

EFFECT OF EMOTIONS IN CRIMINAL JUSTICE SYSTEM

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Abstract

The return of emotions to debates about crime and criminal justice has been a striking development of recent decades across many jurisdictions. This has been registered in the return of shame to justice procedures, a heightened focus on victims and their emotional needs, fear of crime as a major preoccupation of citizens and politicians, and highly emotionalised public discourses on crime and justice. But how can we best make sense of these developments? Do we need to create "emotionally intelligent" justice systems, or are we messing recklessly with the rational foundations of liberal criminal justice? The contributions range from the micro-analysis of emotions in violent encounters to the paradoxes and tensions that arise from the emotionalization of criminal justice in the public sphere. They explore the emotional labour of workers in police and penal institutions, the justice experiences of victims and offenders, and the role of vengeance, forgiveness and regret in the aftermath of violence and conflict resolution. The result is a set of original essays which offer a fresh and timely perspective on problems of crime and justice in contemporary liberal democracies.

Keyword: Criminal, Law, Hate, Justice, Victim, Judge

INTRODUCTION

No aspect of our life is more important to our existence than emotions. They are what make life worth living, or sometimes ending. To define emotion is as difficult as to define law, rather say it is as impossible as it is to define law. So, it is not surprising that most of the great classical philosophers—Plato, Aristotle, Hobbes, Hume—all have their own definition of Emotion as different Jurists such as Austin, Savigny, Bentham, all have their own definition of law.

The oxford learner's dictionary meaning of 'emotion' is: A strong feeling such as love fear or anger: the part of person's character that consists of feeling and another meaning from answers.com is: A mental state that arises spontaneously rather than through conscious effort and is often accompanied by physiological changes. As emotion forms an inevitable part of our life, so in no way it is possible to avoid emotion to enter the 'domain of law' (which itself is very debateable). However, we may sometimes deny that, but law has always taken account of emotions. One can be sufficed with examples; some relevant evidence such as gory photos are not admitted by the courts as there is a fear that it may provoke such emotions which may overcome Judges' ability to reason in the manner required, as reports say Jurors given gory and gruesome evidence are five times more likely to convict, than Jurors who are not given those evidence.[1] May be that is a reason why Dhananjay Chaterjee's mercy petition was never accepted, because the way he murdered Hetal Parekh the victim, was very brutal. Courts take into consideration feelings of anger and jealousy to determine whether a killing is manslaughter or murder. Criminal Law is about theories of fear, grief, and remorse. Tort law also awards compensation on the basis of emotional sufferings.

It is however always said that emotion should not be allowed to creep into the sphere of law. Law is not a place for emotions. It is reason and rationality which should stay there, not emotions. This theoretical model has persisted despite its implausibility whether it is possible. Thus, the emotional aspects of our substantive and procedural law have tended to develop Sub Rosa, consisting largely of unstated assumptions about human nature.[2] There are times when emotion simply surfaces itself—for example in victim impact statements or when there are hearings on emotional damage. Emotion accompanies Law in its each and every sphere. Such as criminal law, civil law, and different acts such as domestic violence act etc.

EMOTION & CRIMINAL LAW

Emotions are ubiquitous to criminal law, as they are to life. But law has always taken very dissimilar approach towards emotions. Is there any need to be sympathetic to defendants who are taken away into passions such as anger and fear? As emotions are a disturbance of personality but at the same time, they embody ways of seeing the world. But law has never given consistent answer to such questions, whether it is Small v. Commonwealth,

State v. Elliot, Beard v. United states, State v. Norman, Commonwealth v. Carr. In each of these cases courts took different decisions. The most primary and basic element to convict a person for a crime is Mens Rea, Guilty Mind. Guilty mind is nothing but a compilation of ill emotions or ill feelings towards someone which provokes you to do some harm to that person or his property.

Hate Crime

Hate crime occur when a victim is targeted because of her membership in a certain social group, usually defined by race, religion, ethnicity etc. Hate crimes involve a very complex emotional agitation, but this is considered a very severe threat to the society hence there are very harsh laws in most legislation of the world in order to stop them.

Definition of Hate Crime

Hatred is a strong term that goes beyond simply causing offence or hostility. Hate crime is any criminal offence committed against a person or property that is motivated by an offender's hatred of someone because of their [6]:

race, colour, ethnic origin, nationality or national origins, religion, gender or gender identity, sexual orientation, disability. Definition of Hate Crime in Wisconsin hates crime statute, upheld by the United States Supreme Court in Wisconsin v. Mitchell.

