institutions would be given preference for appointment to Government service.” The Wood’s Dispatch of 1854 had the main objective of imparting of education to the “...upper classes through the medium of English and to the masses through their own spoken languages.” Even then, the social status was deciding factor in the choice of medium of instruction. From then onwards the English education became popular in India. [The Educational System-Oxford Pamphlets on Indian Affairs:1943]

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

After independence of India

India's Freedom Struggle was not merely a struggle for independence; it also laid the groundwork for all nation-building even when the people were under foreign yoke. Our leaders did not postpone nation-building processes until we were given freedom. The resolutions passed in the various conferences conducted by the Indian National Congress reveal that the national leadership while waging their battle against the British rule thought well ahead of time and prepared the nation with advance steps in the fields of education and language policies. One such step was the generously agreed upon principle to re-organize the British India provinces that were a product of the British tactics of accession for the administrative convenience of the rulers into somewhat linguistically cohesive states. Another resolution that was passed and partially implemented twenty-five years before independence was the policy on National Education that emphasized the use of the mother tongue as medium of instruction in schools.

Resolution adopted at the Provincial Education Ministers' Conference in August 1949 and approved by the Central Advisory Board of Education and the Government of India states that: "The medium of instruction and examination in the Junior Basic Stage must be mother-tongue of the child and where the mother-tongue is different from the Regional or State language, arrangements must be made for instruction in the mother-tongue by appointing at least one teacher provided there are not less than 40 pupils speaking the language in the whole school or ten such pupils in a class. The mother-tongue will be the language declared by the parent or guardian to be the mother-tongue. The Regional or State Language, where it is different from the mother-tongue, should be introduced not earlier than class III and not later than the end of the Junior Basic Stage. In order to facilitate the switching over to the Regional Language as medium in the Secondary Stage, children should be given the option of answering questions in their mother-tongue, for the first two years after the Junior Basic Stage. In the Secondary Stage, if the number of pupils, whose mother-tongue is a language other than the Regional or State language, is sufficient to justify a separate school in an area, the medium of instruction in such a school may be the mother-tongue of the pupils. Such schools, if organized and established by private societies or agencies, will be entitled to recognition and grants-in-aid from Government according to the prescribed rules. The Government will also provide similar facilities in all Government, Municipal and District Board Schools where one-third of the total number of pupils of the School request for instruction in their mother-tongue. The Government will also require aided schools to arrange for such instruction, if desired by one-third of the pupils provided that there are no adequate facilities for instruction in that particular language in the area. The Regional Language will, however, be a compulsory subject throughout the Secondary Stage. The arrangements prescribed above will in particular be necessary in metropolitan cities or places where a large number of people speaking different languages live or areas with a floating population speaking different languages".

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Chief Ministers' Conference on November 16, 1961, agreed on the following in respect of education, viz. that

1. If there are 40 pupils in a school or 10 in a class-room desirous of being instructed at the primary level in their mother-tongue, teaching will have to be done by appointing one teacher;
2. All modern Indian languages mentioned in the 8th Schedule and English be used as media of instruction at the secondary level. For this purpose, a minimum strength of 60 pupils in last four classes or 15 pupils in each class speaking that given language will be necessary, provided that in the first four years a strength of 15 in each class be ensured.
3. Non-diminution of pupil strength and school facilities including teachers for linguistic minorities as it existed on 1.11.1956 should be done without specific sanction of the concerned Government.
4. Advance registration of applications from pupils desirous to have instruction through the minority languages is done for a period of three months ending a fortnight before the commencement of school year.
5. Inter-school adjustments will be made so that no applicant is refused facility of instruction through minority languages only on the ground that the number of such applicants is not sufficient for opening a new section/class.

Article 350 A. Facilities for instruction in mother-tongue at primary stage: It shall be the endeavor of every State and 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.

It has to be noted that the makers of the Indian Constitution did not lay down elaborately the policy for the domain of education in independent India as they did for administration or judiciary. The Constitutional law experts opine the same. "A difficult question arises regarding the medium of education at various levels. The Constitution prescribes no policy or principle, and makes no provision, in this regard. To begin with, the matter was left to the legislative power of the States as 'Education' was a State subject. The States enjoyed full right to prescribe the media of instruction at the primary and the High School levels. [M.P. Jain: Indian Constitutional Law, 4th Edition].

Due to its sensitive nature and fluid language situation at that time, with broad guidelines they allowed the language law to be evolved in the context of multilingual situation under various rights bestowed in the Constitution through the process of adjudication. Karnataka is the only state in the country which has defined the language policy for the domain of education due to

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

judicial interventions on its actions. As far as I know none of the other states possess such a well-defined policy which is adjudicated by the High Court as well as the Supreme Court.

The Universal Declaration of Human Rights states, ' Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory... Parents have a prior right to choose the kind of education that shall be given to their children. The Constitution of India also makes provision for '... free and compulsory education for all children until they complete the age of fourteen years'². But the Constitution has no explicit statements regarding the language(s) to be taught in education or the language(s) through which education has to be imparted (except in the case of linguistic minorities). This may have been a tactical compromise or declaration on the part of the Constitution makers, because everyone could sense the great linguistic complexity of free and democratic India.

The National Policy on Education of 1968 spoke about the regional languages and the Three Language Formula. The 1986 Policy reiterated the earlier stand. The States Reorganization Commission had asked the Union Government to elucidate a policy outline for education in mother tongue at the Secondary stage. The All India Council for Education recommended the adoption of the Three Language Formula (TLF) in September 1956. The endorsement for this formula came from various directions. It was adopted by the Chief Ministers' conference. The National Policy on Education 1968 recommended the inclusion of the TLF 'which includes the study of a modern Indian language, preferably one of the Southern languages, apart from Hindi and English in the Hindi speaking states, and of Hindi along with the regional language and English in the non-Hindi speaking states' in at the Secondary stage. This was reiterated in the Education Policy 1986 and was adopted as the Programme of Action by the Parliament in 1992. These are major attempts to arrive at a language policy for education. Since education is in the concurrent list of the Seventh Schedule of the Constitution, the language policy formulation for education and its implementation is left to the State governments under the Constitutional safeguards and broad guidelines cited above.

The National Curriculum Framework for School Education: A Discussion Document released on January 1, 2000, while reviewing the Three Language Formula, states that :In a number of states/organizations/ boards, however, the spirit of the formula has not been followed and the mother tongue of the people has been denied the status of the first language ... because of the changed socio-economic scenario, the difference between the second and the third languages has dwindled. Thus, in reality, there may be two-second languages for all purposes and functions. Some states follow only a two-language formula whereas in some others classical languages like Sanskrit and Arabic are being studied in lieu of a modern Indian language. Some boards/institutions permit even European languages like French and German in place of Hindi. In this scenario, the three-language formula exists only in our curriculum documents and other

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

policy statements. According to this document the three languages are: (i) the home language/the regional language, (ii) English, and (iii) Hindi in non-Hindi speaking states and any other modern Indian language in Hindi speaking states. The National Curriculum Framework for School Education 2005 records that: Home language(s) of children, should be the medium of learning in schools. Where "...home language(s) or mother tongues are ... the languages of home, larger kinship group, street and neighborhood, ie., languages a child naturally acquires from her/ his home and societal environment". If school does not have provisions for teaching in the child's home language(s) at higher levels, the primary school education must still be covered through the home language(s)...Three Language Formula needs to be implemented in its spirit...In non-Hindi states, children learn Hindi. In the case of Hindi states, children learn a language not spoken in their area. Sanskrit may also be studied as a Modern Indian Language (MIL) in addition to these languages. At later stages, study of classical and foreign languages may be introduced. It is to be noted that earlier it was home language/ regional language but it became home language or mother tongue. As per this curriculum framework the Government of Karnataka issued the order on Oct 29, 2006 where in it prescribed English as a language of study from the first standard in all the Kannada medium as well as linguistic minority schools.

8.3 Defining Mother Tongue in Multilingual Context

Defining mother tongue in multilingual context is a tricky phenomenon; it will not be out of context if I mention the notion of mother tongue in the Census of India documents. From 1881 Census onward, the question on mother-tongue was included in the census though it was used by the enumerators differently in different Censuses. In the Censuses of 1881, 1931, 1941 and 1951, the question was 'Mother-tongue'. The mother-tongue was defined as the language first spoken by the individual from the cradle. In 1891 Census, the question was 'Parent tongue' which has been defined as the language spoken by the parent of the individual. In 1901 Census, 'Parent tongue' was replaced by 'language ordinarily used'. In 1911 the question was 'language ordinarily spoken in the household'. In 1921 the question was simply 'language ordinarily used'. The question on Mother tongue was repeated from Census to Census from 1931 to 1971. In 1971 Census, the mother-tongue was defined as "language spoken in childhood by the person's mother to the person. If the mother died in infancy the language mainly spoken in the person's home in childhood was recorded as the Mother-tongue'. In Census 2001, mother tongue is enumerated as "...the language spoken in childhood by the person's mother to the person. If the mother died in infancy, the language mainly spoken in the person's home in childhood will be the mother tongue. In the case of infants and deaf mutes, the language usually spoken by the mother should be recorded. In case of doubt, the language mainly spoken in the household may be recorded".

As a case study for the purpose of analyzing the language law, policies of two States which were challenged in the court are analyzed in detail but judicial pronouncements from other states are also used for illustration. In the context of education two aspects of language law are

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

important: one is study and learning a language as a subject and the second is language as a medium of teaching and learning.

8.4 Education and Language Choice-language as a Subject

Language policy in Karnataka evolved in several stages with the decisions taken by the bureaucracy, committees, and legislature. These decisions were guided at times by the prevalent dominant public opinion, and often were adjudicated by the judiciary by looking into the claims and counterclaims of various mother tongue/language groups which sought the status of school languages(s). Often social, economic, political, legal, and other issues not related to education came to influence the language choice for education purposes. The demands made by one group were weighed against the demands made by other groups. In this multilingual setup, the preservation of its interests as the dominant linguistic group, and the fear of loss of stature in the state that it considers to be its traditional homeland shaped and guided the responses of the majority mother tongue group (Kannada).

The linguistic minorities are afraid that the language of the majority will be used as a tool of oppression against them. They perceive a threat to the existence of their community as a distinct group. They fear the loss of their home language. Sometimes the majority perceives some threat to the existence and continuation of their language (Kannada) from Hindi, some other times from Sanskrit, and at other times from English. But the minority, most of the time perceives a threat from Kannada, the Official/Regional Language of the State, and tries to find shelter under English. Even among the minority groups different groups have different threat perceptions. Some speak out. Some others remain silent.

8.5 Four Distinct Stages of Law

Under these circumstances, four distinct stages of language law may be identified in the development of the language policy for education in Karnataka. They are: (a) First Phase: Before 1956 - prior to the formation of Karnataka, (b) Second Phase: 1956 to 1982 - after the formation of Karnataka, (c) Third Phase: 1982 to 1988 - after the Gokak Committee recommendations, and (d) Fourth Phase: 1989 onwards after the intervention of the judiciary. We are now in the Fifth Phase: Fifth Phase- the evolving Challenges of the new millennium, but this stage is hardly recognized either by the bureaucracy or the political leaders.

Before 1956: A perusal of the documents from 20 regions that comprise the present day Karnataka indicates the existence of three different kinds of schools: Vernacular schools, English schools, and Anglo-Vernacular schools. The vernacular schools taught the regional language and other subjects in the same language. Similarly the English schools taught English and other subjects in English. Both these types of schools existed in almost all the regions. Although several common elements in the curriculum adopted in the different regions could be identified,

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

there were differences in the curriculum from one region to another. Only languages having their own script had found a place in formal education at the time of unification.

