

# Law & Emotions

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## ABSTRACT:

The paper explores the idea of emotions in the legal realm. The shared relationship between the law and emotions and how they influence each other back and forth. The paper also focuses on role of collective and individual emotions in shaping the law and the reducing the punishment when it is done in the heat of some emotion. This paper evaluates with the help of certain Indian cases and draws the relationship between law and emotion. The role of collective and individual emotions in shaping the law also reflects in the evolution of law. The role of stakeholders, the position they hold in the society and many other factors. Lastly, how the shared emotions spurred in the private realm, forces individuals to come together for a legal discourse also further intertwines the subject of law and emotion stronger.

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Law is a bearer of societal norms and ideologies that are so prevalent in the society that it gradually becomes 'common sense' of the society. It is sometimes believed that the basis or the origin of these laws is the dominant norms and ideologies of the state or the dominant class. For example, in order to enforce the principles of Nazi, the laws in the country were bent and justified against the genocide of the Jews. This shows that only the dominant ideology is taken into account in the process of making law and how law can be repressive and coercive and driven by the emotions of those in power.

Emotions and law are parts of society that are woven together through various interdisciplinary such as psychology, law, literature and sociology. Society affects and has effect through many different mediums of social structure on the subjects of emotion and law. Emotions despite being an integral part of the psychology field it is an important tool in understanding the two way relationship between the individual agency and social structure in the society. Emotions play a major role to drive people to bring about a social change because of this shared relationship. Emotions were manipulated in the society through tools of law to create a sense of shared feelings in the community. For example, strict discipline actions such as repressive laws and punishments were used in case people diverged from the societal norms to create a sense of fear. Growth of individualism after the European enlightenment marked the growth or birth of varied different types of law such as criminal law, tort law family law, contract law. In all these different categories emotions have a different role to play. For example in criminal law death caused in heat of the moment or in anger is considered less criminalized under section 302 than a planned cold blooded murder under section 304<sup>1</sup>. A number of cases have recognized the anger or heat of the moment and the accused is charged under section 302 of Indian Penal

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<sup>1</sup> Susan Bandes and Jeremy Blumenthal, *Law and Relations*, The Annual Review of Law and Social Science, online at [lawsocsci.annualreviews.org](http://lawsocsci.annualreviews.org)

Code (IPC) instead of Section 304 which vouches for life imprisonment. In case of family law the judgment has to take into consideration the harassment the cruelty or the mental torture faced by the victim because of the husband or the family members. The example of considering role-play of emotions in domestic violence becomes an integral part of hearings and judgments.

Many immature and abusive spouses emotionally abuse their spouses as a form of domestic violence. A number of acts has been established that takes into the factor of psychological abuse be it fear, black mailing and other forms of such emotional abuse. The Protection of Women from Domestic Violence Act 2005 in its definition defines domestic violence something that not only includes physical abuse but also recognizes the emotional and economic abuse. The case of *Sou Neha Laxmikant Manjarekar v. The State of Maharashtra and others* the Bombay high court in his judgment mentions ... she was subjected to an emotional abuse. And another statement recognizes ... that because of the physical relationship between the petitioner and the husband of the complainant, she is suffering emotional abuse because of the adultery committed which would be covered by the definition of domestic violence under the part of emotional abuse in Section 3(a) of the said Act. The claim of this right is because judge accepts the facts the fact that the petitioner has been emotionally abused as her husband committed adultery and therefore can claim her legal rights. It is not only always the case of unequal relationship between the couple when the emotional abuse takes place, but even in-laws have an important role to play in keeping the torture on. In case of India where generally after marriage the couple lives with the family of groom, these family members sometimes keep the abuse perpetual, very subtly. These behavior can be because either the victim did not bring enough dowry, or is unable to give birth or unable to give birth to a boy. It is when you hear the victim for yourself then you realize what pain through they went through. Further I would like to mention some cases, the case of *Pawan kuman and others v State of Haryana*<sup>2</sup> where the judge acknowledge the mental torture and the emotion of being self incompetent and tried the person guilty under 304 B and 498A of the constitution. He states, “A girl dreams of the great days ahead with hope and aspiration when entering into a marriage and if from the very next day the husband starts taunting for next dowry and calling her ugly, there cannot be great mental torture, harassment or cruelty for any bride.” (*Pawan kuman and others v State of Haryana* 1998, 311)

