

Teaching Tax Laws in developing countries: Need to link academics, research and practice

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Abstract: - There exists no clear definition of teaching but it has various connotations and most of them are administrative explanations. In the common parlance, teaching refers to the dissemination of knowledge by a person possessing it to the other party. But, the scope of this definition is restricted and therefore, it has been articulated by different scholars worldwide. There has been no consensus among the academicians as to the precise definition of the term, “teaching”. However, the scholars have been absolutely clear about one thing that the process of teaching is not just a monologue delivered by a person in authority instead it has to be a dialogue between two parties which are communicating in a classroom setup. An ideal teacher is a person who equally encourages his pupils to actively participate in the class. Generally it is the ‘teaching act’ that has been described and strategized, and it comes as more of a reflection of the daily activities of a teacher

Teaching being a dialogue between a teacher and a student, the former needs to understand the perspective of the latter. One of the fundamental tenets of teaching is to understand the psychology of the child and thereafter, work upon the framework of conducting the class. The students tend to get astray and thus, it is responsibility of the teacher to manage the affairs accordingly. This approach cuts through the traditional school of thought which believed in epitomizing the teacher. Earlier references reveal that the teacher was the focal point of a classroom setup and the interests of the students always used to take a backseat in this paradigm. The student community has expressed its anguish against the teacher centric set up by not learning the subject whole heartedly. It has been often heard that students tend to ignore some complicated subjects because the teacher who is entrusted with the responsibility of teaching that subject was unable to arouse the interest. So, these problems can be addressed by the improvising teaching pedagogy which can be inculcated in teaching style in many ways. A good teacher is never born instead he is made through ceaseless practice and experimentation. In this paper, the researchers are trying to analyze the requisite teaching skills possessed by the tax law teachers are able to give the desired results or not. Also, this particular paper shall entail the problems emanating out of the process of teaching tax law to undergraduate as well as post graduate students. And, later concrete solutions will be laid down to improvise the teaching skills pertaining to tax laws in India. The paper shall try and establish that an interface needs to be established between teaching practice and administration of tax laws. But, before we delve into the

technicalities of this paper, the researchers have highlighted the framework of legal education in India from its inception to the present scenario.

LEGAL EDUCATION IN INDIA

The Indian legal set up has been characterized by the amalgamation of Emile Durkheim’s mechanical solidarity and Erlich’s “Living law” in the earlier times. The traditional Indian thought prefers the rules set by the community through consensus rather than relying on some written, codified text of law. One of the pre-independence cases is a clear exemplification of the same. It was held therein that customs of a particular society override a written text of law. Thus, it can be comfortably laid down that India had stable social and economic patterns but did not possess a rationally functional legal system.

The absence of a comprehensive legal system also affected the legal education in the country drastically. Since the legal system was not able to develop properly, little attention was given to the legal education in India. The legal education was only restricted to rote memory and verbal analysis. The legal order had little opportunity or need to develop the skills of self criticism and of rational analysis. The law was changing incessantly but those continuous changes were not introduced in the law curriculum and this was considered one of the biggest loopholes of the system. One of the other aspects of criticism involved in this legal set up was the over-emphasis on imparting information and not promoting critical understanding. Learning the provisions of the statute cannot be termed as “learning law” in the real sense of the term instead each and every provision should be critically

analyzed and its sanctity should be judged vis-à-vis the social-political milieu of that particular time. So, the pre-independence era was marked by hazy and obscure regulations pertaining to legal education in India which needed revamping by the government.

The ancient Indian legal education was influenced by the concept of Dharma which was highlighted by Manusmriti as well as the Shantiparv part of the Mahabharata. Even Shrutis and Smritis reiterated the same. Even the Arthashastra written by Kautilya talked about the economic structure of the state in detail. He also talked the need of managing the finances of the state by incorporating taxes and fines so that the exchequer does not go empty. So, the foundations of tax law and economic strategising have been laid down in the ancient era only. The Mughal period was characterized by Fatwa-e-Alamgiri which laid down the duties of the judges, lawyers etc. During the British era, the dispensation of the formal legal education was initiated at Anjuman-I-Punjab in 1868 which was later carried on by Punjab University in 1870. A similar set of law classes were conducted in the State of Travancore to train the police personnel and other officials who aided the courts in justice delivery system.