1956 to 1982: Karnataka adopted a uniform curriculum and syllabus for all its regions/districts in the state from 1959-60, and by the end of 1962-63 all the schools had totally switched over to the new uniform curriculum. Karnataka established the following pattern of language choice for education in schools since the linguistic reorganization of states in 1956.

1. I to IV Standards: The students would study only one language, that is, the mother tongue. Maximum 100 marks. .

2. V to VII Standards: One more language out of the following ten languages -- Kannada, Urdu, English, Marathi, Hindi, Telugu, Tamil, Malayalam, Gujarati, or Sindhi. Maximum 100 marks The students from the III Standard to VII Standard could also study Hindi, or composite Kannada, but this was not obligatory.

3. VIII, IX, and X Standards:

i. First language: Any one of the following languages Kannada, Telugu, Tamil, Hindi, Urdu, Marathi, English or Sanskrit, or a composite course of one of the following languages: Hindi, Urdu, Tamil, Telugu and Marathi and one of the following languages: Sanskrit, Arabic, Persian, or Hindi. The First language -150 marks.

ii. Second language: Those who had taken English as the first language would study Kannada, Hindi, Urdu, Tamil, Telugu or Marathi as the Second language. Those who had not taken English language as the First language would study it as the Second language- 100 marks.

iii. Third language: Those who learned Kannada as the First language would study Sanskrit or Hindi as the Third language. Those who learned Kannada as the Second language would study Hindi as the Third language. Those who studied Kannada either as the First or Second language would study Kannada as the Third language. The Third language-50 marks. This was compulsorily taught, but it would not count for a pass. It was left to the students either to appear or not to appear for the examination in that paper.

This pattern of language choice was practiced for nearly two decades in Karnataka. The late sixties and the early seventies witnessed strong opposition to Hindi since it was perceived as a threat to the existence, use, and development of Kannada. This had forced the Kannada mother tongue speakers to lean towards English. However, many among them also felt that Kannada faced a threat to its continuation as the dominant school language from Sanskrit. It was found that the students from the Kannada majority or other minority mother tongue groups also opted for Sanskrit as a subject of study in the schools. Students availing Sanskrit as first language scored more marks in the final examinations than their Kannada counterparts. It was perceived

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

by many that the easy instructional materials used in the Sanskrit classes, and a liberal evaluation system that helped students to obtain higher marks in the final examinations contributed to its popularity among the parents as well as the students. Choice of Sanskrit as a language of preference was normally perceived to be associated with the students coming from the upper class communities, but there were also others who began to adopt this language for the purposes of scoring higher marks in the final examinations conducted by the State Board.

It was possible to pass the SSLC State Board examination without passing in Kannada in the scheme outlined above. It was but inevitable, then, that this scheme created and widened the incompatibility between the policy of language choice for administration and the languages chosen for the purposes of education of the state. The State government employees lacked adequate knowledge of Kannada to use it as an effective medium of administration. This was found to be an impediment in using Kannada in the administration of the state at all levels. At the political level, there was a growing desire to use Kannada in as many departments of the government as possible. This pressured the State Government to create avenues to enable its employees to acquire a working knowledge of the State Official language through other formal or non-formal means.

Chapter 9 LANGUAGE EDUCATION AND LANGUAGE MOVEMENTS

9.1 Linguistic Movements

Linguistic movements initiated by various political parties, groups of Kannada teachers, students, college and university professors, literary critics, playwrights, and creative writers created an awakening among the Kannada speaking majority to seek a place of pride or pre-eminent place for Kannada in the affairs of the State. Their dream was to restore the primacy and the lost glory of their language as the only medium of governance in the linguistically re-organized Kannada state. This awakening in favor of using Kannada as the language of administration was a consequence of many factors including linguistic movements, political agitations, and the general political awakening among the backward classes. This description of the linguistic situation in Karnataka can be easily applied to many other linguistically re-organized Indian states also. Spread of literacy mainly in Kannada, and the spread of general education among the people, had led to a new awakening.

The large-scale migration of people, mainly from adjacent Tamil Nadu, for jobs that opened up through fast industrialization of the state was perceived to be curtailing the job opportunities for the Kannada majority. All these needed an avenue for the expression of their anger and disgust among the people. The language choice in education provided an avenue to meet the

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

challenge thrown up by industrialization and consequent migration of people from other linguistic groups into Karnataka. The government decided to delete Sanskrit from the first language list in 1979 and included it in the second/third language list. But the government that took this decision did not remain in power to implement its decision. The subsequent government reconsidered the stand of the previous government, and decided to maintain the status quo. Pro-Kannada groups protested against this decision.

1982-1988: This agitation against retaining Sanskrit in the first language list made the government to think afresh about the language choice in school education. For this purpose the Government of Karnataka constituted a committee (July 5, 1980) with Prof. V.K. Gokak as the Chairman, and placed the following questions before it.

1. Should Sanskrit remain as the subject for study in the school syllabus?
2. If so, how to retain it without it being offered an alternative to Kannada?
3. Would it be proper to have Kannada as a compulsory subject as per the Three Language Formula, and should the option of selecting the remaining two languages be left to students themselves?

The Committee recommended (January 27, 1981) that:

1. Kannada should be introduced as a compulsory subject for all children from 3rd Standard.
2. Kannada should be the sole first language for the Secondary Schools (i.e., 8th, 9th and 10th Standards) with 150 Marks.

The Committee further recommended that this should be implemented for the education of Kannada speaking pupils from 1981-82 itself, and, in respect of others, from 1986-87, after taking necessary steps to teach Kannada to them from the 3rd Standard beginning with the academic year 1981-82 itself. The order (dated the April 30, 1982) issued by the Government of Karnataka on the basis of this report prescribed the following pattern for language study:

- At the secondary school level First Language Kannada or Mother tongue: Urdu, Tamil, Telugu, Marathi, English, or Hindi - 150 Marks.
- Two other languages Kannada, Hindi, English, Sanskrit, Arabic, Persian, Urdu, Tamil, Telugu, or Marathi, - 100 Marks each.

The Kannada-speaking majority did not find this solution adequate to meet their demand to accord a pre-eminent place to Kannada. Up to this point, in the debate or agitation over the choice of languages for school education, only the Kannada protagonists were in the forefront.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

The linguistic or religious minorities did not participate in the debate actively. The Government after reconsidering its order issued the notification (on July 20, 1982) detailing the language choice for school system and modus operandi for its implementation through the circular of August 11, 1982. According to this:

1. At the secondary school level, the language pattern to be adopted shall be as follows (from the academic year 1987-88) A. First language: Kannada shall be the sole first language (to carry 125 marks) B. Two other languages from the following: Urdu, Tamil, Telugu, Marathi, English, Hindi, Sanskrit, Arabic, Persian, Malayalam or Kannada. (To carry 100 marks each). Note: 15 grace marks shall be given for a period of ten year(s) in the first language examination, to students, whose mother tongue is not Kannada, and (b) in Hindi examination to students who study Hindi and whose mother tongue is not Hindi
2. Students coming from outside the State and joining VIII or IX Standard in the State of Karnataka and who did not study Kannada earlier may be permitted to take English or Hindi as first language.
3. The teaching of Kannada from the Ist standard in non-Kannada schools will commence from the academic year 1983 itself and the language pattern for High School prescribed in Para (1) above will come into force from the academic year 1987-88.

Pursuing this order, the Director of Public Instruction issued a Circular (dated the August 11, 1982) indicating the strategy to be followed in the implementation of the order. "All the non-teaching Kannada schools in the State should begin to teach Kannada language from the 1st standard in the year 1982-83 as per instructions contained in para 3 of the Government order.

An analysis of this language formula reveals an inadequate understanding of the concepts like 'mother tongue', 'first language' and strategy adopted for choosing languages for education. Also this formula stands out as an exceptional case where a regional (majority) language/Official Language of the State is ascribed a special status of 'sole first language' in the secondary school, and this language is made a compulsory language for all students irrespective of their mother tongue with the same syllabus. This formula does not grade languages as first language, second language, etc., either in terms of pedagogical concepts, or in terms of chronology of their introduction in the school system. In this formula, the Kannada mother tongue student had an advantage over the students of other mother tongues. A mother tongue Kannada speaker has Kannada as first language. The Urdu or other mother tongue student has to take Kannada as the first language. He might select Urdu or another language as one of the other two languages. The third language may be English. Thus Hindi, one of the languages of the three language formula is not included a part of his education. If he desires to take Hindi, his mother tongue is not included a part of his education⁷.

The Linguistic Minorities Protection Committee vs State of Karnataka and others challenged the order and the relevant circular of the Director of Public Instruction in the High Court of Karnataka [ILR 1989 KAR 457]. The following three questions came up before the Full Bench:

- Whether the Government Order dated July 20, 1982 or any part of it is void being violative of the fundamental rights guaranteed to the petitioners under Articles 29(1) and 30(1) of the Constitution
- Whether the Government Order dated July 20, 1982 or any part of it is violative of the pledge of equality guaranteed under Article 14 of the Constitution.
- Whether, on the facts and in the circumstances of the case, the Circular dated August 11, 1982 issued by the Director of Public Instruction of the State Government is violative of Article 14, 29(1) and 30(1) of the Constitution?

This became a classic case and formed a basis for wide debate on the role of the Regional language/Official Language in the school curriculum and on the question of student's mother tongue as medium of instruction. This has no analogy to the cases decided by the Courts hitherto in the country. After hearing all the concerned parties, the two Judges in the three Judge Bench ruled in one direction and another Judge ruled in another direction. However, the majority opinion, by law and practice, was to be accepted as the Judgment to guide the language policy of the State. So it is fascinating to find how different Judges of the same Bench looked at the language problems and the legal provisions that sought to address the issue.

The litigants argued that there is no rational basis for making Kannada as the sole first language; it is unreasonable for the State to compel the students to study the official or regional language if they do not have aptitude and if they intend to reside in the state only temporarily; providing opportunity to study their language is as much in the national interest as is the study of the regional language; to achieve primacy for Kannada, minorities need not be compelled to study it from the first standard in the schools; the parents and students should choose whatever they want to study and the State cannot 'indulge in regimentation' in the matter relating to the study of languages; children must have the benefit of having education in their mother tongue; children whose mother tongue is not Kannada get a discriminatory treatment and they cannot study Kannada and compete with Kannada mother tongue students; the right to equality under Article 14 is affected; the linguistic minorities have the right under Article 29 to take steps to conserve their language and also a right under Article 30 to establish institutions of their choice, which right includes a right to take a decision as to what language should be studied as first language; it is for them to decide in what manner their language should be conserved, preserved, produced and it is not for the Government to decide and the Government under the guise of public interest cannot impose conditions.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

The State while arguing in favor of its policy said that it has power and right to take steps for the development of Kannada, including making the study of Kannada compulsory to all the children from the primary school stage and as the sole first language in the secondary school since Kannada is the declared Official Language of the State and hence it is rational to make it compulsory; this is necessary to give primacy to Kannada in the affairs of the State; also 'the State has power to make regulations in the interest of excellence in education and any regulations so made by the Government cannot be regarded as infringing on the rights of the minority groups; the usefulness of a language is measured in terms of its use in administration, trade, industry, defense, managerial decision-making and such other wide variety of a range of domains and in social and family affairs. Such domains can be covered by more than one language used complimentary to each other. Language development is central to educational advancement on a mass scale. Educational development is central to economic, cultural, and political developments. Language development is corollary to national development. India is a country with a population of sizable numbers, speaking and using different languages and therefore the problem becomes difficult and complex' and 'A child belonging to a minority section of the community in any State speaking a language other than the regional or the local language will thus develop its personality with two languages; one spoken at home, the other spoken beyond the threshold of his home, for in the absence of knowledge of the local language an individual would be at a severe disadvantage in participating in the daily life of the State. When a child or a person learns two languages, one as his mother tongue and the other as the language spoken by the people around, both become his language. Therefore, it cannot be said that a child speaking a language other than the regional language at home is totally alien to the regional language'.

