CHAPTER 12

IMPLICATIONS FOR THE LEGAL LITERATURE OF SRI LANKA FROM THE CHANGE OF THE LANGUAGE OF THE LAW

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The Official Language Act, 1956, the Language of the Courts Act 1961 and the Constitution of 1972 made provision for the replacement of English as the language of judicial administration by Sinhala, the language of about 70 per cent of the people of Sri Lanka. The place of the minority Tamil language is a subject of dispute, which has not been satisfactorily settled. The near exclusive language of the courts prior to the change, English continues to play an important part in the appeal courts. This paper analyses the implications for Sri Lanka's literature of the change of the language of judicial administration from English to Swabasha.

The word "swabasha" used in this paper means "native language" and could refer to Sinhala and/or Tamil the two indigenous languages spoken in Sri Lanka.

IS A SWABASHA LEGAL LITERATURE A PREREQUISITE FOR THE SWITCHOVER OR LEGAL EDUCATION INTO, AND ADMINISTRATION OF JUSTICE, IN SWABASHA?

Law teachers in Sri Lanka at the time when the switchover of the language of the law was mooted in the 1950's were virtually unanimous in expressing the view that the translations of the statute and other law and the availability of Swabasha text books, was at the very least a necessary prerequisite for the switchover of the language of the law. Memoranda were submitted stating the difficulties and near impossibilities of administering and teaching the law in Swabasha. A similar view was expressed by the majority of practitioners during the same period. The report of the Official Languages Commission in 1953 assumed that the presence of a legal literature was a necessary prerequisite for the switchover.[1]

These reviews receive expression in a book written in 1971 by S. Nadesan Q.C.

> A major part of the civil law is the Roman Dutch law. This includes the law of property, contract, tort, marriage and divorce etc. To some citizens Kandyan law, Thesawalami, Muslim law and Hindu law applies. Another large portion of our law is English law. This includes the law relating to partnership, companies, banking, agency, carriers by land, life and fire insurance and the all important prerogative writs.... On these matters the law we apply is the law in force at the relevant time in England. Even where there is a Ceylon enactment dealing with the subject, this is often a substantial reproduction of the English equivalent and so English judical decisions are relevant when it comes to interpretation.
>
> Such enactments also usually provide that any gap shall be filled by resort to the English law.
>
> To find the law, our courts and our lawyers have therefore to look to a wide variety of sources, *all of which are in the English Language*. These sources include the following:
>
> a. legislative enactments, both of Ceylon and the U.K.
>
> b. judicial decisions of the Ceylon courts, the English courts, and the courts of South Africa (where the Roman Dutch law also prevails).
>
> c. the writing of Dutch jurists on the Roman Dutch law.
>
> d. legal text books including works on the English law, Roman Dutch law, Kandyan law, Muslim law, Thesawalami, Hindu law etc.
>
> e. decisions of the Indian courts are also of guidance in certain fields as our Evidence Act, Criminal and Civil Procedure Codes, and Penal Code, are in many respects identical with their Indian counterparts. Indian labour cases are also frequently cited in our courts.
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> It will therefore be clear that more publications in Sinhala with Tamil translations of some of the Sri Lanka enactments, will not suffice to enable all the courts to conduct all their work in Sinhala or Tamil. Before this can be done the laws must be codified and published as a restatement.[2]

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This represented the prevalent view among most law teachers and practitioners in the 1950's and 1960's. The Official Languages Act was enacted in 1956. But the language of the law continued to be English, while the language of administration and education in Arts and Social Science subjects, was gradually being changed. Nationalists and protagonists of Swabasha became increasingly impatient with the attitude of the lawyers. It was stated with a degree of justification that the difficulty of effecting a switchover in the absence of a legal literature was an excuse and device for indefinite postponement and retention of the status quo. On the other hand, it could be asserted with an equal degree of validity that it is only when the language of the law is officially declared to be the Sinhala language that a legal literature will emerge. The first argument is a sound theoretical one. The latter is a practical one. From the Sri Lanka experience it may be said that during the 1950's and 1960's very few steps were taken towards giving birth to a Sinhala legal literature. This was due partly to faulty planning and organization and partly to the fact that law teachers as well as many in the Legal Draughtsman's Department and the Ministry of Justice were not favourably disposed towards the Swabasha implementation policy.

But even if there was a committed and determined administration, wise forward planning and competent translators versed in English, Sinhala, law and translation techniques, there would still be a problem of preparing a glossary and writing books in the abstract. They were not conscious of it, but this was one of the problems which was faced by the planners, glossary makers and translators in the 1950's and 1960's. When legal enactments are not being drafted and passed in Swabasha and words and phrases are not being used either in teaching or in the courts, it is difficult to prepare glossaries and write books. The end product is artificial and divorced from realities. Many criticisms were levelled against the early glossaries and translations. But one of the root causes may be said to be the fact that they were prepared in the abstract.

There was a fairly long period of preparation during which little was done; prior to 1970, apart from the Rural Courts, English was the language of the courts. Between 1970 and 1972 a few courts commenced working in Swabasha. Then suddenly in 1972 constitutional provisions decreed that Sinhala be the official language of legislation and judicial administration. What the law decreed was that there was to be, virtually overnight, a complete switchover, but in practice, English continued to be resorted to, to a very great extent, in breach of constitutional provisions.

A policy which may be adopted by a country which is at an earlier stage in planning than Sri Lanka, is to effect a phased switchover in legal education and in the courts. A switchover in selected courts could be effected and some subjects in educational institutions could at the same time be taught in Swabasha. In this way, glossary making and textbook writing would go hand-in- hand with practical operation in narrow, defined target experimental areas which could help to ease the problems of transition and prepare the way for a complete switchover. The switchover could then be gradually extended.

IS A RE-STATEMENT OF THE LAWS FOLLOWED BY A CODIFICATION A PREREQUISITE FOR TRANSLATION?

The report of the Official Language Commission (1962) took the view that a restatement of the laws followed by a codification was a necessary prerequisite to the translation of the law. This reflects a view expressed by Professor T. Nadarajah that the law of Ceylon must be restated and then codified.[3]

A parallel may be drawn between the present situation in Sri Lanka and the situation in which the legal profession found itself during the early years of British rule when the judges were called upon to administer the Roman-Dutch law in this country. These judges were ignorant of the Roman-Dutch law. They and the lawyers who appeared before them did as best as they could to expand and apply the law. Individuals undertook the work of translating what they considered were relevant areas of the law. In this way there gradually evolved a body of Roman-Dutch law as applied in Sri Lanka. "Today we are in a more fortunate position because even if the entire legal process is changed to Swabasha there is an accessible body of law and lawyers and judges will not be cut off from this". See R.K.W. Goonesekere. Memorandum submitted to the Council of Legal Education (unpublished) (1970).

