



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

---

## Indianisation of Legal System: A Critical Analysis

Shubhi Rathore<sup>a</sup>

<sup>a</sup>IMS Unison University, Dehradun, India

*Received 27 June 2022; Accepted 20 July 2022; Published 22 July 2022*

---

*This article aims to examine the need for Indianisation and its effect on our legal system. It provides a better outlook on the concept of Indianisation and how it helps in making justice delivery more accessible by making it more practical as per the Indian scenario. Moreover, it also covers the challenges that come in the way of Indianising the legal system because changing the ways of the legal system does come with its own set of difficulties. To make this article conclusive, the research work was mainly based on the news articles published and the opinions of the CJI and other prominent judges. The results emphasize the need of making the legal system more Indian but also show the challenges involved. The article concludes that the focus should be on effective justice delivery and the welfare of the people seeking justice.*

**Keywords:** *colonial, accessibility, judicial system, justice, welfare.*

---

### INTRODUCTION

The Constitution of India, which has legal sovereignty over our nation, was 'adopted, enacted and given' to ourselves, which means it was made by the people of India and then given to ourselves so that it could govern us. Unlike the majority of laws in India which have been in use since the colonial era. Though these laws are consistent with the basic principles of the Constitution and hence they have survived the test of constitutionality, still the very spirit of

those laws is not 'INDIAN'. The question that generally pops in the mind of every individual when one studies law is, why are we studying the law made by the Britishers ages ago?

As time changes, everything around it has to evolve according to it, even our Constitution is said to be everchanging. Saffronising our legal system to match the practicality of our nation is the need of the hour, by localising the judicial system so that it meets the needs of the rural people who have minimum knowledge of the judicial system however, it comes with its challenges and obstacles.<sup>1</sup> CJI N.V Ramana recently spoke on this matter and averred that there are different practices followed in the Indian Judiciary which isolate the common man from it. Like the lengthy judgements and the language used in those judgements etc which makes it difficult for the common man to understand the concept. Therefore, it is time for the courts to get rid of the colonial era practices and acknowledge the practical realities of our country so that the common man does not think twice before approaching the court.<sup>2</sup>

This paper focuses on explaining the meaning of Indianisation, its benefits, and its disadvantages. The second section of this paper describes what 'Indianisation' is. The third section enumerates the benefits of Indianising the legal system and the barriers that the colonial practices have created. The fourth section highlights the criticism of Indianising it.

### **WHAT IS INDIANISATION OF THE LEGAL SYSTEM?**

Indianisation means making a system as per the practical realities of India and more local. At present, the Judicial System seems alien to the majority of people as they do not understand the voluminous statutes and laws that govern our nation. Moreover, they are in a language that is not used in common parlance. Therefore, there is a need to make the Judicial System more litigant-centric and this is what Indianisation means, making it as per the need of the

---

<sup>1</sup> Krishnadas Rajagopal, 'Supreme Court's views on Indianisation of the legal system have varied' (*The Hindu*, 29 December 2021) <<https://www.thehindu.com/news/national/supreme-courts-views-on-indianisation-of-the-legal-system-have-varied/article38057819.ece>> accessed 15 June 2022

<sup>2</sup> Krishnadas Rajagopal, 'Need to indianise legal system to suit our society: CJI' (*The Hindu*, 18 September 2021) <<https://www.thehindu.com/news/national/need-to-indianise-legal-system-to-suit-our-society-cji/article36532676.ece>> accessed 19 June 2022

people who are to be governed by it and who seek the redressal of such system.<sup>3</sup> Simplifying the process and the laws to fit in our Indian scenario will only benefit the ultimate beneficiaries.<sup>4</sup> The majority of people involved in seeking remedies through due process of law, are not aware of the procedure and hire lawyers or litigators to explain the process to them which not only makes the redressal process expensive but also affects people mentally and physically. Indian society is mostly of middle-class people who have an average income and for them to afford a separate professional for understanding a document paves a different level of challenge.

