CHAPTER XX

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CHAPTER XX

MISCELLANEOUS MATTERS

LANGUAGE

Introduction

20.1.01 An important issue which has given rise to considerable controversy and bitterness beetween the Union and some States is the question of language.

20.1.02 Language can be a powerful unifying as well as a divisive force depending on how it is handled. After an intensive debate in the Constituent Assembly, a compromise formula was arrived at and the present Part XVII (Official Lanugauge) of the Constitution was adopted. Being a compromise draft it did not, by its very nature, fully satisfy those who demanded Hindi to be the only official language and others who were opposed to it. Part XVII represented a delicate balance which needed to be maintained with care if national integrity was to be preserved. but some of the over zealous proponents of the rival schools tried to tamper with the balance no sooner than it was adopted. This led to unfortunate consequences.

20.1.03 Friction in Union-State relations in the sphere of language arises out of an apprehension that imposition of the language of one section of the population on others who have different mother tongues, is but a precursor to economic and social domination. Service under the Government is one of the major avenues of prestigious empoyment. Any feeling that owing to adoption of the mother tongue of one section of the people as official language the chances of those citizens whose mother tongue is different and who are not equally proficient in that language, would be detrimentally affected gives rise to considerable resistance and scope for fissiparous forces to exploit the sentiment. It is noteworthy that when a foreign language like Persian or English, in which all sections of the people had near equal disadvantage, was the official language, this kind of apprehension was less. As one State Government has pointed out, as late as the first half of the nineteenth century under Maharaja Ranjit Singh, the official language of the Lahour Darbar was Persian and not Punjabi in Gurmukhi script and his domain was anything but a nation-state.

20.1.04 This apart, the use of only one particular language as official or State langauge and for education in bilingual or multi-lingual areas has also been a frequent sources of conflict.

Constitutional Provisions Regarding Hindi

20.1.05 Part XVII of the Constitution deals with Official Lanuage'. Chapter I of this Part deals with 'Language of the Union'. In Article 343 it is declared that the offical language of the Union shall be Hindi in Devenagari Script.

20.1.06 Article 343 of the Constitution, *inter alia*, provides for the continued use of English for all official purposes of the Union for a period of fifteen years from the commencement of the Constitution. Clause (3) of Article 343 further empowers Parliament to provide for the use of the English language for any specified purposes even after the expiry of this period of fifteen years.

20.1.07 Article 351 of the Constitution casts a duty on the Union "to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genious, 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 vocabularly, primarily on Sanskrit and secondarily on other languages".

Historical Background

20.1.08 Towards the end of the period of fifteen years indicated in Article 343, the Official Language Act, 1963 was enacted by Parliament which provided for the continued use of English in addition to Hindi. An assurance was given at that time by Pandit Jawaharlal Nehru that English would continue as an alternative language for as long as the people required it. The decision in this regard was left not to the Hindi-knowing people but to the non-Hindi knowing people.

20.1.09 Subsequently, a violent and-Hindi agitation erupted in some areas when attempts were made to accelerate the process of introducing Hindi to the exclusion of English. The Official Language Act, 1963 was amended in 1967, to give statutory recongnition to the assurance held out in 1963. The Official

Language (Amendment) Act, 1968 which became effective from January 8, 1968 provides that "Not-withstanding the expiration of the period of fifteen years from the commencement of the Constitution..... the English language shall be used for purposes of communication between the Union and a State which has not adopted Hindi as its Official Language" and that this position "shall remain in force until resolutions for the discontinuance of the use of the English language for the purposes mentioned therein have been passed by the Legislatures of all the States which have not adopted Hindi as their official language and until after considering the resolutions aforesaid, a resolution for such discontinuance has been passed by each House of Parliament". It may be noted that no timelimit was laid down for the use of English as an alternate official language.

Criticism

20.1.10 One State Government has stated that India is a country of multi-linguism and one language of a region even if it consists of two or more States cannot and should not be given dominance over other languages of the country. It has observed that though, English has also been permitted to be used statutorily under the Official Language Act, for certain purposes specified in that Act, the Constitution does not recognise English as the Official Language, nor does English find a place in the Eighth Schedule to the Constitution and that all the Languages in the Eights Schedule to the Constitution should be declared the official languages (They have also stated that till then the assurance of Nehru that English shall be continued as the official language so long as the non-Hindi speaking people did not desire a change, should be given a constitutional guarantee and for this purpose a suitable provision should be incorporated in the Constitution itself by means of an amendment." Another State Government has expressed apprehension about zealous Hindi-Hindu Hind chauvinists, who want to impose their domination over the whole country, riding rough-shod over the urges and aspirations of other sections of the nation.

20.1.11 The Eights Schedule to the Constitution enumerates fifteen Indian languages, including Hindi. It does not include English. Article 344(1) envisages that the Commission to be set up (at the expiration of five years from the commencement of the Constitution and thereafter at the expiration of ten years from such commencement) shall consists of a Chairman and 'such other members representing the different language specified in the Eighth Schedule as the President may appoint'. Again, Article 351 dealing with the directive for development of the Hindi language contemplates enrichment of Hindi by assimilating the forms, style and expressions used in the languages specified in the Eights Schedule.If this were all, mere enumeration in the Eigth Schedule would not be of any great signficance. But its real import appears to have been psychological and to assure the regional languages their due place in the new India[1].

20.1.12 Recently, two States have adopted English as one of the State languages. This has lent support to the demand that English should be included in the Eighth Schedule.

20.1.13 The unique place which English occupies today in India is unquestionable. Most languages of India have over the years assimilated a large number of words and expressions from this language. The continued use of English as the associate Official Language of the Union does not turn on its inclusion in the Eighth Schedule.

20.1.14 We are of the view that, inasmuch as the Official Language Act has been amended in 1967 to give effect to the assurance held out in 1963 by Jawaharlal Nehru and the decision in regard to continuance of English is now left not to the legislatures of Hindi-speaking States but to the legislatures of other States which have not adopted Hindi as their official language. there is not need for this purpose to amend the Constitution.

