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Language as an Interstate Migration Barrier – The Interesting Case of India

Abstract: This article focuses on the issue of language as an interstate migration barrier in India. Nowadays, in the era of progressive globalization, when the term “global village” is accurate as never before, more and more attention is paid to the problems regarding migrations. As the result of its internal diversity and multilingualism – Indian society struggles with interstate migration barrier that is nearly non-existent in other countries. Language barrier. There are more than twenty different regional languages being used across India as official languages of particular states, but none of them could be described as the “national” language. As a consequence of that, many Indians are heavily limited in choosing their place of living and managing their education and career. The article provides detailed analysis of the roots of the problem, both historical and legal ones, as well as the evaluation of legislative measures taken in order to resolve it. The paper refers to multiple reports, statistics, and laws regarding discussed matter. Furthermore, this work also highlights the role of both legislature and society in the ongoing process of linguistic transformation.

Keywords: India, Interstate Migration Barrier, Language Barrier, Medium of Instruction, Three-Language Policy, Language of Judiciary.

Introduction

According to the report created by T. Niranjana up to 40% of non-metropolitan Indian students fail to achieve their educational goals because of language barrier (Niranjana, 2013, p. 14).

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The Constitution of India (2020) declares English as the language of legislature, High Courts and central administration, which results in it being also the main medium of instruction at universities.² Surprisingly, even though English could be described as “central” language of India, in the latest national census only 10,6% of India’s inhabitants have declared themselves as English speakers.³ This means that roughly 9 out of 10 Indians are unable to communicate in their country’s central language, what makes them practically excluded from national higher education system.

Furthermore, what is worth pointing out, the Constitution recognises 22 regional languages (as scheduled languages),⁴ which could be adopted as specific state’s official languages, although they would partially co-exist with English, rather than replace it. Apart from them, there are 98 non-scheduled languages, spoken by at least 10.000 people each (as their mother tongue), which sums up to 121 different languages being commonly used among people of one nation (Office of the Registrar General & Census Commissioner, India, 2011b).⁵

The above is the main reason why India struggles with probably the most bizarre interstate migration barrier of current times. A barrier of not being able to communicate with institutions and other people of your very own country. The problem is affecting young people from rural areas at most, as they are unable to study at neither Indian nor foreign universities, and are “forced” to stay in their region, because the only language they are familiar with, is their regional one.

From European perspective, that is quite unbelievable or even unimaginable. The aim of this paper is to present the roots of the problem, and to evaluate legislative measures taken by subsequent central governments in order to resolve it.

1. Historical and constitutional background

Two years after the Parliament of the United Kingdom has passed the Indian Independence Act, 1947, on 26 November 1949 Constitutional Assembly of India adopted the Constitution of India. It became effective the following year, namely on 26 January 1950.

2 It is appropriate to notice that although Hindi is referred to as “the official language of the Union” (the Constitution of India, 2020, article 343) it cannot be described as neither “central” nor “national” one.

3 Although the percentage of Bilingual and Trilingual people rises sharply the lower the age-group. See Office of the Registrar General & Census Commissioner, India (2011a).

4 Listed in the Eighth Schedule to the Indian Constitution. The most notable of them being: Bengali, Hindi, Tamil and Urdu.

5 It is worth noting, that some authors consider English as one of the non-scheduled languages, while others classify it as neither scheduled, nor non-scheduled one.

Several authors have pointed out that after World War II India was “rushed” to independence, and as the result of that, there was no real agreement on a constitution and what it should contain (Schiffman, 2020). Notwithstanding the disputes, there was national consensus that English, as a colonial language, was not appropriate for independent India (Schiffman, 2020).

