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SPECIAL ISSUE ARTICLE

Incongruous pedagogy: on teaching feminism, law and humour during the pandemic

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Abstract
In the wake of the devastating second wave of the pandemic in India, I taught an elective subject called 'A Politics of Frivolity? Feminism, Law and Humour'. I offered a subject that intellectually embraced frivolity, precisely for the purpose of responding to the serious anguish and hopelessness of the pandemic. That the study of law is serious business works as (almost) a truism. Understandably, laughter seldom goes with it. Feminists, and feminisms, have also attained a similar reputation or stereotype of being humourless and killjoys. Given this antithetical relationship that humour and laughter shared with both law and feminism, their friendship was not easily foreseeable, working to infuse their combined study with an element of surprise and incongruity. This essay offers an account of my experience of teaching the subject during these dark times. It is a reconstruction partly from my class notes and partly from scribblings and memory. I reflect on a selected set of materials that I taught in the class, how these were received, the questions they raised and how the context enlivened the materials.

Keywords: feminism; jurisprudence; humour; laughter; critical pedagogy; sexuality; violence; gender; pandemic; post-colonial

1 The context

That the study of law is serious business works as (almost) a truism. Understandably, laughter seldom goes with it (Gordon, 1992). Feminists, and feminisms, have also attained a similar reputation or stereotype of being humourless and killjoys. This is, of course, a mantle worn by some feminists without apology (Ahmed, 2017). In *The Hidden Gender of Law*, a key text of feminist jurisprudence in the common-law world, its authors reflect an understanding of humour as the antithesis of law and feminism joined together (Graycar and Morgan, 2002). By way of a jocular assertion, they include the word 'humourlessness' in the index of the book's second edition, directing the reader to a page range covering the entire book ('1–449')![1] Given the antithetical relationship that humour and laughter share with both law and feminism, their friendship is not easily foreseeable. This works to infuse their combined study with an element of surprise.

In the spring of 2021, hoping to bring some surprise into my teaching, I taught an elective subject called 'A Politics of Frivolity? Feminism, Law and Humour'. The context in which this subject was offered – and by context, I also mean the experiential – was manifold, starting with my own pedagogy. Alongside the core subjects that I taught, this elective was the third in a series of subjects – with a feminist and queer orientation – that I had offered since the start of the Covid pandemic.[2] Through all of the subjects that I taught, I observed an interesting contradiction in the way students joined their feminisms and law. The contradiction became most evident during conversations on sexual and gender-based violence such as the #MeToo movement. Students showed extreme scepticism about the role of the post-colonial state in seeking gender justice because, according to them, state

[1]I am grateful to Sally Sheldon for bringing this gem of a reference to my attention.
[2]The two earlier electives were on 'law and sex work' and 'feminist legal research methods'.

institutions were entrenched in patriarchy. Yet, to address sexual violence, they placed an almost unquestioned faith in punitive methods for which this patriarchal state and its institutions remain the potent arbiter.

My pedagogical concern does not have to do with the contradiction per se. What I find curious, though, is that in the Indian context, by being overzealous about incrimination and punishment of law-breakers, one tends to join a rather problematic trend.[3] There is a long history of how colonial-era punitive laws are used by the post-colonial state to disproportionately criminalise and incarcerate *Adivasi* – religious-minority and caste-oppressed communities. Demands for gender-based criminal-law reform have not been immune from this punitive influence (Bej *et al.*, 2021). A propensity for carceral measures in matters relating to sexual violence has been manifest in several demands for law reform made by the Indian women's movement. Some feminists have rightfully cautioned against this trend. They point out how demands for punitive sanctions only work to fortify an already violent Indian state and its law-enforcement mechanisms (Sunder Rajan, 2003, p. 242). Moreover, with an overreliance on criminal sanctions, feminist ideas run the risk of an unintended consequence: becoming a normative project akin to regulatory technologies of governance, securitisation and control (Kotiswaran, 2018; Agnes, 1992; Kapur, 2014).

To destabilise the foregone conclusion – that feminist wisdom works best (or only) to punish wrongdoers – one needs new tools to think *with*. One way to introduce new tools, I thought, was to reorient our attention to feminisms of another kind, which are less worried about crime and punishment and more directly focused on community formation and friendship. At the time, I was engaged in a research project about feminist humour, thinking about how humour/laughter might enable a minor feminist jurisprudence of reparative conceptions of justice through friendship (Antaki, 2017; Goodrich, 1996). This larger research proved to be a valuable repertoire for putting together an elective subject.[4]

In India, where institutional legal education is increasingly becoming technocratic, offering electives can be an exciting opportunity. Elective subjects are a more hospitable site for critical legal knowledge where the work of reorientation is taken seriously.[5] This kind of legal knowledge – grounded in feminist and critical theory – perceives law in its broadest sense and is not invested in the separation of law from non-law. It is invested in the literary, material and affective dimensions of law; it sees law as relational, context-specific and embedded in the everyday experiences of life, imagination and collective existence.

At the university where I teach, feminist, post-colonial and critical jurisprudence – which are my areas of work – have made their way into the core curriculum, the completion of which is essential for obtaining a professional law degree. To my knowledge, no other law school in India has a core subject dedicated to critical legal thought. But even at my university, these topics appear under Jurisprudence II, a lesser sibling of Jurisprudence I, which has Austin, Hart, Dworkin and other heavyweights on its side. How much of Jurisprudence II will be taken seriously, or even considered as Law in the upper case, is predicated on the individual scholars who love to teach it and students who are not solely driven by the prospect of a lucrative legal career. Subjects (such as my elective) that are invested in the cultivation of legal imaginations via ideas and practices in the humanities would be considered frivolous or useless, especially vis-à-vis the legal job market.