20.1.15 We now consider the other demand that all the languages of the Eighth Schedule as also English should be declared the official languages of the Union. A moment's reflection would show that to have all the sixteen languages (including English) as the official language of the Union is a manifestly untenable proposition.

Development of the Official Language

20.1.16 The command of Article 351 is that in the process of developing Hindi, it is neither desirable nor necessary to replace commonly understood terms by difficult Sanskritised words. Undoubtedly, Sanskrit is to be the source and the ultimate resort when there is no word expressing that idea in common usage either in Hindustani or in the other languages of India. But the purpose behind this Article is clear,

that for Hindi to become an effective "medium of expression for all the elements of the composite culture of India", it should liberally take from all the scheduled languages of the country as well as Hindustani.

20.1.17 The expression 'Hindustani' has not been defined in the Constitution or in the General Clauses Act, But in the popular sense it means the language spoken by a very large majority of the people, particularly in the North. Interestingly, this simple and popular language, also adovocated by Mahatma Gandhi and experimented upon in the Azad Hindi Government by Netaji Subhas Chandra Bose, is quite rich in its vocabularly because it has assimilated world from other Indian languages as well as foreign languages like English French, Portuguese, Persian and Arabic, after making necessary adaptations. Hindustani is essentially a mixed language and was not born in colleges or Akademies. It was the common man in the bazaar that made the greatest contribution to the development of Hindustani. Its special characteristic is that it now has a wealth of expressions and terms, which through long usage have become part of most of the languages spoken in different areas of this vast country.

20.1.18 The development of the Official Language as envisaged in Article 351, would be best served by realising that it has to be the language of the common man and not of the an elitist coterie. It would be against the mandate of the Constitution if in the process of developing the Official Language the forms, styles and expressions of the various regional languages of India, including English which have become assimilated in Hindustani are sought to be discarded. Indeed such a misguided attempt may only retard the growth of a common language. We are of the view that growth of the Official Language can best be fostered by following the command of Article 351 both in letter and in spirit.

Employment Under Government

20.1.19 As observed earlier, service under the Union and State Governments is an important avenue for employment for the educated classes in India. Often, considerable prestige is attached to it. Further, possible domination of the services by one language group is seen as a prelude to economic or political domination . The apprehension cannot be removed unless convincing measures are taken to ensure that language is not used as a factor to create difficulties for persons belonging to other language groups either in recruitment or subsequent career in services. The Union and the State Governments have the right to demand that the person selected for employment under it should *later* acquire adequate knowledge of a language which is necessary for him to discharge his duties satisfactorily. A person selected for a job usually acquires requisite knowledge of the language in the course of his work. In this he can be assisted by imparting suitable instruction and in service training. Even now, officers of the All India Services, allotted to a State where the local language is not their mother tongue, are enabled to acquire adequate knowledge of that language and are expected to pass different tests in the same. This arrangement, coming from the pre-Independence period, is a very constructive approach to the entire problem. Much of the apprehension regarding economic or political domination prevailing in the non-Hindi speaking States would be removed if this constructive approach is followed in regard to all government employment. It is significant that Article 344(3) requires that the Commission constituted under Clause (1) shall in making their recommendations have due regard to the "interests of persons belonging to the non-Hindi speaking areas in regard to the public services".

Use of Local Language

20.1.20 The work of the Government, which involves or affects the local people, obviously must be carried on in the local language. This is even more important in a welfare State. It is necessary that all the forms, applications, letters, bills, notices, etc, are available in the local language as well as the official language. This is of particular relevance to the various departments of the Union Government as often this important aspect is lost sight of in a bid to bring about a mindless uniformity. It is equally relevant in the case of State Govern-ments also. In many of the States sizeable linguistic minorities are concentrated in certain areas. Unfortunately, overzealous action like painting road signs or issuing public notices only in Hindi or in State language, issuing municipal bills (even in the national capital) only in Hindi and retaliatory action in local language in some State capitals, increased bitterness.

Three Language Formula

20.1.21 The States Reorganisation Commission has *inter alia* recommended that the Government of India should, in consultation with State Governments, lay down a clear policy in regard to instructions in mother tongue at the secondary stage. The All India Council for Secondary Education recommended the

adoption of a 'three-language formula' in September, 1956. This formula was also endorsed by the Chief Ministers' Conference 1961 in a simplified form. The National Policy on Education 1968 also laid down that the 'three language formula' should be vigorously implemented. The National Policy on Education 1986 has also laid stress on the implementation of the same. Unfortunately, the 'three-language formula' has been observed more in breach. Some States are following what is virtually a two-language formula. One State is imposing what is virtually a four-language formula on linguistic minorities. We are of the view that effective steps should be taken to implement the 'three-language formula' in its true spirit uniformly in all the States in the interest of the unity and integrity of the country.

Linguistic Minorities

20.1.22 The States Reorganisation Commission had foreseen that none of the States would be totally unilingual and recognised the need of according to the linguistic minorities, sufficient opportunity for development so that they may not suffer from a sense of neglect or discrimination, as also the need to evolve an agency for enforcing the safeguards suggested by them. As a result of the recommendations of the States Reorganisation Commission, certain amendments were made in the Constitution and Articles 350-A and 350-B were incorporated. Article 350-B provides that there shall be a Special Officer for linguistic minorities to be appointed by the President. It is the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President. It also provides that the President shall cause all such reports to be laid before each House of Parliament and sent to the Governments of the States concerned. The first Special Officer (Commissioner) assumed charge in July, 1957.[2]

20.1.23 A Code of Conduct to safeguard the interests of the linguistic minorities was also evolved for giving necessary guidance to the States. A memorandom was circulated by the Ministry of Home Affairs in 1956. It was laid before both Houses of Parliament and commended to the State Governments for implementation. We have been informed by the Union Government that, on the basis of the Constitutional safeguards as well as the other safeguards agreed to at the national level for the linguistic minorities, detailed formula for practical implementation of the safeguards were evolved. A copy of the same is placed at Annexure XX. I.

