

## ROLE OF EMOTIONS IN CRIMINAL LAW

***Responsible Faculty Instructor:***  
**Santwana Dwivedy** [sdwivedy@jgu.edu.in]  
Assistant Professor

Credits: 4

Credits Type: Law

Cross-registration: No

Pre-requisites: Law of Crimes (or The Bharatiya Nyaya Sanhita), Law of Evidence (or Bharatiya Sakshya Adhinyam), Code of Criminal Procedure (Bharatiya Nagarik Suraksha Sanhita)

### COURSE DESCRIPTION (COURSE VISION):

The criminal justice system (CJS) in India is conventionally understood as a domain governed by objective facts, logical reasoning, statutory provisions and evidentiary standards. However, in practice, emotions such as anger, hatred, empathy, fear, forgiveness and love permeate the functioning of the CJS, often shaping not only the adjudication of guilt but also the very conceptual foundations of crime and criminal processes. For instance, within the General Exception of private defence of the body, the judicial assessment of what constitutes a “reasonable apprehension of death or grievous hurt” inevitably requires an engagement with the emotional register of fear: how is such fear identified, measured and rendered intelligible within legal discourse? Similarly, the Indian penal framework frequently reflects retributive impulses mirroring collective emotions of anger and the societal demand for vengeance. In contrast, there exists a parallel movement towards more empathetic approaches such as restorative justice which emphasizes repairing the harm caused by crime through dialogue, accountability and mutual understanding. Traditional legal analysis is often insufficient to fully capture the pervasive role of emotions within criminal law. Understanding this dimension requires broader conceptual and methodological resources that draw upon socio-legal inquiry particularly into the social dimensions of emotional arousal, expression and language.

In this background, this course shall unpack existing criminal law as a site for investigation to understand the role of emotions. We will undertake a socio-legal analysis and explore the definitional and procedural challenges of some of the provisions of Indian criminal law (The Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhinyam, 2023 (BSA) [earlier, The Indian Penal Code, The Code of Criminal Procedure and The Indian Evidence Act]. This course will focus on situating emotions not as isolated psychological states but as phenomena deeply embedded within social structures, cultural narratives and institutional practices. Thematically, the course will explore how emotions and emotional expressions shape the boundaries, doctrines and practices of criminal law in the Indian context. It will also analyse to what extent are the emotions of judges, lawmakers, offenders and victims’ individual experiences and to what extent are they socially constructed.

**TEACHING METHODOLOGY:**

Statutory provisions and landmark cases relating to mob lynching, obscenity, defence of provocation, domestic violence and so on will be used as entry points to understand how courts grapple with emotions such as love, hate, fear and anger. Alongside legal texts, students will engage with writings from philosophy, sociology, psychology, feminist theory and queer studies to capture the complexity of emotions as both individual experiences and socially constructed phenomena. Students will be encouraged to critically assess judicial reasoning and emotional undercurrents behind legal doctrines. This will be done through seminars, debates and critical discussions in the class on whether emotions strengthen or weaken legal rationality and how they intersect with gender, sexuality, caste, disability and human rights in criminal law.

**INTENDED LEARNING OUTCOMES:**

1. Critically analyse the role of emotions - such as fear, empathy, anger and disgust - in shaping doctrines, procedures and outcomes within Indian criminal law through a socio-legal perspective
2. Examine the relationship between collective emotions (such as societal outrage and moral panic) and the structural design of punishment
3. Employ socio-legal methods to study how emotions are socially constructed and institutionalized within the Indian criminal justice system
4. Assess how emotional language and expressions in legal discourse influence judicial reasoning and legislative intent
5. Develop informed positions on contemporary debates regarding the role of emotions in criminal law supported by case laws, statutory analysis and socio-legal scholarship

**READING LIST:**

1. Aishwarya Deb, 'Defending women who kill: Analysing 'Provocation' in the context of intimate partner homicide' (2021) 14 (3) NUJS L. Rev. 1-40
2. Amia Srinivasan, 'The Aptness of Anger' (2017) 26(2) Journal of Political Philosophy 1-24
3. D. M. Kahan, 'The Anatomy of Disgust in Criminal Law [Review of The Anatomy of Disgust, by W. I. Miller]' (1998) 96 (6) Michigan Law Review 1621 -1657
4. Donald Nicolson and Lois Bibbings (eds.), *Feminist Perspectives on Criminal Law* (Routledge-Cavendish 2000)
5. Latika Vashist, *Criminal Law, Feminism and Emotions: Thinking through the Legal Unconscious* (Routledge 2025)
6. Martha C. Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge University Press 2003)
7. Nina Persak, 'Beyond public punitiveness: The role of emotions in criminal law policy' (2019) 57 International Journal of Law, Crime and Justice 1-12
8. Sandhya Fuchs, *The Fragile life of the Atrocities Act: Seeking Justice against Caste Crimes* (Navayana Publishing, New Delhi 2024)
9. Santwana Dwivedy, 'Documenting psychological tactics as violence in Meena Kandasamy's 'When I hit you Or, a Portrait of the Writer as a Young Wife' in Pinki Mathur Anurag and Santwana Dwivedy (eds.), *Violence in intimate spaces: Law and Beyond* (Springer 2024) 25-42

