

(1994) 04 MAD CK 0004
In the Madras High Court

M. Ranka

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 21-04-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 137
Constitution of India, 1950 — Article 257
Tamil Nadu Official Language Act, 1956 — Section 4B

Citation : (1994) 2 MLJ 281 : (1995) WritLR 285

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—It is time we lifted the Language curtain which has descended crise-cross across India so that the Indian can understand

another Indian. St. Paul said in his First Epistle to the Corinthians (XIV. 11),
""Therefore if I know not the meaning of the voice, I shall be unto him

that speaketh a barbarian, and he that speaketh shall be a common tongue,
whatever it be. We may take pride in our mother tongue. We may in

the locality, town or region from where we come. But let us above all prides take
pride in being Indians."" So said Madon, J. in G.K. Dudani and

Others Vs. S.D. Sharma and Others, . But, the patriotic wisdom enshrined in the
above observation does not help us in this case in deciding the

validity of a legislative enactment and a Governmental notification issued
thereunder. We have to bear in mind that courts cannot substitute their

social and economic beliefs for the judgment of the legislative bodies. We have to
decide this case by constitutional measurement free of emotion

and predilection.

2. In W.P. No. 1059 of 1982, the petitioner is an advocate practicing in this

Court. He prays for issue of a writ of declaration declaring Section 4-

B of the Tamil Nadu Official Language Act (XXXIX of 1956) and the order - G.O.Ms. No. 9, Law Department, dated 18th/19th January, 1982

as invalid, unconstitutional, null and void and non est insofar as the petitioner is concerned. The only respondent in the petition is the State of Tamil

Nadu represented by the Secretary to the Government, Department of Law. In W.P. No. 1148 of 1982 filed by another advocate, the only prayer

is to issue a writ of certiorari calling for the records on the file of the Secretary to the Law Department, Government of Tamil Nadu, Madras,

pertaining to G.O.Ms. No. 9, Law, dated 18th January, 1982 and quash the same insofar as he is concerned. The second respondent is the Union

of India represented by the Secretary to the Ministry of Law, Justice and Company Affairs. In W.P. No. 1294 of 1982, filed by a member of the

Coimbatore Bar, the prayer is the same as in W.P. No. 1059 of 1982. The only respondent is the Government of Tamil Nadu. The petitioner in

W.P. No. 1148 of 1982 has filed W.P. No. 4287 of 1984 praying for issue of a writ of mandamus directing the Union of India to secure a

mandate in exercise of the powers under Articles 256 and 257 of the Constitution of India or otherwise requiring all the States and in particular

Tamil Nadu, the second respondent to retain or reintroduce English as the language of the Courts, Tribunals and other authorities subordinate to

High Court for use in the judicial proceedings so as not to violate the petitioner's fundamental rights guaranteed by Articles 19(1)(a), 19(1)(d),

19(1)(e) and 19(1)(g) of the Constitution of India or so as not to impede the exercise of power of transfer of High Court Judges under Article 222

of the Constitution or otherwise.

3. These writ petitions except W.P. No. 4287 of 1984 were heard by a Division Bench at some length and orders were reserved. The Division

Bench passed the following order on 30.3.1984:

Since an important question relating to the introduction of Tamil as the Official language of the Civil and Criminal Courts in Tamil Nadu is involved

in these writ petitions, we consider it desirable that these petitions are heard by a Full Bench. We therefore direct the office to place the papers

before the Honourable the Chief Justice for orders regarding posting of the matter before a Full Bench.

But the Full Bench was constituted only in November, 1993 and the matters were posted before us. The matter could not be heard continuously.

The counsel for the respondents concluded their arguments on 11.1.1994 and the matter was adjourned to 1.2.1994 for the reply of the petitioner

in W.P. No. 1059 of 1982 at his request. But for some reason or other, the matter could not be heard. Ultimately, the petitioner filed a memo on

15.4.1994 stating that he does not insist upon any further hearing in the case and the Bench may consider the material on record and pronounce

judgment.

4. II. History : The Constitution envisages Hindi as the common national language. But it could not straightaway replace English for reasons too well

known which do not require to be set out here. Suffice it to note that the controversy about language threatened the unity of the country and the

constituent assembly adopted half-heartedly a compromise formula known as ""Munshi-Ayyangar Formula"" resulting in the introduction of Part

XVII in the constitution containing special provisions relating to language.

5. Chapter I of Part XVII of the Constitution relates to language of the Union (Articles 343 and 344), while Chapter II deals with Regional

Languages (Articles 345 to 347). Chapter III deals with the language of the Supreme Court and the High Courts (Articles 348 and 349). Chapter

IV provides certain special directives (Articles 350, 350-A, 350-B and 351). Under Article 343, a period of fifteen years from the commencement

of the Constitution is fixed for continuation of English language for all official purposes of the Union for which it was being used immediately before

such commencement. Clause (3) of the Article enables the Parliament to make a law providing for the use of English Language even after the said

period of fifteen years for such purposes as may be specified in the law. In pursuance of the said provision, the Parliament passed the Official

Language Act, 1963 (Act 19 of 1963), by which the continuance of English language for official purposes of the Union and for use in Parliament

beyond the period of fifteen years from the commencement of the Constitution was authorised. We are not, in these cases, concerned with the

provisions in the said Act.

