

Effective Techniques for Teaching about Other Cultures and Legal Systems

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In the context of globalization that has been going on since the 1990's in the wake GATT and WTO we see on the one hand an attempt to change the legal cultures and systems by directly importing from the advanced western countries – European or American – into the less developed countries in the name of modernization. (Modernisation being equated with westernization.) On the other hand we can also see the efforts to learn and understand how these other societies function within their legal and social context. This has led to efforts to study other cultures and legal systems. How one can successfully do this is the issue before us – the law teaching community.

In a multicultural society like that in India this has been an imperative even before this period of globalization began. There is not only a diversity of language, culture, religion and customs one can observe in addition the diversity in laws and legal practices. One area that this difference can be observed is in the context of the teaching and practice of Family Law because of the fact that when it comes to the question of marriage, divorce, succession, inheritance etc the law that is to be applied will depend on the religious identity of the parties concerned. Another context is that of the special protection and recognition granted to the laws and customs of the Scheduled Tribes¹ living in different parts of India but found in majority in the seven North Eastern States.

We can therefore see that there are different contexts in the Law School curriculum which involve the teaching about other cultures and legal systems. For me, personally, this requirement occurs both when I teach history to law students and in the context of teaching women and law related courses. This may even be a necessity for the Constitutional Law teacher since the Indian legal system follows the Common Law system which has developed in a different cultural and historical context – England in the medieval period.

Before I discuss how I go about teaching about other cultures and legal systems in the courses I teach I thought that I would briefly discuss how it is done in the context of Family Law and Constitutional Law. The Indian Constitution has been interpreted to mean that laws that were

¹ Under the Fifth and Sixth Schedules of the Constitution in keeping with Article 244 of the Constitution under Part X provides for administration and control of these regions inhabited by the different tribes in accordance with their laws and practices.

prevalent before the commencement of the Constitution will continue to be valid so long as they are not inconsistent with the Constitution.² As a result the British administrative practice of following the “Mohammedan Law’ for the Muslims and the “Hindu Law” for the Hindus has been recognized and continued and in a sense safeguarded by the Constitutional Provision in Article 25 which guarantees the Right to the Freedom of conscience and free profession, practice and propagation of religion. This in practice means that to the followers of each religion will be applied the laws supposedly derived from their religious texts in the matters of marriage, divorce, adoption, succession, inheritance etc unless they have married under the Special Marriage Act enacted in 1956.

Thus, when one is teaching family law in India one is required to know the laws of each of these communities,³ and also to be familiar with the history of the development of these communities and their customs and legal practices. Family Law in India is thus generally taught by using a comparative method with the help of charts and tables so that the students can learn about these diverse laws with greater clarity and sensitivity. There are as many as six different practices that have to be taught.

Teaching History to law students in this context is particularly aimed at providing the historical context and background to this diversity of laws and their continuity into Independent India. The History 2 course is designed to fulfill this objective. This is particularly necessary in the context of India because of the troubled created of the nation – in the background of communal conflicts which led to the creation of India and Pakistan. Pakistan was created on the grounds of religious identity. In fact this polarization is in part the result of the colonial laws and legal system. From the great diversity of practices and laws that existed were created these monolithic communities that are now seen as homogenous even though there were a variety of customs prior to this period in the history of the subcontinent. This understanding of the process that created these identities is extremely important for India today because of the growing hostilities perpetuated by the electoral politics within India and the global developments outside.

² Article 13 of the Indian Constitution

³ Hindus, Muslims, Christians, Parsis, and Jews. By virtue of the practice established during colonial times Buddhists, Sikhs and Jains are included in the category of Hindus and Hindu law is applied to them. Some of these laws may be by way of legislation like the Hindu Marriage and Divorce Act, the Indian Christian Divorce Act etc, others are said to be derived from custom and religious practices, especially in the context of deciding what is a valid marriage for Hindus and in the context of marriage, divorce, succession etc for Muslims.

To enable students to appreciate the diversity of the cultures and laws and to respect this difference the two papers on history that are taught in the National Law School are designed to make possible the learning of the history and culture of these different communities before they study the two papers on Family Law. In fact the second history paper is entirely oriented to studying Legal History – the objective being not to simply study the institutions and laws that are currently in India. The focus of this paper has been to provide the student with an understanding of how and why these communities emerged as completely different and separate with homogenous identities through the legislative actions and judicial decisions in colonial India.

The teaching of the Women and Law related courses, especially for a course on Women, Law and Development or Violence Against Women I have depended on the study of the history, culture and legal developments in both Western Countries and those in Africa. This method is especially adopted to study those issues for which there are no laws in India or the responses of the state are found to be inadequate. For e.g., for the course on Violence Against Women I relied heavily on the laws and remedies available in the United States of America and in the United Kingdom. This was particularly necessary given the fact that prior to 2005 there was no specific legislation to address the question of Domestic Violence, especially providing for civil remedies. Studying the support services and police and judicial responses in available in many of the American States was useful for appreciating the need for a similar legislation and provision of appropriate remedies. These studies also helped me to enable the students to appreciate the fact that domestic violence was not culture specific but more universal, though its manifestations might be culture specific, in character as a result of the unequal power relations between men and women and society. This enables the students to understand that the nature of gender relations in the Indian context are not unchangeable and also that the status of women can be improved through the intervention of the law and also by empowering women economically, politically and socially as it has happened in other cultures.

While teaching the course on Women, Law and Development it was extremely useful to draw upon the experiences of women in Africa, in particular. This is because of the fact that there are very similar problems and similar colonial history. Thus, studying the remedies that the women's movements there have found to their problems was encouraging and useful. I say this with particular reference to the women's networks that were organized in South Africa for example. When possible we have been able to bring in the teachers from those particular cultures to interact in the classroom and provide their perspective on these issues. This has been largely facilitated

by the faculty exchange programmes that use to be in place then. These methods make it possible to argue for law reform and enforcement of fundamental rights without antagonizing or alienating communities.

In the absence of the faculty from those cultural contexts it has been useful to include the writings by scholars from those cultures so that one can get a more sensitive and nuanced understanding of these practices without being judgmental. In fact the Supreme Court of India has often employed the same strategy in dealing with cases of women from the Muslim community in order to provide relief to them. The Supreme Court in the Daniel Latifi and the Shah Bano case examined the Muslim cultural practices and interpreted more liberally the laws and, thus without directly imposing what would have appeared as an alien concept, creatively introduced remedies which are in keeping with the constitutional values.

It is thus possible to teach about other legal cultures and systems by adopting either the comparative law approach or a more effective method of studying the cultural and historical context of the other legal systems using the knowledge for advocating change within one's own legal system. Because if there is anything one learns from such an approach it is that legal cultures and systems are not fixed and permanent but are constantly evolving.