The full bench of the Karnataka High Court examined the submissions made before it. The majority opinion of the Bench on the teaching of Kannada compulsorily in the primary stage, and as the sole first language in the secondary schools was that such insistence led to the violation or otherwise of various Constitutional provisions.

1. The Government order compelling all children to learn Kannada in the primary schools in the State including those established by minorities is arbitrary and violative of Article 14, because, this Article 'incorporate an injunction both to the Legislature and Executive not to deny equality before law and equal protection of the laws'. The children with Kannada mother tongue and others are dissimilarly placed because the children with Kannada mother tongue will not study any additional language, whereas the children with other mother tongues are forced to study the regional or the Official Language causing additional burden. This burden may cause dropouts. Curtailing the periods allotted to other subjects to accommodate Kannada is irrational and arbitrary.

2. The order prescribing Kannada as the sole first language at the secondary school level is also discriminatory because it prevents the students from having a language of his choice as first

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

language. This will place him in a disadvantageous position from the student who comes with Kannada as first language from the first standard. The grace marks to be awarded to bridge the gap itself accepts this discrimination. Since grace marks are awarded only to the students who fail to secure minimum marks for pass and not to others, the order places everyone in unequal position. Since Kannada mother tongue students can study Kannada both as first language and as other language gives them an advantage over others who have to study three different languages in high school. This is against the three language formula. Also from the point of view of Kannada, even the Kannada mother tongue children are denied an opportunity to take any other language as first language and enhance their knowledge. The students coming from other States for VIII to X standards cannot opt for their mother tongue and have to opt for Hindi or English. This is a clear case of discrimination and is against all other regional languages. It is the opinion of various committees and commissions that children should not be burdened with an additional language in the primary school itself.

3. The issue of medium of instruction and first language is intimately connected. In most of the cases, the language chosen by the student as first language happens to be his medium of instruction also. So 'it would be incongruous to say that a linguistic minority's choice for medium of instruction is absolute but the choice of first language is not'.

4. From the point of view of the Karnataka Civil Services Rules, it is enough if an employee has obtained knowledge of Kannada from 'Having Kannada as medium of instruction or by studying Kannada as main or first language, or by studying Kannada as an optional subject, or as second language, or by passing an equivalent examination'. So it is possible for a person even without studying Kannada as the first language but by studying as one of the languages can carry on the function of the Government in its Official Language. Hence it is not necessary to study Kannada as first language alone to gain the knowledge of the Official Language. So, 'the study of the same can be insisted as one of the languages for study in the high schools, but not necessarily as the first language'. Hence, prescribing the study of the Official Language of the State as one of the three languages in the high schools under the three language formula will not violate Article 14.

5. The language and script can be conserved through educational institutions. The rights guaranteed under Article 29 and 30 are not subject to restrictions. The State cannot either directly or indirectly take away or abridge, infringe or impart the right guaranteed by these articles. This language rule is not in the interests of the minority. Here the choice is of the minority groups themselves. The Government has only the right to prescribe the general standards to secure excellence in education in each of the subjects.

6. People in this country have one citizenship and under Article 16 have right to employment in service anywhere in the country. Since no other State has such a language policy

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

this policy will be inconsistent with personal liberty and equality guaranteed under the Constitution.

7. In Karnataka minorities are not opposed to the use of Kannada fully in administration. Even then Kannada has failed to replace English. It is fancy for English that has retarded the progress of Kannada and its replacement in different walks of life.

8. The judges felt that this 'does not mean that Kannada, the Official Language, cannot be made compulsory subject for study for the students in this State'. They made it clear 'that the State which has, subject to the provisions of the Constitution, the power to prescribe the syllabus to regulate education, can prescribe Kannada as one of the compulsory subjects. It is also the duty of every citizen who is a permanent resident of this State to study Kannada. But the regulations made in this behalf must be of general pattern and should apply uniformly to all'.

9. They agreed that 'there are no two opinions on the primacy for Kannada in the affairs of the State and its occupation of pride of place in the affairs of the State' and 'that position must be accorded to regional/Official Language of each and every State of our country'. However, in the process of arguments, the possibility that the minority language speaking students who have already accepted Kannada as mother tongue may try to misuse the provision of grace marks by reverting back to their minority mother tongue, and that the allocation of grace marks is likely to condone under-achievement in Kannada, and thus frustrate the very purpose were ignored. Thus, in language-related litigation academic issues take a back seat and the legal issues come to forefront.

10. Justice Sri Balakrishna gave the note of dissent. He found Kannada to be an intra-state vehicle of thought; undisputed spoken language of the masses; knowledge of the language of the state as imperative to one and all; the element of compulsion for acquiring the Official Language of the State cannot be called reprehensible; here compulsion leads to enlightenment and enrichment; primacy to the official language is mark of distinction and not discrimination; language is a part of the syllabus, and State is entitled to formulate its domestic policy; access to mother tongue is not denied when offered as a second language; no detriment is caused to the minorities in the matter of conservation of language, script and culture; 'Extra efforts for extra knowledge cannot be regarded as undue burden compared with the benefits that flow to them; compulsion to teach Kannada does not affect the right to establish and administer educational institutions of the choice of the minorities; and since possible disadvantages are overcome by the reasonable and adequate provisions in the notification; the government order in question has not violated any Constitutional provisions'.

The Division Bench which heard *Linguistic Minorities Protection Committee vs State of Karnataka* [ILR 1989 KAR 1595, April 29, 1989] heard the validity of the orders in the context

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

of the Grant in Aid The Grant in Aid Code for primary schools of Oct 19, 1969. In its Rule 12 states that

MEDIUM OF INSTRUCTION: (i) In all primary schools, the medium of instruction shall ordinarily be the Regional Language or mother-tongue of the child.

(ii) With a view to creating facilities for the linguistic minorities provision shall be made for teaching their mother-tongue subject to the prescribed conditions.

English medium schools or English medium sections in the existing Primary Schools may be opened with the permission of the Director for the benefit of the following categories of students:

(i) Students whose mother tongue is English

(ii) Students whose parents belong to All India Services, Central Services, etc., and are liable to be transferred from State to State (on production of certificates from the concerned department

(iii) Students belonging to a migratory group – Migratory group means those who have no permanent abodes and who migrate from State to State frequently for business or other reasons e.g. Labour employed in construction work:

(iv) Students whose parents are employees of Banks, Firms and other business concerns, which have branches in more than one State and the employees of which are liable to be transferred from State to State (on production of certificate from the concerned authorities):

(v) Students whose mother tongue is a minority language for which there is no provision in the schools of the locality:

(vi) Such schools should be started only after obtaining the permission of the Director and

An English medium school or class may be permitted to be started subject to the condition that the minimum strength of each Standard is 10 or 30 for standards 1 to IV taken together. For standards V to VII the minimum strength shall be 10 per standard

The Division Bench issued directions to the State Government

a. to provide and ensure that primary education up to first four years including pre-primary education is imparted in mother tongue of the children concerned. In government schools as also schools established by any private agency including linguistic minorities which are recognized, whether receiving financial aid or not subject to the existence of the prescribed minimum number of children having a common mother tongue who have got themselves admitted to the school concerned and

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

b. to leave the choice of selecting the first language for study in th High Schools to the students

The Government shall however be at liberty

a. to introduce Kannada as one of the two languages from that primary school class from which the study of another language in addition to mother-tongue is made obligatory as part of the general pattern of primary education;

b. to make the study of Kannada compulsory as one of the three languages for study in secondary schools, by making appropriate order or Rules, and make it applicable to all those whose mother tongue is Kannada and also to linguistic minorities who are and who become permanent residents of this State, in all primary and secondary schools respectively, whether they are Government or Government recognized, including those established by any of the linguistic minorities.

1989 Onwards: On the basis of the direction of the court, the Government of Karnataka elucidated the language policy for school education in its order of June 19, 1989 pending the decision of the Supreme Court. This is the first time that the government used the word language policy for education in its official document. Accordingly:

1. At the primary stage from 1st standard to 4th standard, mother tongue will be the medium of instruction, where it is expected that normally only one language from the group of languages, namely, Kannada, Tamil, Telugu, Malayalam, Marathi, Hindi, Urdu, or English will be the compulsory subject of study. From 3rd standard Kannada will be an optional subject for non-Kannada speaking students. This will be taught on a purely voluntary basis and it will not be at the cost of any other instruction imparted in the school or any other school activity in which all school children participate. There will be no examination at the end of the year in Kannada language.

2. From the 5th standard onwards, where, in the normal course a second language is introduced, the child has to study a second language selected from the group of languages, namely, Kannada, Tamil, Telugu, Malayalam, Marathi, Hindi, Urdu, English, Persian, Sanskrit, or Arabic, which will be other than the First language, subject to the condition that the child who has not taken Kannada as the First language will have to take Kannada as the Second language.

3. From 5th standard, provision will be made for the study of the third language which will be other than the languages studied by the student as First and Second language. This has to be chosen from the group of languages, namely, Kannada, Tamil, Telugu, Malayalam, Marathi, Hindi, Urdu, English, Sanskrit, Arabic, or Persian.

4. Attendance in the third language class will be compulsory, writing of the examination in the third language will also be compulsory, but from 5th to 7th standards it will not be obligatory

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

to pass the third language examination. No extra credit will be given in rank, division, class, etc., on account of the marks obtained in the third language examination from 5th to 7th standard.

5. At the secondary stage, from 8th to 10th standards, three languages will be compulsory. First language carrying - 125 marks, Second language - 100 marks and the Third language carrying - 100 marks. It will be obligatory to pass the examinations conducted in all these three languages, and one of them shall be Kannada.

6. The standard expected in second and third languages at the end of 10th standard will be what would have been achieved at the end of 6 years of study, if the language subject had been chosen as First language.

7. As contemplated in Government Order No. ED 113 SOH 79, July 20, 1982, Kannada-speaking students will not be given any grace marks in Kannada. Non-Kannada speaking students will be awarded up to a maximum of 15 grace marks to enable the students to pass the Kannada language examination.

8. Exemption from studying Kannada as a compulsory language can be given to the students whose parents have come to the state on temporary transfer.

Meanwhile, the government, in order to implement the Education Policy 1986, issued curriculum guidelines (April 24, 1992) to be adopted from 1992-93. According to this order, the students could opt for mother tongue Kannada, English, Telugu, Tamil, Hindi, Marathi or Urdu in the 5th, 6th and 7th standards. The second language will be English for Kannada mother tongue students and Kannada for all others. The third language can be one of the following: Hindi, Sanskrit, Persian, Arabic or English. Here each language carries 100 marks. Learning Kannada is made compulsory. The students opting for Sanskrit should answer in Sanskrit only.

In the secondary school, the first language consists of Kannada, Sanskrit, Telugu, Tamil, Urdu, Marathi, English or Hindi. The second language list has Hindi, English or Kannada. The third language list has Hindi, English, Sanskrit, Persian, Kannada, or Arabic. One of the three languages should be Kannada. Here the first language is for 125 marks, and other two 100 marks each.

