

INAUGURAL ADDRESS

by

THE HON'BLE SHRI JUSTICE S.R. DAS

CHIEF JUSTICE OF INDIA AND PRESIDENT OF THE INSTITUTE

The Indian Law Institute, which is now holding its annual session, was, on December 27, 1956, registered as a society under the Societies Registration Act, 1860. The Institute was established in order to meet a long felt demand for an institution, on an all India basis, which might pool together the experience, the wisdom and the resources of all persons engaged in the study, practice or administration of law and under whose auspices advanced legal studies, investigations and researches could be carried on. The objects of this Institute, as set forth in its Memorandum of Association are, amongst other things, to cultivate the science of law, to promote advanced studies and research in law and its administration, to advocate reforms in the administration of law and justice, to bring about a healthy development of law suitable to the economic, social and other needs of the people, to engage and conduct investigation in legal and allied fields, to promote the improvement of legal education and to publish treatises, books, periodicals, reports and other literature in legal and allied fields. From its very inception the Institute has been fortunate in securing substantial financial support from the Government of India and the Ford Foundation

A law Seminar was held under the auspices of the Stanford University Law School in the summer of 1957. The Indian participants at the Seminar were Sri C.B. Agarwala, formerly a Judge of the Allahabad High Court, Sri Justice P.B. Mukharji of the Calcutta High Court, Sri S.M. Sikri, Advocate-General of Punjab, Sri C.N. Joshi, Advocate of Bombay and Sri P.K. Tripathi, Lecturer in the Faculty of Law in the University of Delhi. Sri S.M. Sikri represented the Indian Law Institute at the Seminar.

The Institute was formally inaugurated on December 12, 1957 by our President, Dr. Rajendra Prasad in the presence of a distinguished gathering including our Vice-President, the Prime Minister, many of the Diplomatic Corps, the Speaker of the Lok Sabha, several Union Ministers, the judges of the Supreme Court and distinguished lawyers and law teachers from various parts of the country and many members of the Rajya Sabha and the Lok Sabha.

The necessity for such an Institute, on an all India basis, is obvious. Our legal problems, in the field of both substantive and

procedural laws are many and varied and since the commencement of our Constitution they have become still more acute and pressing. Our experience in those fields in different States constituting the Union has to be collated, classified and analysed with a view to bringing about a synthesis and with that end in view to adopt reforms on sound lines. There are different universities with law faculties teaching law according to their own curricula which often is not uniform. There are societies in different States engaged in legal research work. There is no authority to co-ordinate such activities. The purpose of the Indian Law Institute is to supply that lacuna and to function as a co-ordinating body and give a shape, direction and contact to all such research activities. This it proposes to do in different ways, namely, by holding seminars and study groups to focus attention on important topics of recently developing laws and by employing competent scholars to carry on researches into different branches of the law under the guidance of experienced professors and directors. In this behalf the Institute has had the advantage of the experienced and specialised directions and advice of Mr. Merillat whose services have been made available to the Institute by the munificence of the Ford Foundation. There can be no two opinions about the importance of the work that is being carried on under the aegis of the Indian Law Institute and under the general supervision of our Executive chairman, Dr. K.M. Munshi.

In inaugurating the Institute Dr. Rajendra Prasad recognised the usefulness and importance of the Law Institute in the following words :

“In a country where we have decided to have a welfare State, legislation on many subjects is an absolute necessity, and when we think of the various problems which confront us and of the ways in which many of these problems will have to be solved, when we think of the leading part which law still plays in many of them, the necessity of an Institute which devotes itself to the cultivation of law in a scientific spirit, to its study, to the comparative study of the various branches and aspects of law and also with a view to suggesting reforms not only in the body of the law but also in the procedure and in the administration of it, we can realize the importance of an Institute like this.”

After referring to the plethora of legislation the President further observed :

“Under these circumstances, it becomes necessary for a body like yours to keep pace with the law, to study its

implications and from time to time draw attention of the Legislature, draw attention of the judges and to draw attention also of the people, specially of the Government, to any shortcomings that there may be and any good points you may come across in them. It is only in this way that we can really keep on the right path."

