



MINISTRY OF EDUCATION ● GOVERNMENT OF INDIA

Report
of
the Committee
of
Members of Parliament
on
Higher Education

REPORT OF
THE COMMITTEE OF
MEMBERS OF PARLIAMENT
ON
HIGHER EDUCATION

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MINISTRY OF EDUCATION
GOVERNMENT OF INDIA
1964

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INTRODUCTION

APPOINTMENT OF THE COMMITTEE

At a meeting of the Informal Consultative Committee of Members of Parliament on Education held on the 6th of March, 1963, a resolution was moved by Shri Sidheshwar Prasad recommending that university education should be made a Union subject. In the discussion on the resolution, opinions were expressed in favour of the view that the Union Government should assume a greater responsibility than it has done hitherto in the field of higher education. Suggestions were made that the country should have a more or less uniform pattern of higher education. As the debate had raised some basic issues, Dr. K. L. Shrimali, the then Education Minister, suggested that members should agree to the appointment of a small committee from among members of the Consultative Committee to consider the constitutional provisions in all its aspects relating to the coordination and determination of standards for institutions for higher education including research, scientific and technical education. The proposal appeared to be acceptable to the Members of the Consultative Committee and ultimately it was decided by the Government of India, in pursuance of the observations made by Dr. Shrimali, to appoint a committee of the following Members of Parliament :—

1. Shri P. N. Sapru (Chairman)
2. Shri C. K. Bhattacharyya
3. Shri M. P. Bhargava
4. Shri Amar Nath Vidyalkar
5. Shri Sidheshwar Prasad
6. Shri P. Muthiah
7. Shri Satya Charan
8. Shri P. K. Vasudevan Nair

Shri Triyogi Narain, Under Secretary, Ministry of Education, Government of India was appointed as Secretary of the Committee. For some time he took leave and Shri C. L. Dhingra, Under Secretary, acted as Secretary of the Committee.

Unfortunately the Committee was deprived of the benefit of Shri Satya Charan's advice as he expired after attending only one meeting.

2. In view of the legal and constitutional questions which had to be considered by the Committee, Shri R. M. Mehta, Joint Secretary and Legal Adviser to the Government of India, Ministry of Law was coopted as a member of the Committee and he had been functioning ever since his appointment as a full member of the Committee.

3. Attention may now be invited to the terms of reference of the Committee. They are to the following effect :—

- (a) To examine the provisions of the Constitution regarding the responsibility of the Central Government in the field of higher education with a view to finding out the extent to which the Centre could assume greater responsibility in this field; and
- (b) to suggest appropriate steps to be taken for the purpose.

4. As we read these terms, our first task was to explore all the possibilities open under the existing constitutional and legal position to the Union Government to play a greater part than hitherto in the sphere of higher education. On a careful consideration of the terms, we came to the conclusion that we were not precluded, having regard to No. (b) of the terms of reference, to recommend for consideration to Government measures which cannot be effected without a change in the Constitution itself. We were fortified in our view by the statement of the Minister of Education, Shri M. C. Chagla, in Lok Sabha in answering certain Parliamentary question that what Shri Sapru's Committee was considering was whether having regard to Entry 66 in the Union List, co-ordination and uniformity could be achieved without education being placed in the Concurrent list. We had in framing our questionnaire (Appendix I) borne this consideration in mind. The questionnaire was issued to all State Governments, universities, eminent educationists, public men, legal experts and members of the Informal Consultative Committee of Parliament on Education (See Appendix II). We have had also the benefit of interviewing a fairly large number of distinguished educationists, parliamentarians and public men whose names are given in Appendix III of our report. We are greatly indebted to them for the light that they have thrown on the many difficult problems with which the Committee has had to concern itself. One of our most important tasks was to interpret the Constitution in the light of the decision of the Supreme Court in what has come to be known as the Gujarat University case*. Though, strictly speaking, some of the observations of the Supreme Court are in the nature of *obiter dicta* they, nevertheless, must be deemed to have laid down the law relating to the provisions of the Constitution regarding the coordination and determination of standards. We have considered at length in a separate chapter the meaning and implications of the Judgment of the Supreme Court. It is in the light of our interpretation of this Judgment that our recommendations have been framed.

*Gujarat University Vs. Shri Krishna Mudholker A.I.R. 1963 S.C. 703 at 714-15

CHAPTER I

HISTORICAL BACKGROUND

India has a tradition of scholarship. From time immemorial this country has attached importance to a search for higher knowledge and its diffusion. We had in ancient India universities such as those at Nalanda and Takshila. According to Heuan Tsang, Nalanda University alone had 12,000 students. We gather from the historical material available to us that the teacher-pupil ratio was 1:10 at Nalanda. Knowledge, both temporal and spiritual, was imparted in these institutions of higher learning and it is well known that the ancient Hindus had made significant advances in mathematics, astronomy, medicine and philosophy. Before the advent of British administration in this country and particularly during the Mughal period, this country had a magnificent system of 'Madarasas', 'Makhtabs' and 'Pathshalas' where higher education was imparted in the literatures and the sciences of those days.

2. The British advent in India made a change in the pattern of the educational system followed by our country. In its early years the East India Company took hardly any interest in helping the foundation of any educational institutions in this country. The Regulating Act of 1773 passed by the British Parliament made considerable changes in the government of this country as it provided it with a Governor-General who had an Executive Council to assist him for managing the administrative affairs of Bengal and other parts of the country which had come under the control of the East India Company. The earliest institution founded by Warren Hastings, the first Governor-General of this country, was the Calcutta Madarasa in 1781. It was followed by the establishment of the institution known as the Sanskrit College at Banaras by the acting Governor-General Mr. Jonathan Duncan. These institutions, however, concentrated on oriental learning. It was under the persuasive eloquence of Lord Macaulay, helped and aided by Raja Ram Mohun Roy and other Indians of progressive and modern outlook that the decision to introduce in India education on western lines was taken in 1835 by the East India Company. Whatever may have been the motives guiding the British administrators of those days, the decision must be regarded as a landmark in the history of this country in evolving a system of education suited to modern requirements. Soon after the first War of Independence and the transfer of power from the East India Company to the British Crown, the Calcutta University was established in 1857. Universities were also established in Madras and Bombay in the same year. Colleges sprang up in various parts of the country where English education was imparted. Progress in this direction was slow but the efforts of government were aided in this respect by Christian missionaries and non-official Indian agencies.

3. The question of education in all its aspects was reviewed by the Commission of 1882. A university was established in the Punjab in 1882. It must be made clear that the system of Government, in which the people of the country had hardly any share, evolved by the British was completely unitary—the so-called provinces being subject to the control of the Governor-General who had to take orders from the Secretary of State, who as a Member of the British Cabinet was responsible to the British Parliament for the good government of this country. Advantage was taken of a few facilities offered for higher education by some Indians belonging to the well-to-do classes. The period saw the growth of public opinion and the rise of the national movement. The British administrators of those days were alarmed at the rise of an educated class saturated with national ideas which they looked upon as a source of potential danger to their interests as an alien power in India. They had no love for the new middle class which was springing up as a result of contact with modern thought. In 1902 a Universities Commission was appointed by the Government of Lord Curzon, to go into the question of university education, which, it was felt, was producing a class of elements discontented with British administration. Ostensibly with the object of improving the administration of the universities and the education imparted by them, the Indian Universities Act was passed in 1904 in the teeth of strong opposition from Nationalist India, for its effect was to officialise the university bodies which were controlling the universities and colleges in this country. In 1909 the Minto-Morley Reforms were effected but while expanding the Councils and recognising a system of elections with separate special electorates for Muslims and admitting Indians in the Executive Councils of the three Presidencies and Constituting Executive Councils for the provinces and the Centre, it did not bring about any change in the relationship of the Government of India to the provinces or of the Government of India to the Secretary of State. This position continued until the advent of the Montague-Chelmsford Reforms in 1919. India continued to be governed from the White Hall but during this period the Banaras Hindu University which represented a great effort at providing this country with a University, basically non-official in character, was established. In 1877 or thereabouts the Anglo-Muhammadan Oriental College had been established by Sir Syed Ahmed but it was not until 1920 that the Aligarh Muslim University came into existence.

4. The period of the first world war (1914-18) was marked by considerable unrest in this country. There was an insistent demand for what was in those days called Home Rule and in a memorandum presented on behalf of 19 Members of the Viceroy's Legislative Council, a plan was put forward for a type of diluted autonomy for this country. On the 17th August, 1917, a statement was made in the British Parliament declaring the objectives of British policy by Mr. Montague the then Secretary of State for India. The statement declared the goal of British policy to be the gradual development of self-governing institutions with a view to progressive realization of responsible government

in India and the increasing associations of Indians with every branch of administration in India as an integral part of the British Empire. The goal was, however, to be achieved in successive stages and Britain reserved to herself the right of deciding the pace of each advance, the criterion for which was to be the cooperation received from the people working the Constitution.

5. The Montague-Chelmsford Reforms and the Government of India Act, 1919, based upon them, while visualizing at some unforeseeable future a self-governing India which would achieve Dominion Status, as an integral part of the British Empire did not establish what might be called a federal or even quasi-federal system of government. The Montague Act, however, introduced a system of diarchy in the provinces and while reserving many major subjects including law and order in the hands of Governors vested with complete powers of affirmative and negative legislation in respect of reserved subjects, transferred education to the control of Ministers responsible to Provincial Legislatures. What was done by the Act was devolution of authority subject to the reserved powers of Governors and their responsibility in the ultimate analysis to the Secretary of State remaining unimpaired.

6. The transfer of education to Indian hands led to many changes in the Acts governing the universities in many States. Courts or Senates were made more representative of educational and public opinion and in some of the universities, a system of Vice-Chancellors elected either by the Court or by the Executive Council, subject to the approval of the Governor who was to be the Chancellor and Visitor, was introduced. As a result of the Montague Act, the Government of India ceased to have any direct responsibility for education and it became a provincial subject. One of the members of the Viceroy's Executive Council, however, had charge of education for the Centrally administered areas and the education department was expected to keep in touch with educational systems in the provinces and supply them with such information as they required. This position continued until the Government of India Act, 1935, which envisaged, subject to reservations and safeguards, a federal system of government in this country to which the Indian States would accede by duly executed instruments of accession. The Simon Commission (1927-1929) which was a purely Parliamentary Commission, considered the question of future constitutional advance. Nationalist India withheld its co-operation with it on the ground that it was a completely British Commission. The Commission had a special Committee presided over by Sir Philip Hartog to advise it on education. It is not necessary to make any reference to the recommendations of this Committee, but it may be mentioned that previous to it an important event in the educational history of this country was the report of the Sadler Commission on the Calcutta University (1917-19). Though the Commission was appointed to enquire into the affairs of the Calcutta University, its recommendations were of a far reaching character and it continues to be a classic on educational matters even to this day.

7. In 1921, the Central Advisory Board of Education was appointed. It was dissolved after two years but revived in 1935. The function of this Board was to offer expert advice on all important educational matters that were referred to it and to conduct educational surveys, whenever required.

8. The first Conference of Indian Universities was held in Simla in May, 1924. One of the recommendations of this Conference was the creation of a Central Agency in India (a) to act as inter-university organisation and bureau of implementation, (b) to facilitate the exchange of professors and students, (c) to assist in the co-ordination of university work and the promotion of specialisation of functions, (d) to assist Indian universities in obtaining recognition for their degrees, diplomas and examinations in other countries. As a result of this recommendation, the Inter-University Board of India was set up. The Board has, since then, acted as a forum for discussion on university problems.

9. Immediately after the attainment of Independence in 1947, the Constituent Assembly, set about the task of framing a constitution for India. When the Constitution was being framed, the role of the Government of India in education came up for discussion and it was decided that education including universities, subject to certain provisions, should be a State responsibility. While deciding to include education in the State List, the Founding Fathers were anxious to safeguard the interests of higher education including research and scientific and technical education. Accordingly, the following Entries relating to education are included in the Seventh Schedule of the Constitution :

LIST I—UNION LIST

63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for—
 - (a) professional, vocational or technical training, including the training of police officers; or
 - (b) the promotion of special studies or reserach; or
 - (c) scientific or technical assistance in the investigation or detection of crime.

56. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

LIST II—STATE LIST

11. Education including Universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III.

LIST III—CONCURRENT LIST

25. Vocational and technical training of labour.

10. There is no reference to the co-ordination and determination of standards in the Government of India Act of 1935. It is thus clear that the Founding Fathers took a far-sighted view of the future of higher education in this country. Their aim was that the country should maintain the highest possible standards in higher education and research and that they should not be lower than international standards. The co-ordination of facilities and determination of standards in institutions of higher education is thus exclusively a Central responsibility. This makes it incumbent on the Government of India to take a direct interest in the affairs of all universities. To discharge these functions efficiently and effectively, the Government of India constituted a University Grants Commission in 1952. Later, the Commission was converted into a statutory body, by an Act of Parliament, in 1956. Attention may be invited to Section 12 of the University Grants Commission Act, 1956, which provides, *inter alia*, that:—

“it shall be the general 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.”

The Commission is empowered to inquire into the financial needs of universities and allocate and disburse out of its funds grants for the maintenance and development of Central universities and also for the development of State universities or for any other general or specified purpose. Section 29(1) of the University Grants Commission Act, 1956, lays down that :—

“in the discharge of its functions under the Act, the Commission shall be guided by such directions on questions of policy relating to national purposes as may be given to it by the Central Government.”

We are told that there has been no occasion for the Central Government to exercise this power, so far.

CHAPTER II

HIGHER EDUCATION—BEFORE AND AFTER INDEPENDENCE

The following table is important as showing the progress of higher education (which at one time included the Intermediate Stage) in India during the last 80 years :—

Particulars	1883	1928	1947	1961-62
Number of Colleges	139	307	591	2,282
Enrolment	16,088	90,677	2,28,881	11,77,245

2. After Independence, there has been a remarkable increase in the number of universities, colleges and other institutions of higher education. The following table will give a clear picture of the progress achieved in the direction of expansion of education in the various parts of the country during the last 16 years.

Year	No. of Universities	No. of other institutions of higher education (colleges)
1947-48	16	591
1948-49	19	520*
1949-50	26	719
1950-51	26	798
1951-52	29	834
1952-53	29	899
1953-54	30	953
1954-55	31	1054
1955-56	32	1170
1956-57	33	1300
1957-58	38	1454
1958-59	40	1588
1959-60	40	1881
1960-61	45	2099
1961-62	47	2282

*The decrease in the number of colleges was more apparent than real as the Intermediate colleges in U.P. were reclassified as Higher Secondary Schools during the year.

We have now 55 universities and eight institutions of higher learning deemed to be universities under Section 3 of the University Grants Commission Act, 1956. Besides these there are six other institutions of higher education declared as institutions of national importance under the Acts of Parliament.

