THE INDIA FORUM
A JOURNAL-MAGAZINE ON CONTEMPORARY ISSUES

June 16, 2026

Fraternity: The Constitutional Promise, The Constitutional Peril

By: Sumit Baudh

A recent Madras High Court order invokes fraternity to justify reform over punishment in a caste atrocity case. Read alongside debates on transgender self-identification, it reveals both the promise and the risk of fraternity-as a constitutional interpretive strategy.

A recent order of the Madurai Bench of the Madras High Court has drawn attention for an unusual reason. In *G. Rajesh v. State of Tamil Nadu*, a case involving the desecration of a poster of Dr B.R. Ambedkar, the court did not confine itself to the ordinary logic of criminal prosecution under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act). Instead, it accepted a compromise between the parties, directed the accused to read Ambedkar's writings, subjected them to an oral examination in-camera (that is, in the judge's chambers rather than in open court). It went further: calling upon the state to strengthen the teaching of Ambedkar's ideas in school curricula from classes III to X, with a compliance report due in January 2027.

The order, delivered by Justice L. Victoria Gowri, is striking because of the constitutional vocabulary through which it justifies intervention. The court states that the matter has been approached "not merely adjudicatory, but also reformative". It observes that social harmony cannot be maintained "merely by criminal prosecution after damage is done" and insists that the constitutional value of fraternity "cannot be left to chance". Moving away from a purely punitive understanding of the law, the court attempts to open a constitutional space for repentance, pedagogy, and social transformation.

This is both significant and troubling.

Why Compromise Remains Troubling

For good reasons, offences under the SC/ST Act are largely non-compoundable-that is, they cannot be privately settled between victim and accused. Caste violence is routinely resolved outside formal legal processes through threat, intimidation, or social coercion. The law was designed precisely to address this power imbalance-to ensure that caste-based offences are not quietly settled in ways that erase accountability. Amendments in 2015 strengthened the act by expanding the offences under Section 3 and by removing qualifiers such as "willful" and "intent" from some of the existing provisions-words that had been routinely exploited by accused persons to escape liability. These amendments emerged from deep dissatisfaction with the law and its persistent under-enforcement: cases not registered, compromised investigations, and high acquittal rates.

It is in this context that any judicial move to quash active criminal proceedings must be approached cautiously.

> Where fraternity remains underdeveloped, the burden of social transformation falls disproportionately upon subordinated communities themselves.

The Madras High Court was conscious that the alleged act could not be treated as merely private. It explicitly observed that the desecration of Ambedkar's image carried "social resonance extending beyond the immediate parties". After the in-camera oral examination-in which the accused answered nearly 30 questions on Ambedkar's life, constitutional thought, and public service-the court concluded that the matter had moved "beyond the stage of mere compromise" and had become a case of "demonstrable repentance and measurable reformation".

That formulation is jurisprudentially significant. But it also opens a troubling pathway.

The question of apology within anti-caste discourse is not new. During community consultations preceding the 2015 amendments, Martin Macwan of Navsarjan Trust, raised the possibility that survivors of caste humiliation sometimes sought public acknowledgement and apology rather than criminal punishment alone. His intervention drew on empirical findings from a study by Navsarjan Trust (2010). Yet the proposal generated discomfort in both its practical and doctrinal implications: once apology enters the structure of criminal adjudication, the deterrent force of anti-caste legislation may begin to weaken. Criminal law does not easily accommodate apology as a substitute for prosecution, because the offence is understood as a *public wrong* prosecuted by the state, not merely an

interpersonal harm.

The instability of apology within caste society is illustrated sharply by the history surrounding the sexual assault on Bhanwari Devi, a woman from the subordinated *Kumhar* (potter caste) community, in Rajasthan in 1992. Public memory of the case centres on the failure of criminal justice, and the eventual emergence of the Vishaka guidelines on workplace sexual harassment. Yet feminist scholarship reveals a more complicated landscape (Mathur 2018: 71). Between August and October 1994, members of the dominant *Gujar* (shepherd caste) community made repeated attempts to persuade Bhanwari Devi to compromise. In one such meeting, some of the accused reportedly placed their turbans at her feet-a gesture tied to honour and submission-and urged her to withdraw the case. Bhanwari Devi refused. She insisted that any acknowledgement of wrongdoing must occur publicly before the village community, not privately behind closed doors. The accused declined and became more hostile thereafter.