The administration of the country was solely managed by a set of bureaucrats in whose recruitment legal training does not carry significant weight except for specifically legal jobs. The focus of the legal profession to give adequate suggestions and advices after the peril has occurred. Law was considered more of a remedial action against the wrongdoing rather than a preventive or a precautionary action. Even the members of the Constituent Assembly while drafting the Constitution of our country expressed their desire to have a wide array of lawyers, judges and legal academicians have to interpret the elaborated Constitution of India in all respects. Therefore, it is needed that a good set of lawyers, judges and legal academicians should work together in close harmony so as to solve the existing legal problems prevailing at that time.

In the Constitutional paradigm, there is no specific entry in Schedule VII which deals with legal education. However, some entries do provide slight references pertaining to the same. These are as follows:

Entry 25 of List III- Promotion of technical and vocation based education and establishment of higher education institutions.

Entry 77 and 78- Conditions prescribed for lawyers as well as advocates while practicing before the Supreme Court and High Court.

Not only the constitutional provisions but even legislations like Advocates Act, 1961 have been enacted by the government to ensure smooth functioning of the court system by laying down comprehensive rules for the advocates. Also, a permanent organization "Bar Council of India" has been set

up which regulates the legal profession in entirety ranging from legal education to practicing advocates etc. In totality, it can be comfortably concluded that the requisite authorities have not turned a complete blind eye and a deaf ear to the up-keeping of legal education in India. At the same time, it can be stated that a lot needs to be done in the field of legal education particularly to improvise the teaching skills of the academic community as they have not been able to break the strands of complacency and lethargy and thus, are hesitant in adopting innovative techniques.

One of the points that the researchers want to bring home is the incapacity of the law teachers to critically analyze law and relying solely on the rote memory of the statutory provisions. Their method of teaching law has been typically a static one usually through a lecture method, focusing only on comprehensive presentation of the legal text and theory only restricting on the monologue delivered to the law students. Little attention has been paid either to the policies that underlie the rules or to the processes of growth and development. The government tried to conduct some tutorials and some seminars to improvise the quality of legal education but the entire idea of concretizing an application-based legal knowledge fell flat because of the non-comprehensibility of the same. The students were restricted to theoretical knowledge of the subjects and did not want to venture into practical analysis of the existing legal propositions. Moreover, the teacher was solely interesting in expounding rather than the exploring the subject. The conventional way of teaching was the norm and subjects like constitutional law, jurisprudence, family laws etc. but a blind eye was turned towards more complicated subjects like taxation laws or administrative law. These subjects were never taught adequately in law schools and therefore, the students also possess limited knowledge in these areas as these are unexplored and untouched.

Effective reform measures in Indian legal started with the establishment of National Law Schools and the Indian legal order as a whole moved in a complementary direction in the early 1980s. The students pursuing law from India started getting plethora of opportunities in terms of various subjects which were earlier pristine and un-explored. The Central Board of Indirect Taxes (earlier termed as Central Board of Excise and Custom; changed by Finance Act, 2018) too started such campaigns wherein lawyers, legal officers who were not familiarized with the fundamentals of taxation were given the adequate opportunity through seminars, webinars and other such events. Even many National Law Universities like National Law University, Delhi established Centre of Tax laws for facilitating research in the given area. The coming up of National Law Universities has definitely affected the traditional state and central

government universities wherein teachers were not paid adequately, were not given research grants easily and are usually flooded with administrative duties that they do not get substantial time for furthering their research. The National Law Universities hired teachers who would solely work in the area of research and teaching and shall be divested with other sorts of administrative duties. So, comparing the two set of teachers is akin to "comparison among the in-comparables". Teachers being under paid and over-worked do not get requisite time to focus on their own research and teaching which involuntarily takes a backseat. The faculty is at extremes- self-motivated, average and demoralized. Some faculty members love to teach but also want decent pay and a reasonable schedule. There is relentless attrition and also lack a vital commitment to their institutions.

In the nutshell, the legal profession has been given boost with globalization as it came to be seen as something more than a body of litigators. Law is seen as an instrument of social control and change in the society. So, law should be analyzed from each and every corner of the society and such interpretations and analysis should be put to use by lawyers, judges and legal academicians. The stakeholders of legal education should be more vigilant regarding the coming up of some concrete regulations to improvise the study of law, particularly un-explored areas like taxation etc. Not only the academic community should work in this direction but even, other stakeholders like lawyers, judges, legal officers should contribute their bit in this process. India has got involved in superlative legal education much more than the West because in India a far less viable balance is struck between the society's requirements and a reasonably effective exploitation of the law's potential for contributing to the meeting of those needs.