3. We have endeavoured to survey the existing situation in higher education in our States. The total expenditure on higher education in India during the previous years is given below :—

Year	Rs.
1957-58	36,32,33,945
1958-59	41,82,59,468
1959-60	47,70,06,230
1960-61	54,46,93,590
1961-62	*61,22,43,246

These figures, however, represent the expenditure on higher education met from all sources, viz. public grants, fees, endowments and other sources. In 1963-64, the Central Government spent 0·50 per cent of its budget on universities and arts colleges. During the same year, this percentage for the Central and State Governments taken together was 0·84.

4. The number of scholars in our institutions of higher education including the universities within the last five years is given below :—

Year	No. of Scholars
1957-58	8,62,075
1958-59	9,57,651
1959-60	10,44,918
1960-61	10,94,991
1961-62	*11,77,245

*Figure is provisional.

It will be apparent that the number of scholars total 10,94,991 in a population of 430 million in 1961 or 2499 students per million of the population. It cannot, therefore, be said that the output of qualified persons is adequate for this vast sub-continent. Obviously, higher education is not only necessary for enabling us to hold our own place among the advanced nations of the world, but it is also the most important requisition for the formation, growth and sustenance of developing socialistic democracy like ours. A more strenuous effort than has been forthcoming so far is needed for increasing both our educational output and its efficiency.

A comparison of the figures of the recipients of higher education in our country to those in certain other parts of the world may be helpful to us to estimate the importance that is placed upon higher education in more advanced countries like the U. S. A., the U. K., the U. S. S. R., France, Canada and Japan.

Enrolment Per Thousand of Population

(Higher Education Stage—1958)

Name of the country	Total enrolment (000's)	Enrolment per thou- sand of population
U.S.A.	3,236	19
U.K.	103	2
U.S.S.R.	2,179	10
France	226	5
Canada	93	5
Japan	636	7
India	833	2

Our position in higher education is, as the tables given above will show, much less favourable than that of the more advanced countries of the world. We may also mention that our output in research is comparatively poor. Our research institutions including universities' research departments award doctorate degrees. Opinion on the question as to the quality of those who hold doctorate degrees in our universities is somewhat divided. What can, however, be said with certainty is that the standard of higher education and research is not uniform in all the universities concerned. In some of these the standard is higher and can compare favourably with that demanded at any other university or place of learning in the world.

In others, there is a noticeable tendency to lower standards and attach more importance to the quantity rather than quality. Little regard is being paid to the fact that a highly qualified personnel, in the scientific and the technical world, is necessary both for manning and increasing the efficiency of our industrial and agricultural output. It is obviously imperative for us to attach importance to the development of research and research facilities in our country. Our total expenditure on higher education and research was Rs. 54,46,93,590 in 1960-61. Compared to the corresponding expenditure of £ 219.6 millions in the U. K. and \$ 5,529 millions in the U. S. A., it is low.

CHAPTER III

GUIDING PRINCIPLES

Obviously, as the Robbins Committee on Higher Education* observe that "the growing complexity in the developing branches of knowledge in many cases requires a better foundation of fundamental studies than can be provided in the present first degree course, and it is in this respect that arrangements in some other countries are superior". Expenditure on higher education cannot be regarded as unproductive. It is basically an investment from which future generations will benefit. Higher education must not become the monopoly of the rich. Children of poor persons must not be debarred from types of education for which they are fitted. Obviously universities will have to choose scholars from those who will profit from higher education. But in so doing, in-as-much as the State is contributing towards their functioning, they must ensure that they devise a machinery which will not prevent any person who is capable of benefiting from the education given on the ground that he is too poor to pay for it. Education must be regarded as the most important investment of all, to use the language of Prof. A. C. Pigou,** in the health, intelligence and character of the people. Indeed, to advocate, as that eminent economist puts it, economy in this regard should be regarded as a criminal offence. We have pointed out that we are nowhere near the maximum limit needed for investment in educational expenditure and we shall, in our review of the working of the University Grants Commission, indicate the amount of expenditure that the Chairman, University Grants Commission thinks should be reserved for education during the Fourth Plan period and onwards.

2. We must also make it clear that education is one integrated whole. The quality of higher education is dependent to a large extent upon that of the higher secondary education imparted in our schools or colleges. Our terms of reference did not permit us to go into the question of higher secondary or secondary education but from such material as we have been able to gather and from the interviews that we have had with distinguished educationists we have been compelled to come to the conclusion that the standard of secondary education in some areas is woefully low. Strenuous efforts, therefore, should be made to improve it. Unless there is an improvement in the quality of candidates turned out by our secondary schools, the quality of higher education and research, whether fundamental or applied, cannot be high. The quality of teachers and teaching has to be improved, not only in our colleges and universities, but also in our schools which act as feeders to our universities. Our higher educational

*Page 269, para 8 of the Report of the Committee appointed by Her Majesty's Govt., U. K. to review the present pattern of higher education.

**In his book "Socialism vs. Capitalism".

institutions must be so equipped as to meet the demands of progress for every type of higher education, literary and scientific, technical and professional. They must help us in fighting poverty, disease, ignorance, superstition and all that accompanies it. Our educational institutions have to enrich our society by bringing it into accord with those notions of justice and fair-play which permeate our Constitution. We need, therefore, teachers and researchers, inspired by a zeal for advancing knowledge and firmly loyal to defend social objectives.

3. In order to get this type of a teacher, it is not enough for us to rely on his patriotic impulses. Valuable, as they no doubt are, they need to be supplemented by a determined effort on the part of Government and the community to give to the teacher proper training and attractive service conditions which would keep him free from want and help him to concentrate on building up the mental and moral resources of his pupils.

CHAPTER IV

CONSTITUTIONAL AND LEGAL POSITION

We have indicated in the preceding Chapter some of the considerations which have to be borne in mind in making recommendations regarding the future. We shall now come directly to the question whether higher education, including universities, should be (a) a Union subject, (b) a Concurrent subject or (c) a State subject with the safeguards laid down in Entry 66 of List I of the Seventh Schedule. We shall first consider the question whether it should be a Union subject. In doing so, we have to remember that ours is federal or to be more accurate a quasi-federal Constitution. Education is a subject that concerns the common man. No central agency can be effective in exercising administrative authority or supervision over the vast field covered by education in a large country like India. In any case, we cannot forget that on the 26th January, 1950 when the Constitution came into existence, education including university education was allotted to the States with the exception of the Central Universities of Banaras, Delhi and Aligarh, which were to continue their relationship with the Central Government and be subject further to Entry 66 of List I which gives to the Central Government exclusive power to coordinate and maintain standards.

2. It was urged before us that for the purposes of national integration it was essential to have a unified control over all aspects of education. We are not convinced that the proposition is sound. Any attempt to centralize education may lead to serious complications between the Union and the States and it will be unfortunate if education is dragged into the arena of regional controversies. The administration of universities will not improve necessarily by any provisions which would substitute for direct relationship of the States with that of the Centre. As we see it, the University Grants Commission exercises vast influence over university education. It has helped to improve university standards. The power of giving financial aid to universities and colleges in a country where the springs of private charity are drying up gives to the Commission an authority which, if properly utilized, can help it to maintain and improve standards and coordinate educational activities. We are, therefore, clearly of the opinion that the Constitutional position in regard to education should not be so radically disturbed as to make it a Union subject.

3. The second alternative is to convert education particularly university education into a Concurrent subject. We may at once say that we see some advantages in this course. Our Constitution envisages three Lists. So far as the subjects enumerated in List I of the Seventh Schedule are concerned, Parliament has, in respect of them, exclusive power of legislation. State Legislatures have also power to make laws enumerated in List III in the Seventh Schedule and this

is known as the Concurrent List. Subject to clauses (1) and (2) of Article 246 of the Constitution a legislature of any State has exclusive power to make laws enumerated in List II of the Seventh Schedule for the territories comprising the States. The Constitution further lays down that in the case of a conflict between a law made by Parliament and a law made by a State Legislature, the former shall prevail whether the law made by Parliament is prior or later being immaterial. The administration of the law will, however, remain vested in the State Government. It was suggested to us by some of the eminent men whom we interviewed that this power of concurrent legislation is likely to lead to a dualism in administration which will not make for the smooth functioning of the Constitution.

4. But while recommending that university education may be made a Concurrent subject, we are bound, however, to take note of the opinion against that step strongly expressed by such eminent educationists as Dr. C. P. Ramaswami Aiyar, Dr. H. N. Kunzru and Dr. Tara Chand. In the words of Dr. Aiyar, Central legislation in regard to universities may take a "number of political shapes or forms". States' interest in university education may decline and Centre's financial burden may increase. We see the force of their objections. It was pointed out to us that the Parliament possesses exclusive powers of legislation regarding the coordination and determination of standards under Entry 66 of List I. We have examined in Chapter IX, the extent and implications of the Supreme Court Judgment in the Gujarat University case in regard to this Entry. If Entry 66 of List I is deleted or if the States are given equal authority in determining and coordinating standards, the authority which the Central Government exercises at the moment under the existing constitutional provisions will be weakened. Most of the eminent men who appeared before us were not in favour of conceding to the State Governments a share in deciding questions of coordination and determination of standards. We agree with them and with this reservation, we can see little harm but much good in making education a Concurrent subject. Making it a Concurrent subject, and retaining, at the same time, Entry 66 of List I as it is, will involve no revolutionary change in the Constitution. On the other hand it will help the State Governments and the Union Government to legislate on matters on which it is desirable in the national interests to have uniformity and a common policy. We are also bound to point out that from the replies received from the State Governments it would appear that they are not prepared for a change in the present position. Another view was also strongly pressed before us by Shri Mehr Chand Mahajan, Ex-Chief Justice of India that by making education a Concurrent subject we shall be introducing a complication which shall make the working of the educational machinery in this country a complicated affair. He was, of course, for making it a Union subject in the interest of the unity of the country. We do not agree with this view for the reasons already stated. We may point out that other eminent educationists as Dr. P. V. Kane, Dr. S. Bhagwantam, Dr. V. K. R. V. Rao and Prof. G. C. Chatterji strongly favour the view that university

education should be made a Concurrent subject. Prof. A. R. Wadia's view was that the States will never agree to change the Constitution.

5. Dr. D. S. Kothari's, (Chairman, University Grants Commission) view was that it is a good thing to make education a Concurrent subject but even in the present framework a lot could be done. According to him, "University education is connected with secondary education and that to primary education. Primary education is certainly a local matter and the States would not agree to making school education a Central subject. What we need is not so much constitutional change. The real problem is to provide adequate resources."

6. We shall point out in the chapter on the University Grants Commission that the Central Government is already exercising an appreciable degree of influence over higher education by the system of financial grants which are given to universities and higher institutions by it. This system has the merit of respecting the autonomy of the universities. The University Grants Commission is a body of eminent educationists and in making grants no considerations other than those of an academic or educational character are ever entertained. We have come to the conclusion that if from a legal point of view university education is made a Concurrent subject with Entry 66 remaining as it is, then there will be no cause of complaint so far as State Governments are concerned of any real infringement of their powers but the Union Government will acquire some additional powers of enacting legislation likely to help the universities and our higher institutions in coordinating and maintaining standards.

7. An apprehension expressed by some witnesses is that by making university education Concurrent, new areas of conflict between the Union Government and the States will be created. They are clear in their mind that the existing situation has the merit of creating no constitutional or legal difficulties. The handicaps in moving fast towards an expansion of higher education and improvement of its quality are really of a financial character. They cannot be overcome by making higher education a Concurrent subject; rather they will be increased by it as State Governments who are already somewhat grudging in their support of higher education will tend to reduce their expenditure on higher education and leave it to be financed more or less wholly by the Centre. It was pointed out by some of the witnesses who were opposed to its being made a Concurrent subject that there are 55 universities in the country and that the interest of the States in university education will decline if the subject is made concurrent. No doubt, the Radhakrishnan Commission* had suggested that higher education should be made a Concurrent subject but at the time that the Commission reported there were only eleven universities and it was not so difficult as it is now to maintain an effective contact with them by the Centre. We would like to emphasize that even while we see advantages in making higher

*Page 404-405, Report of the University Education Commission

education a Concurrent subject, the real solution of the problem of improving the quality of higher education and promotion of research—both fundamental and applied—lies in greater financial grants by the University Grants Commission.

8. Uniformity in the sense of sameness is not necessarily desirable but what should be aimed at is a minimum equivalence of standards. That, indeed, is how we would interpret the idea conveyed by the word 'uniformity' in Entry 66 of the Constitution. The power of financing universities which the University Grants Commission possesses, should ensure that minimum standards are observed and in that way help to achieve that equivalence of standards which the word 'uniformity' indicates. Here we would like to point out that the Sampurnanand Committee* on Emotional Integration was of the view that "it is necessary to evolve an effective national policy in education, the implementation of which will bring the States and the Union territories closer together". With this end in view they recommended that "all necessary constitutional changes should be made in order to implement the recommendations of an all-India character, which all States shall necessarily follow".

9. We feel that from a broad academic point of view there are distinct advantages in making university education a Concurrent subject but it will be deplorable if any such change leads to a weakening of the interest that State Governments should take in matters affecting higher education. We find that there is some apprehension in some States over the matter. But any such fear and apprehension of State Governments regarding the effect of concurrency on the autonomy possessed by the States should be overcome by evolving conventions for frequent consultation on important policy issues.

10. One of the members of the Committee, Shri P. K. Vasudevan Nair has stated that in spite of his agreement with the general approach adopted by the Committee, he could not agree to the positive recommendations that higher education should be an item in the Concurrent List. He is against reducing the powers of the State Governments. He feels that the equilibrium between the Union and the States should not in any way be disturbed. As the State Governments are expressing their opposition to any change in the existing Constitutional set-up it is wiser for the Central Government to try to assert itself more effectively in the field of higher education by the method of discussion and persuasion. Besides, Shri Nair is of the opinion that all the powers that accrue to the Central Government under Entry 66 have not been exhausted yet. He believes that the scope of University Grants Commission's activities can be usefully expanded still further, so that the requirements of the situation can be met to a considerable extent.

*Page 140 of the report of the Committee appointed by the Government of India to study the role of education in promoting emotional integration.