Many eminent professors, jurists and judges sent their messages and felicitations on the inauguration of the Indian Law Institute.

Promptly after its formal inauguration, the Institute held a seminar on Administrative Law. Many Judges, practising lawyers and law teachers from different parts of the country participated in that Seminar. Several American professors also joined the Seminar and read instructive papers on different aspects of administrative law. Those papers have since been published in the journal of the Institute and will indicate the wide range of study in certain branches of the law that have so far been undertaken under the auspices of the Institute. Shri C. B. Agarwala, who has been assisting the Institute as its Honorary Secretary, will place before you a survey of the various activities of our Institute and I need not anticipate the same.

Along with its annual session, the Institute has also convened an All India Law Conference. The Conference will discuss different branches of law which, in modern times, have assumed much more than ordinary importance. For facility of study and discussion, the Conference, it is proposed, will work in seven Committees with particular subjects assigned to each Committee. Thus Administrative Procedure has been assigned to Committee No. 1, Judicial Review to Committee No. 2, Inter-State Barriers to Movement of Commodities and Persons to Committee No. 3, Fundamental Rights to Committee No. 4, Delegated Legislation to Committee No. 5, Legal Education to Committee No. 6 and Indian Bar Association to Committee No. 7. The names of the Chairmen of the different Committees are mentioned in the programme and the names of the other members of the Committees will be presently announced. In the Committee on research projects the discussion will be on the basis of working papers which have been prepared by the research staff of the Institute under the direction of Dr. A.T. Markose. A detailed questionnaire on "Legal Education" has also been prepared and issued and the answers thereto will be considered by the members of Committee No. 6 to which that topic has been assigned. Working paper has been prepared for the consideration of this Committee by Shri Rama Prasad Mookerjee, Dean of the Faculty of Law, Calcutta

University, who is the Chairman of this Committee. After a thorough discussion of the different subjects the respective Committees will arrive at certain conclusions which will be embodied in their respective reports. Those reports will be placed before a plenary session of the Conference and the conclusions will be finalised in the form of resolutions adopted and passed at that plenary session.

'Indian Bar Association,' as I have already stated, has been chosen as a subject for discussion by Committee No. 7. The Working Paper for this Committee has been prepared by Shri Purshottam Trikamdas, senior advocate of the Supreme Court of India. The demand for the formation of All India Bar is an old and persistent one. Indeed, as far back as February 1921 a resolution was moved before the Central Legislative Assembly recommending to the Governor-General-in-Council that Government do undertake legislation with a view to creating an independent Bar so as to remove all distinctions in force by statute or by practice between Barristers and Vakils. Then came the Indian Bar Committee of 1923 popularly known as the Chamier Committee. The recommendation of that Committee was partly implemented by the Indian Bar Councils Act, 1926. That measure, however, did not set up an autonomous all India Bar. It left the pleaders, *mukhtars* and revenue agents practising in the mofussil courts and revenue courts entirely out of consideration and did not bring about a unified Indian Bar. Further, the Bar Councils constituted under that Act were merely advisory bodies and were neither autonomous nor had they any substantial authority. This naturally did not satisfy the legal profession and demands were made from time to time to amend the Legal Practitioners Act and/or the Indian Bar Councils Act. Attempts were also made to introduce comprehensive Bills which, however, were eventually withdrawn or lapsed and fell through. The advent of independence, however, gave a new orientation to the claim for an autonomous unified Bar. In April 1951 the Government of India introduced in Parliament a Bill which was passed and became known as the Supreme Court Advocates (Practice in High Courts) Act, 1951 which has since been construed by a majority decision of a Bench of the Supreme Court of India as entitling an advocate of the Supreme Court not only to appear and plead in all courts in all States in India including the Original Sides of the High Courts of Calcutta and Bombay as advocates enrolled in those High Courts can do, but also to act on the Original Sides which advocates of those High Courts cannot do. This measure was obviously inadequate and, as a result of the pressure of public opinion, the Government of India, by a resolution dated December

