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CHAPTER 11

LANGUAGE

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I. INTRODUCTION

DISPUTES over official language policy have long been at the centre of Indian political life. In British India, one of the principal axes of nationalist mobilisation was language, with Muslim elites seeking to preserve the status of Urdu as the official language of public administration in the face of demands by educated, urban Hindus that Hindi written in the Devanagari script replace Urdu. The loss of the struggle over the official language status of Urdu led Muslim elites to shift their demands to the creation of a State in which Urdu would be the official language, Pakistan. But the partition of British India did not settle the debate over India's official language; rather, it spawned a new debate in the Constituent Assembly over whether Hindi should be the sole official language of the Union government, or whether Hindi and English should enjoy equal status. These debates over the official language of the Union government were renewed in the 1960s, and were only resolved through a compromise that preserved, likely indefinitely, a central role for English—which ironically is not one of India's official languages. A closely related issue was the question of whether the boundaries of India's States should be redrawn to ensure their linguistic homogeneity, a major political flashpoint in the 1950s and 1960s that led to the largest and most peaceful reconfiguration of political space under the rule of law, without recourse to mass violence in the history of liberal democracy. Linguistic reorganisation in turn created a set of States which used their power to make regional vernaculars the common language of political, economic, and social life, and set up a series of controversies with internal linguistic minorities over the language of education in public and State-assisted schools.

The centrality of controversies over official language status during the Constituent Assembly debates gave rise to a broad array of constitutional provisions, which have become sites of ongoing constitutional contestation in the post-Independence period. The largest set of provisions is contained in Part XVII, which is devoted in its entirety to 'Official Language'.

* I thank Madhav Khosla and Varun Srikanth for excellent research assistance. This chapter draws on and develops themes first explored in Sujit Choudhry, 'Managing Linguistic Nationalism through Constitutional Design: Lessons from South Asia' (2009) 7 *International Journal of Constitutional Law* 577.

Part XVII has four chapters and nine Articles which address the 'Language of the Union' (Articles 343 and 344); 'Regional Languages' (Articles 345 to 347), which in fact relates to the official languages of the States; and the language of the Supreme Court and the High Courts and legislative enactments (Article 348). Moreover, there are important provisions on official language outside of Part XVII. Articles 120 and 210, respectively, address the language of legislative proceedings in the chapters on Parliament (Part V, Chapter II) and State legislatures (Part V, Chapter III). The fundamental rights guarantees in Part III include cultural and educational rights in Articles 29 and 30 which extend to linguistic minorities, and which have had their greatest impact with respect to minority language schools. The Eighth Schedule selectively enumerates a growing list of Indian languages, and thereby affords them 'official' status. Finally, there are other provisions that do not refer expressly to language, but which have figured centrally in linguistic politics. Central among these is Article 3, which confers on Parliament the power to change State boundaries and create new States. Although it lays down no substantive criteria to direct the exercise of this power, it has been used most often in response to language-based political mobilisation, and was the mechanism for linguistic reorganisation.

Studying the constitutional politics of official language status is necessary to come to grips with the Indian constitutional experience. In addition, the constitutional politics of official language status provides insights into the broader forces shaping Indian political development. For example, the drive to adopt Hindi as the official language of the Union government and to resist linguistic reorganisation were part of an integrated strategy to build a common national citizenship that would sustain the unity of the world's largest democracy in the face of staggering diversity and in the aftermath of Partition, and were designed to pursue a number of specific goals under this overarching framework: creating a common platform for the establishment of a mass, democratic, national politics; dissolving social and economic hierarchy through promoting literacy in a common tongue that would permit social and economic mobility; and providing a basis for direct communication between Indians and public administration in an indigenous language. Non-Hindi speakers, who feared that privileging Hindi and denying official status to regional languages would distribute economic and political power towards Hindi speakers and away from them, resisted this integrative strategy. They invoked precisely the same objectives to argue for the retention of English at the Centre, and the creation of linguistic States with regional languages having official status. Given the importance of these themes to Indian politics outside the context of language, examining controversies over official language status can sharpen and deepen our understanding of these broader trends in Indian politics. Moreover, debates over official language status served as the basis for mass political mobilisation. Although political rhetoric often invoked the link between language and cultural identity, what actually fuelled these claims was not radical cultural difference, but economic competition for white-collar public-sector employment. The material underpinnings of debates over official language status accordingly can shed light on their role in the mobilisation of other identity-based cleavages in Indian politics, such as caste, in debates over reservations.

The Indian Constitution's provisions on language also offer important lessons for constitutional design and interpretation. It is often assumed that once a language receives official status, it should be used across all areas of government activity. However, as the Indian Constitution shows, the choice of official language can be disaggregated functionally

and spatially into a number of distinct institutional decisions, in which the scope for linguistic choice and the consequences of these choices are rather different. Disaggregation can become a tool of constitutional compromise, by eliminating the zero-sum nature of the choice of official language into a multiplicity of separate choices that can be traded off against each other and other constitutional issues. The specific provisions of Part XVII deploy a multiplicity of other devices to broker constitutional compromise, including delays (eg, Article 343), deferrals (eg, Article 344), defaults that can be displaced through ordinary legislation (eg, Article 345), and low thresholds to constitutional change (eg, Article 3). Although the principal institutional sites for the constitutional politics of official language were the Constituent Assembly, Parliament, and State legislatures, the courts have increasingly played an important role in cases on minority language education arising under Article 30. In the course of working out the relationship between the power of States to set the language of educational instruction and minority language educational rights, the courts have articulated their understanding of the consequences of linguistic reorganisation on an original, pan-Indian conception of citizenship that treats all of India as home to all of its linguistic communities which emerged from the Independence movement, and a newer conception of citizenship that may have replaced it.