CHAPTER V

MAINTENANCE OF STANDARDS

We shall now consider the question of the steps which the Union Government must take to ensure that minimum standards of efficiency and uniformity in the sense of equivalence of standards in all the universities and institutions of higher education in such matters as courses of study, examinations and standards of teaching are maintained. Courses of study are obviously matters for universities to decide. There can or should be no all-India courses of study, for, if the courses of study were prescribed by an outside body such as an All-India Council for Higher Education, the principle of university autonomy which we regard as vital for a free competition of ideas will be impinged. But the phrase "courses of study" has not been used in any narrow sense here. We understand it to mean studies in various branches of learning of equivalent or near equivalent character. It is obvious that it is for the universities to arrange their own examinations. A uniform pattern of examinations cannot be set for the entire country. It is desirable that in the interests of higher education itself there should be some diversity in our educational system. But what should be aimed at and what can be achieved is a minimum standard of attainment in the examinations conducted by our universities. Though the syllabus or the textbooks prescribed may differ to some extent in various universities it is possible to work out schemes which will enable anyone who wishes to familiarize himself with our educational system to say that, broadly speaking, there is an equivalence in the minimum standards demanded from those who leave our universities. Both courses of study and examinations are dependent upon the standard of teaching in our universities. Obviously all universities will not be able to have the highest standard of teaching in every subject that a candidate can offer for various examinations. Some universities will have in particular subjects teachers of greater repute than those to be found in others. Possibly, a few of the universities in the country will reach a higher degree of efficiency both in basic learning and research than others. But nevertheless there will be a minimum standard which at all events all will endeavour to reach. In order that this minimum might be achieved, it is essential that our universities should have a supply of good teachers. It is not difficult to lay down minimum standards for members of our university staff. It is not, however, possible to achieve or attain these minimum standards unless there is a determined effort on the part of those responsible for higher education to ensure that the best type of the young men and women turned out by our universities take to an educational career. As educational standards are dependent upon the quality of teaching it follows as a matter of logic that our university men and women should be made to regard education as an attractive career. The question of the pay scales of our teachers has thus a direct bearing upon the quality of teachers employed in our higher educational institutions. The scales should be such as will not

compare unfavourably with those sanctioned for our administrative services serving either under the Union or the States. An educational career has a charm of its own for the scholarly type of young persons. It provides them with opportunities of keeping themselves informed of the latest developments in their subjects and other allied branches of knowledge and contributing, if they have the will and the skill to do so to the sum total of human thought in various branches of knowledge. Even from a monetary point of view, a teacher or a professor who writes qualitative books should be able to make, as education advances in this country and the demand for books increases, a good income from his writings and lectures. Teachers have the leisure to engage themselves in a study of the branches of knowledge that interest them. Their contact with youth should act as spur to activity.

2. But man cannot ignore the obligations which family life imposes upon him. It is, therefore, imperative that the scale of salaries in our universities should be a reasonably good one. We shall show in our review of the University Grants Commission's activities that this consideration has been borne in mind by that body and that as a result of its activities the pay scales of teachers in university institutions have increased. It should, however, be noted that 86% of our students graduate from the affiliated colleges and unless their standard is improved no considerable achievement in the field of higher education is possible. Therefore, pay scales and service conditions of the teachers of affiliated colleges need drastic revision. Further, university education cannot be divorced from higher secondary and secondary or for that matter, even elementary education. The quality of our students in our universities is determined by the teaching they receive in their secondary schools. Obviously, it is imperative that there should be an improvement in the pay scale of secondary school teachers and that the quality of teachers in secondary and elementary schools should also improve. To suggest the pay scales for them would be to go outside the terms of our reference and hence we refrain from doing so.

CHAPTER VI

SOME OTHER ASPECTS OF HIGHER EDUCATION

We have pointed out that there has been a continuous increase in the number of students in our universities and higher institutions. What we should demand of our system, to use the language of the Robbins Committee on Higher Education* is that,

“It produces as much high excellence as possible. It must therefore be so devised that it safeguards standards. We began our discussion of principles, by emphasising the claims of numbers. It is only fitting, therefore, that we should close it by emphasising the claims of achievement and quality. The two ends are not incompatible. Equality of opportunity for all need not mean imposing limitations on some. To limit the progress of the best is inevitably to lower the standard of the average. A sound educational system should afford full scope for all types of talent at all levels. In the past our universities have tended to set the tone and the pace for other institutions and it is probable that in the future they will have a similar role to play. We are proud to think that they have proved themselves well capable of comparison over the years with those of other countries in fostering intellectual excellence. We hope that this reputation will be sustained and that, while they broaden the basis of education for first degrees, they will also achieve even higher standards in the education of those who show themselves capable of advancing beyond this stage.”

2. We may say that this is the objective that we visualize for our institutions of higher learning. The claims of efficiency and expansion have to be reconciled. It is neither possible nor essential for raising the cultural level of the community or efficiency in higher education to insist upon, subject to certain minimum conditions being fulfilled, uniformity of standards in our higher educational institutions. Some are bound to excel others; that is inevitable. It is not in every discipline that a university can reach the highest standard. There will be variations in the standards reached by our universities and higher institutions in the various disciplines. Some will specialize in particular branches of knowledge or, even for that matter, in particular aspects of branches of knowledge than others. Some universities and higher institutions in our country reach much higher standard than others in the quality of their staff, libraries, laboratories and general equipment. This lack of uniformity of standards will, no doubt, grow less with time. In the United States, there are over 2,000 institutions of higher learning with varying degrees of efficiency. This lack of, what may be called for

*Chapter II, para 40, page 1.

want of a better word, uniformity of standards has not prevented that country from providing equality of opportunity to its young people and building up enviable traditions of scholarship and research in some institutions which have come to acquire world-wide reputation as centres of learning. Highly efficient as the new civic universities in Britain are, few will be prepared to go as far as to claim for them that they are in every respect equal to Oxford, Cambridge or London or some of the older Scottish and Irish universities.

3. The conclusion that we have been forced to is that we need in our country various types of universities and colleges, *viz.*, teaching, unitary and residential, federal and affiliating or even purely affiliating and examining with proper supervision and control over colleges affiliated to them. Clearly, our resources do not permit us to have universities and institutions which will specialize in all branches of knowledge in all our regional centres. Somehow, we have to bring knowledge to the door of the common man. "Poverty", as Prof. Galbraith emphasises in his *Affluent Society*, "is self-perpetuating" and we have to discover means which will enable the individual to rid himself of it and to make the best use of whatever talent he possesses. We do not deplore the multiplication of colleges and universities in this country. In 1947 when we started on our career as an independent country we had 607 colleges, universities, and other institutions of higher education. In 1961-62 we had reached the figure of 2,329 universities, colleges and other institutions of higher education. The student population in 1947 in all our universities was 2,28,881. In 1961-62 it was 11,77,245. Naturally, this expansion has created problems of which educationists have to take note. While holding the view that it would be wrong for a welfare State such as we profess to be to deny equality of opportunity to all those who are capable of benefiting by higher education, we think that it is essential, in their interest, that the minimum standards demanded from those who enter our universities and higher institutions should be reasonably high. Among the many products of our universities there are bound to be young men and women who, in intellectual equipment, will be able to maintain their own against those produced by the best universities and higher institutions in the world. What is essential, however, in our opinion, is that there should be a generous system of scholarships and sizarships which will enable our young men and women to secure the benefit of the education they are fitted for. Those who have aptitude and merit should be enabled to embark upon post-graduate studies in our universities and higher institutions. Poverty should not be a bar to the attainment of the highest knowledge possible. We may point out that in Britain, 80% of students in universities are scholarship or sizarship holders. In fact, nearly all political parties are agreed that the proportion of scholarship and sizarship holders should be even greater than it is at present. They would like it to be almost cent per cent. The ideal that we should aim at is that higher education should be as free as the air we breathe, the only limitation being the capacity of the candidate to benefit by it. In simple language, all those who are capable of giving a good account of themselves in

universities and higher institutions should be enabled to do so and the State must hold itself responsible for discharging this most important of all duties in a socialist society. The number of scholarships and sizarships holders in our institutions was 32,560 in 1949-50. In 1960-61, it stood at the figure of 1,72,325. While progress has been achieved in this direction, we cannot say that we are satisfied at the pace of advance in this direction. It may be mentioned here that the amount of scholarship per head is grossly inadequate. It should be such as to cover a scholar's total expenditure in the university.

4. It must not be inferred from what we have said that our opinion is that all students are fitted for higher education, whether in the literatures, philosophies or the sciences of the age. The point, however, is that they should not be made to suffer from any avoidable handicap. It follows from what we have said that the number and amount of scholarships and sizarships will have to be considerably increased in our higher institutions. This increase will be a continuous process with the expansion of higher and secondary education.

5. We have considered it necessary to draw pointed attention to this aspect of the question because it is our firm conviction that the Centre will not be able to discharge its responsibilities towards higher education unless in its planning, it continues to derive inspirations from the obligatory character of its duty to provide good material for the technological and scientific age upon which we have entered. Importance is being attached to higher education and research in all countries. Expression has been given by educationists and publicmen to the fact that our universities and institutions sometimes find themselves denuded of the best talent in the country. They find for example that the conditions offered in the United States of America are such as to attract the best scientists to that country. The problem has not yet arisen in any acute form in this country so far. But with the development of higher education, this country too cannot escape this tendency. Appeals to patriotism, no doubt, have a value in influencing the young but they cannot if they are not supplemented by facilities for the acquisition of the highest type of knowledge in the country plus an assured decent standard of living, help young men from choosing to leave their country for those where greater facilities for the type of work they are interested in exists. In planning for our higher education, this is an aspect which should be borne in mind.

6. Some of the eminent men whom we interviewed were of the opinion that our young men enter the universities and professional institutions at a comparatively young age. This is a question which we were not able to examine at any length because it was not within the scope of our terms of reference. We deem it, however, necessary, to make a reference to it because some of us strongly feel that there should be all over the country a minimum age for entrance into the universities and professional institutions.

7. Bound up with the question of higher education is that of the medium of instruction. We are hesitant to go into it because we recognize that that is not within our scope of enquiry. But obviously, interchange of teachers and students which is vital not only for purposes of national solidarity but also for exchange of knowledge and dissemination of the work achieved in various fields of literary or scientific activity in our higher institutions will present insuperable difficulties if there is no link language in our universities. Almost all the witnesses who appeared before us expressed their apprehension that in the absence of a recognized link language, literary and scientific activity or professional efficiency may suffer.

CHAPTER VII

ROLE OF THE UNION GOVERNMENT

1. The fact is, as is well known, that before 1947, the part played by the Central Government in the expansion and development of university education was not such as it could be proud of. In 1857, the Universities of Calcutta, Bombay and Madras were established on the pattern of the University of London. From 1870, Provincial Governments began to play a greater part in educational matters, though of course, they remained subject to the control of the Government of India and the Secretary of State. By about 1900, only two more Universities, namely, the Punjab University in 1882 and the Allahabad University in 1887 were added to the three mentioned above by us. Both of them owed their creation to the Acts of the Central Legislature. The appointment of the Education Commission of 1882 and the Universities Commission of 1902, the Resolution of the Government of India of 1904 on educational policy, the Indian Universities Act, 1904 empowering, *inter alia*, the Governor-General in Council to determine the territorial limits of the Universities, the Resolution of the Government of India of 1913, the establishment in 1915 of the Bureau of Education, under the Educational Commissioner with the Government of India, with a view to collect and collate educational information in India and abroad and to arrange for the publication of educational reports and a quinquennial review on the progress of education in India, and the appointment of the Calcutta University Commission, 1917-1919 were about the only contributions that the Government of India made to the advancement of higher education in this country. The Governor-General in Council was, as Lord Morley described him, the agent of the Secretary of State who was responsible to the British Parliament for the good government of this country. Control of education, therefore, remained completely under British hands until the year 1919 when the Montague Chelmsford Act introduced a system of diarchy in Provincial Administrations and transferred education to the control of Ministers responsible to largely elected provincial legislatures. The education imparted in our universities was generally of a literary type. Scientific and technical education was neglected. The Sadler Commission, that is to say, the Calcutta University Commission emphasised the need for an organisation to keep local governments in touch with one another and their observations on this point are quoted below :

✓ “The Government of India can perform an invaluable function by defining the general aims of educational policy by giving advice and assistance to local governments and to universities, by acting as an impartial arbiter in cases of dispute, by protecting disregarded interests, by supplying organized information as to the development of educational ideas in the various provinces,

and also elsewhere than in India, by helping to obtain the service of scholars from other countries, by coordinating the work of various universities, and by guarding against needless duplication and overlapping in the provision of the more costly forms of education”.

This recommendation was accepted by the Government of India and in August 1920, a Central Advisory Board of Education was established. The main function of the Board was to offer expert advice on important educational matters referred to it and to conduct educational surveys, whenever required. The Board, however, was abolished on grounds of economy in 1923 but it was revived again in 1935. It was this Board which was responsible for the drawing up in 1944 a Plan of Post-War Educational Development in India generally known as the Sargeant Scheme.

2. Indian universities started meeting in conferences in 1924. Their first conference was held in Simla in May 1924. The conference recommended that a central agency in India should be created (a) to act as inter-university organisation and bureau of implementation, (b) to facilitate the exchange of professors and students, (c) to assist in the coordination of university work and the promotion of specialisation of functions, (d) to assist Indian universities in obtaining recognition for their degrees, diplomas and examinations in other countries. As a result of this recommendation, the Inter-University Board of India was set up. The Board has, since then, acted as a forum for discussion of university problems.

3. In 1935, the Government of India Act gave a new Constitution of a quasi-federal character to this country. One of its distinguishing features was that it divided the subjects of legislation into three lists, List I which was to be the Union List, List II the State List and List III the Concurrent List. In List I, two noticeable entries were (i) Entry 12 and (ii) Entry 13.

- (i) *Entry 12* : Federal agencies, and institutions for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.
- (ii) *Entry 13* : The Banaras Hindu University and the Aligarh Muslim University.

With the exception of these two Entries, education remained an entirely Provincial subject in terms of Item 17 of List II of the Seventh Schedule to the Government of India Act. It may be noted that the functions of the Government of India in the field of education were of an extremely limited character under the Government of India Act, 1935. Indian opinion too did not want the interference of the Central Government as education was a transferred subject and there was a natural reluctance on the part of Ministers and Provincial legislators to allow the Central Government to influence their policies.