20.1.24 We note with concern that the post of the Commissioner for Linguistic Minorities has been lying vacant since March, 1978 and the Office of the Commissioner for Linguistic Minorities has suffered neglect in recent years. So far twenty-six reports have been submitted. These reports have not been discussed in Parliament and have received scanty attention from Government. This needs to be rectified.

20.1.25 The agreement at a Chief Ministers' conference that, wherever there are a certain number of students[3] having a common mother tongue in a school, a teacher of the that language should be provided, is not being complied with in many places on grounds of non-availability of teachers and financial stringency.

The Union Government should consider providing finan-cial assistance and/or maintaining a pool of language teachers to alleviate these difficulties. The Finance Commission should, while recommending fiscal assistance, keep this responsibility of the States in view.

Need for Observing Forbearance and Caution

20.1.26 Politicisation of language has often tended to threaten the unity and integrity of the country. One of the most unfortunate results of the re-organisation of States has been that language has come to be regarded, informally (but never formally), as the basis for the formation of a State. Language chauvinists have carried this to such an extreme as to charge, those dealing with the problems of the people in the local language, with treason. Could there be a saddar commentary than this on the current state of affairs? Various disruptive forces in the country have exploited the language sentiment to further their own cause. The language issue, be it in connection with the extension of the use of the Official Language or in relation to employment in services under the Union and State Governments or in the realm of medium of instruction, requires careful and tactful handling and a constant effort for consensus. We are of the view that there is need for creating appropriate forum at various levels for not only defusing any potentially explosive situation, but also for evolving a positive approach. The Inter-Governmental Council and the Zonal Councils recommended by us, can play a very useful role in this connection.

20.1.27 Experience of the past thirty-seven years has more than amply demonstrated that misplaced zeal to impose the use of Hindi or a particular State language as a medium of instruction on those whose mother tongue is different and to treat the latter not as the first but only a third or even fourth language has invariably proved to be counter-productive. This only shows that, in the area of language, there is need to cultivate forebearance and caution. The safeguard provided for linguistic minorities under Article 347 needs also to be more purposefully implemented.

20.1.28 Unless sorted out in the near future, the language problem may become very explosive in a few years' time. If over-zealous action of some officials to force Hindi, especially the so-called "sudh" Hindi, on the non-Hindi, speaking people without their consent (in contravention of the promise given by successive Prime Ministers), is not resolutely curbed and steps are not taken to implement effectively the directive in Article 351 of the Constitution, serious divisive repercussions are likely to occur. This wise directive is today followed more by the market and private media like films than in official media and it is really this which is promoting Hindi in the country today. On the other hand, tactless action by some enthusiasts has tended to create an unhealthy reaction resulting, in fact, as a curb on the natural spread which Hindi was otherwise already having.

20.1.29 There is a strong case for renaming the "Committee of Parliament on Official Language" and the "Department of Official Language" of the Home Ministry, and the "Directorate General of Hindi" of the Ministry of Human Resource Development as "Committee of Parliament on Official and Scheduled Languages", “Department of Official and Scheduled Languages" and "Directorate General of Three-Language Programme", respectively, with a clear mandate to take measures which would promote enrichment of all these languages. It will be also expedient if the Heads of the above-mentioned bodies are selected, as far as practicable, from people whose mother tongue is not Hindi. This objective would be considerably helped if some popular books of high quality in different scheduled languages are printed in Devanagari (and/or Roman) scripts with the original text on one page and its translation in Hindi (and/or English) on the page facing it. The grammar of the Official Language may be simplified, e.g. having only one gender as in some of the scheduled languages.

20.1.30 The suspicion and resentment that exists in regions where "Shudh" Hindi is not spoken, needs to be allayed tactfully and imaginatively in the interest of unity and integrity of the country. It may be expedient to apply the name "Rashtrabhasha" only to this simpler, easier, mixed Hindi, with potential to develop in to a truly common language of the masses as a conciliatory gesture to those whose mother tongue is not Hindi and who have apprehensions about the so-called "pure Hindi" giving special advantage to the elites of only one part of the country.

Recommendations

20.1.31 The command of Article 351 is that, in the process of developing Hindi, it is neither desirable nor necessary to replace commonly understood terms by difficult Sanskritised words. The growth of the Official Language can best be fostered by following the command of Article 351 both in letter and in spirit. It would be against the mandate of the Constitution if, in the process of developing the Official Language, the forms, styles and expressions of the various regional languages of India, including English, which have become assimilated in Hindustani are sought to be discarded.

(Paras 20.1.16, 20.1.17 and 20.1.18)

20.1.32 Service under the Union and State Governments is an important avenue for employment for the educated classes in India. Proficiency in a particular language need not be insisted upon at the time of recruitment to ensure that language is not used as a factor to create difficulties in recruitment or subsequent career in services. A person selected for a job usually acquires requisite knowledge of the language in the course of his work. In this, he can be assisted by imparting suitable instruction and inservice training.

(Para 20.1.19)

20.1.33 The work of the Government, both Union and States, which involves or affects the local people must be carried on in the local language. This is even more important in a welfare State. It is necessary that all forms, applications, letters, bills notices, etc. are available in the local language as well as the official language. This is of equal relevance to State Governments which have sizeable linguistic minorities concentrated in certain areas.

(Para 20.1.20)

20.1.34 Effective steps should be taken to implement the 'three language formula' in its true spirit uniformly in all States in the interests of unity and integrity of the country.

(Para 20.1.21)

20.1.35 The code of conduct evolved to safeguard the interests of linguistic minorities must be strictly implemented. It is a matter of concern that the post of the Commissioner for Linguistic Minorities has been allowed to remain vacant for a long time. This situation needs to be rectified.