Lawyers and judges must create an atmosphere where the common man does not feel out of place. The environment in the Judicial system should be comforting and more flexible so that every individual can put their thoughts freely and understand what is going on in their case. Furthermore, the person seeking redressal should be able to speak the truth to the Courts and not feel anxious or scared of them.<sup>5</sup> As there is a notion in our Indian society that it's better to stay away from legal proceedings, people are ready to compromise their rights just to stay away from the complicated procedures that the system comes with. Making the system more litigant friendly is the need of the hour as the Judiciary becomes more burdened with cases with each passing day, there is a necessity of having a procedure that makes it easier for both, the Judiciary and the litigant so that justice is delivered on time without any delay.

### **ADVANTAGES OF INDIANISATION**

The majority of laws in India are from the colonial era, they were adopted and continued because they did not pose any threat to the basic structure of our Constitution and it was agreed by the lawmakers of our country that as and when the need arises these laws would be moulded and amended as per the needs of our Indian Society. The benefits that making laws as per Indian society comes with are transparency, accessibility, and effectiveness. CJI N.V.

---

<sup>3</sup> G. Sampath, 'What does indianisation of the justice system mean? | In focus podcast' (*The Hindu*, 26 October 2021) <<https://www.thehindu.com/podcast/what-does-indianisation-of-the-justice-system-mean-in-focus-podcast/article37176987.ece>> accessed 21 June 2022

<sup>4</sup> Krishnadas Rajagopal (n 2)

<sup>5</sup> Krishnadas Rajagopal (n 2)

Ramana also iterated the same thing that Indianisation would bring more of such elements to our Judicial System.

Currently, in the Judicial System, there is a lack of transparency as there is no rule for listing the matters in the Court. For example, in November 2020 the Supreme Court was approached by Arnab Goswami against the Bombay High Court order which refused to grant interim bail to him. His case was listed for hearing on the very next day and the judgement was reasoned emphasizing the importance of constitutional courts in matters of personal liberty. However, an opposite approach was followed in the case of Siddique Kappan, arrested in Uttar Pradesh for covering the Hathras case. His petition was of habeas corpus filed within 24 hours of arrest and such petitions are to be listed as a priority but still, the petition has been adjourned multiple times and is still pending.<sup>6</sup> Therefore, creating a space for transparency is highly necessary as that would give proper answers to the questions of the litigant and will not leave them comparing two scenarios.

Indianisation would also make the system more accessible and effective because due to the colonial laws and practices the procedure still seems difficult to be comprehended by most people.<sup>7</sup> Hence, there comes the need of hiring professionals which raises the cost of litigation resulting in making justice inaccessible to the common public. Furthermore, the crowded courtrooms and having a disproportionate amount of judges over the number of cases, are also some of the reasons which hinder the accessibility and effectiveness of delivering justice because it creates a sense of pressure in the minds of the litigants and they might not feel free in speaking their heart in front of the judges. Moreover, it also delays justice as there are a voluminous amount of cases per judge, and listing them, hearing them, and disposing of them takes years and sometimes decades.

The judgements of the cases are generally lengthy as they are reasoned and are published in a foreign language, making it strenuous for the general public in India to acknowledge the real meaning of it. Certain recommendations have also been made in the past for bringing a change that is 'Indian'. For example, Malimath Committee suggested in its report in 2003 that the

---

<sup>6</sup> G. Sampath (n 3)

<sup>7</sup> *Ibid*

Schedule to the Code must be provided in all the regional languages which would create more awareness with respect to the rights that an individual has and which of those rights have been violated. The report also recommended increasing the judge-population ratio in India.<sup>8</sup> Even Justice S. Abdul Nazeer expressed his views on decolonising the Indian legal system. According to him, the legal procedures and traditions provided by Manu, Kautilya, Katyayana, Brihaspati, Narada, Parashara, Yajnavalkya, and others should be followed by our system as these traditions would help in making great lawyers and judges. He Pointed out how there is the punishment prescribed in Arthashastra for talking personally to a woman employee during working hours, and how Brihaspati treats a corrupt judge, a false witness, and a murderer of a Brahmin at an equal level.<sup>9</sup>

Moreover, even the official dress code that is followed in our Judicial System is not Indian. It has been borrowed from the Britishers and they wore 'black' coats and pants due to the climatic conditions in the United Kingdom. But India does not share the same climatic conditions and it is comparatively quite hot for such a dress code that we have been following forever. Hence, creating a space or an atmosphere where the general public feels familiar and identifies the procedure as local, will make the justice delivery more effective as the individual seeking justice would participate more actively due to the litigant-centric environment.

