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### LEGAL AND JUDICIAL POLICY FOR THE PROTECTION OF URDU LANGUAGE IN STATE OF UTTAR PRADESH IN INDIA

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**M.Z.M. Nomani<sup>1</sup> Madiha Tahreem<sup>2</sup>, LEGAL AND JUDICIAL POLICY FOR THE PROTECTION OF URDU LANGUAGE IN STATE OF UTTAR PRADESH IN INDIA– PalArch's Journal of Archaeology of Egypt/Egyptology 17(9) (2020). ISSN 1567-214X.**

**Keywords: Urdu Language, Muslim Population, Linguistic Diversity, Composite Culture Constitutional Protection, Uttar Pradesh.**

**Abstract:** Section 2 of the *Uttar Pradesh Official Language Act, 1951* provides for the adoption of Hindi as the language to be used for the official purposes in Uttar Pradesh. The state Government amended the Three Language Formula in 1963 which substituted mother tongue of Muslim population. The imperatives of modern education in English language and conservation of script, language, and culture became dexterous for the Urdu speaking population. The *Uttar Pradesh Official Language (Amendment) Ordinance, 1982* recognized Urdu for the first time as second language. The *express verbis* declaration of Urdu as the second official language also reflected in *U.P. Official Language (3<sup>rd</sup> Amendment) Ordinance, 1983* and *Uttar Pradesh Official Language (Amendment) Act, 1989*. The Urdu speaking populace's happens to be sizable in state of Uttar Pradesh but the language did not rise proportionately over the last seven decades. The paper analyses the legal and judicial policies for the protection of the Urdu language in the light of the *U.P. Hindi Sahitya Sammelan v. State Of U.P.* verdicts of the Allahabad High Court and Supreme Court of India.

#### INTRODUCTION

The *Constitution of India, 1950* makes a fundamental duty to value and preserve our composite culture and rich heritage which logically encompasses protection of the Urdu language (Constitution, 1950:Art. 51A (f). The founding father of the Constitution adopted Article 351 to safeguard the linguistic diversity. It envisages that 'legislature of states may by law adopt any one or more language s in state' in

addition to Hindi under Article 345 (Constitution, 1950:Art.345). However, Article 343 of the *Constitution of India*, 1950 declares Hindi in *Devanagari* script as an official language (Constitution, 1950:Art.343). The legal policy for the protection of the Urdu language in state of Uttar Pradesh derives sustenance from the official language policy of the Article 343 of the *Constitution of India*, 1950. The major enactment revolves under *Uttar Pradesh Official Language Act*, 1951, *Uttar Pradesh Official Language (Amendment) Ordinance*, 1982, *U.P. Official Language (3<sup>rd</sup> Amendment) Ordinance*, 1983 and *Uttar Pradesh Official Language (Amendment) Act*, 1989. The *Constitution of India*, 1950, recognized 22 scheduled languages under the Eighth Schedule which include Urdu as a scheduled language. Articles 29 and 30 of *Constitution of India*, 1950 protect the linguistic minority through the National Commissioner for Linguistic Minorities. Urdu has been designated as the second official language in Uttar Pradesh which records 43.3 percent of Muslims having declared the Urdu language as mother tongue. The protection and usage of Urdu language is in state of decay in perpetuity because of despondency of Muslim population as well as sectarian politics. The paper dwells on the legal and judicial policies for the protection of the official language of the state *vis-à-vis* Urdu language in the context of multiculturalism and linguistic diversity. It critically analyses the constitutional scheme of the protection of languages and imperative and implication of the *U.P. Hindi Sahitya Sammelan v. State Of U.P.* verdicts of the Allahabad High Court and Supreme Court of India in rejuvenating Urdu language in Uttar Pradesh in particular and India in general.