According to clause (1) of Article 343 of Indian Constitution (2020) the official language of the Union shall be Hindi in Devanagari script. However, for a transitional period of fifteen years from the commencement of Constitution English language (in Roman script) shall continue to be used for all official purposes of the Union, for which it was being used immediately before the commencement. After fifteen years, the parliament could by law provide for the further use of English.⁶

For the aforesaid period English should be the sole official language used in the Supreme Court and in every High Court, as well as the language of authoritative texts of Bills, Acts, Ordinances, orders, rules and regulations listed in Article 348. It should be also used for the communication between State and the Union or one State with another one, unless particular States would mutually agree to use of Hindi in their communication. On certain conditions the Governor of a State could authorise the use of Hindi in proceedings in the High Court of particular State, but any judgement, decree or order passed or made should still be in English.⁷

Problematically, although Hindi was the most common mother tongue among Indian population, it was not even the majority language.⁸ Furthermore, as described by H. Schiffman (2000), Hindi was neither the oldest, nor the most “prestigious” Indian language.⁹ S.G. Barve, who as the Secretary of The Language Commission was responsible for drafting report on Soviet model of linguistic transformation, in his note foresaw correctly, that considering the strength of regional languages and differences between them it would be bold to assume that the process of “forcing” Hindi upon whole country would be successful (Schiffman, 2000; *see* Language Commission, 1956, p. 481).

When in 1964 Indian prime minister L.B. Shastri had declared that Hindi would become sole national language at 26 January 1965 protests, which would later turn into violent riots, have started in Tamil Nadu and instantly spread to other non-Hindi speaking states and areas (Hardgrave, 1965, p. 399). It became something more than

6 Article 343 clause 2 *in principio* and clause 3.

7 Article 348 clause 2.

8 Although there is no specific data, it is safe to assume that the number of Indians speaking Hindi as their mother tongue at that time oscillated around 30–35% of whole population, as in the 1971 Census 36,99% Indians have declared it as their mother tongue and the tendency throughout the years was always rising. *See* Census of India (2011).

9 Term „prestigious” was used by H. Schiffman to compare the status of Hindi in India to the status of Russian language in Soviet Union, where Russian was the language of “elites” – politicians, scientists, artists.

just a language issue. The protests have gained rather symbolic meaning and became a social movement in favour of regional identity (Forrester, 1966, p. 20–27).

As the result of that, the Official Languages Act, 1963, was amended, and its Section 3 received wording: “Notwithstanding the expiration of the period of fifteen years (...), the English language may, as from the appointed day,¹⁰ continue to be used (...), (a) for all the official purposes of the Union for which it was being used immediately before that day; and (b) for the transaction of business in parliament.”¹¹ The abovementioned “purposes” were later partially defined in the Official Languages Rules, 1976.

But the language problem faced by Indian government was not resolved, it had just evolved. Because of scheduled discontinuity in the use of English, as well as its ‘colonial’ character – teaching English was neglected and astounding number of Indians were unable to fluently communicate in it. The government had to undertake appropriate legislative measures to ensure that on the one hand, both Hindi and English languages would be effectively taught across the country, and on the other hand, that widely understood central administration was ready to guarantee that nobody would suffer from their lack of linguistic knowledge. But the linguistic heritage of the country, would not make it easier.

2. Three-language formula as the remedy for linguistic problems

Acknowledging the importance of language in the process of establishing and preserving national unity, the government have changed the approach towards the matter and decided to focus on the education, without setting a particular transition date.

The first mention of so called „three-language policy” dates back to 1949, when University Education Commission¹² recommended that “pupils (...) [should] be made conversant with three languages, -the regional language, the Federal language and English” (University Education Commission, 1962, p. 284). However, Commission also stressed that English, as the higher education’s medium of instruction should be replaced as soon as possible.

The original idea from 1949 was later modified and adopted by the parliament in 1968 as a compromise between Hindi and non-Hindi speaking states (Chanklader, 1990, p. 88). It was provided that people from states where Hindi was mother tongue should learn Hindi, English, and one modern Indian language, whilst people from

10 26 January 1965, as defined by section 2 of the Official Languages Act, 1963.

11 Former reading of section 3 is mentioned by Committee of Parliament (n.d.).

12 Organization appointed by the Government of India in November 1948 to analyse the problems of Indian higher education system.

other states would learn their regional language (as mother tongue), English and Hindi.

Authors agree that the implementation of the formula was not really successful at the beginning, mainly as the result of unwillingness of local authorities (Chanklader, 1990, p. 88). Some of them, such as C.N. Annadurai, the chief minister of Tamil Nadu openly criticised formerly negotiated compromise and refused to make learning Hindi obligatory (Ramakrishnan, 2019).