The view that a restatement of the law followed by codification is necessary in Sri Lanka is open to many objections. The work of restatement and codification would be time-consuming and would take at least ten to fifteen years. No government has shown much interest in proceeding with a restatement. It is a task for which Sri Lanka lacks the financial resources as well as the manpower. Over-burdened law teachers and busy legal practitioners just do not have the time to embark upon the task. The financial and the intellectual resources available could be better used in other fields. A further argument against restatement and codification is the trend of modern legislation

commencing from 1956. As a consequence of the movement towards a state-controlled economic and social system, legislation has become the predominant source of law. This trend was accelerated after 1970 when the United Front Government committed to transform the social and economic face of Sri Lanka was returned to power. Therefore the importance of the private law in non- statutory areas has greatly declined. The jurisdiction of the courts has been ousted by blanket provisions which in public law areas restrict the resort to the writs and injunctions.

In this situation the body of law which is most relevant is the statute law, particularly the recent statute law. The historic legal systems (Roman-Dutch law, English law, Sinhala law, Muslim law, Thesawalami) are likely to play an increasingly diminishing role in Sri Lanka in the future. Therefore the main task is to translate the recent statute law, and other statute law in order of their importance in terms of the extent to which they are likely to be resorted to in administration and the courts. In other areas governed by non-statute law if a question arises for determination, the task would devolve on the judge to refer the relevant materials, formulate a rule and then render it in Swabasha. It is submitted that it is not worth indulging in a monumental task of translation to save the judge's time and effort in this situation.

PREPARATION OF GLOSSARIES

The Official Language Division and the Official Language Department which succeeded it, conceived that one of the first necessary steps for the language change was the finding of Sinhala equivalents for English terms which were not part of the Sinhala language. This need was repeatedly stressed in the reports of the Official Language Commission and accordingly the administrative units that were set up regarded word-making as one of its most important and primary functions. In retrospect, when most of its translations are criticized and many especially in the legal field are being discarded, the most important achievement of the Official Language Department may be said to be the preparation of a glossary for the expansion and use of the language in a new age. The procedure adopted in regard to glossaries which were prepared separately for each technical subject and for each branch of public administration was to set up a committee.

In the early stages of glossary-making, the committee was composed of administrators and Sinhala scholars. The need for persons versed in the law and in both languages and in addition possessing linguistic and translating skills was not recognized. As a consequence, there were many anomalies, glaring inconsistencies and errors in the early glossaries. After a space of about five years, the need for co-opting lawyers and law teachers was recognized. But the need for persons with linguistic and special skill in the arts and techniques of translating was not recognized. It was significant that the early glossary committees did not contain law teachers. But in fairness to the administrators it must be noted that in the 1950's and even the 1960's the teachers were totally opposed to a switchover and in fact expressed the view that law could not be administered or taught in Sinhala.

It came to be accepted after some time that those who sit on glossary committees must be familiar with English, Sinhala, and also law, even though this had not been recognized during the early working of the glossary committees. But this alone is not sufficient. When a particular term is being discussed with a view to finding a Sinhala equivalent, it is essential that a person who is familiar with the branch of the law from which the particular term is taken is present. No lawyer can be expected to be familiar with every subject and with the background to every term that arises. Thus, to take an example, it may be that a competent lawyer is present but certain terms may arise in subjects with which he is not very familiar. Therefore it is necessary that in the preparation of glossaries, while there is a general committee, in relation to each subject, a specialist in that subject should sit in with the committee.

The Glossary committee published its findings at the outset in small parts. The Committee extracted the words from certain statutes and books and proceeded to find Sinhala equivalents. The decisions of the committee were first published in parts. The first edition ran into 12 parts, each part arranged alphabetically representing a chronological publication of the words coined by the committee. The second edition with slight modifications incorporated all the parts into one volume. A third revised edition is in the course of publication. This edition seeks to profit from the experience and mistakes which have been made in the fifteen years of glossary making and to reduce some of the anomalies which are present.

Thus far reference has been made to the glossary prepared by the Official Language Department. In 1966, an Educational Publications Department was set up which embarked upon the task of the preparation of a separate legal glossary. The original motivating factor for the second glossary was the telling criticism made by a lawyer who was a

Sinhala scholar of the work of the Official Language Department glossary. The Official Language Glossary (the early edition) suffered from the inadequacies and imperfections which any pioneering work must contain. Those who were in charge of it were not lawyers and, in addition though they may have been Sinhala Scholars, did not have an adequate knowledge of translation techniques and problems of translation. The new glossary committee thus was formed in order to correct some of the errors in the Official Language Department glossary. In time the Official Language Department accepted some of the criticisms which were made, particularly the criticism which referred to the absence of the lawyers and law teachers on the glossary committee and their involvement in the planning and administrative work.

Efforts to combine the work of the two committees have failed for many reasons. Bureaucratic procedures made difficult the co-ordination of the work of two different Government departments. Personality conflicts and significant differences in the approach of the two committees stemming from their theoretical attitudes to the Sinhala language complicated matters. It was the view of the Educational Publications committee that the Official Language committee had resorted too often to the use of foreign and colloquial words.

The consequence of the two separate glossaries is that there are many terms which are translated in different ways. The consequence is that law teachers, draughtsmen and translators of books and statutes pick the word which they prefer. Draughtsmen themselves do not agree and the same word may be translated in different ways in different statutes by the Legal Draughtsmen's Department. The Attorney-General's Department has directed State Counsel to use the Official Language glossary. No such direction has been given to the Legal Draughtsmen's Department. In this situation there are those who argue that there is a need for an authoritative body to prepare a glossary which will be binding on all concerned. On the other hand, there are those who feel that such a body may confer a stamp of authority on a word which is linguistically incorrect or is a bad translation or a mistranslation. Especially, in the period of preparation and planning a degree of flexibility is necessary. But when the move is made from planning and preparation to actual administration there is a need for a greater degree of certainty. It is not desirable, for instance, that in the drafting of statutes individual legal draughtsmen have a discretion as to which term to use.

The question which is often raised is whether the Sinhala language is sufficiently developed to be a medium through which to convey legal ideas. Language must not be equated with vocabulary. Structurally and grammatically Sinhala and Tamil are developed languages. But their vocabulary is still not adequate to cope with the rising needs and demands of scientific and legal literature which are not indigenous to the culture of the people. On the other hand in relation to agriculture and Buddhist philosophy, vocabularies of Western languages will prove to be inadequate to express the ideas which exist in Sinhala writings.

