

deliberations of the different Committees and of the plenary session on the different subjects under their consideration and the conclusions arrived at, will bear fruit and help in propagating useful knowledge and lead to appropriate and desirable reforms in the different branches of the law. May your endeavours be crowned with success.

---

## PRESIDENTIAL ADDRESS

by

DR. K.M. MUNSHI

EXECUTIVE CHAIRMAN OF THE INSTITUTE

I need not say how happy I am that we have all met here in this Conference. Apart from any other consideration, it is a landmark in the life of the Indian Law Institute, with which I have the privilege of being associated for the last year and a half.

The Institute, in its very short life, has succeeded in bringing teachers, practitioners and judges in an all-India organization. It embarked on research projects in law, so essential for the growth of our democratic institutions. It has had the good fortune of receiving aid from the Government of India and the Ford Foundation. Due to the help given by the Ford Foundation, we have had the benefit of securing guidance from several visiting specialists. Its quarterly journal has had a good reception throughout the world. One of its Regional Committees has been established at Madras and another at Bombay ; a third will very soon come into existence at Kanpur. Endeavour is being made to give the Institute a permanent home in New Delhi.

This Conference might well consider the future scope of the activities of the Institute. So far it has made a beginning as an all-India centre for research in law. The projects which are being worked out at present deal with Administrative Procedure, Judicial Review, Delegation, Fundamental Rights and Inter-State Barriers. The study in Delegation is being made at Calcutta. Shortly, further studies in one or the other branch will be prosecuted at the Universities of Lucknow and Madras under project directors invited by the Institute. The Institute has succeeded in securing the co-operation of several ministries of the Government of India, without which research in Administrative Procedure would have remained incomplete.

It is hoped that in future, with the co-operation of the law faculties of the Universities and the law Schools, it might be possible for the Institute to co-ordinate legal research wherever it is being conducted under competent professors. The next step will be, if further resources and competent personnel are forthcoming, to run specialised courses in one or the other branch of law at the Institute or at selected law centres, and to hold seminars or refresher courses for practising lawyers.

. . .

The Institute decided to convene this All India Law Conference as a first step towards unifying those who serve the law in this country. The Supreme Court has in a sense unified the legal world in India as never before, and a conference such as this, it is hoped, will give this unity shape and purpose. The recommendations of the Law Commission, in so far as they are published, also indicate the need for such unification.

A conference such as this, if it becomes a permanent feature of the activities of the Institute, can help to improve professional and judicial standards. It can re-establish the basic importance of an independent legal profession and Judiciary in a democratic society such as ours. It might very appropriately help mould public opinion on the necessity and implications of the Rule of Law so essential for maintaining freedom.

. . .

Of late, legal education has come in for critical attention, and deservedly. In India, when started during the British regime, it was intended to provide training for the would-be practitioners; higher study and research in the theories and principles of law was and even at present is, possible only in foreign countries. Things have to change now. Free India has its own Constitution, its own courts, its own legal outlook and its own social needs which demand adjustment in law through research. Our judicial system, though largely based on the British and the American, is different in scope and function, and has to be related to our judicial and juristic experience. In the matter of legal studies, therefore, India cannot afford to be 'colonial' any longer.

This objective can be fulfilled only if the law schools, in point of accommodation and library, are adequately equipped; and further, service conditions for law teachers are so altered as to attract the best talents in the Universities to that vocation and enable the law teacher,

in comfort and security, to specialise in one or the other branches. In this case, the University Grants Commission can, I feel, render great assistance.

I am sure you will devote your attention to this aspect of legal education. In doing so, I may be permitted to place before you certain problems which deserve attention :

First, how to resist the urge to displace English from our Universities, which in a large measure has made imparting and receiving education in law difficult.

Secondly, how to prevent education imparted by part-time law teachers whose main interest lies in the profession from continuing to be perfunctory.

Thirdly, how to overcome the general impression that education and training in law is just a pass-port to start a practice and, unlike every other professional training, need not be thorough. This attitude is based on a curious confusion of thought that law studies need not be theoretical for the aim is to practise, and they need not be practical, for that could only be done when one starts the practice.

Fourthly, how to prevent the best students of the Universities from being lured away from the law studies and the profession to highly-paid Government services which provide security of tenure and the certainty of promotion. As things are at present, by and large the left-overs of the Universities only take to law studies for want of anything better to do.