The case of 2007 of Sanjay and state of Maharashtra, the facts of the case stated that wife being angry with her husband set herself on fire but since no particular evidence, as suicide letter or diary, was found against the husband was let off.

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<sup>2</sup> Pawan kumar and others v State of harayana, (2017). 3 Supreme Court Cases 309(India)

<sup>3</sup>Gopal v state of Karnataka, ( 2012) Supreme Court. 1344. (India)

The case of Gopal v state of Karnataka<sup>3</sup>, the victim, refused to bring back the rupees 100 she spent at the ration shop. The husband wanted the money back to consume alcohol unable to accept the rejection and angry at her behavior he burnt her alive. The judge decided to tried the accused under Section 302 and acknowledge it was due to anger that he did so.

In the above examples, it reflects how law and emotion are important players in the society and how important it is for judges to take into account the emotional aspect of the cases. This is what Robin West in last claim mentions that law is responsible for the freedom of caregivers from anxiety and fear<sup>4</sup>. It is necessary for law to provide with good material and psychtic conditions, as the capacity to provide others with good attention and love depends on the mental and emotion health of the caregivers<sup>5</sup>. I don't tend to stereotype here but the women of these families are the source of caregivers and affection. And providing them with good mental environment is one of the important functions of the law. Robin West argues that it is not only that emotions influences law, but law produces or gives birth to some emotions, against the common belief that emotions are generally produced in the private realm of the society<sup>6</sup>. He recognizes and categorizes these emotions in four broad categories which will be addressed in the different sections of the paper. Firstly, he says that law produces a sense of authoritativeness and obedience and constitution act as a replacement to the king<sup>7</sup>. The point that robin west makes us think that if there is any better form of civil society that can exist and maintain order in society with such diversity in terms of religion, race, class. He talks about how we have swore allegiance to the constitution instead of the monarch which is more dangerous as it is driven by the highly personalized authority of legislators and presidents and we follow them because we have emotions attached to it<sup>8</sup>. I write to disagree with him, what better way to adjust to our needs the constitution, which can adjust itself according to the developing and evolving stages of society. Constitutions are generally made by independent states by their people of the country taking into account various factors such as history, diversity, geographical location, suiting and answering to the required needs of the people of the country. An excellent example to support my argument is the case of Srinivas others v dunichand and others where it was the case of harijans and Supreme Court in its judgement mentioned that high court was swayed by emotions and was wrong in overturning the rule of district court. It said, 'The, High court, was therefore not justifying in reversing the order of the acquittal. Indeed. While dealing the appeal against acquittal, the high court could appreciate the evidence itself to come to an independent conclusion but in the present case we find that instead of basing its judgment on

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<sup>4</sup> Robin West, *Law's Emotions*, 19 RICHARD PUBLIC INTEREST L.R. 340, 360 (2015)

<sup>5</sup> Robin West, *Law's Emotions*, 19 RICHARD PUBLIC INTEREST L.R. 340, 360 (2015)

<sup>6</sup> Robin West, *Law's Emotions*, 19 RICHARD PUBLIC INTEREST L.R. 340, 342 (2015)

<sup>7</sup> Robin West, *Law's Emotions*, 19 RICHARD PUBLIC INTEREST L.R. 340, 344 (2015)

<sup>8</sup> Robin West, *Law's Emotions*, 19 RICHARD PUBLIC INTEREST L.R. 340, 344-345 (2015)

evidences High Court, perhaps swayed by emotions allowed presumptions and conjectures to take its place was set aside was not proper. The approach of the high court to say the least was not proper.’ (Srinivas others v Dunichand and others 1997, 524) His first claim that constitution is authoritative, based on Freudos hypothesis but the fact that we are emotionally attached to our constitution and thus we place it above everything is also something I fail to give consent to and would further illustrate it why while counterattacking the second claim.