9.2 Growth of English Medium Schools

The anti-Hindi stand of earlier decades, instead of supporting the regional language, gave rise to fast growth of education in English medium. This gave an added advantage to the linguistic minorities who could opt for English due to their perceived threat from the regional language. Thus, the microscopic minority of English mother tongue succeeded in providing an universal umbrella for all the elites in all categories, the minorities as well as the majority, by creating a common avenue for education through English medium.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

So, the primary and secondary education in English medium, like engineering and medical education, has become donation/capitation-oriented, and ultimately a tradable commodity. The legal provisions that were framed to protect minority rights became an effective means for every section of Karnataka society to make capital out of the very same legal provisions. There were institutions of the linguistic minorities imparting higher education and primary education in English medium but not through their mother tongue. The government took a policy decision not to sanction English medium schools, except in rare cases, where a considerable number of non-Kannadiga residents and minority institutions were involved. This led to litigation by those who failed to get permission or recognition for their English medium schools.

This policy was challenged by the Sahyadri Education Trust in 1987 on the ground that the medium of instruction is one aspect of freedom of speech and expression. The student cannot be compelled to express in one particular regional language and not in English. The parents have every right to give education to their children in English and if there is a language policy it should be applicable to all the primary schools uniformly and according permission to some and not doing the same for others is a clear case of discrimination. The High Court saw a valid argument only on the ground 'that many other institutions have been given permission to impart primary education in English medium but the petitioners have been singled out by denying them the right to impart education in English medium.' It directed the government to accord 'permission to the petitioners to start English medium primary schools'. However this Judgment was viewed by many as support to the cause of English medium schools.

The validity of the judgment was questioned in the Supreme Court [on the ground that the linguistic minorities are discriminated and they cannot be forced to study Kannada (violation of Article 14); linguistic minorities cannot be prevented from an opportunity to choose languages (violation of Article 350-A). Finally the Supreme Court did uphold the High Court judgment and ruled that (a) there is no element of compulsion because mother tongue of the child is medium of instruction (b) only one of the languages is a compulsory subject of study, (c) Kannada is optional from 3rd standard for non-Kannada mother tongue speakers and it is taught on voluntary basis and there is no examination. Study of Kannada does not throw any burden on children. There is no violation of Article 350 -A. [English Medium Students Parents Association vs State of Karnataka and others, Dec 8, 1993, (1994) 1 SCC 550]. In pursuance of this judgment the Government issued the order of April 29, 1994 wherein it made a comprehensive policy relating to language choice for education and medium of instruction in Karnataka.

Accordingly, from 1st to 4th standards, the child's mother tongue will be the medium of instruction. It will be Kannada, Tamil, Telugu, Malayalam, Marathi, Hindi, Urdu, or English. From 3rd standard Kannada will be an optional subject. There is no examination in it at the end of 3rd or 4th standard. From the 5th standard, the student has to choose second and third languages. They can be one of the following: Kannada, Tamil, Telugu, Malayalam, Marathi,

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Hindi, Urdu, English, Sanskrit, Arabic, or Persian. The student who is not studying Kannada as first language has to study it as second language. Attendance for classes and appearing for examination for third language is compulsory and it is not an examination subject.

In the secondary schools three languages have to be studied compulsorily. The first language for 125 marks will be any one of the following: Kannada, Tamil, Telugu, Malayalam, Marathi, Hindi, Urdu, or English. The second and third languages for 100 marks each can be any two of the following: Kannada, Tamil, Telugu, Malayalam, Marathi, Hindi, Urdu, English, Sanskrit, Arabic, or Persian. One of these should be Kannada. The students whose mother tongue is not Kannada and the students whose mother tongue is not Hindi will get grace marks up to 15. This will be in vogue for 10 years.

This was challenged by the linguistic/religious minorities, parents associations, children/parents through their educational institutions run by majority etc., vide *Associated Managements of Primary and Secondary Schools in Karnataka vs State of Karnataka and others* [ILR 2008KAR 2895]. This was referred to and adjudicated by the Full bench of the High Court. The questions that the bench answered after examination are:

- a. Is the right to choose the medium of instruction at the primary level, either to study or impart education a fundamental right guaranteed under any of the Articles 19(1)(a)(g), 26, 29 and 30(1) of the Constitution of India?
- b. Whether parents and children have the right to choose the medium of instruction?
- c. Can the State by way of regulation restrict the said right of choice to mother tongue or regional language only?

The full bench ruled that:

- a. Right to education is a fundamental right. It flows from Article 21, right to life. Free and compulsory primary education is guaranteed to all the children in the age group of 6 to 14 years under Article 21 A as a fundamental right.
- b. Right to education includes right to choose a medium of instruction. This is the fundamental right of the parent and the child.
- c. Right to freedom of speech and expression includes the right to choose a medium of instruction. Right under Article 19(1)(g) to establish and administer an educational institution of one's choice, one's choice includes choice of medium of instruction.
- d. Also under the Articles every citizen, every linguistic and religious minority have right to establish and administer educational institution under 19(1)(a)(g), 21, 26, 29(1) and 30(1) and it

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

also includes right to choose the medium of instruction which is the fundamental right of the management concerned.

e. The policy that mother tongue or regional language shall be the medium of instruction in primary schools is valid and legal for the schools run or aided by the State.

f. This policy is not valid in case of other recognized primary schools since it will be violative of Articles 19(1)(g), 26 and 30(1).

Here it was recollected that the International Covenant on Civil and Political Rights under the convention of the rights of the child states that “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art, or through any other media of the child’s choice. As per the meaning given by the Supreme Court the freedom of speech and expression is “...freedom of press, propagation of ideas, freedom of circulation, right to publish and circulate one’s ideas, opinions and views, right to speak, publish and express their views as well as right of people to read, right of citizens to exhibit film on Doordarshan, right to express one’s opinion by words of mouth, writing, printing picture or any other manner, right to propagate or publish public opinion, right to air his or her views through the printing and /or electronic media or through any communication method.”

The clauses of the government order that (2) The medium of instruction should be mother tongue or Kannada with effect from the academic year 1994-95 in all Government recognized schools in classes 1 to 4. (3). The students admitted to 1st standard with effect from the academic year 94-95, should be taught in mother tongue or Kannada medium. (6). Permission can be granted to only students whose mother tongue is English, to study in English medium in classes 1 to 4 in existing recognized English schools. (8). It is directed that all unrecognized schools which do not comply with the above conditions will be closed down, was sent to the single Bench for decision in the context of the judgment of the Full Bench. The single Bench after hearing all the parties in the context of the constitutional provisions, quashed these clauses [Daffodils English School vs State of Karnataka and others. ILR 2009 KAR 104. Oct 3, 2008]

The Government of Karnataka did not accept the judgment and file a special leave petition in the Supreme Court requesting for stay of the High Court order. The Council appearing for the state argued that “...the children will imbibe better if the medium of instruction was in their mother tongue. We have to take care of the interest of the children. Learning through mother tongue is the universal law for all.” The Chief Justice Balakrishnan who was hearing in the three judge bench remarked that “It is easy to say things. They are unable to get even a clerical post. How do we survive in this world? Parents are ready to pay Rs.20,000 to 50,000 for admission in English medium schools. This is the real state of affairs. They donot want to send their children

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

to mother tongue medium schools. The choice should be left to the parents.” The Supreme Court refused to grant the stay. [The Hindu, July 5, 2009]

Implications: The judgments of the High Court and the Supreme Court on the choice of languages in education and medium of instruction have many implications for language education in multilingual India. They are,

1. The three-language formula, which was so far designated as a strategy, and which had no direct Constitutional status and was totally dependent on the governmental and institutional support, has now been given a legal sanction and status from the Apex court of the country for its implementation.
2. Teaching a regional language, the Official Language of the concerned state as a compulsory language in the schools, more specifically at the secondary stage, is recognized as legally acceptable. It may even be considered as a must.
3. Earlier research had claimed that learning more languages is not a load. The same is reinforced by the judgment that teaching more languages as subjects from primary schools is not a burden imposed on the students.
4. A government need not wait up to Vth standard to introduce a second language. It can be introduced from the IIIrd standard itself.
5. The Constitutional safeguard for the linguistic minorities to have education through their mother tongues in the primary schools is made obligatory for all the mother tongue groups, irrespective of their majority or minority status.
6. Kannada is now recognized by the court as the 'second mother tongue' of the indigenous speakers of the minority languages in Karnataka.
7. English can be taught as a subject from the primary school itself.

Medium versus Language as a Subject: The question of language through which education has to be imparted always gets entangled with the issue of language(s) to be taught in the schools. The same thing happened in case of Karnataka too. So, we saw in the case of Karnataka the way the issue started with 'which language to be taught and when' but ended up in getting a judgment about teaching through a language too from the courts of law. The anti-Hindi stand of earlier decades, instead of supporting the regional languages, gave rise to the fast growth of education in the English medium. This gave an added advantage to the linguistic minorities who could opt for English due to their perceived threat from the regional language. Thus, the microscopic minority of English mother tongue succeeded in providing a universal umbrella for all the elites in all categories, the minorities as well as the majority, by creating a common avenue for education through the English medium.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

9.3 Language Education in Tamil Nadu

The Government of Tamil Nadu issued an order on Jan 13, 1999 which directed that "...at least two out of three subjects, that is, Social Studies (History and Geography), Math, and Science shall be taught through the medium of Tamil, apart from teaching Tamil as a subject in Nursery and Elementary Schools... From the ensuing Academic year, Recognition for the Nursery and Elementary Schools which are already approved by this Government will be renewed only to those Schools which teach two out of three subjects mentioned above through the medium of Tamil etc.," On June 7, 1999 the single judge of the Madras High Court dismissed the same and said that order "...is valid only for those students, whose mother tongue is Tamil" The government order was not applicable to the students whose mother tongue is not Tamil.

Justice Mohan Committee: May 3, 1999 constituting a high level Committee headed by Mr. Justice Mohan, a former Supreme Court Judge with four other members, was set up to "...frame guidelines for introducing Tamil as medium of instruction at all levels in the Educational sphere from Nursery to Higher education." On the recommendations of the committee, the Government issued an order on November 19, 1999, summary of the order is that – The First language in all Government aided, unaided, approved and Matriculation Schools shall be specified as Tamil or Mother tongue, in all schools from class 1 to 5 (Matriculation and Schools with the State Board Syllabus), Tamil or mother-tongue shall be the medium of instruction etc.

Contention about What Constitutes a Mother Tongue: Here, what constitutes a mother tongue became an important item for adjudication. On behalf of the government it was argued that "...mother-tongue of a child should only be understood for the purpose of these cases as the language which the child is most familiar with ... mother-tongue need not be the mother's tongue or father's tongue. Generally, the parents are the proper persons who can assess and say as to which is the language, that child is most familiar with." In 1949, the Provincial Education Ministers had resolved and the Central Advisory Board of Education had approved that "the mother-tongue will be the language declared by the parent or guardian to be the mother-tongue."

The Court Order: The court ruled that the order issued by the government was illegal on many grounds like the following:

The constitution of the Justice Mohan Committee was not proper. And it took into account irrelevant matters and did not take into account relevant matters. Also it has acted in haste. Since the matriculation schools had English medium for the past 50 years, now they cannot be forced to change over to Tamil or mother tongue medium. This is arbitrary and violative of the Article 14.

Proper application of mind is not there formulating the order as far as its implications are concerned.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

1. Notion of mother tongue is not properly understood while making the order.
2. Principle of natural justice is not followed.
3. The rule is not uniformly applicable.
4. The rule does not take mobility of parents of the students into account.
5. One will not lose his culture by studying in English medium, etc.