10. Sara Ahmed, ‘Introduction: Feel your way’ in *The Cultural Politics of Emotion* (Edinburgh University Press 2nd ed. 2014) 1-19
11. Sreenivasan Jain, Mariyam Alavi, and Supriya Sharma, *Love Jihad and Other Fictions: Simple Facts to Counter Viral Falsehoods* (Aleph Book Company 2024)
12. Terry A. Maroney, ‘Law and Emotion: A Proposed Taxonomy of an Emerging Field’ 30 (2006) *Law & Hum. Behav.* 119 -142

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

MODULES	WEEK(S)
<p><b>MODULE 1 - INTRODUCTION: ROLE OF EMOTIONS IN CONCEPTUALIZATION AND ADJUDICATION IN CRIMINAL LAW</b></p> <ul style="list-style-type: none"> <li>• Overview of psychological, philosophical and socio-legal approaches to emotion</li> <li>• Distinction between ‘rational’ law and ‘irrational’ emotions</li> <li>• Why do emotions matter in the criminal justice system?</li> </ul>	Week 1
<p><b>MODULE 2 - LOVE: CRIMINALIZING LOVE AND DESIRE</b></p> <ul style="list-style-type: none"> <li>• Anti-conversion laws and the politics of ‘love jihad’</li> <li>• Criminalization of consensual adolescent relationships</li> <li>• How does moral panic around sexuality and intimacy translate into criminal law?</li> <li>• Is love treated as a threat to social order?</li> </ul>	Weeks 2-3
<p><b>MODULE 3 - DISGUST: THE POLITICS OF DISGUST IN CRIMINAL LAW</b></p> <ul style="list-style-type: none"> <li>• Obscenity jurisprudence and the regulation of sexual expression</li> <li>• Crimes against the LGBTQIA+ community</li> <li>• How does disgust operate as a moral emotion shaping criminal law?</li> </ul>	Weeks 4-5
<p><b>MODULE 4 – HATE: COLLECTIVE HATRED, VIOLENCE AND HIERARCHIES OF PURITY AND POLLUTION</b></p> <ul style="list-style-type: none"> <li>• Hate crimes (mob lynching) - targeting of vulnerable groups as an expression of majoritarian hate</li> <li>• Caste-based atrocities under the SC/ST (Prevention of Atrocities) Act</li> <li>• To what extent does law reinforce social hierarchies of purity and pollution?</li> <li>• Does criminal law itself reproduce forms of exclusionary hate?</li> </ul>	Weeks 6-7
<p><b>MODULE 5 - FEAR: FEAR AS A LEGAL JUSTIFICATION AND SOCIAL EXPERIENCE</b></p> <ul style="list-style-type: none"> <li>• Domestic violence and the lived reality of coercive control</li> </ul>	Weeks 8-9

<ul style="list-style-type: none"> <li>• The legal standard of “reasonable apprehension” in private defence</li> <li>• Does the law adequately capture the gendered and structural dimensions of fear?</li> </ul>	
<p><b>MODULE 6 - ANGER: ANGER AS A DEFENCE AND A SOCIAL EMOTION</b></p> <ul style="list-style-type: none"> <li>• The defence of provocation and its doctrinal limits</li> <li>• Whose anger is legally excusable in the eyes of the law?</li> <li>• Can anger serve as a productive force in criminal law such as mobilizing resistance to injustice?</li> </ul>	<p>Weeks 10-11</p>
<p><b>MODULE 7 - EMPATHY vs REVENGE: COMPETING EMOTIONAL FOUNDATIONS IN CONSEQUENCES OF CRIME - PUNISHMENT AS OPPOSED TO RESTORATIVE JUSTICE</b></p> <ul style="list-style-type: none"> <li>• Restorative justice practices and the role of empathy in conflict resolution</li> <li>• The death penalty debate and the appeal to collective outrage</li> <li>• Should law institutionalize forgiveness and empathy or is punishment necessarily tied to retribution?</li> <li>• How do victims’ emotions shape sentencing practices?</li> </ul>	<p>Weeks 12-13</p>
<p><b>MODULE 8 - SYNTHESIZING INSIGHTS ON EMOTIONS AND CRIMINAL LAW</b></p> <ul style="list-style-type: none"> <li>• Which emotions are criminalized, which are legitimized and which are ignored by criminal law?</li> <li>• Can criminal law disentangle itself from emotions or are emotions constitutive of law itself?</li> </ul>	<p>Week 14</p>
<p><b>REVISION WEEK</b></p>	<p>Week 15</p>