

REPORT NO.

217



PARLIAMENT OF INDIA
RAJYA SABHA

COMMITTEE ON SUBORDINATE LEGISLATION

TWO HUNDRED AND SEVENTEENTH REPORT

Taking over of Distance Education Council (DEC) of IGNOU by the University Grants Commission (UGC) through an administrative order in violation of IGNOU Act, 1985 and the Statutes framed thereunder

(Presented to the Rajya Sabha on 18 December, 2014)



Rajya Sabha Secretariat, New Delhi
December, 2014/Agrahayana, 1936 (Saka)

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**COMPOSITION OF THE COMMITTEE
(CONSTITUTED ON THE 15th SEPTEMBER, 2014)**

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|-----|-----------------------------|-----------------|
| 1. | Dr. T. Subbarami Reddy | <i>Chairman</i> |
| 2. | Shri M.P. Achuthan | |
| 3. | Shri Ali Anwar Ansari | |
| 4. | Shri Shadi Lal Batra | |
| 5. | Prof. Jogen Chowdhury | |
| 6. | Shri Kalpataru Das | |
| 7. | Prof. M.V. Rajeev Gowda | |
| 8. | Shri S. Muthukaruppan | |
| 9. | Shri K. Parasaran | |
| 10. | Dr. K.P. Ramalingam | |
| 11. | Dr. K. Keshava Rao | |
| 12. | Shri Arvind Kumar Singh | |
| 13. | Shri Shankarbhai N. Vegad | |
| 14. | Shri Bhupender Yadav | |
| 15. | Shri Palvai Govardhan Reddy | |

SECRETARIAT

- | | |
|----|--|
| 1. | Shri N. K. Singh, <i>Joint Secretary</i> |
| 2. | Shri Mahesh Tiwari, <i>Director</i> |
| 3. | Shri Ravindra Singh Rawat, <i>Joint Director</i> |
| 4. | Shri Rakesh Anand, <i>Joint Director</i> |
| 5. | Shri R.P. Shukla, <i>Deputy Director</i> |
| 6. | Smt. Monica Baa, <i>Assistant Director</i> |

INTRODUCTION

1. I, the Chairperson of the Committee on Subordinate Legislation, having been authorized by the Committee, do hereby present on its behalf, this Two Hundred and Seventeenth Report of the Committee.
2. The Committee examined the matters that came up while scrutinizing the issue of taking over of Distance Education Council (DEC) of IGNOU by the University Grants Commission (UGC) through an administrative order in violation of IGNOU Act, 1985 and the Statutes framed thereunder and issues relating to them along with the comments received from the Government.
3. The observations and recommendations of the Committee are contained in the Report.
4. The Committee considered and adopted the draft Report in its meeting held on the 17th December, 2014

DR. T. SUBBARAMI REDDY
Chairman
Committee on Subordinate Legislation,
Rajya Sabha

NEW DELHI
December 18, 2014

REPORT

Report on the taking over of Distance Education Council (DEC) of IGNOU by the University Grants Commission (UGC) through an administrative order in violation of IGNOU Act, 1985 and the Statutes framed thereunder

The Distance Education Council (DEC), which had been created and was functioning under Indira Gandhi National Open University (IGNOU), Act 1985 was abolished and its mandate was given to the University Grants Commission (UGC) and All India Council of Technical Education (AICTE) through an administrative order of the Ministry of Human Resource Development (MHRD) dated 29 December 2012 (**Annexure-I**). This was done without making the necessary amendments in the IGNOU Act, 1985 which mandates IGNOU *inter alia* to regulate distance education in the country. DEC, which regulated distance education in the country, had come into existence as an authority of IGNOU under Statute 28 framed in exercise of powers conferred by Section 16 of the IGNOU Act, 1985. Now, transferring the mandate given to IGNOU (read DEC) to the UGC & AICTE raises the following questions:

- (i) whether an administrative order can undo something that was created under a law passed by Parliament;
- (ii) whether this can be done without amending the IGNOU Act;
- (iii) whether UGC and AICTE Acts provided for regulating the Open & Distance Learning (ODL) mode of education;
- (iv) whether the Ministry was legally right in taking such a decision; and
- (v) whether Ministry of Law was consulted before taking such a recourse?

2. In order to examine and understand these issues, the Committee requested the Ministry of Human Resource Development (Department of Higher Education) to furnish its written comments *vide* a D.O. letter dated 5 June 2013. The Ministry furnished their comments and clarifications on 25 June 2013 (**Annexure-II**).