“If a person intentionally selects the person against whom the crime is committed or selects the property which is damaged or otherwise affected by the crime because of race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property, the penalties for the underlying crimes are increased [by as much as triple].” [7]

THE TERM HATE CRIME: ITS ORIGIN

The term Hate Crime first appeared in a popular magazine in the October 9, 1989 issue of U.S. News and World Report, in an article entitled “The Politics of Hate” where the author, John Leo questioned a law proposed in District of Columbia and argued that everyone should be, in a democracy, given the same punishment for the same crime even if the crime is motivated by prejudice. The law in fact enhanced the punishment for a criminal conduct motivated by prejudice. May be, the term “Hate Crime” is quite recent in its origin but these kinds of crimes, which were motivated by prejudice have been very old, the killing of Jews in from the first crusade to the Nazi Germany were all “Hate Crimes” because they were all motivated by a prejudice that the Jews are the impure blood or are Anti-Christian.

These kinds of Crimes have been often portrayed in the popular media but with a decent version, such as Romeo and Juliet, we also have its Bollywood counterpart Qayamat Se Qayamat Tak.

HATE CRIMES: RECENT STATISTICS

The last few years have seen a dramatic rise in Hate Crimes. According to the Federal Bureau of Investigation the US in 2005 [8] had the following hate crime statistics. An analysis of the 7,160 single-bias incidents by bias motivation revealed that 54.7 percent were motivated by a racial bias, 17.1 percent were triggered by a religious bias, 14.2 percent were motivated by a sexual-orientation bias, and 13.2 percent of the incidents were motivated by an ethnicity/national origin bias. Nearly 1 percent (0.7) involved bias against a disability. There were 5,190 hate crime offenses classified as crimes against persons in 2005. Of the 3,109 hate crime offenses classified as crimes against property. Of the 6,804 known offenders reported in 2005, 60.5 percent were white, and 19.9 percent were black. The race was unknown for 12.3 percent, and other races accounted for the remaining known offenders. The majority (30.0 percent) of hate crime incidents in 2005 occurred in or near residences or homes. If we analyse the above data, we would find that in modern America racial bias form a greater cause for Hate Crimes and among those the White offenders were much more than the black ones, may be because the white possesses an ancient sense of Supremacy.

CAUSES THAT CAUSE HATE CRIMES

The roots of hate violence are broad, but most causes come back to one element in the end: fear. This fear is most often rooted in ignorance: fear of the unknown, fear of the "other," fear of perceived competitors; all of these hold the potential to generate a violent reaction under the right conditions or rather wrong conditions. Prejudice is, at a basic level, instinctual. Many studies have been conducted to show that people habitually, instinctually are drawn to notice differences and similarities between themselves and others. This is a natural function of our desire to create order out of the chaotic world around us. But in comparing ourselves to others, we tend to label others' similar attributes to be desirable and others' dissimilar attributes undesirable. Soon we

are judging whether a person is "good" (that is, we react positively to them), or "bad" (we react negatively). It is only a short jump for a stressed person from thinking "that person is bad because they are different from me" to "those people caused all my problems, and I'm going to do something about it." [10]

The effort of groups such as the Ku Klux Klan, the White Aryan Resistance (WAR), Shiv Sena, and other ethnic groups, to preach violence against racial, religious, and other minorities continues unabated today. They have hated hotlines, computer bulletin boards, hate propaganda distribution networks, youth groups, street gangs, etc. active throughout the state, pumping out a steady drone of messages designed to transform the fears of the economically distressed, the paranoid and the ignorant into violent reaction. The recent lynching of UP youth in Maharashtra shows that India is no difference place. These kinds of crime are also rising in India. The North Indian is being thrown from every region of the country. These Groups function very systematically. They recognize very clearly the psychology of the issues they raise. This helps them to gain local support. They indoctrinate people to believe that minorities are a threat to their way of life, to their very existence, and that the only choice is to fight back in as violent a fashion as possible. What is more disturbing and dangerous is the rise and empowerment of hate groups such as Hindu Janjagran Samiti and Bajrang Dal. These issues which were once a concern of Sangha, have now gone out of its control. One other basic cause is politicians. Some political figures today are willing to fan the flames of bigotry in order to advance their own interests and careers. We have seen rampant examples in recent years of political campaign ploys that are permeated with racist and religionist connotations. The appearance that political figures and even some government leaders approve of these views gives them a coating of respectability that they do not deserve.