Unfortunately in Sri Lanka little thought has been given to translation techniques and to profiting from the experience of other countries. As far as I am aware no person has been sent abroad to acquire training in translating, though persons have been sent abroad for training in a variety of other disciplines.

Any country embarking upon a switchover of the law would be advised to initiate a preliminary study of the whole subject of translation and ensure that their translators have the advantage of obtaining information from the experiences of other nations and U.N. and scientific agencies which are involved in translation work.

Even at this late stage Sri Lanka could well think of sending persons abroad for translating and placing translation on the curriculum for study in the Universities and Technical Colleges. There is a translation course which is part of the Sinhala degree course at Vidyalankara University. But the ground covered in this course is very elementary and the basic text is "Teach Yourself Translating".

The two main components of the law of Sri Lanka are statute law and case law. In those areas of the law in which Roman-Dutch law applies the treatises of the old Roman-Dutch law writers would be relevant. However, case law which has interpreted and declared the Roman-Dutch law becomes the primary source of law and to that extent deprives the Roman-Dutch treatise of the authority it would otherwise have had. The modern sources of the indigenous laws are legislation and case law. Information about the above may be obtained from written works such as text books, monographs and articles in periodicals. The question therefore arises whether a change of the language of the law must necessarily involve a transfer of legislation, case law and legal writings into the new language. It is proposed to discuss the manner and extent to which (1) legal writings, (2) statutes and (3) case law have been transferred into Swabasha, the problems that arose and the lessons that can be learned from the Sri Lanka experience. It is proposed to discuss legal writings, first, because though it is not an authoritative source of law in the sense that legislation and case law are sources, yet

it is from legal writings that students learn about the law, and judges and lawyers gain information for the application of the law.

LEGAL WRITINGS

The responsibility for translation of legal writings was assumed in 1956 by the Publications Section of the Official Language Division which was converted into a department called the Educational Publications Department in 1966. The Publications Section, soon after it was established, decided to embark upon a project of translating books which would be required when law was taught at the University level in Swabasha. The Publications Section, as a preparatory step, attempted to list the books used by lecturers and students. The aim was to prepare a list of books students in the University and Law College would need in their first year of study, in their second year of study and in their third year of study. The policy was to translate two books for each subject. The Section was supplied with a list of books needed for reference by students by the Professor of the Law Faculty of the University. This list was provided with a tongue-in-the-cheek attitude. All the recommended books in the syllabus (text books and reference books) were put down as an indication of the magnitude of the task and thereby to demonstrate that the administration of justice and the teaching of law in Swabasha was an impossibility.

The administrators were perhaps unaware, and unfortunately the University Law Faculty at the outset did not in a persuasive manner attempt to point out to the administrators, that the list of recommended books could be misleading. The courses at the University were directed towards conveying to the students an understanding and knowledge of the rules of law applicable in Sri Lanka. But there were in 1967 hardly any legal text books about the law of Sri Lanka. The books on the recommended list were books about the laws of England and South Africa which were only partly relevant to the student seeking information about the law of Sri Lanka.

The department also did not appreciate that not only were those books only partly and at times marginally useful to law students, but that legal text books become outdated fairly soon because a new edition is published as a consequence of changing statute and case law. Thus books could become out of date even before the work of translation was completed.

The first twelve books which were translated and published were Local Government Law by Jennings, Company Law by Topham, Principles of the Law of Partnership by Underhill, The Law and the Constitution by Jennings, Government of the British Empire by Jenks, Introduction to Roman-Dutch Law by Lee, Classification and Uses of Fingerprints by Henry, Steven's Mercantile Law, Legislatures of Ceylon by Namasivayam, Constitutional Law by Wade and Phillips, Conflict of Law by Graveson, Elements of Roman Law by Lee, Outlines of Criminal Law by Kenny, Bills of Exchange by Jacobs, Kandyan Law by Hayley, Law of Contract by Anson, Law of Delict by McKerron. It is significant that some of those books are only marginally relevant for the local law student. Local Government Law, Government of the British Empire and Wade and Phillips' Constitutional Law are books which were hardly relevant for the local law student. It is also significant that in the entire list there is not one book which deals with the current local law. Hayley's Kandyan Law was a book written by an Englishman in 1921 and is out of date and is of relevance only as a historical source.

A great deal of money was spent on this entire project. Wade and Phillips' book on Constitutional Law was published at a cost of Rs. 88,000 and less than 10 copies of it were sold. The computation of the cost of Rs. 88,000 does not take account of the time and labour of the members at the Educational Publications Department who worked on it. It merely reflects the cost of obtaining copyright and payment to translators and printing.

Up to 1969 the Publications Section and the Educational Publications Department maintained a momentum of translation, planning and implementation. After 1969 no new book has been projected and the department is merely concentrating on the publication of books which were mooted before 1969. Due to delays in preparation and the notorious time taken by the Government Printer to print the books, the books which are now in the press are those which were prepared about six years ago.

The translation programme of the Educational Publication Department was confined to books and did not involve the translation of periodical articles or extracts from any journals. When I was on the University staff, I tried unsuccessfully to interest both the Educational Publications Department and the University of Ceylon in the task of making compilations on the law of Ceylon. The idea was to prepare on each subject a list of materials consisting of relevant extracts from statutes, case law, text books, legal

journals and other writings with, if possible, annotated comments by a specialist. The Department also has not published any work dealing with the laws of Sri Lanka.

The procedure adopted by the department at the outset was to farm out the translation to lawyers. No translations were given to law teachers probably because there were none who were willing and competent in Swabasha. Farming out of translation has its disadvantages. The work has to be done by a busy practitioner in his spare time. And a job done especially when one is tired and in a hurry does not necessarily produce the best results. Further, in some cases those who undertook the translation never completed it. In such a situation the entire project had to be abandoned. There were others who sub-farmed the translation which had been assigned to them on the basis of their qualifications to persons who were not always competent.

The farming out of translations proved to be not satisfactory and very expensive. Therefore the department then recruited persons to its permanent staff and entrusted the job of translating to them. The disadvantage was that the recruits who translated law books had sometimes little or no knowledge of law.

It has already been mentioned that the criteria for selection of books was very unsatisfactory and that the books were outdated even before they were translated. The translations were undertaken at the time when the glossary was being compiled. Thus words are used in the translations which were subsequently discarded or modified by later editions of the glossary. The tendency also has been to transliterate. The translations have been done by persons who did not know law or even if they had a knowledge of law did not have the "feel" for the subject and a deep understanding of it. As a consequence the books tend to be meaningless to a person who does not have some understanding of the English original or the subject which is being written about. This of course defeats the purpose of the entire exercise and makes the books relatively valueless for the law student for whose benefit they were primarily translated.