## **MATERIAL & METHOD**

The material and methods of the study unequivocally suggests deep rooted politics of languages in India (Pai, 2002:2705-2708). The legal policy for language protection is logically linked to right to education and a fundamental duty of a parent or guardian to provide opportunities for education in mother language (Constitution, 1950:Art. 21A & 51A (k)).The prevalence of Urdu in UP attracted scholars to meaningful researches in terms popularity and decay (Nomani, Salahuddin & Tahreem, 2020:5075-5083). The Urdu language in contemporary India slipped from mainstream educational institutions to religious education in seminaries (Abdullah, 2002:2705-2708).in such a situation the constitutional goal of universal education under *Compulsory Education Act*, 2009. the instructional medium of Urdu seems a distant reality(Bhattacharya & Jiang,2018: 149-168). The linguistic diversity is concomitant to cultural diversity (Tyagi, 2003: 5-28) and essentially reflects in state practices in equalization of opportunities and entitlements ((Nomani, 2012:1-9). The Constitution did not recognize Urdu as a national language despite its forceful articulation in heralding freedom from British under the colonial rule.

## **RESULT**

The *Uttar Pradesh Official Language Act*, 1951 and adoption of Three Language Formula in 1963 proved detrimental to Urdu speaking population in Uttar Pradesh. The formula substituted mother tongue with Sanskrit. It declares Hindi as the first language, Sanskrit along with other modern Indian languages as a second language, and English as the third language (Mustafa, 2018: Internet). The Muslim community's urge to come out of backwardness compelled them to switch over to English and Hindi. Since the third language choice was English, the student tilted towards the either Hindi or English.

**3.1 Three Language Formula & Urdu:** The Urdu was gradually shrunked to marginal usages under the *Uttar Pradesh Official Language Act*, 1951 and Three

Language Formula of 1963. This dilemma to have modern education in English language and conservation of script, language, and culture through the repository of Urdu linguistic heritage was nothing short of impossibility in primary and secondary levels of school education (Khalidi, 2008:1545-1562). The legal policy for the languages in Uttar Pradesh dramatically became instrumental in wiping out the Urdu base in the state (Table-I). Although Urdu remained in the list of modern Indian language it lost its modernity and classics by mandating Sanskrit as second official language under Three Language Formula (Shahabuddin, 1983:357).

**Table-1: Population Opting Urdu As Their Mother Tongue [1971-2001]**

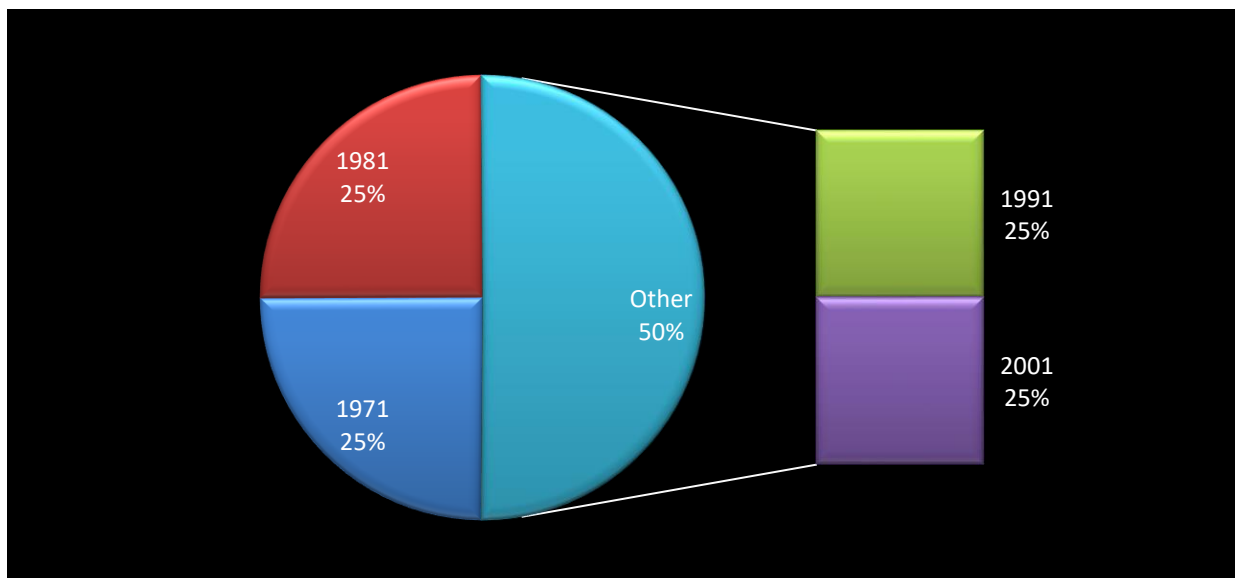
Year	Persons Opting Urdu As Their Mother Tongue	%age Population
1971	28620895	5.22
1981	34941435	5.25
1991	43406932	5.18
2001	51536111	5.01