4. We shall now review the work done by the Ministry of Education since we became independent. The first act of the Ministry was to appoint a high-powered commission on university education under the chairmanship of Dr. S. Radhakrishnan to report on Indian university education. The Commission surveyed the entire field of university education in the country and submitted its Report in 1949. One of the recommendations of this Commission was that university education should be placed in the Concurrent List. While agreeing with the view that in a large country like India, good government is only possible if wide powers are conferred by the Constitution upon the Provincial Governments, the Commission went on to observe that the all India aspects of university education, the repercussions and interchanges necessary and desirable between universities and the need for a national guarantee of minimum standards of efficiency, make it impossible for university education to remain a purely Provincial subject. They went on to observe that the necessary safeguards can be achieved by Concurrence and they, therefore, recommended that education should be made a Concurrent subject. The Constituent Assembly had before it the Report of the Radhakrishnan Commission. It appears to have felt that the purposes that the Radhakrishnan Commission had in mind would be met by vesting the Union Government with powers such as are to be found in Entry 66 of List I of the Seventh Schedule. They also seemed to have been of the view that the further points made by the Radhakrishnan Commission would be met by authorising Parliament to declare certain institutions of higher education to be institutions of national importance. It was on this basis that the Constituent Assembly appears to have proceeded. The question, therefore, which we have to consider is whether "the interchanges necessary and desirable between universities and the need for a national guarantee of minimum standards of efficiency" can be said to have been met by the provisions of the Constitution now in force. The Radhakrishnan Commission was itself careful to observe that it was not in favour of superimposing on, or substituting central control for the existing measure of provincial control of universities. They recognized that many of the evils present in our universities arise from the fact that they have "no real autonomy whatever, and have proved incapable of resisting pressure from outside". They were of the opinion that while "universities should be sensitive to enlightened public opinion, they should never let themselves be bullied or bribed into actions that they know to be educationally unsound or worse still, motivated by nepotism, faction and corruption." Their view was that the right public policy is "to give a university the best possible constitution, securing among other things the inclusion of wisely chosen external members of its governing body and then to leave it free from interference." They went on to elaborate the directions in which the constitution of the universities should be framed.

5. As we have stated before, the Constituent Assembly did not accept their recommendation that university education should be a Concurrent subject. The question is whether the Education Ministry

of the Government of India has taken the initiative that was intended to make our universities real centres of higher learning. For an answer to this question, we must examine the work that the University Grants Commission which has been established by an Act of Parliament in 1956 has done in the field of university education. We may mention that even prior to 1956, the Education Ministry had taken steps to establish a University Grants Commission. It consisted of nine members including five vice-chancellors of universities, two officers of the Central Government and two other educationists of repute. Its functions were to (i) to advise Government on the allocation of grants-in-aid from public funds to Central Universities, (ii) to advise Government on the allocation of grants-in-aid to other universities and institutions of higher learning whose case for such grants may be referred to the Commission by Government; and (iii) to advise the universities and other institutions of higher learning in respect of any question referred to the Commission by the Government.

6. The University Grants Commission Act has as many as 26 Sections. Its Preamble enacts that it is intended to make provision for the coordination and determination of standards in universities. The word "University" as defined in Section 2 of the Act has been given a wide meaning and includes any institution recognized by the Commission in accordance with the regulations made by it. According to the Act, the Commission is a body corporate having perpetual succession and a common seal. It consists of nine members selected as follows :—

- (a) Not more than three members from among the vice-chancellors of universities ;
- (b) Two members from among the officers of the Central Government to represent that Government ; and
- (c) The remaining number from among persons who are educationists of repute or who have obtained high academic distinctions.

The further proviso is that one-half of the total number so chosen shall be from among persons who are not officers of the Central Government or of any State Government. The appointing authority is the Central Government and members hold office for a period of six years but one-third retire on the expiration of the third year in accordance with the procedure prescribed and their vacancies are filled up by fresh appointment. The office of the Chairman is a whole-time salaried one. The Commission has been empowered to associate with itself any person in such manner and for such purposes it may desire in carrying out any of the provisions of this Act.

7. We shall now come to the question of the vital provisions of the powers and functions of the Commission. They are to be found in Section 12. That Section empowers the Commission for the promotion and coordination of university education and for the determination and

maintenance of standards of teaching, examination and research in universities—

- (a) to enquire into the financial needs of universities;
- (b) to allocate and disburse, out of the Fund of the Commission, grants to universities established or incorporated by or under a Central Act;
- (c) to allocate and disburse out of the Fund of the Commission such grants to other universities as it may deem necessary for the development of such universities or for any general or specified purpose subject, however, to the condition that the Commission shall give consideration to the development of the university concerned, its financial needs, the standard attained by it and the national purposes which it may serve.

8. It will be seen that whereas the Commission can grant funds for the maintenance and development of Central universities it can allocate and disburse grants to other universities only for the purpose of development. Their maintenance is not its concern. The Commission has been further empowered to recommend measures necessary for the improvement of university education and advise a university upon the action to be taken for the purposes of implementing such recommendation, advise the Central Government or any State Government on the allocation of any grants to universities for any general or specified purpose out of the Consolidated Fund of India or the Consolidated Fund of the State, as the case may be; advise any authority, if such advice is asked for, on the establishment of a new university or on proposals connected with the expansion of the activities of any university; advise the Central Government or any State Government or university on any question which may be referred to the Commission by the Central Government or the State Government or the university, as the case may be; collect information on all such matters relating to university education in India and other countries as it thinks fit and make the same available to any university; require a university to furnish it with such information as may be needed relating to the financial position of the university or the studies in the various branches of learning undertaken in that university together with all the rules and regulations relating to the standards of teaching and examination in that university respecting each of such branches of learning, and perform such other functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India or as may be incidental or conducive to the discharge of the above functions.

9. The most important power which has been given to the Commission is that it can under Section 13 for the purpose of ascertaining the financial needs of a university *or* its standards of teaching, examination and research and after consultation with the university, order an inspection of any department or departments thereof to be made in such

manner as may be prescribed or by such person or persons as it may direct. It will be obligatory on the Commission to communicate to the university the data on which such inspection is made and the university shall be entitled to be associated with it. It will be open to the Commission to communicate to the university its views in regard to the results of any such inspection and it may after ascertaining the opinion of the university recommend to the university the action to be taken as a result of such inspection.

10. Section 14 of the Act authorizes the Commission to withhold grants after taking into consideration explanations offered by the university for failure on the part of the university to comply with its recommendations. The Central Government has, as required by the Act, to pay to the Commission such sums as may be considered necessary for the purpose of its functions and the Act makes it clear that the Commission shall have its own funds. It is not necessary to refer to the other provisions of the Act as they are mostly of non-controversial character. It was pressed before us by some of the eminent men whom we interviewed that the powers of the University Grants Commission are analogous to those of the University Grants Committee of Britain which, however, is appointed by Exchequer and is responsible to it for its functioning. There is no doubt that the financial powers as also those of inspection which the Commission possesses vest it with great authority over the universities of this country. They can, if wisely utilized, help to ensure co-ordination and determination of standards such as no legislative enactment administered by a ministerial wing of the Government can do.

11. The question, however, which we have to consider is whether the University Grants Commission has served all the purposes for which it was intended. Its record of work is, in our opinion, impressive. It has appointed a number of review committees. There is no doubt in our opinion that the University Grants Commission has helped to maintain standards and by far the most valuable service that it has done is to raise salary scales of university teachers and research scholars. But it has not been able to solve fully the problem of affiliated colleges, for it has no direct connection with them. Steps have to be taken to improve further the scales of the salaries of hundreds of teachers who are to be found in our aided colleges and institutions. The consolidated grant to the University Grants Commission for the period of the Third Five Year Plan was Rs. 37 crores. The number of universities has increased from 16 in 1947-48 to 55 at present. It cannot be said that the grant that the Commission is getting is at all adequate for the purposes of improving the needs of university education and higher research. It was pointed out to us by Dr. Kothari that in order that University Grants Commission might be able to discharge its functions efficiently it was necessary to raise the grant to ten-fold. This would be exclusive of the amount needed for the development of research facilities and the expenditure which the States must incur on secondary and higher secondary education, for education must be looked upon as one integrated

whole. What must be aimed at is that our educational standards should compare with the best standards in the international world. Nothing less than this can or should be our objective.

12. We are also of the opinion that the work demanded by the existence of 55 universities and enormous number of affiliated colleges is for too heavy for one whole-time chairman and eight part-time members. We, therefore, are clearly of the opinion that the number of whole-time members of the University Grants Commission must not be less than five educationists of the highest distinction in the country. Importance should be attached in appointing whole-time members, to the fact that they are recognized experts in various disciplines including the professions. Besides five whole-time members, we suggest an additional membership of 10 members to be selected on much the same basis as the present members are. Care should, however, be taken that the Commission is so constituted as to be a microcosm of educational and scientific India. A question upon which there was some divergence of opinion was whether serving Vice-Chancellors should be allowed to be members of the University Grants Commission. The British Grants Committee has no serving Vice-Chancellors among its members. It was stressed by Dr. C. P. Ramaswami Aiyar and some other educationists that serving Vice-Chancellors should not be appointed as members of the University Grants Commission. There is much to be said for this point of view but the difficulty is that the number of distinguished educationists in this country is limited. We are, however, of the view that serving Vice-Chancellors should not be appointed as members of the University Grants Commission. We think that the power of inspection which the Act vests in the Commission should be exercised more frequently than has been the case so far. Regular inspection of institutions should help both the process of coordination and maintenance of standards. With five full time members it should be possible to organize teams of inspections aided by coopted members who will not generally be members of the Commission. The salary of the Chairman of the University Grants Commission is Rs. 3000 per month. We record our appreciation of the fact that the present Chairman, Dr. Kothari, has on his own initiative been drawing only Rs. 1800 per month. He has subjected himself to a voluntary cut. We think that the salary of a member of the Commission should be adequate to ensure that they are men of status not lower than that of a Vice-Chancellor.

13. We shall now come to the question of professional education. There is no difficulty so far as the legal education is concerned, for the University Grants Commission considers it within its purview and finances it. But medical, engineering and agricultural education are not within the jurisdiction of the University Grants Commission. We had the benefit of discussions with some eminent authorities in the respective fields of professional education. While naturally anxious to safeguard the autonomy of their institutions they felt that it would be of benefit to them if they get connected with scientific

education in its larger aspects. The medical witnesses were clear in their mind that so far as basic medical sciences are concerned, they should look to the University Grants Commission for their financial support. In regard to clinical subjects they were not very definite in their views because hospitals are under the management of State authorities and dual control might not be desirable. So far as engineering and agricultural institutions are concerned, no such difficulty exists and they can be placed under the care of the University Grants Commission. We recommend that this should be done.

14. We understand that University Grants Commission's grants to universities/institutions are given on the condition that the matching contribution must not be less than 20% though in some cases as much as 50% is required. Having regard to this condition, it is difficult for many universities and institutions to avail themselves of the grant. State Governments are reluctant to give matching grants. In some cases there is justification for their not doing so, for their finances do not permit them to give these matching grants. Private institutions find it difficult to get donations for matching purposes. It is, therefore, desirable that the condition of a matching grant should either be done away with completely or relaxed in suitable cases.

CHAPTER VIII

UNIVERSITY GRANTS COMMISSION—A REVIEW OF ITS WORK

The University Grants Commission has an impressive record of work to its credit for promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research. To put it briefly, the Commission has from time to time, constituted Review Committees consisting of eminent university teachers, to examine the existing facilities for teaching and research and the current syllabii in various subjects of study. Thus, it can be truly claimed for the Commission that the Committees appointed by it have helped to improve and modernize our educational system. The reports of some of the Committees so appointed have been forwarded to universities for their consideration and action. The question of standards in our universities has received special attention at the hands of the Commission. We may refer to the fact that a special committee was appointed by it to undertake a systematic and objective study of the standards prevailing in our universities and to make recommendations for their improvement.

2. For encouraging the pursuit of excellence in teaching and research and for accelerating the attainment of international standards, Centres of Advanced Studies in selected subjects in some universities have been established by the Commission. One of the most important services which the Commission has rendered is to revise the scales of pay of the teaching staff of the universities, so that it might become possible for them to recruit and retain some of their best products in the universities. The revised scales of pay are given below :—

Professor	Rs. 1000-50-1500
Reader	Rs. 700-40-1100
Lecturer	Rs. 400-30-640-40-800
Instructor	Rs. 300-25-350

The practice of the Commission is to share the additional expenditure required for the introduction of these scales to the extent of 80% provided the universities or State Governments concerned contribute the balance and give a reasonable assurance that the revised scales will be maintained on a permanent basis even after the Commission's assistance ceases. It may be mentioned that the Commission has also provided assistance for introducing the scales of pay noted below for different categories of teachers in affiliated colleges :—

Principal	Rs. 600-40-800
Professor/Head of the Department	Rs. 400-25-700
Senior Lecturer	Rs. 300-25-600
Lecturer	Rs. 200-15-320
Tutor or Demonstrator	Rs. 150-10-200

The condition attached to this assistance is that the Commission will share only 50% in men's colleges and 75% in women's colleges. In other words, 50% and 25% of the additional expenditure has to be found by either the State Government or the university or the college concerned before the grant can be made.

3. Seminars and summer schools which provide opportunities to teachers and research workers to acquaint themselves with the latest developments in their various fields of knowledge have been encouraged by the Commission. By so doing, the Commission has endeavoured to improve the professional competence of teachers and contributed towards raising the standard of teaching in universities and colleges.

4. Another activity in which the Commission has taken interest is examination reform. An Expert Committee whose report was published in 1962 has examined this question which appears to have evoked widespread and searching interest in the subject. Many universities have expressed their general agreement with the recommendations of the Committee and some are even contemplating to introduce certain measures of reform recommended by it.

5. Tutorial classes in selected institutions have been encouraged by the Commission. Assistance has been given for this purpose and the Commission has helped by financial assistance the provision of additional accommodation and expansion of libraries in universities and colleges.

6. In order to bring about rationalization and modernization of general education, the Commission has, from time to time, taken steps to promote re-orientation of undergraduate courses of study.

7. Universities are provided with grants by the Commission for the improvement of physical facilities, recruitment of additional staff, purchase of books and scientific equipment, the development of libraries and laboratories, the construction of hostels and staff quarters and the provision of other essential amenities necessary for a better academic atmosphere for students and teachers.

8. It has been the endeavour of the Commission to stimulate research and attract suitable personnel to the teaching profession. For this purpose, the Commission has instituted a number of research scholarships and fellowship. It has also provided special grants to teachers to enable them to carry on research and other learned activities.

9. Attention may be drawn to the fact that for improving existing conditions of study and work, the Commission makes grants, *inter alia*, for the following purposes :—

- (i) Travel grants to teachers and research scholars.

- (ii) Assistance to retired teachers to enable them to continue their teaching and research work.
- (iii) Publication of doctoral theses and learned works of high standard.
- (iv) Printing presses.
- (v) Extension lectures.
- (vi) Gandhi Bhavans.
- (vii) Hobby workshops.

10. The Chairman, University Grants Commission, in his interview with the Committee pointed out that the most serious difficulty which faced them was the paucity of funds necessary for raising standards and implementing approved schemes effectively and particular reference was made by him to the need for improving teacher-pupil ratio from 1 : 17 to at least 1 : 10. We attach great importance to this. From what we are able to gather from the information supplied to us by the Commission as also the other eminent men who met us, the quality of education is largely dependent on the standards maintained by colleges. They have meagre resources and lack the necessary facilities for imparting good education. It is urgently necessary to improve their staff, equipment, libraries and laboratories. Without these and other such like facilities, no real improvement of university education is possible. The Commission has only been able to tackle these problems on a limited scale. The problem is of vast magnitude and it can be tackled only by the provision of much larger funds and more liberal grants than had been hitherto forthcoming.