The significance of this episode lies in what it reveals about public acknowledgement itself. The conflict was not only about legal liability: it was about whether caste and patriarchal hierarchy could be publicly repudiated through social recognition of wrongdoing. The criminal justice system provided no such repudiation-it provided the opposite. The trial court's reasoning was itself an extension of the hierarchies that had enabled the assault: the accused were treated as men of standing whose family relations and social respectability made gang rape an implausible act, while Bhanwari Devi's testimony was discredited accordingly. Dignity and restoration were drawn from elsewhere-through women's movement spaces, village-level solidarity, and the broader jurisprudential transformation that culminated in the Vishaka guidelines. Recognition came not through the criminal justice process but in active resistance to what that process had done.

These histories suggest that the opposition between punishment and reconciliation is less stable than either side of the current debate assumes-and that constitutional language capable of holding this complexity together has been largely absent from Indian jurisprudence. The Madras High Court order in *G. Rajesh* attempts to supply exactly that.

Fraternity as Affirmative State Responsibility

What is notable about the Madras High Court order is that fraternity provides constitutional language through which such complexity can now be approached within adjudication itself.

Ambedkar's famous 1949 speech in the Constituent Assembly had invoked the trinity of liberty, equality, and fraternity as the means to secure social democracy. Yet fraternity has remained conspicuously underdeveloped. Liberty and equality have generated expansive doctrinal traditions. Fraternity, by contrast, has mostly remained rhetorical-invoked at commemorative moments but rarely operationalised through institutional reasoning.

The Madras High Court draws upon this neglected vocabulary in striking ways. It states that Ambedkar cannot be viewed merely through the "narrow prism of caste sentiment" but belongs to the "constitutional soul of India". To insult Ambedkar, the court suggests, is not merely to offend a particular community but to exhibit indifference toward the constitutional values of justice, liberty, equality, and fraternity. In doing so, the court is not treating fraternity as constitutional symbolism. It operationalises fraternity through institutional directives: directing the state to introduce Ambedkar's constitutional role, scholarship, and social thought into school curricula, and requiring a compliance report from the state.

This move-from individual repentance to curricular reform-is jurisprudentially important because it shifts fraternity from the realm of sentiment into the domain of affirmative state responsibility. The court appears to recognise that caste is not reproduced merely through isolated acts of violence or humiliation. It is reproduced socially, through everyday practices, inherited prejudice, silences, and pedagogic absence. If caste hierarchy is socially produced, constitutional transformation cannot rely exclusively upon criminal sanction. It must also intervene in the social conditions that produce caste consciousness itself. The sentence "fraternity cannot be left to chance" is easily overlooked. It may be the most important sentence in the judgment.

Transgender Rights Beyond Liberty and Equality

The significance of this constitutional move extends beyond caste. Contemporary debates on amendments to the Transgender Persons (Protection of Rights) Act, 2019 have largely been framed through liberty-particularly the right to self-identification. The Supreme Court's decision in *NALSA v. Union of India (2014)* recognised self-identification as central to constitutional dignity and autonomy. That recognition was foundational to the equal protection of the laws.

> Political democracy, Ambedkar argued, could not endure alongside deeply unequal social relations.

Yet equality and liberty alone cannot resolve the problem of recognition. A legal declaration of identity does not automatically transform the social world within which that identity must survive. It is possible to be legally recognised and still be exposed to everyday forms of humiliation. Self-identification secures the formal right to name oneself; it does not secure the social conditions under which that name can be borne without cost.

This is where fraternity acquires renewed constitutional significance. Where fraternity remains underdeveloped, the burden of social transformation falls disproportionately upon subordinated communities themselves. Transgender persons become responsible not only for asserting their rights but for educating society into recognising them.

The Madras High Court order points to another constitutional possibility: the state is responsible for creating conditions for social recognition. Its pedagogic directions imply that constitutional democracy requires active social education rather than passive tolerance alone. Curriculum is one of the principal sites through which societies stabilise norms about hierarchy, dignity, gender, and citizenship. Battles over school curricula are therefore never merely educational disputes. They are struggles over the social imagination of the constitutional order itself.

A 2017 decision of the Rajasthan High Court in *Ganga Kumari v. State of Rajasthan* illuminates a related constitutional concern-distinct from the pedagogic mode of the Madras order, but equally significant.

