

ROLE OF EMOTIONS IN CRIMINAL LAW

1. Course Vision and Pedagogical approach:

The criminal justice system (CJS) in India is conventionally understood as a domain governed by objective facts, logical reasoning, statutory provisions and evidentiary standards. Yet, 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.

The course shall unpack the 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 Adhiniyam, 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? Statutory provisions and landmark cases relating to mob lynching, obscenity, domestic violence judgments, etc 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 questions of gender, sexuality, caste, disability and human rights in criminal law.

2. Learning outcomes of the course:

At the end of the course, students will be able to:

- Critically analyse the role of emotions - such as fear, empathy, anger, and forgiveness - in shaping doctrines, procedures, and outcomes within Indian criminal law, particularly under the Bharatiya Nyaya Sanhita (2023), the Bharatiya Nagarik Suraksha Sanhita (2023), and the Bharatiya Sakshya Adhiniyam (2023) through a socio-legal perspective
- Examine the relationship between collective emotions (such as societal outrage and moral panic) and the structural design of punishment
- Employ socio-legal and interdisciplinary methods to study how emotions are socially constructed and institutionalized within the Indian criminal justice system
- Assess how emotional language and expressions in legal discourse influence judicial reasoning and legislative intent
- Develop informed positions on contemporary debates regarding the role of emotions in criminal law, supported by case law, statutory analysis and socio-legal scholarship

3. Pre-requisite courses: Law of Crimes (or The Bharatiya Nyaya Sanhita), Law of Evidence (or Bharatiya Sakshya Adhiniyam), Code of Criminal Procedure (Bharatiya Nagarik Suraksha Sanhita)

4. Credit Type: Law

5. Lecture Design:

Week	Topic	Description of Topic
1	Introduction: Role of emotions in conceptualization and adjudication in criminal law	<ul style="list-style-type: none">• Overview of psychological, philosophical and socio-legal approaches to emotion• Distinction between ‘rational’ law and ‘irrational’ emotions• Why do emotions matter in the criminal justice system?
2-3	<i>LOVE</i> : Criminalizing love and desire and the boundaries of criminal law	<ul style="list-style-type: none">• Navtej Singh Johar vs Union of India• Anti-conversion laws and the politics of ‘love jihad’• Criminalization of consensual adolescent relationships• How does moral panic around sexuality and intimacy translate into criminalization• Is love treated as a threat to social order?
4-5	<i>DISGUST</i> : The politics of disgust, purity and social exclusion	<ul style="list-style-type: none">• Obscenity jurisprudence and the regulation of sexual expression

		<ul style="list-style-type: none"> • Caste-based atrocities under the SC/ST (Prevention of Atrocities) Act • Crimes against the LGBTQIA+ community • How does disgust operate as a moral emotion shaping criminal law? • To what extent does law reinforce social hierarchies of purity and pollution
6-7	<i>FEAR</i> : Fear as a legal justification and social experience	<ul style="list-style-type: none"> • Domestic violence and the lived reality of coercive control • The legal standard of “reasonable apprehension” in private defence • How is fear quantified and recognized in law? • Does the law adequately capture the gendered and structural dimensions of fear?
8-9	<i>HATE</i> : Collective hatred, violence and criminal law	<ul style="list-style-type: none"> • Mob lynching as an expression of majoritarian hate • Hate crimes and the targeting of vulnerable groups • Digital hatred: revenge porn and online abuse • Can law effectively address crimes motivated by hatred? • Does criminal law itself reproduce forms of exclusionary hate?
10-11	<i>EMPATHY vs REVENGE</i> : Competing emotional foundations in consequences of crime - punishment as opposed to restorative justice	<ul style="list-style-type: none"> • Restorative justice practices and the role of empathy in conflict resolution • The death penalty debate and the appeal to collective outrage • Should law institutionalize forgiveness and empathy or is punishment necessarily tied to retribution? • How do victims’ emotions shape sentencing practices?
12	<i>ANGER</i> : Anger as a defence and a social emotion	<ul style="list-style-type: none"> • The defence of provocation and its doctrinal limits • Gendered aspects of anger in cases of intimate partner violence and ‘honour’ crimes • Whose anger is legally excusable in the eyes of the law? • Can anger serve as a productive force in criminal law such as mobilizing resistance to injustice?
13	Synthesizing insights on emotions and criminal law	<ul style="list-style-type: none"> • Which emotions are criminalized, which are legitimized and which are ignored by criminal law?

		<ul style="list-style-type: none"> • Can criminal law disentangle itself from emotions or are emotions constitutive of law itself?
14	Revision	<ul style="list-style-type: none"> • Revision and assessments

6. Select Essential Readings:

- i. Latika Vashist, *Criminal Law, Feminism and Emotions: Thinking through the Legal Unconscious* (Routledge 2025)
- ii. Martha Nussbaum, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge University Press 2003)
- iii. Nina Persak, 'Beyond public punitiveness: The role of emotions in criminal law policy', *International Journal of Law, Crime and Justice* (2019) 57
- iv. Donald Nicolson and Lois Bibbings (eds.), *Feminist Perspectives on Criminal Law* (Routledge-Cavendish 2000)
- v. Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2014)
- vi. A.R. Ackerman and A. Sardina, 'Restorative Justice in Cases of Sexual Harm', *City University of New York Law Review* (2022) 25 (1)
- vii. Latika Vashist, 'Disgust for the sexual: the emotional side of obscenity law in India', *Oxford Univ. Comm. L. J.* (2022) 22
- viii. Amia Srinivasan, 'The Aptness of Anger', *Journal of Political Philosophy* (2017) 26(2)
- ix. 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)
- x. Aishwarya Deb, 'Defending women who kill: Analysing 'Provocation' in the context of Intimate partner homicide' *NUJS L. Rev.* (2021) 14 (3)
- xi. Sreenivasan Jain, Mariyam Alavi, and Supriya Sharma, *Love Jihad and Other Fictions: Simple Facts to Counter Viral Falsehoods* (Aleph Book Company 2024)