Much before the spring semester of 2021, this institutional order of legal education had encountered the global Covid pandemic – a terrifying new order of life. India was in the throes of a second

[3]Similar trends have been noted by feminists about how in recent times, across diverse contexts, a global turn to a state-reliant carceral feminism has marked the dominant justice-seeking practices in law against sexual or gender-based violence (Halley *et al.*, 2018).

[4]This is a collaborative book project entitled *The Rule of Laughter*. It is a collection of illustrated stories that show how sex workers in India use fun and laughter to refuse the criminalisation of their lives and livelihood and form friendship and community instead (Dutta, 2016).

[5]For insights on feminist and jurisprudential reorientation, see Genovese (2014).

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wave that proved to be more devastating than the first. The media images of mass graves, funeral pyres and hundreds of floating dead bodies in the Ganges haunted our daily psyche.

The actions of the Indian government reaffirmed the lack of faith in state-authorised law and order that lurks in many of us (Sircar, 2020). There was already the collapse of the public health system. Hospitals ran out of capacity. There was oxygen shortage. People were queuing up outside hospitals, in the streets, where they were just left to die. Family members of those deceased in hospitals did not know how and where the last rites of their loved ones were performed.

The failure of the post-colonial state to secure the rights of its citizens became evermore stark and amplified. Students, human rights activists, lawyers and others critical of the government were put behind bars. They were arrested under a draconian anti-terror law called the Unlawful Activities Prevention Act (UAPA) with no regard for their life and fundamental rights (Ellis-Petersen, 2021b). In March 2020, when the first lockdown in India began, the government had shown complete disregard for the lives of the countries' migrant workforce. Out of the fear of unemployment and the virus, millions of migrant workers fled cities on foot. They travelled thousands of miles to return to their villages or die on the way (Kumar and Choudhury, 2021). The fear of death and poor governance was everywhere. The government had washed its hands of any responsibility in the face of an unprecedented humanitarian crisis that presented a very bleak future.

The present was equally horrific. The lockdown imposed a sort of physical disconnect between the home and the outside, at least for those of us who had the privilege of having a home. Even within the privilege of a putatively secure home, some could not escape the fear of death, and some others the fear of being trapped in an abusive home. The grief and fear bred extreme anger that, no doubt, we were all carrying into our academic lives, our teaching and learning of law. I found myself – like many of my colleagues – supporting distraught students through their loss of parents, friends and relatives. I was simultaneously trying to help them believe that their legal education was somehow still meaningful in the present and for a future. Meanwhile, I was myself struggling with the loss of loved ones. And in that moment, I found teaching to be quite meaningless.

In the words of Upendra Baxi:

> 'teaching and learning are *acts* of social intervention and they are complete when knowledge accumulated the erudite way is enriched by knowledge earned through encounters which interrogate tyranny, injustice and exploitation enacted before our own eyes even as we "teach" and "learn".' (Baxi, 1990, p. 154, emphasis in original)

In other words, a law teacher is a conduit for calling law into relation with lived experiences, including one's own, through the act of teaching. The learning of law does not happen in abstraction either, as 'one learns something always in context' (Baxi, 2014, p. 154).

For my teaching and learning of law to be situated in context, both social and emotional, the grief and anger that we were experiencing had to be accounted for. It was only lawful to ask: What should feminist legal pedagogy look like in these times of fear, anguish and anger? By 'lawful' I do not mean the antonym of 'lawless' or a synonym of 'legal', but the conduct of mutual responsibility and collaboration, in context. So, what was my responsibility as a law teacher, in *my* time and place? As unexpected as it may sound, I decided to offer a subject that intellectually embraced frivolity. It was precisely for the purpose of responding to the serious anguish and hopelessness that these times had given rise to. It felt interesting to explore together with students whether or how or if at all humour and laughter offered us something, anything, that – as lawyers and feminists in academia – we could think with in dark times. The prospect of intellectually embracing laughter – when it was becoming very difficult to laugh in actuality – had a counter-intuitive force, as did the juxtaposition of humour with feminism and law, in an academic subject.

Since the eighteenth century, amongst the various academic theories that exist on humour in the West, there have been two that seem to have contemporary purchase. Relief theory, largely influenced by psychoanalyses, deems laughter as a release of repressed nervous energy. This is the kind of energy

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caused by unpleasant thoughts that, if not released, remain inside us as unresolved emotions and cause havoc in our minds. Incongruity theory, most supported amongst contemporary scholars, believes that laughter is invoked by the juxtaposition of two things that are apparently inconsistent and contradictory. This school of thought considers laughter – or humour – to be born out of incongruities and unexpected ways of thinking about something (Morreall, 1986; Little, 2018). Patricia Williams explains that '[w]hat one might think of as humor, it is to take two things that seem inconsistent and to join them in ways that bring to the fore the cognitive dissonance that they're embedded in' (Williams *et al*., 2021, p. 1074).

In a way, teaching this elective, for me, was an attempt at performing the incongruous. I designed and taught the subject as a way of emplacing my pedagogy of law within the affective anguish of the pandemic. At the same time, via humour, I tried to foster some imagination of a future that at the time seemed bleak. There was no way of transcending the doom, but we had to learn to live with it in that moment. Thinking about humour seemed like an especially productive intellectual engagement at the time, in our Covid-ridden world of despair, doom and alienation from our communities of friendship, peers and a public life.

