



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

DESIGN THINKING IN TAX LAW REFORMS & FAT TAX: CREATING HEALTHY TAX PAYERS:AN ANALYSIS

Bharath Gaikwad R,

Student,

School of Law,

SASTRA Deemed – to – be – University, Thanjavur, Tamil Nadu, India

Abstract : Design Thinking is a process that aims to modify the whole thinking mechanism and it channelizes to refresh the thinking mechanism. The main aim of design thinking is to challenge the existing assumptions and give innovative solutions as output. It paves way for an entirely different way to think. In the field of Law, design thinking has been rarely applied and there exists a huge vacuum in this area of research. But, if we go into the roots of the Law – making process, we would realise the necessity of design thinking in the legal field. Moreover, it is in the areas of Law, where design thinking is really required. Tax Laws are formulated keeping in mind the interests of various stakeholders involved. This process involves lengthy brainstorming sessions, analysing benefits and burden of the proposed Laws on these stakeholders upon whom the Laws are to be implemented, gathering feedback, tabling them in the legislature, debating upon them and then passing them. To illustrate and emphasise the need for Design Thinking in Tax Law Reforms two examples – Fat Tax and Exclusion of Petroleum Products from the ambit of Goods and Services Tax have been highlighted. This Article seeks to establish the importance of design thinking in reforming Tax Laws, moving forward with its applicability in maintaining the ethics of progressive taxation and also explains how various obstacles and deadlocks can be eliminated in the course of implementation of Laws in the future.

1. Introduction

Design Thinking is an approach towards thinking solutions to problems that may not be apparent per se, but, may have an impact in the due course of time. It is the way designers think, work and approach problems. It is focused on creating a deep understanding of the minds of the population for whom the solution is being developed. In other words, it involves thinking from the position of the persons who are faced with the problems to which we are finding solutions. It is about empathizing the needs of the target population for whom the solution is designed. It questions the existing assumptions and raises concerns about their validity in the present context. It tries to cultivate new ways of thinking ways that do not adhere to the prevailing or more typical problem-solving approaches, make meaningful inquiries and refute presumptions. Thinking beyond the box might include things like disproving preconceptions or making it simple to determine if they are true or untrue. We can think more creatively and completely dissect challenges thanks to design thinking. It enables us to conduct the proper research, design prototypes, and test our goods and services in order to find fresh approaches to satisfy the demands of our customers. In the field of Law, legislations are framed to be implemented upon the citizens of any country where they stand to operate. So, the legislations have to be

in such a manner that they really address the root cause of problems and provide concrete remedies to the aggrieved parties. If design thinking is applied, then it would prevent future cases where the validity of the legislations would be put to question by using loopholes in them. Moreover, in reforming Tax Laws, design thinking can play a vital role. The Article further discusses¹ how Tax Laws can be reformed by applying design thinking and thereby bringing in updated legislations that would suit the needs of today's dynamic world² moving forward towards appropriate progressive taxation favourable to the common man assessee in India.

The final part of this Article illustrates instances of application and non – application of design thinking in Indian Tax Law with the implementation of Fat Tax and the long pending non – inclusion of petroleum products under the ambit of Goods and Services Tax.

2. Design Thinking – Major Works Reviewed

Various research studies have been conducted in several areas about the need and implementation of design thinking to reform that particular field. Empathize, Define, Ideate, Prototype, and Test are its five crucial processes. It is an exploratory human-centered approach. It holds that there are various approaches to problem-solving that are superior. It encompasses many different types of human-centered tasks, such as processes, services, interactions, entertainment forms, and means of communication and collaboration, and is not just restricted to the introduction of new physical objects.

¹ <https://www.interaction-design.org/literature/article/what-is-design-thinking-and-why-is-it-so-popular>

² <https://www.ie.edu/insights/articles/design-thinking-legal-services/>

Few relevant works have been referred here. “Design Thinking applied to the Redesign of Business Education”, provides an introductory approach to the concept of design thinking and its possible role for the improvement of business education programmes through the presentation of a new framework: The D-Think Toolkit. “Customer and employee on a shared journey – Case Lapland Hotels, Human See”, discusses how design thinking strategies were adopted to identify the connection points between the hotel and its customers that create value for the customer and communicate the mission of being “more than a hotel”.