3. The Ministry's arguments for abolishing DEC and transferring its mandate - of regulating ODL system, to UGC & AICTE was basically based on objections being raised by other Universities in this system. Their argument was how can one university (IGNOU) control or regulate the working of other universities in this system? The Ministry informed that upto 2007, DEC used to give recognition to institutions offering general courses in the distance mode but during that year, DEC started giving recognition for technical programs also under the distance mode. This was against the policy of the AICTE, which is responsible for maintaining standards in technical education, to conduct technical programs through regular (conventional) mode only. This created confusion as to who will regulate the technical education in the ODL mode. The Committee was informed that Delhi University had challenged the authority of the DEC to regulate their ODL programmes in the Delhi High Court. The main issue before the Court was whether an authority of one university could regulate the other universities. Unscrupulous institutions conducting ODL programmes started exploiting this confusion to their commercial advantage, it was argued.

4. The Ministry further informed that in view of this, a 'Madhava Menon Committee' was constituted to suggest measures to regulate the standards of education being imparted through distance mode. It recommended to create a separate regulatory authority - the Distance Education Council of India (DECI) for regulating distance education by a separate Act of Parliament. The Ministry, however, did not accept the recommendation of bringing a separate Act for this purpose on the plea that the 'Higher Education and Research Bill' was then pending in Parliament which sought to subsume all such existing regulators into one authority. Therefore, the Ministry took a decision to let the existing regulators, viz. the UGC and AICTE to perform the regulatory responsibilities for Open and Distance Learning (ODL) mode as well.

5. The Ministry further argued that DEC, created through Statute 28, was dissolved with the approval of the Visitor i.e. the President of India after following due procedure laid down in Section 25 of the IGNOU Act, 1985 as enumerated below:

- (i) Minutes of the meeting regarding approval of the Madhava Menon Committee and taking over of DEC by UGC was forwarded to Chairmen AICTE, UGC and DEC for taking necessary action *vide* the Ministry's letter dated 30.04.2012.
- (ii) DEC accordingly discussed the issue regarding repealing Statute 28 of IGNOU on 08.06.2012 and recommended to the Board of Management (BOM), IGNOU to repeal Statute 28 framed under 16 of the IGNOU Act, 1985.
- (iii) Board of Management (BOM), IGNOU considered the matter on 28.07.2012, accepted the recommendation of DEC and decided to request the Visitor, i.e. the President of India to repeal Statute 28.
- (iv) On receiving the approval of the Visitor to repeal Statute 28 of IGNOU, as required under the IGNOU Act, Notification dated 01.05.2013 was issued regarding repeal of Statute 28 of IGNOU Act.

6. After considering the above facts and the issues involved, the Committee heard the representatives of the Ministry of Human Resource Development (Department of Higher Education), Vice-Chancellor, IGNOU and Chairman, UGC for further clarifications in the matter on 30 July 2013. The Ministry was asked to clarify whether the mandate of regulating ODL mode of education can be taken away from IGNOU simply by abolishing the DEC without amending the relevant provisions of the IGNOU Act, 1985 for this purpose. The Committee also asked about the specific Sections of an Act/Rule/Statute, etc. under which the said mandate was shifted to UGC and AICTE. The Committee also wanted to know about the urgency with which DEC was shifted to UGC without waiting till proper legislation in the matter was passed by Parliament.

7. The Ministry could not give a convincing and legally tenable replies to the queries raised by the Committee. It could not deny the fact that mandate to regulate standards of

education through distance mode still remained with the IGNOU Act and that it did not cease to exist merely on the repeal of Statute 28 abolishing DEC. On the question as to which Section of UGC Act empowers UGC to regulate distance education, Chairman, UGC informed the Committee that Section 12 of the UGC Act empowers UGC to regulate distance education which says, “*It shall be the duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities..*” . He further stated that the Ministry had issued a Direction to UGC to take over DEC under Section 20(1) of UGC Act which said that the Central Government has the power to give Direction to the UGC, which is binding.

8. As regards the urgency the Ministry stated that the Madhava Menon Committee was aware that passing of the Distance Education Council of India Bill as suggested by it, might take some time. It also felt that the position of UGC *vis-à-vis* IGNOU as a Regulator is stronger and more acceptable to the whole university system including the Open Universities. Therefore, the Madhava Menon Committee recommended that the Government should issue a policy direction/notification to UGC for assuming the responsibilities of maintaining standards in ODL system and creating a DECI like interim authority for the purpose. That is the reason why DEC had been shifted to UGC as an interim arrangement.

