

AUTONOMY OF INSTITUTIONS DEEMED TO BE UNIVERSITIES



BANASTHALI VIDYAPITH

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AUTONOMY OF INSTITUTIONS DEEMED TO BE UNIVERSITIES

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IN DEFENCE OF AUTONOMY

The value of Variety in Higher Education: - The full genius of a country can develop only with freedom to create variety. Our university system has not had that freedom. Foreign Control could best be maintained by regimented uniformity. Something new and different might threaten control, and therefore was to be looked upon with suspicion. This regimented uniformity, which originated partly in bureaucratic unimaginativeness, and partly as an administrative convenience whereby a foreign ruler could maintain control with a small administrative staff, because it is all we have known in our universities, has become a habit of mind of Indian higher education. It is not inherent in the nature of good education.

"A live, progressive society must rely, not upon rules of uniformity but upon live, competent judgment of actual merit. To deny capacity for such judgment is to deny possession of the capacity and integrity necessary to encourage the full cultural and spiritual resources of the country. The University Grants Commission in deciding the degree of recognition and support to be given to any institution should be governed, not by the likeness of that institution to others of a standard type, but by its judgment of whether that institution is making a substantial contribution to the economic, intellectual, cultural and spiritual life of India. By such encouragement of quality with variety, the educational resources of India will be enriched." - Report of the University Education (Radhakrishnan) Commission.

+ : President, Banasthali Vidyapith, P.O. BANASTHALI VIDYAPITH-304022 (Raj).

* : Director, Banasthali Vidyapith, P.O. BANASTHALI VIDYAPITH-304022 (Raj.).

1. AUTONOMY - MEANING AND CONTENT

We cannot do better than quote from the Report of the University Education (Radhakrishnan) Commission 1948 (Report submitted in 1950) which had such intellectual giants as Dr. Radhakrishnan, Dr. Tara Chand, Dr. Zakir Hussain, Dr. A. Lakshmanaswami Mudaliar, Dr. Meghanad Saha, Dr. N. K. Sidhanta and experts from UK and U.S.A. as members.

While referring to principles of Justice, Liberty and Equality in the Preamble to the Constitution of India the Commission has deliberated upon the concept of University Autonomy under the head Liberty.

The Commission says: "University Autonomy - Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such States Institutions of higher learning controlled and managed by governmental agencies act like mercenaries, promote the political purposes of the State, make them acceptable to an increasing number of their populations and supply them with the weapons they need. We must resist in the interests of our own democracy, the trend towards the governmental domination of the educational process.

* * *

"The respect in which the Universities of Great Britain are held is due to the freedom from governmental interference which they enjoy constitutionally and actually. *Our Universities should be released from the control of politics.*" (emphasis added) (Para 29 Chapter II)

The Supreme Court of India has quoted the above observation of the Radhakrishnan Commission with approval in its landmark judgment delivered by the Constitution Bench in the T. M. A. Pai Foundation & Others V/s State of Karnataka & Others.

The Court said: "Para 52 - There cannot be a better exposition than what has been observed by these renowned educationists with regard to autonomy in education. The aforesaid passage clearly shows that the government domination of the educational process must be resisted. Another pithy observation of the Commission was that state aid was not to be confused with state control over academic policies and practices. The observations referred to hereinabove clearly contemplate educational Institutions soaring to great heights in pursuit of excellence and being *free from unnecessary government control* (emphasis added)".

While holding that “the right to establish and administer educational Institutions is guaranteed under the Constitution to all citizens under Article 19 (1) (g) & 26” the Court explained “The right to establish and administer broadly comprises of the following rights:

- (a) to admit students
- (b) to set up a reasonable fee structure
- (c) to constitute a governing body
- (d) to appoint staff (teaching & non-teaching) and
- (e) to take action if there is any dereliction of duty on the part of any employees”. (Para 50)

2. UNIVERSITY GRANTS COMMISSION: ITS ROLE AND FUNCTIONS AS ENVISAGED BY THE RADHAKRISHNAN COMMISSION

Radhakrishnan Commission considered establishment of a Commission for allocating both recurrent and capital grants to Universities from the Centre fundamental to its proposals for improving and developing Universities. It felt that the decision of how much money can be spent on the Universities is a political decision but once the decision is taken its allocation should be left to an expert body, rigidly protected from political and personal lobbying.

However, the Commission was emphatic that no duties besides allocation of grants should be prescribed for the Commission.

The Commission may be quoted at length;

“Duties of the Commission - We have considered the pros and cons of prescribing additional duties for the Commission besides the allocation of grants, and *we have decided against it* (emphasis added). But this is far from meaning that the appointed members will have nothing else to do. For one thing, they should visit Universities as often as they can, either separately or together with members of one or more of the subject panels. There may soon be thirty or more Universities in India, and with all their efforts the three appointed members will not be able to know them all intimately, yet their aim should be that a visit by one of them should not be regarded by the University concerned as a rare, still less as a formidable, event.

