

# STUDY ON EMOTIONS AND IT'S IMPACT ON LAW AND DECISION MAKING

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## Abstract

*The present paper is an attempt to understand emotions and their impact on law and decisions. Emotions are seen as modification of desire and attachment. The desires are seen as arising from the contact and attachment of the ego or ahamkara with the external world and are caused by a sense of imperfection, incompleteness or non-fulfillment. Ego or ahamkara is differentiated from the true Self or atman. The Legal Realist movement argued that the legal system's insularity blinded it to the political, psychological and social influences that help shape legal reasoning and legal institutions. Although it might seem evident that legal theory and legal practice are influenced by social and political forces, this insight was widely resisted until the 1980's. By the late twentieth century, particularly in the wake of the influential Law and Economics movement, legal scholars were becoming more accustomed to looking toward other disciplines for insight into the workings of the legal system. The guiding principle of the field of Law and Emotion is that the law should not rely on untested or inaccurate assumptions about how emotions work, but should make choices, and design institutions, in light of the best available knowledge.*

## INTRODUCTION

Emotion, as an important ingredient of life, has intrigued psychologists and all those who are interested in understanding human behavior for long. Emotions play an important role in our day- to-day life. All our actions and thoughts are governed by our emotional experiences. In turn, emotions are reflected in our actions and thoughts. In addition, they play a significant role in human life by way of preparing us for action, shaping our future responses to situations and events. They also influence our social interaction a great deal. Ways in which we deal with our emotions and emotional experiences influences the quality of our social interaction too. Emotions have been defined as feelings having both physiological and cognitive components. Various theories have been proposed in an attempt to understand them. There are theories emphasizing the physiological components and there are theories highlighting the cognitive components and there are still others, which acknowledge the role of both physiological as well as cognitive components and also there are the cognitive appraisal theories. In addition, there is the social-constructionists' view-point. A wide range of emotions have been studied and described in terms of physiological responses, accompanying cognitions and associated environmental events. However, the feeling, which is the experiential component, has often been neglected. Feeling, termed as "affect" is the most complex component and cannot be understood by analyzing emotions into parts. This experiential aspect has been central to the Indian approach to understanding human nature. The term "affect" focuses on the subjective experiential aspects of emotions as against the physiological changes and behavior accompanying emotions. "Affect" as a feature and function of the "person" and the nature of one who experiences it, has been the focus of Indian tradition of understanding human nature.

## EMOTIONS

In the Indian philosophical texts and scriptures detailed description of emotions are not available nor are dealt with as a separate concept. They are seen as a component of personality arising out of the contact of ego or ahamkara with the external world. According to Jain, this could be because "emotions remained something to be transcended in order to achieve the ultimate goal of life." Emotions are viewed in the context of the ego (ahamkara) and the true self (atman). It is an experience that represents the relation between the ego and the outside world. In the Indian thought, emotions are seen as arising from desires. Emotions in turn are viewed as springs of action and are bi-polar in nature. There is a strong emphasis on sukha and dukha (pleasure and pain) as the two opposites. Emotions are concerned with mind or the Manomaya kosa and influence both the food sheath and the vital air sheath as evident from the physiological reactions accompanying emotions. Emotions