Source: Based on the Census of India [1951-2001]

The legal policies for languages ostensibly survived the test of constitutionality and legality but Hindi became a dominant language for official and education purposes. The phenomena relegated the Urdu to marginal utility and a language of Muslim and seminarians (Rab, 1984:462).

**3.2 Legal Status of Urdu:** The legal status of Urdu witnessed a continuum of discriminatory policies and actions amidst power structure and cultural hegemony. The state governments cutting across all party lines have been extremely conscious in bestowing its due place to Urdu languages in composite culture of Uttar Pradesh (Beg & Kidwai, 2012:79-93). The constitutional notion of linguistic minority along with the educational right and duties did not adequately mirrored in policies and programmes of Urdu language protection (Khan & Akhtar, 2018:211-220). The demand of Urdu speakers as the mother tongue has a sound legal and historical basis as evident from the colonial educational and language policies of the British Empire.

**Figure-1: Urdu Speaking Population 1971-2001**

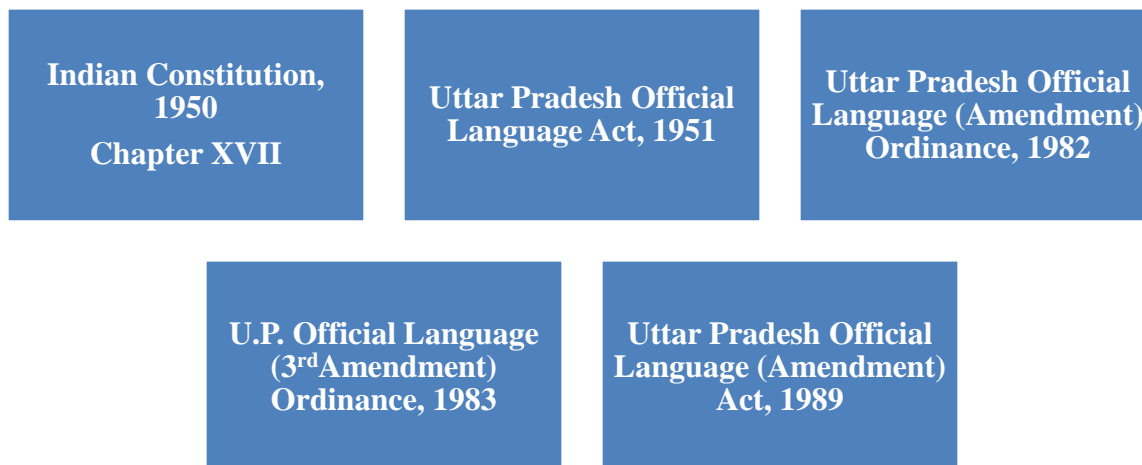


Source: Based on the Census of India [1951-2001]

The seminal and powerful role of Urdu forgotten in heralding independence to be continued in independent India. There is no plausible alibi for the administrative lapses in Urdu’s distinct language status (Nomani & Rahman, 75-103). The cultural linkages to diversity and multi-culturist cut short through the projection of Hindi as the sole official language in the state (Brass, 1974: 208).

**3.3 Allahabad High Court Verdict:** Section 2 of the *Uttar Pradesh Official Language Act, 1951* provides for the adoption of Hindi as the language to be used for the official purposes in Uttar Pradesh as enumerated in Section 2 (UPOLAct, 1951: Section 2). After 35 years of independence, a partial recognition of Urdu discerned by insertion of Section 3 of *Uttar Pradesh Official Language (Amendment) Ordinance, 1982* was challenged before Allahabad High Court (UPOLOrdinance, 1982: Section 3).