II. OFFICIAL LANGUAGE OF THE UNION GOVERNMENT

The official language of the Union government was the single most divisive issue in the Constituent Assembly.¹ At Independence, the official language of British colonial administration was English, which was spoken by less than 1 per cent of the population. Most Indians spoke one of approximately a dozen regional languages. Hindi was India's most widely spoken language, commanded by approximately 40 per cent of the population. Very few speakers of the other languages spoke Hindi; indeed, the principal languages of South India are radically different from Hindi and from entirely different linguistic families. In the assembly, the main questions were whether to replace English, in whole or part, with an indigenous language as the Union government's official language, and which indigenous language(s) should receive official status in central institutions. There were two camps, one that advocated for Hindi to be the sole official language of the Union government and legal system, and another that argued for both English and Hindi to be official languages of the Union government and legal system.

At first blush, since Article 343 designates Hindi as 'the official language of the Union', it would seem that the proponents of Hindi won. But upon closer examination the resulting set of constitutional provisions reflects a multidimensional compromise between these two positions. Article 343(2) provides for a delay of fifteen years during which the status quo with respect to the use of English would remain in place. Moreover, under Article 343(3), the delay can be extended indefinitely through ordinary legislation, shifting the burden of

¹ For a helpful overview of the founding debates on language, see Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) 330–83.

legislative inertia onto those who wish to preserve the use of English but at the same time not requiring the two-thirds majority needed to amend Article 343. The combination of these mechanisms kept open the possibility that the transitional arrangements surrounding the shift to Hindi could be continued indefinitely and channelled these questions into the legislative process and ordinary politics.

In addition, the question of official language status was disaggregated into a series of specific institutional decisions. Although Article 343(1) designates Hindi as 'the official language of the Union', which implies its sole official status across all central institutions, this categorical declaration is qualified by a number of other provisions which differentiate across the different branches of government, and within each branch, and establish different rules governing official languages for each context. For example, consider Parliament. Article 348(1)(b)(I) provides that English is the language of primary and secondary legislation, until legislation to the contrary is enacted. This continued the status quo of English indefinitely, and shifted the burden of legislative inertia onto those who would adopt Hindi as the language of legislation—the reverse of Article 343(1). Although the Official Languages Act 1967 mandates that there be an official Hindi translation of a central statute, the Supreme Court has held that Article 348(1)(b) makes the English version authoritative, and that it prevails over the Hindi version in the event of conflict.² The importance of Article 348(1)(b) is underlined by the fact that its reach extends to notifications issued under central legislation.³

The Indian Constitution also differentiates between the language of parliamentary deliberations and the language of legislation. Article 120 permits the use of Hindi or English in parliamentary debates, and permits the Speaker of either chamber to permit a member to use his or her mother tongue (with the right to use English expiring in fifteen years unless extended through legislation, as in the case of Article 343). The possibility of multilingual parliamentary debates, however, is treated separately from the language of the legal outputs of those proceedings, which presumptively remains English. The courts are also governed by rules that depart from Article 343. Article 348(1)(a) establishes English as the language for Supreme Court and High Court proceedings and judgments. While Article 348(2) authorises State legislatures to legislate the use of Hindi or regional languages in High Court proceedings, that power does not extend to the constitutional requirement that judgments be in English (which would require a constitutional amendment to alter). Moreover, for the Supreme Court, the Constitution does not create a legislative mechanism to alter the language of its proceedings, which could only be achieved through constitutional amendment. Indeed, the Court has declined to permit parties to present arguments before in languages other than English, on the basis of Article 348(1)(a), even though it arguably has the inherent authority to do so.⁴ Against the backdrop of the provisions, the rejection of an Article 14 challenge to holding the Delhi University Law entrance exam in English should be understood as rooted in the special constitutional status of English in the legal system.⁵ Finally, Article 346 impliedly

² *Nityanand Sharma v State of Bihar* (1996) 3 SCC 576; *Prabhat Kumar Sharma v Union Public Service Commission* (2006) 10 SCC 587.

³ *Jaswant Sugar Mills Ltd v Presiding Officer, Industrial Tribunal* AIR 1962 All 240.

⁴ *Madhu Limaye v Ved Murti* (1970) 3 SCC 738.

⁵ *Shailendra Mani Tripathi v University of Delhi* 2014 SCC OnLine Del 3328 (Delhi High Court).

maintains English as an official language for Centre-State communications, by preserving the linguistic status quo in this arena as well.

The provisions on Parliament and the courts illustrate the logic of disaggregation, by drawing a distinction between the language of deliberations and decision, permitting the former to be multilingual whereas presumptively, or permanently, retaining the unilingual character of the latter. These distinctions are driven by a number of considerations. One is the demand for legal certainty, which exerts strong pressure in favour of one or very few languages to serve as the language of legislation and judgments. Moreover, given the official status of English prior to Independence for judgments and legislation, legal certainty argued in favour of continuing the linguistic status quo. But official language status also distributes opportunities to participate in the decisions of legislatures or courts, and hence, distributes political power. The opponents of the adoption of Hindi as the sole official language of central institutions argued that such a policy would distribute political power away from non-Hindi to Hindi speakers. The fear was that this would produce a new kind of colonialism, a form of 'Hindi Imperialism'. This explains the rationale behind allowing institutions to deliberate in more than one language. And disaggregation explains how different approaches to official language status can be taken for deliberations and decisions. Finally, concerns about the redistributive power of official language status explain the retention of English as the language of legislation and judgments.