It has been said that a good translation requires of the translator a knowledge of English, a knowledge of Sinhala, a feel for and a deep understanding of the subject and some knowledge of linguistics and the techniques of translating. It appears that the translators did not have more than one of those requirements. Most of them were merely knowledgeable in the Sinhala language.

The Educational Publications Department did not seek to make a profit from its publications. The Prime Minister, Mr. S.W.R.D. Bandaranaike who was returned to power in 1956, on an election programme in which the speedy change-over of the language of administration and education into Sinhala was an important commitment, placed the Official Language Department under his Ministry. He recognized that for the implementation of the Swabasha policy a Government subsidy was essential for educational publications at the post-secondary level because there would not be a reading public to maintain the cost of the preparation and publication of Sinhala books. As regards law, it was decided that two text books be translated for every subject on the syllabus at the Law Faculty of the University and the Law College. There was need for a Government subsidy. But money was wantonly spent on glossary committees (whose proceedings went on interminably) and translations. Those taking part were paid on a fairly lavish scale. Administrative costs were considerable. Costing is not possible because Government regulations will not permit reference to files in order to obtain the necessary information. The only information available is the annual expenditure of the department concerned. As regards the Offical Language Department the money spent on legal work cannot be separated from money spent in other fields. These departments were concerned solely with Swabasha work. No computation can be made as regards other Government departments, (notably the Government Printer) where swabasha work was only a part of the entire work of the department. Private publications were not unnaturally especially few prior to 1970. It is not likely that money will be invested by the private sector when there is no reading public. A Sinhala reading public would arise only when law was being administered and taught in Swabasha and when this happened a few books appeared.

The first Sinhala legal book which was printed was the Nithi Niganduwa. It was printed in 1880 but the date of its compilation and who was responsible for it has been a subject of controversy. It was probably compiled in the early nineteenth century (circa 1830-40) by a British Civil servant, who sought to state principles of the ancient Sinhala legal system, having consulted the Sinhala chieftains. It is a historical source and, as far as I am aware, was not consulted nor referred to by legal glossary makers or translators. It forms part of the dead wood of history and no longer attracts even controversy about its source.[4]

In 1927 A.B.C. Soyza wrote a book in Sinhala about the law of Sri Lanka. But apart from that, until the 1960s there were no significant Sinhala legal publications. Pino Moragoda wrote a pioneering work on the organization of the laws of Sri Lanka and also wrote books on the law of persons and law of property. W.S. Weerasooria published, in

1970, a book on commercial law. P.T.B. Kohona and L. Mendis, two young lawyers, produced a work in 1973 consisting of a series of essays on the legal system of Sri Lanka. These were pioneering works and of course must be judged as such. They are certainly of much more use than the translations put out at great cost by the Educational Publications Department. Weerasooria's and Kohona and Mendis' works are significant because the authors show that it is possible in fairly simple language to express legal ideas. Kottegoda has produced an adaptation of Sir Sydney Smith's Forensic Medicine. It is not a mere translation but it is an adaptation with deletions and modifications to suit local needs. M.J.A. Cooray has produced a very fine work on the Constitution of Sri Lanka (1975) which, in simple language, effectively expresses legal ideas. The Law College students have produced two volumes of a magazine consisting of legal articles. The University students have produced in mimeographed form extracts from relevant books and journals for the use of students.

There are signs that a local legal literature is beginning to appear. And those responsible for it are the young persons who have recently graduated and entered the legal profession or become university teachers, having studied in secondary school through the medium of Swabasha and obtained their legal education in the English language. When the post-1970 students who have in addition pursued their legal studies in Swabasha (at the Law Faculty of the University) or bilingually (at the Law Faculty of the University) or bilingually (at the Law College) are in a position to contribute to legal literature it may be expected that there would be a further impetus. It is true that the younger generation does not have the accumulated experience and knowledge of their elders - but due to the needs of the time, will find that it is their task and role to write articles and books in Swabasha.

From the little experience I have had correcting examination scripts in Sinhala and reading the books and articles that have been written which are of very uneven quality - my conclusion is that they provide hope of better things to come. I have little doubt that the Sinhala language over a period of time can develop and expand to convey legal ideas adequately.

There are two factors which may adversely affect the development of the law in Sinhala: first, if the lawyers and the courts in the future are cut away from the English language and the consequent opportunity to enrich the legal system from foreign sources; and second, if due to lack of financial resources a legal literature cannot develop. Looked at from the financial angle, the future of Swabasha legal writing appears to be bleak. At the outset the Government was willing to subsidize the production of Swabasha books. As a reaction against the vast expenditure of money, the entire project has now been scrapped. The Educational Publications department has been wound up. This means that there will be no subsidies in the future for legal writings and publishing and it is private individuals and firms which will in the future have to produce legal works.

In this context it must be remembered that the cost of paper has gone up considerably and import of paper has been restricted as a consequence of the fact that the Government does not have sufficient foreign exchange to import unlimited quantities of paper. Publishers are to a great extent dependent on paper produced locally, but the supply is limited because of restricted import of raw materials used for production of paper, again due to foreign exchange problems. As a consequence paper finds its way onto the black market and when publishers are forced to buy paper on the black market this is reflected in the cost of the book. Further there are only 8 million Sinhala speaking people in the world. The market for Sinhala books is therfore very limited. The legal reading public would of course constitute a minute fraction of the total population. The market for legal books is therefore very limited and coupled with the high cost of printing it is unlikely that private individuals or firms will with a few exceptions embark upon the production of legal books.

A continuing Government subsidy is essential. But the Government subsidy would have to be more selectively used than in the past. It is suggested that a Swabasha law Institute should be established and one of its tasks should be to concern itself with the publication of "compilations" of statutes, cases and materials on particular subjects and text books. Incentives should be given to selected individuals for the production of such works and the publications would have to be subsidized. Specialized academic works or works which are not of immediate practical relevance to students or to the profession may be subsidized if they are of a very high merit only. The prime need is to provide basic reading material. The production of specialized works could be undertaken at a later stage. The task of translation of books should not be commenced again unless the book is of practical relevance.

When a book or extracts from a book are being translated it is important to choose books or extracts that can "stand translation". This means several things. Firstly, having regard to the lexical, graphic and grammatical components it must be material which is capable of being translated into Swabasha. A book, for instance, where the

language is more didactic with legal principles is easier for translation than a book where the language is full of syntactical structure coupled with abstract and abstruse legal thinking. Simply, the difference is between a book on contracts dealing with fundamental principles and that of an abstract and involved jurisprudential work or one dealing with legal theory. If a book is being translated it should be able to stand without being soon outdated in its entirety or even partly as a consequence of changes in the law. A set of criteria to assess the utilitarian value of a book should depend primarily on the question of its utility in the legal system of Sri Lanka. A book which discusses the English law in its entirety and is not applicable to local needs should not be translated.