TEACHING OF TAX LAWS – A PARADOX TO UNLOCK

Taxation is one of the most complicated subjects in the field of law and almost every teacher tries his/her best to evade the same. Even the students are habitual of avoiding these complex subjects. But, over the years, many of the government, private as well as deemed universities have made these un-explored subjects an intrinsic part of the curriculum. This has definitely given a boost to the academicians working in these areas who were earlier considered as unsung heroes playing their role silently have come up at the forefront. But, for others even the basic course in taxation has become a herculean task to tackle. This happens because of two major reasons:

Unfamiliarity with the subject- The teachers are themselves not aware about the technicalities of such difficult

and complex subjects.

Use of obsolete and redundant techniques- Even though the teachers may be fairly familiarized with these complicated subjects, still the techniques used by them are obsolete and redundant. They still rely on rote memory of the statutory provisions rather than explaining each and every provision with practical problems. This traditional approach is unable to increase the acumen of the law students and merely focus on bare memorizing of the substantive provisions.

This is not an exhaustive list of reasons for not teaching these complicated, complex and difficult subjects like taxation, administrative law etc. But, the researchers have broadly categorized these reasons as the predominant ones for such aversion. Tax laws are an amalgam of fiscal traditions and policies which are used to take important decisions. These fiscal traditions and policies do not have any specific definition and are generally inclusive of public procedures for the creation of binding tax rules and settlements which lead to binding singular rules (tax rulings, or settlements during tax audits). These fiscal policies are generally framed for the settlement of problems can either result in eradication of the problem itself or aggravation of the existing problem into a bigger menace. It has to be noted that a tax problem may be solved by the use of statutory rules, administrative guidelines, judicial decisions or an amalgamation of all of them.

One of the most important tasks is to establish a comprehensive connection between teaching and "tax design." The term, "Tax design" connotes the plausible costs and benefits emanating out of solutions provided for the existing tax problems in hand. The three important terms namely "tax problem", "tax model" and "tax mechanism" are considered synonymous and the scholars as well as academicians often confuse them with each other. The academic fraternity is very well connected with the emerging tax problems as they should be equally contributing towards the finding of solutions rather than over-articulating the problem. A "tax problem" talks about a situation wherein the rule-makers are confronted with a problem pertaining to the tax related matters of the country and they need to decide a specific course of action by enacting a set of rules called policies. A "tax model" of a country provides a definite framework in dealing with tax problems arising in the country. Whereas a "tax mechanism" is the actual implementation of a tax model by a specific country. So, this instance was used by the researchers to exemplify that these technical jargons used in the dissemination of taxation law discourses can create major impediments for the new learners making the subject ungraspable. So, the role of good teaching skills of a teacher play a pivot role in making the students learn about the basic

tenets of the tax law. These modern techniques are more comprehensible and relatable thus, are used widely these days .

CHALLENGES ENCOUNTERED BY TEACHERS DURING TAXATION LAWS DISCOURSES

Linguistic confusion- The tax code in India is humungous and many provisions there under are difficult to comprehend owing to ambiguity, imprecision and confusion which is embedded in taxation law and this becomes one of the major impediments for students taking the course. Academicians might be well-versed with the conceptual aspect of the law but the ambiguity, imprecision emanating out of the interpretation of various provisions of the tax code can be adequately dealt by experienced tax lawyers who are habitual in dealing with complex problems in their day-to-day work. So, tackling the over-complicated nature of the tax code becomes a herculean task for the teachers. The tax teachers incessantly face problems while elucidating on the interpretation of the provisions of the tax code. For instance, a capital gain is defined as the gain arising from a "capital asset," which includes all property except for specifically excluded items. However, any sort of business property is excluded from the category of capital assets. It is clearly evident that the term "capital" has a different connotation in different contexts . These changing paradigms create confusion and obscurity.

Over-reliance on the Passive approach- One of the major problems tax teachers usually encounter is the difficulty of finding innovative techniques to teach complicated subjects like taxation laws. The teachers generally have a passive approach, simply disseminating a volume of tax information. They do not indulge in newer methods of teaching which could ensure a clear understanding of the technical jargons used in the tax code to the students. As a result of these passive teaching strategies, even the students become complacent and lethargic. The over-emphasis on rote-learning of the textbook will not enable the students to fully grasp the complicated genres of subjects like tax laws.

Lack of adequate knowledge about the subject matter- It is extremely saddening to note that many taxation law teachers do not even possess an expertise in the field. The colleges also fail to acknowledge this fact and allot these complicated subjects like taxation laws either to un-equipped teachers or newcomers . This ultimately affects the learning process and also acts as one of the major impediments in the tax law discourses.