Rajasthan had included transgender persons within its existing list of backward classes, treating this inclusion as compliance with the directions in NALSA. The controversy also reflected a deeper problem of social recognition. By treating transgender persons as a single backward-class category, the state appeared ignorant of significant differences within the transgender category. Transgender persons do not stand outside caste society; they may be part of Scheduled Castes, Scheduled Tribes, Other Backward Classes, or other social groups. Yet policies that assume a uniform transgender experience can obscure these differences and, in practice, compel individuals to navigate competing frameworks of state recognition.

The issue, therefore, was not only whether facilities were extended, but whether the legal framework adequately recognised the distinct social location of transgender persons without erasing other forms of structural disadvantage that shape their lives. In practice, this means that a transgender person of Scheduled Caste or Scheduled Tribe origin might be compelled to forgo their caste-based recognition altogether, since the state's classification of all transgender persons within the backward classes framework leaves no mechanism for recognising the compounding of caste and gender-identity disadvantage simultaneously.

The Rajasthan High Court rejected this approach. Subsuming transgender persons within an already existing category, it held, does not enhance their substantive entitlements. The court directed the state to enable such individuals to achieve substantive equality; and, as an interim measure, granted an additional 3% weightage to transgender applicants in selection processes.

Ganga Kumari does not explicitly invoke fraternity. It operates within the framework of equality-specifically, substantive equality over formal equality. Yet the insistence on distinctiveness that runs through the judgment points toward fraternity, suggesting that the constitutional relationship between social groups cannot be forged by absorbing one into another. Read in this light, *Ganga Kumari* suggests that substantive equality and fraternity converge on a common constitutional threshold-that recognising the distinctiveness of social groups is a condition for both. The challenge for constitutionalism is whether fraternity, however approached, can strengthen rather than weaken the fragile legal protections upon which subordinated communities depend.

The Danger of Routinising Remorse

That question becomes urgent when one considers how quickly the language of fraternity can travel beyond the exceptional facts of any single case. Once apology and remorse become central to judicial reasoning in cases of caste-based harm, courts may increasingly rely upon them as grounds on which the force of protective legislation is gradually weakened.

> Unlike liberty or equality, fraternity cannot be secured solely through formal legal declaration. This is what makes it simultaneously indispensable and precarious.

There is already visible judicial discomfort, in many cases, with the stringent provisions of the SC/ST Act. Observations about the supposed "misuse" of the Act-most controversially in the Supreme Court's 2018 decision in *Subhash Kashinath Mahajan*-have repeatedly shaped legal discourse. Against that background, fraternity may begin to function not as a constitutional ethic of social transformation but as a language through which the deterrent force of anti-caste legislation is softened.

The concern is especially acute because remorse can be proceduralised. A jurisprudence centred upon repentance inevitably produces incentives for its performance. A young accused person expresses regret, the complainant agrees to compromise, copies of Ambedkar's works are distributed, and the criminal proceeding is quashed in the name of fraternity. This is not a hypothetical trajectory-it is what the Madras High Court order has already done.

In an analysis of crimes against members of Scheduled Castes and Scheduled Tribes, and of the role of courts over a period of five years from 2019 to 2023, the National Campaign on Dalit Human Rights (NCDHR) notes that high levels of pendency and acquittal rates allow offenders to act with impunity. What the Madras order adds to the mixture is a constitutional vocabulary-of fraternity-through which exercises of judicial discretion may increasingly be justified.

That is precisely what makes the order a risky interpretive strategy.

The risk that transformative legal language slides into institutional cover for impunity is not unique to the Indian context. Comparative experience from societies navigating structural inequality and legal accountability reveals a recognisable pattern. The legal anthropologist Richard Wilson (2001), studying the South African transition from apartheid to democracy, observed that when the language of social restoration is harnessed to processes of state legitimation, it tends to serve elite institution-building rather than the redistributive demands of those who bore the harm. The procedural vocabulary of transformation, in such conditions, substitutes for accountability without disturbing the underlying relations of power. Reconciliatory human rights discourse, when harnessed to state legitimation, Wilson argues, systematically displaces accountability for structural harm. His conclusion draws from and echoes what scholars of Latin American transitions, like Francisco Panizza (1995), have documented more bluntly: that the legacy of such processes can be captured in a single word-impunity.