(Paras 20.1.23 and 20.1.24)

20.1.36 The agreement at a Chief Ministers' conference that, wherever there are a certain number of students having a common mother tongue in a school, a teacher of that language should be provided, is not being complied with in many places on grounds of non-availability of teachers and financial stringency. The Union Government should consider providing financial assistances and/or maintaining a pool of language teachers to alleviate these difficulties. The Finance Commission should, while recommending fiscal assistance, keep this responsibility of the States in view.

(Para 20.1.25)

20.1.37 Politicisation of language has often tended to threaten the unity and integrity of the country. There is need for creating appropriate forum at various levels not only to defuse any potentially explosive situation but also for evolving a positive approach. The Inter-Governmental Council and the Zonal Councils can play a very useful role in this connection.

(Para 20.1.26)

20.1.38 (i) There is a strong case for renaming the "Committee of Parliament on Official Language" and the "Department of Official Language" of the Home Ministry, and the "Directorate General of Hindi" of the Ministry of Human Resource Development as "Committee of Parliament on Official and Scheduled Languages", "Department of Official and Scheduled Language" and "Directorate General of Three-Language Programme", respectively, with a clear mandate to take measures which would promote enrichment of all these languages.

(ii) The objective of enrichment of all the languages would be considerably helped if some popular books of highquality in different scheduled languages are printed in Devanagari (and/or Roman) scripts with the original text on one page and its translation in Hindi (and/or English) on the page facing it.

(Para 20.1.29)

ANNEXURE XX-1.
DETAILED SCHEME OF SAFEGUARDS

On the basis of the Constitutional safeguards as well as the other safeguards agreed to at the national level for the linguistic minorities, detailed formulae for practical imple-mentation of the safeguards are indicated below subject-wise.

I. EDUCATION

(i) Provision of teaching at primary stage through the mother-tongue by appointing at least one teacher provided there are not less than 40 pupils speaking in that language in a school or 10 such pupils in a class.

(ii) The modern Indian Languages mentioned in the Eighth Schedule of the Constitution, as well as English, should be used as media of instruction at the secondary stage. Other languages may also be used in the hill districts of Assam and the district of Darjeeling in West Bengal. For the purpose of providing instruction at the secondary stage in mother-tongue of linguistic minorities, a minimum strength of 60 pupils in the last four classes and 15 pupils in each class will be necessary, provided that for the first four years a strength of 15 in each class will be sufficient.

(iii) Non-diminuation of pupil strength and school facilities including teachers for linguistic minorities as it existed on 1-11-56 (for Telugu pupils in Tamil Nadu and Tamil pupils in Andhra Pradesh—1-10-53) without specific sanction of the concerned Government.

(iv) Advance registration of applications from pupils desirous to have instruction through the minor languages for a period of three months ending a fortnight, before the commencement of school year.

(v) To make inter-school adjustment so that no applicant is refused facility of instruction through a minority language on the ground that the number of such applicants is not sufficient for opening a new section/class.

(vi) The Central Government should prepare model text-books both for the primary and secondary stages and the State Governments should undertake publication of these text-books instead of leaving it to private enterprises.

II. USE OF MINORITY LANGUAGES FOR OFFICIAL PURPOSE

(i) At district level and below, like municipality, Tehsil etc. where a linguistic minority constitutes 15—20 per cent of population, important Government notices, rules and other publications are to be published in minority languages also.

(ii) District-level—where 60 per cent of the population in a district use a language other than the official that language may be recognised as an additional official language for that district—Recognition for this purpose is to be given ordinarily to the major language mentioned in the Eighth Schedule.

(iii) At the State headquarters, a translation Bureau may be set up where arrangements may be made for translation of the substance of important laws, rules, regulations etc. into minority languages for publication.

(iv) In correspondence with the public, petitions and representations received in other languages are to be replied, wherever possible, in the languages of the petition/represen-tation.

III. RECRUITMENT TO STATE SERVICES

Language-knowledge of State Official language should not be a pre-requisite for recruitment to State services and option of using English or Hindi as a medium of examination should be allowed. A test of proficiency in the State Official Language should be held during the period of probation.

IV. MACHINERY FOR IMPLEMENTATION OF SAFEGUARDS

(i) State Level—The responsibility for the coordination of work relating to national integration (including safeguards for linguistic minorities) should be assumed by the Chief Minister who may be assisted in this task by the Chief Secretary. In addition, there should be a special officer in each State who will work under the direction of the Chief Secretary, and this officer should prepare a note periodically reviewing (1) the progress of implementation of the safeguards for linguistic minorities; (2) pending correspondence if any, on linguistic minorities with the Government of India, the Commissioner for Linguistic Minorities and other State Governments; (3) visits, if any, of the Linguistic Minorities Commissioner; and (4) other matters relating to national integration.

(ii) District Level—At the district level, the responsibility for coordination of work relating to safeguards for linguistic minorities and national integration should vest in the district officer.

UNION TERRITORIES

Introduction

20.2.01 During the post-Independence period, a number of Union Territories (UTs) evolved into self governing units. In each of them, the Parliamentary system of government was introduced, on the analogy of the one obtaining in the States and in the Union. Each of them acquired a Legislative Assembly and, to aid and advise the Administrator of the UT, a Council of Ministers responsible to the Assembly. However, the responsibility for the administration of a Union territory has continued to rest with the Union Government and Parliament. Except as otherwise provided by parliament by law, the president of India administers a UT, acting to such extent as he thinks fit, through an Adminstrator appointed by him (Art. 239).

20.2.02 All the UTs with Legislature, except pondicherry were eventually declared as States, thereby terminating their status as territories for the administration of which the Union Government and parliament had undivided responsibility. The historical developments in this connection are briefly described below.

Historical Developments

20.2.03 At the time the Constitution came into force, the Centrally administered areas were:—

(i) Andaman & Nicobar Islands, Coorg, North-East Frontier Tract and Naga Tribal Area. These areas were preponderantly tribal and had to be administered according to special laws.