If a translation is attempted on a subject which is not strictly on all fours with our legal system, it must be adapted to suit local needs and circumstances with deletions and additions. In this connection, the translation of Sir Sydney Smith's book on forensic medicine by Professor Kottegoda referred to above should be commended as a pioneer venture in this field.

In regard to translation of law books, it is important to bear in mind that books are translated primarily for students who pursue law studies in Sinhala and also to facilitate the working of the courts in Sinhala. The other benefits accruing from such a venture would be to help legal thinking and theorizing in Sinhala. An absence of good legal literature in Sinhala is a bar to acclimatizing oneself with the correct Sinhala legal jargon in a transitional period. This is necessary for both the academic student and the busy practitioner, since thinking in Sinhala will not precipitate unless the necessary background is created. Therefore, a good Sinhala law book will also have the effect in a roundabout way of popularizing the legal studies in the mother tongue and will also facilitate the working of courts and the shift of the legal language.

The unfortunate conclusion is that the translations put out by the Educational Publications Department are virtually useless. They probably assisted in a marginal way the building up of a Sinhala legal vocabulary and helped the coining of terms, but the benefits thus accruing can in no way justify the tremendous expenditure. It is however unfortunate that the Educational Publications Department has been wound up as a consequence of complete loss of faith in it. But there exists an urgent need, in a situation where it is unlikely that private sources will publish the requisite number of legal books, for the state in some way to provide incentives and to encourage and subsidize the production of a local literature. The emphasis in the future should be on the production not of translations, but of compilations of relevant materials, adaptations and original writings which serve the basic needs of legal education and the legal profession.

STATUTES

Statutes were first translated during the colonial period. The statutes which were translated were those which affected, and a knowledge of which would be required by, the non-English speaking sections of the population, and statutes which were required in the process of administration, particularly localadministration, industrial law and the rights of workers, land registration, births and deaths, marriage and maintenance. With the growth of a Swabasha speaking commercial sector it became necessary to translate statutory provisions affecting trade and commerce, such as patents and registration of companies.

Prior to 1948, translation of statutes and the rules and regulations made under them where necessary were undertaken by the department concerned. Thus, for example, a statute dealing with local government was translated by the department of local government. In 1948, consequent to a cabinet decision, all translations of statutes were entrusted to the Ministry of Justice and thereafter the task of translation of statutes devolved on the Legal Draughtsmen's Department. But the Official Language Department undertook the task of translating subsidiary legislation.

The Legal Draughtsmen's Department, after it assumed responsibility for all translations, proceeded very slowly. The reasons for this are not clear, but it appears to have been due to lethargy, excessive care and caution, the problems encountered in translating and the absence of a glossary. The officer in charge of the translation section of the Legal Draughtsmen's Department in the late 1950s and early 1960s said there was lethargy and lack of interest everywhere and he attributed this to the fact that the official language of the law was then English. He said he resigned in disgust. Up to 1956 none of the statutes which had been translated involved "lawyers' law". The Legal Draughtsmen's Department commenced translating the Penal Code, the Courts and their Powers Ordinance the Criminal Procedure Code and other statutes which were considered basic. These statutes involved the use of legal language. More complicated problems arose in the translation of the Penal Code as compared for example

to the translation of the Village Committees Ordinance, the Town Council Ordinance or even the provisions of the Companies Ordinance which deal with the procedure for the formation of a company. The former statutes deal primarily with the law which would have to be applied by the courts and the latter category deals primarily with laws which layman must refer to in the process of conducting public and private business.

R.K.W. Goonesekere states the problems that can arise in the course of translating of statutes:

> The point I was trying to make is that law is not a body of knowledge (I do not know whether that is the correct word) which exists apart from language. It is so much bound by the language in which it is expressed that the transference to another language is a delicate operation. One has to take into account the possibility of a change on the context of law as a result of its expression in a different language, quite apart from other possibilities such as the incomprehensibility arising from a new terminology. These considerations are particularly important when dealing with statutes, and we must bear in mind that the bulk of our law is statute law. The style of legislation is so intimately connected with language that careful thought must be given to evolving a pattern for legislation in Sinhala which is suited to the language. It is unduly restrictive of what can and ought to be done. Perhaps it would be more accurate to speak of 're-writing' or 're-enacting' legislation.[5]

A person who reads a translation of the Penal Code, the Criminal Procedure Code, the Evidence Ordinance or the Courts and their Powers Ordinance and who is not familiar with the English original will find the translation difficult to understand. The statutes have been translated word for word, virtually phrase for phrase. It is translation at its worst. It amounts to a transliteration. These translations were the inevitable consequence of translating at a time when the English statute was the only valid source of law. Translators therefore sought to stick as closely as possible to the English original. If they had chosen to break up the English sentences, especially when the sentences were long and contained phrases and provisos and sought to convey the idea behind the particular sentence, the consequence may well have been that the Sinhala rendering might have varied in some small but material particular from the English. The translator prior to 1972 when the language of the law was in English had this problem. Law is tied to the language in which it is expressed (in this case English), which gave the translator very little scope for a free translation of the type which a translator in another subject could resort to.

A draughtsman of a bill after 1972 when Sinhala became the official language of law who would have to translate a bill, the prior work and preparation of which has been done in English, would not be in the same position. He could reconstruct the words of the bill as found in English and render them into Sinhala. If there is a slight conflict and variation between the English and the Sinhala, it will not matter because it will be the Sinhala version that will be authoritative. A changeover of language must in the long term involve a change of drafting techniques, though this has not yet taken place. The drafting techniques which draughtsmen in Sri Lanka are accustomed to were originally evolved for the English language and the English social environment. At the present these drafting techniques have been carried over for use in the process of translation. But in the future changes must take place as new techniques are evolved as a new generation of civil servants and legal draughtsmen arise who do the thinking and preparatory work in Sinhala.

Sections 9, 10 and 46 of the Republican Constitution of 1972 made a significant change in that Sinhala was deemed to be the language of legislation. The relevant constitutional provisions were as follows:

Section 9 (1) All laws shall be enacted or made in Sinhala.
(2) There shall be a Tamil translation of every law so enacted or made.