In this essay, I will share my experience of teaching the course that is a reconstruction partly from my class notes and partly from scribblings and memory. I will reflect on a select set of materials that I taught in the class, how these were received, the questions they raised and how the context enlivened the materials. The specific readings and the discussions that took place around these have been organised thematically. I regret the utter lack of humour or playfulness in my style of writing. But if I had to defend this mismatch of form and substance, I could perhaps respond by calling it an act of incongruity.[6]

2 The subject

In contemporary feminist legal discourses on justice, across varied historical contexts, we see that two dominant forms of emotions carry political and/or ethical valence. One is anger/outrage and the other is care/compassion. These have been the driving forces behind feminist legal insights into how relations are to be ordered in public life and how institutions and people in power can be resisted or negotiated. Anger and outrage have been mobilised in response to sexual violence leading to feminist demands for law reform. This relates righteous indignation to justice as rectification. Care and compassion have played a role in framing the language of rights to address experiences of gender-based discrimination thus relating justice to love. Feminist engagements with law demonstrate an underlying recognition of these two sets of emotions as politico-ethical responses that are both adequate and in alignment with the values of feminisms. Another emotion that has also been a part of feminist praxis but is not yet recognised in law is humour/laughter, which relates justice to friendship and community.

The common-sense presence of humour/laughter in legal discourse has been one of those courtroom jokes whose agents are primarily men. Or, humour is understood as an expression of sexism and racism that is humiliating for women. Law is either understood to enable such harm or is recruited to protect women from the harm that sexist humour can cause. For instance, in feminist legal strategies for combating sexism or any other form of sexual harm, women as agents of humour who use laughter to refuse sexual harm on their bodies and minds would be considered risky at best, and frivolous at worst.

I put together the elective with a view to rethinking the entanglement of humour and humiliation. The intent was to think with humour and to see what it might offer for a feminist project that identifies law and justice – in a more reparative and non-retributive sense – with community formation and friendship. Thus, I wished to take the constructive force of humour and draw on its feminist and

[6]A notable characteristic of most writings on humour is that they are written in an extremely unfunny voice. The same was pointed out by one of the peer reviewers. This paper (regrettably) might even claim to join that tradition.

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queer inheritances, while responding to the immediate context of loss and anger. The aim was to see humour and anger as related experiences in our quest for justice, taking humour seriously as a means for creative rejuvenation and collective existence through friendship, rather than corrective indignation.[7]

Humour was the central theme around which all other topics and materials were organised in the elective. An interrelated term that had the most prominent place in our conversations was laughter. The two terms were often used interchangeably. Humour was primarily understood as an emotional sensibility, a disposition or an orientation and comportment by which one associates with others. Within the materials studied, humour sometimes emerged as fun, happiness and joy; sometimes it had to do with ridicule, sarcasm, jokes and satire; but for the most part, humour was related to laughter, a corporeal or an affective and emotive expression and address.[8]

By design, the juxtaposition of eclectic and contradictory ideas was key to the method of teaching. Our entry point into humour was anger – an emotion that is commonly perceived to be furthest from humour. After all, how can we laugh about something if we ought to feel angry about it? We began the conversations at this disjuncture. From the second topic onwards, we focused on humour. We explored how anger as righteous indignation works to de-legitimise humour in the way we think about justice. Our third topic explored how humour is understood by feminist and queer thinkers. Is it the content of jokes that make a joke feminist? Or is it something else? Does laughing at a gender or racial stereotype always perpetuate sexual and racial injustice? Conversely, does *not* laughing at an anti-sexist joke count as sexist? The fourth topic looked at the potential and limitations of humour as a feminist sensibility. How does thinking about humour/laughter aid or assist us in seeking justice, and where do we draw the line? Finally, we ended with the way in which humour has been thought in post-colonial and anti-colonial feminist politics to displace colonial authority and form just and joyful communities.

The formation of an intellectual community – of the joyful kind – is what drove me to conceive this elective. The assignment format for the course was also bound to this intent. Collective engagement and sharing of ideas and experiences by students is, understandably, harder to facilitate in a virtual classroom. But it was especially important for a course that was committed to community and friendship. The assignment was thus a podcast that the students had to make in pairs and in discussion with me. It was a shared project, with neither individual ownership over the ideas nor the burden of sole responsibility for completion. Students could interview other people or curate a discussion amongst themselves on how the ideas they were learning in the course related to a specific area of law, a legal principle, a statute or a judicial decision that was of interest to them. They could also discuss any personal experience that was pertinent to legal education or legal thought. Students had to develop the idea for their podcast throughout the semester and then present it in class where their peers would participate in collective listening and conversation.

The podcast format was meant to facilitate camaraderie and friendship around an idea. It was also meant to make place for affective elements.[9] For the presentation of ideas, the podcast format relied on speech and not writing. This enabled affective elements such as a sigh, laughter, chuckles, frustration, aguish and silences to find a way into the articulation of ideas. The point was to also encourage students to let the affective and the analytical find a shared space for expression. The podcasts were meant to map students' journey with an idea, to make visible the conflicts, rather than to present a set of coherent arguments. For that, one needed new criterion for evaluation too, beyond how well a position

[7]The question of why we need to take laughter/humour *seriously* was the subject of some very serious debate and contemplation throughout the semester. This jocular paradox, however, did not yield a resolution.

[8]There is a wealth of excellent scholarship that distinguishes between humour, comedy, laughter and happiness (Carroll, 2014; Goodrich, 2004). Further, as pointed out by one of the peer reviewers of this essay, there are nuances such as that of irony or bathos that are pertinent to discussions of humour relating to the juxtaposition of contrary ideas and things. These distinctions and nuances were not explored in the organisation of the materials and their teaching as my elective subject was not designed to delve into humour as a conceptual category. This is a limitation of the paper's account of humour.