6. Even in 1956, the State of Tamil Nadu passed the Madras Official Language Act, 1956 (XXXIX of 1956), which received the assent of the

Governor on the 19th January, 1957, to provide for the adoption of Tamil as the language to be used for the official purposes of the State of

Madras. The preamble refers to the Constitution of India as enabling the Legislature of a State bylaw to adopt any one or more of the languages in

use in the State as the language to be used for all or any of the official purposes of the State. Obviously, the reference is to Article 345 of the

Constitution, though the number is not mentioned in the preamble. Section 2 of the Act provides that the Official language of the State of Madras

shall be Tamil. Notwithstanding that, Section 3 provides that English language shall continue to be used for all the official purposes of the State for

which it was being used before the commencement of that Act until the State Government, by notification u/s 4, otherwise direct in respect of any

official purpose specified in such notification. Section 4 enables the Government to issue notifications from time to time and direct that Tamil shall

be used in respect of such official purpose as may be specified in the notification. u/s 5, the language to be used in Bills, Acts, Ordinances or

orders, rules, regulations and bye-laws etc., shall be Tamil from such date as the Government may appoint. The Government was empowered to

appoint different dates in respect of the different items referred to in the section. Section 6 enjoins the placing of all notifications issued under

Sections 4 and 5 as soon as possible on the table of both: the Houses of the State legislature and shall be subject to such modifications by way of

amendment or repeal as the Legislative Assembly may make within fourteen days from which the House actually sits either in the same session or

in more than one session.

7. The State passed another legislation called the Madras State Legislature (Continuance of use of English Language) Act, 1964 (Act 38 of 1964)

providing for the continuance of the English Language for the transaction of business in the legislature of the State of Madras, notwithstanding the

expiration of the period of fifteen years from the commencement of the Constitution of India. In exercise of the powers conferred u/s 4 of Act

XXXIX of 1956, the State Government issued a notification in G.O.Ms. No. 5630 of 1969, Public (Tamil Development-I), dated 13th

November, 1969. The Notification referred also to Section 137 of the Code of Civil Procedure. Under that Notification, Tamil language was

officially adopted as the Court language in the subordinate courts and came into force on 14th January, 1970. Under the express terms of the

notification, Tamil was to be used by the subordinate courts only for recording evidence.

8. The State came under President's Rule by virtue of a proclamation issued under Article 356(1) of the Constitution on 31.1.1976. Under that

proclamation, the President of India assumed to himself all functions of the Government of the State and all powers vested in or exercised by the

Government, declared that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament and made certain

consequential and incidental provisions which he considered necessary and desirable for giving effect to the object of the proclamation. On the

same day, he passed an order pursuant to Sub-clause (i) of Clause (c) of the proclamation, directing that all the functions of the Government and

all the powers vested in or exercisable by the Governor of the State under the Constitution or under any law in force in the State which had been

assumed by him by virtue of Clause (a) of the proclamation, shall, subject to his superintendence, direction and control, be exercisable also by the

Governor of the State.

9. The Parliament passed an enactment called the Tamil Nadu State Legislature (Delegation of Powers) Act, 1976 (hereinafter referred to as

Central Act 41 of 1976"), in March, 1976, conferring on the President, the power of the State Legislature to make laws. Section 3 of the Act is in

the following terms:

3. (1) The power of the Legislature of the State of Tamil Nadu to make laws, which has been declared by the proclamation to be exercisable by or

under the authority of Parliament, is hereby conferred on the President.

(2) In the exercise of the said power, the President may, from time to time, whether Parliament is or is not in session, enact, as a President's Act, a

Bill containing such provisions as he considers necessary: Provided that before enacting any such Act, the President shall whenever he considers it

practicable to do so, consult a committee constituted for the purpose, consisting of forty members of the House of the People nominated by the

Speaker and twenty members of the Council of State nominated by the Chairman.

(3) Every Act enacted by the President under Sub-section (2) shall as soon as

may be after enactment, be laid before each House of Parliament.

(4) Either House of Parliament may, by resolution, passed within thirty days from the date on which the Act has been laid before it under Sub-

section (3) which period maybe comprised in one session or in two sessions, direct any modifications to be made in the Act and if the

modifications are agreed to by the other House of Parliament during the session succeeding such modifications shall be given effect to by the

President by enacting an amending Act under Sub-section (2) provided that nothing in this sub-section shall affect the validity of the Act or of any

action taken thereunder before it is so amended.

That Act received the Assent of the President on 22.3.1976.

10. By virtue of the power conferred by the aforesaid Act, the President enacted Tamil Nadu Official Language (Amendment) Act, 1976 (41 of

1976)(hereinafter referred to as "the Act"), amending the provisions of the Tamil Nadu Official Language Act, 1956. The Amendment Act

provides for the insertion of Sections 4-A and 4-B in the Act of 1956. The two sections read as follows:

4-A. Declaration of Tamil as the language of Courts for recording evidence in all proceedings : Notwithstanding anything contained in Sections 2, 3

and 4 of this Act or in the Code of Civil Procedure, 1908 (Central Act V of 1908) or in the Code of Criminal Procedure, 1973 (Central Act 2 of

1974), Tamil shall be the language of all-

(i) Civil and Criminal Courts subordinate to the High Court; (ii) Tribunals;, and

(iii) Rent Courts and Revenue Courts, for the purpose of recording evidence in all proceedings"

Provided that the Presiding Officer of any such court or tribunal may, in recording evidence in Tamil, employ English words and phrases, wherever

he feels, necessary, to bring out the exact purport and meaning;

Provided further that the High Court may, by general or special order, permit-

(i) any class of Presiding Officers of Civil and Criminal Courts, or Tribunals, or

(ii) any Presiding Officer of any such court or Tribunals to record evidence in English in such circumstances and for such period as may be special

in such order;

provided also that the Board of Revenue may, general or special order, permit-

- (i) any class of Presiding Officers of Rent courts or Revenue Courts, or
- (ii) any Presiding Officer of any such court, to record evidence in English in such circumstances and for such period as may be specified in such order.

