

Inaugural Speech*

by

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I deem it a privilege to be invited by the Chief Justice of India to inaugurate this Seminar on a vitally important subject under the auspices of the Indian Law Institute. I thank you Mr. Chief Justice, for this opportunity.

Some time ago several aspects of the problem of minorities were discussed at a Seminar held at the India International Centre and valuable contribution was made by the distinguished speakers there. It is only fitting that the juridical aspects also, of the problem, are examined and discussed at a high level. This being an inter-disciplinary Seminar I am sure, the problem will be examined from every point of view and the examination will be exhaustive and comprehensive. I have no doubt that this Seminar will make a thorough analysis and practical suggestions will emerge.

I may briefly touch on some matters connected with the problem of minorities. This problem has existed for a long time but it acquired special importance since the First World War when a system of protection of minorities was evolved. The League of Nations had a section for minorities. The Permanent Court of International Justice had occasion to deal with questions relating to them. With the United Nations Charter the traditional system of protection of minorities came to be covered by the concept of human rights and fundamental freedoms as enshrined therein. The Universal Declaration of Human Rights, however, enumerated rights in general to be enjoyed by all without distinction of race, religion, language, etc., but had no specific reference to minorities' rights as such. A sub-commission of the Human Rights Commission had to deal with the protection of minorities and ultimately this protection came to be incorporated in article 27 of the International Covenant on Civil and Political Rights. This article runs thus: 'In those states in

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which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'. While dealing with the treaty obligations created to protect racial, religious and linguistic minorities, Oppenheim observes: "Moreover, in so far as the principle of humanitarian intervention has become and is tending to become a rule of International Law, states are bound to respect the fundamental human rights of their own citizens. The Charter of the United Nations refers repeatedly to the promotion of human rights and fundamental freedoms, as well as of the observance thereof as one of the principal purposes of the Organization. And although the Charter provides for no clear or specific legal obligations in this field, it cannot be said that under the Charter a state possesses unfettered freedom of action as to the treatment of its own citizens regardless of their 'human rights and fundamental freedoms'."

In India, the minorities had for a long time become an ineluctable fact of political life. This was well recognised in the Karachi resolution of the Indian National Congress of the year 1931. The demand for the rights of minorities was also apparent both from the Nehru and the Sapru Reports. It was manifest that in order to create a homogeneous society and national unity, harmony between the various communities in India was essential. But this could be achieved only by a conjoint and cooperative effort of all. Jawaharlal Nehru posed the problem thus. 'How shall we promote the unity of India and yet preserve the rich diversity of our inheritance?' The Preamble of our Constitution while speaking of justice, social, economic and political, to be secured to all its citizens, proclaims as one of its aims the promotion among them all: Fraternity assuring the dignity of the individual and the unity of the nation. The Constitution adopted two methods for protecting the minorities. First, the guarantees of what might be described as negative quality, which protected them from the possibility of discriminatory treatment. The Constitution conferred certain positive rights on members of minority groups which they shared with other citizens of the country. Among the above rights may be mentioned equality before the law (article 14), in particular, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (article 15), equality of opportunity in matters of public employment (article 16), the well-known seven rights to freedom (article 19), the right to freedom of conscience and free profes-

sion, practice and propagation of religion (article 25), and freedom to manage religious affairs given to religious denominations or sections thereof (article 26). The other kind of rights guaranteed may be described as those of special nature which ensure to the minorities the right to conserve their distinct language, script or culture and the right to establish and administer educational institutions of their choice (articles 29 and 30).

The word 'minority' has not been defined in the Constitution and the question may be what is the true scope and ambit of this concept. There is a wide-spread dispersal of minorities in India, sometimes living in enclaves. They may be said to possess peculiar characteristics and may fall into several categories. The Constitution specifically recognises religious minorities, linguistic minorities, cultural minorities, minorities possessing special scripts of their own, untouchables, socially and educationally backward classes, scheduled castes and scheduled tribes. According to a recent decision of the Supreme Court, a caste has always been recognised as a 'class'. In certain territories of India it may be that caste may by itself acquire the attributes of a minority group. One is not sure whether those of the several million refugees who have been received by us on humanitarian grounds and who have not yet been absorbed by the existing communities would form a separate group of minorities. The Seminar held at India International Centre seems to have attempted a definition of Minorities. But as it is an expression used in the Constitution, it must possess a legal aspect also. The question of its definition arose in the *Kerala Education Bill* case. While repelling the argument that the minorities within the meaning of article 29(1) and article 30(1) must numerically be a minority in the particular region in which the educational institution in question is or is intended to be situated, S. R. Das C. J. said: '...Strictly speaking for answering question No. 2 we need not enquire as to what a minority community means or how it is to be ascertained.' An eminent statesman who was a member of the Constituent Assembly in an article published in the Indian Express of the 30th July, 1970, deals with the subject of minorities in India under the caption 'Who are minorities?' It is true that there were well known minority communities at the time when the Constitution was framed, but the Constitution is for all time and it may be that this Seminar may consider the question of how the expression 'minority' should be defined for the purposes of the Constitution and other laws. The sub-commission of the Human Rights Commission explained the term 'protection of