[9]I included a reading that discussed podcasting as a useful form of assessment for law students (Wall, 2019).

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was argued. For instance, one of the markers for how a pair had brought affective elements into the discussion and analysis of their topic of choice, to me, was determined on the basis of its emotive content. That is, how well, in the podcasts, students foregrounded the emotions that their topic invoked in them and the direction in which such emotions then led them to think.

My co-travellers in the elective, taught entirely online for fifteen weeks, were about thirty students who were mostly in their undergraduate final year. As a prerequisite, the students ought to have studied two core subjects – jurisprudence, and gender and society. With the exception of two, they were primarily female-identified students. Almost all of them, from what I was able to tell, were predisposed to a feminist orientation. Outrage, for most, was the go-to emotional response to any injustice. The conflation of humour and humiliation was the most pronounced sentiment held by many. Thus, we started on a healthy note of scepticism towards humour/laughter.[10]

2.1 Anger

Ironically, anger as a topic seemed to put many of the students at ease. Anger was considered the just response particularly to the endemic nature of sexual violence that surround our lives.

They spoke about #MeToo and regarded anger as the only expression and language of resistance against both spectacular and normalised forms of misogyny. This intensity was perhaps especially palpable given that we were just a few months into yet another brutal instance of caste-based sexual atrocity in which the upper-caste perpetrators and law-enforcement officials worked in cahoots (Mondal, 2021).

In this scenario, we encountered our very first material, *A Question of Silence*, the 1982 Dutch feature film by feminist filmmaker Marleen Gorris (1982). The story revolved around the lives of three women who were unrelated, except for one thing: the sexism and misogyny that they experienced each and every day of their life. The women coincidentally met at a shop one day and violently beat a male shopkeeper to death when he tried to stop one of them from stealing a garment. Most of the events in the film take place in the courtroom where the culpability of these women was determined. A criminal psychiatrist, also a woman, was appointed by the court to determine the women's state of mind as there seemed to be no rational explanation for their actions. Motive could not be established; the act of killing could not have been premeditated. The accused, meanwhile, maintained silence. In the end, the women were declared insane by the court, at which point they broke into a roar of defiant laughter.[11]

Maggie Hennefeld wrote that

> 'when women laugh too loudly or pointedly they're often disregarded as "hysterical" – not in the positive sense or as a figure of speech but as pathology: "maybe we should send you to a mental institution and poke at your uterus to figure out what's wrong with you".' (Hennefeld, 2018)

The patriarchs in the film – also the legal minds – did something similar. They tried to make sense of the women's laughter in the face of their actions and in the end perceived them as hysterical, delusional and insane.

Feminists have argued that the film portrays how the law and its institutions act as the patriarchal unconscious of the society (Lucia, 1997, p. 163). For our purposes, the film simply fused anger and laughter to set the tone for the subject. It foregrounded that anger and laughter do not preclude each other; they can co-exist. The film made a compelling argument both for not diminishing the value of laughter and not reducing its diverse meanings to one.

[10]Even as laughter/humour might carry feminist political charge, just like anger, humour is not a universal good. Students were well aware that it had also been weaponised by the powerful to devalue and demean marginalised people. For instance, in India, the very tools of humour used in the political cartoon to challenge state authority have been deployed to humiliate caste-based marginalised people (Syama Sundar, 2019).

[11]For a feminist discussion focused on the laughter of the women in the film, see Ahmed (2017, pp. 188–189).

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In class, there was much discussion about whether the anger against patriarchy, by extension, justified the killing of an innocent man. As a male member of a patriarchal society, was he innocent after all? Was vengeance feminist? We asked ourselves, what is the right amount of anger in an instance when we have been wronged? Or how much anger is reasonable and rational, and therefore right? The search for rationality in anger led us to two very insightful readings: 'The philosophy of anger' by Agnes Callard (2020) and 'The aptness of anger' by Amia Srinivasan (2018). Both the philosophers, directly and indirectly, responded to a question that we were reeling under: for feminism, is anger a friend or a foe?

Callard was very clear on that question. Anger is most definitely a friend – because it is an acknowledgement of pain. It is also a recognition that the wronged and the wrongdoer had something shared that is now broken. But she also made another very interesting point. While anger is our friend, anger is like that bad friend whose company is not necessarily always good for us. Anger forces us to be intimate with the one who harmed us, who is our enemy. That is because through anger our minds get consumed by thoughts of the one who harmed us. It is via our anger that the wrongdoer can colonise our minds, occupy our thoughts and command our actions. And we remain intimately bound with them. Callard, however, was not anti-anger. But she was cautious. According to her, those who see anger as righteous indignation do not understand this: you are not correcting a wrong when you take angry revenge; you are simply being overruled by it and letting the wrong/harm rule you.

Srinivasan, on the other hand, was pro-anger and argued that we need to recognise anger as the apt response to injustice. For her, not all kinds of anger at injustice are accompanied by a desire for revenge. Thus, we must also see anger in terms of its affective dimensions. When we deny anger to someone who has suffered a wrong, *we cause*, what she calls, '*affective* injustice' (Srinivasan, 2018, p. 127, emphasis in original).