11. The existing provisions of the University Grants Commission Act do not enable the Commission to give recurring grants to State universities. Necessarily this leads to difficulties and retards the pace of development. It may not be possible to go as far as to suggest that the Commission should make itself responsible for the maintenance grants of State universities but certainly the grants for development purposes should not only be increased but also given without the condition of a matching grant attached to it. We have considered it necessary to review very briefly some of the activities of the University Grants Commission. A perusal of the Annual Reports published by them discloses that the Commission has been an active body and has done much during the years that it has been in existence to maintain and improve educational standards.

12. We may say that on the question of the working of the University Grants Commission, we had the benefit of interviews with the Chairman, Dr. D. S. Kothari and ex-Chairman Dr. C. D. Deshmukh, Pt. H. N. Kunzru, Prof. A. R. Wadia, Mr. B. Shiva Rao and Dewan Anand Kumar and Shri Boothalingam, ex-Members of the Commission.

13. We have, in formulating our proposals for the expansion of higher education, borne in mind the necessity of preserving the academic freedom of our universities. One of the main problems is to secure the services of the best talent available in the community for educational institutions. We have already indicated that an effort has been made by the University Grants Commission in this direction to improve the pay scales of teachers and research scholars in universities and colleges. We think that there is scope for further improvement in this direction and we see no reason why the pay scales of literary artists, scientists, technologists or engineers or medical men should be inferior to those paid to the administrative services.

14. In the new era which we have entered, a wider conception has to be taken of the duties and responsibilities of our universities. Their task is to provide leadership for all our national activities. It is their job to ensure that the country possesses a sufficient supply of statesmen, parliamentarians, diplomats, judges, jurists, scientists, engineers, technologists, physicians, surgeons and men capable of giving a new lead in agriculture, industry and business. Our universities must be so equipped as to meet the challenge which is bound to increase as we advance along the lines of progress for every type of higher education, literary and scientific, technical and professional. Our places of learning have to help us in fighting poverty, disease, ignorance, superstition and all that goes with it. They have to enrich our society by bringing it into accord with notions of that justice upon which emphasis has been placed in the Preamble of our Constitution. In order that they might be able to accomplish the vast task, they need teachers and researchers, inspired by a zeal for advancing knowledge and determinedly loyal to definite social purposes. It should be the endeavour of our universities to secure for their staffs a sufficient supply of teachers dedicated to the pursuit of knowledge. It is necessary to ensure that we preserve the best talent in our country for purposes of research and higher learning. It is well known that some of the best talent in Britain is migrating to the States not only because the salaries paid are more attractive but the conditions of work are more satisfactory. We should prevent a situation like that happening in this country. In order that we might be able to tackle this problem, with courage and determination it is necessary for us to take a wide view of the purposes for which our educational system exists. It is the foundation upon which the future of our nation depends.

CHAPTER IX

THE *GUJARAT UNIVERSITY CASE AND ITS IMPLICATIONS

Our terms of reference require us to examine the provisions of the Constitution regarding the responsibility of the Central Government in the field of higher education with a view to finding out whether the Centre could assume greater responsibility in this field, and, secondly, to suggest appropriate steps to be taken for the purpose. The precise scope and extent of our inquiry has been a matter of deep concern to us. We have given anxious thought to all possible interpretations of the terms of reference. One view was that it did not lie within those terms for us to suggest any amendment to the Constitution as a step to enable the Centre to assume greater responsibility in the field of university or higher education than is enjoyed by it at present. Our task, according to this view was simply to determine the precise responsibility of the Centre in the matter of higher education, and to suggest measures within the existing constitutional framework as to how the Centre could assume greater responsibility in this field. The other view was that we were not debarred from suggesting amendments to the Constitution if the result of our inquiry showed that it was in the national interests that the Centre should be given larger powers and responsibilities in the field of higher education which it cannot have except by an amendment to the Constitution.

2. After careful deliberations, we have been compelled to reject the narrower interpretation of the terms of reference. It seems clear to us that our task is in the first place to examine the provisions of the Constitution to determine the exact responsibility of the Union Government in the field of university and higher education. We have next to consider, whether within the present constitutional framework the Centre can assume larger powers and responsibilities in this field. The words "to suggest appropriate steps to be taken for the purpose" are in our view wide enough to admit of recommendations for constitutional amendments if we reach the conclusion that the existing provisions of the Constitution do not give the Centre adequate powers of control, to coordinate and determine the standards of higher education in the country. This wide interpretation of the terms of reference runs as a constant under-current in our Questionnaire. It was on the basis of this interpretation that we sought to elicit informed opinion of educational authorities in the country on the questions whether any changes in the Constitution are necessary for a more effective control over university education by the Union Government, whether the powers at present exercised by the Union Government over university education can be increased by making it a concurrent subject or whether making education a Union subject by transposing the subject-matter of Entry No. 11 of the State List to the Union List will give greater authority to the

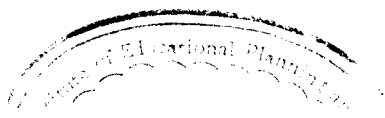
*Gujarat University vs Shrikrishna Mudholkar, AIR 1963 SC 703 at 714.

Union Government to discharge its responsibility for higher education. We therefore proceed on the basis that the terms of reference do not preclude us from recommending an amendment to the Constitution as one of the steps necessary to give larger powers and responsibility to the Centre in the field of university and higher education. On this premise, we shall now proceed to examine the existing provisions of the Constitution in regard to education.

3. Under the Government of India Act, 1935, the Provincial Legislatures derived power to legislate on the subject of education under Entry 17 of List II of the Seventh Schedule to that Act—"Education, including universities other than those specified in paragraph 13 of List I". Entry 13 of List I included the Banaras Hindu University and the Aligarh Muslim University. With the exception of these two Central Universities, all residual power to legislate on the subject of education resided in the Provincial Legislature. The Constitution introduced a vital change in the pattern of distribution of legislative power on the subject of education between the Union and States. Under Entry 11 of List II of the Seventh Schedule to the Constitution, the State legislature has the power to legislate on the subject of education including universities subject to the provisions of items 63, 64, 65 and 66 of List I and item 25 of List III. Item 63 of List I replaces, with modification, item 13 of List I in the Seventh Schedule to the Government of India Act, 1935. Power to enact legislation with respect to institutions known at the commencement of the Constitution as the Banaras Hindu University, the Aligarh Muslim University and the Delhi University and other institutions declared by Parliament by law to be institutions of national importance is thereby granted exclusively to Parliament. Item 64 invests Parliament with power to legislate in respect of institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance. Item 65 vests in Parliament the power to legislate for Union agencies and institutions for—(a) professional, vocational or technical training including the training of police officers, or (b) the promotion of special studies or research, or (c) scientific or technical assistance in the investigation or detection of crime. By item 66, power is entrusted to Parliament to legislate on "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions". Item 25 of the Concurrent List confers power on the Union Parliament and the State Legislatures to enact legislation with respect to vocational and technical training of labour.

4. Thus, with the exception of the excluded items, the State legislature has, under the Constitution, plenary powers to make laws on all matters relating to education including universities. In the Gujarat University case,* the Supreme Court held by a majority that the extensive power of the State Legislature to legislate with respect to higher

*Gujarat University vs. Srikrishna Mudholkar, AIR 1963 SC 703 714-15.



education including scientific and technical education is controlled by the five items which are carved out of the subject of education and in respect of which Parliament has exclusive power to legislate. The power of the State Legislature in respect of education including universities must, to the extent to which it is entrusted to the Union Parliament whether such power is exercised or not, be deemed to be restricted. If the subject of legislation is covered by items 63 to 66, even if it otherwise falls within the larger field of education including universities, power to legislate on that subject must lie in Parliament.

5. There is no difficulty regarding the scope of Parliament's power to legislate in respect of the particular institutions mentioned in Entries 63, 64 and 65. It is only when we come to consider the impact of Entry 66 of List I upon Entry 11 of List II that we are faced with the real difficulty of drawing a precise dividing line between the power of the Union Parliament and that of the State Legislature in the matter of legislation for institutions for higher education and research. The Supreme Court has held that item 11 of List II and item 66 of List I overlap and must therefore be harmoniously construed, and to the extent of such overlapping the power conferred by item 66 of List I must prevail over the power of the State under item 11 of List II. The Court has also held that the use of the words "subject to" in item 11 of List II takes out of its content the subject-matter of item 66 of List I, so that to the extent of coordination and determination of standards in institutions of higher education or research and scientific and technical institutions the Union Parliament has the sole and exclusive power of legislation.

6. But this construction of the two Entries does not help to solve the problem of determining with precision the content of item 66 itself. In its broadest sense the concept of education covers a very wide field. Buildings, libraries, laboratory equipment, courses of study, standards of examinations, research, medium of instruction, qualifications of teachers and their conditions of service,—all these and more are the matters which together constitute higher education. These are not distinct legislative heads and the power to legislate in respect of all or any of them resides in the State legislature in which the power to legislate on education is vested. But the Supreme Court says that the Union Parliament has also the power under item 66 to legislate on all the above aspects of education in so far as they have a direct bearing and impact on the powers of coordination and determination of standards in particular educational institutions. If the primary aim be to fix a standard which is to be attained by a student who passes out at the end of his training it can well be said that everything necessary for the attainment of that standard by him falls equally within determination of standards. In order to attain a particular standard at the end, each preliminary step will have to be of that standard. Thus the quality of the examination he has to pass at the end, next the quality of any intermediate examination, the textbooks for the purpose, the nature of the practical training, if any, the appliances which he must have to use, the qualifications of

the teachers who impart the education, may also require to be fixed according to certain standards in order that the ultimate standard may be attained. If coordination means the fixing of the same or similar standards within a university state-wise or countrywise so as to have a more or less uniform level, all these items might equally be included as fit subjects for Central legislation. Almost every aspect of university life and activity may be controlled in the name of coordination and determination of standards. In short, all matters which are comprehended in the word "education" and are within the competence of State Legislature as falling within item 11 of the State List may equally have to be dealt with by Union legislation if it is necessary to do so for coordinating and determining standards. In this connection the following observations of the Supreme Court in the Gujarat University case are apposite.

"Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is not possible to lay down any general test which would afford a solution for every question which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within the power of the Union to legislate in respect of media of instruction so as to ensure coordination and determination of standards, that is, to ensure maintenance or improvement of standards. The fact that the Union has not legislated or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of a matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment."

It follows that Parliament's power cannot go beyond what is strictly necessary under item 66 and its interference with education must be limited to the purposes mentioned in the said item. It cannot directly encroach upon the State field and deprive Entry 11 of all or substantially all its content under the cloak of coordination and determination of standards. It is therefore, a matter of extreme difficulty to draw a sharp dividing line between item 11 of List II and item 66 of List I, and to ascertain where the State's power ends and the Union's power begins.

7. In this connection, we have had the advantage of the views of the learned Attorney-General whose advice was sought by us in the light of the Supreme Court's judgement on the question of the extent of the implied powers of Parliament to undertake legislation under

Entry 66 of List I, particularly the extent to which such implied powers would include the matters stated in paragraphs (a) to (f) of question 8 of the Questionnaire. The extreme difficulty in drawing a sharp dividing line between item 11 of List II and item 66 of List I is highlighted by the learned Attorney-General in the following words :—

“Education cannot be imparted effectively without building laboratory equipment, teaching staff, finances, etc. All these matters are comprehended in the word “education” and would be within the competence solely of the university as falling within Entry 11 of the State List but they each of them may equally have to be touched upon or dealt with by Union legislation if it is necessary to do so for determining standards and/or for coordination. Normally, it is for the State to regulate the imparting of education and maintaining of standards. Parliament’s power in this matter is limited to coordination and the fixing of standards. As pointed out by the Supreme Court, when legislation is passed by Parliament and/or the State, it would be a question of ascertaining the pith and substance of each so as to determine whether it falls properly within Entry 66 or Entry 11. The Centre cannot be permitted in the name of coordination to legislate so as directly to interfere with education. It is obvious that it is a matter of the utmost difficulty to draw a clear line at a place where the State’s function ends and the Centre’s function begins. This much, however, can be said that the Centre’s power cannot go beyond what is strictly necessary for legislating under Entry 66. The interference with education must be limited to the purposes mentioned in that Entry and not step into the field covered by Entry 11 by direct interference.”

And further,

“If it were that Entry 66 contemplated only remedial measures, that is to say, where there is no approach to coordination, or where standards are so diverse as to require fixation, the difficulty would not be so great, but the Supreme Court has said that the Centre has not to wait until there is a distinct want of coordination or a lowering or variation of standards in order to act. The Centre can act also anticipatorily. In any such anticipatory legislation even more care would have to be taken to see that Central legislation is kept strictly within the bounds of Entry 66.”

8. We have tried to ascertain through Question 8 of the Questionnaire whether the implied powers of Parliament under Entry 66 would include the powers to legislate on the specific matters mentioned therein. Question 8 is as follows :—

“8. To what extent can the doctrine of implied powers as enunciated in the case of Gujarat University by the Supreme Court

be carried to include the right of the Parliament to legislate :—

- (a) That Visitorial powers shall reside, in the interest of co-ordination and the maintenance of standards, in the President of the Union.
- (b) That Chancellors shall be persons of eminence either in the educational world or in other spheres of public life of the country and shall have such powers as may be specifically delegated to them but that they shall not be vested with any Visitorial powers.
- (c) Regarding minimum standards of fitness for admission to universities or to technical and professional institutions including medical, engineering and agricultural institutions.
- (d) Prescribing the procedure for the appointment of Vice-Chancellors.
- (e) Regarding the right to direct inspection of colleges and other institutions in order to ensure that proper standards are maintained.
- (f) Regarding the fixing of qualifications as also the method of selection of members of (1) the teaching staff and (2) other members of the community, to various governing bodies such as the Court or the Senate, the Executive Council or the Syndicate, the Academic Councils, Appointment or Selection Boards, Examination Committees for bringing out results and other similar university bodies.”

The most important aspect of this question is regarding the power of Parliament to confer on the President the powers of the Visitor in respect of all universities in India. It may not be out of place to compare the powers of the Crown in England as a Visitor of the universities with like powers of the President of India in respect of the Central Universities.