Explanation : In this section and in Section 4-B, ""Rent Court"" or ""Revenue Court"" shall mean any Court presided over by an Officer of the Revenue Departments

4-B. Declaration of Tamil as the language of courts for writing judgments, decrees and orders : (1) Notwithstanding anything contained in Sections 2,3 and 4 of this Act of in the Code of Civil Procedure, 1908 (Central Act V of 1908) or in the Code of Criminal Procedure, 1973 (Central Act 2of 1974) and subject to the provisions of Sub-section (2), Tamil shall be the language of all-

- (i) Civil Courts subordinate to the High Court;
- (ii) Criminal Courts subordinate to the High Court;
- (iii) Tribunals; and
- (iv) Rent Courts and Revenue Courts for the purpose of writing judgments, decrees, and orders;

Provided that the Presiding Officer of any such court or Tribunal may, in writing judgments, decrees and orders in Tamil, employ English words and phrases wherever he feels necessary, to bring out the exact purport and meaning.

Provided that the High Court may, by general or special order, permit-

- (1) any class of Presiding Officers of Civil or Criminal Courts, or tribunals, or
- (ii) any Presiding Officer of any such Court or Tribunals, to write judgments, decrees and orders in English in such circumstances and for such period as may be specified in such order.
- (2) The provisions of Sub-section (1) shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed in respect of-
- (i) Civil Courts subordinate to the High Court;
- (ii) Criminal Courts subordinate to the High Court;
- (iii) Tribunals; and

(iv) Rent Courts and Revenue Courts.

The said Act came into force on 12.11.1976. Acting u/s 4-B, the State Government made an order G.O.Ms. No. 191, Law, dated 13th

November, 1976 making Tamil the language in which judgments, decrees and orders are to be written by the subordinate criminal courts.

11. The proclamation under Article 356 of the Constitution relating to the State expired on 30.6.1977. But, before the said date, when the

proclamation was in force, the Parliament passed the Constitution (Forty-second amendment) Act, 1976. By Section 51 of the said Amendment

Act, Article 357(2) of the Constitution was amended and it came into force on 3.1.1977. Before the said amendment, Clause (2) in Article 357

was in the following terms:

Any law made in exercise of the power of the legislature of the State by Parliament or the President or other authority referred to in Sub-clause (a)

of Clause (1) which Parliament or the President or such other authority would not, but for the issue of proclamation under Article 356, have been

competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the proclamation

has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which

shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.

That clause was substituted by the following clause by the amendment:

Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in Sub-clause

(a) of Clause (1) which Parliament or the President or such other authority would not, but for the issue of a proclamation under Article 356, have

been competent to make shall, after the proclamation has ceased to operate, continue in force until altered or repealed or amended by a competent

Legislature or other authority.

It has to be noted that the amendment of the Constitution came into force when the proclamation of emergency was in operation, with the result,

the Act passed by the President viz., the Tamil Nadu Official Language (Amendment) Act, 1976, would continue in force inspite of the expiration

of the proclamation until altered or repealed or amended by a competent

Legislature or other authority. It is brought to our notice by the learned

Advocate General that the said Act was placed before the Council of States on 20.6.1977 and before the House of the people on 22.6.1977 and

thus it had received the approval of both the Houses of the Parliament.

12. u/s 4-B (2) of the Tamil Nadu Official Language Act, the State Government is empowered to notify the date or dates from which the

provisions of Sub-section (1) of that Section shall come into force. In exercise of the said powers, the State Government issued a notification in

G.O.Ms. No. 9, Law, dated 18th January, 1982 appointing the 1st day of February, 1982 as the date on which the provisions of Sub-section (1)

of Section 4-B of the Tamil Nadu Official Language Act shall come into force in respect of (1) civil courts subordinate to the High court; (ii)

tribunals and (iii) rent courts and revenue courts. The same was placed before the State Legislative Assembly on 22.3.1982 and before the State

Legislative Council on 23.3.1982.

13. III. Contentions : The petitioner in W.P. No. 1059 of 1982 has raised the following contentions:

1. The President was not competent to enact the amendment Act of 1976, as he had not consulted a Committee as provided in the proviso to

Section 3(2) of the Central Act 41 of 1976.

2. The provisions in Articles 345 to 347 of the Constitution do not permit the use of any regional language in courts. The expression ""official

purpose of the State"" found in the Article would not include judicial proceedings or purpose of courts.

3. The subordinate courts are under the control of the High Court under Article 235 of the Constitution and in view of the provisions contained in

Article 348 of the Constitution, the State Legislature has no power to determine the language to be used in such courts.