“Duties continued - But there is another function, which we think will inevitably accrue to the Commission, that of being always available for consultation and

advice. Their power of the purse is bound to make them a very influential body, and on top of that they will soon come to possess more knowledge about the Universities, individually and collectively, than anyone in India possesses today. *We have encountered in our tour a great deal of timidity as to policy and reforms both in Universities themselves and in governmental attitude towards them.* (emphasis added) Much of this is due to sheer lack of knowledge. Indian Universities except in one or two provinces are much more isolated than they are in U.S.A., or Great Britain; isolation causes inbreeding, and that in turn accentuates the isolation. To have informal access to advice from an authoritative central body would be great gain to them. University A is thinking of some change in statutes that has been adopted by Universities B. Can the Commission tell them privately whether it has been a success at B? University C is a unitary University that has become too big and wants to transform itself from a unitary to a federative type. Can the Commission advise them, in the light of what has been done elsewhere? University D is making a serious attempt at student self-government and wants to know where else such attempts have been made, and why some have succeeded and others failed. University E has to find a Vice-Chancellor and has no suitable men on its own staff. University F is in a still worse plight; having two men about equally suitable and each supported by a party, they have wisely decided to appoint neither. Can the Commission suggest a good man from another University who could come in and restore harmony? We could multiply examples, but let these suffice. The initiative, in seeking advice, should always come from the Universities. *If the Commission proffered advice unsought, it would spoil the relationship, we wish to see it established with the Universities, which is the relation of friendship and not that of the policeman or even the inspector.* (emphasis added) In the last resort, if a University persists in faction fight at the expense of its proper task, the commission will be bound to divert the public money with which it is entrusted into more profitable channels. That is inherent in the situation, and the mere knowledge that it is so should be a steadying influence". (Para 19 and 20 Chapter XIII)

3. GENESIS OF THE CONCEPT OF THE INSTITUTIONS DEEMED TO BE UNIVERSITIES.

Radhakrishnan Commission in its Report has devoted a Chapter to New Universities (Chapter XVII). A section in the Chapter deals with the National Impulse and New Universities.

It says, "The Nationalist Impulse in Education - During the earlier years of the nationalist movement a number of Institutions of higher education were established independent of the government and without its support, determined to work out their own destinies in the spirit of a free India. Though their difficulties and discouragements were great, and the mortality among them high, a few of them survived and have justified the heroic struggle they made. Chief among these survivors are the College of Engineering and Technology at Jadavpur, Calcutta; the Visva-Bharti at Santiniketan; Jamia Millia Islamia, near Delhi; and the Gurukula Kangri at Hardwar, U.P."

It goes on to say "Each of the Institutions we have described, beginning and working against great odds outside the University system, has made and is making a significant contribution to our national life but, at least up to the recent past, under extreme financial privation and hardship. Each of them, so far as it meets the fundamental requirements of our constitution for equal treatment and opportunity for all classes and communities, and so long as it maintains acceptable quality in its work, should receive grants of aid on a par with other recognized colleges and Universities, and should be given University status if that is desired. *Such support and recognition should be granted without infringement upon the freedom and initiative of the Institution.* (emphasis added)

The Radhakrishnan Commission while advocating University status for such Institutions was careful to underline the need to preserve their freedom. Indeed, it was in favour of giving freedom to all Institutions of higher learning.

It said "*The Value of Variety in Higher Education. - The full genius of a country can develop only with freedom to create variety. Our University system has not had that freedom. Foreign control could best be maintained by regimented uniformity. Something new and different might threaten control, and therefore was to be looked upon with suspicion. This regimented uniformity, which originated partly in bureaucratic unimaginativeness, and partly as an administrative convenience whereby a foreign ruler could maintain control with a small administrative staff, because it is all we have known in our Universities, has become a habit of mind of Indian higher education. It is not inherent in the nature of good education.*

"A live, progressive society must rely, not upon rules of uniformity but upon live, competent judgment of actual merit. To deny capacity for such judgment is to deny possession of the capacity and integrity necessary to encourage the

full cultural and spiritual resources of the country. The University Grants Commission in deciding the degree of recognition and support to be given to any Institution should be governed, not by the likeness of that Institution to others of a standard type, but by its judgment of whether that Institution is making a substantial contribution to the economic, intellectual, cultural and spiritual life of India. By such encouragement of quality with variety, the educational resources of India will be enriched."

The Commission also had received suggestions for uniformity and standardization as are being made now. It mentioned "Repeatedly, we have received suggestions that uniformity and standardization be increased, as though they were prime educational values" However, these suggestions did not find acceptance in the Report.

The Commission was of the view that though *wide variations should be allowed and encouraged in the structure, administration, and type of service* to be rendered by a University; quality should be insisted on. Institutions doing perfunctory or mediocre work should not be dignified by University status.

However the criteria for appraisal should not be arbitrary rules and regulations, but first hand appraisal of competence, spirit and achievement.

The Commission suggested that in order to give these Institutions University status the Government may consider adopting the method of creating Universities by charter. "*University Charters.* —In many countries of the world Universities are set up not through Acts of legislature of their parliaments, but through charters granted by the head of the state. This course may also be adopted in our country, at any rate, with regard to the new Universities, which are established by the conversion of existing Institutions. It may be thought necessary that such Institutions be given provisional University status before they are recognised permanently as Universities. Such charters may be granted by the head of the state on the recommendation of the University Grants Commission. The recommendation of that Commission should indicate the conditions and the time for which the provisional charter is granted. These charters may be made permanent if the Commission is satisfied about the staff, management, and quality of work done." (Para 12, Chapter XVII)

It may be relevant here to mention that the Commission was not in favour of granting University status to technical Institutions.

