

BI-LINGUAL COURT SYSTEMS

Malaysia

Of the approximately 9.3 million inhabitants of the Federation of Malaysia, it is estimated that Malays form 50 percent, Chinese 36 percent, and Indians 11 percent.^{1/} The national language of the Federation is Malay, as stipulated in Clause (1), Article 152 of the Constitution of August 31, 1957. According to Clause (2) of the same article, English may nevertheless be used in both Houses of Parliament, in the Legislative Assembly of every State, and for all other official purposes, for ten years after the promulgation of the Constitution, or until Parliament chooses to provide otherwise. All Bills and Acts of Parliament, as well as all subsidiary legislation issued by the Federal Government, have to be in English. Furthermore, Clause (4) decrees that until Parliament otherwise provides, all proceedings in the Federal Court or a High Court shall be in the English language, provided that, if the Court and counsel on both sides agree, evidence taken in the language spoken by the witness need not be translated into or recorded in English. According to Clause (5), all proceedings in subordinate courts, other than the

^{1/} Bela C. Maday et al., Area Handbook for Malaysia and Singapore, Washington, D. C., Superintendent of Documents, 1965, p. 2, 76.

taking of evidence, shall likewise be in the English language.^{2/}
Parliament has thus been free since 1967 to terminate the official use of English. As far as the Borneo States of Sabah and Sarawak are concerned, Parliament may not terminate the use of English there before 1973, and even then the concurrence of the legislatures of those States will be required in order to effect its termination.^{3/}
That is to say, the State itself has the power to make the ultimate decision. It has been pointed out that while many non-Malays in the rest of the Federation know some Malay, that language is much less well-known in large parts of the Borneo States, and that replacing the official use of English with Malay will therefore be a considerably greater task there.^{4/}

In the eleven Malay States of the Federation, viz., Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, and Trengganu, there are Islamic religious courts known as Shariah Courts, wherein English and Malay may both be used.^{5/} However, no information is available in our collections

^{2/} The Federal Constitution, Kuala Lumpur, Government Printer, 1964, p. 96-97.

^{3/} H. E. Groves, The Constitution of Malaysia, Singapore, Malaysia Publications, 1964, p. 150-151.

^{4/} L. A. Sheridan and H. E. Groves, The Constitution of Malaysia, Dobbs Ferry, N. Y., Oceana Publications, p. 225.

^{5/} L. A. Sheridan, Malaya and Singapore: The Borneo Territories, London, Stevens, 1961, p. 225.

on the procedures for accommodating both languages in Court.

Singapore

In Singapore, of approximately 1.7 million inhabitants, Chinese make up 75 percent, Malays 14 percent, and Indians 8 percent. As in the Federation of Malaysia, Malay is the national language, although English is used for all official business.

In the Shariah Court established by the Muslims Ordinance of 1957, it is provided that English and Malay shall both be used. It is further provided that all documents and written proceedings may be written or typewritten in English or in Jawi or Rumi script (Malay may be orthographically represented by either of these two writing systems).

An observer at the Shariah Court of Singapore has described the proceedings as follows:

The language used in the Court is usually Malay, but the Usher speaks to the President in English. When lawyers are present they use English only, and their questions are interpreted in Malay by the Court Usher

^{6/} Bela C. Maday, Area Handbook for Malaysia and Singapore, p. 87.

^{7/} Federation of Malaya; Singapore; British Borneo Territories; Three-Monthly Economic Review, Annual Supplement, June 1962, London Economist Intelligence Unit, 1962, p. 1.

^{8/} Laws of the Colony of Singapore, Supplement for 1957, Kuala Lumpur, Government Publications Bureau, 1959, p. 473.

for the benefit of the witness and of the litigants; this is so even if the lawyers are Malay-speaking. If any of the litigants or any witness knows no English, or Malay, an interpreter is called in order to translate the Indian or Chinese dialect into English, and this in turn is translated into Malay by the Court Usher in case one of the litigants speaks only Malay. 2/

Hong Kong

English is the official language of the Colony of Hong Kong. However, it is estimated that about 98 percent of the total population can be described as Chinese on the basis of language and place of origin. ^{10/} It is thus inevitable that the use of languages other than English is to be observed in the courts. The Hong Kong Law Reports for 1963 contains an account of the case of Leung Chung Tin vs. the Tin Yat Company, wherein Hogan J. said:

It is clear that a Judge may often be faced with a difficult decision when a witness had a knowledge of English which may be something less than perfect. To allow him, in these circumstances, to give his evidence in another language may confer on the witness a considerable advantage in cross-examination, since he may well have a pretty shrewd idea of

2/ Judith Djanour, The Muslim Matrimonial Court in Singapore, New York, Humanities Press, 1966, p. 35-36.

^{10/} Report for the Year 1967, Hong Kong, Government Press, 1968, p. 238.

the purport of a question before it is put to him by the interpreter; on the other hand, to require a witness to speak a language with which he is not perfectly acquainted may result in the witness not doing himself justice in the witness-box. The matter is clearly one for the discretion of the Judge. . . . 11/

11/ Hong Kong Law Reports, 1963, Hong Kong, Government Printer, 1963, p. 305.

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