RESOLUTIONS ADOPTED BY THE PLENARY SESSION OF THE ALL INDIA LAW CONFERENCE

ADMINISTRATIVE PROCEDURE

I. Procedure under the Industrial Disputes Act

(*a*) Legal practitioners should be permitted to appear before the Labour Courts, Tribunals and National Tribunals in their own right.

(*b*) Services of Conciliation Boards should be availed of more frequently than is the practice at present.

(*c*) Conciliation Officers in order to be effective in bringing about conciliation should be men of experience and should possess necessary qualifications for their job.

II. Procedure under the Income Tax Act

(*a*) Uniformity in procedure regarding recovery of arrears of income-tax being desirable it may be achieved by the Centre enacting a Public Demands Recovery Act.

(*b*) Simplified assessment forms may be devised for the small income groups.

(*c*) There should be right of appeal from orders made under section 35 and Rule 6-B.

(*d*) The discretion of the Income-tax Officer in matters like changing the accounting system should be guided by rules.

III. Procedure under the Land and Sea Customs Act

(*a*) The composition of Appellate Authorities in the Customs Administration should be so devised as to be free from governmental interference.

(*b*) The depositing of the amount of penalty as pre-condition of appeal may not be enforced in cases where goods are confiscated.

JUDICIAL REVIEW

1. Under the Land Acquisition Act the present procedure prescribed in Section 11 to 16 of the Act should be deleted and the Court should, in case of disagreement, adjudicate on the question of compensation without an intermediate award by the Collector.
2. Sec. 8 of Act 30/1952 should be amended, so that

the award under Sec. 8 be deemed to be a decree as in Sec. 26(2) of the Land Acquisition Act, 1894.

3. A direct appeal to the High Court should be provided for from the decisions of Labour Courts, Industrial Tribunals and National Tribunals under the Industrial Disputes Act. The appeals should be disposed of within six months.
4. The High Courts should, in the exercise of their jurisdiction under Art. 226, go into disputed questions of fact in suitable cases and the High Courts should frame rules for that purpose.
5. Sec. 20 of the Workmen's Compensation Act, should be amended in order to prescribe qualifications for the Commissioner as is provided in Sec. 15 of the Payment of Wages Act.

INTERSTATE BARRIERS TO MOVEMENT OF COMMODITIES AND PERSONS

The Conference noted that interstate barriers may exist inspite of the constitutional provisions guaranteeing freedom of trade and commerce. It is because:

1. Existing laws are saved by Art. 305 of the Constitution.
2. Article 301 guarantees freedom of trade and commerce. This freedom, however, means regulated freedom and is subject to exceptions stated in other provisions of the Constitution. The State thus while regulating an activity or imposing taxes may in fact create interstate barriers though it may not have intended so. In this respect difficulty mainly arises from the multiplicity and diversity of State laws.
3. Under the colour of reasonable regulation, a State may create interstate barriers.
4. Barriers may be created by regulations issued by the Executive for which there is no warrant either in the statute or the Constitution.
5. Barriers may be created in the administration of a statute.

The Conference, therefore, recommends that in view of the above, the problem of interstate barriers to movement of commodities and persons needs a thorough investigation. Certain subjects were indicated as deserving priority in the study.

FUNDAMENTAL RIGHTS

Equality before the Law & Equal Protection of the Laws

1. That the two distinct concepts embodied in Art. 14 derived from two distinct historical sources should be kept in view and further study and research should be undertaken so as to bring out the implications thereof.
2. The requirement that classification must have reasonable relation to the object sought to be achieved, is an objective test and the fact that the Legislature considered there was a reasonable basis for differentiation should not be taken as justifying legislation that fails to meet the objective test.
3. That a statute which provides for differential treatment of persons, whether directly or by delegating a wide discretion, may be valid in spite of the absence of any express justifiable classification, if it discloses a clear underlying policy which justifies and controls such treatment. The statute should itself contain the principle or policy to be followed and should also embody an intelligible basis for effective judicial control.
4. That the cause of speedy justice and the letter and the spirit of the Constitution demand access under Art. 32 to a citizen to the Supreme Court in the case of violation of Art. 14 or any other fundamental right even though he had gone to a subordinate court or a High Court.
5. That Article 32 may be invoked in cases where the statute impugned is inconsistent with the Fundamental Rights as also in a case where an executive order in pursuance of a statute validly enacted infringes Article 14 or any other fundamental right of a citizen.

DELEGATED LEGISLATION

1. The provision in a statute delegating legislative power should maintain terminological consistency and precision.

2. The Minsitry or administrative department, when sending to the draftsmen any proposal for legislation containing a provision for delegation, should also send a detailed memorandum, stating precisely :—

(*i*) the matters to be delegated ;

(*ii*) the authority which is to exercise the delegated power ; and

(*iii*) the basic features of the manner in which it is to be exercised.