In England, the Universities of Oxford and Cambridge being civil and lay corporations, have, it seems, no Visitor. The Colleges of Oxford and Cambridge unlike the Universities themselves are eleemosynari corporations and subject to visitation. Other universities are likewise visitable, the Crown usually being the Visitor in the case of those incorporated by modern Charter.* Holt, C. J. defines “Visitorial power” as “an authority to inspect the actions and regulate the behaviour of the members that partake of the charity”, the object being “to prevent all perverting of charity or to compose differences that may happen among the members of the Corporations themselves.** Where the King

*Halsbury : Laws of England III Ed. Vol. 13, p. 709

**Phillips vs Bury (1788) 2 TR 1353; Tudor on Charities, 5th Ed. p. 199

is the founder he and his successors are Visitors.*** But if the founder is a subject and his heirs become extinct or could not be found or was a lunatic, the Visitorial powers devolve upon the Crown.**** The powers of the Visitor in England thus appear to be of supervisory nature aimed at maintaining the regular working of the institution according to the statute. The powers given to the President under the respective statutes of the Central Universities (Banaras, Aligarh, Delhi and Visva-Bharati) are broadly speaking of this type. The President in his capacity as Visitor of the Central Universities exercises the following powers :--

- (a) "He has the right to cause an inspection to be made of the University, its buildings, laboratories and equipment and of any institution maintained by the University and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the University.
- (b) He may address the Vice-Chancellor with reference to the result of such an enquiry and the Vice-Chancellor shall communicate to the Executive Council the views of the Visitor with such advice which the Visitor may offer of the action to be taken thereon.
- (c) The Executive Council has to communicate through the Vice-Chancellor to the Visitor such action, if any, proposed to be taken or which has been taken upon the result of the inspection or enquiry.
- (d) If the Executive Council does not within a reasonable time take action to the satisfaction of the Visitor the latter may after considering any explanation or representation of the Executive Council issue such directions as he may think fit and the Executive Council shall be bound to comply with such directions.

The Visitor has also the power by an order in writing to annul any proceeding of the University which is not in conformity with the Act, the Statutes or the Ordinances. In addition to these powers the respective Acts further provide that every new Statute or addition to the Statute or any amendment or repeal of the Statutes of the University require the previous approval of the Visitor who may sanction, disallow, or remit it for further consideration. He has also the power to disallow ordinances and suspend their operation.

10. Parliament can of course provide by law made under Entry 66 of List I that the President of India shall be the Visitor in respect of the other universities as well as the four Central universities in so far as it is necessary for the purpose of coordination and determination of standards. But to what extent the President can be investee

***Eden v Foster 24 ER 750

****R vs St. Catharine's Hall, 100 E.R. 991

as Visitor with powers analogous to those exercisable by him in respect of the Central Universities is again a question which is not capable of an easy answer. As early as in 1952, the Government of India was advised by the learned Attorney General that in carrying out the functions assigned to the President as the visitor under the Banaras, Aligarh and Delhi University Act, the President is required to act on the advice of his Council of Ministers as provided by Article 74(1) of the Constitution. So far as we are aware, that view has not yet been revised and still holds the field. In effect, therefore, the Visitorial powers of the President would in the ultimate analysis be exercised by the Ministry of Education of the Government of India. Most of these powers would make a direct inroad into the autonomy of the universities and the States and it is a moot point whether even in the name of coordination and determination of standards the powers analogous to those in respect of the Central universities can be conferred upon the President as Visitor of the other universities.

11. It will be useful in this connection to refer to the U. G. C. Act, 1956 which at present is the only enactment made by Parliament under their powers under item 66 of List I. Under section 12 of that Act the Commission has been vested with certain powers and duties for the promotion, coordination of university education and for the determination and maintenance of standards of teaching, examination and research in the universities. Besides the power to inquire into the financial needs of different universities and to allocate and disburse grants for their maintenance and development, the Commission has been given certain further powers for the furtherance of its objects and purposes. It can recommend to any university measures necessary for an improvement of university education and advise the university upon the action to be taken for the purpose of implementing such recommendations. It can advise the Central or State Governments on the allocation of any grants to the universities for any general or specified purpose. It can also advise any authority if such advice is asked for the establishment of a new university or on proposals connected with the expansion of the activities of any university. It can also advise the Central or State Government or university on any question that may be referred to the Commission by the Central or State Government or the university, as the case may be. It can further require a university to furnish it with information relating to its financial position or studies in various branches of learning in that university, the standard of teaching and examination in the university etc. The Commission has further the power to cause an inspection of any department or departments of the university to be made but such power can be exercised only after consultation with the university and for the limited purpose of ascertaining its financial needs or its standards of teaching, examination and research. If any university fails to comply with the recommendations or advice made by the Commission, it entails the consequence of the Commission withholding from the university grants proposed to be made to that university out of the Commission's funds.

12. The powers of the Commission are thus of a recommendatory and advisory nature and care seems to have been taken to see that apart from the consequence of the withholding of grants, there is as little interference as possible with the universities' autonomy. We agree with the learned Attorney-General that the Commission's powers are with reference to grants made or to be made by the UGC and it is desirable to enumerate and consolidate the powers of coordination and maintenance of standards in one person, such as, the Visitor, to the extent it is possible to do so. In any case, however, the powers can be only for the purpose of coordination or fixing of standards within the meaning of Entry 66 and these would have to be precisely specified.

13. The matter of appointment of Chancellors and Vice-Chancellors and their qualifications has, in our opinion, no relation whatsoever to the matters lying within Entry 66. So also the fixing of qualifications or the methods of selection of the teaching staff and other members of the various universities authorities, such as, the Court, the Senate or the Executive Council are outside the purview of Entry 66. The only matters which may lie within Entry 66 are regarding the fixing of minimum standards of fitness for admission into universities or any technical and professional institutions including medical, engineering and agricultural institutions and inspection of colleges and other institutions in order to ensure that proper standards are maintained.

14. Several eminent educationists, lawyers and other persons prominent in public life who gave evidence before us have felt, despite the majority decision of the Supreme Court in the Gujarat University case, that item 66 of List I itself does not give adequate powers to the Centre in the matter of higher education. According to this view, Entry 66 is concerned principally with equation and coordination between the standards of universities in different States in the country or between different universities within the same State. If standards of universities fall because of deficiency in matters, such as, teaching staff, equipment, libraries, etc., Parliament can intervene under item 66 by making a law providing for facilities in respect of all such matters so that the backward universities may pick up and come up to the level of advanced universities. "It may", to quote Mr. Justice Subba Rao, who delivered the minority judgment in the Gujarat University case, "also make a law for raising the general standards of all the universities" which may provide the necessary financial and other help to enable the universities to reach the level prescribed. "For the said entry does not permit the making of any law which allows direct interference by an outside body with the course of education in a university, but enables it generally to prescribe standards and give adventitious aids for reaching the said standards. In short, the role of a guardian angel is allotted to Parliament, so that it can make a law providing a machinery to watch, advise, give financial and other help, so that the universities may perform their allotted role." It was for the implementation of such a role that the University Grants Commission Act was passed.

15. It has been strongly represented before us that in the larger interests of the nation the Centre should not now rest content with being merely a "guardian angel" but should play a role which is more purposive and effective, for raising the level of standards for university and higher education and scientific and technical education in the country. Towards that end, a large number of witnesses whom we interviewed expressed themselves whole-heartedly in favour of the proposal to make university and higher education a Concurrent subject, so that the Union Parliament may have co-extensive powers with the States to make laws on all matters relating to higher education should it become necessary to do so for the promotion, coordination, and maintenance of proper standards. If the subject of university education is transposed from List II to List III, leaving intact item 66 of List I, it will undoubtedly result in increasing to a considerable extent the Union's power which it possesses at present in the matter of higher education. There is no doubt that it constitutes a radical departure from the scheme of distribution of legislative power between the Union and the States on the subject of education. The States are jealous of preserving their powers in the matter of education which they have enjoyed so long under the Constitution as also under the Government of India Act, 1935. A few State Governments who have favoured us with their views on the Questionnaire issued by us have expressed themselves in favour of maintaining the *status quo*. But as we have pointed out in Chapter IV, the States need not have any fear or apprehension on this score. Conventions should be established whereby the Union Government, before undertaking legislation on the subject of university education in the Concurrent List will ascertain the views of the State Governments so that the States will have full opportunity to make their voice heard and respected. Administration in any case will remain with the States. For these reasons we reiterate the opinion which we have already impressed that steps should be taken to amend the Constitution to make university education a Concurrent subject.

CHAPTER X

RECOMMENDATIONS

Education is a problem of the greatest national importance. Nothing is more vital for an average individual than to know how his children are to be educated. "We cannot", as the Radhakrishnan Commission Report points out at page 44, "separate the individual from society. Social justice is the foundation of States and it demands that we create a society which is free from the evils which it is within human power to banish. If all men are entitled to an equal chance to be free from want, fear and ignorance, we cannot sit quiet and contented when millions of our fellow-men continue to live in poverty, disease, hunger and ignorance". But into the questions raised by educational re-construction we are not required to enter. We have a limited task, namely, to point out the extent to which the Union Government can assume greater responsibility for university and higher education. We have pointed out how university and higher education are closely connected with secondary and elementary education. Into the questions raised by a re-organisation of secondary and higher education we do not feel called upon to comment.

We shall now proceed to summarise our main recommendations to which we have been led by our study of the problem :—

1. We think that while Entry 66 of List I gives exclusive authority to the Union Government to coordinate and maintain standards it needs to be supplemented by an arrangement which would enable the Union Government to review the work and purposes achieved by university enactments and bring them, where necessary, into conformity with national requirements. We, therefore, recommend that university and higher education should be transferred from the State List to the Concurrent List, retaining intact Entry 66 in the Union List. Under this arrangement the State Governments will continue, as at present, to be responsible for the maintenance of universities. We have explained in the Chapter on the Gujarat University Case the exact import of Entry 66 according to the view taken by the Supreme Court.

2. We have pointed out that the University Grants Commission is the main agency through which the Central Government has exercised the obligations imposed upon it by Entry 66. We are satisfied that under existing conditions, the University Grants Commission should have 15 Members, of whom at least five should be full time Members. It goes without saying that they should be men of the highest standing in the educational world and we, therefore, recommend that they should be persons of the status of Vice-Chancellors. We have also been forced to come to the conclusion that it is undesirable that a person who is for the

time being holding full time appointment as a Vice-Chancellor should be appointed Member of the Commission. We, therefore, recommend that serving Vice-Chancellors should not be appointed as Members of the Commission. Our reason for making this suggestion is that it is undesirable to place a person in a position where he may have divided loyalties. The prestige of the University Grants Commission depends upon its being an independent and impartial body. The composition of the Commission should be such as to give no impression to the public that it is not completely independent.

3. We have emphasised the importance of university education and research. They are vital for our national development. No country can afford to neglect them. Our considered opinion is that the grant for allotment for university education and research placed at the disposal of the University Grants Commission is very meagre, as was emphasized by Dr. Kothari, Chairman of the University Grants Commission in his statement before us. Without committing ourselves to any figure, we are strongly of the opinion that in the Fourth Five Year Plan, a very much larger amount should be placed at the disposal of the Commission.

4. Our enquiry has disclosed that the system of matching grants has not worked satisfactorily. Both State Governments and universities find it difficult to provide matching funds. We, therefore, do not favour the system of matching grants and feel that depending on the merits of the case, the conditions of grant should be liberalized.

5. We are strongly of the view that the University Grants Commission should recognize, in consultation with the universities concerned, more and more institutions, as provided in clause (f) of Section 2 of the University Grants Commission Act, 1956, for purposes of financial aid. This will enable institutions which do not at present come within the purview of University Grants Commission Act to come under it.

6. We are distressed to find that the pay scales in aided colleges are grossly inadequate. We, therefore, recommend that steps should be taken to see that more and more colleges adopt the pay scales prescribed by the Commission for affiliated colleges.

7. We have emphasised in our Report how education must be regarded as one integrated whole. Professional education cannot be completely divorced from general education. We therefore, recommend that professional education including Medical (Basic), Agricultural, Engineering and Law should also come within the purview of the University Grants Commission.

8. A real improvement in university education is not possible without a corresponding increase in the efficiency of our secondary education. We, therefore, recommend that vigorous steps should be taken to improve the quality of secondary education. We refrain from going into further details in this matter as it is not within our purview.

9. Poverty should be no bar to the acquisition of the highest knowledge. It should be possible for common people to start life without avoidable handicaps. Provided a candidate has merit he should be enabled to join our higher educational institutions. We, therefore, recommend that the number of scholarships and sizarships for university education and research should be considerably increased in institutions of higher education. We attach importance to the question of amount as it should be one which would cover all reasonable expenses of a student.

10. The importance of the education of women cannot be over-emphasized. **Women** hold the key to the future progress of the country. The number of scholarships and sizarships for higher education for women students should be considerably increased.

11. We are not in favour of single-faculty universities, for neither the literatures, nor philosophies or the sciences can be separated one from the other. Nevertheless, we recognise that there is a place in our educational system for institutions of national status specializing in various disciplines in our country. We, of course, assume that there will be no complete divorce in these institutions between the humanities and the sciences.

12. We have examined in our Chapter on the University Grants Commission the working of that body. We have been disturbed by the fact that there have been occasions when a State Government has not consulted the Commission before setting up a university. We, therefore, recommend that the University Grants Commission Act should be so amended as to make it obligatory on the part of a State Government to consult the Commission before setting up a new university. We may point out that this change cannot be effected if education is not made a Concurrent subject. Indeed, this is one of our main reasons for recommending that education should be brought on the Concurrent List. We feel that University Grants Commission Act should have specific provision which would enable the Commission to consistently refuse to give any financial aid to universities established without its prior consultation.

13. There are agencies at present for consultation between the universities and State Governments. The time has come now when a convention should be formally established for frequent consultations with State Governments and universities on all important policy issues. We are in favour of making the Inter-University Board a more effective body and it should more and more be regarded as the spokesman of university opinion.

14. We think that the universities should give attention to the question of minimum age of entry. We think that there should be a minimum age. What that age should be is a matter for the universities

to consider and decide. We are also of the opinion that the universities should pursue a common policy in regard to admissions and that admission particularly to professional institutions be based upon merit consistently with due regard to the interests of Scheduled Castes, Scheduled Tribes and other socially and educationally backward classes of society. It would, of course, be the concern of the universities to lay down the tests for merit.

15. One way in which the Centre can play a greater part in promoting higher education is to establish at least one Central institution of the highest standard in every State to serve as an example to other educational institutions in the State.

16. Our universities have a duty to perform towards those who are not able to complete their education and who desire to have the benefit of higher education. We recommend establishment of morning, evening colleges and correspondence courses for the benefit of those who are unable to pursue regular courses.

ACKNOWLEDGEMENTS

We would like to express our thanks to the Attorney-General for the valuable opinion on legal questions involved in and proposition deducible from the Judgment of the Supreme Court in the Gujarat University Case. We have been greatly helped by his observations. The statement of the case and his opinion is at Appendix IV.