“The Importance of Empathy in IT Projects: A Case Study on the Development of the German Electronic Identity Card”, describes how disregarding the users’ needs caused problems regarding the introduction of the electronic identity cards in Germany. “Design thinking in development engineering education: A case study on creating prosthetic and assistive technologies for the developing world”, analyses the application of the human centred DT approach at the MIT D-Lab on creating low-cost prosthetic and assistive devices for the developing world.

3. Design Thinking: Legal Approach

The mechanistic and conventional way of framing legislations have eroded the intent of the statutes themselves. There have been many instances where stringent provisions are needed in the legislation, but, they have been rephrased into lighter ones, reducing their severity. The reasons may be political, inclined towards corporates, legislators themselves may end up in committing activities that would be prohibited by the proposed legislation. Corporate legal must ultimately develop its standard operating procedures and way of thinking. It needs to accept disruptive forces like legal technology, if not embrace them. It needs to consider how it will react to such rapid technological development, such as the aforementioned AI-based legal management systems. The problem-solving approach of legal design thinking presents a practical technique for addressing this and other "big concerns" for many legal practitioners. But keep in mind that legal design thinking is more than just a method that is becoming more popular. It is an all-encompassing perspective that

incorporates the potential for innovation, co-workers' needs, and criteria for overall business success. It combines what is ideal from a human standpoint with what is best. Cost pressure on law firms and legal departments is increasing as a result of the intense strain the legal sector is under to change. Additionally, certain innovative, frequently digital service models are undermining traditional legal counsel. Answers to these current developments, in particular how those involved in legal systems and providers of legal services should handle digitization and how the legal industry must act and develop in relation to the continuously changing expectations and behaviour of (legal) users/consumers when using services, can be found through the use of legal design methods. Finding a balance between what is legally required and the design-immanent creative freedom of legal material and tasks is the job of legal designers. A legal design project's implementation is correspondingly difficult and optimum multidisciplinary collaboration is required. The fact that there is (currently) no training in this field is a fundamental issue, making a change in legal education not just desirable but also imperative.

Using legal design thinking methods has many advantages, including placing the user at the centre of the solution, encouraging multidisciplinary collaboration, making it simpler to develop and test prototypes of ideas, and making it much simpler to provide feedback on whether an idea is satisfactory to the user or needs to be modified. Therefore, the need to empathize from the position of the victims or the persons who are facing the problems is necessary to bring in effective legislations. First, the different stakeholders who are involved need to be identified. Then, the issues faced by them need to be identified along with their wants. The next step would be brainstorming and testing the solution formulated.³

Additionally, the legal design method revolves around looking at a certain issue from as many angles as you can. Additionally, it necessitates a spontaneous "yes-and" method of brainstorming potential answers as well as the resolve to put such ideas into action even at the risk of failure. Lawyers, however, would be well to avoid confusing this process with the result. Legal design thinking's fundamental nature is to employ intelligence and flexibility to solve the kinds of deadlocks that lawmakers and courts face today. But, in most of the cases, the above aspects are not taken into consideration when framing legislations.

4. Tax Law Reforms in India

The Government's combined efforts through the Ministry of Finance, Corporate Affairs and the Income Tax Department have resulted in major tax reforms in India. *Corporate Tax* has been reduced gradually over the years through legislations like the Finance Act, 2016 and the Income Tax Act, 1961 has been simplified by removing various exceptions and incentives. Taxation Laws (Amendment) Act, 2019 has provided concession in the rate of taxation if they choose not to avail certain exemptions. Further, such companies are not required to pay Minimum Alternate Tax Credit.

Personal Income Tax reforms have been made through the Finance Act, 2020 by providing option to individual taxpayers for paying Income Tax at lower slab rates if they forgo specific exemption and deduction. Also, concessions have also been given to co-operative societies. Introduction of the *Goods and Services Tax* was one of the major tax reforms in the country. *Tax Administrative Reform Committee 2014* has comprehensively dealt with the reform of tax administration and emphasized that goal of tax administration is not to maximize revenue but to maximize voluntary compliance and minimize compliance gaps. A *ten-member Committee* was constituted on 22 October 2015 to study and identify the provisions of phrases in the Act that are leading to litigations due to different interpretations, impacting the ease of doing business, and those that can be simplified.