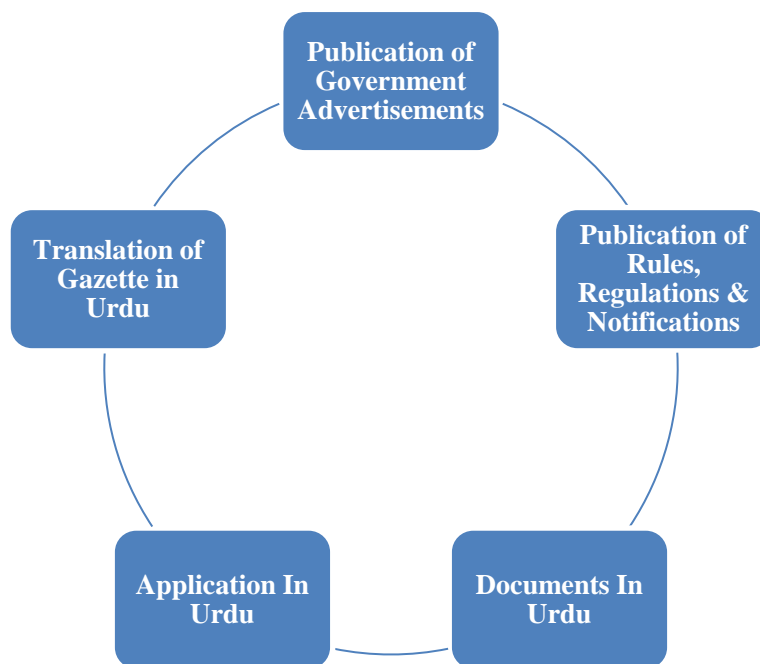
**Figure-2: Legal Policy For Protection Of Urdu Language In Uttar Pradesh**



The Ordinance provided a new section namely Section 3 to accommodate the linguistic aspirations of the Urdu speaking population. It says that the Urdu language shall be used as a second language, in addition to Hindi for such purposes as are specified in the Schedule. The *Uttar Pradesh Official Language (Amendment) Ordinance, 1982* has conferred the status of Urdu for five objects. The *Uttar Pradesh Official Language (Amendment) Act, 1989* accorded Urdu as the second official language for seven specified purposes. The schedule accords publication and application of Urdu in administrative and official arena (Para 3, 2014: 5240). The legislative development for Urdu languages sparked competitive assertiveness of identity among Hindi speaking population of the state. Therefore, the *U.P. Hindi Sahitya Sammelan v. State Of U.P.* challenged the constitutionality

of *Uttar Pradesh Official Language (Amendment) Act, 1989*; *U.P. Official Language (Amendment) (3rd) Ordinance, 1983* and *Uttar Pradesh Official Language (Amendment) Act, 1989* before Allahabad High Court.

**Figure-2: Salient Features of *Uttar Pradesh Official Language (Amendment) Ordinance, 1982***



The writ petition was dismissed by the Division Bench of the Allahabad High Court through separate judgments. The Allahabad High Court upholding the *Uttar Pradesh Official Language (Amendment) Act, 1989*. The constitutionality of the three legal instruments upheld by the court and virtually dismissed the plea by *UP Hindi Sahitya Sammelan* (Para 3,2014: 5221).

#### **DISCUSSION**

The Allahabad High Court ruled that ‘the State Legislature shall not be precluded from making any law in future with respect to Urdu in accordance with the provisions of Articles 345 and 347 of the Constitution (Para 9,2014: 5240). The U.P. Hindi Sahitya Sammelan aggrieved by the judgment of Allahabad High Court filed special leave petition before Supreme Court on 27.01.1997. The petitioner contended that state’s declaration of Hindi as an official language under Article 345 of the constitution put bar on the recognition of Urdu as second official language.