## DISADVANTAGES OF INDIANISATION

Though Indianisation comes with numerous benefits still it also has its own drawbacks and challenges. The statutes and the procedure for seeking justice is being followed since time immemorial therefore, it is a huge step to change it all in the name of Indianisation, as it can be seen that it is easier said than done. Changing and amending the laws or statutes is not an easy task because it has its own procedure that is to be followed. Making a law, then inviting

---

<sup>8</sup> K. Deepalakshmi, 'The Malimath Committee's recommendations on reforms in the criminal justice system in 20 points' (*The Hindu*, 28 November 2021) <<https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article61493071.ece>> accessed 23 June 2022

<sup>9</sup> Kaleeswaram Raj, 'An unfortunate ideological shift in the judiciary' (*The Hindu*, 1 January 2022) <<https://www.thehindu.com/opinion/lead/an-unfortunate-ideological-shift-in-the-judiciary/article38083370.ece>> accessed 24 June 2022

objections, and then implementing it is a time-consuming plan of action, which cannot happen overnight.

For such a long time these laws have served the purpose of delivering justice to the aggrieved persons, one cannot aver that due to those colonial laws justice has been denied to them. For creating transparency, accessibility, and effectiveness, Indianisation is not necessary because one cannot guarantee that these elements will themselves be created by just moulding the statutes and procedures as per the Indian need.<sup>10</sup> If these elements are what Indianisation means then there is no need to amend those colonial laws but there is a need to create a procedure only which would be enough to serve the purpose.

All the statutes made before the Constitution have been followed peacefully and when the need arises they are amended as per that. Since we have a well-established law does it have to change just because it is not Indian in nature? All the laws and procedures that are being followed pass the test of constitutionality under Article 13 (1)<sup>11</sup> of the Indian Constitution then when there is nothing wrong then what is the 'Need' of changing them. Moreover, the procedures that are to be made more litigant-friendly can still be made without labelling them as 'Indian' while changing them because procedures are not hard and fast rules. They are just to help the litigant seek justice and the law to deliver it. So, they can be moulded to serve the purpose of the law but only to an extent that they don't obstruct the process of law.

Hence, putting the blame on not having a proper system due to the colonial laws is not the need of the hour. If we need to bring a change then it can be brought but for doing that blaming and labelling are not necessary. The times have changed and even the laws should be evolved with it, is an agreeable argument but just for the sake of labelling it 'Indian' giving suggestions like following Manu, Kautilya etc that does not fit with today's reality is a different argument.

---

<sup>10</sup> G. Sampath (n 3)

<sup>11</sup> Constitution of India, 1950, art.13(1)

## CONCLUSION

The legal supremacy of our country lies in the Constitution, which is said to be ever evolving to match the pace of time and traditions. Our Constitution also protects the rights of every citizen and treats everyone with equality as its basic structure does not allow the legal system to be arbitrary and to go against the rule of law. So, if in the name of Indianisation a fair and easy redressal process can be adopted then it must be. If Indianisation can provide a better environment for the litigants to seek justice then it is the need of the hour to Indianise our system. Moreover, having a system that the Indians can call their own is also an achievement in itself as it makes us free from the shackles of the colonial rule that still prevails over us through these laws. Making the redressal process easily accessible and less complicated is what is required in our country because the majority of people who seek the help of the system are not very well established. However, the challenges cannot be ignored but they are to be overcome to achieve delivery of justice easily and effectively as it is said that justice delayed is justice denied.