Important Issues Relating to Language Rights as Exemplified in the Court Order: Issues discussed in the judgment from the point of view of language rights are important to us. They are:

1. The mother-tongue will be the language declared by the parent or guardian to be the mother-tongue.
2. The parents have the right to choose the kind of education that will be given to their children.
3. Right to education is a fundamental right, which also includes the right to choose the medium of instruction, and it can be exercised by the parents on behalf of their children, and they have absolute and exclusive right in this regard.
4. Citizens shall have the freedom of speech and expression, which would include the right to educate and to be educated.
5. The fundamental right guaranteed to the minority institutions under Article 30(1) of the Constitution of India includes "... right to teach the subjects in the medium of their own choice." The conditions in the Government Order amount to restrictions of their choice of selecting the medium of instruction.
6. Career opportunities will be more advantageous to those who have studied in the English medium than using the Tamil medium. Compelling the students to study in Tamil will affect their career, and doom their future prospects.
7. The Universal Declaration of Human Rights - is also applicable in the Indian context since India. India is a signatory to the document.

9.4 Pedagogical Implications Ignored

As we saw in both the cases, the pedagogical aspects of language education have taken a back seat and the issues are fought mainly from the legal angle. The issues became very handy for the political parties in some sense. Political interests have counted more than anything else in

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

the decision making about language use in education. Practicality of existence of a right and practical utility of such a right under specific socio-economic conditions still remains to be examined. The economic issues are driving the parents and students towards one or the other language normally other than their own mother tongue. Though it looks as if the parents have the right to choose the kind of education they need for their children, the government has the power to decide on the options to be provided about language choice for the parents and children. The parents have to exercise their choice within the broad framework made available to them.

9.5 Languages of Integration

Regional languages as languages of integration: In the course of 50 years or so, Hindi, English at one level and at another level the regional languages have grown as lingua franca of the concerned state and become languages of wider communication. The Government of Maharashtra had made study of Marathi language compulsory in the schools of the State. This resulted in the English medium schools run by linguistic minority schools teaching Hindi, English, Marathi and the mother tongue which is construed to be against the basic assumption of the three language formula. This was challenged by Usha Mehta in the Supreme Court. She had said that the imposition of Marathi language as compulsory subject in the minority schools violates Articles 29(1) and 30(1). The Supreme Court Bench ruled that the policy decision of a state that all schools must compulsorily teach the regional language of the State is not violative of the minority rights. It was stated that “It is not possible to accept the proposition that the people living in a particular State cannot be asked to study the regional language...while living in a different State, it is only appropriate for the linguistic minority to learn the regional language. The resistance to learn the regional language will lead to alienation from the mainstream of life resulting in linguistic fragmentation within the State, which is an anathema to national integration...” About Article 30 the judgment said that the state could impose reasonable regulations on the institutions for protecting the interest of the State and the nation and “The ‘choice’ that could be exercised by the minority community or group is subject to such reasonable regulations imposed by the state. While imposing the regulations, the State shall be cautious not to destroy the minority character of institutions.” [The Hindu. June 6, 2004]. Similar stand is reiterated in case of Karnataka also - it is valid for the government to introduce Kannada as first language to the children with Kannada as mother tongue. And also the students who do not have Kannada as mother tongue shall study Kannada as a subject. *Associated Management of Primary and Secondary Schools in Karnataka vs The State of Karnataka and others* [2008]

Here is an interesting case where in issue of medium of instruction and choice of medium of instruction were dealt both by the High court and the supreme court .The Government of Bombay and directed on Jan 6, 1954 that “...no primary or secondary school shall from the date of these orders admit to a class where English is used as a medium of instruction any pupil other

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

than pupil belonging to a section of citizens the language of which is English namely, Anglo-Indians and citizens of non-Asiatic descent”. At the same time all schools using English as a medium of instruction were advised to open progressively sections with Hindi or other Indian language as medium of instruction from first standard in 1954. As a result of this, children whose mother tongue is not English were not entitled for admission to the English medium class in any school. Under these circumstances Bombay Education Society wanted to “...admit to any standard in the said school any children of non-Anglo- Indian citizens or citizens of Asiatic descent and to educate them through the medium of English language”. Similarly, a Gujarati mother tongue student wanted to join the school and study in the medium of English and pursue his further education in medicine: another student belonging to Indian Christian community claimed to have English mother tongue but due to the said rule unable to get admission in the school made a common cause before the High Court and won the case. The Supreme Court too upheld the decision of the High Court. This is against the fundamental right guaranteed under Article 29(2) and this article is wide and covers all citizens whether they are majority or minority. This “...confers a special right on citizens for admission in to educational institutions maintained or aided by the state”. [State of Bombay vs Bombay Education Society. SC. AIR 1954]

9.6 Higher Education and Medium of Instruction

The question of medium of instruction in the higher education also was debated in the judiciary in several cases. In one of the landmark judgment the full bench of the Gujarat High court has said that “...power at best is only to lay down Gujarati or Hindi as one of the media of instruction and examination and not as the only medium of instruction and examination to the exclusion of other languages and does not extend to forbid the use of English or any other language as a medium of instruction and examination...”. When this decision was challenged in the Supreme Court, the court upheld the decision of the High Court. ”. [State of Bombay vs Bombay Education Society. SC. AIR 1954]

Chapter 10 MINORITIES AND LANGUAGE CHOICE

10.1 Minorities’ Rights and Languages

As already said the Constitution of India recognizes two kinds of minorities-linguistic and religious and provides certain specific safeguards. The religious minorities are products of more than 2000 years of history, culture and society. In the post-independence India, in the historical process of national development, the regional languages formed basis for the

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

reorganization of the geographic boundaries of administrative territories. Linguistic minorities are mainly products of this reorganization.

10.2 Epicenter of Language Rights

The epicenter around which the discussion of language rights mainly revolves is mainly the rights of the linguistic minorities. The sources of these rights in general are: the international declarations, constitutions of the countries, legislation, policy statements, and official communiqués issued by the countries for the promulgation and implementation of language-related orders and declarations, reports of the committees or commissions, and the judgments of the courts relating to language use in different domains. Formulation of language policy in this manner, and any modification(s) of the existing policy affect the character of 'language rights of the people'. Language rights have to be discussed in the social, economic and pedagogical contexts and not in isolation.

10.3 Globalization and Language Rights

The wind of globalization blowing across the world is bringing changes in every sphere of life in many countries. The acceptance of globalization as a dominant economic model has introduced certain urgency to modify even language loyalty and identity questions in the minds of the citizens of various countries, because, in these nations, English is fast replacing other languages as the lingua franca. Paulston (1997) writes that- Language rights is an important new topic for us, because their existence usually reveals past and present injustice or exploitation against the weak in the world. Our responsibility as academics is the careful exploration of the nature of language rights and their consequences. Accepting this statement as a general premise, I intend to document, analyze, and interpret the status of language rights in general (inclusive of both the majority and minority populations) as they exist in the statute books and their practice in reality in India. As language rights relate to the status and use of languages, we discuss, from a linguistic point of view, the Rights relating to language education at all levels of education as enshrined in the Constitution of India; Rights bestowed through official orders in continuation of the provisions in the Constitution; the interpretation of the Rights relating to language by the courts of law, and the Rights applicable as part of the declaration of the human rights. These include primarily, the right to learn a language, the right to learn through a language of choice, and secondarily, the rights of users of various languages, the rights of languages themselves to exist and develop in some sense, and the actual language education scenario in India in the context of all these language education rights.

10.4 Majority-Minority Relation

The Majority-Minority relation between populations is an interesting and important factor in the development and nation-building discourse. It assumes different contours at different times

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

in any country. At present, India is witnessing a transition. The Indian political plane is so volatile that it may overcrowd, eliminate, submerge, or transform the kind of identity assertions that we have been witnessing for the past half a century or so. It is necessary to capture this transitional process through exploring the linguistic majority-minority relations using statistical, economic, social, political, constitutional, legal, geographical (nation : region), social / religious, ethnic(tribal : non-tribal) and other dimensions. Interdependency of these factors is highlighted. We have to unravel the intention of the nation-builders, and the kinds of safeguards provided to the minorities, even as I identify the use or misuse of such provisions by the 'minorities', and ultimately to assess whether this classification or categorization is healthy, and whether this classification has helped the languages and people groups in any significant way.

While analyzing and describing the relation between the linguistic majority-minority populations, and demonstrating among other things, that the linguistic relation continually evolves and, in reality, is relative to the socio-political and economic conditions. In addition, the recent processes of globalization, more clearly exemplified in the rise of gigantic multi-national Indian corporations, urbanization, focus on English education, zest for jobs abroad, and the growth of a vast middle class spanning across ethnic and linguistic boundaries are also to be seen. These additional processes blunt the focus on the majority-minority relations.

In recent past, the majority-minority language relations have depended upon various factors and diverse issues like the constitutional provisions, population, language use statistics, legal interpretations, and, above all, political compulsions and interpretations. The majority-minority relations are influenced also by factors such as whether the speakers of a language or a group of languages or dialects have a religious or tribal back up support, and whether the context of such identities jibe well with the historical context in which the issue is raised and discussed. An Indian language having a state, i.e., a defined geographic territory for its spread in terms of bilingualism, tri-lingualism and opportunities for its use in more and more functional domains, contributes for development and change of majority and minority relation. We may recall here that Sindhi and Urdu were accorded the status of a Scheduled language in the Constitution of India even when they did not or do not have a defined territory.

The quality and importance of the majority-minority relation at the time of partition of India and in the years after independence of the nation do not exist now; nor is the context during the 1960s and 1970s going to be repeated now. At the same time, the present lack of focus or urgency on maintaining a proper majority-minority linguistic relation may not continue forever.

10.5 Notion of Minority

The notion of majority does not need any introduction or explanation, since it is more or less a self-evident fact, whatever be the measures we adopt in defining it. On the other hand, the notion of minority needs to be defined in every new context due to its multidimensionality. The

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

word 'minority' is derived from the Latin word 'minor', '-ity' small in number. The Oxford Dictionary defines minority as "the condition or fact of being smaller, inferior, or subordinate; smaller number or part; a number which is less than half the whole number. Similarly, relation is "an existing connection..., a significant association between or among things." Laponee J.A identifies minority as "...a group of persons having different race, language or religion from that of majority of inhabitants." The Year book on Human Rights (1950) describes minority as "...non-dominant groups having different religion or linguistic traditions than the majority population."

First of all, it is the number count, or the statistical divide between two or more entities under consideration, resulting in majority/minority division. The minor, since it is numerically less, is perceived to be weak and has to be empowered separately through special measures to make it equal to the majority. In this power relation, the minor is supposed to be subordinate to the major.

10.6 Linguistic Minorities in India

The concept of linguistic minority in India is a relational one, and no one definition captures the essence of all kinds of linguistic minorities that the national planning and language planning has thrown up in the country. In the British India, India was perceived to have 'English' 'the Indian vernaculars', 'provincial languages', and other 'dialects'. Then, the word 'minorities' meant mainly the religious minorities. This was inevitable because, for the British, the major power to contend with in the acquisition of Indian territories was the Mughal Empire, which happened to be a Muslim rule over the majority Hindu. Their world view was thus shaped by this dichotomy. The progress of the struggle for the independence of India since the partition of Bengal and even before this point in modern history, revolved around the world view that the India consisted of Hindu-Muslim societies. The Notion of linguistic minorities is largely the contribution of independent India. The British went after their administrative convenience. Moreover, several of the Indian territories they acquired and integrated were already multilingual under some princely rule or the other. They have established themselves in their chosen settlements long before their incessant acquisition of territories began. Their central trading posts had become multilingual, and the empire began spreading out from these factory towns. The English became the language of government; there was no compulsion on them to divide the territories on the basis of the dominant Indian languages used in each of these territories. Growing linguistic identity consciousness among the people of various presidencies and provinces became a focal point for the Indian National Congress in their attempt to mobilize popular support for the struggle for independence. The Congress in many of its resolutions recognized the popular aspirations and thus they could not avoid creating linguistically organized states. Thus, focused linguistic majority-minority concept is mainly the result of the creation of

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

linguistic states and choice/categorization of language(s) by the language policy of the Union and the governments of States and Union Territories.