Read alongside the cluster of constitutional provisions on language, it becomes clear that the true ambit of Article 343 is the language of public administration. Even here, it is important to disaggregate the language of public services from the internal working language of government—that is, a distinction between external and internal communication. In principle, it is possible for governments to offer services in multiple languages, as the Indian central bureaucracy does. Indeed, Article 350 grants every person the entitlement 'to submit a representation for the redress of any grievance to any officer or authority of the Union' in 'any of the languages used in the Union or in the State'. Rather, the focus of Article 343 is the internal working language of government. From a practical standpoint, the State is limited in its ability to function internally in more than one language, because of the difficulties of translation. There is a zero-sum aspect to the designation of an official language in this sphere, creating clear winners and losers. Article 343 was a victory for Hindi speakers, although it gave an opening for revisiting this issue through statute as 1965 approached.

Article 344 directed the creation of a commission to develop a plan for the transition from English to Hindi, which was struck in 1955 with BG Kher as chair. The possibility created by Article 343 to extend the transitional status of English created the option of deferring the transition past the fifteen-year mark, if not indefinitely. The majority of the Kher Commission's members decisively rejected that idea, and reiterated the democratic case for conferring official status solely on Hindi as providing a common language for mass democratic politics.⁶ But there were passionate dissents, which argued that such a policy would consolidate political power in the hands of a Hindi-speaking elite and withdraw it from non-Hindi speakers. The focus of the most intense disagreement within the Commission was not on the language of Parliament, but of the examinations for the All India Administrative

Service (IAS). In addition to serving in the central bureaucracy, IAS officers are also assigned to work in State governments, where they hold the most senior posts. At Independence, the exams were administered in English. The Kher Commission recommended that Hindi eventually become the sole language of the examination. The dissenters argued that the result would be neo-colonial in non-Hindi-speaking States, because of the central role played by IAS officers in State bureaucracies.

As the constitutionally set deadline for implementing Article 343 in 1965 approached, the language of the IAS exam emerged as the major flashpoint of controversy. In Tamil Nadu, university students led violent anti-Hindi protests, which led to riots in which sixty-six were killed. As part of a broader decision to postpone indefinitely the implementation of Article 343, the adoption of Hindi as the language of the IAS exams did not proceed. The status of English was preserved by the Official Languages Act 1967, which grants a statutory veto on the continued use of English to each non-Hindi-speaking State. There has been very little litigation surrounding the internal working language of government, and the courts have been non-interventionist. For example, notwithstanding the retention of English as the language of the IAS exam, civil servants receive Hindi language training. In *Murasoli Maran*, the Supreme Court turned back a challenge to this policy, holding that it did not contradict the Official Languages Act's continuation of the use of English in Union government institutions.⁷ But the Delhi High Court also turned back a challenge under Article 14 to a compulsory English exam for the IAS.⁸ The most persuasive reading of that judgment is that since the retention of English was itself authorised by Article 343, it could not be challenged on the basis of another constitutional provision, the right to equality.

Although the dissenters in the Kher Commission framed their concerns surrounding the adoption of Hindi in terms of democracy, at the root of mass political mobilisation on the basis of language and the resistance to Hindi was economic competition over white-collar public sector employment. The demand for those kinds of employment opportunities increased in the post-Independence period because of increased social mobility, which was a product of increasing participation in education, especially secondary education. Education also fuelled the migration of the newly literate, with youth flocking to urban centres in search of employment opportunities not available in rural areas, such as public-sector employment. The choice of an official working language of public administration created unequal access to public-sector employment opportunities, which translated into political demand to redistribute those opportunities from one group to another through official language policies. Material interest, not cultural difference, was at the root of this politics, which in turn drove constitutional adaptation.

These provisions and subsequent developments also illustrate an ongoing, and in some cases, indefinite role for English, as the preserver of linguistic peace between Hindi and non-Hindi speakers. In this context, the Eighth Schedule is striking. It now lists twenty-two languages, which thereby acquire official status. However, the inclusion of a language in this schedule has no operative effect with respect to any of the key provisions of Part XVII. Indeed, the practical irrelevance of the Eighth Schedule is underlined by the fact that English, which clearly has ongoing official status, is not enumerated therein. Since neither the inclusion nor

⁶ Official Language Commission, *Report of the Official Language Commission* (Government of India Press 1956).

⁷ *Union of India v Murasoli Maran* (1977) 2 SCC 416.