In his second claim he says that act of consensus leads to emotional dysphoria by exchanging something we create an unacknowledged disempowerment in private sphere<sup>9</sup>. I believe, a sense of liberty and freedom is also produced and constitution being the sovereign, acts as protector of this liberty instead of claiming authoritativeness. It acts as a protector of the liberty and freedom which is distributed throughout the state equally among individuals. He says that at the same time of creating liberty it restricts us from some beautiful forms of intimacy or social intercourse and act of legal consent and very smartly restricts or creates certain permissions<sup>10</sup>. In my understanding of this point it is quite relevant to the Indian context under section 377 of the Indian Penal Code which criminalizes homosexuality and says that it is against the natural order of the society. This also restricts and puts a barrier on who we can love also and what age we can love. The resentment not only arises when there is personal loss but also when humans feel that the loss has to be face by their entire group. Drawing parallel to the milestone case Extra Judicial Execution Victim Families Association Manipur (EEV FAM) and Another v Union of India and the association of parents of disappeared persons in Kashmir quite similar to EEVFAM has been struggling and trying to even lodge complaints against the military force. The tensioned shared in that specific regions have no other option but to ask the international forums to step in. As in the case of the Manipur the enemy of the place was recognized and the actions by law could be taken but in case of Kashmir the ‘enemy’ is itself unknown, is it the ‘ikhwan’ group who are backed by army for the information or the insurgents sent by Pakistan, the militants, the separatist or the army itself. The feeling of completely broken because of the lost child who were just picked up one day has forced these parents or guardians to question the working of the law and the protection of the army as they are not exposed as they are tried under marshal court, the proceedings under this court are not made public. Not further diverging from the topic, this example was necessary to explain on the collective level the relationship between law and emotion and how these numbers of disappearances and deaths spurred the emotions of the stakeholders when the basic human rights are violated.

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<sup>9</sup> Robin West, *Law's Emotions*, 19 RICHARD PUBLIC INTEREST L.R. 340, 352 (2015)

<sup>10</sup> Robin West, *Law's Emotions*, 19 RICHARD PUBLIC INTEREST L.R. 340, 350 (2015)

The emotion of resentment in their private realm of the life is the main key that drives people to come together and take on a legal discourse to claim their violated

Human rights<sup>11</sup>. The law and emotion, they both share a two way relationship with each other despite having different origins. Emotions originate from the private sphere of life and mainly through social and intimate interaction while law drawbacks its root to the sovereignty and the norms.

The lack of research outcomes in the field of law and emotions and the shared equations with different stakeholders and a expected form of performance maintained by these legal actors have forced us to look deeper. Being a comparatively new field a lot of new discoveries can still have to come. The continuous and rigorous efforts to decriminalization attempt to suicide is an excellent example of realization by the stakeholders the emotions individual may go through, depression, fear, sadness performance anxiety, with growing competition the growth of these emotions will multiply. The growth will be further marked when the emotions of the minority community in terms of the LGBTQ community is taken into account and there is decriminalization and more liberation and freedom to individuals and groups.

The essay looks at the exchange role of emotions between laws, its varied actors, how their emotions interact with the different individuals in the society. The emotions that are generated in the personal life add up to influence judgements or demand legal aid for the entire community. The different background brought in the legal institutions by the victims, judges, lawyers should be taken into account as these emotions are sometimes too subjective. Finally, we as correspondents to the sociology of law are responsible to analyze and criticize these factors and players if they harm or question the liberty of individual.

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<sup>11</sup> Catherine Lane West-Newman. "Feeling for Justice? Rights, Laws, and Cultural Contexts." 2. Law & Social Inquiry 30, 305-35 (2005).