

What are we talking about when we talk about “harm to feelings”? About “harm to feelings” in Israeli law and what stands behind it

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The law's, Israeli law's in particular, attitude towards emotions is rather ambivalent. As a general matter, the law does not seem to “speak” in the language of emotions. The legal discourse usually deals with rights and duties, policy considerations and theories of justice, rational reasoning and “logical” application of rules to specific cases. Emotions (or feelings) on the other hand seem to have little or no room at all within such a discourse.

The absence of emotions from the legal language is not just a matter of semantics. There seems to be a certain reluctance to provide legal protection to feelings, either by providing compensation due to harm to feelings in private law, or by recognizing emotions as a protected interest within public law. This attitude seems to be rooted in liberal thought and is often explained by the concern regarding a “slippery slope” that will lead to a wide restriction of individual liberty. Furthermore, the law aspires to clarity and objectivity, whereas emotions are commonly perceived as ambiguous, subjective and generally “irrational.”

Nevertheless, there are exceptional cases in which Israeli law does talk about “harm to feelings” and provides protection from such harm (such as in the case of harm to religious feelings in public law), among them landmark decisions of the Israeli Supreme Court. In this article I will explore the usage of the term “harm to feelings” in Israeli law in order to better understand its meaning, or different meanings, and critically examine it.

As this article demonstrates, tracking the phrase “harm to feelings” leads to some of the most controversial, complex, and sensitive issues in Israeli society, as well as issues regarding Israeli identity and the identities of different groups in Israel. While these cases could have been conceptualized in terms of potential infringement of values or interests such as the right to dignity or autonomy, it is in such matters that the language of emotions is employed rather than in the ordinary legal discourse. This raises questions about the role of law, its social function and its boundaries.