15, 1951, set up a Committee, popularly known as All India Bar Committee, for the purpose of examining and reporting on, amongst others, the desirability and feasibility of a completely unified Bar of the whole of India and the desirability and feasibility of establishing a single Bar Council (a) for the whole of India, or (b) for each State. I had the privilege of serving on that Committee as its Chairman along with other distinguished members including the Attorney-General for India, Shri M.C. Setalvad who is now a Vice-President of this Institute. The circumstances in which that Committee came to be constituted are thus summarised in paragraph 56 of the report of that Committee :

“The demand for a unified all India Bar, at this inception, came, mainly, if not wholly as a protest against the monopoly of the British Barristers on the Original Sides of Calcutta and Bombay and the invidious distinctions between the Barristers and non-Barristers. That monopoly has now completely disappeared and those irksome distinctions creating discriminations against the members of the indigenous Indian Bar have all been done away with. Nevertheless, the advent of independence has given a new orientation to the claim for an autonomous unified all India Bar. It is no longer a protest for redressing grievances as before, but it is a claim for the fulfilment of a cherished ideal. The sense of unity fondly fostered amongst the members of the legal fraternity in India has received added stimulation by the political unity of India brought about by our newly won independence and the establishment of the Supreme Court of India. In this situation the Government of India took the view that in the changed circumstances a comprehensive Bill sponsored by the Government was necessary and to that end in August 1951 the then Minister of Law announced on the floor of the House that the Government of India were considering a proposal to set up a Committee of inquiry to go into the problem in detail. That pledge has since been implemented, by the appointment of the present Committee.”

By its report the Committee expressed the view that the establishment of a unified national Bar could no longer be put off and advised the Government to undertake legislation for the formation of an all India Bar subject to certain conditions regarding minimum qualification and setting up and maintenance of a common roll of

advocates for all India as therein elaborated. I also discussed in detail various questions ancillary to the main problem. In its Report, which has just been published, the Law Commission of India under the chairmanship of Shri M.C. Setalvad, the Attorney-General for India, has in Chapter 26 under the heading "The Bar" referred, with regret, to the non-implementation of the All India Bar Committee's recommendations which it has fully endorsed. Paragraph 9 of the Report of the Law Commission is in the following terms:

"9. That Committee was appointed in response to a persistent and wide-spread demand for an all India Bar. As far back as the 12th of April 1951, a comprehensive Bill was introduced in Parliament by a private member to implement the demand. As pointed out by the Committee, the demand for a unified all India Bar which arose initially as a protest against the monopoly of the British Barristers on the Original Sides of Calcutta and Bombay High Courts and the invidious distinctions between Barristers and non Barristers, received a new orientation with the advent of Independence and became "a claim for the fulfilment of a cherished ideal", *viz.*, an autonomous and unified all India Bar. The Committee went carefully into the whole question and made detailed recommendations for the unification of the Bar providing for a common roll of advocates who would be entitled to practise in all courts in the country. It is a matter for regret that these proposals which were made as far back as March 1953 and which, in the words of the Committee, sprang from "the sense of unity fondly fostered amongst the members of the legal fraternity in India **** brought about by our newly won independence and the establishment of the Supreme Court of India" should not yet have been given legislative effect."

It is hoped that the recommendations of the Law Commission will succeed in inducing the Government of India to take steps to implement them forthwith. The resolution that may be adopted by the concluding plenary session of this Conference will certainly buttress the efforts of the two earlier bodies. You will, therefore, readily agree that the subject of 'Indian Bar Association' has been quite appropriately assigned to Committee No. 7 of which Shri M.C. Setalvad is the Chairman.

With these few words, I have great pleasure in inaugurating the annual session of the Indian Law Institute. I have no doubt that the

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.