(ii) Ajmer which had originally proved to be very difficult of adminstration by any province.

(iii) The Capital region, *viz.* Delhi which could not be placed under the administrative control of a State Government.

(iv) Bhopal, Bilaspur, Himachal Pradesh, Kutch, Manipur, Tripura and Vindhya Pradesh, the esrtwhile princely States or groups of such States which for strategic or other reasons, were not merged with adjoining provinces.

20.2.04 The areas mentioned at (ii) and (iii) & (iv) above as also Coorg were categorised as Part C States in the Constitution. Later, on the recommendations of the States Reorganisation Commission (1955), the categorisation of States into Parts A, B, and C was removed with effect from November 1, 1956 and some of the then existing Part C States were merged with the adjoining States. The remaining Part C States (*viz.* Delhi, Himachal Pradesh, Manipur and Tripura), the newly formed State of Laccadiv, Minicoy & Amindivi Islands, and the territory of Andaman & Nicobar Islands, were termed as Union territories in the Constitution.

20.2.05 After their liberation in 1961, the territories comprised in Goa, Daman and Diu were integrated with the Union by the Constitution (Tenth Amendment) Act as a Union territory. An assurance was given at that time by the Union Government that Goa would be kept a separate entity in direct connection with the Union Government and that its special features would be maintained till the people of Goa themselves desired a change.

20.2.06 In 1962, Pondicherry also was *de jure* made a part of the Indian Union and constituted as a Union territory. The Treaty between India and France for the cession of the French possessions of Pondicherry, Karikal. Mahe and Yanam provided *inter alia* that any constitutional change in the special administrative status of the territory which was in force prior to 1st November 1954 (the date on which the *de facto* possession of the territory was transferred to the Indian Government), would be made after ascertaining the wishes of the people of the territory.

20.2.07 In 1956, the Territorial Councils Act was enacted providing for a measure of local self-government in the Union territories of Himachal Pradesh, Manipur and Tripura , Territorial Councils were created with powers over local affairs and powers to levy certain taxes.

20.2.08 In 1963, the above arrangement was radically changed. Legislative Assemblies and Councils of Ministers were introduced in Himachal Pradesh, Manipur, Tripura, Goa, Daman & Diu, and Pondicherry. For that purpose, Article 239A was incorporated in the Constitution and the Government of Union Territories Act, 1963 was enacted under that Article. This was a historic step. It meant a reversal of the

earlier policy of the Union Government which was based on the recommendations of the States Reorganisation Commission that these UTs would not be able to subsist as separate administrative units without execessive dependence on the Union and that, with the exception of Delhi and the Andaman and Nicobar Islands, the remaining UTs would eventually have to be merged with the adjoining States. The new policy also recognised the fact that equipping these UTs with Legislative Assemblies and Councils of Ministers would arouse hopes and ultimately lead to demands for full state-hood, even though some of them would not be financially viable.

20.2.09 Himachal Pradesh became a State on January 25, 1971, and Manipur and Tripura on January 21, 1972. On January 21, 1972, the Mizo district of Assam and the North-East Frontier Agency were formed as the Union Territories of Mizoram and Arunachal Pradesh, respectively. On February 20, 1987, the two UTs became States. On May 30, 1987, Goa became a State, with Daman & Diu continuing as a Union Territory.

20.2.10 It is necessary to note that in the UTs, which do not have Legislatures, institutional arrangements have been progressively introduced for associating public opinion with their administrations. Delhi has an Executive Council responsible to a larger Metropolitan Council. The remaining UTs have each an Advisory Committee associated with the Union Home Minister and another Advisory Committee associated with the Adminstrator. In Dadra and Nagar Haveli, the Varishtha Panchayat, an indirectly elected body, functions, as the Advisory Committee associated with the Administrator.

Views of Union Territory Administrations

20.2.11 Among the Union Territories, those of Goa, Daman & Diu (prior to becoming a State), Pondicherry and Andaman and Nicobar Islands presented their memoranda to us. The Goa Administration highlighted the legislative, administrative and financial limitations on its working and suggested that it should be made a full-fledged State. The Pondicherry Administration observed that, in regard to such matters as are decided by the Administrator on the aid and advice of the Council of Ministers, the powers of the latter would *prima facie* appear to be the same as those exercised by the Council of Ministers in a full-fledged State, particularly with regard to State List subjects. However, in reality, the Union Territory Administration has only limited financial and administrative powers, particularly in matters like purchases, contracts, etc. The Andaman and Nicobar Islands Administration did not mention any specific difficulty faced by it.

20.2.12 As already mentioned in para 20.2.09 above, the demand of the Goa Administration has been met with the grant of Statehood to it. However, the difficulties that it faced as a Union Territory and those faced by the Pondicherry Administration seem to be worth examining and are summarised below.

20.2.13 As in every State, a UT Administration with Legislature has a Council of Ministers responsible to a Legislative Assembly to aid and advise the Lieutenant-Governor. However, unlike a State, it is subject to severe administrative and financial limitations, particularly on the developmental side.

20.2.14 Under the Rules of Business, the UT Administration has to obtain the prior approval of the Government of India before introducing any legislation relating to any subject in the Concurrent List or specified in the Second Proviso to Section 25 of the Government of Union Territories Act. In regard to the inclusion of various items in the annual budget, the approval of the concerned Ministries/Departments of the Government of India has to be obtained. Also, the prior clearance of Government of India is esential before any scheme costing more than Rs. 50 lakhs can be executed. The power to purchase various items are severely limited if the items are borne on the list of the Directorate General of Supplies & Disposal.

20.2.15 Thus, the Administration has been made dependant on the Union Government in many matters, which get settled only after protracted correspondence and long delays. If Statehood cannot be conferred, it is imperative that powers analogous to those of a State Government in all matters including legislative, financial and administrative matters should be delegated.