**4.1 Ruling of the High Court:** It is strange to note that the Division Bench comprising of Justice S.N. Sahay and Justice D.K. Trivedi held that the *Uttar Pradesh Official Language (Amendment) Act, 1989* and the notification impugned in the writ petition were *ultra vires* and liable to be struck down. Justice D.K. Trivedi, on the other hand, did not concur with the view of Justice S.N. Sahay and preferred a separate judgment holding that ‘the *Uttar Pradesh official Language (Amendment) Act, 1989* and the notification impugned in the writ petition did not suffer from the constitutional vice and the writ petition was liable to be dismissed(Para 3,2014: 5241).’ The difference of opinion in the Division Bench led

to the Chief Justice of the High Court for referring to a third Judge for his opinion on three pertinent questions of law and constitution. Justice Brijesh Kumar also found the impugned enactment and notification valid and constitutional. The Division Bench upheld the view of the third judge and dismissed conclusively the writ petition on 16.08.1996 dated 16.08.1996. The writ petition is dismissed on 16.08.1996 and U.P. Hindi Sahitya Sammelan reiterated the state's exclusive policy for Hindi as an official language in special leave petition before Supreme Court.

**4.2 Supreme Court Ruling:** The Supreme Court in *U.P. Hindi Sahitya Sammelan v. State Of U.P.* (2014 AIR SCW 5238) on 4.9.2014 by special leave granted for hearing by Constitution Bench. The Supreme Court did not concur with U.P. Hindi Sahitya Sammelan view on Hindi as the sole official language of Uttar Pradesh. The *Official Language (Amendment) Act, 1989* introducing Urdu as the second official language in Uttar Pradesh was upheld by the Supreme Court. It paved the way for a more democratic approach to the use of languages in states (Mandhani, 2018: Internet). The Supreme Court not only approved Urdu as the second official language but also clarified that the constitution does not foreclose the other languages from inclusion as an official language. Article 345 is spacious enough to subsume other languages of the state as the second official language. This can only be at the cost of distorting the provision contained in Article 345 (Para 27 at 5249). The Supreme Court upheld Section 3 of *Official Language (Amendment) Act, 1989* conferring Urdu the status of a second official language,

**4.3 Constitutional Interpretation of Official Language:** Chief Justice R.M. Lodha, explained that the separate mention of 'Hindi' in the Article 345 was only meant to promote Hindi among the States. The Article says '*the Legislature of a State may by law adopt any one or more of the languages in use in the State.*' It simply meant to promote Hindi among the States and not stifling the natural growth of other languages including Urdu. The Supreme Court made far more clearly that 'nothing in Article 345 bars declaring one or more of the languages in use in the state, in addition to Hindi, as the second official language. While leaving no confusion, the court interpreted Article 367 of the Constitution and Section 146 of the *General Clauses Act, 1897* to reach pragmatic implication of Article 345 of Constitution. It leaves no doubt that the State Legislature is within its constitutional obligations to provide a liberal interpretation to Article 345 in the wake of multiple languages of the State. The state of its own motion can embark on linguistic diversity principles and accommodate other popular languages of the state as an official language besides Hindi. There is a need to read the Articles 345 and 347 in broader principles of cultural and composite culture of the country.

## CONCLUSION

The verdict of Allahabad High Court and the Supreme Court upheld the constitutional validity of Section 3 of *Official Language (Amendment) Act, 1989*. The UP Hindi Sahitya Sammelan's petition for challenging constitutional validity of Urdu as the second language was set aside. The State Legislatures are free to choose any language in use in the State as an official language besides Hindi. The Courts believed that the law and language are both organic in their mode of development. The process of accepting the legitimate aspirations of the speakers of different languages are not rigid but accommodative. The legal scheme of the constitution secures linguistic secularism and diversity. The judgments have far-reaching implication on Chapter XVII of the *Indian Constitution, 1950*. The linguistic aspiration of the Urdu speaking populace contained under the minorities'

right underpinned in Articles 29 and 30 (Constitution, 1950:Arts. 29&30) as well; as Articles 347, 350 and 350A (Constitution, 1950:Arts. 347&350A) of the *Constitution of India*, 1950. No one can deny the fact that the northern belt is predominantly Hindi-speaking, but in states of Uttar Pradesh and Bihar, there is a large Urdu-speaking population. The judgment invigorates fresh stamina among Urdu speaking population, social organizations and intellectuals in vindicating their linguistic aspirations. Allahabad High Court and the Supreme Court taken together provides great impetus Urdu language not only officially but also functionally in the state of Uttar Pradesh in particular and India in general.

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