Un-familiarization of the analytical skills of a tax law teacher- The students are solely made to go through the black letter of the law and no importance is generally given to the interpretative-understanding of the legal provisions . Students

end up learning the bare provisions and application of mind takes a backseat in this entire process. A dynamic environment for tax law discourses can only be created when analytical skills of the students as well as the teachers are put to use. It needs to be emphasized that tax law is a rich repository of intellectually challenging interpretations and applications. So, mere reading of the provisions of the tax code shall not help in the enhancement of tax law knowledge. So, effective teaching of taxation laws involves active application of mind not only by the teachers but the students as well. Whereas, passive approach essentially leads to frustration among the students and they try evading such complicated subjects.

No synchronization between law school curriculum and law practice- The tax law which is taught in the class is diametrically opposite to what is practiced in the Court of law . The teachers are not fully familiarized with the latest and contemporary changes brought in by the law makers. The students are not made to learn all the provisions of the law without delving into the analysis part of the same. The entire focus lies on clearing the examination and unfortunately, the end result is not learning. To practice tax law is very different from the law school learning.

Heterogeneous tax concepts in one frame- Some of the most bewildering problems arise while teaching taxation laws is the broad framework of its application and operation. Not only this, its inter-relationship with other disciplines like finance, economics makes it all the more complex . Many universities prepare their curriculum in such a way that Indirect taxes as well as the direct taxes are taught together under one particular paper. This not only aggravates the burden of the students but creates confusion in their mind with respect to learning the dynamics of the subject.

Pre-conceived notions of the students - There are some subjects in the law school curriculum like investment and competition laws, taxation laws etc. which are generally labeled by the students as "difficult and complicated". Therefore, they do not intend to study these areas even though the teacher might be putting assiduous efforts at her end .

Lack of any support from the CBDT and CBIT- The Central Board of Direct Taxes and Central Board of Indirect Taxes (name changed after Finance Act, 2018) are absolutely dormant in this area and not contributing in any way possible. Thus, lack of support from these departments also makes the academic system helpless to a certain extent .

Thus, these are some of the major problems underlined by the researchers which emanate during the tax law discourses. However, these problems have been prevalent since a considerable period of time and academic as well as research scholars in this area came up with different strategies or

methodologies which could improvise the teaching skills pertaining to taxation laws.

METHODOLOGIES ADOPTED BY TEACHERS FOR TAX LAWS

A teacher can opt for innumerable ways to teach a particular topic. The ideal framework for teaching includes making the students understand the fundamental tenets of law, detailed analysis of the provisions, giving practical life examples to explain the situation better. Active participation also plays a pivot role in facilitating the class smoothly. There are many ways to conduct taxation laws discourses like computer-based tax methodologies or teaching through emphasis on research, or laying stress on tax policy implications or a case-based format. Different methodologies are decided according to different student populations. The decision for choosing a particular methodology should be inclusive of various relevant considerations like abilities of the students, age structures and background of the students, as well as the resources available with the instructors. The methodologies for teaching tax laws has been categorically classified into three broad areas:

- Life Cycle Approach
- Socratic Method
- Functional approach

LIFE CYCLE APPROACH

As the name suggests, this approach essentially entails a detailed analysis of all the set of cases arranged chronologically and sequentially on the life of a specific individual and business. It amalgamates research and planning so that the teaching process becomes smooth and flexible. Not only this, even active participation from the students is ensured under this method of teaching.

The cases written in narrative form give the students insights into the character, problems and goals of the individual. It can be inferred that students learn by real life examples as to how tax laws influence a person's behavioral choices. It is generally said that first two weeks should be considered "introductory weeks" wherein basic and fundamental terminology should be explained. This is usually done to familiarize the students about the fundamental tenets of taxation law. Then, the students should be given the requisite time to conduct a preliminary research or pilot study about the prospective topics to be discussed in the class. This shall ensure that students are adequately contributing towards the facilitation of the classroom process.

Not only this, even the political-social milieu is also discussed by the teachers so that students grasp the subject and its inter-relationship with other disciplines too. Like a teacher should not only talk about the bare provisions of the new GST law in India but also should be focusing on the

political climate favoring the law and the reaction of the people after coming up of GST law in India. Through this, students would also come to know about the background of a particular law and not only its legal sanctity. Students should be regularly given small project-based assignments so that they do not restrict themselves to the rote memory techniques and focus more the analytical aspect of the law. This process-oriented assignment also helps students discover that there is no single and clear answer for a particular problem and there can be innumerable solutions to a specific problem of law.