9. The Ministry also informed the Committee that as the Higher Education and Research Bill was unlikely to be cleared by Parliament, a decision had then been taken to have a separate legislative enactment as suggested by the Menon Committee for setting up of Distance Education Council of India. They said that the DECI Bill had been prepared. Thereafter, a Cabinet Note would be prepared and the opinion of the Legislative Department would be taken before the Bill is introduced in Parliament.

10. On the Committee’s query in regard to regulating technical education in distance mode, the Ministry clarified that even earlier when the regulation of distance education

was with DEC under IGNOU, it was only for general education and that technical education was regulated by AICTE only. An Order issued by the Ministry of Human Resource Development on 29 December 2012 gave Direction to both UGC and AICTE to regulate distance education and that AICTE shall look at ODL for technical education.

11. The Committee was further informed that DEC did not go out of existence because of its disassociation with IGNOU; it will be very much in existence, performing its current duties, but it will do so under the UGC till the new arrangement could be made.

12. The Committee again heard the Vice-Chancellor, IGNOU and Chairman, UGC for further clarifications in the matter on 31 January 2014. During the meeting, Vice-Chancellor, IGNOU stated that IGNOU was for making DEC an independent body. Chairman, UGC argued that prior to 1991, the entire higher education was regulated by UGC which had the mandate to maintain standards of teaching, examinations and research in higher education. Chairman, UGC replied that under Section 20(1) of UGC Act, the Ministry can issue Directions and argued that the Ministry is within its mandate to issue Directions to UGC and UGC has also within its ambit to regulate distance education. Chairman, UGC further stated that he was happy about the transfer of DEC to UGC and that he had already put a system in place for this purpose. He claimed that they had cleared all pending cases before DEC after the work was transferred to them in December, 2012. He also informed the Committee that previously, DEC was regulated through guidelines. But now, they had come up with Regulations which had been sent to the Ministry of Human Resource Development for its concurrence. Once the concurrence of the Ministry is received, the Regulations would be notified.

13. The Chairman, UGC expressed his opinion that there was no need to have another regulatory authority. He was of the view that instead of creating a large number of regulatory bodies, we can have only one authority, an overarching body in the country for the purposes of regulating higher education, under which there could be a number of instruments to take care of the different facets of education. **In conclusion, the**

Committee observed that a *faux pas* was made by the Ministry of HRD by hurriedly repealing DEC and transferring its work to UGC by an Executive Order and IGNOU did not put any kind of formal resistance to this. The Committee was of the view that these questions would be best answered by the Ministry of HRD. Accordingly, it decided to hear the Ministry of HRD again before reporting the matter to the House.

14. The Committee thereafter heard the Secretary, Ministry of Human Resource Development (Department of Higher Education) on the matter on 28 February 2014. On the Committee's query as to why a new legislation was not brought before Parliament, the Secretary stated that the National Council for Higher Education and Research Bill to create one umbrella regulator for all educational institutions has been pending before Parliament for the last four years. Due to this, he submitted that it would not have been proper to bring in legislation affecting one particular sector of education. He assured the Committee that the Ministry is committed to creating an independent Distance Education Council of India (DECI) by separate legislation as recommended by the Madhava Menon Committee and that the Bill will be brought before Parliament. When the Committee wanted to know the time-frame by which this will be done, the Secretary replied that the Bill should be ready within three months to be vetted by the Law Ministry which will be taken to the Cabinet, thereafter.

15. Despite the assurance given by the Secretary, Department of Higher Education, the Committee was not informed about the status in the matter nor was the Bill since been introduced in Parliament. Accordingly, D.O. letter was issued to the Secretary, Department of Higher Education on 23 September 2014 to furnish a status report regarding the Bill as assured to the Committee. In response, the Ministry, *vide* their letter dated 15 October 2014 stated that **draft Cabinet Note and draft Bill on Distance Education Council of India (DECI) have been prepared and the concerned file is under submission of the Human Resources Minister (HRM). Upon approval of the same by HRM, further necessary action regarding seeking approval of Cabinet shall be taken.**

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

16. The Committee after perusing the papers, documents, etc. furnished by the Ministry; facts and clarifications given during oral evidences by the Ministry, the UGC and IGNOU feels that the demand of other ODL Universities to take DEC out from IGNOU fold was well taken. Parliament, when IGNOU Act was passed in 1985 for ODL system, had thought it prudent to give the regulatory powers also to IGNOU, because the distance mode of education at that time was at a rudimentary stage. But in view of vast expansion of ODL system during all these years, the Committee is of the view that might involve a conflict of interest, therefore, DEC may be taken out of IGNOU fold and to provide it status of independent regulatory body through a separate Act of Parliament on the lines of UGC and AICTE as they have their own Acts.