4. Entries 2 and 13 in List III of the Seventh Schedule of the Constitution on which reliance is placed by the State will not cover the language of the courts.

5. Under Article 356, the President can be vested only with such powers of the State Legislature as would fall within the entries in List II in the

Seventh Schedule and none other. 6. The Presidential enactment is violative of Articles 14 and 19(1)(a) and (g) of the Constitution and therefore,

void, it also offends Article 13(2) and Article 315 of the Constitution.

14. The petitioner in W.P. Nos. 1148 of 1982 and 4287 of 1984 put forward the following contentions:

1. The power to prescribe an official language for a State is vested exclusively on the State Legislature and it could not have been validly exercised

by the President of India as evident from the proclamation issued by him read with the relevant provisions of the Constitution. It is submitted that

the power under Article 345 of the Constitution conferred on the State Legislature to adopt by law any one or more of the languages in use in the

State as the language or languages to be used for all or any of the Official purposes of the State will not fall within the expression "power to make

laws" found in Article 357 and, therefore, the President is conferred only with a limited power and not all the powers of the Legislature.

2. Even assuming that the President could have validly passed the Amendment Act, Section 4-B of the Tamil Nadu Official Language Act was not

in force on the date of the impugned notification i.e. 19.1.1982 as it had already lapsed and it was not saved by the forty-second Amendment of

the Constitution.

3. The expression "official purpose" found in Article 345 of the Constitution would not include "judicial proceedings before the subordinate courts".

4. The impugned notification is unconstitutional in as much as it cuts into the powers of superintendence and control of the High Court over the

subordinate courts and violates the fundamental rights of the petitioner guaranteed by Articles 19(1)(d),(c) and (g) of the Constitution.

5. As it is now finally established, that Judges can be transferred from one High Court to another from time to time in variable numbers, that power

of transfer cannot be whittled down or affected in any manner by making the regional or local language as the language of the courts at any level.

The counsel for the petitioner in W.P. No. 1294 of 1992 has adopted the above arguments.

15. IV. Discussion : The above contentions can be conveniently classified under four broad heads as below and considered:

A. Legislative competence : That will cover contentions 2 to 5 of the petitioner in W.P. No. 1059 of 1982 and contentions 1 and 3 of the petitioner

in W.P. Nos. 1148 of 1982 and 4287 of 1984.

B. Failure to adopt the prescribed procedure : Non-consultation with the Committee u/s 3(2) of the Central Act 41 of 1976. That will cover

contention No. 1 of the petitioner in W.P. No. 1059 of 1982.

C. Violation of Articles 13, 14, 19(1), 222 and 315 of the Constitution of India : That will cover contention 6 in W.P. No. 1059 of 1982 and

contentions 4 and 5 in the other writ petitions.

D. Section 4-B of the Tamil Nadu Official Language Act : Whether inoperative that will cover contention 2 in W.P. Nos. 1148 of 1982 and 4287

of 1984.

16. Before proceeding to discuss the merits of the contentions, It is necessary to refer to the provisions in the CPC and the Code of Criminal

Procedure, which have been in existence even prior to the advent of the Constitution of India. Section 137(1) of the CPC provided that the

language, which on the commencement of the Code was the language of any court subordinate to a High Court, shall continue to be the language

of such subordinate court until the local Government otherwise directs. Under Clause (2), the local Government was empowered to declare what

shall be the language of any such court and in what character applications to and proceedings in such Courts shall be written. Under Clause (3),

where the Code requires or allows anything other than the recording of evidence to be done in writing in any such court, such writing may be in

English, but if any party or his pleader is unacquainted with English a translation into the language of the court shall, at his request, be supplied to

him. The word "local" appearing in clauses (1) and (2) was substituted by the word "State" in 1950 after the passing of the Constitution. Section

138 of the CPC empowered the local Government to issue a notification in the local Official Gazette directing with respect to any Judge specified

therein or falling under a description set forth therein, to take down evidence in the English language and in the manner prescribed in cases in

which an appeal was allowed. The words "local Government" were substituted by the words "High Court" by Act 14 of 1914. The words "Local

Official Gazette" were substituted by the words "Official Gazette" in 1937.

17. In the Criminal Procedure Code of 1898, Sections 218(2), 221(6), 265(1), 356, 357, 367 and 372 contained provisions relating to the

language of court and the use of English with respect to matter specified therein.

It is not necessary for the purpose of this case of refer to them in detail. Section 558 of that Code enabled the State Government to determine what shall be deemed to be the language of each court within the territories administered by such Government, other than a High Court of Part A State or Part B State for the purpose of the Code. In the Criminal Procedure Code of 1973 (Act 2 of 1974), Section 265 provides that every record of the substance of the evidence in a case tried summarily and judgment therein shall be written in language of the court. Section 272 empowered the State Government to determine, for the purposes of the Code, the language of each court within the State other than the High Court. Section 277 relates to the language of record of evidence. Section 354 provides that except as otherwise expressly provided by the court, every judgment referred to in Section 353 shall be written in the language of the court. We have already referred to the notification made in G.O.Ms. No. 191, dated 13th November, 1976 with reference to subordinate criminal courts, as a result of which Tamil has become the language for the purpose of writing judgments decrees and orders by those courts. We have also referred to the notification u/s 4 of Act 39 of 1956, whereby Tamil was to be used by the subordinate courts for recording evidence. Strictly speaking, Section 4-A of the Amendment Act was in effect on incorporation of the notification of 1969 as part and parcel of the Act of 1956. Sections 4-A and 4-B contain a non obstante clause by which they are given overriding effect as against the provisions in Sections 2 to 4 of the said as well as the CPC and the Code of Criminal Procedure.

