

Fraternity, the unforgotten principle

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In different parts of the world, attempts have been made to define the principle of fraternity as a political and legal value as compared to a historic/rhetoric one.^[i] *Fraternity* or fraternal relations (occasionally also referred to as solidarity, humanity, compassion, brotherhood) are forged in the everyday lives of societies, when they share common aspirations and vulnerabilities.^[ii] The wider use or the linking of the principle to conditions of conflict and mass frustration makes it a sort of mirror of realities. These lived experiences and contexts also give the principle a dynamic and propelling quality within law and politics.^[iii]

Indian Constitution

Under the Constitution of India, the Preamble mentions *fraternity* in the text making it a foundational principle along with liberty, equality and justice. The Constitution relies on the moral, historic and legal strength of these values which have individual, societal, institutional and global dimensions. The values have often been interpreted for formulating rules of governance and ushering social change.

In the case of fraternity, it has long been felt that the principle has not been given a *wholesome interpretive* existence—an interpretive existence independent of the ideals of liberty, equality and justice. This sentiment was also expressed in the case of *Prithvi Raj Chauhan v. Union of India*.^[iv] The Supreme Court in India emphasized the *crucial place fraternity holds* in the scheme of the nation's consciousness, but observed that it was yet one of the lesser explored areas in the constitutional discourse of the court. Quoting from the judgment, the *articulation of fraternity as a constitutional value, has lamentably been largely undeveloped*. On a closer look it becomes clear that the interpretive gap or “forgotten”^[v] realm of the Constitution has been remembered.

Fraternity under Constitutional provisions

The Constitution makes a reference to *fraternity* in three ways; under the Preamble, Article 51 A (fundamental Duties),^[vi] and Article 51 making provision for global cooperation and respect.^[vii] The three constitute an integral part of the idea of fraternity under the Indian constitution.

In the Preamble, the text states—*we the people of India having solemnly resolved to...secure amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity and integrity of the nation*. The text has led to several interpretations leading to a consensus on the two constitutive facets of fraternity, i.e., *the dignity of the individual* and *the unity and integrity of the nation*. The two facets “depict individuals as being fundamental to the legal order as well as the intricate web of innumerable human relations”.^[viii] Through the principle of fraternity, the Preamble construes individual dignity and the unity of the nation as inseparable values.^[ix] Under the other provisions, fraternity is seen as a fundamental duty and as a duty towards the international society. The former elevates the importance of society in building and nurturing fraternal relations. The latter magnifies *domestic–global* unity, an important relationship forging the experiences of an interconnected world.

Facets

A look at the various meanings attributed to *fraternity* leads one to the following considerations:

a. Study and application.

- The *principle of fraternity* needs to be studied and applied more.^[x]

b. A global context of fraternity

- A need to define fraternity in the context of one’s relationship with the world—the global context of fraternity.
- A need to define the indivisibility of the *two dimensions*—global fraternity and fraternity within societies.

c. The material and non-material aspects of fraternity

- Based on McWilliams list of conditions for fraternity, an attempt be made to identify the material and non-material aspects of fraternity.^[xi] Eshete in this regard discusses how fraternal bonds implicitly involve feelings of care, moral regard for the other. A sense of morality flows from the bond. Author Katie Stockdale discusses how solidarity while manifesting in collection action against oppression can lead to *collective hope*.^[xii]

The *remembering* of fraternity in law and academic literature makes the principle highly valuable in nurturing bonds, i.e., the diverse ways in which individuals are freely drawn together by their common humanity.^[xiii] It also finds value in addressing conditions of conflict.

Notes

[i] *The Forgotten Principle: Fraternity in Law and Politics* (First published in 2006) by Antonio Baggio (Italy) has taken the lead in bringing the study of fraternity back to the mainstream of political and historic discussions. See Rodrigo Mardones, "Fraternity in Politics: New Scholarship and Publications from Latin America", *Journal of Dialogue and Culture* 1 (2), 2012, p. 72.

[ii] Eshete identifies a *common bond* as being essential to fraternity. He discusses bonds based on familial ties, nationalist sentiments, and bonds that individuals can develop across national boundaries. See Andreas Eshete, "Fraternity", *The Review of Metaphysics*, Vol. 35:1, 1981, pp. 27-44.

[iii] Referring to mass demonstrations in India (2019) the author writes- "mass readings of the Constitution's preamble were staged in different languages. Live artwork, poetry, and songs disseminated this appeal to the Constitution beyond the gatherings on Twitter, YouTube, and TikTok. The TikToking of India's Constitution is a remarkable thing... the Indian example illustrates that founding texts can have unexpected popular valences. See Adom Getachew, "Living Constitutions", *Dissent*, Volume 67: 4, Fall 2020, pp. 161-166 (Review). Available at <https://muse.jhu.edu/article/765760/pdf>

[iv] Supreme Court of India, 2020. Civil writ petition No. 1015 of 2018. Available on Livelaw.in

[v] Charles Gonthier, "Liberty, Equality, Fraternity: The Forgotten Leg of the Trilogy, or Fraternity: The Unspoken Third Pillar of Democracy", *McGill Law Journal* 45, 2000, pp. 569.

[vi] The duty of every citizen "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities...".

[vii] McWilliams listed out the set of necessary conditions for fraternity to exist among citizens: (a) The absence of continuous war or crisis; (b) the small state, which makes it possible for the sharing of affection and emotion; and (c) a non-materialistic standard of value, excluding the possibility of setting citizens apart from other members of the community. See Wilson McWilliams, *The Idea of Fraternity in America*, London, University of California Press, 1973.

[viii] M.M. Singh, *The Constitution of India: Studies in Perspective*, Calcutta, World Press Pvt. Ltd., 1975, pp. 4.

[ix] See *Ashok Kumar Thakur v. Union of India* (2008) 5 SCALE 1. Quoting from case, *the Preamble to the Constitution of India secures, as one of its objects, fraternity assuring the dignity of the individual and the unity and integrity of the nation to 'we the people of India'*.

[x] One may study the application of the *principle* in different settings including domestic, international or domestic. See for instance;

(a) the Draft Declaration on the Right to International Solidarity, prepared by the Special Rapporteur on International Solidarity. Available at

<https://www.ohchr.org/Documents/Issues/Solidarity/DraftDeclarationRightInternationalSolidarity.pdf> , (b) the 1993 Declaration *Towards a Global Ethic* by the Parliament of the World's Religions *Towards a Global Ethic*.

Available at <http://www.parliamentofreligions.org/includes/FCKcontent/File/TowardsAGlobalEthic.pdf> and (c) the case of *Prithvi Ram Chauhan* cited above, wherein the court discusses fraternity in light of the SC/ST Amendment Act, 2018.

[xi] *Supra* note vii.

[xii] *Supra* note ii at 39. And, Katie Stockdale, "Hope, Solidarity, and Justice", *Forthcoming in Feminist Philosophy Critique*, 2020, pp. 5.

Available at <https://philpapers.org/archive/STOHS-2.pdf>

[xiii] *Ibid* at 44.

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Other works from the author include *The Idea of Fraternity in Law and Politics*, 2014 and *Fraternity in The Preamble* (Book), Universal Publishers Ltd. , 2013.