17. The Committee is happy that the Ministry ultimately has decided to take DEC out of the IGNOU but it expresses its serious reservation about the manner in which DEC has been transferred to UGC by an administrative order. The Committee hastens to add that it does not have any reservation about the manner in which the DEC was abolished; it had been done as per the procedure laid down in the IGNOU Act and Statutes made thereunder.

UGC and ODL

18. The Committee is of the considered opinion that transferring DEC and its mandate to the UGC and AICTE is legally untenable. It also feels that abolition of DEC was done with undue haste for which no convincing explanation could be furnished, either by the Ministry or by the UGC.

19. The Committee notes that nowhere in the UGC Act it is specifically mentioned that UGC has the power to regulate distance education also. The Committee feels that interpreting Section 12 of UGC Act, 1956 to include distance education as well as fallacious and untenable. The Committee also notes that Section 20(1) of the UGC Act only gives the Ministry the power to issue Directions which can never be extended to override the powers granted to IGNOU (for regulating distance education) through IGNOU Act passed by Parliament.

20. In this regard, the Committee would like to quote the Madhava Menon Committee Report, paragraph no. 6.6, page 59 which says:

"The provisions of the IGNOU Act suggest that the Parliament intended, for the purpose of regulatory arrangements, to treat higher education through open and distance learning differently from the conventional university system, in view of its unique characteristics. Therefore, while setting up a separate university, IGNOU, for imparting higher education through ODL system, the Act also gave the responsibility of development, coordination and determination of standards in the Open and Distance Education system to it, "notwithstanding anything contained in any other law for the time being in force". Accordingly, the IGNOU established the Distance Education Council in the year 1991 to discharge the responsibilities as a Regulator of the ODL system".

21. It is evident that while ODL system may have been with UGC before, but the position changed after DEC was created in 1991 under IGNOU Act passed in 1985. To buttress this position, the Committee would further like to refer to paragraphs 3.2, page 19 of the Menon Committee Report which also argues that "with the enactment of the IGNOU Act, the legal position in respect of regulation of ODL system changed. IGNOU, besides being a University of Open and Distance Learning, was also entrusted with the responsibility of laying down norms and

maintaining standards of distance education system in the country which is evident from the preamble" of the Act and its Sections 4 and 5 (2) as well.

22. Therefore, the Ministry's contention that UGC had the powers to regulate higher education in general encompasses power to regulate ODL as well is basically flawed. This argument may have been acceptable before the IGNOU was given power to regulate ODL. Thus, the power to regulate ODL that may have been there in other law, ceased to exist after IGNOU Act came into being.

AICTE and ODL

23. As regards AICTE, the Committee notes that even AICTE Act, 1987 does not specifically provide for regulating distance education programmes. A Notification (No. 44 of March 1995) of the MHRD has made approval of DEC necessary for degrees awarded through distance education by universities/institutions of national importance and wherever necessary AICTE also supported this interpretation. .

24. The Committee, in view of the nature and significance of technical education and the competitive advantage that India enjoys in this field world over, is also of the view that there should not be any confusion and dilution regarding enforcement of the specifications/standards of technical education in the country. Besides, excluding technical education altogether from the ODL system may not be a desirable thing in view of its outreach, affordability and popularity. The Committee, therefore, recommends to the Ministry to consider this aspect while drafting DECI Bill and also amending relevant provisions of AICTE Act, if necessary.

25. The Committee finds that it is very clear from the Preamble and Sections 4, 5(2) & 24(j) of IGNOU Act, 1985 as well as AICTE Act and UGC Act that IGNOU as on date remains the sole authority for regulating distance education in the country and power of UGC and AICTE in this regard might be implied not

expressed. In other words, expressed provisions of a law shall necessarily override the implied aspect of another law. If there was a justifiable need and reason for transferring this responsibility from IGNOU to UGC & AICTE, it should have been done by making necessary amendments in IGNOU Act and by a separate enactment and not certainly through an administrative order. The Committee would like to reiterate that administrative orders cannot override a law passed by Parliament and assented to by the President of India. The Committee accordingly recommends that while preparing DECI Bill, the IGNOU Act, 1985 should be amended by deleting/amending the provisions which mandate IGNOU to regulate distance education such as the Preamble and Sections 4, 5(2) & 24(j) of the Act. This has been suggested by the Menon Committee as well that was set up by the Ministry.