minorities' as meaning the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve the basic characteristics which they possess and which distinguish them from the majority of the population.

Our Constitution does not enumerate the duties and obligations of those on whom rights are conferred by it. It cannot be imagined, however, that the citizens of India have only rights and no obligations. One should think that a citizen who enjoys certain rights under the Constitution must owe some obligations to his fellow-citizens as well as to the community in general. Does not this impliedly follow from the Constitution itself? In this connection I am reminded of what Dr Junckerstorff said in his book on *World Minorities*: 'Right and duty are correlative ideas, one naturally implying the other. Minorities have rights, of course, but they have duties as well. It is illogical to conceive a minority enjoying rights without fulfilling duties.... Loyalty implied in the concept of minority (as explained above) positively demands non-dominant groups to contribute to the welfare of the state through various means, and negatively, forbids them to impair it by any act. This is the idea of duties or obligations.' What duties or obligations can be spelt out from our laws is a matter worth considering. Apart from legal obligations of minorities there must be social and moral obligations also which need clarification. The creation of the social order as envisaged in our Constitution (vide article 38) requires a social consciousness and active cooperation of all the sections of the society. This indeed has become increasingly the characteristic feature of modern societies.

The Constitution has provided for ample safeguards for the protection of minorities in India and one cannot find any other Constitution in the world where safeguards for minorities are provided in such ample measure. Minorities' rights receive the protection of the Supreme Court and the High Courts and their scope and ambit find very clear and instructive exposition in a series of cases decided by the Supreme Court. Apart from the Constitution there are statutory enactments on the subject which existed at the time of the Constitution in certain states and which are continuing. Then we have article 17 of the Constitution, and the Untouchability (Offences) Act of 1955.

Article 46 of the Constitution requires the state to promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and imposes a duty on the state

to protect them from social injustice and all forms of exploitation.

The Commissioner for Scheduled Castes and Scheduled Tribes and the Commissioner for Linguistic Minorities have to submit reports which are placed before Parliament and are open to discussion. Apart from these reports, there is a recent report of the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes. This Committee was appointed by the Department of Social Welfare. These reports point out the persisting evils and also make certain suggestions. From a perusal of these reports the conclusion is inescapable that there is no sufficient awareness of the laws among not only the people affected thereby but also some of those who are concerned with the administration of the laws. It may be said that for the existing evils the reason is an inadequate implementation of the laws and that the fault does not lie with the laws themselves.

It is rightly said that the absence of discrimination and the protection of minorities by will are the tests of the political and moral achievement of society but the solution of minority problems rests, in part, on the minorities but also to a larger extent, with the dominant groups.

One of the reports of the Commissioner for Scheduled Castes and Scheduled Tribes says: 'Helpful laws have been passed; but they cannot bring about social equality by means of any legal or administrative procedure alone. An enormous amount of voluntary endeavour must go along with it'. The Commissioner further observes that the situation created by the existence of untouchability can hardly be removed by punitive measures alone.

The question of national integration has been uppermost in the minds of many in the country. Anxious thought and immense energy have been expended on the devising of methods by which the objectives may be achieved. There is the National Integration Council which makes some suggestions from time to time. There is the Report of Justice Raghubar Dayal. There is other material also. All these no doubt provide very valuable help, but the answer to this problem really lies in educating the masses, shaping public opinion and bringing about a gradual change in the pattern of thinking processes.

The subject is vast, intricate and vitally important for the nation. I have mentioned only some of the matters connected with it. I am sure the subject will be discussed at this Seminar in detail in all its aspects. In conclusion, I have much pleasure in inaugurating this Seminar on Minorities and the Law in India and wishing you success in your deliberations.