Section 10 (1) All written laws, including subordinate legislation in force immediately prior to the commencement of the Constitution, shall be published in the Gazette in Sinhala and in Tamil translation as expeditiously as possible under the authority of the Minister in charge of the subject of Justice.
(2) The laws so published shall be laid before the National State Assembly at the meeting next following the date of such publication.
(3) Unless the National State Assembly otherwise provides, the law published in Sinhala under the provisions of subsection (1) of this section, shall, as from the date of such publication, be deemed to be the law and supersede the corresponding law in English.

Section 46 (1) Every Bill for a law shall be published in the Gazette in Sinhala and in Tamil translation at least seven days before it is placed on the Agenda of the National State Assembly.

Section 23 of the Constitution of 1978 is worded differently, but the effect is substantially the same. Section 23 enacts:

(1) All laws and subordinate legislation shall be enacted or made, and published, in both National Languages together with a translation in the English Language. In the event of any inconsistency between any two texts, the text in the Official Language shall prevail.

(2) All laws and subordinate legislation in force immediately prior to the commencement of the Constitution, shall be published in the Gazette in both National Languages as expeditiously as possible.

(3) The law published in Sinhala under the provisions of paragraph (2) of this Article, shall, as from the date of such publication, be deemed to be the law and supersede the corresponding law in English.

The former Secretary of the Ministry of Justice stated in "Legislative Drafting in Multilingual Countries", British Institute of International and Comparative Law 1973 (mimeographed):

> At present all drafting is being done in the English language. The Department however has on its staff a number of Assistant Legal Draughtsmen who are lawyers and are proficient in either Sinhala or Tamil. The practice then is to Gazette the Bill in all three Languages although s.46(1) refers only to the Gazetting of Bills in Sinhala and Tamil. When the Bill is debated in the National State Assembly the Ministry which initiated the Law will be responsible for taking steps to have the new Law published by the Government Publications Bureau. As stated in section 9, Laws must be published in Sinhala with a Tamil translation. However, the practice so far has been to publish the new law in Sinhala, Tamil and English.[6]

The constitutional provisions require the translation of legislation and subsidiary legislation prior to 1972. This consists of twelve volumes of legislative enactments which are contained in the 1956 consolidation and also seven volumes of subsidiary legislation. There is a supplement to the 1956 consolidation published in 1965 consisting of two very bulky volumes. There is also the body of legislation consisting of individual statutes which have been passed, bound in annual volumes. In the period after the United Front Government was returned to power in 1970 there has been a large volume of legislation after 1956 which has to be collected from the Gazette in which they are published.

It is only a few of the pre-1972 enactments that have been published and translated and therefore a large number of pre-1972 enactments have not been translated and published. It should be noted however that after 1961 all bills which were tabled in Parliament have been tabled with a Sinhala and Tamil Translation. The translations were provided because in the course of debates, members spoke in Sinhala and Tamil. But the Act which was passed was not translated.

The question to which I attempted to find an answer was what portion of the legislative enactments have actually been translated (even though not published). This task is the responsibility of the Legal Draughtmen's Department. It appears that the enactments up to 1956 and the subsidiary legislation up to 1956 have been translated. But most of the translations are not very satisfactory, some of them were translated at an earlier stage and bear the defects referred to above, associated with the early translations. They made use of terminology appearing in the earlier glossary, which have since been discarded. The terminology used is not uniform and the same term has been translated in different ways in different statutes. A special committee consisting of judges and members of the Legal Draughtsmen's Department was appointed to go through and modify these translations. The committee started its labours and on one particular statute spent about twenty hours analyzing the translation, arguing over it and correcting it. Subsequently the committee gave up the task for lack of time. There are few more difficult tasks than correcting a bad translation. Less time may be taken in doing the translations all over again. What is to be done with the translations that have been carried out? It is my view that these translations should be discarded.

It is preferable to indulge in a selective translation of the important statutes and those which are required for purposes of administration and in the day to

day working of the courts. The remaining statutes, some of which may be scarcely or seldom referred to or cited in the courts, need not be translated. If it becomes necessary to apply a statute which has not been translated, the judge hearing the case could translate the relevant portions of the statute into Sinhala for the purpose of the decision. Problems will only arise if a disputed question of construction arises, and in a particular litigation it is not likely that more than a few provisions or clauses will be the subject of controversy. So the task before the judge will not be a very difficult one.

There are many who advocate the translation of statutes and case reports and it is commonly recognized to be an urgent requirement for the administration of justice and legal education. There are many who say that the government has failed in not having translated legislation and case reports during the period from the 1950s to the present. It has been and is being repeatedly stated by law teachers that the minimum for effective legal education is the presence of the statute and case law in Swabasha. But law teachers have been saying this for many years. When the switchover was ultimately made in the absence of a legal literature, the staff got on with the task and by all accounts managed pretty well. The main problem which arose was as regards students who did not know English and the solution which may be suggested is to compulsorily teach students English language until they acquire a reasonable degree of proficiency during their legal studies. Whether in practical terms this is feasible may well be queried.

Therefore I express a contrary opinion to that which is so commonly stated. The translation and publication of the statute and case law in the 50s and 60s during the period of glossary making would in my view have been disastrous for the reasons stated above. Many of these translations would have become outdated by changing glossaries which are inevitable at an early state of planning for a switchover. But that argument is not maintainable in the present time, as regards the translations of statutes and cases prior to 1972 for use in the future. But, it is nonetheless my view that these should not be translated except very selectively. Translation of statutes and case law in bulk can only result in bad and inadequate translations. It may then be said that the solution is to use competent translators and provide adequate translations. But this is not feasible both in terms of the financial resources available and the manpower. And if there are persons who can provide effective translations, they may be profitably employed in other tasks. Further, the person who could make an ideal translation would probably not be willing to stagnate as a translator.

In this context the problems which can arise from bad translations must be remembered. A bad translation can result in reference back to the original English and a comparison between the two and discussion as to whether the translation is a correct rendering of the original. This would be a sheer waste of time. If a decision is taken that the break with the past is complete, and translations of statute would be final and conclusive, this may solve some problems. But it would create others in situations where (if there is translation in bulk this is very likely) there will be sections which are incomprehensible and meaningless or which will lead to absurd results.

From the point of view of the administration of justice a bad translation could create more problems than not having translations at all. From the angle of legal education it may be that bad translations may be better than no translation at all. In this situation it is my view that we should look at the question from another standpoint.

The monumental task of translating the legislative enactments has been entrusted to the Legal Draughtsmen's Department which also has the task of drafting and translating the current statutes. It is submitted that whether statutes are being translated in bulk or selectively, it is imposing too great a burden on the Legal Draughtsmen's Department to expect it to translate past statutes, when its primary obligation is the draughting of current law which itself may involve translation of a bill prepared in English into Sinhala and Tamil. It is submitted that the task of translating the past statutes should be entrusted to a special body. If a Swabasha Law Institute is set up this is one of the tasks which could be entrusted to it. In Israel a special Academy which consisted of draughtsmen, administrators and academics have been set up to tackle the task of translating early statute law.