26. The Committee welcomes the assurance given by the Secretary, Department of Higher Education before the Committee on 28 February 2014 that the Ministry is committed for creating an independent Distance Education Council of India (DECI) through a separate legislation and the time-frame of three months within which the Bill would be ready for the same. The Committee, however, found that the Bill for creation of DECI could be introduced in Parliament within the time frame given by the Ministry. The Committee notes that in response to a D.O. letter from the Committee Secretariat in September, 2014, Ministry stated that draft Cabinet Note and draft Bill on Distance Education Council of India (DECI) had been prepared and the concerned file was under submission of the Human Resources Minister (HRM) and that upon approval of the same by HRM, further necessary action regarding seeking approval of Cabinet shall be taken accordingly. The Committee finds that there is apparent reluctance on the part of the Ministry to bring a separate legislation for creating DECI for reasons better known to it. The Committee, therefore, recommends that the process should be expedited and the Bill should be introduced in Parliament at the earliest.

27. It may be pointed out that the Parliamentary Standing Committee on HRD which was considering the Bill to constitute an over-arching body subsuming all the

Regulators of Higher Education had submitted its report rejecting the proposed body in December 2012 *i.e.* long before the 25 June 2013 when the Ministry had informed this Committee that it was not bringing any Bill for creating DECI on the ground that the former was pending before HRD Standing Committee. The Ministry needs to clarify its position in this regard.

28. Now, we have come to a situation where DEC has been abolished and its powers are being exercised by UGC and AICTE the very legal basis of which is under question. The Ministry says that DEC in actual practice, will not cease to exist after its disassociation with IGNOU; it will continue to perform its current duties but under UGC till the alternate arrangement is made. It further complicates the situation in respect of technical education which is under the AICTE. The Committee feels that the new arrangement will create further confusion between the UGC (read DEC) and AICTE. The Committee, therefore, is of the opinion that there should be a single regulator for distance education-whether technical or general. The Committee hopes that the proposed Bill would give the mandate of regulating all forms of distance education in the hands of DECI only.

29. The Committee is concerned that the interests and rights of the employees of the erstwhile DEC of IGNOU may be adversely impacted through their shifting from IGNOU to UGC. The Committee, therefore, urges the Ministry to ensure that the interests and rights of the employees of the erstwhile DEC are protected and that they are not adversely impacted/unduly disadvantaged as a result of this shifting of DEC and also when the proposed DECI comes into being.

30. The Committee questions both the manner as well as urgency with which DEC was abolished and its mandate was shifted/transferred to UGC and AICTE. The Committee feels that as advised by the experts, members of the DEC, VCs of the open universities and Members of Board of Management of IGNOU, DEC could have remained with IGNOU until the DECI was set up by an independent Act of Parliament. It is evident from the Minutes of the DEC on 27 May 2012 in which

despite larger opinion being against doing this, it passed a Resolution for deletion of Statute 28.

31. While going through the minutes of the meeting of the Distance Education Council dated 8 June 2012 and that of the Board of Management, IGNOU dated 19 September 2012, the Committee observed that there were two prominent views which were echoed by most of the Members, viz. (i) it would be appropriate if DEC is made an independent regulator rather than shifting it under the UGC and (ii) DEC should continue under IGNOU in the present set up. Some Members of DEC even raised the question on the ability of UGC to perform such a role for DEC which was being performed by IGNOU for it and cautioned against mixing of regulation of conventional and ODL systems which are two different modes of imparting education. The Chairman of DEC also stressed to make DEC as an independent regulator for all practical purposes rather than shifting it to UGC/AICTE.

32. The Committee also took note of the resolution passed by the Vice-Chancellors of State Open Universities (SOUs) held on 18 September 2012 wherein they resolved that DEC should be made an independent regulatory body and till such time it becomes an independent regulator, *status quo* may be maintained. The Committee wondered how despite all opposition for shifting of DEC to UGC, DEC/ Board of Management, IGNOU reached the resolution to recommend the shifting of DEC to UGC.

**MINUTES OF THE MEETING OF THE COMMITTEE ON SUBORDINATE
LEGISLATION, RAJYA SABHA**

III

Third Meeting

The Committee met at 11.00 A.M. on the 30th July, 2013 in Room No.53, Parliament House, New Delhi.