It said "A University is more than a technical school. It should be a place for providing a student with opportunity for all round well proportioned education for effective living and for citizenship, in addition to preparation for a calling. It may occur that a University shall develop special strength in some particular field, as in engineering or industrial development or in teacher training or in forestry or fisheries. In fact, since no Institution can be excellent in everything, it is desirable that areas of special strength be developed at least in all but perhaps the largest of our Universities. However, these areas of special strength should be in addition to facilities for all round higher education, and should not be a substitute for such facilities. *Unless an Institution aims at providing such all round training it should continue as a technical institute and should not aspire to be a University. (emphasis added)*

4. THE UNIVERSITY GRANTS COMMISSION ACT, 1956 AND ITS SECTION 3

In accordance with the recommendations of the University Education (Radhakrishnan) Commission a provision was included in the University Grants Commission Act, 1956 so that the Institutions, which had a unique and distinct character of their own could enjoy the privileges of a University without losing their distinctive character and autonomy.

Section 3 of the Act provides:

"The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any Institution for higher education, other than a University shall be deemed to be a University for the purposes of this act, and on such a declaration being made, all the provisions of this Act shall apply to such Institution as if it were a University within the meaning of clause (f) of Section 2."

Section 2 (f) reads:

"University means University established or incorporated by under Central Act, a provincial or a state Act and includes any such Institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this act."

As will be argued later much of the present day confusion could have been avoided if the formulation suggested by the Radhakrishna Commission had been followed instead of being modified in accordance with bureaucratic usage.

5. STATUTORY PROVISIONS REGARDING UGC'S RELATIONSHIP WITH INSTITUTIONS DEEMED TO BE UNIVERSITIES

It is very unfortunate that the term "Deemed University" has come into wide usage.

The University Grants Commission Act or for that no other Legislative enactment uses the term. Section 3 of the University Grants Commission Act only says that if the Government of India notifies that an *Institution of Higher Education* will be *deemed to be University*, it will be a *University* defined Under Section 2 (f) of the University Grants Commission Act.

Cross references of the Section 3 and Section 2(f) and plain reading of the two sections together will suffice to show the intention of the Legislature was that once the Government notifies that an Institution shall be deemed to be University the University Grants Commission will have over it same, no more and no less, regulatory authority than that it has over statutory Universities whether established by an Act of Parliament or on an Act of State Legislature.

This point becomes even more clear when one refers to Section 22 (1) of the UGC Act.

It reads: The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act, or a State Act or an institution deemed to be a University under Section 3 or an Institution specially empowered by an Act of Parliament to confer or grant degrees.

Only Universities established either by an Act of Parliament or an Act of State Legislature or Institutions notified as deemed to be Universities are given the right to confer degree. Institutions of National Importance like AIIMS, IITs are also given the right to confer degrees. Rashtra Bhasha Prachar Samiti is also given the right to confer degrees. But these are not mentioned in the Section 2 (f) because the Legislature did not have the intention to bring them under the purview of UGC.

For the simple reason that the intention of the Legislature was that the Institutions notified to be deemed to be Universities should also be under the purview of UGC like Statutory Universities, there is cross-reference in Section 3 and Section 2(f). Nothing more should be read into it.

Thus the UGC has the regulatory authority over the Institutions notified as Institutions deemed to be Universities because these are Universities. Its

regulatory authority over them is no more or no less than that over Statutory Universities.

The advice of the UGC is crucial to an Institution being notified by the Government of India to be deemed to be University. Its advice is also crucial in the matter of the MOA of the Institution. But once the advice has been tendered its role ceases. The MOA becomes a covenant between the Government of India and the Institution. The MOA cannot be changed without an agreement between the two. The UGC cannot tinker with it as it cannot with an Act of Legislature establishing a University.

The use of the term "Deemed" University has led to many undesirable consequences.

One, the University Grants Commission itself has got a wrong impression that it had more regulatory power over these Institutions, in some special way, because they were not Universities they were deemed Universities. If some of the "Deemed" Universities are fully funded by the UGC and are thus maintained by it the UGC may have some additional regulatory power over them in the same way it has over Central Universities fully funded and maintained by it.

Two, the use of term gives an impression to people at large that these Institutions are "Deemed" Universities and not Universities that is not full-fledged Universities. Sometimes people ask a foolish question when a "Deemed" University may become a "University". One knows of Institutions, which have "graduated" to "Universityhood" from "deemed University status" to their utter regret. The University Grants Commission too treats them sometimes as second-rate Universities.

Three, on the other hand forgetting that these are Institutions of Higher Education which are deemed to be Universities, UGC treats them like Statutory Universities. It was to preserve their uniqueness and their autonomy that they have been notified as Institutions deemed to be Universities and not converted into Universities established by an Act of Legislature or Parliament putting them at their mercy.

One fails to understand why this appellation is used every time a reference is made to these Institutions. There are different types of Statutory Universities, State or Central, Unitary, Federal and Affiliating etc. When a reference is made to a Statutory University nobody specifies the class.

All this has caused great confusion in public mind and what is of great concern in Government and UGC circles.