State Reorganization Commission (1955: 260) recommended that Constitutional recognition should be given to the right of linguistic minorities to have instruction in their mother-tongues at the primary school stage subject to a sufficient number of students being available." Hence, after the reorganization of the states in 1956, Articles 350 A and 350 B were included into the Constitution

Article 350 A. Facilities for instruction in mother-tongue at primary stage: It shall be the endeavor of every State and 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.

Article 350 B. Special Officer for linguistic minorities :(1) There shall be a Special Officer for linguistic minorities to be appointed by the President. (2)It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

In order to protect their cultural and educational interests in the form of rights, the following are part of the Constitution.

10.7 Cultural and Educational Rights

Article 29. Protection of interests of minorities: (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30. Right of minorities to establish and administer educational institutions : (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1 A) In making any law providing for the compulsory acquisition of any property or an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

The reorganization of the nation on linguistic lines provided linguistic, geographic and intellectual space for the growth of many regional languages. Now, the states are further reorganized on the lines of issues, like underdevelopment and development of the regions within a state. The demands are on for their further division of linguistic states for social, economic and sometimes for political reasons. These divisions are on the lines of some of the divisions that existed in pre-independence India, such as provinces. These further divisions may not create some more linguistic minorities.

Another important feature in India's linguistic scenario is of layering of linguistic minorities unlike in most of the other countries, and also existence of different kinds of linguistic minorities. Many times, the identification of these kinds is domain-specific, or geography-specific. Speakers of one language are minority at one level, and they are majority at another level. Speakers of some of the languages remain minority at all the levels. Some of them tend to have a religious or tribal affiliation added to their feature as linguistic minority. And hence, the constitution of India does not define as to who the linguistic minorities are and what should be the limitation criteria to be used to identify them. However, as we saw above, the Constitution has provided safeguards for them. Hence, the definition of linguistic minorities is generally taken for granted as a known commonsense fact than a concept to be defined or identified. The definition used to identify them is largely context-bound as we see in the following paragraphs.

State as a Unit

The Supreme Court of India in the matter of TMA Pai Foundation and others vs State of Karnataka [Writ petition (Civil) No.317 of 1995 on October 31, 2002 decided that 'minority' within the meaning of Article 30 which provides right to the minorities to establish and administer educational institutions "...for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par in Article 30, have to be considered State-wise". And at the same time, it said that "Article 30 is a special right conferred on the religious and linguistic minorities because of their numerical handicap and to instill in them a sense of security and confidence, even though the minorities cannot be per se regarded as weaker sections of underprivileged segments of the society." This is not the end of the criteria to identify the linguistic minorities. There are other criteria too.

Taluk as a Unit: For the purpose of the implementation of Official Language(s) Act(s) of different states, the taluk is taken as a geographic territory to decide about whether a language is a minority language or not. If within a taluk a language spoken by more than 15% of the total population of the said taluk, that language is considered as a minority language in that context. The official documents, announcements of the government in the official language of the state have to be translated into those languages too, for use by the speakers of that language.

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

School as a Unit: As agreed to in the Chief Ministers Conference in 1961, whenever there are 40 students in a school, or 10 in a class-room, desiring to learn in their mother tongue at the primary level, teaching will have to be done by appointing one teacher. Here normally the mother tongue of the child is different from the regional language and generally a minority language in the numerical sense.

Kinds of Linguistic Minorities: Also, the tag of 'linguistic minority' is not applied normally, mechanically, or automatically. A language needs to be officially recognized or declared as a minority language by the competent authority. As we already saw, that the Official Language Acts of the States recognize a language as the Official Language and identify other minority languages which are permitted for use in the administration in a specific region or regions of a state. Under these circumstances, three different kinds of linguistic minorities could be identified in India and they are:

1. Linguistic minorities
2. Linguistic minorities with tribal affiliation
3. Linguistic minorities with religious affiliation

10.8 A Mosaic of Linguistic Minorities

Indian multilingualism has thrown up a mosaic of linguistic minorities. Apart from this, as we already saw, practically the existence of linguistic minorities officially stretches across different levels. Levels and different kinds of linguistic majorities-minorities in India are:

1. Hindi (including all mother tongues cobbled up within it for creating a statistical majority) vs all other Indian languages [1 vs 121]

If we see the way the statistical majority of Hindi is growing, it is amazing. Different mother tongues are combined to make a linguistic majority. Processes of Census relating to language classification in the last 100 years or more reveals that this cobbling up is not an accident and that this process is applied to other major non-Hindi mother tongues as well.

If this kind of clustering is not done, the linguistic demography of Hindi will be different. It is mother tongue of 22% of population; it has 20.22% of mother tongues clustered under it as a language; it is used as second language by 6.16%; and as third language by 2.60% - totaling to 50.98%. Hindi crosses the magic figure of definition of majority by being above 50% in 1991 Census.

2. Scheduled Languages (all these being considered major languages) vs Non-Scheduled Languages (all these being considered minor languages). [22 vs 100]

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

The Scheduled languages constitute 96.56% of the population of India. The rest 3.44% of the people speak non-scheduled languages.

3. Regional languages (recognized as official languages of the concerned states) vs all other languages used in that state including Indigenous languages and other languages (of past or present migrants from other places). The declared 16 official languages in the country are: Assamese, Bengali, English, Gujarati, Hindi, Kannada, Konkani, Malayalam, Nepali, Manipuri, Marathi, Oriya, Punjabi, Tamil, Telugu and Urdu. [16 vs 97]

4. Notified tribal languages vs non-notified tribal languages:

The following have been scheduled as tribal languages by a Presidential Order published in the Gazette of India, Part II, Section 1, on August 13, 1960: Abor / Adi, Anal, Angami, Ao, Assuri, Agarva, Bhili, Bhumij, Birhor, Binija/ Birijia, Bodo including Kachari, Mech, Chang-Naga, Chiri, Dafla, Dimasa, Gadaba, Garo, Gondi, Ho, Halam, Juang, Kabui, Kanawari, Kharia, Khasi, Khiemnungam, Khond/Kandh, Koch, Koda/Kora, Kolami, Konda, Konyak, Korku, Kota, Korwa, Koya, Kurukh/Oraon, Lushai/Mizo, Mikir, Miri, Mishmi, Mru, Mundari, Nicobarese, Paite, Parji, Rabha, Rangkhul, Rengma, Santali, Savara, Sema, Tangkhul, Thado, Toda, Tripuri [The list given here is not complete). [60 vs all other tribal languages]

1. Languages declared as minority languages for specific purposes vs other non-declared languages. In Karnataka Malayalam, Marathi, Tamil, Telugu, Urdu, Kodagu, Tulu, Konkani are declared as minority languages for administrative purposes in specific taluks in the year 2004 as per 1991 Census. But Banjari, Yerava, Soliga etc., are officially neither major languages nor minor languages. Same is the case with other states and the languages used there.

2. Regional languages having majority status in one or more states but having minority status in another state. All the Official languages of the States are major languages in the respective states and minority languages in other states.

3. Languages with the literary tradition and the languages without such a tradition. The languages recognized by the Central Sahitya Akademi and the languages recognized by some of the states for literary purposes vs the languages who have literature but lack such recognition.

4. Recognized linguistic minority's vs unrecognized linguistic minorities. The languages of this later group do not find any place and get included under 'other languages/mother tongues'.

The issues relating to majority and minority situations are discussed by Schermerhorn (1970), Paulston (1978) and Singh (1987). It is demonstrated that a group tries to get a dominant position and push others to back stage; there will be integration, which will be proportionate to percentage of bilinguals, network of institutions, control of resources, character of subordinate group or groups - assimilationist, pluralist, secessionist, or militant; sunflower syndrome - all

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

looking towards the sun and for various reasons, none liking the other. However, the above 8 groups of majority minority language situations exhibit different kinds of majority/minority relationships and not uniform relationship which can be analyzed and interpreted along with looking into the extent the minority rights are used or misused.

10.9 Dynamic Elements

In the context of Indian multilingualism, the majority-minority status is not static and permanent, but it is dynamic and ever evolving. The position or status of many of the languages is changing. We have seen such movement of languages within the stock of Indian languages in the past 50 years. Recent movement of Maithili from the status of a mother tongue under the umbrella language Hindi to an independent status of a Scheduled language and movement of Boro, Dogri, and Santali from the status of Non-Scheduled languages to Scheduled languages are such examples. The change of position is always supposed to be towards growth and prosperity of languages and their speakers. To what extent such claims are really achieved is another matter that needs an intensive investigation from different angles. Normally no language has explicitly objected to such progressive movement of other languages, so long as their already designated space is not to be shared. A language having or acquiring majority status (and such type of movement) is the result of a combination of many linguistic and nonlinguistic factors. It affects the language that has moved and does not affect the position that it has left. For the same language, both acquiring the status of a Scheduled language in the country and demanding the status of a minority language in a state, are considered important by the linguistic agenda of speakers of different languages. That the Tulu speakers demand for the status of scheduled language and at the same time they seek the minority language status for themselves in Karnataka is one such example. Contradictions are truly galore in the linguistic scenario. One curious element in the recognition of Indian languages is observed. First, the speakers seek entry for their language into Schedule VIII; then, if the speakers of the language are in a geographically contiguous place, they seek a separate state; and then, seek the status of official language in the concerned state. The case of Konkani and Goa is an example for this phenomenon. On the same lines theoretically one can predict that if proper political leadership for the language emerges one day or the other, recognition of Maithili may lead to creation of the state of Mithila. Recognition of Bodo(Dec 2003) preceded the creation of Bodoland Autonomous Council (Feb 1993).The formation of different autonomous councils (Autonomous Councils for Mising, Rabha, Lalung etc.,) which have a language as a base too may follow the same pattern.

One of the important and well-argued phenomenon of super-ordinate and subordinate relations among the languages is the of spread of super-ordinate languages among the speakers of subordinate languages. Through this, major languages become languages of wider communication. This results, unfortunately, in the non-spread of minority languages among

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

majority languages. So, minor language speakers are necessarily more bilingual (38.14%) and trilingual (28%) than the majority language speakers-bilinguals (18.72%) or tri-lingual (7.22%).

10.10 Clubbing Minority and Religion into One Bunch - Consequences

The Constitution did not define the notion of ‘minority’ and it clubbed both ‘language’ and ‘religion’ in to one bunch with the word ‘or’ for giving certain rights to them as opposed to the ‘majority’. As we see them they form part of ‘cultural and educational rights’. The Articles cited above confer special rights to both the linguistic and religious minorities. The questions relating to these rights are debated and adjudicated in the High Courts and in the Supreme Court for more than 5 decades. Important judgments that are relevant from our purpose are discussed here.