It is almost at the end of her paper that Srinivasan clarified the basis for her aptness-of-anger argument. We must consider anger as apt for it will help us see something else, which is that all the discourse around anger that the philosophers have been engaged in have mostly had to do with the anger of powerful people. She wrote:

> 'it was simply taken for granted that women and slaves had no business getting angry; the debate about anger was never about them … in condemning anger we neglect, as we have always neglected, those who were never allowed to be angry, the slaves and women who have the power of neither the state nor the sword.' (Srinivasan, 2018, p. 142)

At the time of extreme and shared grief and anger caused by the pandemic, coupled with the actions of our government, reading both Callard and Srinivasan felt pertinent. For some of the students who were homebound without contact with the outside world, living at home was not only unhappy, but also unsafe. Domestic violence, sexual abuse, depression and anxiety were on the rise and no less fearful than the pandemic. Recourse to legal action and public engagement both seemed to be out of reach. These experiences made them angry. But talking about anger in class, from personal experience and with conceptual insights, seemed like a very constructive way of addressing matters relating to our lives. The words of the scholars provided care and comfort, both intellectually and emotionally.

What felt relevant for discussion at this stage was not whether one should or should not be angry in the face of injustice, but does anger need to be expressed only in stereotypical ways? Can humour be an expression of anger? Can anger be committed to a public – that is, can it be committed to creating community through expressions of humour and laughter? Moreover, if we were to think of anger as the apt emotional response to injustice, what are we saying about those who do not feel angry at injustice? Are we implicitly saying that if you have suffered and you do not feel angry then you are not doing the apt thing, that you may even have false consciousness?

Drenched in anguish, and with the certainty about the legitimacy of anger in the face of injustice, most of the students wanted to linger on the anger discussions. I found it hard to locate a moment of

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doubt at which to initiate any intellectual movement towards the next topic, which was humour. So, by way of a strategic intervention, I invited guest speakers into our conversations. They were invited to share their experiences with humour. How did humour intersect with their work on law reform or other legal processes and legal scholarship? Hearing from scholars and activists about their practical experiences of using humour in their work, in or alongside law, helped to draw students' attention to the topic. It also helped to join our theoretical discussions on the relationship between law and humour with lived contexts that took place outside of our virtual classroom.

The first of these conversations was a dialogue between a legal scholar and two activists who work on peace and conflict resolution and are part of an organisation called Play for Peace (PFP).[12] The activists use a form of play and non-competitive gaming to enable processes of community building amongst people living in war-torn areas and those who often belong to opposing sides of the conflict (Gass *et al.*, 2016). They play in situations in which state-authorised legal processes of negotiations and convictions have remained inadequate. In contrast to the dominant legal idea of justice that is adversarial in nature, the PFP games adopt a generative form of play that are non-competitive and non-adversarial. The play, which appears to be ridiculous, invokes spontaneous laughter and often works to pave the way for state-authorised legal peacebuilding measures. The games, and the laughter that these invoke, facilitate a common ground for dialogue amongst antagonistic parties.

The students played these games in class – with hand gestures, using funny words and sounds. The virtual classroom was filled with resounding laughter. The standard experience of online teaching during the pandemic has often been that of speaking to a dark screen and muted microphones. With everyone laughing and participating with their videos and microphones on, this was indeed new and unexpected in our context of virtual classes and the pandemic.[13]

2.2 Laughter

Laughter is the common-sense opposite of seriousness, and law tends to present itself in the vocabulary and images of a resigned solemnity (Leung, 2010). There is a stereotype about laughter being the resort of the frivolous – those unaffected by the intensity of violence and historical injustice. The oppressed must be stoic, for otherwise your experience of suffering will not be taken seriously. This is as axiomatic as it gets. Who can afford to laugh in the face of injustice? What is a legitimate expression of suffering? What kind of script does our expression of suffering have to follow in law? For instance, to be believed and taken seriously, how does a rape victim need to conduct herself during trial? Is she allowed to express pain through laughter? Why do our expressions of joking and laughing in court need to be interpreted as contempt? Are these even valid questions for an intellectual legal discourse?

On Humour by Simon Critchley (2002) helped us make a segue into laughter. For Srinivasan, anger was fundamental to human suffering that is born out of historical injustice. For Critchley, it was humour that was fundamental to the human condition per se. Because life was inherently flawed, humour was an acknowledgement of that flaw – the fact that things were not the way they should be. It is the capacity for humour that separates humans from other animals in nature. Humour was our reflective capacity that set us apart from animals (Critchley, 2002, p. 28). Thus, laughter was not solely an affective register; it was an intellectual one. It was a critical cognitive function of the mind.

Not very far from this argument about humour being a faculty of the mind, some feminist thinkers characterised humour as another kind of reason. In 'The seriously erotic politics of feminist laughter',

[12]Activists Swati and Agyat from PFP were in conversation with legal scholar Oishik Sircar from Jindal Global Law School. The starting point of the conversation was about the limits of retributive justice and the possibilities of laughter in the wake of the 2002 anti-Muslim pogrom in Gujarat (Sircar, 2021, pp. 207–208).

[13]The other two guests were Pramada Menon and Ummni Khan. Menon is a feminist, queer rights activist and performer. She was involved in the activism around the decriminalisation of sodomy in India. Khan is Associate Professor of Law at Carleton University, Ottawa. She is a queer feminist legal scholar.