6. GROWTH OF INSTITUTIONS DEEMED TO BE UNIVERSITIES OVER LAST FORTY-SIX YEARS

The first batch of Institutions notified as deemed to be Universities included: Indian Council of Agricultural Research (1958), Jamia Millia Islamia (1962), Gurukul Kangri (1962), Gujarat Vidyapith (1963), Kashi Vidyapith (1963), Tata School of Social Science (1963), Birla Institute of Technology & Science (1964) and Indian School of Mines (1968). Thus in the first ten years only 8 Institutions were notified as Institutions deemed to be University Under Section 3.

There was a clear thinking in the matter. Jamia Milia, Gujarat Vidyapith and Kashi Vidyapith had been established as counter to be British Indian educational system consequent to Gandhiji's call for boycott of the alien system. Gurukul Kangri was also set up as an alternate to the alien system. BITS, Pilani was patterned on American system, as opposed to the British system, in collaboration with Massachusetts Institute of Technology, Cambridge, USA and with the support of Ford Foundation. It would not have been possible for these Institutions to continue their work had they become part of the traditional University system.

When these Institutions were accorded University status their constitutions were respected, their uniqueness and autonomy preserved and no attempt was made to impose rigid control on them.

In the decade of seventies that followed the UGC decided that notification under section 3 should be made only rarely and only in very special cases. And only three Institutions were granted the University status (1) Central Institute of English and Foreign Languages (1973), Gandhi Gram Rural Institute (1976) and School of Planning & Architecture (1979).

However, there was a slight shift in policy and in the decade of eighties and eighteen more Institutions were notified under Section 3. These were: Dayalbagh Educational Institute (1981), Sri Sathya Sai Institute of Higher Learning (1981), Banasthali Vidyapith (1983), Indian Veterinary Research Institute (1983), Thapar Institute of Engineering and Technology (1985), International Institute of Population Studies (1985), Indian Institute of Science (1985), Birla Institute of Technology, Mesra, Ranchi (1986), Lal Bahadur Shastri Rastriya Sanaskrit Vidyapith (1987), Tilak Maharashtra Vidyapith

(1987), Rajasthan Vidyapith, (1987), Rastriya Sanskrit Vidyapith (1987), Avinashilingam Inst. for Home Science & Higher Edu. for Women (1988), National Dairy Research Institute (1989), Central Institute of Higher Tibetan Studies (1989), Jamia Hamdard (1989), Central Institute of Fisheries Education (1989), National Museum Institute of History of Art, Conservation and Musicology (1989).

Still there was a definite thinking about what type of Institutions deserved to be notified under Section 3 as is evident even from a cursory glance through the names of above Institutions.

Till that time, there was not much interference with the autonomy of the Institutes nor there was any attempt to impose drab uniformity on them, which would destroy the whole idea of preserving uniqueness of such Institutions.

Between 1956 to 1990, that is in the period of thirty-five years only twenty-nine Institutions were notified under section 3.

It seems that thereafter floodgates have opened and now there are 90 deemed to be Universities. In last fifteen years number of Institutions given the deemed University status (61) is double the number [Jamia Millia Islamia and Kashi Vidyapith later become Statutory Universities] that was given the status in the preceding 31 years.

In last 5 years (In fact 3 years only), 34 institutions (excluding 17 RECs) have been notified as Institutions Deemed to be Universities.

In this rush for issuance of notifications focus seems to have got blurred. It has also led to grave concern about the idea itself.

7. HOW IT ALL CAME ABOUT

One can only surmise as to how it all came about. One could get an inkling of what could have been the Government thinking in this regard during the discussion among a group of deemed Universities where a high ranking former Government Officials who had access to policy makers was also present.

Perhaps the Government thought that there was no clear cut statutory provision that defined as to what kind of Institution deserved the University status. Section 3 of the University Grant Commission Act merely said that the Central Government had the authority to declare any Institution of higher

education as a deemed to be University. All it needed was a recommendation by the UGC (Presto its done!).

How innocent! Who cares to go through the Report of the University Education (Radhakrishnan) Commission on which the above provision was based or the Parliament proceedings relating to debate on the UGC Bill!

The Government had failed to get the Private Universities Bill through the Parliament and what could be easier way to circumvent the Parliament than by using Section 3 of the UGC Act putting Government interpretation to it.

The Regional Engineering Colleges were joint ventures of the Central Government and the State Governments. Mashelkar Committee had recommended their conversion into National Institutes of Technology. That could be done by an Act of Parliament. There could also be other ways but the Central Government wanted to have a complete control over them. The simplest way to achieve the twin objectives was to use the Section 3 of the UGC Act.

This is how that during last ten years compared to only a very few academically and otherwise really deserving institutions a large number of politically and ideologically backed Institutions and, what was much worse, non-viable or wheeler dealer Institutions got notified as Institutions deemed to be universities.

One can only lament the way a sound academic and visionary concept has fallen prey to mundane and narrow causes.

8. ASSAULT ON THE AUTONOMY OF THE DEEMED UNIVERSITIES

As has been explained in detail earlier, the autonomy of Deemed Universities had actually got threatened when the concept of having Institutions of Higher Education with distinctive character of their own notified as Universities got perverted.