Article 30 has been described by different terms like ‘sacred obligation’ [Kerala Education Bill 1957], ‘absolute right’ [Rev. Sidhajibhai Sabhai vs State of Bombay 1963], ‘a special right’ [Ahmadabad /st.Xaviers College Society vs State of Gujarat 1974], ‘an article of faith’ [Lily Kurian vs Sr.Lweina 1979]

Kerala state wanted that in order to claim the minority status the population should be numerical minority in the specific region where the educational institution is situated- locality or ward or town and it has to be taken as unit to treat a community as minority. But the Supreme Court said that since Kerala Education Bill “...extends to the whole of the state of Kerala and consequently the minority must be determined by reference to the entire population of that state”. Kerala Education Bill [1959]

It was argued that the Article 29(1) provides for conserving a distinct language, script or culture of its own and the St.Xaviers College since it is admitting students of other communities also cannot seek protection under Article 30(1) because it is not established to conserve them. This interpretation was not accepted by the Supreme Court and it was decided that “...the width of Article 30(1) cannot be cut down by introducing in it considerations on which Article 29(1) is based. The latter article is a general protection which is given to minorities to conserve their language, script or culture. The former is a special right to minorities to establish educational institutions of their choice. This choice is not limited to institution seeking to conserve language, script or culture and the choice is not taken away if the minority community having established an educational institution of its choice also admits members of other communities. That is a circumstance irrelevant for the application of Article 30(1) since no such limitation is expressed and none can be implied. The two articles create two separate rights, although it is possible that they may meet in a given case.” Rev. Father W. Proost and Others vs State of Bihar and Others [1969]

The Punjabi University had prescribed Punjabi in Gurumukhi script as sole and exclusive medium of instruction and examination for all colleges affiliated to the University. This was challenged by the DAV College Trust and Society which is an association of Araya Samajes since it is against their right to conserve their script and administer their institutions. When this was questioned the Supreme Court ruled that “While the University can prescribe Punjabi as ‘a’ medium of instruction it cannot prescribe it as the exclusive medium nor compel affiliated colleges established and administered by linguistic or religious minorities or by a section of the citizens who wish to conserve their language, script and culture, to teach in Punjabi or take examination in that language with Gurumukhi script” and this violated the right of the Arya Samajis to use their own script in the colleges run by them and affiliated to the university. It was intended that the religious or linguistic minority should be decided on the basis of their population in relation to the country as a whole. The Supreme Court ruled that minority status has to be decided on the basis of the law that is being framed. If it is state law, minorities have to be decided on the basis of their relative population in the state.....Also, “The right conferred on religious and linguistic minorities to administer educational institutions of their choice is not absolute right”. The State has powers to regulate the functioning of the Institutions without affecting the substance of the rights guaranteed in the Constitution. *Bhatinda vs State of Punjab* [1971]

The State of Punjab exercising its powers decided about the affiliation of colleges to the Gurunanak University. Dayanand Anglo-Vedic College Trust and Society challenged the same on several grounds. The Supreme Court in its judgment said that “It is not necessary that that language should also have a distinct script for those who speak it to be a linguistic minority. There are in this country some languages which have no script of their own, but nonetheless those sections of the people who speak that language will be a linguistic minority entitled to the protection of Article 30(1)” *DAV College, Jullundur vs State of Punjab.* [1971]

The Supreme Court said that “The whole object of conferring the right on the minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality”. *Ahmadabad St. Xavier’s College vs Government of Gujarat* [1974]

The two articles, Article 29 and 30 confer four kinds of rights according to the Supreme Court: (1) any section of the citizens to conserve its own language, script, or culture (2) religious and linguistic minorities to establish and administer educational institutions of their choice (3) an educational institution cannot be discriminated in the State aid since it is managed by a religious or linguistic minority, and (4) citizen cannot be denied admission into State maintained or State aided educational institution on the ground of religion, caste, race or language. *St. Stephen’s College vs State of Gujarat* [1974]

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

The Karnataka High Court has said that “The imposition of Kannada as the sole medium of instruction cannot be said to be in the interest of the general public and has no nexus to public interest...the policy decision of the State Government are violating of Article 19(1)(a) of the Constitution as the medium of instruction is one aspect of freedom of speech and expression and I do not know of any law which can say that a student should express himself in a particular regional language not in English if he has the inclination to study the curriculum in English in addition to English as the II language or the III language as the case may be.” [Sahyadri Education Trust vs State of Karnataka. ILR 38, 1988]

The Supreme Court has said that in the name of minority institution, commercialization of education or maladministration is not permitted it will be constitutionally valid if the government orders valid restrictions to ensure the same. The right of a minority community to establish and administer an educational institution comes with its right to impart instruction to its children in its own language. That it has right to choose its medium of instruction. St. Stephen’s College vs University of Delhi [1992]

Even a single individual can establish a minority institution. A minority institution need not teach only minority language, culture or religion. But if it is to be treated as a minority institution it should exhibit that it serves or promotes the interests of the community by promoting religion, culture, language or literature. TMA Pai Foundation vs State of Karnataka [1994]

The religious and linguistic minorities are put on par as far as Article 30(1) is concerned have to be considered State-wise. There is no relation/link between language and religion. The professional educational institutions are also covered under the Article 30. TMA Pai Foundation vs State of Karnataka [2003]

An expanded definition for the term minority is provided by the Supreme Court. According to this “Minority as understood from constitutional scheme signifies an identifiable group of people or community who were seen as deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happen to be in majority and likely to gain political power in democratic form of Government based on election”. Bal Patil and Anr vs Union of India [2005]

=====

Chapter 11 MASS MEDIA, LANGUAGE AND EMPLOYMENT

11.1 Employment and Language

The Karnataka Official Language Act 1963 recognizes Kannada as the Official Language of the State. At the same time it made provisions for continued use of English for Official purpose and for the transaction of business in the Legislature. As per the Notification No.GAD 55 Pol 71, June 26, 1972 “if the population of linguistic minority in any Taluk is not less than 15 per cent: (i) Petitions shall continue to be accepted in the minority language concerned and replies given in that language as far as possible; (ii) Hand-outs and publicity materials shall continue to be given in such a minority language; (iii) Government Notice shall continue to be published in such a minority language”.

This action of the Government of Karnataka in consonance of the provisions of the Article 345 of the Constitution of India gave a new impetus for the development of Kannada. This has far-reaching linguistic, educational, social, psychological, political, geographical, economic and cultural implications on the framework of the state and its Official Language, Kannada. For the sake of total implementation of the Act, automatically the policy implementation machinery took necessary steps mechanical, human resources development, material preparation and others. But though Karnataka is conceived in theory as a unilingual state it is multilingual in reality. Hence steps to protect people’s Rights enunciated in the Constitution towards Equality before law, Equality of opportunity in matters of public employment, Prohibition of discrimination on grounds of religion race, caste, sex or birth of places were also taken. As part of the creation of human resource, persons who were not having knowledge of Kannada prior to their appointment to Karnataka Government service were provided a period of two years to acquire necessary language competence. In due course Kannada came for wider use in taluk and district levels of administration and hence the Government took a policy decision on August 8, 1984 and notified that after August 1986 knowledge of Kannada will be a ‘pre condition’ for appointment for Group-C posts in Karnataka. So a person seeking selection to any Group-C post was required to pass the Kannada test to become eligible for appointment.

This Policy decision was challenged by the persons having Urdu and Marathi as mother tongues in the Karnataka Administrative Tribunal saying that the decision is discriminating and violate of Article 14 and 16 of the Constitution. And they prayed to declare the prescribing of Kannada language test as null and void and without any effect, etc.

The person with Marathi mother tongue argued that he had passed Secondary School in 1979 with Marathi, English and Hindi as languages of study and has passed some Kannada examination conducted by a private organization. So he made a claim about his adequate

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

knowledge of Kannada for his functioning as a government servant. Whereas, the Urdu mother tongue person put forth that she has passed the Secondary School in Urdu medium and Kannada as third language and possess working knowledge of Kannada. These persons challenge was that the rule is discriminatory, because under this only persons selected for Group-C posts have to have prior knowledge of Kannada whereas persons selected for A and B groups can obtain the knowledge of Kannada after a period of two years of joining to service.

However what is interesting is the Court's understanding of the nature of duties of various categories of employees like A, B, C, D and the language competence required by each of them to perform these duties. The Tribunal said that the "Group-D employees are required to perform routine manual work. The ministerial and clerical functions are mostly in the hands of Group-C employees such as clerks, Stenographers and the like. Group-C employees serve in most of the administrative units including the smaller ones. It is these persons who are at the grass-root level come in touch with the common person mostly in the rural areas". And the Tribunal ruled that 'it is not the love of the local language that has the rule' but it is 'the administrative need and requirement that taken into consideration in prescribing this additional qualification.' And concluded that Group-C employees are not discriminated as far as requirement of knowledge of Kannada is concerned.

In this case it is also interesting to note that though there was no question before the Tribunal regarding the Kannada competence of aspirants for group A and B posts since "...they have to function as heads of sections, administrative units, divisions etc., and the jobs though are decision making ones, depend upon materials processed and placed by Group-C employees ...". It categorically made an advice to the government that it can prescribe tests of any standard to these persons also as it done for Group-C posts. Another one important factor to be noted in this case is though the Government has prescribed minimum knowledge of Kannada required for an employee for appointment, the contention made by an appointing agency that a particular post for which a non-Kannadiga is selected needs more competence in Kannada than prescribed in the Rule is also accepted by the Court. That is, when a language related Rule is contested in a Court of law it is subjected to wider interpretation in the form of expansion of the rule application and enhancement of the language requirement.

On matters relating to language requirements and the Government jobs, there were cases questioning 'whether persons promoted to the higher posts despite their not passing Kannada language examination (as prescribed in the Karnataka Civil Service Rules 1974) could be reverted to their original posts?' In this case a Bench of the High Court ruled that persons who had been promoted are not liable to be reverted on the ground of their not passing the Kannada language examination.

So, in order to obtain promotion in the regular course of government service one has to pass the Kannada Language examination of the Karnataka Public Service Commission or Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

equivalent. Passing of the Kannada language examination is made a precondition to the promotion. The same was also challenged in the Court. The court has upheld the rule, and stated that the State is entitled to prescribe the eligibility requirement for conferment of status of higher office. The prescription of the eligibility rule did not result in arbitrary denial of promotion. On promotion the person will become a gazetted officer of the State and as a civil servant he may have to function not entirely confined to the one of his official life. In this way, without affecting the interests of the citizens and without diluting any provision of the Constitution and the Official Language Act, the Official Language Policy of the Government of Karnataka is directed to be implemented.

In a multilingual state/country, the interests of the declared linguistic minorities are protected as their right. But, at the same time the interests of the state are safeguarded in interpreting the language laws framed by the state. Also, knowledge of language is measured in terms of possession of the same through formal education and not by claim of having the knowledge of the language.