2. We wish to record our deep sense of appreciation of the help and advice given to us by Shri R. M. Mehta, Joint Secretary and Legal Adviser to the Government of India, Ministry of Law on the legal and constitutional issues which we had to consider in our Report. To Shri Mehta, we are grateful for a careful analysis of the judgment of the Supreme Court and indeed we may add that the Chapter relating to it is entirely his word. Though he is one of us, we cannot but be too thankful to him for the interest, knowledge, ability and wisdom with which his work has been characterized by the Committee.

3. We would also like to express our sincere appreciation of the care, faithfulness and ability which has marked the work of our Secretary, Shri Triyogi Narain. He has spared no pains in helping us in every way in the performance of our work. For a short while he was away and during his absence the work of the Secretary was performed by Shri C. L. Dhingra. We owe it to say that he discharged his functions with knowledge and ability. We are indebted to him for the services rendered by him during the absence of Shri Triyogi Narain. We would like to record our appreciation of the work of the other members of the staff, especially Shri M. C. Jain who worked as Assistant to Secretary. They had been unsparing in their efforts to assist us. They have known no holidays,

for the Committee often worked on the days which are regarded as holidays. The work of our Stenographer, Shri D. D. Arora, has been a heavy one and we are bound to express our admiration for the efficiency and carefulness with which he has discharged his functions.

Sd. P. N. SAPRU

Chairman

Sd. M. P. BHARGAVA

Sd. SIDHESHWAR PRASAD

Sd. P. K. VASUDEVAN NAIR

Sd. AMAR NATH VIDYALANKAR

Sd. P. MUTHIAH

Sd. R. M. MEHTA

Sd. C. K. BHATTACHARYYA

Sd. TRIYOGI NARAIN

Secretary

APPENDIX I

QUESTIONNAIRE ISSUED BY THE COMMITTEE

Closing Date : 31st August, 1963.

GOVERNMENT OF INDIA
MINISTRY OF EDUCATION

Committee of Members of Parliament to Examine Constitutional
Provisions Regarding Higher Education

From : To :
..... The Under Secretary to the Government of
..... India, University Education Division, Mi-
..... nistry of Education, Government of India,
..... New Delhi

The University Education Commission while considering the problem of University Education recommended* that "the all-India aspects of University Education, the repercussions and interchanges necessary and desirable between Universities and the need for a national guarantee of minimum standards of efficiency" require that University Education should be a concurrent responsibility of the Centre and the States. This point came up for discussion when the Indian Constitution was being framed and it was decided that Education, including Universities, subject to certain provisions, should be a State responsibility. The Central responsibility was thus limited to the Central Universities and the co-ordination and determination of standards as provided in Entry 66 in List I of the Seventh Schedule of the Constitution which reads as follows:—

"Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

To discharge these functions efficiently and effectively, the Government of India constituted a University Grants Commission for the purpose in 1952. Section 12 of the University Grants Commission Act provides, *inter alia*, that "it shall be the general 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."

QUESTIONS

ANSWERS

1. Has the Central Government, in your opinion, adequate powers of control to co-ordinate and determine standards in institutions for higher education or research and scientific and technical institutions under the existing provisions of the Constitution (Entry 66 in List I of the Seventh Schedule)?

Please answer this question with reference to the Supreme Court's judgement in the Gujarat University's case, if possible.

NOTE.—Higher Education may be taken to mean University Education including agricultural, technical, engineering and medical education.

*Report of the University Education Commission, Vol. 1—Chapter XIII (para 3).

 QUESTIONS

ANSWERS

2. Are any changes in the Constitution necessary for a more effective control over University Education by the Union Government? If the answer is in the affirmative, what are your suggestions?
3. How will the powers possessed at present by the Union Government over University Education be affected by making it a Concurrent subject? Will these powers increase or decrease?
4. Will the omission of Entry No. 11 from the State List (List No. II) and putting it into the Union List (List No. I) along with Higher Education constitute an improvement on the existing state and provide the Union Government with greater authority to discharge its responsibilities for higher education?
5. What, in your opinion, are the steps that should be taken to ensure a minimum standard of efficiency and uniformity in all the universities and institutions of higher studies in the following matters:—
 - (i) Courses of Study.
 - (ii) Examinations.
 - (iii) Standard of Teaching.

Can you please suggest other spheres of higher education and university education in which also minimum standard of efficiency and uniformity is desirable and feasible?
6. Under the present arrangements, is there any difficulty so far as State Governments are concerned in discharging their full responsibility towards higher education? If so, in your opinion, what are the ways of removing the same?

Note.—Entry No. 11 of List II—State List reads: “Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.”

QUESTIONS

ANSWERS

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7. If you are not in favour of disturbing the present allocation of responsibility between the States and the Union Government what other measures would you recommend for enabling the Central Government to discharge the obligations imposed upon it by Entry 66 in List I of the Seventh Schedule of the Constitution?
8. To what extent can the doctrine of implied powers as enunciated in the case of Gujarat University by the Supreme Court be carried to include the right of the Parliament to legislate:—
- (a) that Visitorial powers shall reside, in the interest of co-ordination and the maintenance of standards, in the President of the Union.
 - (b) that Chancellors shall be persons of eminence either in the educational world or in other spheres of public life of the country and shall have such powers as may be specifically delegated to them but that they shall not be vested with any Visitorial powers.
 - (c) Regarding minimum standards of fitness for admission to Universities or to technical and professional institutions including medical, engineering and agricultural institutions.
 - (d) Prescribing the procedure for the appointment of Vice-Chancellors.
 - (e) Regarding the right to direct inspection of colleges and other institutions in order to ensure that proper standards are maintained.
 - (f) Regarding the fixing of qualifications as also the method of selection of members of (1) the teaching staff and (2) other members of the commu-
-

QUESTIONS

ANSWERS

nity to various governing bodies such as the Court or the Senate, the Executive Council or the Syndicate, the Academic Councils, Appointment or Selection Boards, Examination Committees for bringing out results and other similar University bodies.

9. If your answer to the above question or any of its parts be in the affirmative, please indicate how you reconcile entry No. 11 of List II—State List with entry No. 66 of List I—Union List of the Seventh Schedule?
10. What steps should the Central Government take to ensure determination of standards and their co-ordination?
11. What steps should be taken, in your opinion, to emphasise or bring out the all-India aspects of the University and Higher Education?

Could you suggest any method of co-operation among the States or State Universities which will lead to greater national solidarity and integration?

12. Whether the Zones as defined at present can be of any use for this purpose?

Following is the composition of the Zones:—

Northern Zone:—Punjab, Rajasthan, Jammu & Kashmir, and the Union Territories of Himachal Pradesh, and Delhi.

Central Zone:—Uttar Pradesh and Madhya Pradesh.

Eastern Zone:—Assam, West Bengal, Bihar, Orissa, and Nagaland by special invitation and the Union Territories of Manipur and Tripura.

Western Zone:—Gujarat and Maharashtra and the Union Territories of Dadra and Nagar Haveli and Goa, Daman and Diu.

QUESTIONS

ANSWERS

Southern Zone :—Andhra Pradesh, Madras, Mysore and Kerala and the Union Territory of Pondicherry.

13. How can the U.G.C. be made to play a more active part in the development of University and Higher Education? Please make concrete suggestions.
14. What are your views regarding single faculty vis-a-vis multi-faculty universities? Is it desirable to have single faculty universities? In the interest of co-ordination and determination of standards, what kind of control do you suggest by the Union Government for such institutions?
15. Do you think that in the interest of bringing about co-ordination in Higher and University Education, the President of India should be vested with the powers of Visitor in respect of all the Universities in India?
16. In your opinion what powers should the Central Government possess to implement decisions of international agreements or conventions regarding higher education in order to discharge their obligations under entry No. 13 of List I of the Seventh Schedule?

Note.—Entry No. 13 of List I—Union List of Seventh Schedule reads :
“Participation in international conferences, associations and other bodies and implementing of decisions made thereat.”

APPENDIX II

LIST OF PERSONS TO WHOM THE QUESTIONNAIRE WAS ISSUED

1. All State Governments.
2. Vice-Chancellors, Ex-Vice-Chancellors and Deans, Faculty of Law of Indian Universities and Institutions deemed as Universities.
3. Education Secretaries to the Government of India (past and present) by name.
4. Ministries of S. R. & C. A., Health and Food & Agriculture (Department of Agriculture).
5. Members of Union Public Service Commission and State Public Service Commissions.
6. All members of the Informal Consultative Committee of Parliament on Education.
7. Advocates-General of State Governments.
8. Bar Councils of All States including Bar Council of India.
9. Education Ministers of all States (by name).
10. Inter-University Board of India.
11. Members of University Grants Commission (past and present) by name.
12. The Chairman, Indian Law Institute, Supreme Court Building, New Delhi.
13. The Chairman, Law Commission, New Delhi.
14. The Director, Indian Council of Medical Research, New Delhi.
15. The Director, Indian Council of Agricultural Research, New Delhi.
16. The Director, All India Institute of Medical Sciences, New Delhi.
17. The Chairman, Institute of Engineering, New Delhi.
18. The Chairman, U. P. University Grants Committee and Bihar University Grants Committee.
19. Dr. Zakir Husain, Vice-President of India, New Delhi.
20. Dr. A. L. Mudaliar, Vice-Chancellor, Madras University, Madras.
21. Dr. C. V. Raman, Raman Research Institute, Bangalore.
22. Prof. M. S. Thacker, Member, Planning Commission, New Delhi.
23. Dr. P. V. Kane, Bombay.
24. Shri C. Rajagopalachari, Madras.
25. Dr. M. S. Aney, New Delhi.
26. Shri K. M. Munshi, Bombay.
27. Shri K. M. Panikkar, Vice-Chancellor, Mysore University, Mysore.
28. Dr. C. P. Ramaswamy Aiyar, Vice-Chancellor, Annamalai University, Annamalainagar.
29. Dr. S. N. Bose, 22, Iswar Mill Lane, Calcutta.
30. Dr. H. J. Bhabha, Secretary and Chairman, Atomic Energy Commission, Bombay.
31. Dr. Sampurnanand, Governor of Rajasthan, Jaipur.
32. Prof. Hiren Mukerji, M. P., Calcutta.
33. Dr. R. P. Paranjapae, Formerly Vice-Chancellor, Poona University, Poona.

34. Shri K. G. Saiyidain, 63-F, Sujan Singh Park, New Delhi.
35. Dr. D. S. Kothari, Chairman, University Grants Commission, New Delhi.
36. Dr. Nihar Ranjan Ray, Calcutta.
37. Shri Justice P. B. Gajendragadkar, New Delhi.
38. Shri M. C. Setalvad, Bombay.
39. Dr. Ishwari Prasad, Member, Executive Council, Allahabad University, Allahabad.
40. Dr. Radhabinod Pal, Calcutta.
41. Dr. G. S. Sharma, Principal, University College, Jaipur.
42. Dr. S. Bhagwantam, Scientific Adviser, to the Minister of Defence, New Delhi.
43. Prof. Mohd. Habib, Deptt. of Political Science, Aligarh Muslim University, Aligarh.
44. Dr. G. C. Chatterjee, Chairman, Central Board of Secondary Education, New Delhi.
45. Shri C. B. Agarwala, General Secretary, Bar Association of India, New Delhi.
46. Shri Mehr Chand Mahajan, New Delhi.
47. Shri Dhawan, Member, Executive Council, Varanasaya Sanskrit Vishwa-vidyalaya, Varanasi.
48. Dr. Tara Chand, M. P., New Delhi.
49. Prof. Humayun Kabir, New Delhi.
50. Shri R. K. Singh, Principal, B. R. College, Agra.
51. Shri Ganthan Chatterjee, M. A., No. 2, Palam Palace, Calcutta.
52. Dr. Irfan Habib, Aligarh Muslim University, Aligarh.
53. Shri Debi Prasad Chattopadhyaya, Calcutta.
54. Dr. V. B. Singh, Reader in Economics, Lucknow University, Lucknow.
55. Prof. Joseph Mundassery, Former Minister of Education, Trichur (Kerala).
56. Shri Eravenkara Gopala Karup, M. L. A., Noorand, Mavelikkara, Kerala.
57. Prof. A. R. Kamat, Deputy Director, Gokhale Institute of Economics and Politics, Poona.
58. Prof. D. D. Kosambi, Poona.
59. Shri Bhan Phatak, M. L. C., Bombay.
60. Shri Shyamul Chakravarty, Calcutta.
61. Dr. Munish Raja, Aligarh Muslim University, Aligarh.
62. Shri Bipan Chandra, Hindu College, Delhi.
63. Prof. A. K. Sen, Professor of Economics, Delhi School of Economics, Delhi.
64. Shri Veliyan Bhargavan, M. L. A., Kottarakkara (Kerala).
65. Shri T. C. Narayanan, Nambiara, M. L. A., Trivandrum.
66. Dr. Mulk Raj Anand, University of Punjab, Chandigarh.
67. Dr. Salamatulla, Principal, Teachers' Training College, Jamia Millia Islamia, Delhi.
68. Dr. Mathew Kurien, St. Stephens College, Delhi-6.
69. G. V. Subba Rao, Amalapuram (A. P.).
70. Prof. B. N. Prasad, President, Indian Science Congress, Allahabad.
71. Shri P. K. Kaul, Allahabad.

72. Smt. Seeta Parmanand, M. P., New Delhi.
73. Smt. Rukmini Devi Arundale, Madras.
74. Dr. N. P. Asthana, Allahabad.
75. Prof. P. K. Tripathi, Head, Deptt. of Law, University of Allahabad.
76. Prof. N. R. Kulkarni, Dean, Faculty of Science, and Member, Executive Council, University of Poona.
77. Shri Purshottam Trikamdas, Advocate, New Delhi.
78. Dr. V. B. Singh, Department of Economics, Lucknow University, Lucknow.
79. Dewan Anand Kumar, New Delhi.
80. Smt. Achamma J. Mathai, Chairman, Central Social Welfare Board, New Delhi.
81. Shri S. Bhoothalingam, Secretary, Ministry of Finance, New Delhi.

APPENDIX III

LIST OF PERSONS INTERVIEWED

The Committee had the privilege of ascertaining the views of the following :—

(At Aligarh)

14-9-63

1. Shri B. F. H. B. Tyabji, Vice-Chancellor, Aligarh Muslim University, Aligarh.
2. Shri Yusuf Husain Khan, Pro-Vice-Chancellor, Aligarh Muslim University, Aligarh.
3. Prof. Hafizul Rahman, Dean, Faculty of Law, Aligarh Muslim University, Aligarh.
4. Prof. H. L. Sharma, Dean, Faculty of Arts, Aligarh Muslim University, Aligarh.
5. Prof. Z. Ansari, Dean, Faculty of Engineering and Technology, Aligarh Muslim University, Aligarh.
6. Prof. S. M. H. Naqvi, Dean, Faculty of Medicine, Aligarh Muslim University, Aligarh.
7. Prof. N. C. Saha, Head, Department of Electrical Engineering, Aligarh Muslim University, Aligarh.
8. Prof. S. A. Haqqi, Professor in the Faculty of Arts, Aligarh Muslim University, Aligarh.
9. Prof. K. A. Chowdhury, Dean, Faculty of Science, Aligarh Muslim University, Aligarh.
10. Prof. S. Nurul Hasan, Head, Department of History.