18. It will also be convenient here to refer to the judgment of a single Judge of this Court in *Ramayee v. Munniyandi Konar* (1978) 2 M.L.J. 442. The learned Judge held that a judgment written by a District Munsif in Tamil was no judgment at all and it was a mere waste paper inasmuch as Section 4-B was not notified by the State Government with reference to civil courts. The learned Judge said:

Till today no notification has been issued by the State Government making Tamil the medium of expression in judgment, decrees and orders in our subordinate civil courts. This means that even now they must not be expressing themselves in any language other than english. For all we know, this situation may not last long. But, for the desired change to occur, it is the State

Government who should be the prime mover. We, Judges, cannot usurp the exclusive initiative either anticipatorily or even experimentally. Hence, until the day the State Government Acts, I am afraid the subordinate civil judiciary in Tamil Nadu will have to go on composing their judgments in language which is, recognizably, English. That judgment was probably the cause of action for the issue of the impugned notification by the Government in 1982.

19. A Legislative Competence : It is vehemently contended that the proviso to Article 345 of the Constitution does not enable the State Legislature to make a regional language, the language of courts. It is argued that the expression ""official purposes"" used in the proviso excludes courts and judicial proceedings. According to learned Counsel ""official purposes"" can only mean administrative and legislative purposes but not judicial proceedings. Support is sought to be derived from the provisions of Act XXXIX of 1956 itself. It is contended that if the expression ""official purposes"" includes courts and judicial proceedings, there is no necessity at all to introduce Sections 4-A and 4-B by amending the Act. It is further argued that Part XVII is a special provision in the Constitution relating to Official Language. Chapter III thereof relates to Courts. Though Article 348 refers only to the Supreme Court and the High Courts expressly, it would include the subordinate courts as they are all under the control of the High Court. Under Clause (2) of Article 348, the expression ""official purposes of the State"" is used in juxta-position to the expression ""proceedings in High Court"" that, according to learned Counsel, shows that ""official purposes of the State do not by themselves include proceedings in court and, therefore, there was a necessity to mention expressly the proceedings in the High Court in the Article. If ""official purposes of the State included proceedings in courts, there would have been no necessity at all to mention separately ""proceedings in the High Court"" Our attention is drawn to Article 120 of the Constitution, which provides that notwithstanding anything in Part XVII, but, subject to the provisions of Article 348, business in Parliament shall be transacted in Hindi or in English. It is contended that the supremacy of Article 348 is clearly recognised by the Constitution and ""proceedings in courts"" will stand on a different pedestal from other ""official purposes of the State"". A similar provision is found in

Article 210, which relates to the language to be used in the State Legislatures. There again, it is made subject to Article 348.

20. We do not find any substance in any of the above contentions. The expression used in Article 345 is ""official purposes of the State"". It is

elementary that the State comprises of three organs, the executive, the Legislature and the judiciary. Unless the context otherwise indicates, ""official

purposes of all the three organs of the State. The courts and judicial proceedings cannot be excluded there from. It is only because of that, the

Constitution took care to expressly exclude the Supreme Court and the High Courts from the ambit of Articles 343 to 347. There is no merit in

saying that the language of the High Court shall be the language of the subordinate courts as they are under the control of the High Court. Article

235 enumerates the matters with respect to which the High Court has control over the courts subordinate to it. That provision does not override

the provisions of Article 345. A perusal of Article 235 shows that it pertains, to the administrative control of the subordinate courts. If the said

article is construed in the manner in which the petitioners wanted it to be construed, it would run counter to the provisions of Article 345. It has

been repeatedly held that if it is a matter of construction of the Constitution by the Parliament, the court will have to find out the expressed intention

from the words of the Constitution or the Act, as the case may be, and if two constructions are possible, the court must adopt that which will

ensure smooth and harmonies working of the Constitution and eschew the other which would lead to absurdity or give rise to practical

inconvenience or make well established provisions of existing law nugatory. If the interpretation put forward by the petitioners is accepted, Article

345 will become a dead-letter in so far as subordinate courts are concerned, we cannot accept such an interpretation. The meaning of the word

control"" used in Article 235 of the Constitution and the nature and scope thereof have been explained in Baradakanta Mishra Vs. High Court of

Orissa and Another, . Referring to the earlier decisions of the court, it is held that the word "control" includes disciplinary control and it is vested in

the High Court to effectuate the purpose of securing independence of the subordinate judiciary. It is stated that the High Court is made the sole

custodian of control over the judiciary, which is not merely the power to arrange the day-to-day working of the court, but includes something in

addition to the mere superintendence of the court and over conduct and discipline of the Judges. The same view is reiterated in Chief Justice of

Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , that will not cover the language to be used in the courts. Language is not a matter as

between the High Court and the subordinate courts, but it is a matter relating to a litigant who approaches the subordinate court. That is why a

separate provision is made in Article 345 of the Constitution which is in consonance with the previous legislative history. As seen from the

provisions of the CPC and Code of Criminal Procedure, the determination of the language of court was left with the local Government previously

and after the passing of the Constitution with the State Government. It is worthwhile referring to the following passage in the judgment of Division