However, first direct salvo aimed at virtual takeover of Institutions notified as Institutions deemed to be Universities was fired when a D.O. letter was sent purportedly to all Deemed Universities by Deputy Secretary, University Grants Commission on 12th April, 2000. However, many Deemed Universities did not seem to have received it.

The Ministry of Human Resource Development had convened a Conference of the Deemed Universities for sharing of experiences of Deemed Universities in the field of quality control and innovations in Higher Education. The

Conference met on 9th November, 2000 at Jamia Hamdard, New Delhi. Shri Champk Chatterji, Joint Secretary, MHRD, was in Chair.

During the meeting, when the host the Vice Chancellor of Jamia Hamdard, referred to the above stated letter many of the delegates were taken aback because they had not received such a letter. However, the minutes of the conference recorded that "the standardization of MOA of deemed Universities could lead to practicable difficulties which would need to be discussed in depth."

The so-called "Guidelines" were virtually a clandestine way to takeover Deemed University and, it seems, had been framed and issued in a surreptitious manner (as is explained hereinafter).

Immediately on coming to know of the letter and the "Guidelines" the Vidyapith wrote to UGC requesting that the matter be reconsidered by the Commission in consultation with the Deemed Universities. A copy of this request was sent to the Education Secretary to the Government of India who was constrained to write to the Chairman, UGC:

"I enclose a copy of a letter received from Shri Diwakar Shastri of Banasthali Vidyapith which is self-explanatory.

As I have been saying on a number of occasions, Deemed Universities are supposed to be innovative institutions and, therefore, it will be wrong on our part to try to bring them under any straight-jacket. I would, therefore, request that their MOAs / Rules to be in line with the UGC's guidelines need to be reconsidered. We should refrain from imposing any pattern on the existing Deemed Universities.

I shall be grateful if this matter is also brought up before the Commission in its next meeting with the other proposals for loosening the Deemed University framework, which we have been sending from time to time."

Thereafter, it was learnt that a Committee under the Chairmanship of Prof. K. Venkatasubramanian, Member (Education) Planning Commission, was appointed to look into the matter and make recommendations to the Government. Not many knew about the appointment of the Committee and it is not known what recommendations were made by it and whether the Government had taken any action.

It has been said above that the so-called "Guidelines", it seems, were framed and issued surreptitiously. It is so said because the forwarding D.O. letter

says that "the matter has been examined in the U.G.C. Secretariat and it has been decided." Secretariat has no power to frame regulations. UGC Act prescribes a procedure for the same, which had not been followed as is evident from the Education Secretary's letter to the UGC Chairman. Perhaps, the Government was hiding its real motives even from its executive arm.

Perusal of the above referred so called guidelines will show that they aim to take away from Deemed Universities each of the elements enumerated by the Supreme Court as constituting the Fundamental Right to establish and administer an educational Institution.

For ease of reference, we repeat here the quotes from the landmark judgment delivered by the Constitution Bench in the T. M. A. Pai Foundation & Others V/s State of Karnataka & Others:

"The right to establish and administer educational Institutions is guaranteed under the Constitution to all citizens under Article 19 (1) (g) & 26, and to minorities specifically under Article 30."

The Court explained "The right to establish and administer" broadly comprises of the following rights:

- (a) to admit students
- (b) to set up a reasonable fee structure
- (c) to constitute a governing body
- (d) to appoint staff (teaching & non-teaching) and
- (e) to take action if there is any dereliction of duty on the part of any employees". (Para 50)

Perusal of the above referred so called guidelines will show that they aim to take away from Deemed Universities each of the elements enumerated by the Supreme Court as constituting the Fundamental Right to establish and administer an educational Institution. Through it UGC sought unilaterally to amend MOAs of the Deemed Universities, which it had no right in law to do.

When this generalized attack on the autonomy of the Deemed Universities failed UGC issued a slew of Regulations impinging upon different academic functions of a University, *including the above-mentioned five functions which the Supreme court has held as a fundamental right of every citizen.*

8.1 Model Curriculum : On 9 April, 2002, UGC vide its D.O. letter No. F.4-1/97(desk Panel) sent the so-called “model” curriculum in 32 subjects and wanted all universities to “update” their Curriculum accordingly by July, 2002!

Every university has a definite procedure to revise curriculum and the procedure to update curriculum for the academic session 2002-03 was already carried out by most universities much before April, 2002.

Furthermore, these curriculum, termed “only suggestive as the term model implies” by a senior Ministry official, were essentially required to be adopted in toto. We reproduce here the last two paragraph from the ‘FOREWORD’ enclosed along-with above-referred letter from the UGC, Chairman:

“May I request Hon’ble Vice-chancellor and the Hon’ble Registrar including the esteemed Deans, Heads of Departments, Members of the Faculty, Board of Studies, and Academic Council of the Universities to kindly update their curriculum in each of the 32 subjects in consultation with the model Curriculum provided here. This has to be done and must be done soon. May I request the Academic administration of the universities to kindly process it immediately so that an updated Curriculum is adopted by the university latest by July, 2002.

The University Grants Commission requests the Hon’ble Registrars to confirm that this time bound exercise has been done and send a copy of the university’s updated Curriculum in each subject by 31 July, 2002. It is a must. It has to be done timely, failing which, the UGC may be forced to take an appropriate unpleasant action against the concerned university.”