Apart from the lack of goodwill, the main issue was that there were just not enough qualified teachers who could teach either English or Hindi in order to guarantee successful implementation of the formula across the country. P. Goel in his analysis of the issue accurately stated that “languages are not learnt individually but, in a community, where it is spoken and transacted daily. This fact alone decides that there won’t be millions of fluent English teachers in non-English speaking communities” (Goel, 2018). Although English served as ‘central’ language of the Union, at the local level it was nearly non-existent. As defined by the formula, children should start to learn English between 5th and 8th grade, but outside of school, they had no opportunity to use it, until they would decide to get higher education. As a result of that, there was not enough pressure put onto local authorities to effectively implement adequate regulations.

What were the effects of closely 45 years of three-language policy? According to the analysis of 2011 census done by “Hindustan Times” only 7,3% of population declared themselves as speakers of both Hindi and English. 3,3% could speak English, but not Hindi, and 49,8% could speak Hindi, but not English (Kawoosa, 2018).

Considering the above, it would be easy to underestimate the significance of three-language formula. Primarily, its implementation has allowed for peaceful and harmonized development of the country, so much needed in the early days of independence. Secondly, it would be foolish to expect linguistic revolution to happen in a span of just one generation.

Optimistically, the percentage of bilingual and trilingual people in the society increases rapidly the lower the age group (Census of India, 2011). R. Guha have observed that for the majority of young Indians English appears to be the “passport to a safe and secure job” and that the monolingual model of education will no longer be socially accepted (2010, p. 71).

It is probably still too early to say with certainty that the policy is starting to give effects, but forthcoming census scheduled on 2021 should bring us closer towards proper evaluation of the formula.

It cannot be denied, that the scale of linguistic exclusion is still terrifying, although it must be said that three-language policy, if executed correctly, appears to be a proper way of tackling the problem. However, it will never fully succeed,

unless states honestly try to enforce effective regulations. It is the role of central government to ensure that its policies will be adopted in each and every state.

3. (Constitutional) Controversies around the language of judiciary

Unfortunately, even the policy of teaching both English and Hindi could not resolve all problems regarding language as a migration barrier. Constitution of India gives local parliaments the power to “adopt any one or more of the languages” as the official language or languages for the “official purposes” of the State. However, as there are more than twenty different scheduled regional languages, most of the states do not recognize neither Hindi nor English as their state’s official language (Commissioner for Linguistic Minorities, 2016). This means, that in more than a half of the states, local administration and judiciary are using regional languages, what creates further difficulties for people willing to change their place of living. The matter of local judiciary’s language is worth further commentary.

According to the Codes of both Civil and Criminal Procedure – the State Government may determine what shall be the language of each court within the State other than the High Court.¹³ Its decision however, cannot be made arbitrarily, as according to the article 345 of the Constitution – official language or languages of a State to be used for all official purposes are by law adopted by the Legislature of a State. The relation between abovementioned laws was analysed by Madras High Court in 1994, which in the ruling of *Ranka v. State of Tamil Nadu* (1994) case stated that “the expression used in Article 345 is ‘official purposes of the State’. It is elementary that the State comprises of three organs, the executive, the Legislature and the judiciary. Unless the context otherwise indicates, (...). The courts and judicial proceedings cannot be excluded there from.” Considering the above interpretation, the language of each subordinate (district) court, determined by the State Government, must be one of the State’s official languages – previously adopted by the Legislature.

Interestingly, the matter of the High Court’s language was also the subject of discussion. As it was stated previously, the language of all proceeding in the Supreme Court and every High Court shall be English. However, clause (2) of article 348 of Indian Constitution permits a Governor of a State, with prior consent of the President of India, to authorise the use of Hindi (or any other scheduled language) to be used in proceedings in the High Court having its principal in that state. Yet, the abovesaid would not apply to judgements, decrees or orders passed or made by such High Court, as it is expressly excluded by clause (3).