Views of Union Goverment

20.2.16 We have obtained the views of the Union. Government on the above suggestions. The Union Government has observed that Union Territories do not stand on the same constitutional footing as the States. The Union Government is responsible for the proper administration in Union Territories. It has been constantly reviewing delegation of powers to their Administrations and has delegated increased powers to them from time to time. The Union Government does not agree that financial and administrative powers delegated to the UT Administration are inadequate or that these have inhibited development.

Need for Maximum Delegation of Powers

20.2.17 We do not propose to deal with the question whether Pondicherry may be granted statehood. However, we cannot lose sight of the many similarities in the political and administrative arrangements in that UT with those in a full-fledged State. We consider it important that the programmes and aspirations of the people in the UT, as reflected by its Legislative Assembly, and Council of Ministers, should be fully met consistently however with its accountability to the Union Government and Parliament as also the constitutional responsibility of the latter for its proper administration. A suitable mechanism should be adopted by which the problems of the Administration can be resolved with the utmost expedition.

Proposed Standing Committee for Union Territories

20.2.18 We feel that there is considerable force in the plea that a UT Administration with Legislature should have larger powers in the legislative, financial and administrative fields to cut delays and help in development. In order that adequate powers are delegated as soon as the need for them arises and various pending matters are dealt with expeditiously, it seems essential that there should be a forum where the Lt. Governor and the Chief Minister of a Union Territory Administration with Legislature can discuss these matters with the Union Home Minister and concerned Union Ministers.

20.2.19 We recommend that all matters which need to be sorted out between the Union Government and a Union Territory Administration may be discussed by a Standing Committee for the Union Territory. The Committee may have the Union Home Minister as Chairman and the Lt. Governor and the Chief Minister of Union Territory with Legislature as members. When a matter concerning a Union Ministry other than the Ministry of Home Affairs comes up before the Committee, the Union Minister concerned may be coopted.

20.2.20 In the Chapter on "Inter-Governmental Council—Article 263", we have recommended that the five Zonal Councils constituted under the States Re-organisation Act, 1956 should be constituted afresh under Article 263. The Union Territory with Legislature will then continue to be a member of one of the Zonal Councils. The UT will also continue to be represented on the national Development Council which, we have recommended, should be re-named as the National Economic and Development Council. In these circumstances, the Standing Committee for the Union Territory may not deal with matters which can appropriately be discussed either in the Zonal Council or in the National Economic and Development Council.

Recommendations

20.2.21 All matters which need to be sorted out between the Union Government and a Union Territory with Legislature may be discussed by a Standing Committee for the Union Territory. The Committee may have the Union Home Minister as Chairman and Lt. Governor' and the Chief Minister of the Union Territory as members. When a matter concerning a Union Ministry other than the Ministry of Home Affairs comes up before the Committee, the Union Minister concerned may be co-opted.

(Para 20.2.19)

20.2.22 The Standing Committee for the Union Territory may not deal with matters which can appropriately be discussed either in the Zonal Council or in the National Economic and Development Council.

(Para 20.2.20)

3. HIGH COURT JUDGES

Introduction

20.3.01 The Constitution envisages a democratic republic with two levels of responsible government, each deriving its demarcated powers from the Constitution itself. In such a two-tier system, the legislative, executive and judicial powers of each Government are limited and disputes as to excess or lack of jurisdiction are inevitable. In deference to the basic principle, that the dispute-resolving authority should be independent of the contestants, the Constitution entrusts, in the main, their adjudication to the judiciary. The *final* power to interpret the Constitution and nullify an action on the part of any of the three branches of the Union or State Governments, which transgresses the Constitutional limits of its jurisdiction, vests in the Supreme Court which stands at the apex of the judicial hierarchy.[1] The Constitution empowers the judiciary to decide issues between citizens *inter-se*, citizen and Government,[2] and between one Government and another. The Supreme Court is not only the final court of appeal in civil and criminal matters, but also a court of original jurisdiction to decide disputes between—(a) the Government of India and one or more States, (b) the Government of India and any State or States on one side and one or more States on the other; (c) two or more States. It also exercises extraordinary original jurisdiction to issue writs for enforcement of fundamental rights.

20.3.02 One of the major concerns of Constitution—makers was to insulate the selection and appointment of Judges, particularly of the higher courts, from political pressures and extraneous influence and thereby ensure that only persons of professional competence and integrity were chosen to fill these high judicial offices.

Constitutional Provisions

20.3.03 The Constitution and organisation of the High Courts is a Union subject (Entry 78, List I). Since the Forty-second Amendment, the 'administration of Justice' is a Concurrent subject (Entry 11A, List III) Judges of the High Courts are appointed by the President (in effect the Union Council of Ministers) after consulation with the Chief Justice of India, the Governor and in; effect, the Chief Minister and the Chief Justice of the High Court (Article 217). Transfer of a Judge from one High Court to another is made by the President after consultation with the Chief Justice of India (Article 222). There is no Constitutional obligation to consult the State Government in the matter.; However, as a matter of courtesy, the views of the Chief Ministers of the concerned States are often ascertained before effecting the transfer. Thus, problems relating to the appointments and transfers of High Court Judges fall within the area of Union-State administrative relations.

20.3.04 Our attention has been drawn by a State Government to certain problems in the area of appointment and transfer of Judges of High Courts. The Chief Minister conveyed his views to us in regard to these problems in the form of a brochure. A few State Governments and some retired High Court Judges have also communicated their views in this matter. We have also gathered or taken cognizance of relevant data from published literature or reports referring to authentic sources. Two issues stand out—*First*, there have been endemic delays in filling up vacancies of Judges in the High Courts and this is one of the major factors contributing to the accumulation of arrears of cases in these courts. The *second* is that transfer of judges against their consent from one High Court to another has a demoralising effect on the higher judiciary, and compromises their capacity to administer justice without fear or favour.

