

## Emergence of English and Urdu as Court Language

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Persian had flourished as the court language of India for many centuries. The Turks, the Pathans and the Mughals had made it the official language of the Country and extended to it all favours of royal patronage. Persian did not lose its old importance during the days of the Maratha ascendancy either. Even the East India Company in the beginning accepted it as a legacy of the erstwhile rulers. The Company, however, simultaneously acknowledged the rightful claims of the vernaculars of the Country and accorded them a more honoured place in the administration of justice. Bengal Regulations IV and IX of 1793 and IV of 1797 conferred upon the parties and witnesses in criminal trials and civil suits the liberty to be examined in any language they preferred.

It was, however, gradually realised that Persian was not the language of the masses, and, as such, the proceedings of the law courts remained unintelligible to litigants in general. This was a positive handicap. Besides, however, proficient themselves, the English judicial functionaries had to be furnished with English translations of Persian records. This cumbersome process delayed the dispensation of justice and made it costlier. Also, unconsciously a feeling was at work that, like the Muslims, the British conquerors had a right to force their own language on the people of the country. Attempts were made to this end, and, by 1832, English was partially introduced along with local vernaculars, viz. Tamil, Telugu, Kanarese and Malayalam in Madras and Gujrati and Marathi in Bombay, displacing Persian altogether from the Courts.

In the Bengal Presidency this could be done only about 1837, and, that too, at the instance of the Court of Directors, who desired to replace Persian as court language to effect economy in the ever-increasing judicial expenses. The Government of India, thereupon, asked the Governments of Bengal and Agra to furnish their opinions on the subject in consultation with the Sadar Courts and judicial officers of their respective provinces.

In the Bengal Presidency as many as 63 officers were consulted, of whom 30 expressed themselves in favour of retaining Persian as the court language, 5 recommended the substitution of Urdu or colloquial Hindustani for Persian, 24 stood for the vernacular languages in lieu of Persian and 4 pleaded for the introduction of English language. The opinion of the judicial authorities in the North-Western Provinces on the subject was nearly balanced, 33 being in favour of the introduction of Hindustani in lieu of Persian in all the Courts and 29 opposing the measure. It may as well be interesting to note the opinions expressed by some of the officials on the language issue.

Davidson, Zila Judge, Saran, was a supporter of Persian on the plea that "the use of the vernacular tongues upon all occasions, would be attended with great expense from the number of hands requisite for writing out and copying such diffused languages as Bengali, Hindi and Oriya". Sandys, the Magistrate of Shahabad, was opposed to the complete abolition of Persian, but he, at the same time, called for the use of Urdu in Persian character for recording depositions. Moore, the Judge of Chittagong, also did not favour the complete abolition of Persian, although he thought that the people in general had a right to complain of the rejection of their vernacular and that Persian was frequently "a tool of the fraudulent on account of the manner in which Shikastah proceedings are written an 'ast' frequently bearing the appearance of a 'neyst' etc."

Prominent among those who took up the cause of Persian in the North-Western Provinces was C. Fraser, Commissioner, Second Division. He went to the extent of disparaging English in favour of Persian. Stressing upon the suitability of Persian as Court language, H. Swetonham, Judge, Farrukhabad, observed that, like English which made up its deficiency liberally borrowing from the Latin and Greek, Persian was also well disposed to adopt words and, therefore, its aptitude for business in the courts had been clearly established. He added, "The Hindustanee, it is true, may borrow words from the Sanskrit and Persian, and may thus remedy its original poverty in words adapted to business, but it seems deficient in style, dignity, and conciseness, compared with the Persian language." Even on the score of economy, it was felt, Persian could not be displaced by Hindi written in Nagri character. This was pointed out by R. Begbie, Judge, Mainpuri, who said that "the adoption of the Nagree character would be found to entail a great expenditure of stationery compared with the Persian" and Hindi" is redundant, and the character bulky and it would require at least twice the space to express in Hindee what it contained in Persian. . . . .".

To obviate the uncouthness of Hindustani being written in Nagri character, adoption of the Roman script was suggested. The introduction of Roman or Anglo-Hindi for Hindustani, as recommended by Gilchrist and certain Hindu philanthropists of Calcutta, it was felt, would not only help the naturalisation of English but also encourage efficiency by economising the time of the European functionaries and bringing fluency in the judicial proceedings. Quite a number of officers, from whom opinions were invited on the question of court language, were in favour of Urdu or colloquial Hindustani as substitute for Persian. The general tone of the arguments advanced by them was that Hindustani, by virtue of its being the most easily understood language, deserved preference over Persian.

Hindustani, however, found its most ardent champion in Shore, Commissioner of the Sagar and Narmada Division, who had already introduced Hindi in Devanagri character in the courts of his territories. He was opposed to both the Persian and Roman characters for writing Hindustani and saw little difficulty in disseminating Deva Nagri character uniformly throughout. He asserted, "If Government would order a Committee to select the best of the varieties with reference to its simplicity and most general use and publish an Alphabet for adoption in all the Offices, Courts, Schools and Colleges, over which we have any control, this should soon render the use of that particular Alphabet universal."

Those, who advocated the cause of local vernaculars, like engali and Oriya, for being the Court language in place of Persian in the Presidency of Bengal, sought to justify their view point on grounds of reasons, and equity and better administration of justice.