Present

1. Shri Prakash Javadekar *In the Chair*

Members

2. Shri M.P. Achuthan
3. Shri Ali Anwar Ansari
4. Shri Balwinder Singh Bhunder
5. Dr.Bhalchandra Mungekar

Secretariat

1. Shri N.K. Singh, Joint Secretary
2. Shri Mahesh Tiwari, Director
3. Shri R.S.Rawat, Joint Director
4. Shri Rakesh Anand, Joint Director
5. Shri R.P.Shukla, Assistant Director
6. Smt. Monica Baa, Assistant Director

Witnesses

Representatives of the Ministry of Human Resource Development (Department of Higher Education)

1. Ms, Amita Sharma, Additional Secretary
2. Shri Anant Kumar Singh, Joint Secretary

Representatives of University Grants Commission (UGC)

Prof. Ved Prakash, Chairman

Representatives of Indira Gandhi National Open University(IGNOU)

Prof. M. Aslam, Vice-Chancellor

2. ***

3. ***.

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II. Taking over of Distance Education Council of IGNOU by UGC through administrative order

6. The Committee then heard the representatives of the Ministry of Human Resource Development (Department of Higher Education), Vice-Chancellor, IGNOU and Chairman, UGC on the issue of taking over of Distance Education Council of IGNOU by UGC through administrative order without making the necessary legislative enactments. The Convenor asked the Ministry to clarify whether the mandate of regulating ODL mode of education can be taken away from IGNOU simply by abolishing the DEC without amending the relevant provisions of the IGNOU Act, 1985 for this purpose. He also asked about the specific Sections of an Act/Rule/Statute, etc. under which the said mandate was shifted to UGC and AICTE. The Committee also questioned about the urgency with which DEC was shifted to UGC without waiting till proper legislation in the matter is passed by Parliament.

7. The Ministry could not give convincing and legally tenable replies to the queries raised by the Committee. It could not deny the fact that mandate to regulate standards of education through distance mode still remained with the IGNOU Act and that it did not cease to exist merely on the repeal of Statute 28 abolishing DEC. On the question as to which Section of UGC Act empowers UGC to regulate distance education, Chairman, UGC informed the Committee that Section 12 of the UGC Act empowers UGC to regulate distance education which says, *“It shall be the duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities..”* . He further stated that the Ministry has issued a direction to UGC to take

over DEC under Section 20(1) of UGC Act which says that the Central Government has the power to give direction to the UGC, which is binding.

8. As regards the urgency, the Ministry replied that the Madhava Menon Committee was aware that passing of the Distance Education Council of India Bill as suggested by it may take some time. It also felt that the position of UGC *vis-à-vis* IGNOU as a Regulator is stronger and more acceptable to the whole university system including the open universities. Therefore, the Madhava Menon Committee recommended that the Government should issue a policy direction/notification to UGC for assuming the responsibilities of maintaining standards in ODL system and creating a DECI like interim authority for the purpose. That is the reason why DEC had been shifted to UGC as an interim arrangement.

9. The Ministry also informed the Committee that as the Higher Education and Research Bill is unlikely to be cleared by Parliament, a decision has now been taken to have a separate legislative enactment as suggested by the Menon Committee for setting up of Distance Education Council of India and that the DECI Bill has been prepared. A Cabinet Note would be prepared, the opinion of the Legislative Department would be taken and after following due procedure, the Bill will be introduced in Parliament.

10. On the Committee's query in regard to regulating technical education in distance mode, the Ministry clarified that even earlier when the regulation of distance education was with DEC under IGNOU, it was only for general education and that technical education is regulated by AICTE only. An Order issued by the Ministry of Human Resource Development on 29th December, 2012 gave direction to both UGC and AICTE to regulate distance education and that AICTE shall look at ODL for technical education.

11. The Committee was further informed that DEC is not going out of existence because of its disassociation with IGNOU. DEC will be very much in existence, performing its current duties, but it will do so under the UGC until the Higher Education

and Research Bill is passed. The Convenor, in his concluding remarks stressed that Parliament should not be bypassed.

12. ***

13. ****.

14. ***,

15. ***,

16. A verbatim record of the proceedings of the Committee was kept.

17. The meeting adjourned at 1.13 p.m.

MAHESH TIWARI
DIRECTOR

New Delhi
30.07.2013

*** Does not relate to the subject reported

**MINUTES OF THE MEETING OF THE COMMITTEE ON SUBORDINATE
LEGISLATION, RAJYA SABHA**

VIII

Eighth Meeting

The Committee met at 3.00 P.M. on the 31st January, 2014 in Committee Room A, Ground Floor, Parliament House Annexe, New Delhi.

