

Interview given by Mr.M.R. Masani to the YOUTH TIMES
on August 8, 1978.

Question: What is a Minority?

Answer: Minorities are of various kinds, but they fall into two main categories. The first ^{category are} Minorities are reflecting points of view or what may be called political minorities, which shift from time to time with trends of opinion, and the second are fixed minorities which are determined by birth.

In so far as the first category is concerned, the only two basic measures of protecting minorities from the tyranny of the majority is to have a system of election based on Proportional Representation which assures them due representation in legislative bodies and, secondly, to adhere to limited government, which deals with ^{the} essential functions of Government and does not enter into every aspect of ^{the} life of the individuals. As Gandhiji put it "that government is best which governs the least".

The ordinary understanding of the word, however, refers to the minorities to which we are confined by the accident of birth. Such are ethnic or racial minorities, linguistic minorities, religious minorities, caste and sex. These are the minorities which are sought to be protected by such instruments as the Constitution of the Indian Republic or the Universal Declaration of Human Rights.

Q. What is the international experience with efforts at protecting the rights of minorities?

A. The United Nations through its Human Rights Division had

... as the Universal Declaration of Human Rights. Unfortunately, it is enforceable or non-justiciable because the Soviet Union and many other governments which insist on what they describe as their "national sovereignty" refuse to submit their actions to the judgement of an international tribunal. The Declaration has therefore remained mostly on paper, and even our own Government does not respect all the Articles of the Declaration to which it has put its signature.

I had a little experience of the ⁵²United Nations activities as I was an expert elected to the U.N. Sub-Commission for the Prevention of Discrimination and Protection of Minorities and was elected its Chairman from 1950-52: to 1952

Q. The countries of Europe have, however, pioneered in this respect and in recent years they have surrendered enough of their sovereignty to accept the judgements of The European ^{court} Code of Human Rights before which a government can be dragged and charged with the ^{violation} destruction of human rights. Thus, for instance, the British Government was charged before the Court with violation of human rights in Ulster.

Q. What is the position in India?

A. The position is set out in our own Constitution, in the drafting of which I had a little hand as a member of the Constituent Assembly. Our Constitution has certain articles like Article 29 and 30 which protect the rights of minorities, for instance, to control and run educational institutions of their own which are established by them, for instance, Aligarh Muslim University. Such institutions cannot be discriminated against on the ground that they are 'communal'. The other relevant articles of the Constitution are Articles 15(4) and 16(4) which permit of discrimination in favour of Scheduled Castes and Tribes.

Q. How then are a concern for rights of the minorities to be reconciled

with the other principle of equality before the law?

A.

That is a 64 thousand dollar question and the answer to that has not yet been discovered. You are quite right in pointing that these two desirable principles are likely to conflict to some extent. The situation is like that in a Greek tragedy where the conflict is not between right and wrong but between right and right. In the U.N. Sub-Commission to which I belonged, we grappled with this problem but found no answer. The result is that the courts of law in various countries have had to face this problem. Thus, for instance, in India the Supreme Court of India gave a judgement on 19th September 1976 in what was described as the case of the State of Kerala vs. Thomas. Mr. Thomas had alleged that he had been unjustly discriminated against in favour of some scheduled caste man in regard to admission to some institution or other. The Supreme Court had to face the philosophical question. How much injustice should be done to Mr. Thomas to make up for past injustice done to the Harijans? The Supreme Court held that, in this particular case, the injustice done to Mr. Thomas was reasonable and bearable and therefore ruled against him. But the Court was careful enough to say that this did not mean that such affirmative action or reverse discrimination can be carried to any lengths. There were obvious limits to such action and the Court would have no hesitation in striking down discrimination in favour of Scheduled or Backward Classes if it went too far.

Q.

What is the position in the United States?

A.

Interestingly enough, the Supreme Court was faced with precisely this problem in what is known as Bakke's case on which it gave its judgement in June this year. In this case, Mr. Bakke, a

young "White" American of California, was the complaint. He complained that he was denied admission to Medical School in favour of a black ^{or} man who was inferior to him in his eligibility for such admission, in violation of the United States Constitution. The California Court found in this favour but the Carter Administration decided to appeal to the Supreme Court. In their brief ^{the} Federal Government pleaded that the past injustice done to Negroes justified the injustice done to Bakke.

The Supreme Court of the United States upheld Bakke's complaint and has ruled that he should now be admitted to Medical School. At the same time, the Supreme Court by a majority upheld the principle of Affirmative Action and commended the admission policy in Harvard, where race was not the only determinant but one of the factors to be borne in mind was deciding on priorities in admission.

It is interesting that both Supreme Courts therefore have balanced between the right to equality and the right to protection of a formerly under-privileged minority. The net result in the two cases is not very different.

- Q. In our country whose main problem is poverty, should not the emphasis be on helping the economically weaker sections rather than emphasising social and religious differences?
- A. Not all minorities have economic grievances, for instance, the Parsis! Nor are all poverty stricken sections of the people members of minority communities. My own view would be that there is need for action at both levels, economic as well as social. I would rather not confront one with the other, but would suggest simultaneous action on both fronts. I do not think that ^{the} Articles of our Constitution for protecting the minorities in any way cut across the need to ameliorate the economic conditions of the poorer sections of our people. To a certain extent, if the economic problems can be solved, the need for minority protection and in particular in regard to scheduled castes and the tribes, may fade

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away, but it will not end. Even a minority that is prosperous can be persecuted as, for instance, the Jews in Nazi Germany and the dissident Jews in the Soviet Union even today who are not the poorest of the people.

Q. In other words, do I understand that you reject the Marxist effort to explain everything in terms of class?

A. Yes, that is right. ~~XX~~

Q. Is it not true that the benefits of reservation of seats in Parliament and Legislative Assemblies, positions in colleges and schools and jobs in Government benefit, not the large mass of the Harijans or the tribals, but only the upper crust of those classes?

A. In many cases reservation of seats in jobs, admission to schools and colleges does not benefit the bulk of the classes which is supposed to benefit but only the upper strata. Therefore some intelligent members of the Backward and Scheduled Classes themselves want these reservations to end so that they might cease to be exploited by the politicians of their class who utilise such reservations for their own advantage.

Q. Are politicians encouraging such differences among the people and are not they to blame for highlighting these differences for political reasons?

A. Yes, that is sometimes so.

Q. Does it not prove that the problem is one of class rather than of caste or religion that the affluent of any caste or religion become a vested interest and seek to protect their entrenched privileges?

A. I am afraid that is an over-simplification. The problems of Ulster and of Palestine are real and certainly cannot be solved on an economic basis. Religion and race are as important factors as economic prosperity or poverty, and the fight against injustice has to be waged on many fronts.

Q. Are there not States in India such as Meghalaya and Kashmir where a group of people who are a minority in the country as a whole happen to be the majority and is it possible that the non-tribals in Meghalaya or non-Muslims in Kashmir might find the need for seeking protection?

A. Yes, that is so, and in my view the minorities in these States deserve protection just as much as the minorities in other States of India where those who are in a minority in Meghalaya and Kashmir happen to be the majority.

Q. Are these problems that can be solved by Governments by passing laws? Are these problems which can only be solved by change in attitude of the people at large?

A. You are right. Just as you cannot make a man a good man by passing a law, so you cannot legislate good neighbourliness or fraternity between different groups or elements in society. That requires a change or revolution in the attitude and thinking of the people. So in the end we come to the basic need for educating people about these problems.