and their affective experiences are influenced by the intellect or the Vignanamaya kosa, the cognitive appraisal as proposed by Lazarus, as well as the Anandamaya kosa, the experiential aspect, or the bliss sheath. The nature of emotions and the associated affect needs to be examined in this context. All emotions spring from desires and desire is caused by a sense of imperfection, incompleteness or non-fulfillment felt within oneself. The stronger the desire, the stronger would be the emotional experience. A desire when not fulfilled or thwarted gives rise to anger (Krodha), jealousy (Asuya), unhappiness (Dukha), and suffering. Desire when fulfilled leads to happiness (Sukha) and enjoyment. Indian scriptures warn that fulfillment of a desire can and most often leads to greed (Lobha). One craves for more and more of it. There is a yearning for larger possession and greater enjoyment. These when entertained, one may develop arrogance (Mada) and envy (Matsarya). There is an additional emotional experience of fear (Bhaya) of losing whatever one possesses. These emotions cloud one's intellectual discrimination and lead one to emotional and mental disturbance. However, not all emotions are considered detrimental. Emotions are basically seen as virtue but allowing them to interfere with one's judgment and awareness is considered a weakness. The scriptures reiterate that desires are responsible for all mental agitations and sorrows. The traditional Indian thought lays great emphasis on desires in the causation of suffering, misery and pain. Emotions are seen as modification of desire or attachment. It is suggested that if one wants to overcome the overwhelming emotional experiences like anger and sorrow, one must locate the desire underlying it and then eliminate it. According to Patanjali's Yoga Shastra, suffering is due to ignorance about one's true "Self" (avidya). Ignorance leads to misperception. Individuals develop a false sense of ego by identifying themselves with things/objects around them. The desires, with this ego attachment, become stronger. This ego attachment, attraction, and repulsion are termed affliction (Klesas). The misperception lies in the acceptance of external objects as the true self. This produces a false view of reality. In this sense, suffering/dukha arises from within and not from the outside world. The Bhagavadgita traces all emotional experiences to the gunas, i.e., sattva, rajas, and tamas. Cheerfulness, joy, bliss, forgiveness and equanimity are associated with sattva. Rajas gives rise to discontent, mental agony, grief, greed, hatred, and intolerance. Fatigue, "delusion," indolence, and non-discriminations' (between the pleasant and the good) are due to tamas. Hence it is suggested that men should strive to increase the sattvic guna.<sup>4</sup>

## THE EMERGENCE OF THE FIELD OF LAW AND EMOTION

In the early twentieth century, the Legal Realist movement argued that the legal system's insularity blinded it to the political, psychological and social influences that helps to shape legal reasoning and legal institutions (see e.g. Llewellyn 1962). Although it might seem evident that legal theory and legal practice are influenced by social and political forces, this insight was widely resisted until the 1980's. By the late twentieth century, particularly in the wake of the influential Law and Economics movement (which uses economic theory to analyze law and to predict the behaviors governed by law), legal scholars were becoming more accustomed to looking toward other disciplines for insight into the workings of the legal system. The guiding principle of the field of Law and Emotion is that the law should not rely on untested or inaccurate assumptions about how emotions work, but should make choices, and design institutions, in light of the best available knowledge.

## IDENTIFYING EMOTIONS

The legal system is a vast apparatus for predicting, regulating and influencing human behavior. Therefore it is not surprising that legal rules, decisions and institutions rest upon assumptions about how emotions influence human behavior in a wide range of situations. Some of these assumptions are explicit; most are implicit. Explicit Assumptions: At times the legal system makes its assumptions about emotion explicit. For example, a homicide is considered less culpable if it is committed in the heat of passion, instead of after cold calculation (Finkel and Parrott 2006). An excited utterance "made...under the stress or excitement caused by [an] event," (Federal Rules of Evidence 803 (2)) is considered so reliable that it counts as an exception to the hearsay rule, which bars the admission into evidence of a statement made by someone who is unavailable for cross examination in court.

For example, judges assume that shaming punishments will deter offenders from repeating their criminal behavior. The drafters of the Federal Rules of Evidence assumed that the emotional nature of "excited utterances" means they are unreflective and therefore less likely to be deceptive. But even if this is so, excitement and stress are known to distort perception and cloud memory.

1. Dharitri RamaPrasad, "Emotions: An Indian Perspective", Indian J Psychiatry 55: Indian Mental Concepts I – Supplement, January 2013

Implicit Assumptions: Many of the legal system's assumptions about emotion are implicit rather than explicit. The term "emotional" is frequently used as a code word for "unreasonable" or "unreliable," in reliance on the implicit assumption that emotion is incompatible with reason, despite the fact that this assumption is out of step with the modern consensus in psychology and other fields. The anti-sympathy jury instruction mentioned above provides an example of this use of the category "emotion." "Sympathy" is singled out as "emotional" and therefore harmful to the jury's deliberative process. But there is substantial evidence that juries in death penalty cases experience other strong emotions, including anger and disgust at the defendant (Deise and Paternoster 2013). Notably, the standard jury instructions make no mention of these emotions, likely because they are regarded as natural responses and therefore "rational" rather than "emotional" (Bandes 2009).