Bench of the Allahabad High Court in Prabhandhak Samiti and Another Vs. Zila Vidyalaya Nirikshak, Allahabad and Others, :

6. It cannot be doubted that the proceedings of the courts functioning for the benefit of the inhabitants of any place must on principle be conducted

in a language understood by them. It does not appear to be sufficiently realised that the employment of an indigenous language is essential for

maintaining the democratic character of the courts. They can be linked with the people only by using their language it is a necessary democratic

feature of the courts and one of the foundations of socialist justice. Even Communist thinkers like Lenin attached great importance to the

democratic form of the functioning of the courts. Lenin said that:

Courts will be able to ensure, through democratic form conforming to the principles of the Soviet system, that aspirations for discipline and self-

discipline do not remain vain aspirations...(V.I. Lenin ""Collected Works"" Vol.27, page 218 Mahatma Gandhi down right rejected the slavish

adoption of a foreign language.

He said:

I must not be understood to decry English or its noble literature. The columns of the Harijan are sufficient evidence of my love of English. But the

nobility of its literature cannot avail the Indian nation any more than the temperate climate or the scenery of England can avail her. India has to

flourish in her own climate and scenery and her own literature, even though all the three may be inferior to the English climate, scenery and literature.

We and our children must build on our own heritage. If we borrow another, we impoverish our own. We can never grow on foreign victuals. Life

and Thoughts of Mahatma Gandhi"" edited by Krishna Kripalani, page 154.)

In the same judgment, the Bench accepted the argument that ""official purposes of the State"" would include judicial functions of the State and said

that dispensation of justice is one of the fundamental acts of the State.

21. Another argument advanced by the petitioners is that Entries 2 and 13 of the Concurrent List in the Seventh Schedule will not cover the

impugned Legislation. According to the petitioners, the two entries relate only to the procedure and not to the language to be used in courts. It is

also also contended that the impugned provisions contain a nan obstante clause that they will have effect notwithstanding anything contained in the

two Codes and, therefore, the State cannot rely upon those two Entries. It is argued that the legislation is a colourable one and it is totally void.

Another limb of the argument is that under Article 357(2) of the Constitution, the President can be vested only with the ordinary legislative powers

of the Legislature and not with any Constitutional power. The argument is that under Article 345 of the Constitution, the State Legislature has a

Constitutional power to adopt any one or more of the languages in use in the Slate or Hindi as the language or languages to be used for all or any

of the official purposes of the State. That power is entirely different from the ordinary legislative power which is conferred on the Legislature over

the matter set out in Lists II and III of the Seventh Schedule. There is absolutely no merit in these arguments. Article 345 also contemplates only

the making of a law by the Legislature in order to adopt any one or more of the languages. In our opinion, learned Counsel, wants to make a

distinction between tweedleddum and tweedledee. It is only by a legislation under Article 345, the State Legislature can adopt a language as the

language for the official purposes of the State. That legislative power can certainly be vested in the President under Article 357(2) and that has

been done in this case by the Tamil Nadu State Legislature (Delegation of Powers) Act, 1976 passed by the Parliament. Under that Act, the

power of the State Legislature to make laws has been conferred on the President. That power included the power to make a law under Article

345. There is also no substance in the contention that the impugned legislation

will not fall under Entries 2 and 13 of List III of the Seventh

Schedule. We have already stated enough to show that the language of the courts was undoubtedly a matter dealt with by the Codes of Civil

Procedure and Criminal Procedure. There is no question of the impugned legislation being a colourable one. Even in the matter of construing the

Entries in the Lists given in Seventh Schedule of the Constitution, it has been held in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State*

of West Bengal and Others, , that every attempt should be made to harmonise the apparently conflicting entries not only of different lists but also of

the same list and to reject that construction which will rob one of the entries of its entire content and make it nugatory.

22. in *Jaora Sugar Mills (P) Ltd. Vs. State of Madhya Pradesh and Others*, , the court referred with approval to the observation made by

Mukherjea, J. in *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, , that the idea conveyed by the expression colourable legislation

is that although apparently a Legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it

transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. The court

said that where a challenge is made on that ground, what has to be proved to the satisfaction of the court is that though the Act ostensibly is within

the legislative competence of the Legislature in question, in substance and in reality it covers a field which is outside its legislative competence. The

same proposition is reiterated in *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, .

23. It has been held in *A.K. Roy and Others Vs. Union of India (UOI) and Others*, , that Ordinances issued by the President and the Governors

and the laws made by the President or his delegate under Article 357(1) partake fully of legislative character and are made in the exercise of

legislative power, within the contemplation of the Constitution. Hence, the validity of the said law has to be decided as any other legislative

enactment. If the State Legislature was competent to pass an enactment, that power having been vested in the President under Article 357 of the

Constitution, he was also competent to pass the same. We have no hesitation to hold that the impugned provisions do not suffer from want of

legislative competence either on the part of the State Legislature or of the part of the President of India.