Present

1. Dr. Najma A. Heptulla *Chairperson*

Members

2. Shri M.P. Achuthan
3. Shri Ali Anwar Ansari
4. Shri Balwinder Singh Bhunder
5. Dr. Bhalchandra Mungekar
6. Shri Vijay Jawaharlal Darda

Secretariat

7. Shri N.K. Singh, Joint Secretary
8. Shri Mahesh Tiwari, Director
9. Shri R.S. Rawat, Joint Director
10. Shri Rakesh Anand, Joint Director
11. Shri R.P. Shukla, Assistant Director
12. Smt. Monica Baa, Assistant Director

Witnesses

Representatives of Indira Gandhi National Open University (IGNOU)

1. Prof. M. Aslam, Vice-Chancellor
2. Prof. Ravindra Kumar, Director

Representatives of University Grants Commission (UGC)

1. Prof. Ved Prakash, Chairman
2. Shri Vikram Sahay, Director

I. Issue of taking over of Distance Education Council of IGNOU by UGC through administrative order

2. At the outset, the Committee decided to hear first the representatives of IGNOU on the matter. While initiating the deliberations, the Chairperson expressed the

Committee's apprehension about transferring the function of regulating distance education from DEC to UGC when the latter was already overburdened. She also sought to know as to why IGNOU agreed to it and whether IGNOU ever objected to the proposal of shifting of DEC to UGC.

3. The Vice Chancellor, IGNOU stated that IGNOU Act entrusted it with the responsibility of promoting, coordinating and maintaining the standards of distance education in the country and DEC was created as an authority of IGNOU under Section 16(7) read with Section 5(2) of the Act for this purpose. He stated that the 'Madhava Menon Committee' recommended to create an independent regulatory body for distance education through a separate legislation and also recommended that the government may issue a policy direction/notification for UGC to regulate distance education in the meantime. This was accepted by the Government and Statute 28 establishing DEC was repealed. Subsequently, the Ministry of Human Resource Development, by an Executive Order dated the 29th December, 2012, authorized UGC and AICTE to regulate distance education. He also stated that IGNOU was for making DEC an independent body.

4. The Committee observed that as far as giving the mandate of DEC to UGC is concerned, it was a decision taken on the basis of the Madhava Menon Committee recommendation and accepted by Government/Ministry. The Committee also observed that there was no note of dissent attached to the Minutes of the meeting presided over by Vice- Chancellor, IGNOU and that the Minutes were written and re-written thrice which in the Committee's view has been done with *mala fide* intention.

5. The Chairperson expressed that if the Government had created an independent and autonomous body through a separate legislation to regulate distance education, the Committee would not have had any objection. Repealing Statute 28 while not coming before Parliament and shifting this responsibility to UGC by an executive order without amending the IGNOU Act reflects badly both on IGNOU and the Ministry. The Committee felt that these questions would be best answered by the Ministry of HRD and UGC.

6. The Committee then heard the representatives of UGC on the matter. The Chairperson enquired how UGC having been burdened with extra work of regulating distance education felt about it. She sought UGC's reaction on the issue as the Ministry had given them neither any grant nor any manpower for the purpose.

7. Chairman, UGC submitted to the Committee that prior to 1991, the entire higher education was regulated by UGC which has the mandate to maintain standards of teaching, examinations and research in higher education. He further stated that UGC is happy about the transfer of DEC to them and that they have already put a system in place for this purpose. He claimed that they had cleared all pendency which was there when the work was transferred to them in December, 2012. He also informed the Committee that previously, DEC was regulated through guidelines. But now, they had come up with Regulations which had been sent to the Ministry of Human Resource Development for its concurrence. Once the concurrence of the Ministry is received, the Regulations would be notified.

8. Stating that taking responsibility was fine but whether it was done legally or illegally was the moot question, Chairperson expressed the concern of the Committee that this decision was taken by the Ministry by an Executive Order which could not be done without amending the IGNOU Act and the UGC Act. Responding to the Committee's concern, Chairman, UGC replied that under Section 20(1) of UGC Act, the Ministry can issue Directions. The Ministry is within its mandate to issue Directions to UGC and UGC has also within its ambit to regulate distance education. Chairperson countered this argument saying that such Direction can be issued only in extraordinary circumstances but even in that case it would be a temporary solution.

9. She stated that there was a basic difference between the nature of formal education and distance education. Therefore, IGNOU was established to regulate, among others, distance education in the country because of its vast area and population. She, accordingly, sought Chairman, UGC's opinion on mixing the two. Chairman, UGC

stated that there was a conflict of interest in the sense that on the one hand IGNOU was itself a University and on the other hand it was also entrusted with the responsibility of regulating distance education in other Universities of the country, to which other universities were taking objection. Madhava Menon Committee recommended that until the establishment of an independent DECI through a separate legislation, the work of regulating distance education may be transferred to UGC.