⁸ *Dinanath Batra v Union of India* 2013 SCC OnLine Del 2261.

exclusion of a language in the Eighth Schedule has real institutional implications, the politics surrounding the Eighth Schedule is largely symbolic. The lack of any concrete impact may be the real reason why the Supreme Court in *Kanhaiya Lal Sethia* declined to subject decisions to include languages in the Eighth Schedule to judicial oversight.⁹

III. LINGUISTIC REORGANISATION OF STATES

The disaggregation of official language status into a multiplicity of separate decisions, which vary across and within specific institutions, and which can be traded one off against the other as part of a comprehensive constitutional negotiation, is one of the great contributions of the Indian constitutional experience to other societies wrestling with the constitutional politics of mobilisation around official language status. Disaggregation also sheds light on the relationship between federalism and language. In Indian political discourse, it has often been assumed that the adoption of multiple official languages requires federalism. The unstated premise of this claim is that the public sector is a single, indivisible zone across all areas of government activity. But the above examples show how it is possible for a government to operate with multiple official languages without federalism. The Indian experience also illustrates the limits of disaggregation, with respect to the internal working language of government, because of the pressures towards linguistic homogeneity. Economic competition over public-sector employment opportunities was at the root of the political resistance to the implementation of Article 343; because of the indivisibility of the internal working language of government, it also fuelled the demand for linguistic federalism, to create multiple public sectors to offer white-collar employment opportunities in a range of languages.

Demands for linguistic federalism dated back to the movement for Independence. Since 1920, the Congress Party had been committed to linguistic provinces, and indeed, organised itself internally along regional-linguistic lines that did not correspond to the internal administrative divisions of British India. It abandoned this stance in the wake of Partition, out of the fear that linguistic federalism would be the stepping stone to secession, by creating States that would serve as sites of political identification and loyalty that would conflict with a pan-Indian conception of citizenship. Indeed, in the debates over linguistic federalism, national elites framed an argument for national citizenship in civic terms, as rooted in a shared commitment to liberal democracy and shared political institutions, that formed a common spine of citizenship that transcended linguistic and regional divides, and which underpinned a project of modernisation built around democracy, economic and social mobility, and administrative efficiency. Subnational citizenship was denigrated by these elites as being rooted in primordial and parochial forms of identity that were hostile to this modernising project, and was the basis for the opposition to linguistic States. The Report of the Linguistic Provinces Commission (the Dar Commission), appointed by the Constituent Assembly to study the issue of linguistic provinces, accordingly rejected the demand for

⁹ *Kanhaiya Lal Sethia v Union of India* (1997) 6 SCC 573.

linguistic provinces because it was rooted in 'a parochial patriotism'¹⁰ of a 'centuries-old India of narrow loyalties, petty jealousies, and ignorant prejudices engaged in a mortal conflict',¹¹ which was inferior to an 'Indian nationalism and Indian patriotism' that was inconsistent with linguistic provinces, and which went hand in hand with the adoption of Hindi as the language of the Centre.¹²

The Constituent Assembly rejected linguistic provinces. But the Constitution contained two provisions that gave political actors the tools to thrust this issue back onto the constitutional agenda. First, Article 345 authorises State legislatures to 'adopt one or more of the languages in use in the State or Hindi' as an official language, which led newly created State legislatures to debate which regional languages would receive official language status. Second, Article 3(a) grants authority to Parliament to 'form' a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting 'any territory to a part of any State' through ordinary legislation. These two provisions interacted in the following way: if the choice of official language could not be resolved within State legislatures, the disagreement could be shifted to Parliament and transformed into a debate over the redrawing of State boundaries, which would be relatively easy to accomplish because of low procedural thresholds.

The rejection of linguistic provinces unravelled before Independence. The report of the Dar Commission was rejected, especially in the South, where the opposition to Hindi was also strongest. The Congress Party responded by appointing the Congress Linguistic Provinces Committee, which recommended in 1949 the creation of Andhra State from the Telugu-speaking parts of Madras State, which had a Tamil majority. Andhra State (later Andhra Pradesh) was created in 1953, which impelled the creation of the States Organisation Commission. The Commission was charged with proposing principles for the redrawing of State boundaries and making specific recommendations about State boundaries. The Commission concluded that language should be a factor in drawing State boundaries, and issued a series of specific recommendations that were largely based on language. Based on the Commission's recommendations, Parliament created Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras State (later Tamil Nadu), Mysore State (later Karnataka), Orissa, and Punjab in 1956. Multilingual Bombay State was further divided into Gujarat and Maharashtra in 1960, and Punjab into Haryana and Punjab in 1966.¹³

The creation of linguistic States occurred with almost no judicial intervention, closely paralleling the minimal judicial role with respect to Chapter XVII. The one possible hook was Article 3's requirement that bills to create new States be referred to the legislatures of the States affected 'for expressing its views thereon'. States argued that this requirement of consultation should be interpreted as requiring a State's consent to any change in State boundaries. In *Babulal Parate*,¹⁴ a challenge brought by Bombay State to the first States'

¹⁰ Linguistic Provinces Commission, *Report of the Linguistic Provinces Commission* (Government of India Press 1948) [13].

¹¹ Linguistic Provinces Commission (n 10) [143].

¹² Linguistic Provinces Commission (n 10) [133].

¹³ On linguistic mobilisation and reorganisation, see Paul Brass, *Language, Religion and Politics in North India* (Cambridge University Press 1974); Robert D King, *Nehru and the Language Politics of India* (Oxford University Press 1997); Ramachandra Guha, *India After Gandhi: The History of the World's Largest Democracy* (Picador 2007) 180-200.

¹⁴ *Babulal Parate v State of Bombay* AIR 1960 SC 51.

reorganisation, the Supreme Court decisively rejected this view, which it later affirmed in *Pradeep Chaudhary*.¹⁵ It is interesting to contrast the Supreme Court's refusal to thicken the requirement of consultation into consent with its approach to Article 124(2), where the Court read a requirement to consult the Chief Justice prior to making appointments to the Supreme Court into a need to obtain the Chief Justice's consent. Notably, *Babulal Parate* also rejected the less demanding claim that the process of consultation be repeated each time there were amendments to a bill proposing a change in State boundaries, even though accepting this claim would not have undermined the plenary authority of Parliament.