In the North East Circle, Shillong had advertised the post of Postal Assistant for the Nagaland and Manipur Divisions which is under the Control of the Chief Post-Master General. The Recruitment Rule for the position had a clause under the essential conditions that: Knowledge of local language of the state concerned. The candidate should have studied the local language as a subject at least up to Matriculation or equivalent level. Two of the applicants to the posts who were not shortlisted for the post on the ground that they do not fulfill this prescribed local language criteria challenged the decision in the Tribunal with the plea that it is violating the Article 14 and 16 of the Constitution of India. One of them was from Bihar. He had studied Hindi and English up to intermediate level in Bihar and then studied in Nagaland. Another person was from Manipur and capable of reading and writing Manipuri. This person had passed the equivalent examination to intermediate level where Hindi was the first language and English was the second language. Their contention was that though they have not studied the local languages they have the knowledge of the local language and English is the official language of Nagaland and they have studied it. Hindi is the official language under the Article 343 and all the departments have to accord equal status to it. The Superintendent of Post Office, Kohima stated that Ao, Lotha, Sema and Tenyidie as the local languages. The Tribunal ruled that that prescribing of local language knowledge as a condition of employment is not violating any provision of the Constitution since the officials have to deal with local customers and the authorities are at liberty to prescribe such qualifications and the knowledge of the local language has to be obtained through proper schooling and educational qualification. [O.A Nos. 111 of 2005 and 112 of 2005 reported in the Swamysnews, December, 2006]

In continuation of its Notification of 1972 regarding reservation of jobs for Marathi people in the industrial establishments at the lowest level 80%, supervisory level 50% the

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

government has set up committees to oversee whether this notification is followed or not at the district level through another Notification in Nov 2008. According to this any person who is living the state since 15 years could be considered as local person and he could be given job . [Prajavani Nov 19, 2008]

11.2 Mass Media and Language

The Karnataka Government amended the Karnataka Cinemas (Regulation) Rules 1971 to include a condition that ‘The license shall exhibit Kannada film for a period of not less than twelve weeks in a year’ This was challenged in the High Court on the ground that it is violative of Article 199(1)(a)(g) etc. The litigants averred that this condition may lead them to loss or total extinction of their business, the limit imposed should be reasonable and not arbitrary. Here, the contention of the Government was that the litigants with due license were exhibiting films that fetch maximum profit to them and were systematically omitting Kannada films though Kannada people want to see Kannada films depicting Kannada culture, literature and art. Kannada being spoken by a majority people of the state and it being official language has right for right place in the society. The exhibitions have put forth unreasonable conditions before the Kannada film producers and distributors to exhibit Kannada films. And hence the State has to come to rescue of Kannada people to give encouragement and scope to Kannada art, literature, film dramatics, fine arts etc. so that they will spread. The encouragement to exhibiting Kannada films was in the interest of the majority of people of the State. After hearing both the parties involved the Court advised that the population to which the specific theatre caters to is to be taken into account while asking it to exhibit cinema in a particular language for a specific period. And found no rational to fix 12 weeks period as standard for all the theaters to exhibit Kannada films. So, suggested that depending on the density of Kannada speaking population that licensing authority on rational grounds can fix reasonable period for exhibition of Kannada films as a condition in the license itself.

The Government of Karnataka collects entertainment tax from the cinema theaters for exhibiting cinemas. It was charging at different rates for cinemas of different languages. It was charging – for regional languages, if the cost of the ticket is less than Rs.5 the tax was fixed at Rs.13, if the cost of the ticket is Rs.8-15, the tax was 25, if the cost of the ticket was more than Rs.15 the tax was Rs.38. However, in case of other language films if the ticket cost was less than Rs.5 the tax was Rs.18, if the ticket cost is Rs.5 to 15, the tax was Rs.30 and if the ticket cost is Rs.15-20, the tax was Rs.38 and if the ticket cost is above Rs.20, the tax was Rs.48. This order was challenged by some of the exhibitors and the High court ruled that this kind of tax fixation on the basis of language as unconstitutional. [Prajavani, Sep 18, 2008]. Recently Lucknow Bench of the Allahabad High court received petition from Ashok Pandey, a local advocate that some of the films like Peepli Live, Gangajal, Omkara use abusive and unparliamentarily language which is violative of the Cinematography Act and hence notices are issued to the

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

producers and directors of the films as well as members of the Censor Board. The petition intends cancellation of censor certificates and removal of the members of the censor board. [Times of India. Oct 13, 2010]

References

- Annamalai, E. 1986. "A Typology of language movements and their relation to Language Planning", *Language Planning: Proceedings of an Institute*. ed. by E. Annamalai et al. Mysore : Central Institute of Indian Languages.
- Apte, Mahadev L. 1976. "Multilingualism in India and its Sociopolitical Implications: An Overview", *Language and Politics*, ed. by William M.O' Barr and Jean F. O'Barr. 141-164. The Hague: Mouton.
- Ashok Mitra. 1992. *Report of the Education Commission*, Government of West Bengal.
- Bajpe, S.N. 1993. "Staff Selection Commission: A Retrospective", *Employment News*, January 23, 1993.
- Campbell, William. 1839. *British India*. London: John Snow
- Census of India 2001. Language: India, States and Union Territories: Reports from 1881 till 2001. New Delhi: Office of the Registrar General, India
- Chaklader, Snehomoy. 1987. *Minority Rights: A Sociolinguistic Analysis of Group Conflicts in Eastern Region of India*. Calcutta: K.P. Bagchi.
- Craig, Colette. 1992. "A Constitutional Response to Language Endangerment: The Case of Nicaragua". *Language* 68:1. 17-24.
- Dalal, Suresh. 1987. *Report of the Review Committee on the Scheme of University Level Book Production, in Indian Languages*. New Delhi, Ministry of Human Resource Development.
- Das Gupta, Jyotindra. 1976. "Practice and Theory of Language Planning: The Indian Policy Process", *Language and Politics*, ed. by William M.O' Barr and Jean F.O' Barr. 195- 212. The Hague: Mouton.
- Emeneau, M.B 1956: "India as a Linguistic Area". *Language*, 32:1. 3-16
- India, Government of. 1949. *Constituent Assembly Debates of September 12 to 14, 1949*, Vol. IX, 1312-1488.
- India, Government of. 1955. Report of the State Reorganization Commission
- India, Government of. 1968. Official Language Resolution
Language in India www.languageinindia.com
12 : 9 September 2012
B. Mallikarjun Ph.D.
The Evolution of Language Laws in Post-Independence India – A Monograph

India, Government of. 1981. *The Constitution of India*. New Delhi: Government of India, Ministry of Law, Justice and Company Affairs

India, Government of. 1986. *National Policy on Education*

India, Government of. 1992. *Programme of Action: National policy on Education*, 1986.

India, Government of. 1971 onwards . *Reports of the Commissioner of Linguistic Minorities*.

Jain, M.P. 1987. *Indian Constitutional Law*, 4th Edition. Nagpur : Wadhwa and Company Law Publishers

Jeanne, Laverne Masayesva. 1992. "An Institutional Response to Language Endangerment: A Proposal for a Native American Language Centre, *Language* 68:1. 24-28.

Jennifer Lindsay & Tan Ying Ying (eds). 2003. *Babel or Behemoth : Language Trends in Asia*. Singapore: Asia Research Institute, National University of Singapore.

Kelkar, Ashok R.1984. "Language in Action in a Developing Country. *India International Centre Quarterly*, II. 145- 153.

Kumaramangalam,S.Mohan. 1965. *India's Language Crisis: An Introductory Study*. New Delhi: New Century Book House.

Mahapatra, B.P. 1992. Nehru's Approach of Linguistic Minorities. *South Asian Language Review*, 2:2.

Mallikarjun, B, 1986. *Language Use in Administration and National Integration*. Mysore: Central Institute of Indian Languages.

Mallikarjun, 1995. "The Eighth Schedule Languages - A Critical appraisal". Gupta, R.S. (ed), *Language and the State: Perspectives in the Eighth Schedule*. New Delhi: Creative Books: 61-83.

Mallikarjun, B. 2010. Patterns of Indian Multilingualism. *Language in India. E-Journal*, 10. July

Mallikarjun, B. 2002. Language Policy for Education in Indian States: Karnataka. *Language in India, E-Journal*, 2: 9 December.

Mallikarjun, B. 2003. Globalization and Indian Languages. Johann Vielberth and Guido Drexel (eds), *Linguistic Cultural Identity and International Communication*. Saarbrücken: AQ-Verlag. 23-46.

Mallikarjun, B. 2004. An Exploration into Linguistic Majority-Minority Relations in India. *Language in India. E-Journal*, 4. August.

Mallikarjun, B. 2011. Language Laws in India. *Interdisciplinary Journal of*

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

Linguistics.4.161-168.

Mazumdar, S.N. 1970. *Marxism and the Language Problem in India*. New Delhi: People's Publishing House.

Peter Auer & Li Wei. 2008. *Handbook of Multilingualism and Multilingual Communities*. Berlin: Mouton de Guitar

Prasad, N.K. 1979. *The Language Issue in India*. Delhi: Leeladevi Publications.

Ramamurti. 1991. *Report of the Committee for Review of National Policy of Education, 1986: Recommendations*. New Delhi: Government of India.

Saiyadain K G and others 1943. *The Educational System - Oxford Pamphlets on Indian Affairs No 15*. Oxford University Press.

Thirumalai, M.S. "Freedom Struggle and Language Policy" (Ms.).

Tollefson, James W. 1991. *Planning Language, Planning Inequality*. London: Longman.

Tyabji, Badrud-Din. 1977. *A Third Look at Our Language Problem*. Bombay: Hindustani Prachar Sabha.

Weinstein, Brain. 1983. *The Civic Tongue: Political Consequences of Language Choices*. New York: Longman.

Writ petitions and judgments referred

1. Public interest W.P.(CIVIL) No.401 of 2001. CSTT
2. R.R.Dalavai vs State of Tamil Nadu. AIR 1976 SC 1559
3. L.M.Wakhare vs The State. AIR 1959.MP.208
4. Murasolimaran vs Union of India.AIR 1967 SC 225
5. Katwe Jaggery Traders vs State of Karnataka (ILR 1990 KAR 1882).
6. Govindlal vs P.M. Committee (AIR. 1976.SC.263)
7. C.Seetharama Setty vs State of Karnataka and Superintendent of Prison, Bangalore WP No.68 of 1987 in HC, Karnataka.
8. Linguistic Minorities Protection Committee vs State of Karnataka and others [ILR 1989 KAR 457].
9. English Medium Students Parents Association vs State of Karnataka and others, Dec 8, 1993, (1994) 1 SCC 550

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph

10. Associated Managements of Primary and Secondary Schools in Karnataka vs State of Karnataka and others [ILR 2008KAR 2895].
11. Daffodils English School vs State of Karnataka and others.[ILR 2009 KAR 104. Oct 3, 2008]
12. Associated Management of Primary and Secondary Schools in Karnataka vs The State of Karnataka and others [2008]
13. State of Bombay vs Bombay Education Society. SC. AIR 1954
14. TMA Pai Foundation and others vs State of Karnataka [Writ petition (Civil) No.317 of 1995
15. TMA Pai Foundation vs State of Karnataka [1994]
16. TMA Pai Foundation vs State of Karnataka [2003]
17. Rev. Sidhajibhai Sabhai vs State of Bombay 1963,
18. Ahmadabad /St.Xaviers College Society vs State of Gujarat 1974,
19. Lily Kurian vs Sr. Lweina 1979
20. Rev. Father W. Proost and Others vs State of Bihar and Others [1969]
21. DAV College, Jullundur vs State of Punjab.. [1971]
22. Ahmadabad St. Xavier's College vs Government of Gujarat [1974]
23. St. Stephen's College vs State of Gujarat [1974]
24. Sahyadri Education Trust vs State of Karnataka. ILR 38, 1988
25. St. Stephen's College vs University of Delhi [1992]
26. Bal Patil and Anr vs Union of India [2005]
27. Unnikrishnan J P vs State of Andhra Pradesh AIR 1993 SC 2178
28. Ms Mohini Jain vs State of Karnataka AIR 1992 SC 1858
29. Tamil Nadu Tamil and English Schools Association vs State of Tamil Nadu 2002-2 LW 319

B. Mallikarjun, Ph.D.
Professor and Director
Centre for Classical Kannada
Central University of Karnataka
Gulbarga-585 106, Karnataka, INDIA, mallikarjun56@gmail.com

Language in India www.languageinindia.com

12 : 9 September 2012

B. Mallikarjun Ph.D.

The Evolution of Language Laws in Post-Independence India – A Monograph