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Cynthia Willett, Julie Willett and Yael D. Sherman saw laughter as the enemy of male-centric reason/rationality, which was tied to the moral codes that were at the heart of our social organisation (Willett *et al.*, 2012). For them, laughter defies male-centric reason and operates independently of pure logic. They argued for placing humour at the centre of academic practices and social movements because joyous laughter was a tool for social change. The authors introduced a new idea into our conversations, which they called 'an erotic politics of feminist humor, or fumerism' (Willett *et al.*, 2012, p. 227). They wrote:

> 'Fumerist humor critiques conventional morality and the underlying codes of normalization and social exclusion that this morality sustains, but it does so through an ethical comportment and a social vision. Normal moral codes and rules yield to a more playful and egalitarian ethics.' (Willett *et al.*, 2012, p. 230)

The practice of humour as an ethical comportment gained focus at this point in the class discussions. Students raised questions about the ethical considerations that inform our judgment about what is funny and what is not. This led us to consider how questions of intent and agency relate to humour. We discussed how, for instance in the case of a joke, agency is shared. It belongs to both the speaker and the listener, and no singular entity can control it. Does agency not rest with the person making a joke as well as with the listener of the joke who responds with laughter (or not)? Someone might carefully curate a joke, but then it falls flat on their audience, in which case the listeners would have decided to respond with no laughter. Then again, someone might make a very sexist remark *intending* it to be a sexist remark but instead of getting angry, the listener laughs at the ridiculous and offensive nature of that statement with the intention of denying being harmed by that sexism. In this instance, isn't this a negation (rather than affirmation) of sexism by making it a laughable matter? Isn't laughter bursting the sexist power of the joke, as opposed to glorifying it? In that moment, isn't laughter a civil disobedience of sorts that serves, perhaps, a minor act within a larger justice-seeking project?

A disruptive reading intervened just when the merits of humour were beginning to come alive. A particularly controversial and complex book by Vanessa Place called *You Had to Be There: Rape Jokes* caused much discomfort (Place, 2018). Place, an American criminal appellate attorney, was known for defending sex offenders. She claims that her conviction in due process and the guarantees of fairness in the American Constitution is reflected in the choice to defend those she sees as 'its terminus' (Place, 2018, p. 153). The book was a collection of jokes about rape. It was an affront to the general culture of sexual inequality, of which, in her view, rape was an extension. The rape jokes in the book, which students found to be emotionally and intellectually troubling, were a political intervention. These were meant to take on the ethical task of disrupting societal complacency towards sexual violence by making us witness our own failures. Because, as Slavoj Zizek wrote in his preface to the book, '[s]ometimes, laughter is the most authentic way to admit our perplexity and despair' (Place, 2018, p. 3).

Students battled a sense of despair that was born out of reading this book. Some of them said that they found at least one joke to be funny – funny, because as law students, it was not only relatable, but its irony almost made them laugh: 'As a judge, I'm constantly faced with the same dilemma: The black guy obviously did it, but then again, the woman is always wrong' (Place, 2018, p. 48).

2.3 Justice

The arrest of Disha Ravi, a twenty-two-year-old college student and climate activist, was in the national news and all over the social media when we began the semester. Ravi was arrested by the Indian government under a colonial-era sedition law allegedly for supporting a separatist political agenda (Lalwani, 2021). Her crime was her support for the cause of climate justice and the farmers who were organising widespread protests on the borders of Delhi. These protests were against the introduction of agricultural laws that gave corporations, rather than farmers, the control over the produce. To the government, Ravi's support for the farmers' cause, expressed through these words in a

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tweet, were enough to characterise her support as seditious and a criminal conspiracy: 'I support farmers because they are our future and we all need to eat' (Ellis-Petersen, 2021a). Later, during her bail hearing in court, she said: 'If highlighting the farmers' protest globally is sedition, I am better [off] in jail' (Apoorvanand, 2021).

Most of the students in the class were of the same age as Ravi and the absurdity and horror of this event was not lost on them as they witnessed the harsh reality of colonial measures in post-colonial times (Agathocleous, 2021). Our discussions on feminist humour and justice, through materials that were set in post-colonial/anti-colonial/settler-colonial contexts, appeared serendipitous at that moment. The materials were grounded in experiences at former colonies or currently occupied territories. The absurdities of state action and oppression served as the staple ingredient for humour/laughter in these contexts. The materials helped us think about how humour bares the absurdity that embodies our place and time.

'Laughing at power: humor, transgression, and the politics of refusal in Palestine' by Lisa Bhungalia described the laughter of the Palestinian people. In the face of extreme terror and grief, their laughter was a refusal of power and a means of political expression by subjugated people (Bhungalia, 2020). Humour opened the possibilities for 'something otherwise' under conditions of all-encompassing injustice, violence and doom. She wrote, 'humor has become an increasingly popularised mode of political rhetoric in bleak times due to its ability to "turn a situation upside down to reveal its absurdity", and in doing so, invite contemplation' (Bhungalia, 2020, p. 397).

Laughing in situations of extreme oppression, in occupied territory, was a refusal of the legal authority of the coloniser. It was a means of asserting and reclaiming one's humanity – the thing that is most denied under oppressive conditions. The gesture, Bhungalia pointed out, is not confrontational yet is most certainly defiant (Bhungalia, 2020, p. 388). Laughter done out of place *at* a colonial authority – since the laughter of the oppressed in the face of extreme subjugation does not make sense in such situation – was an act of transgression. It simply displaced the authority and jurisdiction of the law-maker, a colonial figure, to create a solidarity amongst the subjugated through their disobedient act of laughter.