Fifthly, how to change the teaching and the examination system so as to ensure a thorough grounding in the principles of law and to develop the necessary capacity to apply them to facts sifted and ascertained according to the law of evidence. Prescribing large textbooks and throwing immature minds in the arms of guide-makers is scarcely the right way to develop a grounding in law or legal skill.

. . . . .

You have before you the question of establishing a Bar Association for India. A Bar Association for the whole of India is, in my opinion, necessary to give shape and direction to professional activities; to unify and maintain the ethics of the profession ; to strengthen the independence of the bar and the judiciary ; to educate the public as to the value of ' government under law ' ; and to contribute, as a group independent of the Government, its vitality to the free life of a democracy.

Besides this, there are other questions to which, I am sure, you will apply your mind, viz. whether such an Association should be

federal, or federal-cum-unitary, or unitary ; what should be the nature and scope of its activities ; and how are the resources necessary for setting up an effective machinery to be raised. The satisfactory solution to all these problems depends upon whether the lawyers in this country have developed an urgent need for unification and realised their role and mission as lawyers in our society.

. . . . .

Often enough we have heard diatribes against lawyers and we will surely hear them in the future. Whether they are justified or not will depend upon whether we, as lawyers, have a role to play and a mission to fulfil in the context of the modern world ; or whether the sphere of law is no more than a market wherein the lawyer's brain is to be traded for money to secure monetary gain for some person or to save him from penalties.

In spite of the diatribes, lawyers are indispensable to civilised community, more so when it is free and democratic. Every change in the social and economic order, every scientific discovery, every movement of men and things and every act of Government involves the aid, guidance and the decision of a lawyer. So do all agencies of the Government, all corporations, companies and institutions. All occupations also need the lawyer, for their members have to be licensed, protected and governed by law.

I realise that the work of lawyers is scarcely appreciated, but those who fail to do so do not realise that if they were not there, we may have to revert to the days of Chenghis Khan when the will of the tyrant was the law of the slave.

. . . . .

Here, I may be permitted to refer to the fundamental concept of law which determines the role and the mission of the lawyers in a civilised society. In this concept, law is not the same as 'a law', which may conceivably include the edict of an arbitrary power. As Dean Pound recently pointed out, when we talk of 'law', it means 'legal order' (*Rechtsordnung, ordre juridique*), which supports social control through legal institutions of justice. It is only in such an order that the individual citizen reaches an all-round development and the authorities function in well-regulated orbits. Of this 'law', the lawyers are the guardians, interpreters and defenders.

This concept of 'law' is as old as the oldest system of jurisprudence. In the opinion of the ancient Hindu jurists, 'law'—which they call *Dharma*—is supreme in its own right. The sovereign—who

ever or whatever is included in the term—is not its source, but its instrument. Its sanction arises from the fact that the moral order is ineluctable, that whoever conforms to it finds happiness and self-fulfilment and whoever does not, cannot. It is in this sense that the *Narayaniya Upanishad* says: 'Law is the foundation of the society'. *Brihadaranyaka* asserts the same when it says: 'Law is the mightier than the mighty.' Manu is still more explicit when he says: 'God first created from his own lustre his son *Dharma*, the same as *Danda*—the protector of all creatures.'

Continental jurists took a similar view. Grotius, one of the greatest of them, says: 'Law is a rule of moral action obliging to do that which is right.'

Anglo-Saxon jurisprudence, in its Austinian attitude, however, inculcated that 'law' is nothing but a rule issued by the sovereign and which attaches definite consequence to proved facts. This as I said before, can conceivably be the instrument of arbitrary power.

This theory, though it clouded the real concept of law, did not do harm to the juristic and social thinking in England, for the English people had an abiding respect for law as distinct from 'laws.' In the field of jurisprudence, Coke, the great authority on common law, supplied the appropriate corrective when he said: 'Reason is the life of the law, nay the common law itself is nothing else but reason'. As a result, derived from a nebulous concept of common law, we have in modern jurisprudence certain principles well accepted like the 'Rule of Law', 'the rules of natural justice', 'equal protection of law' and 'Fundamental Rights'. These, with the juristic heritage of the French Revolution, have found a place in many Constitutions of the world and which finds a prominent place in the Preamble and Part III of our Constitution. They are all intended, as stated in the Preamble of our Constitution, to protect human dignity, or to use the words of the United Nations Charter, 'to protect the dignity and worth of the human person'.