The lack of a judicial role in the creation of linguistic States is striking when viewed through the lens of the basic structure doctrine. Given the roots for the initial rejection of linguistic States in an overarching theory of Indian nationhood, it is possible to conceptualise an argument rooted in the basic structure doctrine that would have held linguistic reorganisation to run counter to some basic characteristics of the Indian constitutional order. Indeed, on some formulations, the basic structure of the Indian Constitution includes its territorial integrity, which the Dar Commission argued would be threatened by linguistic States. The Turkish Constitutional Court has developed an argument along these lines, in cases that have banned political parties that advocated the creation of a federal Turkey with a Kurdish-majority State in which Kurdish would be an official language.¹⁶ In *Dalavai*, the Supreme Court hinted at the outlines of such an argument, when it struck down a Tamil Nadu statute that created a pension scheme for anti-Hindi agitators.¹⁷ The Court struck down the statute because 'the pension scheme formulated by the Tamil Nadu government contains the vice of disintegration and fomenting fissiparous tendencies'.¹⁸ Its judgment was not based on any provision of the Indian Constitution. By implication, the Court seems to have relied on an implicit theory of the Constitution's underlying structure. It may be that a basic structure challenge to linguistic reorganisation was never made, because the 1956 reorganisation pre-dated *Kesavananda Bharati* by seventeen years. It is interesting to speculate on the constitutional counterfactual of how the Court would have reacted had the doctrine existed in the 1950s, and been invoked by Bombay State in *Babulal Parate*. As I have argued elsewhere, the best justification for the doctrine has been to protect Indian democracy from attempts by political parties to thwart political competition, a particularly acute risk in the era of Congress Party dominance.¹⁹ Given the link between linguistic reorganisation, and the rise of regional parties around language and caste, and that these parties ended the dominance of the Congress Party in the States and ultimately led to the end of Congress Party rule centrally, a far-sighted Court should have not stood in the way.

The State's power to determine official languages under Article 345 is the analogue to Article 343, and is also subject to the special provisions of Article 348. Article 348(1)(b)(i) provides that the language of primary and secondary legislation in the States shall be English. However, Article 345 authorises the State legislature to confer official status on a

regional language 'for all or any of the official purposes of the State', a broad formulation which has been understood to include the language of primary and secondary legislation. Moreover, Article 348(3) impliedly confirms that such non-English versions of legislation would have legal force, through its requirement that an English translation be 'published' of State legislation, and 'be deemed to be the authoritative text thereof in the English language', as opposed to the authoritative text in any language. The lack of a provision parallel to Article 348(3) for central legislation suggests that the rule in *Jaswant Sugar Mills* does not 'apply in the States; rather, in the event of a conflict between the official versions of a statute in English and the regional language, the latter should prevail. *Ashgar Ali*, a case involving a conflict between the English and Hindi versions of a notification, the effect of the ruling was to apply the Hindi version.²⁰ Although the basis for the holding was that the English translation had not been published under the authority of the Governor, as Article 348(3) requires, and hence, there was no authoritative English version to reconcile with the Hindi version, a better justification for the holding was that the Hindi version was authoritative—the reverse of the position for central legislation.

State legislatures also have the power, under Article 348(2), to authorise the use of Hindi or any other official language in the State for use in High Court proceedings. In *Vijay Laxmi Sadho*, the Supreme Court confirmed that State legislation with this effect prevails over conflicting provisions of the High Court rules that only permit the use of Hindi.²¹ Moreover, under Article 345, English remains in use in the High Courts 'until the Legislature of the State otherwise provides by law'. *Dayabhai Poonambhai* and *Sarshwati Bai* establish a clear 'statement rule under Article 345 that requires legislation to expressly exclude Hindi from High Court proceedings; those judgments would not imply the exclusion of English as a necessary implication of legislation that allowed the use of Hindi in High Court proceedings.²² These judgments likely reflect a judicial reluctance to permit the ouster of English from State High Courts, given their central role in an integrated national judicial system operating under the common law, with its rules of precedent, and sitting under a Supreme Court which functions exclusively in English. The express limitation in Article 348(2) that the provision does not extend to High Court judgments, which must remain in English even if the language of the proceedings is changed to Hindi or a regional language, is consistent with this view on the role of the State High Court in India's judicial hierarchy.

IV. LINGUISTIC FEDERALISM AND LINGUISTIC MINORITIES

The courts have been largely uninvolved in the constitutional politics of official language policy. The major exception is in the context of minority language education. This body of case law arose in the wake of linguistic reorganisation, where newly created linguistic States

¹⁵ *Pradeep Chaudhary v Union of India* (2009) 12 SCC 248.

¹⁶ See Ceren Belge, 'Friends of the Court: The Republican Alliance and Selective Activism of the Constitutional Court of Turkey' (2006) 40 *Law and Society Review* 653.

¹⁷ *RR Dalavai v State of Tamil Nadu* (1976) 3 SCC 748. ¹⁸ *RR Dalavai* (n 17) [6].