The protagonists of English were a little divided in their views regarding its adoption as court language in place of Persian. While some of them were satisfied with only partial introduction of English in the proceedings of the

courts, others pressed for its whole-sale use. There was, however, basic agreement among them that the blessings of the British rule could not possibly be extended to the general people without their being sufficiently acquainted with the English language and this could well be achieved by means of introducing English as the language in the Courts of Justice. H. H. Thoma, Judge, Mirzapur observed: "Situating as we long have been in India, the civilised lords of an uncivilised country, there can be little doubt that it was only duty no less than our policy to have suppressed the language of the first conquerors and to have encouraged the use of our own."

Out of such divergent views on the language question, certain broad issues emerged and these were whether Persian be retained or displaced in favour of either the local vernaculars or English or Hindustani. The claims of each of these languages were examined both by the Sadar Courts and the Governments of Bengal and the North Western Provinces. The Calcutta Sadar Court stood for the retention of Persian; as, in their opinion, the introduction of English would seriously protract the despatch of business; and, as regards Hindi or Bengali, their contention was that "the process of recording judicial proceedings in Bengali or Hindi occupies at least one-third more time than the same in Persian" and, therefore, to have them as court language was inexpedient and undesirable. Like their counterpart in Bengal, the Sadar Court in the North-Western Provinces also, expressed themselves in favour of retaining Persian as the language of judicial proceedings. It may be interesting to note that the Government of the North-Western Provinces did not agree with the opinion of their Sadar Court and the Lieutenant-Governor, Sir Charles Metcalfe, asserted that the language of the people, as far as practicable, should be the language of the Courts.

In order that a final decision on the question of court language might be taken, the Governments of Bengal and the North-Western Provinces sent to the Government of India their recommendations together with the opinions of their Sadar Courts and other judicial officers. There was a final round of deliberations among the members of the Legislative Council of the Governor-General and once again the language question was discussed thread-bare.

H. Whakespear, a member of the Supreme Legislative Council, pleaded eloquently for the retention of Persian; but A. Ross, President of the Council, did not share his views. The latter, while fully admitting the advantages of the Persian language, opined that "the advantage to the people of having justice administered to them in their own tongue is, I conceive, of far more importance than any inconvenience. . . .". Ross went so far as to propose the abolition even of the Persian script in favour of Nagri in the North-Western Provinces.

The Governor-General, Lord Auckland, after an overall assessment of the situation, felt that it would be desirable to substitute Persian language for vernaculars in Bengal and, as discreetly as possible, Hindustani in the North-Western Provinces. The Governor-General drew an analogy between the use of 'bad Latin and Norman French' in legal proceedings in England and 'broken stick and obsolete characters' in the financial accounts of the British Exchequer. These were considered to be inconvenient and against all perspicuity and even though they had been used for ages, they were done away with. Similarly, Persian could also be discarded as the language of the British Indian Courts by retaining the Persian Law terms exactly in the same manner as Latin phrases had found their way into Judicial proceedings in England.

The orders of the Supreme Government on the language issue were duly communicated to the Governments of Bengal and the North Western Provinces. Whereas the Government of the North-Western Provinces was authorised to introduce Hindustani in place of Persian in law Courts, the Bengal Government was asked to use its discretion in the matter.

These long-drawn efforts regarding the question of Court language materialised in the shape of Act XXIX of 1837, which empowered the Governor-General to dispense with any Regulation which enjoined the use of the Persian language in Judicial or Revenue proceedings and prescribe the use of any other language or character he deemed fit. The Act also authorised the Governor-General-in Council to delegate the powers given to him in this respect to any of his subordinate authority. Further, the Act accelerated the process of introducing Hindustani by displacing Persian in the Courts of the North- Western Provinces and vernaculars in the Bengal Province.

The net result of the entire deliberations was that, with the exception of the Sagar and Narmada territories where Hindi in Devanagari script was in vogue, Urdu in Persian script became the new court language in the North-Western Provinces. In the Bengal Province, vernaculars were given a place in the district Courts, though, for the sake of expediency and uniformity, the language of record in the Sadar Court was Urdu in Persian script. Thus, Persian was ousted completely and vacuum so created was filled by vernaculars and Urdu. This change also proved to be harbinger of the ascendancy of the English language in the law courts, as the local vernaculars and Urdu were to play only a secondary role. This had been clearly stated, as early as 1839, by T. C. Robertson, a Legislative Councilor, who had observed that "the vernacular, having fulfilled its part in expelling Persian, will; in its turn, be driven out as the language of record by English, seems to me as what must, in veritable sequence, ensue." The English Barristers of the Supreme Courts, who were later allowed to practise in the Sadar Courts, enthusiastically subscribed to the general introduction of English in the judicial proceedings. A vivid description of the gradual and steady progress of English in the Indian law courts was given by F. J. Halliday who, on the eve of the passing of the Charter Act, 1853, deposing before a Select Committee of the British Parliament, said, "I may say that English has been introduced as the language in the administration of justice in the Sudder Court, some what in this way: the nominal language of the court is Oordu but the records of the appeal cases from the various courts come up in the language of the court in which they have been tried; Bengalee from Bengal, Oordu or Hindustanee from Bihar, Oria from Cuttock, and so on. The language, in which the pleadings are supposed to be conducted, if there are oral pleadings and oral discussion in Sudder Court, is Oordu or Hindustanee, but a rule has been made that whenever the Vakeels, who answer to the Barristers, on both sides understand English and are willing that the business should be conducted in English, it may be so conducted. The effect of that and of the gradual coming in to the Court of English Barristers from the Supreme Court and of natives, who understand English better than anything else, has been to make the use of English in the Sudder Court the rule, and the use of Hindustanee the exception, and Hindustanee is fast going out as the language in use in the Sudder Court, with very marked advantage."