In Malaysia, the English version of a statute continues to be the authoritative one until it is translated and officially promulgated. The Constitution of 1972 which provides that all legislation and subordinate legislation shall be translated and laid before Parliament as soon as possible, makes no reference to the legal status of statutes prior to 1972, until such time as they are translated and laid before Parliament. It appears that the statute enacted in English could be regarded as the authoritative source until the Sinhala translation becomes law. But the judge who writes his judgment in Sinhala generally attempts to render it in Sinhala.

Once the pre-1972 statutes have been translated another question which may arise is as to the extent to which (if at all) the earlier English original is relevant. If it is permissible to compare the earlier original against the translation and to show that the translation does not effectively or correctly convey the meaning in the former, it could lead to endless arguments. A field day would be provided for legal sophistry and lawyers arguing a lost case are likely to fall back on quibbling on the correctness of the translation. The alternative solution is not to provide any scope for reference to the original. The danger here is that if the translation has been hurriedly done there may be situations where the translation is patently erroneous or incomprehensible or will lead to absurd results. And this consequence is most likely to follow if the statutes have been translated in bulk and if the twelve volumes of the legislative enactments and the legislation between 1956 and 1972 are translated and presented to the National State Assembly. The solution which has been suggested above is that the more important statutes be selectively translated and done very carefully. In such a situation it will be possible to provide that the translation is authoritative. But it is submitted that such authority should not be accorded to translations which have been compiled in bulk.

A question which arises is the relevance of and binding effect of case law interpreting a statute enacted in the English language before 1972, after the statute itself has been translated into Sinhala. A similar question regarding the relevance of case law could be raised as regards statutes enacted after 1972 which constitute a consolidation or re-enactment with modifications of a statute prior to 1972, enacted in English, or where a statute enacted in Sinhala contains a word or phrase in a similar context to which it is used in an enactment in English. To give an example, the word "building" may be translated in the statute in Sinhala. The Sinhala equivalent used for the English word may carry a slightly different connotation than the English word because it will be seldom possible to find an exact equivalent. One view is that as far as possible the cases in the English language should be followed especially where a phrase carrying a particular meaning is involved. But if the Sinhala word or phrase is to be interpreted in the light of English it may do violence to the Sinhala word or phrase. More involved problems may be encountered with words such as "possession", "occupation", "title".

On the other hand, a phrase like "in furtherance of the common intention" which occurs in section 32 of the Penal Code raises slightly different issues. It may be argued that as regards such a phrase the English cases should continue to be relevant even to a limited extent. But in the case of the earlier examples it would be necessary to make a complete break with English case law, and construe the word in the statute in Sinhala without reference to case law.

It is desirable that policy guidelines be laid down by the legislature in the form of an interpretation statute. The rules themselves cannot be definitive, but broad guidelines must be laid down stating that in certain circumstances a break with the English case law must be made. The judges and lawyers, as a consequence of their legal training and the way the courts have operated in the past, have a degree of reverence for the doctrine of precedent. Thus there may be a tendency to refer to cases in the English language in the interpretation of a translated statute in such a way as to do violence to its language. The above are some questions on statutory interpretation and construction which are likely to arise in the future and they are raised to provide scope for thinking and planning in order that remedial measures can be taken before the problems arise.

The promulgation of the Constitution in 1972 and the enactment of the Administration of Justice Law 1973 and addition to it in 1975 dealing with civil procedure were preceded by consultation with the general public and lawyers. In the case of the latter various drafts were circulated and comments invited. Most of the comments on the Constitution and all the comments on the amendment dealing with civil procedure were directed towards drafts in the English language. The debate in the Constituent Assembly, in the case of the Constitution, and the National State Assembly, in the case of the Procedure Law, were in all three languages. The final enactment was in all three languages, but it is the Sinhala draft which is the sole authoritative one.

The statement of the Ministry of Justice quoted above illustrated the extent to which in the drafting of statutes English was being resorted to in 1973. In 1979, the practice is not much different. In this context the quotation from an educationist examining the problem in 1974 may be quoted.

> With education and legislation and particularly the latter, we are entering the most sophisticated and difficult area of change, and the need for a clear sense of direction is greatest. While a great many people are engaged in sorting out all kinds of problems which they are faced with as a result of their accustomed language, English, being replaced with the not-so-familiar Sinhala, the law-giver and the creator of this major change, is unaffected in

his day-to-day work and for that reason indifferent to the difficulties which have arisen. Is the legal thinking before legislation done in Sinhala, is the legislation prepared in Sinhala, and is there any discussion of its provisions in Sinhala? Whether it is existing legislation, case law or text books, there is a simple solution - put as many people on the job with a single word - 'translate'. There is a bee-hive of activity in legal Sinhala but what proportion of honey and wax is produced must remain a matter of doubt.

But it must be noted the original thinking and working in Sinhala is only possible when there are original Sinhala legal concepts and ideas. The critics who point out that most of the thinking is still being done in English and then a translation is being effected, forget that this is to some extent inevitable because what is being attempted is to convey into the Sinhala language legal rules and concepts which are in the English language and related to English culture. The critics who say that the thinking must be done in Sinhala seem to overlook this fact. Thinking in Sinhala can be done as a Sinhala legal culture begins to arise and the links with English become less. Some of the critics say that they think their law in Sinhala. But all this means is that having imbibed legal concepts in English at an earlier stage, they are now thinking in Sinhala.

Thinking and working in English and translating is inevitable in a period of transition until a Sinhala legal language, idiom and culture emerge and the links with the English system become less tenuous. It is also inevitable in a situation where many who have been educated in the English language, have studied and worked with law in the English language, continue to be involved in the administration of law.

CASE LAW

The Ceylon Law Recorder (New Series), an English language legal periodical (published privately between 1959 and 1961) contained a section with translations of judgments in Sinhala. This was a pioneering venture in the field of law reporting in Sinhala. The journal however had only a short life. Subsequently, The Ceylon Law Weekly, an established private law report, commenced in 1960 devoting a part of each volume for the reporting of Sinhala translations of judgments rendered in English. In 1971 a few translated judgments in Tamil were reported. In 1971 the journal stopped publication. The New Law Reports, the official law reports, commenced in 1977 publishing in Sinhala.