20.3.05 While delays in the appointment of Judges continue, the arrears in the High Courts are piling up at an alarming rate. According to one report,[3] at the end of 1986, "there were 1,53,000 cases pending in the Supreme Court of which more than a fourth were for regular hearing mainly because the institution of new cases far exceeds the rate of disposlas". Similarly, in the High Courts, the institutions are far out-stripping disposals. At the end of 1985, the combined, total of arrears in the High Courts numbered 14 lakhs. This figure has gone up considerably since then.

20.3.06 At the end of 1986, in all the High Courts there were 62 vacancies consisting of 47 permanent and 15 Additional Judges. The problem is chronic. As on January 1, 1987 out of the full strength of 26 Supreme Court Judges, only 14 were in position. In the High Courts, out of a total strength of 440 sanctioned posts (409 permanent and 31 additional posts), as many as 57 posts consisting of 40 permanent and 17 Additional Judges were vacant. It was stated in the Lok Sabha that posts of 25 permanent and 65

Additional High Court Judges are to be created. If these figures are added to the existing vacancies, there would be a short-fall of 65 permanent and 82 Additional Judges in all the High Courts in the country.

20.3.07 These problems have been the subject of study and deliberation in various forums. The Law Commission of India dealt with these problems in its Fourteenth, Seventy-ninth and Eightieth Report. In its Seventyninth Report the Law commission after an empirical survey observed: "".....though the sanctioned' Judge strength of the High Courts in the country during the year 1977 was 352, only 287 Judges on an average were in position.

Likewise, in the year 1976 even though the sanctioned strength was 351, only 292 judges were in position ..... This disparity between the sanctioned strength, and number of Judges in position was apparently due to the fact that vacancies in the posts were not filled in as soon as they occurred. It is our considered opinion that delay in filling in the vacancies is one of the major contributory factors responsible for the accumulation of arrears." Consistently with its earlier report, the Law Commission in its Eightieth Report (1979) recommended that the Chief Justice of the High Court should initiate action for filling an anticipated vacancy, at least 6 months before the date on which it is expected to occur, and that the State Government should complete the processing of the Chief Justice's recommendation within an outside limit of six months. It emphasises the need to avoid delay in subsequent stages also.

20.3.08 The Estimates Committees of Parliament also considered the question of delay in the appointment of Judges of the High Courts and noted that as on 1-1-1986 there were sixty vacancies and on an average it took one to two years to fill the vacancies. The Committee noted with regret "that in spite of the specific recommendations of the Law Commission made as early as 1979, the position had been allowed to worsen further in as much as the vacancies in Supreme Court/High Courts have not been filled up for as long as two to four years." In their Thirty-first Report (1985-86) to the Eighth Lok Sabha the Estimates Committee recommended that "the matter be considered at the appropriate highest level (*viz.*, Chief Justice of India, Chief Justice of High Courts, Chief Ministers and Law Ministers) in order to simplify the procedural formalities. The procedure be so streamlined that the selection and the appointment of the Supreme Court/High Court Judge is synchronised with the actual occurrence of the vacancies" (Recommendation No. 7, para 4.12).

20.3.09 We enquired from the Union Government as to how far they had accepted and implemented the recommendations in the Eightieth Report of the Law Commission for Streamlining the procedure to eliminate delays in this matter. The Union Government has informed us: "The main reasons of the delay in filling up the posts of Judges in High Courts is the unusually long time taken by the Chief Minister to send their recommendations (in consultation with the concerned Governors) to the Government of India on proposals received by them from the Chief Justice of the High Courts. While it is appreciated that the State Government has to make appropriate enquiry about the persons proposed for appointment as Judges and come to a conclusion regarding their suitability or otherwise, there would seem to be no good cause for inordinate delay in sending their views to the Government of India. In the case of a few States, it has happened that the State authorities have sought to "Kill" the proposals made by the Chief Justice by simply not sending their recommendations to the Government of India in spite of several reminders from Union Law Minister. This aspect of "Killing" the proposal has been adversely commented upon by the former Chief Justice of India who was of the opinion that such practice was "unconstitutionsal."

20.3.10 The Union Government has affirmed that in this matter, they have noted the recommendations in the Eightieth Report of the Law Commission. They have further stated that the Law. Minister again reiterated (in November 1985) in his D.O. letter addressed to the Chief Ministers of States (with copies to the Chief Justices of the High Courts) that a proposal for filling a vacancy in the office of a Judge should be initiated and the recommendation forwarded to the Chief Minister by the Chief Justice six months in advance of the anticipated occurrence of the vacancy. The Chief Minister, in turn, should finalise his recommendation in consultation with the Governor within a month of the receipt of the Chief Justice's communication and send it to the Union Minister of Law and Justice. The Union Government has further observed that while Chief Justices do initiate a proposal usually in advance of the expected occurrence of a vacancy, the Chief Ministers take considerably longer time than one month to send their recommendations in consultation with the Governors. By another D.O. letter, the Law Minister has informed the Chief Ministers that the Government of India have decided that if the Chief Minister of a State does not give his views in consultation with the Governor on the proposal made by the Chief Justice within one month of its

receipt it would be presumed that the Chief Minister and the Governor have no views to express and further action to process the proposal in accordance with Article 217(1) would be taken.

20.3.11 One State Government has, however, pointed out that the names sent by them unanimously approved by the Chief Justice, the Governor and the Chief Minister, were not approved for over two years. Be that as it may, the Report of the Estimates Committee clearly shows that inordinate delays, sometimes extending to 4 years in filling vacancies of Judge have taken place. This is a matter of serious concern. Obviously, there have been delays not only at the State level, but also in some subsequent stages.