However, the major responsibility for choosing the correct analysis lies with the student himself. And, this is one of the major grounds of limitation of this approach and it states that "this approach relies too much on students" and the teacher's role takes a backseat in the classroom set up. But, still it is considered as one of the most important approaches as it entails a comprehensive dialogue between the teacher and a student in a classroom set up.

SOCRATIC METHOD

The earlier approaches of making a teacher, "the focal point" of the classroom has been considered as rudimentary and obsolete. Cutting across the traditional approach, this approach tends to bring new dimensions to teaching tax laws in a classroom set up. It uses questions and follow-up questions to draw information out of students, rather than providing the information to them. So, rather than the teacher taking the class in a linear fashion, teachers incessantly ask questions to check whether the students have been reading the subject or not. So, students own reading is a must under this approach. The results from an initial assessment of the Socratic approach in a class setting suggest that students not only show discernable improvement in the critical thinking skill but also self-report the same. One of the major shortcomings of this approach is the non-involvement of the teacher in the teaching process which drastically affects the classroom paradigm.

FUNCTIONAL APPROACH

The teaching process should give due importance to research in the theoretical areas as well the practical exigencies which can emanate anytime. The theoretical aspect should involve research pertaining to various countries' domestic tax mechanisms. It should specifically analyze the process of competitive selection of tax mechanisms through the operation of tax systems and fiscal institutions. And, the practical aspect entails teaching of taxation laws through a lawyer's prism. The focus is solely on the creation of analytical skills like a lawyer. The only effective way of achieving this development is to provide a structure in which students are required to perform their own

analysis of these sources. Teaching tax laws should provide an opportunity for incorporating a multitude of learning experiences. Depending on the teaching “style” and creativity, the material can be tailored to specific geographical and regional situation and individual competence. The case material may change over time and even if there is repetition of facts changes in the tax law will change the results. Functional approach essentially combines both the above approaches and covers the limitations of each one of them .

Thus, none of the approaches can be used as a straight jacket solution for the problems emanating pertaining to the tax code. The academicians should try to amalgamate all of these approaches and the hybrid becomes the most ideal method for a classroom setup.

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Tax law is a complicated as well as a complex area wherein rote memory alone cannot improvise the knowledge of the students. Therefore, analytical skills and practical exemplification should supplement the reading of bare provisions. Special emphasis should be given on the proper articulation of problems collectively by the teachers and students. Also, tax issues should not only be understood in vacuum and the contemporary social-political milieu should also be discussed in the classroom. The students should be provided the full picture so that they can grasp the subject easily and smoothly .

. Thus, the following suggestions can boost up the teaching process in tax laws:

Complete use of Computer-based technology- One of the major problems our education system suffers is the non-involvement of computer techniques in the curriculum. So, giving boost to the same can be really helpful, particularly in the tax law realms. They should be given the chance to view power point presentations on filing tax returns, GST returns etc.

Involvement of Central Board of Direct Taxes and Central Board of Indirect taxes in developing the tax curriculum- These tax departments should fully contribute towards the creation, perpetuation and amendment of tax law curriculum. By this, important notifications pertaining to tax law can also be included in the curriculum and the students can learn the contemporary reality of law.

Collaboration of universities with legal entrepreneurs and taxation lawyers- The universities should collaborate with the taxation practicing lawyers so that insights of the cases should be made clearer to the students. This will help develop them the requisite skills .

Conducting seminars, symposiums and conferences-

Conducting of seminars, symposiums and conferences can trigger a sense of analytical skills in the students and they can act accordingly. So, the universities should invest in these areas incessantly.

Making arrangements for creating awareness regarding tax laws among students- Suitable arrangements have to be made for creating awareness among the students regarding tax laws as many times, students are being governed by pre-conceived notions relating to the complexity of the subject .

Bringing up new techniques in teaching tax laws- New techniques have to be evolved by the teachers to make the subject innovative and interesting as the traditional methods have now become rudimentary and obsolete.

Creation of a comprehensive code on teaching tax laws- The academic community should come up with a teaching code on tax laws covering all the major approaches and methods to teach the younger generation about the fundamentals of tax law so that it becomes easily graspable for the students.

Intersection of academia, bar and bench in the promotion of tax laws- Lastly, an intersection of bar, bench and academia can uplift the teaching approaches of taxation laws in the country. All of them should go hand in hand to make the classroom set up more interesting.

While academicians should focus on deducing new techniques to explain the fundamental tenets of tax law, however, tax practitioners should also contribute positively to the body of knowledge. It is significantly crucial for a prospective lawyer to understand the black letter of the law and also the practical knowledge that is needed to upkeep the subject. But, this is not possible with the present paradigm in operation until and unless adequate amendments are brought in this setup

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