. . . . .

The role and mission of the lawyer therefore is determined by a special responsibility to uphold this legal order and guard it against hostile inroads: for, such an order is the only constructive alternative to the tyrannous misuse of power and the suppression of human dignity.

This responsibility becomes all the greater as life changes fast and with it the outlook and purpose of society. In these days, the government operates and regulates the economic system. It furthers

the production of the material resources of the community; it also secures their wide distribution. Naturally, therefore, the interests of the community as a whole as understood by those in power, are considered as the supreme goal and the individual important only as an instrument of their will.

Another factor has been the increase of anti-social activities in intensity and scope on account of the advance in technical knowledge and an increasing neglect of moral and religious standards. Governments, therefore, often unwillingly, have to exercise their police power on a large scale.

Though, in view of both these factors, laws must change from time to time, to say that the legal order should also change with the social needs is to deprive it of its sanctity. On the contrary, the laws have to be framed, controlled and interpreted in the light of the legal order so as to contribute an element of stability and certainty to society. As our Constitution has wisely envisaged, it can be maintained only if its provisions are strictly maintained and liberally interpreted through justice administered by an independent judicial agency.

We must, however, recognise that we cannot rely merely on the lawyers, either in the profession or the judiciary, to guarantee free government. As Judge Learned Hand once said: 'Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it'.

At the same time, if the lawyer loses his sense of mission and the courts take a deferential attitude towards the Legislature, the citizen will be left unprotected against the violations of human dignity and the government will cease to function 'under law'.

Apart from this consideration, if the lawyers are imbued with an active consciousness of their role and mission, even the process of studying, expounding and interpreting law would become a highly educative influence. For, it would encourage the average citizen to appreciate the heritage of freedom; to have greater regard for the protection of individual rights; to appreciate and strengthen the principles of a stable legal order; and to inculcate an active desire for a peaceful existence as members of a civilised society.

This is the great mission to which we are called. If it is fulfilled, it will not only bring about a passionate love of freedom and induce respect for law, but also maintain and develop our democratic institutions and, in a wider context, influence international relations which, if the human society is to exist in freedom, should look forward to a world ruled by law.

•            •            •

Some of us are reaching an age when in a few years' time we may not be here to participate in your deliberations. It would not, therefore, be inappropriate for me to look back to trace how well and wisely the traditions of legal order have been built up in India. It is a most fascinating story highlighted by outstanding events. The great lawyers and judges—both Indian and foreign—during the last century, created the great traditions of our bar and the bench. Step by step we absorbed the technique and traditions of constitutional freedom and the Rule of Law. The people learnt to assert their rights through courts of law. During the 'Quit India' movement, when several of us throughout the country went from Province to Province defending civil liberties, judges—again both Indian and foreign—vindicated them. The Varadachari Committee, in drawing from the best in Anglo-Saxon judicial tradition which had found a root in the land, devised our system of integrated judiciary as the vital centre of our constitutional freedom. The fighters for Indian freedom enshrined a firm legal order in our Constitution. The first Chief Justice of Free India, Shri Justice Kania—and I remember it with pride—while inaugurating the Supreme Court, described in stirring words the independent role of the judiciary. Our Supreme Court in less than ten years has become the guardian of our constitutional ark and secured the respect and confidence of the country. The Law Commission, through its findings, has recently passed mature judgment on the deficiencies of our legal system and pointed out ways and means to correct them. And if I may be permitted to strike a personal note—my old friend, the Attorney-General, has given us the shining example of forensic fearlessness, even while occupying an office under the Government. All these form an accumulated heritage, of which we are all proud and of which the coming generations will reap the benefit in freedom and order.

Let me hope that the deliberations of this Conference will help to carry forward the significance of this great heritage.

---

### ADDRESS OF THE HON'BLE MR. A.K. SEN, MINISTER OF LAW\*

The Hon'ble Mr. A.K. Sen, Minister of Law and one of the Vice-Presidents of the Institute addressing the closing plenary session,

---

\*This is a summary of the address.