¹⁹ See Sujit Choudhry, 'How to Do Constitutional Law and Politics in South Asia' in Mark Tushnet and Madhav Khosla (eds) *Unstable Constitutionalism: Law and Politics in South Asia* (Cambridge University Press 2015) 18.

²⁰ *Ashgar Ali v State of Uttar Pradesh* AIR 1959 All 792.

²¹ *Vijay Laxmi Sadho v Jagdish* (2001) 2 SCC 247.

²² *Dayabhai Poonambhai v Natwarlal Sombhai* AIR 1957 MP 1; *Sarshwati Bai v The Allahabad Bank* AIR 1963 All 546.

enacted laws to mandate instruction in the regional languages in elementary and secondary schools. The goal underlying these laws was to further the making of regional vernaculars the common language of political, economic, and social life, by ensuring that all children resident in the State attained fluency. These laws can therefore be understood as logical extensions of official language legislation. In *Gujarat University*, the Supreme Court provided a constitutional anchor for this legislation in the power of States over education, which was at that time item 11 in the State List in the Seventh Schedule.²³ Although the Forty-Second Amendment shifted education to item 25 in the Concurrent List, States still have the power to enact such laws. To be sure, reorganisation created States that were much more linguistically homogeneous than before. But many contained significant linguistic minorities that operated schools offering mother tongue instruction. Indeed, mother tongue education for linguistic minorities within States was often deeply rooted in questions of cultural identity and survival. The new laws mandating education in regional languages also applied to schools operated by linguistic minorities that primarily offered mother tongue education, which either did not offer education in the official language or at best made it an elective option. These laws generated a clash between linguistic nation building by State governments and the demands of linguistic minorities to be allowed to choose the language of instruction for their children.

The key constitutional provision in these cases has been Article 30, which grants religious and linguistic minorities 'the right to establish and administer educational institutions of their choice' (Article 30(1)) and which, in addition, prohibits the State, when granting aid to educational institutions, from discriminating 'against any educational institution on the ground that it is under the management of a minority, whether based on religion or language' (Article 30(2)). The focus of the jurisprudence has been on Article 30(1), with the Supreme Court in *State of Bombay v Bombay Education Society* holding that the power of linguistic minorities to 'administer' educational institutions encompasses not just managerial authority over financial and administrative matters, but also control over the curriculum, including the language of instruction.²⁴ This interpretation of Article 30(1) flowed from reading that provision in light of the Article 29(1) right of linguistic minorities to conserve their language, script, and culture. In essence, the Court has read Article 30(1) as conferring the right on linguistic minorities to create institutions to exercise their Article 29(1) right. In addition, Article 30(1) has been interpreted to include the right to opt for mother tongue education—that is, it is an option they may or may not wish to exercise. The presence of the phrase 'of their choice' in Article 30(1) has been the textual underpinning of this reading of Article 30(1). The Court quickly clarified that the scope of Article 30(1) extends beyond primary and secondary education (as in *Bombay Education Society*) to post-secondary institutions, in *DAV College, Bhatinda v State of Punjab*.²⁵

The main legal debate has been over the extent to which Article 30(1) grants linguistic minorities the right to exclude instruction in the regional language. The principal cases have come out of the largest non-Hindi States: Karnataka, Maharashtra, and Tamil Nadu. In principle, there are a range of possible policies which States can pursue on the use of

regional languages in education: that instruction in the regional language be offered as an elective; that it be mandatory but not exclusive and/or primary; that it be primary; and that it be exclusive. The courts have groped towards a framework that distinguishes among different stages of education, with the right of linguistic minorities operating their own educational institutions to exclude instruction in the regional language diminishing as the age of the child increases. Initially, the courts took the view that States had no power to require instruction in the regional language in primary education, and only had the power to make the regional language 'a' mandatory language of instruction at the secondary level, leaving to each individual student the choice of whether they wish to make the regional language the primary language of their instruction.²⁶ The courts later authorised States to make the regional language 'a' language of instruction for primary education beginning in the fifth standard, in *Usha Mehta v State of Maharashtra*,²⁷ and even the first standard, in *KR Ramaswamy v State*.²⁸

Underneath the increasing power of States to mandate instruction in regional languages have been important shifts in the doctrinal framework for Article 30. Initially, the courts described Article 30 as an absolute right that could only be regulated by States through laws that enabled the exercise of the right by promoting educational quality and efficiency. The courts held that the State interest in promoting literacy in regional languages was per se inadmissible or very weak. The obvious rejoinder was the State's power to determine the official language of the State government under Article 345, and to infer from that power the constitutional legitimacy of adopting ancillary policies to support widespread literacy in the official language, including through the educational system. The courts responded to this argument by firmly distinguishing States' authority over the former, which was plenary, and the latter, which was subject to Article 30.

General Secretary, Linguistic Minorities Protection Committee v State of Karnataka, a decision of the Karnataka High Court, illustrates these points.²⁹ The case was a challenge by Urdu, Tamil, Marathi, and English speakers to a Karnataka law that made instruction in Kannada compulsory from the first grade for children whose mother tongue was not Kannada, and made Kannada the sole first language in secondary school. Although the Court stated that Article 30 was an 'absolute' right, it nonetheless permitted laws that regulated it.³⁰ There are two inconsistent strands to the Court's explanation of what kinds of State laws Article 30 permits. On one strand of reasoning, the High Courts held that Article 30 only permits 'regulative measures' which are 'conceived in the interest of the minority educational institutions'—for example, laws which ensure educational quality. On this formulation, laws rooted in broad claims to the 'public interest' are impermissible. By implication, promoting the use of the regional language cannot serve as a justification for requiring instruction in Kannada, because the interest served is not that of the pupils themselves. The Court buttressed this view by relying on a consensus among policymakers that it is in the best interests of a child to only be educated in a mother tongue—and hence, the requirement for some instruction in a regional language in elementary school was unconstitutional. But

²³ *Gujarat University v Shri Ranganath Krishna Mudholkar* AIR 1963 SC 703.