3. The following forms of delegation should be avoided:

(*a*) Delegation of the power to extend the geographical application of the Act;

(*b*) Delegation of the power to amend the Act;

(*c*) Delegation of the power to grant exemption from the operation of the Act;

(*d*) Delegation of the power to make provisions or give directions for the removal of doubts or difficulties arising in giving effect to the provisions of the Act.

In unavoidable cases necessitating the delegation of such power, the Act should

(*i*) lay down specifically the conditions and standards for the exercise of the power, and

(*ii*) require previous publication of the statutory instrument by which the power is to be exercised.

4. Legislative sanction for Government to issue directions for the purposes of the working of the Act should not find a place in the statute.

5. (*a*) The procedure of laying statutory instruments on the table of the Legislature concerned, after they come into force, should be discontinued except in the case mentioned in Cl.(*b*) below.

(*b*) Every statutory instrument should, as a rule, require the affirmative resolution of the Legislature concerned before it comes into operation. In urgent cases, the statutory instrument may be given immediate effect, subject to affirmative resolution within a specified period, in default of which the instrument shall lapse.

6. A provision authorising the making of statutory rules should require

(*a*) previous publication in all cases, which should conform to the procedure provided by Section 23 of the General Clauses Act, 1897.

(*b*) effective antecedent publication (besides publication in the Official Gazette), for example, by circulars issued to persons or bodies of persons or interests affected by the rules and summary publicity in newspapers.

7. Wherever any statutory bodies are set up an Act itself should provide for

(*a*) the basic features of the procedure to be followed by that body; and

(*b*) right of objection and representation and adequate hearing to interests likely to be affected by the proceedings of that body.

The practice of leaving all these matters to be formulated by the statutory body, without such standards should be avoided.

8. Wherever there is a power to make rules under an Act, there should also be a provision requiring the first rules to be made within a period not exceeding six months from the commencement of the Act.

LEGAL EDUCATION

Reform and re-organization of legal education in India should be taken in hand on an All India basis and the Indian Law Institute will take necessary steps in that direction. Attempts should be made to improve the contents as also the methods of legal education. The standard to be maintained is to be definitely higher than at present.

It is the definite opinion of the Conference that legal studies should be under the Universities so far as the entire syllabus is concerned.

I. Aims and Objects of Legal Education

The aims and objects of legal education should be to provide

(*a*) education in law for citizens necessary for participating in the life of a democracy;

(*b*) knowledge and training in theory and practice that are required for the legal profession and judicial and administrative work;

(*c*) Specialized legal studies in relation to business and public affairs and;

(*d*) training in research in law.

II. Qualifications for entrance for the Law Course

(*a*) The minimum qualification for admission into a law College to qualify for the degree (LL.B.) course in law should be a degree in any Faculty in a University. At the time of admission to the law class, the University should adopt methods for screening the candidates.

(*b*) General knowledge in law may be included as one of the optional subjects in the course of studies for the degree course in Arts and in General Education. This is expected to provide a suitable background for the future entrants to the LL.B. Course.

III. Course of Studies

The following should form the compulsory subjects for the LL.B. Course:

1. Jurisprudence
2. Constitutional law with particular reference to the Indian Constitution
3. Law of Contracts including Negotiable Instruments, Sale of Goods and Partnership
4. Torts,
5. Transfer of Property Act and Law of Easement
6. Equity, Specific Relief Act and Trusts
7. Personal Laws
8. Law of Evidence
9. Principles of Criminal Law including Indian Penal Code
10. (*a*) Civil Procedure Code
    (*b*) Criminal Procedure Code
11. History of Law and Legal Institutions in India
12. Revenue and Tenancy Laws of the State.

Roman Law and Law of Real Property should be excluded from the course of studies.

In view of the increasing importance that some branches of law are gradually assuming in the changed pattern of the society, a minimum of three optional subjects should be available to the students. The following subjects are suggested for forming the optional groups:

1. Administrative Law
2. Law of Insurance
3. Industrial Laws including Labour Laws
4. Taxation Laws
5. Company Law
6. Law of Local Bodies
7. International Law (Public)
8. International Law (Private)
9. Construction of Deeds and Statutes
10. Comparative Law
11. Drafting and Conveyancing
12. Succession and Wills.

IV. Duration of the Course

(*a*) Law should be ordinarily studied by those who devote full time for such studies and not along with any other

course or avocation. For such students the whole time course should cover a period of three academic years. The first two years should be occupied in the study of the compulsory subjects except the procedural laws, which along with the optional groups, should be taken up in the third year. The period of apprenticeship necessary for enrolment of Advocates in the High Courts should be covered during the third year for which the Universities in collaboration with the respective High Courts or Bar Councils as the case may be, will be able to evolve a system.