Besides this, legal rules and decisions also rest on assumptions about what emotions defendants, victims, judges, jurors and other legal actors feel, and how these emotions ought to be expressed or displayed. And it is not only those in the courtroom, or those explicitly associated with lawmaking, whose emotions need to be scrutinized; it is also those in the institutions law regulates, such as workplaces, hospitals, schools, and even the home.

Rape law is a fertile area for the study of implicit emotion norms. Legal actors often have firm beliefs about what a "true" rape victim will feel and how she will express those feelings. For example, investigators often believe a rape victim ought to act hysterical rather than calm shortly after the crime. See, for example, the harrowing account of a rape victim whose account was disbelieved and who was charged with perjury for reporting the rape, based largely on her flat affect (Miller and Armstrong 2015). Once rape victims appear in the courtroom, however, one troubling study found that judges in Minnesota adjudged these victims most credible when they expressed compassion or forgiveness for their assailant, rather than anger (Schuster and Proppen 2011).

#### EVALUATING ASSUMPTIONS ABOUT EMOTIONS<sup>5</sup>

It is important to emphasize that not every use of emotion in law is based on unsupported assumptions. For example, there is a growing body of research showing that apologies by doctors decrease the likelihood they will be sued for malpractice (Korobkin and Guthrie 1994). In light of these findings, a number of jurisdictions have sought to encourage apologies, and presumably to encourage better doctor-patient relations, by passing statutes establishing that a doctor's apology, which could be construed as an admission of error, cannot be used as evidence of doctor error in a malpractice suit.

Nevertheless, many "commonsense" beliefs about emotion are contradicted by findings in the sciences and social sciences, or at least require further study. Law and emotion scholars aim to subject these beliefs to scrutiny, identifying misconceptions and gaps in understanding. Once the legal system's beliefs about emotion are evaluated in light of knowledge from fields like psychology, many of them turn out to be inaccurate. In addition, some assumptions are not empirical in nature at all: they rest on normative views about how people ought to act. These assumptions, too, must be debated and evaluated, but they cannot be definitely proved or disproved.

#### CONSIDERATION OF EMOTIONS IN THE REFORMATION OF LAW:

It is important to emphasize that even when law rests on demonstrably wrong assumptions, it does not necessarily follow that the law must change. Whether reform in the law is necessary, is ultimately a question of law. For example, courts recognize an "insanity defense" to murder, but have struggled to align the defense with rapidly shifting knowledge of mental illness. As a practical matter, legal standards – "insanity," for example – must be crafted with an eye toward values like equal treatment, predictability and fairness, and these values sometimes conflict with the goal of case-by-case psychological accuracy. And as a normative matter, the question of what counts as a mental illness that makes an accused murderer less culpable (or excused from criminal liability entirely) is ultimately a legal question, not a psychological one.

Legal institutions can be improved in light of current knowledge of emotional dynamics. Here is another example. There is a disturbing pattern of prosecutors refusing to revisit wrongful convictions, even of those on death row. Prosecutors feel loyalty to victims and their families, and gain satisfaction from helping victims. Efforts to reform the institutional culture or organization of the prosecutors' office ought to take these emotional dynamics into account when determining how to encourage prosecutors to keep an open mind and do the right thing without losing the satisfactions and rewards of their job.

<sup>5</sup> Susan A Bandes, "What Role do emotions play in the Law", Emotions Researcher, ISRE's Sourcebook for Research on Emotion and Affect. Also available at <https://emotionresearcher.com/what-roles-do-emotions-play-in-the-law/>

## CONCLUSION

Thus, it can be said that the desires are the root cause of any attachment and identification resulting in experience of varied emotions/affect. Hence, the emotions are the functions (dharma) of ahamkara and not the atman, or the true self and “happiness” or “bliss” is seen as the true nature of the human being. Thus, the focus of the research has been on the emotions that influence legal decision-making and that shape legal institutions. Just as important, the legal system and legal rules can shape or guide emotions and emotion norms. Besides, legal decisions, rules and institutions can help shape norms about empathy, tolerance and other values. Shaping the Structure of legal institutions depends on what the institutions ought to achieve.

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