20.3.12 The Departmental instruction in the matter of appointment of Judges of High Courts conveyed to the States by the Government of India are in broad conformity with the recommendations in the Seventyninth and Eightieth Reports of the Law Commission. These instructions lay down a specific time-schedule within which the Constitutional functionaries having a consultative role in the appointment of High Court Judges, are required to complete their part of processing the proposal. To recapitulate briefly, the Chief Justice of the High Court has to initiate and forward his recommendation for filling an anticipated vacancy in that court, to the Chief Minister at least six months before the date on which it is excepted to occur. The Chief Minister, in turn has to finalise his recommendation in consultation with the Governor within a month of the receipt of Chief Justice's communication and send it to the Union Minister of Law and Justice. If the 'Chief Minister does not give his view in consultation with the Governor on the proposal made by the Chief Justice within one month of its receipt it would be presumed that the Chief Minister and the Governor have no views to express and further action to process the proposal in accordance with Article 217 will be taken.

20.3.13 The inordinate delays that are taking place in the appointments of Judges, are demonstrative proof of the fact that these instructions issued by the Government of India and the time-schedule prescribed thereunder for completing the processing of a proposal initiated by the Chief Justice of the High Court, are being honoured more in breach rather than in observance. Thus, the problem narrows down into the issue as to how strict compliance with these instructions and adherence to the time-schedule prescribed thereunder, is to be ensured? The questions further resolves itself into the query why these instructions are not being strictly obeyed or respected by the functionaries concerned? Clearly, the answer is that having no binding force, these instructions are being treated as more pious declarations to be observed or ignored at will. We are of the firm view that the only way of ensuring effective observance of these departmental instructions and the time-schedule specified thereunder, is to give them a binding force with the sanction of a Constitutional provision. The only appropriate manner in which this can be done is by inserting in Article 217, itself, a clause on these line:

1A. The President may after consultation with the Chief Justice of India, make rules for giving effect to the provisions of clause (1) of the Article, and in order to ensure that vacancies in the posts of Judges in the High Courts are promptly filled in, these rules may prescribed a time-schedule within which the various functionaries having consultative role in the appointment of Judges under this Article, shall complete their part of the process.

Transfer of Judges

20.3.14 This takes us to the second issue relating to the transfer of Judges from one High Court to another. The Union Government has informed us that the recommendation of the Law Commission of having a convention according to which one-third Judges in each High Court should be from outside, has been accepted and this decision is to be implemented gradually either by making initial appointments from outside the State or by effecting transfers.

20.3.15 The Supreme Court has held that Article 222 cannot be construed to mean that for transfer of a Judge to another High Court, it is necessary to obtain his consent *as a matter of Constitutional obligation.* Even so, the Court significantly suggested:

> "By healthy convention normally the consent of the Judge concerned should be taken, not so much as a Constitutional necessity, but as a matter of courtesy ..... where the Judge does not consent and the public interest compels, the power under Article 222 can be exercised."[4]

While holding that Article 222 postulates that the transfer of a Judge can only be made in public interest and after consultation with the Chief Justice of India, the Court enunciated "that the Chief Justice owes a

corresponding duty both to the President and to the Judge who is proposed to be transferred, that he shall consider every relevant fact ..... Indeed, it is his duty whenever necessary to elicit and ascertain further facts either directly from the Judge concerned or from other reliable sources. The executive cannot and ought not to establish rapport with the Judges which is the function and privilege of the Chief Justice."[4]

20.3.16 The Judgement in Sankalchand[4] was affirmed by a larger Bench of the Supreme Court in *S.P. Gupta v. Union of India and others* (1982).[5] Notwithstanding the legal position that under Article 222 a Judge can be transferred without his consent, a very large section of the enlightened public holds the view that as a matter of salutary convention and propriety, no Judge should be transferred without his consent. It is pointed out that such a convention was strictly observed for the first 25 years of the adoption of the Constitution. Even the Government of India had agreed to abide by this principle, in practice. This is evident from the following assurance given in the Lok Sabha on April 30, 1963 by the Hon'ble Law Minister of India:

> " ..... We had accepted it as a principle that so far as High Court Judges were concerned, they should not be transferred excepting by consent. This convention has worked without fail during the last twelve years and all transfers have been made not only with the consent of the transferee, but also in consultation with the Chief Justice of India."

We recommend that the Observance of this healthy convention should continue.

20.3.17 Indeed, the Union Government has communicated that a Judge proposed to be transferred is informed by the Chief Jusitce of India to give his reaction to the proposal and also mention his personal difficulties, if any, in this regard. These are considered by the Chief Justice of India and intimated by him to the Government alongwith his own views on the proposal for transfer of the Judges.

We recommend that the advice given by the Chief Justice of India regarding a proposal to transfer a Judge, after taking into account the latter's reaction and the difficulties, if any, should as a rule of prudence, be invariably accepted by the President and seldom departed from.

We further recommend that as a matter of healthy practice, the Chief Justice of India should, before formulating an opinion in his individual judgement as to the proposed transfer of a Judge from one High Court to another, take into confidence two senior Judges of the Supreme Court and ascertain their views.

Recommendations

20.3.18 Article 217 may be amended by inserting in it a clause as under:

"**1A.** The President may after consultation with the Chief Justice of India, make rules for giving effect to the provisions of clause (1) of the Article, and in order to ensure that vacancies in the posts of Judges in the High Courts are promptly filled in, these rules may prescribe a time-schedule within which the various functionaries having consultative role in the appointment of Judges under this Article, shall complete their part of the process."

(Para 20.3.13)

20.3.19 The healthy convention that as a principle High Court Judges are not transferred excepting with their consent should continue to be observed.

(Para 20.3.16)

20.3.20 Advice given by the Chief Justice of India regarding a proposal to transfer a Judge, after taking into account the latters reaction and the difficulties, if any should, as a rule of prudence, be invariably accepted by the President and seldom departed from.

20.3.21 As a matter of healthy practices, the Chief Justice of India should before formulating an opinion in his individual judgement as to the proposed transfer of a Judge from one High Court to another, take into confidence two senior judges of the Supreme Court and ascertain their views.

(Para 20.3.17)