In the *Indian Equity Market*, the abolition of *Dividend Distribution Tax* has provided a huge relief to a large class of investors. The *Faceless Assessment Scheme*, and the *Faceless Appeal Scheme, 2020* provide a new mechanism for making assessment by eliminating the interface between the assessee and the Assessing Officer. In order to bring efficiency and transparency in the functioning of the Income Tax Department, every communication of the department are now mandatorily having a *Document Identification Number*.

Individual taxpayers now have access to pre-filled Income Tax Returns, making tax compliance easier. *Compliance for Start-ups* has been simplified. *Direct Tax Vivad se Vishwas Act, 2020* was introduced under which declaration for settling disputes are currently being filed to ease speedy disposal of tax disputes. *Black Money Act, 2015, Benami Transactions (Prohibition) Amendment Act, 2016, Expansion of scope of TDS/TCS, etc.*, are major reforms to curb tax evasion and widening of tax base. Further the holding limit of house property, reduction in tax rates have benefitted middle – class taxpayers and senior citizens.⁴

5. Challenges in Tax Reforms and areas to be addressed

Even after several years have passed since India has entered the era of tax reforms, there still many challenges in implementation of these reforms and many grey areas the need to be addressed. Expanding the tax base promotes equity because it lessens the burden on current taxpayers if all individuals who are required to pay taxes are included in tax records. When many people who are legally obligated to file returns do so, the general level of compliance rises. It also motivates others to fulfil their legal duty of paying their taxes on time.⁵ It should be emphasised that even with the exceptional tax receipts in FY 2021–2022, India's federal tax share of the GDP is just 11.7%², with direct taxes accounting for 6.1% and indirect taxes for the remaining 5.6%. In contrast, the tax-to-GDP ratios are significantly higher for comparable sized economies (in terms of GDP), such as the UK, France, and Italy, at 24.9%, 24.6%, and 24.6%, respectively. Even with its smaller economy, South Africa has a 24.2% tax-to-GDP ratio. This percentage seems to have room to grow considerably for India (even after accounting for the present tax exemption on agricultural income). Furthermore, only around 5% of people actually submit taxes (71.4 million returns were filed in FY 2021–2022), and a significant percentage of those filing report income levels that are either completely exempt from taxation or relatively somewhat so.⁶ It is necessary to identify and investigate the many causes of non-compliance in the Indian context, as well as to study and put into action important administrative efforts and suitable policy measures. In India, increasing the tax system's productivity remains a significant problem. Very little has been done to cover the hard to tax groups. The requirements for submitting tax returns have caused the percentage of tax returns to rise from less than 5% to over 2% of the total population. However, there hasn't been a matching rise in income as a result of this. Pressure to raise the standard exemption limit deductions has persisted due to the inability to include the hard-to-tax groups in the net. Lesser tax rates for consumables and higher tax rates for luxury items benefits the economy. But, the highest rate needs to be brought down to make the domestic manufacturing sector internationally competitive.

³ <https://incometaxindia.gov.in>

⁴ <https://incometaxindia.gov.in/booklets%20%20pamphlets/direct-tax-reforms.pdf>

⁵ <https://loksabhadocs.nic.in/>

⁶ <https://www.pwc.in/research-and-insights-hub/immersive-outlook/addressing-the-tax-gap-in-india.html>

Most importantly, there needs to be a coordinated taxing system. taxes levied by the centre (excise duties), states (sales taxes, state excise duties, taxes on motor vehicles, goods and passengers), and local governments (octroi) create a chaotic situation with tax on tax and mark up on the tax. In addition to relative price distortions and cascading, this leads to a completely opaque tax structure. One option that needs to be implemented gradually is the creation of dual VAT, which consists of a production stage VAT by the Union government and a consumption type location based retail stage VAT by the states. But there hasn't been any noticeable advancement in this area from either the federal government or the states. In order to do this, all excise duties in the instance of the centre should be imposed as *ad valorem* (according to the transaction value) levies. Phased implementation is required for rate rationalisation, systematic tax credit provision on inputs and those paid on earlier stages, elimination of competing tax incentives and concessions, and zero rating of the interstate sales tax. The states' inability to impose a service tax is a significant obstacle to developing a

