Indianisation of the Legal System

Why in news?

Supreme Court judges have in the past few months openly expressed the need to Indianise the legal system.

What does 'Indianisation' of the justice system mean?

- Different meanings have been attributed to the term "Indianisation of the justice system".
- In the post-independence decades, Indianisation has coincided with the democratisation of public spaces, or increased access, or more transparency.
- At other times, it has meant the crystallisation of the idea of a strong nation state with fewer deliberations and debates.
- Indianisation has also meant as merging of the country with particularist religo-cultural representations.

How did the Indian legal system evolve?

- The evolution of laws in India has been through legislation and the binding precedents of the Supreme Court under **Article 141** of the Constitution.

Article 141 of the Constitution of India stipulates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India.

What were the reiterations of the judges for favouring Indianisation of the justice system?

- **Former CJI P.N. Bhagwati's statement**- In the *M.C. Mehta case, 1986,* Justice P.N. Bhagwati has said that the judicial thinking cannot be allowed to be constricted by reference to the law as it prevails in England.
- He stressed on the need to build up our own jurisprudence.
- **Chief Justice of India's statement-** According to him, 'Indianisation' means the need to adapt to the practical realities of our society and localise our justice delivery systems.
- The CJI has cited that the current proceedings are lengthy, expensive and in English and are technical to manage.
- Rules and procedures of justice delivery should be made simple for the inclusion of common man into the judiciary.
- **Justice (retired) S.A. Bobde's statement**- He referred to how even in the ancient and religious texts of India, a well-developed sense of privacy is evident as Kautilya's *Arthashastra* prohibits entry into another's house, without the owner's consent.

What statements indicate an unfortunate ideological shift in our judiciary?

- **The Constituent Assembly debates-** The plea for Indianness was very prominent in the debates of the Assembly.
- K. Hanumanthaiah, a member from Mysore said "We wanted the music of Veena or Sitar, but here we have the music of an English band".
- Pandit Govind Malaviya's suggestion was to start the Preamble to the Constitution by the words, "by the grace of Parameshwar, The Supreme Being, Lord of the Universe".
- Lokanath Misra and H.V. Kamath also supported their own version of Indianess of the legal system.
- **Justice S. Abdul Nazeer's statement**- Justice Nazeer speaks about the decolonisation of the Indian legal system.
- He underscored the need to embrace the great legal traditions as per Manu, Kautilya, Katyayana, Brihaspati, Narada, Parashara, Yajnavalkya and other legal giants of ancient India.
- The judge underlined Kautilya's theory about the duties of the king which, according to him, is based on the great tradition established in the age of Ramayana.
- Justice Nazeer has found glory in the Arthashastra which provided for punishment for an official for personally talking with a woman employee during work hours.
- After quoting Brihaspati, he said that a corrupt judge, a false witness and the murderer of a Brahmin were considered as criminals on a par with one another.
- On selection of judges, he recalled the Vedic priest, Katyayana, who insisted that the king had to appoint only a Brahmin to act as a judge.

What are the concerns with the Justice Nazeer's interpretations?

- The interpretations did not indicate a concrete and comprehensive legal system that is desirable or adaptable for the nation, after Independence.
- It ignores the Constituent Assembly debates on designing the nation's legal landscape.
- When religious revivalism is used as a political tool by the ruling party, the legal revivalism proposed by the judge in generic terms can only promote the regime's political and populist agenda.
- The speech of Justice Nazeer in line with the right wing's political rhetoric which relies on the unsubstantiated glories of the past.
- When the Constitution becomes the most effective tool against electoral autocracy, the speech by Justice Nazeer has had only an adverse impact on the movements thriving to restore the values of the Constitution.
- It is significant that even while attacking the colonialised legal system, Justice Nazeer did not find fault with the sedition law or such other draconian penal provisions.
- At a time when legislations are being used as a means to shatter constitutional tenets such as secularism and federalism, the remarks of the Supreme Court judge against the alleged colonial nature of the legal system, which includes the nation's Constitution, are deeply disturbing.

Has the court has differed from the views of these ancient

texts?

- **Joseph Shine judgment-** In Joseph Shine judgment decriminalising adultery, the court refers to how the Manusmriti prescribes punishment for those who are addicted to intercourse with wives of other men by punishments which cause terror, followed by banishment.
- **Sabarimala case**- In the Sabarimala case, the court points to the Manusmriti in which menstruating women have been considered as polluting the surroundings.
- The notions of 'purity and pollution', limit the ability of menstruating women to attain the freedom of movement, the right to education and the right of entry to places of worship and, their access to the public sphere.

What is the current status of India's democracy?

- The country's democracy has gone down in the freedom index as well as hunger index.
- There were reports where laws against religious conversions in India have been accompanied by mob violence.
- Hate speech has become a prominent mode of communication in the country which is assisted by selective invocation or non-invocation of the penal laws.
- There needs to be a separation of relationship between the judicial ideology and the political ideology.

References

1. https://www.thehindu.com/news/national/supreme-courts-views-on-indianisation-of-the-legal-system-have-varied/article38057819.ece
2. https://www.thehindu.com/podcast/what-does-indianisation-of-the-justice-system-mean-in-focus-podcast/article37176987.ece
3. https://www.thehindu.com/opinion/lead/an-unfortunate-ideological-shift-in-the-judiciary/article38083370.ece

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