24. B. Failure to adopt the prescribed procedure : It is argued that the Amendment Act is void as the President failed to consult a Committee as

required by Section 3(2) of the Central Act 41 of 1976. While the Parliament conferred by that Act the power of the Legislature of the State of

Tamil Nadu, it provided that before enacting any Act, the President shall whenever he considers it practicable to do so, consult a Committee

constituted for the purpose consisting of forty members of the House of the People nominated by the Speaker and twenty members of the Council

of States nominated by the Chairman. This contention is raised only in W.P. No. 1059 of 1982. But, the Union of India is not made a party

thereto. However, the Union of India is a party to the other two writ petitions and represented by counsel. It is not in dispute that a Committee was

not constituted. The question is whether the non-Constitution of a Committee and the absence of consultation by the President with such a

Committee would invalidate the Amendment Act.

25. The provision in Section 3(2) of the Central Act 411 of 1976 is not mandatory. The President is given a discretion to decide the same and

whenever he considers it practicable, he has to consult the Committee. The failure to consult a Committee would be an irregularity and not an

illegality. But the more important aspect which defeats the argument is that the Amendment Act was placed before the Parliament and got its

approval. It was tabled on 20.6.1977 before the Rajya Sabha and on 22.6.1977 before the Lok Sabha. That cured whatever irregularity was

there in passing the enactment.

26. That is the view expressed by the Gujarat High Court in Saiyedbhai Kadarbhai v. Saiyed Intajam Hussien AIR 1981 Guj. 154 : 22 Guj. L.R.

596, the President passed Gujarat Rural Debtors' Relief Act (35 of 1976 when the State was under President's Rule without consulting the

consultative committee as provided in the proviso to Section 3(2) of the Gujarat State Legislature (Delegation of Powers) Act, 1976. The court

held that the failure to consult a Committee will not vitiate the enactment. The Bench said:

We do not think omission on the part of the President to consult the Consultative

Committee as required by Section 3 was an illegality which rendered the impugned law void ab initio. The requirement of consulting the Consultative Committee was nothing more than the requirement to be in touch with the democratic opinion obtaining in the State because in a democratic society no law which does not express the will of the people can be enacted. When the State is under President's Rule, it is reflected by the Members of the Consultative Committee. However, it is also reflected by the Parliament. Therefore, if the President fails to consult the Consultative Committee and enacts a law which is ultimately placed before the Parliament, then the requirement of enacting a law in consonance with public will is satisfied. Sub-section (3) of Section 3 of the Gujarat State Legislature (Delegation of Powers) Act, 1976, required that "Every Act enacted by the President under Sub-section (3) shall, as soon as may be after enactment, be laid before each House of Parliament.

27. With respect, we agree. In this case also the Amendment act was laid before both the Houses of Parliament and the argument and the argument of the petitioner is rejected.

28. C. Violation of Articles 13, 14, 19(1), 22 and 315 of the Constitution of India : The bone of contention is that the petitioners are practising advocates and they do not know Tamil. There are several other advocates practising in Tamil Nadu without knowing Tamil and they will be deprived of their fundamental right to carry on their profession as advocates if Tamil is made the language of courts. The impugned enactment and the notification are making a hostile discrimination between Tamil knowing advocates and other advocates. Under, the provisions of the Advocates Act, all advocates are equal and they have a right to practise anywhere in India and appear before any court. In one way the impugned law treats unequals as equals by not providing for any exemption or special provision for the advocates who do not know Tamil. There is no merit in any of these arguments.

29. As pointed out by the learned Advocate-General, "advocacy is not a vocation for private gain but is an institution created by the State of public good". (See Anand's Professional Ethics of the Bar, p. 15). The Act is passed with the object of benefiting the litigants in Tamil Nadu. Most of them are agricultural peasants and they do not know English. In 41 C.W.N. 117 ,

it is said:

Those who are concerned with the administration of justice in India have often felt disturbed by the unreality of much of the recorded evidence on which cases are decided. The court language of this country is English, but the proportion of litigants and witnesses who know the language at all is infinitesimal. Even among lawyers many can be found whose knowledge of English is of less than striking. The Judge again is often an Englishman who, inspite of his prizes for proficiency in the vernacular, possesses no more than a smattering of the language in which the case is unravelled before him. Even when the Judge is an Indian, he suffers from the converse difficulty of rendering into faithful English the vigorous and often picturesque idiom of the native speech, particularly when it is of the colloquial variety. The result of these many-sided deficiencies in the instruments of transmission inevitably is that the matter transmitted into pages of the record suffers considerable mutilation in the process and what is recorded is far removed from what is actually said.

30. It is only to remove the above defect, the impugned enactment was passed. The interest of the litigants who knock the doors of the courts seeking justice is far more important than that of the lawyer. The Advocate-General submits that as a fact the advocates who do not know Tamil have found no difficulty in carrying on their profession and many of them have lucrative practice. That is however beside the point. Hostile discrimination can be said to arise only when a legislation discriminates one person or class of persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter. A lawyer who is not acquainted with the language of the court in which he wants to practise cannot claim to be in the same class as the lawyer who is well versed in that language. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , it was held that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.

31. In *Paradip Port Trust, Paradip Vs. Their Workmen*, , the Supreme Court held that Industrial Disputes Act being a Special Act will prevail over the provisions of the Advocates Act which is a General Act. The court also

pointed out that the matter should be viewed from the point of view of employer and workmen and not from that of legal practitioners. We accept the contention of the Advocate-General that the impugned Act is a special one and it will prevail over the general enactment, the Advocates Act. The matter has to be viewed as between the rival parties and not the advocates.