destination-based retail stage VAT at the state level. As previously stated, only items are subject to state-level sales taxes. The state and the centre are not responsible for taxing services; instead, the former taxes certain services according to its authority to tax remaining goods. A constitutional modification would consequently be necessary in order to properly impose the goods and services tax. This can be used as leverage by the federal government to get the states to lower or do away with their interstate sales taxes in order to make destination-based value-added taxation a reality. The majority of Indians are presumably not subject to taxes due to the country's tiny tax base. According to the IMF Country Report, there are only roughly 40 million direct taxpayers, including corporations and individuals, out of 1.2 billion people. Generous tax preferences are a significant issue that have plagued the tax system and shrunk the revenue base. The tax benefits encompass various incentives and concessions related to savings, housing, retirement benefits, investing in certain financial assets and their return, retirement plan investments, income from charity trusts, and more.

6. Design Thinking in Reforming Tax Laws

In the past few years, the role of the Tax Department has been rapidly changing to driving strategy as compared to its earlier compliance – restricted role. With rapid transformation taking place, the Tax Department needs to embrace new methods like Design Thinking to understand the various possibilities, to keep pace with the process of efficiency and effectiveness required in today's environment. Design Thinking is based on the perspective of empathising from the point of view of the persons being affected. So, tax reforms need to be made from the point of the view of the middle income assessee and the common man who is the primary target of both benefits of progressive taxation and losses caused due to tax evasion. So, efforts must be made to channelise policies and statutes towards progressive taxation and Design Thinking can be employed here.

A traditional way of problem solving involves steps like problem definition, root cause analysis and solution design. In the area of Taxation, the application of this traditional method involves identifying issues from an upper – management lens and not from the eyes of the end taxpayer. Design Thinking approach involves the end taxpayer's point of view when deciding taxing policies.

Design Thinking involves the “Who, What, How and Why?” approach for solving problems. Therefore, with regard to product/service related taxes, the question of “Who” is answered as who form the group that primarily uses the product/service, “What” – the nature of the product/service, “How” – method of levy of tax and “Why” – the necessity of levying the tax. With regard to tax on income/property. “Who” – the person/property upon whom tax is to be levied, “What” - the nature of the income of the person/property, “How” - method of levy of tax and “Why” – the necessity of levying the tax. Therefore, the Design Thinking Framework can be implemented in taxation in the areas of tax organisation, planning. Accounting, reporting, compliance.

In achieving the goals of Taxation, Design Thinking can be applied in respective areas such as Tax Compliance – direct tax processing, indirect tax processing, transfer pricing processing, data analytics proves, Tax Legislation – Gathering data and information, interpretation and application, impact analysis, communication process, Tax Returns – cross data analytics process, timeline management, risk mitigation process, delivery and communication process.

7. Application of Design Thinking in Taxation – Examples: GST & Fat Tax

Keeping the view of the consumer as the base, two examples of Design Thinking in Taxation are cited. One is the case where application of Design Thinking has resulted in a considerable impact – *Fat Tax*. It is a surcharge or tax placed on food and beverages containing high amounts of fat. The main objective of this tax is to discourage the consumption of fatty food products and thereby avoid the economic loss citizens are going to suffer thereafter, due to obesity – related ailments. On the other hand, this tax can also encourage producers to supply food products that contain optimum level of fat content. Data shows that the obesity rate in India is very high and needs to be controlled. As one of the ten objectives of the National Action Plan for Prevention and Control of non - communicable illnesses, the Indian government has set a goal to end the obesity pandemic by 2025. The creation and execution of legislative measures to limit the use of trans fats and saturated fats by food manufacturers and processors were recommended as action items to reach this goal.⁷ Statistics show that the consumption of high fat products like *Vanaspati* have increased coupled with the increasing consumption of fat rich *junk and fast food* items.

⁷http://www.searo.who.int/india/topics/cardiovascular_diseases/National_Action_Plan_and_Monitoring_Framework_Prevention_NCDs.pdf.

Internationally there have been examples of imposition of Fat Tax in Denmark in 2011 to control the risk of cardiovascular diseases. It has resulted in decrease in consumption of fatty food products. But, on the other hand, the products remained selling in the market by circumventing tax by purchasing such products through cross – border transactions from Germany and Sweden.⁸

Value added taxes (VAT) in Canada and Europe and food sales taxes in the US have demonstrated that even lower taxing may contribute to increased national revenue. According to research, a national excise tax of one cent per 12-ounce soft drink may generate up to US\$1.5 billion in revenue annually. In an effort to lessen the burden of obesity and other nutrition-related morbidities, the Mexican government also implemented sales taxes on a variety of energy-dense food items and levies on beverages that were sweetened with sugar in September 2013. The US city of Berkeley in California has recently started taxing drinks with added sugar.