Prior to 1972 the judgments of all Appeal Courts were rendered in English. Subsequent to 1972 the constitutional provisions decree that Sinhala is the official language of the law and therefore judgments should be rendered in Sinhala. But since most judges in the appellate courts, with a few exceptions, are more familiar with administering the law in the English language, judgments continue to be written in English and entrusted to legal assistants, who are young law graduates, for translation. Since it is now some years since Sinhala became the language of record, it could be expected that appellate court judgments in Sinhala should by now have appeared. But this has not happened. The Ceylon Law Weekly has stopped publication following the death of the Managing Editor. The Bar Association of Sri Lanka formed in 1974 is assuming the responsibility for law reporting in the future.

It was suggested during the 1960s that the New Law Reports while being published in English should be contemporaneously translated and published in Sinhala. It was asserted that if this had been done the problems of the switchover would be less. From the point of view of legal education it would have had its advantages. But the same arguments stated against bulk translation of statutes would likewise apply to bulk translation of case law reports.

If the pre-1972 judgments remain in English, it is hoped the courts will permit the reference to such authorities where relevant. There is every indication that the courts would do so. The problem, of course, would be if a new generation of Sinhala only educated lawyers arises who would not therefore cite in court the pre-1972 English language decisions. It is hoped that this situation will not arise. It is envisaged that when a pre-1972 case is referred to, the court would be sufficiently flexible to listen to the case quoted in English and if it considered the case to be relevant, then it will be the task of the counsel and judge to render the relevant principle stated therein in Sinhala, for the purpose of the decision. It is admitted that the translation of the entire case reports is not desirable. But compilations would include extracts from important pre-1972 cases. If translations of case reports are to be attempted, it is desirable that selected cases be translated and the translation be not report-wide, but in relation to a particular subject, i.e. a compilation of cases on a statute (e.g. Penal Code) or on certain branches of the law (e.g. law of taxation).

THE FUTURE

The view was frequently expressed in the 1940's and 1950's whenever the question of the change in the language of judicial administration and legal education was mooted, that a prerequisite was the existence in Swabasha of a legal literature. The term "legal literature" includes statutes, law reports, legal textbooks, legal periodicals and any other written work containing a statement, discussion or analysis of legal rules, concepts of ideas. In addition, there were those who expressed the view that a restatement of the law followed by codification was an essential prerequisite to any attempt to translate the law. The argument regarding restatement and codification could be rebutted on the following grounds: no government has ever shown any enthusiasm for the project; the great part of the law which would be restated is contained in the "historic" systems of law which seem destined to play an increasingly diminishing role in Sri Lanka in the future, in the context of a movement towards a state-directed and controlled economic and social system in which the predominant sources of law are statutes and delegated legislation; the expenditure involved; the time which such a project would take; and finally, the fact that overburdened law teachers and busy legal practitioners neither have the time nor the inclination to embark upon such a project, even if they were provided with the financial expenditure and the research and secretarial staff.

The need for a legal literature as a prerequisite for a switchover appears on the surface to be a very sound argument. But it is equally true that until legal education and judicial administration are being conducted in Swabasha, it is unlikely that legal writings will appear. It is only when an actual language change takes place that authors would feel moved to write and publishers would find it financially lucrative to publish.

The protagonists for Swabasha argued (with a degree of justification) that the stated difficulty of effecting a switchover in the absence of a legal literature was an excuse and device for indefinite postponement and retention of the status quo. But on the other hand, viewing the question merely from the standpoint of legal education, a switchover in the absence of a legal literature must inevitably (at the very least in the short run) lead to a decline in the high standards which had been built up.

While legal educationists prior to 1970 took scarcely any meaningful steps towards preparation for an eventual switchover, government authorities after the enactment of the Official Language Act of 1956, made slow, uncertain and at times, self- defeating preparations for the switchover. Work on the compilation of a glossary of legal terms and concepts was commenced. A glossary committee proceeded very slowly and at great cost to prepare a glossary of legal terms. This committee, which has been severely criticised, must however be judged on the basis that it was embarking on a pioneering venture and in the light of the fact that a coined word cannot satisfy linguistic purists, and lawyers who use it, many of whom have differing approaches and viewpoints. The glossary committee suffered from certain inbuilt deficiencies. At the outset the committee consisted of language scholars and only after some years was it realized that persons knowledgeable in the law should be appointed. The committee never realized the need to co-opt linguists, persons with special knowledge and training in the techniques of translation and specialists in relation to particular subjects in which terms were being coined. The committee also had the disadvantage that they worked for a long time in the abstract when all legal thinking and work was in English. Word-making in the context of legal writing, law teaching and judicial administration would have been very much easier and more productive.

The books which were translated had many defects. The books chosen for translation were those dealing with foreign laws and only parts of the books were relevant in the local context. The books themselves became outdated due to the appearance of a new edition, even prior to their being published. No books dealing with the laws of Sri Lanka were translated. Some of the books used terms contained in the earlier edition of the glossary, which terms had been replaced in subsequent editions. The books attempted to translate very closely the language of the original, even reproducing clauses in the same order. There was no attempt to reconstruct clauses and sentences and express the meaning. Many of the books are therefore very difficult to read and understand, if one does not have a knowledge of the English original. The books perhaps assisted in a marginal way the building up of a Swabasha legal literature and in the coining of new words. But such benefit cannot justify the expenditure incurred.

The Government in 1956 decided that two books should be translated for each subject which was being taught in the University and the Law College and provided a subsidy for this purpose. The tragedy is that the books which were translated are virtually useless, and the government now having lost faith in the translation programme, at a time of grave financial crisis decided in 1975 to abandon the entire project. There is now, in 1978, rethinking on this matter.

The continuing government subsidy at a time of spiralling printing costs is essential if books are to appear. A few books published recently give promise of better things to come. There are indications that the teething period is over - and that creative and original legal works in Sinhala (as distinct from translations) will be provided, but the financial implications will deter writers and publishers. Thus the sad conclusion is that unless the government intervenes, the legal literature which is essential for legal education and judicial administration will just not appear.

FOOTNOTES

1. See Sessional Paper XXII of 1953, paras. 31-33.

2. S. Nadesan, Some Comments on the Constituent Assembly and Draft Basic Resolutions. (1971), pp. 37-38.

3. See T. Nadarajah "The Legal Systems of Ceylon", University of Ceylon Review (1952), p.31.

4. See further, L.J.M. Cooray, An Introduction to the Legal System of Ceylon (Colombo: Lake House Investments, 1973), pp. 118-119.

5. R.K.W. Goonesekere, "Law in Sinhala, Questions of Direction" unpublished (1974).

6. N.M.S. Jayewickreme, "Legislative Drafting in Multi-lingual Countries", (British Institute of International and Comparative Law, 1973), mimeographed.

7. Goonesekere, *op. cit.*