10. The Chairman, UGC expressed his opinion that there was no need to have another regulatory authority. He was of the view that instead of creating a large number of regulatory bodies, we can have only one authority, an overarching body in the country for the purposes of regulating higher education, under which there could be a number of instruments to take care of the different facets of education. The Chairperson of the Committee remarked that UGC was doing the responsibility which had been 'thrust upon' them and thanked Chairman, UGC for doing his best to carry out its new mandate.

11. In conclusion, the Committee observed that a *faux pas* was made by the Ministry of HRD by hurriedly repealing DEC and transferring its work to UGC by an Executive Order and IGNOU did not put any kind of formal resistance to this. The Committee was of the view that these questions would be best answered by the Ministry of HRD. Accordingly, it decided to hear the Ministry of HRD again before reporting the matter to the House.

12. ***.

13. A verbatim record of the proceedings of the Committee was kept.

The meeting adjourned at 5.17 p.m.

MAHESH TIWARI
DIRECTOR

New Delhi
31.01.2014

***Does not relate to the subject reported

**MINUTES OF THE MEETING OF THE COMMITTEE ON SUBORDINATE
LEGISLATION, RAJYA SABHA**

X

Tenth Meeting

The Committee met at 3.00 P.M. on the 28th February, 2014 in Room No.63, First Floor, Parliament House, New Delhi.

Present

1. Dr. Najma A. Heptulla *Chairperson*

Members

2. Shri M.P. Achuthan
3. Shri Ali Anwar Ansari
4. Shri P. Bhattacharya
5. Shri Balwinder Singh Bhunder
6. Shri Prakash Javadekar
7. Shri Lalhming Liana
8. Shri K. Parasaran
9. Shrimati Vasanthi Stanley

Secretariat

13. Shri Mahesh Tiwari, Director
14. Shri R.S.Rawat, Joint Director
15. Shri Rakesh Anand, Joint Director
16. Shri R.P.Shukla, Assistant Director
17. Smt. Monica Baa, Assistant Director

Witnesses

Representatives of Ministry of Human Resource Development (Department of Higher Education)

3. Shri Ashok Thakur, Secretary
4. Shri Praveen Prakash, Joint Secretary

Representatives of Indira Gandhi National Open University (IGNOU)

Prof. S.V.S. Chaudhary, Registrar

Representatives of University Grants Commission (UGC)

Shri Upamanyu Basu, Secretary

I. Issue of taking over of Distance Education Council of IGNOU by UGC through administrative order

2. At the outset, the Committee first heard the representatives of Ministry of Human Resource Development (Department of Higher Education) on the issue of taking over of DEC by UGC through Administrative Order. While initiating the deliberations, the Chairperson of the Committee stated that the Committee had already heard Chairman, UGC and Vice-Chancellor, IGNOU on the matter and were not convinced about the need for shifting DEC from IGNOU to UGC. She stated that if the Ministry were able to convince the Committee about the reasons, the Committee will consider them. The Chairperson further stated that if the Government had created an independent and autonomous body through a separate legislation to regulate distance education, the Committee would not have had any objection. She also wanted to know the reason for reluctance to bring such a legislation before Parliament, i.e. to create an independent body to regulate distance education.

3. Secretary, Department of Higher Education stated that IGNOU was started when the concept of distance education was a new subject and accepted that Section 4 of the IGNOU Act clearly points out that IGNOU would set the standards for distance education because at that time it was a new subject and no other University was doing it. But with time, other Universities also started giving education in distance mode and were opposed to IGNOU, being an University itself, regulating other Universities. He submitted that the Delhi High Court in IGNOU *versus* Delhi University case said “One University cannot regulate another University”.

4. On why a new legislation was not brought before Parliament, the Secretary stated that the National Council for Higher Education and Research Bill to create one umbrella regulator for all educational institutions has been pending before Parliament for the last four years. Due to this, he submitted that it would not have been proper to bring in legislation affecting one particular sector of education. He assured the Committee that the Ministry is committed to creating an independent Distance Education Council of

India (DECI) as recommended by the Madhava Menon Committee. He assured that the Ministry will take a view on withdrawing the NCHER Bill and go to the Cabinet and Parliament with the suggestion for a separate Act. When the Committee wanted to know the time-frame by which this will be done, the Secretary replied that the Bill should be ready within three months to be vetted by the Law Ministry which will be taken to the Cabinet, thereafter.

5. ***

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9. ***

10. ***.

11. ***

12. ***.

13. ***.

14. A verbatim record of the proceedings of the Committee was kept.

The meeting adjourned at 5.15 p.m.

MAHESH TIWARI
DIRECTOR

New Delhi
28.02.2014