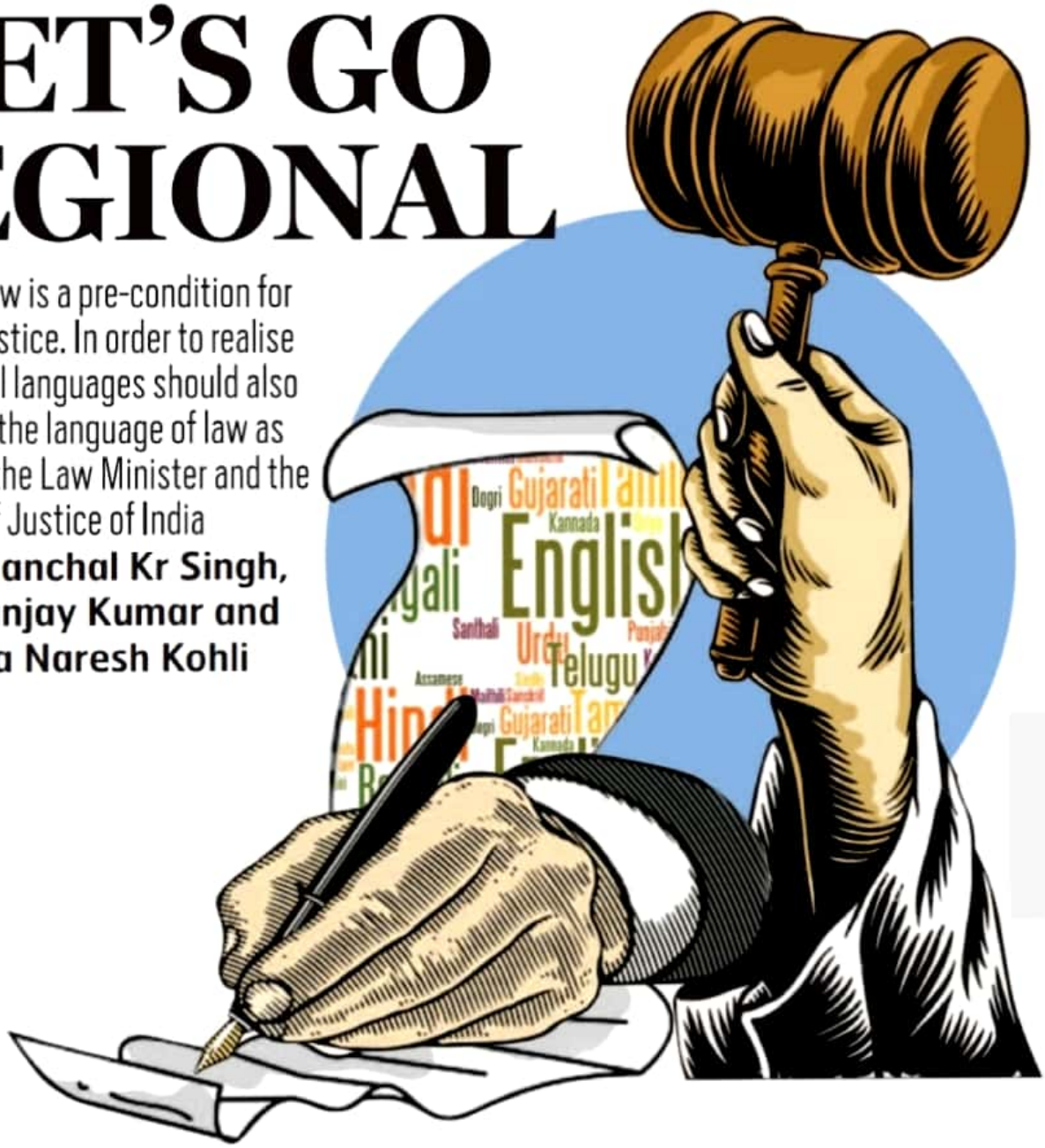
LET'S GO REGIONAL

Access to law is a pre-condition for access to justice. In order to realise this, regional languages should also be used as the language of law as proposed by the Law Minister and the Chief Justice of India

By Dr Chanchal Kr Singh, Dr Mritunjay Kumar and Aastha Naresh Kohli



THE exclusive use of English as the *lingua franca* in higher justice administration has led to a chasm between law and people. The question is whether legal language speaks the voice of the people, their hopes, experiences, expectations, anxieties and concerns.

Legal language is certainly different from scientific or general language. It is culture-specific and functions within a specific social field. It has diverse effects on different people with respect to experiencing law and legal system. In that sense, the elitist and colonial nature of Indian laws and lawyers' language is perhaps one of the reasons for the gap between law and people.

Fortunately, despite all the differences between the executive and apex judiciary, in recent months there appears to be a common ground of agreement between them—to rethink on legal language. The Union Law Minister and the Chief Justice of India have

favoured the use of regional languages. This will assimilate legal language with the general language of the people.

A committee has been constituted to look at the possibility of translating the judgments of the Supreme Court and High Courts in regional languages. These developments are a strong blow to the hegemonic belief inculcated by generations of lawyers that as India received the foreign law and legal system (Common Law), the system can only work with British English.

The problem is not unique to India. Similar problems are being faced by many countries. For example, it is frequently claimed that there should be a common legal language for the European Union for integration of different legal cultures. However, the problem faced by the European Union is not directly related to access to law and justice. The problem has a transnational character and mainly torments lawyers and administrators of European nations. But the problem in India is directly related to the relationship between the language of law and access to justice by all.