It may be noted that this Foreword was dated December, 2001. It took UGC almost 4 months to send it to universities whereas the universities were expected to change the entire curriculum within 2 months (forget Boards of Studies, Faculties, Academic Councils, Syndicates, Senates etc.)

Since then the UGC has sent several reminders to universities asking for “Compliance report” to Model Curriculum based revisions.

If a university does not even have autonomy to design its own curriculum, one does not know what is the purpose of its existence!

8.2 UGC Interim Regulations , 2003 regarding Admissions to Specified Professional Programmes : In November, 2003 UGC wrote to universities

that it is finalizing Interim Policy Regulations for the session 2004-05 regarding admissions to professional courses and, therefore, requesting all universities not to conduct admission tests or issue admission notices etc.

8.2.1 Untimely Pronouncement: Most universities by then had already finalized their admission policies, printed their prospectus, and some have even announced the dates and venue for their entrance test.

Subsequently, UGC (Admissions to Specified Professional Programmes) Interim Regulations 2003, were sent to universities on 24 December, 2003 vide D.O. letter No. F.1-6/2003(CPP-II). The UGC requested every university to adhere to these regulations in letter and spirit.

These regulations directed all universities to admit students to specified professional programmes through a chosen entrance examination. Having already decided its admission policy much before this (in some cases the policy which has served the university well for more than 15-20 years), and having remained in total confusion for more than a month and a half due to non-receipt of these Interim Regulations, the universities suddenly found that in the first week of January, 2004 the UGC is wanting them to change their admission policy altogether. For MBA, universities were expected to admit students based on the scores of one of the five Entrance Examinations, whereas some of the exams was already held and for some other the last date to participate in the exams had already gone.

8.2.2 Legal Legitimacy of the Interim Regulations: These regulations appeared contrary to the UGC Act to even a layman.

No wonder universities turned to the court of law and the opinion offered by some legal luminaries was that *these regulations are ultra-virus*.

Here are some excerpts from the legal opinion of Mr. K. Parasaran, Former Attorney General of India, Mr. Harish Salve, Senior Advocate-Supreme Court and Justice N.M. Kasliwal (Retired Judge Supreme Court), on the matter.

- *“On a proper interpretation of the AICTE Act and the UGC Act it does not flow that those statutory bodies can take on themselves the entire process of holding the examinations for admission in universities/deemed universities.”*
- *“The principle underlying the holding of a common admission test to judge merit is confined to institutions other than Universities/deemed*

universities; the Universities are entitled to hold the examinations themselves. Nor is it permissible to the State, or other Authorities, to conduct counseling and assigning candidates to different University departments, faculties and institute suo moto."

- *"No candidate can be assigned to a department/faculty by any agency without the consent of the department/faculty of that University for admission to colleges affiliated to that University."*

- K. Parasaran

- *"De hors the directions of the Supreme Court, it does not appear from the provisions of the statute that UGC has the power to regulate admissions to a "university" under the UGC Act. It bears emphasis that a Deemed University is for the purposes of the UGC Act on par with any other University, and has the power to impart degrees to those who qualify its examinations. Thus, ex hypothesi a Deemed University has to be an institution that commands the confidence of the UGC that it has the integrity and capability to give post-graduate degrees – surely it would be an institution, which can be trusted to conduct entrance examinations. Secondly, if a Deemed University is on par with any other university, then it must follow that it has the autonomy to conduct its own admissions without any hands on interference by the UGC. In fact this position has also been accepted by the Ministry of Human Resources and Development in its notification dated 18th March 1997."*

- *"Under its Memorandum of Association the Querist has been empowered to conduct its own exams. There has not been, to date, any attempt to seek to modify or curtail this Memorandum. This is an additional reason in support of the conclusion that the UGC cannot seek to assert the right to make admissions."*

- *"In the circumstances, I do not find any statutory authority that would sanctify the current UGC Regulations. The Regulations refer to Section 26(1)(g) of the UGC Act. This Section reads thus"*

S.26(1)..... "(g) regulating the maintenance of standards and the coordination of work or facilities in the Universities."

A bare perusal of this provisions shows that it would not authorise

the framing of regulations that curtail the autonomy of the institutions such as the Querist in the matter of admission of students.

- *“In the instant case, if the UGC was to prescribe the standards that should govern the conduct of the entrance test in terms of the minimum marks that a student should secure in such entrance test in order to qualify for admission to any such institution, it would possibly fall within the powers of the UGC under Section 26 as extracted above. However, it cannot take on unto itself or appoint an agency to conduct on its behalf the entrance examination in lieu of the examinations to be conducted by the universities in question.”*

- Harish Salve

- *“The University or Deemed University is an autonomous body and is entitled to perform its own functions according to its own rules regulations and by-laws. It has full freedom in discharge of its academic as well as administrative functions, which may not violate any provisions of the Constitution. In the present case, in my humble opinion the UGC clearly went wrong and acted beyond its jurisdiction in interpreting and relying upon the decisions of the Supreme Court in TMA Pai Foundation & others and Islamic Academy of Education for including the Deemed University like BVP. As already mentioned above, BVP is a Deemed University which is functioning as a Residential University and catering the need and care of education for women only. It has achieved high standards of academic excellence and the Government of India has recognised its efficiency and has granted Accreditation certificate in March 2003 itself. The Hon'ble Supreme Court in TMA Pai's case has laid stress on following the test of merit in admission of students. BVP in its procedure for admission to MBA and MCA courses, as mentioned above, has fully taken care of the principle of merit. The UGC as well as the Government of India have taken a wrong view that Their Lordships in TMA Pai's case were in any way concerned with the rule of admission by a Residential University like BVP. Thus, the action of UGC in including the Deemed University like BVP in framing interim regulations on December 17, 2003 and restraining BVP not to have its own system of admission is clearly an infringement of the autonomy of BVP.The policy for applying Common Entrance test and*

denying the BVP to hold its own Entrance test of admission is bound to create serious complications apart from infringement of its autonomy."