13 The Code of Civil Procedure, 1908 – Article 137 (2); The Code of Criminal Procedure, 1973 – Article 272.

It is worth pointing out, that president's decision on the matter is fully discretionary. Practise throughout the years has shown that only Hindi was given the consent to be used in proceedings. As of 2016 proceedings in four High Courts (namely of Rajasthan, Madhya Pradesh, Uttar Pradesh, and Bihar) were given allowance to be in Hindi. Simultaneously, all requests made by local Governments of non-Hindi speaking states were rejected. Surprisingly, the Supreme Court has supported the policy of not authorising other languages than Hindi, as Chief Justice of India¹⁴ opined (on the matter of introducing Tamil for the use of Madras High Court) that "It is not proper to introduce regional language in the orders, decrees and other proceedings of the High Court" (The Hindu, 2007). The opinion was strongly criticized by M. Karunanidhi – Chief Minister of Tamil Nadu (2006–2011), who pointed out that Hindi-speaking states were given permission and "the same cannot be denied to Tamil Nadu" even if the language would not be Hindi, and that the opinion was unreliable, as it was referring to outdated resolutions (from 1966) on the issue of the use of other languages than English (The Hindu, 2007).

Further controversies have emerged in regard to the adoption of previously mentioned Official Languages Act, 1963. Its article 7 provides that "Governor of a State could, with the previous consent of the President, authorise the use of Hindi or the official language of state in addition to the English language, for the purposes of any judgement, decree or order passed or made by the High Court." If the judgement would be made in any such language it shall be accompanied by a translation of the same in English.

It was argued, whether the above is contradictory or not, to the provisions of the Constitution, but in its judgement from 1989 the Rajasthan High Court have stated that: "we are of the opinion that the use of Hindi as optional language in judgments, decrees and orders of this Court in addition to English cannot be said to be in contravention of any provision of the Constitution of India, rather it is in accordance with Official Language Act" (*Kumar v. Rajasthan High Court and Ors*, 1991). It shall be the duty of the High Court to create a translation department and to authorize its officer to authenticate any translation made. It is important to mention, that the translation would be issued under the authority of the High Court and such judgements would have the same binding power as the non-translated ones.

On the side note, it is worth noticing that neither the Code of Civil Procedure, nor the Code of Criminal Procedure provide any significant regulation aimed at helping people who do not speak in the language of the court. The only party to the proceeding that is provided translation during the court's proceeding is the accused in the criminal one.¹⁵

14 Head of the Supreme Court of India.

15 E.g. the Code of Criminal Procedure – Article 279 (1): Whenever any evidence is given in a language not understood by the accused, and he is present in Court in person, it shall be

It is easy to observe that the knowledge of both English and regional language is required to freely act in person in the proceedings of particular courts. Regional language – to act in district courts, and English (or Hindi) – to act in the High Court. This aspect of language barrier affects not only ordinary citizens, but also attorneys, who are unable to practise in courts, other than their local ones. Lawyers from states where Hindi is mother tongue are in a better spot, as it is the most popular regional language, but they are still heavily limited.

Conclusions

Upon closer look, the language problem India is struggling with, is far more complex and multifaceted, than it appears to be at the first glance. It is simultaneously a legal problem, but also, and probably primarily, a sociological one. It is hard to properly evaluate measures taken by subsequent governments to enforce effective language transformation, but one thing cannot be denied. Indian society is becoming more and more multilingual.

English is no longer perceived as colonial language, but rather as a language of a “chance”. The chance of getting higher education, the chance of having better-paid job, the chance of not being limited in choosing your place of living. At the same time, Hindi in non-Hindi speaking states is still being perceived as “foreign” language, but approximately 50% of society speaks it and the percentage is expected to increase in the forthcoming years.

From the perspective of time, three-language formula seems to be a proper way of tackling the problem. It prevents exclusion of people, without requiring them to abandon their regional identity and tradition. As the social perception of both English and Hindi changes, the formula should flourish, and finally become fully effective.

When it comes to the language of judiciary, precisely to the language of District Courts, there are not enough regulations aimed at helping people, who do not speak the language of court. Acknowledging the problem, legislature should take adequate steps to ensure, that nobody would be victim of not knowing particular regional language, no matter which one it would be.

interpreted to him in open Court in a language understood by him.

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