ECONOMIC CAUSES

There are other causes too in earlier times hate crimes were because of lack of knowledge of other cultures, narrow mindedness but now the reasons have changed now they are economic. Economic insecurities. They feel they are left out of economic progress and left out of the political mainstream. There are millions of individuals who even at age 35 get nowhere in life. Their small business packs up or their promotions are denied. In an earlier time these bitter men would have become sadhus. Now, they get recruited to the cause of Hindu rage. The persistent perception of failure in a success-oriented society, the daily humiliation of being the loser when everyone around seems to be winning, the factory of glossy cultural products like ads and movies that scream "I have it and you don't," is creating armies of recruits to Hindu "rage".

The thousands of underemployed or semi-employed youths who are perpetually available to be part of screaming "nationalist" mob against "minorities", are not just protesting about Muslims: they are screaming out their own economic and cultural deprivation. Thus, the fashion show, St Valentine's Day, the English-speaking "pseudo secularists" all the demonstrable symbols of the economy that are new and which appear successful, must be met with hatred and violence because "success" is the enemy. And this is not limited to Hindus and India only it is happening around the world, and with this growing economic recession it is bound to rise.

HATE CRIME LAWS

With rise in globalization we have seen a rise in hate crimes, especially in fast growing and extraordinary economies and in those nations, which have traditionally been very diverse such as India and Unites States. So, it's high time when we should categorize Hate Crimes as a distinct category of crime and form strict rules in order to control them. Many nations have penalty enhancement acts which enhance the punishment in case of such crimes. The US has all together a separate category of crime. The reason that we need a separate consideration for such types of crimes is that hate crimes cause greater individual and societal harm. In Wisconsin v. Mitchell, the Supreme Court of the United States unanimously found that "bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest" As Blackstone said long ago, "it is but reasonable that, among crimes of different natures, those should be most severely punished which are the most destructive of the public safety and happiness."

People do have their arguments against the legislation of such acts. The U.S. Supreme Court unanimously found that hate crime statutes which criminalize bias-motivated speech or symbolic speech conflict with free speech rights because they isolated certain words based on their content or viewpoint. Some have argued hate crime laws bring the law into disrepute and further divides society, as groups apply to have their critics silenced. Some have argued that if it is true that all violent crimes are the result of the perpetrator's contempt for the victim, then all crimes are hated crimes. Thus, if there is no alternate rationale for prosecuting some people more harshly for the same crime based on who the victim is, then different defendants treated unequally under the law, which violates the Constitution.

Moreover, practically it is very difficult to prove a Hate Crime because they are not very much different from ordinary crimes, the only difference they are accompany is that of a hate speech which the criminal often gives before committing a crime.

Emotions & Judges

Judges are not a personality untouched by emotions. It is believed for a judge to be very rational and reasonable. But judges being a human being can't avoid the most important aspect Emotion. A judge can't be emotionless while judging and provide with all rationality. It is not possible to deliver a judgment without getting swayed by the emotions of the courtroom hall. Judges in the past have delivered judgments under great emotional influence. There are many factors that affect the judgment of the courts, such as emotional inclination of the judge, evidence, public feelings, victim impact statement.

Emotional Inclination

It is very important to notice a judge's emotional inclination, because it will govern the whether the judge has some sympathy for the victim or not. For example, Judges such as Krishna Iyer and their emotional inclination towards the downtrodden and suppressed so it is very much possible that he would have convicted a capitalist. There are demands by the National Commission for Women that the rape cases should heard by female judges, just because the female judges would have their emotional inclination and sympathy towards the victim and it is very much possible that injustice is not done.

Victim Impact Statement

Victim Impact Statements are those written or verbal statement which form a part of a judicial legal process, which give a opportunity to the victim of crime to speak during the sentencing of the attacker. Victim impact statement have a very great emotional affect over the judge and are likely to change the course of trial.

Public Emotions

Many a times public emotions and media also pursue the judges to deliver a judgment which otherwise they would have not.

CONCLUSION

The integration of law and emotion has always been controversial. Whether Victim impact statements and gory photographs should be accepted as an evidence or the emotional inclination of the judges should be there, all these are very debatable topics. But it seems that emotions cannot be stopped from entering into the domain of law. As emotions sometime form the weakness of human nature, so they cannot be allowed to enter without any policing. These though are tough to regulate but can only be regulated at the stage of legislation by the parliament, though even parliamentarians are subject to emotions but still at the time of making regulations they are not subject to any emotional drama and hence they can be considered independent of any prejudice. It is very necessary that the elements of emotions are properly embodied in legislations. However, this would not be proper to exclude emotions completely while making decisions because by taking emotions into consideration a person can make a proper decision. Moreover, a proper space to discretion of the judge should also be given so that he is able to decide in the best of justice, since for different socio-cultural background there are different emotion values. Hence, we need strict scrutiny as well as liberty to see that emotions do not bend the 'course of justice'.

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