²⁴ *State of Bombay v Bombay Education Society* AIR 1954 SC 561.

²⁵ *DAV College, Bhatinda v State of Punjab* (1971) 2 SCC 261.

²⁶ See *General Secretary, Linguistic Minorities Protection Committee v State of Karnataka* AIR 1989 Kar 226.

²⁷ (2004) 6 SCC 264.

²⁸ AIR 2008 Mad 25.

²⁹ *General Secretary, Linguistic Minorities Protection Committee* (n 26).

³⁰ *General Secretary, Linguistic Minorities Protection Committee* (n 26) [47].

on another strand of its reasoning, the Court accepted that linguistic minorities themselves did benefit from a command of the regional language, which led it to conclude that the State could mandate the regional language as 'a' mandatory language, but that the State must still leave it to students to choose which language would be the principal language of instruction, based on their educational and career objectives.

It is possible to offer the following reconstruction of the decision that renders it more doctrinally coherent, by rooting it in the underlying theory of citizenship that the Karnataka High Court set out in its reasons, but did not connect with its legal analysis. Under the High Court's theory, India is a single country with 'one' citizenship, held equally by members of all linguistic communities across the entire country. It follows that each State is 'a miniature India',³¹ where linguistic 'minorities are as much children of the soil as the majority'.³² It follows that 'it is not permissible for a State to impose a condition that a citizen residing in that State permanently or temporarily, must study the official language of that State in high school'.³³ What this suggests is that the State lacks an interest in establishing fluency in the regional language. If this were the real goal underlying the law, then the law would be *per se* unconstitutional for pursuing an unconstitutional purpose. However, what would be permissible, even on this formulation, is the less ambitious goal of providing minority language speakers with a working understanding of the regional language, and with the option of developing fluency in it they wish. If this is the objective underlying the law, it explains the High Court's holding on secondary schools. The holding on elementary schools must turn on the empirical premise that requiring even some instruction in the regional language for very young children just to provide them with a working knowledge of it would unduly interfere with the acquisition of literacy in the mother tongue, and is therefore a disproportionate means for pursuing a legitimate State objective.

Usha Mehta, a Supreme Court decision, illustrates the shift in the courts' approach to Article 30.³⁴ The law under challenge made Marathi a compulsory subject from the fifth standard onward. Gujarati-speaking families, for whom the law meant that Marathi would be 'a' language of instruction for their children, alongside mother tongue instruction, brought the challenge. Under *General Secretary, Linguistic Minorities Protection Committee v State of Karnataka*, the Maharashtra law should have been held to be unconstitutional, because it applied to elementary education. However, the Court rejected the challenge and upheld the law. There are two ways to explain the result. One would be that the Court concluded, as an empirical matter, that instruction in Marathi in elementary school would not interfere with the acquisition of literacy in the mother tongue, Gujarati. *General Secretary, Linguistic Minorities Protection Committee* could arguably be distinguished on the basis of the evidentiary record basis for this holding, either because that earlier decision addressed elementary education from the first standard onward and therefore was inapplicable to *Usha Mehta*, or because in between that earlier decision and *Usha Mehta* there had been an evolution in our understanding of the impact of instruction in a second language on developing literacy in the mother tongue. This reading of *Usha Mehta* presupposes a doctrinal continuity with *General Secretary, Linguistic Minorities Protection Committee*.

³¹ *General Secretary, Linguistic Minorities Protection Committee* (n 26) [38].

³² *General Secretary, Linguistic Minorities Protection Committee* (n 26) [48].

³³ *General Secretary, Linguistic Minorities Protection Committee* (n 26) [38].

³⁴ *Usha Mehta* (n 27).

But the better explanation is that *Usha Mehta* adopted a new theory of citizenship. This new theory of citizenship accepts the sociological reality of linguistic States, in which 'official and common business' is conducted in the regional language.³⁵ Gone is the metaphor of each State as 'a miniature India' where multilingual life is possible. Rooted in a more realistic understanding of the centrality of regional languages to economic, political, and economic life within States, the Court reasoned that for linguistic minorities, to refuse 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.³⁶ Under this new theory of citizenship, the objective that was *per se* unconstitutional in the Karnataka case—the promotion of fluency in the regional language for minority language speakers—is now in 'the larger interest of the State and the nation'.³⁷ The unstated premise is that linguistic reorganisation is a strategy that maintains the unity of India, and that laws which mandate instruction in regional languages support the success of that strategy, by ensuring the full participation in economic, political, and social life of all State residents, irrespective of the mother tongue. A later judgment of the High Court of Madras made this point even more powerfully, linking the rise of Tamil as 'a home language and as well a dominant language of people residing in the State irrespective of their community...' to linguistic reorganisation, which had taken place more than fifty years ago.³⁸