- Justice N.M. Kasliwal (Retd. Judge Supreme Court)

Consequently, many universities approached the High Courts in their respective States and obtained Interim injunctions.

8.2.3 Academic Soundness of Interim Regulations: Leaving aside the legal angle, one of the major concerns of the educationists has been, for quite some time, to find a common yardstick to measure merit so that it does not happen that really meritorious persons are denied the opportunity for higher education while the undeserving get into it. *The National Policy on Education had recommended in 1986 institution of National Testing Service on the line of Educational Testing Service in USA.* It was to become operative before the end of the 1987, but nothing has been done for last 18 years.

When the previous Government had come out with the concept of Common Entrance Tests for professional courses, it was not the same as the concept of National Testing Service. We need to work so that it can prove a step towards initiation of the same. Furthermore, as pointed out earlier the scheme of the Common Entrance Tests was being implemented without much time on hand, perhaps therefore, it had not been possible to fine tune it.

Even if the scheme of Common Entrance Tests was thought necessary keeping in mind certain institutions, some of the Deemed universities faced quite serious problems joining the same. *Perhaps it was in order to safeguard against this type of contingency that the Government itself wisely provided the provision of granting exemption to some Universities. Unfortunately, the Government chose not to exercise this option.*

Perhaps it would have served one and all had the Government decided some well defined criteria for granting exemption from Common Entrance Test such as the following :

1. The institution has been in existence for a long time and has an unblemished record of work in the field of education during its existence.
2. It has been established by educationists or social philosophers/reformists with a definite mission and clear cut objectives and is being managed and run by the people who are directly involved in the work of education.

3. It has been enjoying the status of a Deemed University for at least 20 years and has taken full advantage of the status and used it for advancement of its mission and earned recognition as a University comparable to any other University in the country as may be evidenced by accreditation by NAAC with a superior grade, or being considered for identification as a University with a potential for excellence.
4. It has raised substantial resources from the public at large and is not dependent to any significant extent on the Government for its recurring expenditure.
5. It fulfills some of the following criteria :
 - (i) The programmes of the institution are Indo-centric even in case of professional courses.
 - (ii) The institution is working solely for weaker sections of Society say Women, Scheduled Castes, Scheduled Tribes etc.
 - (iii) It is a residential institution and has a campus which has a special ethos of its own which need to be preserved.
 - (iv) It is situated in a rural or backward area and majority of its students hail from either rural areas or semi-urban areas making higher education available to that section of the population which will otherwise be deprived of the opportunity.
 - (v) It charges reasonable and moderate fees which are much lower than those which are being charged by other institutions while at the same time has infrastructure comparable to the best in the country.

To lay down such a rigid admission policy certainly violates the right to admit students guaranteed under Articles 19(1)(g) & 26 of the constitution and in the opinion of leading experts seems legally unjust. Based on the above, it also appears to be academically unsound.

8.3 Model Act for Universities of the 21st Century in India : There is no doubt that Indian University systems needs to stand up to the challenges of 21st century. It is unclear why amendments to the MOA of various universities is required for this purpose.

Dangers behind such an attempt are the same as has been discussed in the context of the so-called “guidelines” for deemed universities, though at a much broader level.

Only thing such an effort could have succeeded in imposing drab uniformity on universities which is neither needed nor intended as is clearly spelt in the report of the University Education Commission. One can not help but go back to the following statement of Mr. Arun Jaitley :

“The idea that all (deemed) universities should have identical systems and procedures essentially amounts to contemplating that apples and oranges must taste and smell and look the same just because both belong to the category ‘fruit’.”

MOA of various universities were finalized in consultation with the UGC and keeping the special characteristics of the institution concerned in mind. These Memorandums of Association have served their respective universities well and the regulating bodies should refrain from needless effort to temper with them.

8.4 Guidelines for Establishing New Departments within the Campus, Setting-up off-campus Centres/Institution(s)/Off-shore Campuses and starting Distance Education programmes by the Deemed Universities: In March, 2004 Deemed Universities were issued yet another guidelines this time requiring UGC permission not only to start off-shore centres, off-campus centres but also to start a new department or to even start a new course!

When the whole country is under going a phase of liberalization it seems education sector is undergoing anti-liberalization.

One can only term such a pronouncement as “License-Raj at its best”. This is a time when access to higher education is one of the prime concerns, raised by Hon’ble President of India, Dr. A.P.J Abdul Kalam at numerous occasions, and globalization of higher education is at its peak, such a policy would needlessly stifle Indian education from expanding in a global scenario.