What makes this pattern directly relevant for India is that it operates most corrosively within protective legal frameworks such as the SC/ST Act, those enacted precisely because ordinary law had already failed structurally subordinated communities. Where enforcement is chronically weak, where the social conditions producing harm remain intact, and where institutional remorse becomes available as a litigation strategy, the language of transformation risks becoming what Wilson calls legitimation: a way of managing the visibility of structural violence without confronting its conditions.

This is the structural danger the Madras High Court order inadvertently opens. The constitutional instinct animating the judgment may be sound. The jurisprudential pathway it creates is not so easily controlled.

The SC/ST Act was enacted because caste oppression was historically normalised within society itself. Its purpose is preventive and declaratory. The law signals that caste humiliation is not a private dispute to be informally settled but a *public wrong*. Any movement toward restorative approaches must remain alert to the unequal social conditions within which compromise occurs.

Fraternity as Unfinished Constitutional Project

Yet the inverse is equally true-criminal sanction and punishment alone cannot generate recognition, solidarity, or constitutional culture. The difficulty is not choosing between punishment and transformation but ensuring that fraternity does not become the vocabulary through which protective legislation is quietly hollowed out.

> The challenge is whether fraternity can be developed in ways that deepen constitutional equality without weakening the fragile legal protections upon which subordinated communities continue to rely.

The Madras High Court order does not resolve these tensions. But it forces constitutional discourse to confront them more directly than Indian jurisprudence usually has.

Fraternity is structurally difficult to translate into law. Liberty can be expressed through rights against state interference. Equality can be institutionalised through anti-discrimination guarantees and redistributive measures. Fraternity, however, concerns the social relations

within which constitutional life itself unfolds. Unlike liberty or equality, it cannot be secured solely through formal legal declaration. This is what makes it simultaneously indispensable and precarious. Without fraternity, liberty risks becoming purely individualistic, detached from the material and social conditions necessary to make autonomy meaningful. Equality risks becoming formal and administrative-extending legal inclusion without transforming the social hierarchies that structure everyday life.

Ambedkar's warning in the Constituent Assembly was directed precisely at this danger: political democracy, he argued, could not endure alongside deeply unequal social relations.

Yet fraternity, like liberty and equality, carries interpretive risk. It can slide into the language of harmony, consensus, or social cohesion. The safeguard, as Ambedkar recognised in 1949, lies not in any single value but in holding the trinity together. It is when liberty, equality, and fraternity are read as an inseparable whole that the aspiration of social democracy becomes realisable.

The question is therefore not whether fraternity matters constitutionally. The deeper question is what fraternity will come to mean. Will it become a language of transformative social democracy-rooted in Ambedkar's insistence upon the annihilation of hierarchy? Or will it become a softer vocabulary through which structural conflicts are absorbed into gestures of reconciliation and symbolic inclusion?

The answer may depend less upon abstract doctrine than upon the institutional conditions within which fraternity is invoked. Where anti-caste protections remain weakly enforced, and prosecutions routinely fail, excessive reliance upon remorse and reconciliation can secure impunity. Under such conditions, fraternity cannot substitute for accountability.

The challenge is not to choose between punishment and transformation. It is whether fraternity can be developed in ways that deepen constitutional equality without weakening the fragile legal protections upon which subordinated communities continue to rely. The Madras High Court order does not answer that question. But in placing it squarely within constitutional discourse, it may be its most significant contribution.

Sumit Baudh is a professor of law at O.P. Jindal Global University, Sonipat, Haryana, and the author of the forthcoming Routledge monograph Law at the Intersection of Caste, Class, and Sex.

References:

Kannabiran, Kalpana (2012). *Tools of Justice: Non-discrimination and the Indian Constitution.* New Delhi: Routledge.

Mathur, Kanchan (2018). 'Challenging the collusion of caste, class, and patriarchy embodied in the state'. In *Indian Feminisms: Individual and Collective Journeys*, edited by Poonam Kathuria and Abha Bhaiya, 59-88. New Delhi: Zubaan.

Navsarjan Trust (2010). *Understanding Untouchability: A Comprehensive Study of Practices and Conditions in 1598 Villages.* Report. Robert F. Kennedy Center for Justice & Human Rights.

Panizza, Francisco (1995). 'Human Rights in the Processes of Transition and Consolidation of Democracy in Latin America'. P*olitical Studies* 43:168-188.

Wilson, Richard (2001). *The Politics of Truth and Reconciliation in South Africa: Legitimizing the Post-Apartheid State*. Cambridge: Cambridge University Press, 2001.