Laughter – as an act of refusal – was also the focus of another paper. But in this, refusal was seen as an act of generosity rather than disobedience. In 'Laughter, refusal, friendship: thoughts on a "jurisprudence of generosity"', Karin van Marle (2007) offered a discussion on gender justice and friendship. She described women's laughter as a prudent refusal of the normative force of patriarchy, by which women enabled new ways for their existence. Drawing on lessons from post-apartheid South African approaches to racial justice, van Marle urged us to attend to 'the reconciliation between the sexes and genders and a transformation of sex and gender relations' (van Marle, 2007, p. 195). Through the legal processes of the Truth and Reconciliation Commission, a model of transformative justice was instituted in South Africa to repair race relations. Using law's insights, she wished to bring a similar framework to repair gender relations and imagine gender justice through a jurisprudence of generosity rather than punishment. For van Marle, laughter was a form of refusal and an act of generosity with a potential for disrupting patriarchal norms. She advanced laughter as a means of 'resisting and refusing patriarchy by which women can seek to create their own spaces from where to engage in political ways of living'. Laughter was 'a response of refusal, neither active nor passive, but a refusal nevertheless' (van Marle, 2007, p. 198).

To refuse was to negate the terms of intelligibility ordained by patriarchy about women's work and being. It was from a place of negation – originating in laughter – that a friendship between genders become possible. When women do the negation, the refusal of the laws of patriarchy, men must take the responsibility to make space for that refusal. That is the common ground on which the terms of friendship between genders may be envisioned.

3 A hopeful despair

Towards the end, a fatigue was setting in amongst students due to long hours of screen time. The university declared a short break in the middle of the semester as there was a sharp drop in class

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attendance. The university also allowed students to opt out of electives to lessen their academic burden. To my surprise, there was no dip in attendance in our subject during the semester and not a single student dropped out of it. During student feedback at the end of the semester, many of them cited their feelings of 'happiness' and 'joy' as measures for how much they were able to learn from the course. They said that learning was, at times, 'cathartic'. As a law teacher, these affective registers of joy and happiness as markers for teaching evaluation were unfamiliar. It may have also felt out of place at other times, but not in this time of despair. By offering this subject, I gained sustenance and happiness too.

Somewhere midway through the course of our discussions and engagement with materials, I noted a shift. The vocabulary and sentiment of punishment and carcerality had given way to those of friendship and frivolity. Perhaps, it was the fatigue that made the intensity of anger less attractive. Fatigue perhaps also made the lightness of laughter appear more hospitable for discussing matters related to gender, violence and harm. Another palpable dimension of this shift was visible in the way students viewed law's relationship with humour. From their initial scepticism about humour, a near certainty that humour had very little to do with our feminist legal imaginations, students took to an active search for the correlations between law and humour.

I am reminded of one question that came up in class many times towards the end: How does one find the humour *in* law? It is only now that I am able to formulate two responses to this provocation. I would borrow the words of another legal academic to say that

> '[l]aw is everywhere. First are the obvious places – our government, our courtrooms, and our lawyers' offices. But it is also in our homes, our jobs, our relationships, and our casual interactions. Humor is everywhere too, so we should not be surprised then to discover that law crosses paths with it in every realm.' (Little, 2018, p. 1)

Thus, an encounter with these crossings every now and then – if one's sensibility is attuned for it – is to be expected.

My other response is pedagogical. The way to find the humour in law, for me, has been to look at law teaching as a performance of the unexpected, which is grounded in context. A subject on law but with a focus on humour was an invitation to surprise when our hearts and minds were filled with despair. It had to do with working out counter-intuitive means to think about law in unexpected ways that would make the work of legal imagination – in dark times – a joyful and pleasurable exercise for both me and the students.

Incongruous pedagogy is thus a generative experiment in critical engagements with law that are invested in the affective joy of a lawful education. It is a form of contextual legal pedagogy that is not focused on transforming the world; it is instead rooted in a time and place with its sense of community and shared vulnerabilities. Incongruous pedagogy is about finding a resting place and nurturing the minor moments of fleeting joys and despair in the law classroom. We were not intending on revolution. The force of laughter may never be able to cause it. But come to think of it, haven't revolutions always been about working out a collective public existence and learning how to laugh together in community (Isaak, 1996; Gordon and Arafa, 2014)?