32. In *Sunil K.R. Sahastrabudhey Vs. Director, I.I.T., Kanpur*, it is held that there is nothing in the Constitution laying down that any one has a fundamental right to be taught in any particular language where he is admitted and that no student getting education in an institution run under a Central Act can force the institution to impart education to him in Hindi in Doonagari script.

33. In *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*, the question was whether Section 9-A of Maharashtra Restoration of Lands to Scheduled Tribes Act (14 of 1975) which prevented a pleader from appearing on behalf of any party in any proceeding under the Act before the Collector, the Commissioner or the Revenue Tribunal was unconstitutional. Answering the question in the negative, the Court said that Section 30 of the Advocates Act not having been notified, an advocate enrolled under the Advocates Act had no absolute right to practise before all Courts and Tribunals. We are unable to discern any violation of Article 14 or Article 19 of the Constitution in the impugned Act.

34. We do not find any substance in the argument that the Amendment Act is violative of Articles 13 and 315 of the Constitution. Nor does it affect the power of transfer of High Court Judges under Article 222 of the Constitution. The High Court can never be brought within the ambit of the State legislation. The contention of the petitioners in this regard is stated only to be rejected.

35. D. Section 4-B of the Tamil Nadu Official Language Act - Whether inoperative?: The contention is that the proclamation of emergency came to an end on 30.6.1977. Though the Amendment Act was enacted on 12.11.1976, Section 4-B did not come into force. It was left to the State Government to notify the date on which it will come into force. The State Government did not do anything to give life to the section by issuing a notification before the expiry of the emergency. The notification was issued in

1982 only when the proclamation was not in force. At that time, the President had no power to pass an enactment for the State. Hence, the notification is ineffective and inoperative. It cannot bring into force a provision which became dead for all purposes on 30.6.1977. At one stage, an argument was sought to be advanced that the 42nd Amendment to the Constitution was not applicable as the Act was passed before the amendment and as per old Article 357(2), the Amendment Act ceased to have effect on the expiry of one year after the cesser of the proclamation. In other words, the contention was that the Amendment Act ceased to have effect from 30.6.1978. Later counsel realised the futility of this argument and pressed into service the other contention referred to above.

36. Though the argument is attractive, it has no merit. We have already referred to the notification in G.O.Ms. No. 191, Law, dated 13th

November, 1976 pertaining to subordinate criminal courts. By that notification the section had come into force partly. The section cannot,

therefore, be considered to be a dead letter after 30.6.1977 or even in 1982.

37. Reliance is placed on the judgment in *M. Manickchand and Others Vs. Elias Saleh Mohamed Sait and Another*, wherein the words "common

cement of this Act", found in Section 2(3) of the Usurious Loans Act, 1923, Mysore Act 9 of 1923 had to be interpreted. The court said:

Commencement" is defined in Section 3(13) of the General Clauses Act as follows: "Commencement", used with reference to an act or

Regulation, shall mean the day on which the Act or Regulation comes into force." "Obviously, an act can only commence in a particular area on the

date on which that act comes into force in that area. The mere fact that it was in operation in other areas will not result in the act having

commenced in the area where it had not yet been applied. In this connection, notice may be taken of the language of Sub-section (3) of Section 5

of the General Clauses Act where it is laid down that "unless the contrary is expressed, a Central Act or Regulation shall be construed as coming

into operation immediately on the expiration of the day proceeding its commencement." This sub-section clearly indicates that there is a distinction

between an Act coming into operation, and the commencement of the act. The date of coming into operation is not necessarily the date of

commencement. In interpreting Section 2(3)(b) and (c) of the Act, we are

concerned with the expression ""commencement of the Act"" and not with coming into operation of the Act"". In view of the definition of ""commencement"" given in Section 3(13) of the General Clauses act which applies to

this expression as used in the Act, it has to be held that the commencement of the Act for the purposes of the present suit must be held to be the date on which the Act come into force in Bangalore Civil and Military station.

38. Our attention was also drawn to State of Orissa Vs. Chandrasekhar Singh Bhoi, etc., , while considering the provisions of the Orissa Land

Reforms Act (16 of 1960), the court found on the facts that the provisions of Chapter IV were not extended by a notification u/s 1(3) of the Act

and said that it could not be considered to be a "law in force". The Court said,

A law cannot be said to be in force unless it is brought into operation by legislative enactment, or by the exercise of authority by a delegate

empowered to bring it into operation. The theory of a statute being ""in operation in a Constitutional sense"" though it is not in fact in operation has,

in our judgment, no validity.

39. Neither of the rulings will help the petitioners herein as the court had to interpret in those cases the words in ordinary statutes. But in this case

we are concerned with the provision in Article 357(2) of the Constitution. We have already extracted the provision before and after the

amendment. Under that clause, the expression used is ""any law made"". The Amendment Act is certainly a law made by the President when the

proclamation under Article 356 was in force. Such law shall continue in force until altered or repealed or amended by a competent Legislature.

Section 4-B(2) of the said law (Act) enables the Government to notify the date on which Section 4-B(1) shall come into force. That power is

available to the State Government until the provisions of Section 4-B are altered, amended or repealed by a competent Legislature. Hence, there is

no difficulty in holding that Section 4-B is operative and consequently the impugned notification is valid.

40. V. Conclusion: In the result, all the writ petitions are dismissed. There will be no order as costs.