This is a time when predictions are made about the potential of India from “Export of Higher Education” and requiring permit for every activity would only create uneven playing field for our institutions vis-à-vis major International players.

This is a time when numerous experimentation are being carried out the world over and new degrees/programmes and emerging virtually everyday requiring UGC approval for every new course that a deemed university would amount to asking them to stop all innovations.

Like designing its own curriculum, designing a new course should be a fundamental right of every university and Indian Education needs all the help it can get to expand internationally at a rapid pace.

8.5 UGC (Minimum Standards of Instruction for the Grant of the First/Master's Degree through Formal Education) Regulations 2003: Yet another regulation which mostly hinders the smooth functioning of universities and works against innovation in higher education. If one must offer only degrees as specified by UGC one will never be able to respond to ever changing demands of the market. One must be able to experiment, like in UK/USA to offer new degrees which are conceived virtually everyday. Furthermore, it is a common practice to offer credit for work experience for MBA degree in UK and USA. Thus a student can complete the MBA in only one year or slightly more. There appears to be no need to insist on two-year's full-time study for MBA.

One must emphasize again and again that "Deemed" Universities are Universities and they cannot be treated differently from other Universities. If certain Regulations are to be framed they should be applicable to all Central Universities, State Universities and Deemed Universities. Signaling out Deemed Universities by making invidious distinction is unjust. If some of the Deemed Universities are guilty of errant behaviour so are some of the Statutory Universities.

9. WHAT CAN BE DONE

It is very difficult to suggest a simple solution to a complex problem.

To begin with all the "Deemed" Universities should be assessed and accredited by NAAC within a definite time frame, say a year and if any fail to pass the muster the fact should be given wide publicity. This will have sobering effect on the working of these institutions. While assessing their work special attention should be paid to the so-called extension centers of many Institutions, which are really only franchisee.

However, while assessing the work of these Institutions advice of the University Education Commission should be kept in mind that they are not judged by the same yardstick with which other Universities are judged. They should be judged from the angle of the achievement of the objectives for which they were granted this special status. A system specific to need of Deemed Universities should be evolved by NAAC which should be based more on

qualitative rather than quantitative parameters as suggested by the University Education Commission.

9.1 Broader Perspective: At a broader level several steps may be taken to limit the dimensions of the problem:

- (1) Separate dispensation should be worked out for National Institutes of Technology so that they can function and be administered on the lines of IITs. This will take out 17 Institutions from the list of "Deemed" Universities.
- (2) Other purely technical Institutions, which have been granted this status recently, say within last five or ten years, should be encouraged, persuaded and helped to become Private Universities now that the provision for the same exists. This will be in tune with the University Education commission's thinking. This should not be difficult because many aspirants for Deemed Universities Status have already opted for the Private Universities route e.g. Dhirubhai Ambani Institute for Information and Communication Technology, Amity, ICFAI etc.
- (3) Non-viable Institutions, which have tried and have been able to get notified as Institutions deemed to be University simply to escape control of State Governments may be encouraged persuaded and helped to become autonomous Institutions associated with the Central Universities with a guarantee from the Central Government that their autonomy regarding *courses currently conducted by them from their own campuses* will be honoured.
- (4) Those Institutions which have been functioning successfully for more than 15 years, have won acclaim for their work and have been assessed and accredited by NAAC with a high grade should be allowed to work without let or hindrance as they had been functioning till now. If they have been functioning well for say 20 years, 25 years or 30 years there is no reason why they should not be allowed to work without any interference.
- (5) Those newer Institutions which are found to fit the bill for a deemed Universities and are appraised and accredited with a good grade may be treated in the same way as older Institutions.
- (6) Cases of those Institutions old or new, which do not pass the muster should be examined case by case and corrective measures taken by mutual consultation.

- (7) The Deemed Universities should be asked to form an Association and to evolve a Code of Conduct in consultation with the UGC and the Central Government which should include all the aspects of critical concern. All the Institutions should agree to honour the Code voluntarily.
- (8) A Committee consisting of Education Secretary, Chairman UGC, four eminent educationists and five representatives of Deemed Universities should be formed to examine the suggestions that the Ministry may be receiving or may itself make or UGC may make in this regard.
- (9) In future specific criteria, not mechanical parameters, should be spelt out for an Institution to be notified as an Institution deemed to be University.

9.2 Immediate Need: However, to immediately restore the autonomy of the universities, in general, and institutions deemed to be universities, in particular, which has been under serious assault over the last few years, the following three immediate steps are necessary :

- (1) The government and regulating bodies should refrain from prescribing uniform 'guidelines' for (deemed) universities and should not indulge in exercises such as evolving Model Act for all universities. The MOA of all universities have served them well and as such the same should be to respected. There should not be any attempt to impose drab uniformity on all universities in a vast and diverse country such as ours.
- (2) The government should insist on UGC to withdraw the slew of Regulations issued over the last couple of years and should encourage universities to design their own curriculum, admit students as per their own well-defined and transparent procedure, decide a reasonable fee structure and constitute governing body as per provisions of MOA.
- (3) The Government and Regulating body should encourage the expansion of higher education within the country keeping in view the issues of access and equity (the participation in higher education is still highly inadequate) and they should not come in the way of institutions wanting to export higher education abroad.