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References

Agathocleous T (2021) *Disaffected: Emotion, Sedition, and Colonial Law in the Anglosphere*. Ithaca: Cornell University Press.
Agnes F (1992) Protecting women against violence: review of a decade of legislation, 1980–89. *Economic and Political Weekly* **17**, 19–33.
Ahmed S (2017) *Living a Feminist Life*. Durham: Duke University Press.
Antaki M (2017) Making sense of minor jurisprudence. *Law Text Culture* **21**, 54–75.
Apoorvanand (2021) Disha Ravi's brave statements in court should challenge India's judicial conscience. *The Wire*. Available at: https://thewire.in/rights/disha-ravi-brave-statements-court-challenge-india-judicial-conscience (accessed 31 March 2022).
Baxi U (1990) Teaching as provocation. In Amrik Singh (ed.), *On Being a Teacher*. New Delhi: Konark Publishers, pp. 150–158.
Baxi U (2014) Unlearning the law with Lotika Sarkar: Lotika Sarkar Memorial Lecture. *Journal of the Campus Law Centre* **2**.
Bej S, Sonavane N and Bokil A (2021) Construction(s) of female criminality: gender, caste and state violence. *EPW Engage*. Available at: https://www.epw.in/engage/article/constructions-female-criminality-gender-caste-and (accessed 31 March 2022).
Bhungalia L (2020) Laughing at power: humor, transgression, and the politics of refusal in Palestine. *Environment and Planning C* **38**, 387–404.
Callard A (2020) On anger. *Boston Review Forum* **13**, 9–28.
Carroll N (2014) *Humour: A Very Short Introduction*. New York: Oxford University Press.
Critchley S (2002) *On Humour*. New York: Routledge.
Dutta D (2016) Brushstrokes: the sound of laughter. *In Plainspeak*. Available at: https://www.tarshi.net/inplainspeak/brush-strokes-the-sound-of-laughter/ (accessed 31 March 2022).
Ellis-Petersen H (2021a) Disha Ravi: the climate activist who because the face of India's crackdown on dissent. *The Guardian*. Available at: https://www.theguardian.com/world/2021/feb/18/disha-ravi-the-climate-activist-who-became-the-face-of-indias-crackdown-on-dissent (accessed 31 March 2022).
Ellis-Petersen H (2021b) India's Covid anguish fuels calls to release rights activists from jails. *The Guardian*. Available at: http://theguardian.com/world/2021/may/13/india-covid-anguish-fuels-calls-to-release-human-rights-activists-from-jails (accessed 31 March 2022).
Gass M *et al.* (2016) Play for Peace as a violence prevention model: achieving voluntad y convivencia. *Journal of Experiential Education* **39**, 412–426.
Genovese A (2014) On Australian feminist tradition: three notes on conduct, inheritance, and the relations of historiography and jurisprudence. *Journal of Australian Studies* **38**, 430–444.
Goodrich P (1996) *Law in the Courts of Love: Literature and Other Minor Jurisprudences*. London: Routledge.
Goodrich P (2004) Satirical legal studies: from the legists to the 'lizard'. *Michigan Law Review* **103**, 397–517.
Gordon J and Arafa H (2014) 'Stuck with him': Bassem Youssef and the Egyptian revolution's last laugh. *Review of Middle East Studies* **48**, 34–43.
Gordon JD, III (1992) Introduction: Humor in legal education and scholarship. *BYU Law Review* **2**, 313–323.
Gorris M (1982) *A Question of Silence*. Quartet Films.
Graycar R and Morgan J (2002) *The Hidden Gender of Law*. Annadale: The Federation Press.
Halley J *et al.* (2018) *Governance Feminism: An Introduction*. Minneapolis: University of Minnesota Press.
Hennefeld M (2018) Comedy is a part of feminist history – and we need it more than ever. *Open Democracy*. Available at: https://www.opendemocracy.net/en/transformation/comedy-is-part-of-feminist-history-and-we-need-it-more-than-ever/ (accessed 31 March 2022).
Isaak JA (1996) *Feminism and Contemporary Art: The Revolutionary Power of Women's Laughter*. New York: Routledge.
Kapur R (2014) Gender, sovereignty and the rise of a sexual security regime in international law and postcolonial India. *Melbourne Journal of International Law* **14**, 1–29.
Kotiswaran P (2018) Governance feminism in the postcolony. In Halley J *et al.* (eds), *Governance Feminism: An Introduction*. Minnesota: University of Minnesota Press, pp. 75–148.
Kumar S and Choudhury S (2021) Migrant workers and human rights: a critical study on India's COVID-19 lockdown policy. *Social Sciences & Humanities Open* **3**, 1–8.
Lalwani V (2021) Who is Disha Ravi, the climate activist arrested by the Delhi police? *Scroll*. Available at: https://scroll.in/article/986861/who-is-disha-ravi-the-climate-activist-arrested-by-delhi-police (accessed 31 March 2022).
Leung G (2010) The efflorescent nihilism of laughter: an existential supplement to satirical legal studies. *Law and Humanities* **4**, 275–289.
Little L (2018) *Guilty Pleasures: Comedy and Law in America*. New York: Oxford University Press.
Lucia C (1997) Women on trial: the female lawyer in the Hollywood courtroom. In Fineman MA and McClusky MT (eds), *Feminism, Media, and the Law*. New York: Oxford University Press, p. 163.
Mondal A (2021) The constitution of the Hathras victim's body. *Body Studies* **3**, 42–58.
Morreall J (ed.) (1986) *The Philosophy of Laughter and Humor*. Albany: SUNY Press.
Place V (2018) *You Had to Be There: Rape Jokes*. Brooklyn: powerHouse Books.

https://doi.org/10.1017/S1744552322000362 Published online by Cambridge University Press

Sircar O (2020) Postcolonial liberalism's double binds. *Critical Legal Thinking*. Available at: https://criticallegalthinking.com/2020/06/19/postcolonial-liberalisms-double-binds/ (accessed 31 March 2022).

Sircar O (2021) *Violent Modernities: Cultural Lives of Law in the New India*. New Delhi: Oxford University Press.

Srinivasan A (2018) The aptness of anger. *Journal of Political Philosophy* **26**, 123–144.

Sunder Rajan R (2003) *The Scandal of the State: Women, Law and Citizenship in Postcolonial India*. Durham: Duke University Press.

Syama Sundar U (2019) *No Laughing Matter: The Ambedkar Cartoons 1932–1956*. Delhi: Navayana.

van Marle K (2007) Laughter, refusal, friendship: thoughts on a 'jurisprudence of generosity'. *Stellenbosch Law Review* **18**, 194.

Wall IR (2019) Podcast as assessment: entanglement and affect in the law school. *The Law Teacher* **53**, 309–320.

Willett C, Willett J and Sherman YD (2012) The seriously erotic politics of feminist laughter. *Politics and Comedy* **79**, 217–246.

Williams PJ, Kaplan C and Mitra D (2021) Ask a feminist: Patricia Williams discusses rage and humor as an act of disobedience with Carla Kaplan and Durba Mitra. *Signs* **46**, 1073–1088.

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