On this interpretation of *Usha Mehta*, this new theory of citizenship, based on a changed view of the facts on the ground after linguistic reorganisation, is what led the Supreme Court to accept that it was legitimate for the State to promote fluency, not just a working knowledge, in a regional language, which in turn justified the introduction of instruction at an earlier stage—that is, in elementary school. The other dimension of the case which may explain the shift in the case law is that the Gujarati parents sought in *Usha Mehta* to protect their ability, under Article 30, to offer their children education in English, which they defended as an exercise of the right to provide their children with a 'good general education'. Thus, the impact of mandatory instruction on developing fluency in a mother tongue was not really at the heart of the case. Now even if the right of linguistic minorities to provide English-language instruction falls within Article 30, it is arguably peripheral to its core concern of maintaining minority identity for minorities whose mother tongue is not English. Thus, not only was the State's interest stronger, but the rights-claim of the linguistic minority weaker, which may have led to the change in the Court's approach to assessing the constitutionality of the State law. Nor is this aspect of *Usha Mehta* idiosyncratic; it reflects the growing demand for English-medium language education, and the strategic use by linguistic minorities to protect their ability to offer such instruction to their children through the exercise of Article 30. Once again, constitutional claims about language, even if justified in the name of preserving cultural identity, are increasingly driven by material considerations—in this case, the economic opportunities afforded by English. The poor fit between the economic motivations that may play a growing role in Article 30 claims, and the theoretical justifications of that provision, may have been what led *Usha Mehta* to defer to the State legislature.

However, even after *Usha Mehta*, Article 30 claims by linguistic minorities to protect the right to choose English-medium instruction can still prevail. In *Associated Management*

³⁵ *Usha Mehta* (n 27) [10].

³⁶ *Usha Mehta* (n 27) [11].

³⁷ *Usha Mehta* (n 27) [10].

³⁸ *KR Ramaswamy* (n 28) [22].

of *Primary & Secondary Schools*, a five-judge constitutional bench of the Supreme Court faced a constitutional challenge to a Karnataka law that mandated instruction in the first to fourth standards in the mother tongue, for both Kannada speakers and linguistic minorities.³⁹ As in *Usha Mehta*, the parents desired to educate their children in English, and brought a challenge under Article 30(1). But unlike in *Usha Mehta*, the State law not only permitted mother tongue instruction for linguistic minorities, but in fact mandated it. Thus, the only conceivable basis for attacking the legislation was that it interfered with the ability of those parents to educate their children in English, which required the Court to squarely address whether this kind of claim fell within the scope of Article 30(1). The Court had no qualms in holding that it did. But unlike in *Usha Mehta*, the Court did not defer to the legislature and struck down the State law. Although the Court's reasoning was sparse, the best explanation of the holding must be that there was no plausible basis for justifying the requirement for mother tongue instruction as a means to promote knowledge of the regional language. The only possible justification for the State law was the paternalistic one of promoting the interests of the linguistic minorities in understanding their own language. In support for this argument, the State pointed to the findings made by courts in previous cases, like *General Secretary, Linguistic Minorities Protection Committee*, that mother tongue instruction was in the best interest of those children. The fatal flaw in the legislation must have been the failure of the State legislature, acting to promote the cultural identity of linguistic minorities, to defer to the linguistic minorities' own assessment of how best to preserve their cultural identity, and how important mother tongue education was to that goal. Ultimately, *Associated Management of Primary & Secondary Schools* grants this choice to linguistic minorities themselves.

V. CONCLUSION

The Indian constitutional experience has captured the global constitutional imagination in a number of areas that are addressed in this Handbook. The central areas of comparative preoccupation include the basic structure doctrine, judicial independence, social and economic rights, reservations or affirmative action, secularism and religion-State relations, and the rise of public interest litigation. When India has been included in comparative studies, the intellectual agenda has been set by the systems around which comparative constitutional law and politics have been framed—that is, the liberal democracies of the North Atlantic, South Africa, and Israel. To be sure, the Indian case now looms larger in global debates on democratic transition and consolidation, although this is a relatively recent development. The engagement with India has been narrow and selective, approached through the lens of constitutional law and politics in constitutional systems implicitly understood as paradigm or central cases.

We must study India on its own terms. To come to grips with Indian constitutional law and politics requires that we develop our research agendas around the actual practice of constitutional actors in India. Orienting the study of Indian constitutionalism around the

³⁹ *State of Karnataka v Associated Management of Primary & Secondary Schools* (2014) 9 SCC 485.

problems that have preoccupied constitutional actors opens the door to an alternative strategy of comparative case studies that shifts the field beyond the narrow set of jurisdictions that command central concern. The constitutional politics of official language policy, for example, has been central to the Indian constitutional experience, but has been largely ignored in the vast literature on comparative constitutional law. The Indian experience, both in the design of the Indian Constitution, and its judicial interpretation, deserves careful comparative attention. Above all, the Indian experience with language accommodation and its constitutional compromises through disaggregation reveal the possibilities for both functional disaggregation and spatial disaggregation. They remind us of the idea that different languages might be used for different things, not just in different spaces.⁴⁰ Language links India both with other countries in South Asia (eg, Sri Lanka), and with Turkey and Spain, where a major axis of cleavage for sub-State nationalist mobilisation has been language. This chapter provides a basis for that conversation to occur.

⁴⁰ On the long prehistory of this social and political practice in India, and the relationship between language politics and the nation-state, see Sheldon Pollock, *The Language of the Gods in the World of Men: Sanskrit, Culture, and Power in Premodern India* (University of California Press 2006).