There is another comparison between continental Europe and India. Modern law and legal systems of almost all members of the European Union developed out of ancient Roman law written in Latin. Notable instances are the Twelve Tables (5th century BC) and Corpus Iuris Civilis of Justinian (6th century AD). Till the recent period, most of the books on law and jurisprudence in Europe were written in Latin. In the wake of Renaissance and Reformation, independent nation states emerged, whose legal status of sovereignty was recognised by the Peace of Westphalia in 1648. Thereafter, they developed their own legal language, freeing from the yoke of Latin, though many of its terminologies were retained.

However, high hopes regarding regional legal language were not sustained. One of the reasons may be that law in its language creates its own structure, techniques and values, which are not grasped even by well-educated people. Such problem, however, does not exist with respect to customary law which evolves like a tree of language

Union Law Minister Kiren Rijiju (left) and the Chief Justice of India DY Chandrachud have favoured the use of regional languages. This will assimilate legal language with the general language of the people.

amongst the demos.

In the Indian context, we have inherited a common legal system from the colonial rulers. Adapting the complex structure in an alien language or a partially language of a few Indians was not a great idea. English as a legal language created double jeopardy in the sense that codified law already had complexities and its reliance on an alien language like English further alienated the masses from accessing justice.

Even in contemporary times, the English educated elite class feels alienated from the law of the land, so it is far-fetched to expect the subaltern and marginalised sections of society to know the basics of English language. In this context, relying on regional languages in courts or translating the judgments of higher courts in regional languages are steps to be appreciated.

Historically, the connection between law and its language has been connected to access to law. Ancient India had a four-fold division of practical law. It was declared by *smriti* that every lawsuit rests on four feet—*dharma* (righteousness), *vyavhara* (practice), *caritra* (custom and usage) and *raj-sasana* (royal-decree). And each latter source overruled the previous one in case of a conflict between them. Which means that the customary practices were preferred by the courts over laws written in *sutras* and *sastras* in case of conflict between multiple ▶

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sources of law. Only the first source of law—*dharma*—existed in Sanskrit, which was monopolised by Sanskrit scholars as they were considered regal interpreters. The other three kinds of law remained in local or people's language. Practical law, applicable to and used by courts, was related to customs and *raj-sasana*. The latter was based on consent of and in the language of the people. Thus, Sanskrit did not occupy the status of legal-*lingua franca* in the Indian subcontinent.

Smritis exemplify the diversities of court, starting from family, clan, tribe and guild to royal courts assisted by the chief justice and other judges. Most of the courts relied on *sastric* laws, normatively, as one of the most authoritative sources, but they did not neglect customary laws. Rather, many of its features were absorbed in the *sastric* laws. It is an undeniable fact that India had a long oral tradition of law, which was later incorporated in the written tradition. In such a tradition, state and people's law were assimilated, so much so that no chasm was apparent between the two.

The modern Indian legal system recognises the supremacy of codified statues over customs. Often custom is tested at the touchstone of reason, equity, public policy, and legality. Customs are either absorbed into positive law or destroyed by state-centric legal tradition. The codified laws or legislations of parliament remain confined in legal rationality and their access is further obstructed by an alien language, the vocabulary of which is fearsome for those brought up in indigenous languages.

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The Indian legal system, in that sense, carries the colonial legacy of gap between law and people and serves mostly the interests of legal professionals who are trained in its language-based logic. Does the Indian legal system really represent the values of Indians, especially when its Constitution aspires to achieve equality, liberty, fraternity, and justice for all?

At the district level, the language of court is usually regional in India. When it comes to higher courts, English has hegemony in legal practice. Teaching law and its curriculum have already been confined to English in elite legal educational institutions, including NLUs. There are only a few traditional universities which carry a beacon of hope. The legal language adopted by the higher bureaucracy and corporate moguls too is predominantly English. In such an Anglicised transformation of law, do we really stand a fair chance of access to justice for the marginalised?

The foremost challenge of a regional legal language is making it precise and easy to comprehend, especially, as legal language creates its own rationality and usage, which are usually unfathomable. In recent years, Europe debated reviving Latin as a common language to integrate the pluralities of legal languages persisting in European societies. Such kind of revivalist sentiments is visible

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in the ruling apparatus of India as well. The New Education Policy, 2020 is an example of this. But when it comes to teaching and learning regional languages, there is hardly any concrete action plan.

The following recommendations could help:

(i) Regionalisation of legal language must be looked at from three dimensions—(a) teaching and learning of law in regional languages (b) availability of law and legal precedents in regional languages(c) use of regional legal language by lawyers and judges in courts.

(ii) A system of teaching and learning in the regional language of the state should be made compulsory as a non-credit course for the initial years along with the English language.

(iii) The Union and state governments should constitute a specific committee of experts who have good knowledge of regional languages and the law. Their task should be to make available all laws, rules, regulations, and ordinances in regional languages.

(iv) All lawyers in High Courts should be required to have minimum knowledge and proficiency in the regional language of the state. Lower courts should primarily function in the regional language. Records of such courts can accordingly be communicated in English as well as the regional language to the respective High Courts. Rules, regulations, and all previous judgments of the High Court and the Supreme Court should be made available in the regional languages as well as in Hindi so that the law can be easily communicated and is accessible to everyone at the village, taluk, and district level.

(v) It is evident that Sanskrit and other classical languages have lost their relevance in the modern India. Though, many of the social rules applicable today originated in those classical languages. The government may make efforts to prepare glossaries, by way of dictionaries and modern encyclopaedia on matters of rules drawn from those classical texts.

The dream of making law regional and accessible to all will require a revolutionary plan of action as the challenges are many. A coordinated approach between the judiciary, legislative bodies, and legal educational institutes can make this a reality. With the right policies and framework, this can be realised. ■

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