(*b*) To enable people engaged in other pursuits of life to take advantage of studies in law which often times help improving their economic position and/or sense of citizenship, it is recommended that part time course for four years (comprising the same syllabus) should be provided during the morning or evening hours. For such of the students who intend to join the legal profession it may be considered whether the period of apprenticeship may be included within the last year.

V. Teachers of Law: Whole time or Part-time

The Conference are of opinion that there should be in addition to whole time teachers of law part time teachers as well.

VI. Qualifications and Remuneration for Teachers

For future appointments the qualifications of teachers are to be as follows:—

1. Ordinarily a 1st Class LL.B. preferably an LL.M. for the posts of Lecturers.
2. Ordinarily an LL.M. with research experience preferably with a doctor of Laws for the post of Reader.
3. Ordinarily a doctorate in Law with research publications for the post of Professor.

Experienced members of the Bar, though not fulfilling the above qualifications, may be invited to deliver either courses of lectures or as part time teachers by the colleges.

The teachers of Law should be remunerated in the same way and on par with teachers in technical and other professional subjects like medicine and engineering.

VII. Language

For the time being English should be the language for instruction for the law course.

VIII. Methods of Teaching

(*a*) The present mass lecture system followed in many colleges is not conducive to draw the best of the teachers and students. In the opinion of the Conference drastic changes should be brought about in the teaching of law to achieve the objects enumerated above.

We recommend a system of teaching which will ensure more intimate relation between the teacher and the taught. There should be a proper teacher pupil ratio. Instruction be imparted in addition to lectures, through Tutorials, Seminars, Moot Courts and by adapting the Case method to the needs of the students.

(*b*) It is absolutely necessary that the roll strength in each class, whether for lecture, tutorial or seminar etc., should be kept as low as practicable.

IX. Examination

The Conference feel that the present system of setting questions and of evaluation encourages cramming and is not sufficient or proper test to find out the knowledge or capacity of the students.

Reform of the examination system is intimately connected with the re-orientation of legal studies. It is desirable that immediate steps be taken in the following direction:

1. Class work should be taken into consideration for assessing the proficiency of the students at the final stage. A certain proportion of the total marks should be assigned for class work. Class work will include tutorials, seminars and moot courts in addition to class examination and participation in class discussions.

2. The question papers are to be so set as to avoid the scope of rote or cramming from cram books. Stereo-typed questions are to be avoided. The questions are to be so framed as to test the capacity of the students to think independently and also to indicate to what extent they have grasped the principles of the subject of study.

3. The paper setters should be ordinarily persons who are or have been teachers of Law for at least 10 years or members of the Bar with at least 10 years experience in the profession and from the Bench.

4. For evaluation of the answer scripts at least 50% of the examiners are to be teachers of law with at least 3 years experience as teachers. Members of the Bar with at least 5 years experience may also be appointed.

5. At least 50% of the total number of examiners are to be external examiners, some of them being from other Universities.

X. LL.M.

In such of the Colleges where proper facilities are available steps should be taken to impart instruction for the LL.M. course.

Teachers for the LL.M. course should ordinarily be at least LL.M. with research and teaching experience to their credit, preferably a doctor of laws with experience.

XI. Research Facilities

Research facilities should be provided by each University having a Faculty of Law with courses for LL.M. in collaboration with the departments of other Social Sciences including Sociology, Politics, Economics, etc.

XII. Implementation of the Recommendations

Most of the recommendations made depend upon proper financial help for suitable accommodation, adequate library facilities, proper remuneration for the teachers and examiners and for examination work as also for carrying on research and publication of valuable research materials. The Conference record with pleasure the assurance given by Dr. Deshmukh, Chairman of the University Grants Commission who actively participated in the proceedings of the Committee, that financial assistance for improving legal education will be forthcoming.

INDIAN BAR ASSOCIATION

1. This Conference is of the opinion that steps should be taken to organize an Indian Bar Association.
2. (*i*) That an Organizing Committee consisting of the Attorney-General, the Solicitor-General, the Additional Solicitor-General, the Advocates-General, Presidents of State Bar Federations wherever they exist, Presidents of High Courts, Bar Associations, four Organizing Secretaries and Treasurer should be formed with powers to the Chairman of the Organizing Committee to invite such organisations or persons as he may consider necessary to join the Committee.

   (*ii*) That Shri M.C. Setalvad, the Attorney-General of India

be the Chairman of the Organizing Committee and

Shri C.B. Agarwala
Shri P.K. Bose
Shri C.R. Pattabhi Raman
Shri Purshottam Trikamdas

be the Organizing Secretaries and Shri N.C. Chatterjee be the Treasurer.

3. That the report of the Committee on Indian Bar Association and other suggestions that have been received or which may be received from members be forwarded to the Organizing Committee.

4. That the Organizing Committee be authorised to take the necessary steps to form the Association.