Kerala was the first Indian state to levy a fat tax on fast food products served in chain restaurants in 2016. The purpose of the 14.5% fat tax was to stop the rising addiction to junk food. Since unhealthy food items elicit the least amount of opposition from the public, the fat tax was initially implemented on them. There was also a plan to gradually increase the scale and include sugar-filled drinks. Since large corporate food chain restaurants were the subject of this levy, those with lower incomes were not impacted. It was done to promote healthy food habits among the citizens and boost local agriculture, but, was criticised by certain companies of the FMCG market.⁹

This policy had both criticisms on the grounds of restriction of choice of people and their purchasing autonomy. But, this was implemented with the view of eliminating junk food where Design Thinking was applied from the consumer's point of view. Similarly, the repeal of such policy in Denmark was also done on the same basis.

Another live example of non – application of Design Thinking in Taxation is *exclusion of Petroleum Products from the ambit of Goods and Services Tax*. The much hailed tax reform of the century – Goods and Services Tax (GST) was introduced with the main aim of curbing the cascading effects of other indirect taxes. Several indirect taxes like Value Added Tax (VAT), Sales Tax, Excise Duty were subsumed in GST. The implementation of GST has simplified tax collection and boosted revenue. But, there is lacuna in the aspect of benefit to the ultimate consumer at the end.

⁸ <https://iea.org.uk/publications/research/the-proof-of-the-pudding-denmark%E2%80%99s-fat-tax-fiasco>

⁹ <https://economictimes.indiatimes.com/news/politics-and-nation/in-a-first-kerala-imposes-14-5-fat-tax-on-junk-food/articleshow/53113799.cms?from=mdr>

Both the Union and State Governments have ‘conveniently’ kept one of the most widely used commodities on a daily basis - Petroleum Products out of the ambit of GST. Various reasons like aim of generating revenue over consumer welfare have been attributed to this ‘arbitrary’ exclusion even after several meetings of the GST Council. The VAT levied by State Governments on Petroleum Products hugely vary from state to state based on population, area and revenue generation aspects. For example, states like Maharashtra and Tamil Nadu levy VAT on Petrol and Diesel ranging between 12 to 25%. Whereas, in other smaller states, it is considerably very less in comparison.¹⁰

On one hand when enacting GST, the Government had pioneered the slogan – ‘one nation, one tax.’ But, on the other hand consumers are facing this discrimination in prices of petrol and diesel across the country. The very objective of GST to bring the prices of the same/similar products equal in all parts of the country stands defeated due such discrimination in imposition of VAT. All citizens must pay equally for purchasing similar products and services in the same circumstances except in cases of transportation and logistical restrictions. Government has kept this issue pending for many years since introduction of GST as there is no support from all states.¹¹

In this case, if Design Thinking was applied and if the Government had looked this issue from the perspective of the consumer, then it would have brought Petroleum Products under the ambit of GST a long time ago. Therefore, these examples emphasise the need for Design Thinking in Taxation and if Tax Laws are enacted by incorporating five processes of Design Thinking - Empathize, Define, Ideate, Prototype, and Test – it would benefit all the stakeholders concerned.

5. Conclusion

From the grey areas in the examples highlighted in the Tax Laws so far passed, we can come to the conclusion that there is a need to change the process in which such legislations are formulated. Empathising aspect is the key. Feedback is essential to bring in legislations that strike the core issue and provide concessions and exemptions to the common man who is compliant and stringent punishment to those who exploit the system through tax evasion. This can be done through the application of the five pillars of Design Thinking. Therefore, application of design thinking in the process of reforming Laws can go a way forward in protecting the welfare of all the stakeholders.

¹⁰ <https://ppac.gov.in/prices/vat-sales-tax-gst-rates>

¹¹ <https://www.deccanherald.com/business/petrol-diesel-to-come-under-gst-if-states-agree-fm-nirmala-sitharaman-1191560.html>