(At New Delhi)

17-10-63

11. Shri Purshottam Trikandas, Advocate, New Delhi.
12. Pt. H. N. Kunzru, New Delhi.
13. Shri C. B. Agarwala, General Secretary, Bar Association of India.

18-10-63

14. Dr. C. D. Deshmukh, Vice-Chancellor, Delhi University.
15. Dewan Anand Kumar, Formerly Member of the University Grants Commission.
16. Shri Nihar Ranjan Ray, M. P.
17. Shri S. Bhoothalingam, Secretary, Ministry of Finance (formerly Member of the University Grants Commission).
18. Dr. V. K. R. V. Rao, Member, Planning Commission.
19. Dr. Tara Chand, M.P., Formerly Secretary, Ministry of Education.

19-10-63

20. Shri Muhammad Ishaque, M.P.
21. Shri N. M. Anwar, M.P.
22. Shri Mahadeo Prasad, M.P.

21-10-63

23. Dr. A. Appadorai, Director, Indian School of International Studies, New Delhi.
24. Prof. A. Ramaswamy, Dean, Faculty of Law, Delhi University.
25. Prof. G. C. Chatterji, Chairman, Central Board of Secondary Education.
26. Dr. S. Bhagwantam, Scientific Adviser to Defence Minister.
27. Prof. M. Mujeeb, Sheikh-ul-Jamia, Jamia Millia Islamia, New Delhi.
28. Shri G. S. Pathak, M.P., Senior Advocate, New Delhi.

11-12-63

29. Prof. A. R. Wadia, M.P.

20-12-63

30. Dr. D. S. Kothari, Chairman, University Grants Commission. (The Committee had an interview with him for the second time on 26-2-64.)

24-1-64

31. Rajkumari Amrit Kaur, New Delhi.

25-1-64

32. Shri B. Shiva Rao, Member, University Grants Commission.

6-2-64

33. Shri Asoka Mehta, Deputy Chairman, Planning Commission.

7-2-64

34. Shri Mehr Chand Mahajan, formerly Chief Justice of India.

22-2-64

35. Shri N. C. Chatterjee, M.P., Senior Advocate, New Delhi.

24-2-64

36. Dr. C. P. Ramaswami Aiyar, Vice-Chancellor, Annamalai University.

16-3-64

37. Smt. Renuka Ray, M.P.
38. Dr. (Smt.) Seeta Parmanand, M.P.

18-3-64

39. Smt. Raksha Saran, Chairman, National Council for Women's Education.
40. Prof. M. Ruthnaswamy, M.P.

30-3-64

41. Shri G. Pande, Vice-Chancellor, Roorkee University.
42. Major-General S. S. Sokhey.

31-3-64

43. Dr. B. K. Anand, Prof. of Physiology, All-India Institute of Medical Sciences, New Delhi.

1-4-64

44. Dr. B. B. Dixit, Director, All-India Institute of Medical Sciences, New Delhi accompanied by Dr. K. L. Wig of the Institute.

2-4-64

45. Dr. R. K. Singh, Principal, B. R. College, Agra.

46. Dr. R. N. Dogra, Director, College of Engineering and Technology, New Delhi.

3-4-64

47. S. K. Sen, Sen's Nursing Home, New Delhi.

4-4-64

48. Dr. R. V. Sathe, Vice-Chancellor, Bombay University.

6-4-64

49. Dr. B. P. Pal, Director, Indian Council of Agricultural Research, New Delhi.

50. Col. B. H. Zaidi, M.P., Former Vice-Chancellor, Aligarh Muslim University.

17-4-64

51. Dr. B. Malik, Vice-Chancellor, Calcutta University.

52. Dr. N. K. Anant Rao, Acting Vice-Chancellor, U.P. Agriculture University, Pantnagar.

18-4-64

53. Shri J. S. Pillai, M.P.

ANNEXURE IV

STATEMENT OF THE CASE FOR THE OPINION OF THE ATTORNEY-GENERAL AND HIS OPINION

On the recommendation of, the Informal Consultative Committee of Members of Parliament on Education, the Ministry of Education has set up a Committee of certain Members of Parliament under the Chairmanship of Shri P. N. Saprú, for the purpose of examining the constitutional provisions on higher education. The terms of reference of the Committee are :—(1) To examine the provisions of the Constitution regarding the responsibility of the Central Government in the field of higher education with a view to finding out the extent to which the Centre could assume greater responsibility in this field, and (2) to suggest appropriate steps to be taken for the purpose.

2. The Committee has issued a Questionnaire to the State Governments, Universities, eminent educationists and legal experts to elicit their opinion and advice on the subject. A copy of the said Questionnaire is briefed herewith. Attention of the learned Counsel is particularly invited to Question 8(a) and Question 15 thereof. The Committee has desired that the advice of the Attorney-General should be obtained on the question of the extent of the implied powers of Parliament to undertake legislation under Entry 66 of List I of the Seventh Schedule to the Constitution, and in particular, the extent to which such implied powers include the power of Parliament to provide by legislation :

- (a) that in the interests of coordination and maintenance of standards in universities the President of India shall have Visitorial powers.
- (b) that Chancellors shall be persons of eminence either in educational world or in other spheres of public life of the country and shall have such powers as may be specifically delegated to them but that they shall not be vested with any Visitorial powers.
- (c) Regarding minimum standards of fitness for admission to Universities or to technical and professional institutions including medical, engineering and agricultural institutions.
- (d) Prescribing the procedure for the appointment of Vice-Chancellors.
- (e) Regarding the right to direct inspection of colleges and other institutions in order to ensure that proper standards are maintained.
- (f) Regarding the fixing of qualifications as also the method of selection of members of (1) the teaching staff and (2) other members of the community to various governing bodies, such as, the Court or the Senate, the Executive Council or the Syndicate, the Academic Councils, Appointment or Selection Boards, Examination Committees for bringing out results and other similar University bodies.

3. Education including universities lies exclusively within the legislative sphere of the States under Entry 11 of List II of the Seventh Schedule to the Constitution, subject, however, to the provisions of Entries 63 to 66 in List I and Entry 25 of List III. Under Entry 66 of List I, Parliament is competent to legislate on the subject of coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Counsel will recall that in the case of *Gujarat University v. Shri Krishna Mudholkar*, (A.I.R. 1963 S.C. 703), the Supreme Court was invited to consider the scope and content of Entry 11 of List II and Entries 63 to 66 of List I. One of the main questions for determination before the Court was whether, the State Legislature was, under the Constitution,

competent to make laws imposing Gujarati or Hindi or both as the exclusive media of instruction. Dealing with this question, the Supreme Court has by a majority of 4 : 1 laid down the following propositions :

- (i) The extensive power vested in the Provincial legislature to legislate with respect to higher scientific and technical education and vocational and technical training of labour is under the Constitution controlled by the five items mentioned in Entry 11 of List II. Entries 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in Parliament.
- (ii) The use of the words "subject to" in Entry 11 of List II indicates that legislation in respect of excluded matters cannot be undertaken by the State legislature. In other words, when one entry in a legislative list is made subject to another entry in a different list, the doctrine of pith and substance does not apply.
- (iii) If a subject of legislation is covered by items 63 to 66 even if it otherwise falls within the larger field of education including universities, power to legislate on that subject must lie with Parliament.
- (iv) Entry 11 of List II and entry 66 of List I overlap and must be harmoniously construed. To the extent of the overlapping, the power conferred by Entry 66 of List I must prevail over the power of the State under Entry 11 of List II.

4. Against the background of this decision the Committee is considering how far under the existing constitutional provisions can the Central Government assume greater responsibility in the field of higher education. The first and the most important question on which the Committee desires to be advised is, whether Parliament is competent to undertake legislation conferring on the President of India "Visitorial" powers over all universities in the interests of coordination and maintenance of standards.

5. Under the Act relating to the Central universities (Banaras, Aligarh, Delhi and Visva-Bharati), the President in his capacity as the Visitor exercises the following powers:—

- (a) He has the right to cause an inspection to be made of the university, its buildings, laboratories and equipment and of any institution maintained by the university and also of the examinations, teaching, and other work conducted or done by the university and to cause an inquiry to be made in like manner in respect of any matter connected with the university.
- (b) He may address the Vice-Chancellor with reference to the result of such an inquiry and the Vice-Chancellor shall communicate to the Executive Council the views of the Visitor with such advice which the Visitor may offer of the action to be taken thereon.
- (c) The Executive Council has to communicate through the Vice-Chancellor to the Visitor such action, if any, proposed to be taken or which has been taken upon the result of the inspection or inquiry.
- (d) If the Executive Council does not within a reasonable time take action to the satisfaction of the Visitor, the latter may after considering any explanation or representation from the Executive Council issue such directions as he may think fit, and the Executive Council shall be bound to comply with such directions.
- (e) The Visitor has also the powers by order in writing to annul any proceeding of the university which is not in conformity with the Act, the Statutes or the Ordinances.

In addition to these powers the Acts further provide that every new Statute or addition to a Statute or any amendment or repeal of the Statutes of the university requires the previous approval of the Visitor who may sanction, disallow, or remit suspend further consideration. He has also the power to disallow ordinances and it for their operation.

6. The powers conferred on the Visitor are thus very wide. They embrace almost every aspect of the university education and in effect entitle the Visitor to exercise virtually a veto on all important activities of the university bodies. The question naturally arises, whether such powers can be conferred upon the Visitor in respect of universities other than Central universities in the interests of "coordination and determination of standards". The phraseology of Entry 66 of List I is very wide and comprehensive. The Supreme Court held that in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in the subject. "There is nothing either in item 66 or elsewhere in the Constitution to support the view that the expression 'coordination' must mean in the context in which it is used merely an evaluation; coordination in its normal connotation means 'harmonising or bringing into proper relationship, which all things coordinated participate in a common pattern of action.' The power to coordinate, therefore, is not merely a power to evaluate; it is a power to harmonise or secure relationship for concerted action."

7. At the same time, however, it must also be remembered that the entire field of education including universities, subject to the exceptions mentioned in Entry 11, has been entrusted to the State legislature. Education cannot be imparted effectively without buildings, laboratories, equipment, teaching staff, finances, etc., in respect of which the President has been given "Visitorial" powers over the Central universities. As observed by Suba Rao, J., in the minority judgment, all the said matters are admittedly comprehended by the word 'education', for they are the necessary concomitants of education and it would be unreasonable to hold that all the said matters fall under the heading "coordination and determination of standards". For, if it was so held, the entry education would be "robbed of its entire content". He agreed that in such a case, the principle of harmonious construction should be invoked and that a demarcating line should be drawn and the clue in drawing such a line is found in the word 'coordination'. So understood, the State can make a law for imparting education and for maintaining its standards whereas Parliament can step in only to improve the said standards for the purpose of coordination. But in the name of coordination, the said Entry does not permit the making of any law which allows direct interference by an outside body with the course of education in a university; it only enables it generally to prescribe standards and give adventitious aids in reaching the said standards. In short, the role of a guardian angel is allotted to Parliament, so that it can make a law providing for machinery to watch, advise, give financial and other help, so that the universities may perform their allotted role.

8. In the light of these observations of the learned Judges, Counsel is requested to consider whether conferring upon the President powers of a Visitor as described above in respect of all universities would amount to a direct interference by an outside body in the course of education which, subject to certain exceptions, lies exclusively within the State field. The Committee also desires to be instructed on the extent to which Parliament can act under Entry 66 of list I legislate on the matters specified in clauses (b) to (f) of paragraph 8 of the Committee's general Questionnaire. The appointment of authorities of the university, such as, the Chancellor, the Vice-Chancellor and also matters, such as, the qualifications and selection of the teaching staff and members of other authorities of the university all pertain to the autonomy of the university and it is a moot point whether Entry 66 of List I would enable Parliament to make legislation to any extent on such matters.

9. The learned Attorney-General is therefore requested to advise on the questions raised in paragraph 2 above.

NEW DELHI,
27TH NOVEMBER, 1963.

Sd. R. M. MEHTA
Joint Secretary

OPINION

“Education including Universities” is item 11 in the State List. It is subject to the provisions of Entries 63, 64, 65 and 66 of the Union List. Of these only item 66 is material for the present purposes. The Supreme Court has held that by reason of the words “subject to” in item 11, the subject matter of item 66 in List I is taken out of the content of Entry 11 completely, so that to the extent of co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions the Union has the sole and exclusive power. While generally all the aspects of education such as the framing of syllabi, courses of studies, prescription of textbooks, employment of teachers or professors and so on in institutions of higher education are concerned, they remain within the competence of the State Legislature.

2. I take the meaning of ‘co-ordination’ to be “bringing into line or arranging in order”. As to the phrase ‘determination of standards’, it, just like co-ordination, has a very wide connotation. It primarily refers to standards of the ultimate degrees or qualifications to be attained, the standards of the examinations which are necessary and the standards of the courses of study to be gone through. Co-ordination may include within it any of the factors which, as taken together, constitute higher education or in research, scientific and technical institutions. Determination of standards and co-ordination may be required in respect of any of the various matters which are comprised in the activities of those educational institutions. It is difficult strictly to limit the application of either to a specific set of facts or to a specific stage or element in the process of education. Thus, if the primary aim be to fix a standard which has to be attained by a student who passes out at the end of his training, it can well be said that everything necessary for the attainment of that standard by him falls equally within determination of standards. In order to attain a particular standard at the end each preliminary step will have to be brought to a standard. Thus the quality of the examination he has to pass at the end, next the quality of any intermediate examination, the textbooks for the purpose, the nature of practical training, if any, the appliances which he may have to use, the qualifications of the teachers who impart the education, may all require to be fixed according to certain standards in order that the ultimate standard may be attained. If co-ordination be taken to mean the fixing of the same or similar standards within a university or State-wise or country-wise, so as to have a more or less uniform level all the above mentioned items might equally be included as fit subjects for Central legislation. Almost every aspect of university life and activity may be controlled in the name of co-ordination and determination of standards.

3. Education cannot be imparted effectively without building, laboratory equipment, teaching staff, finances, etc. All these matters are comprehended in the word education and would be within the competence solely of the university as falling within Entry 11 of the State List, but they each of them may equally have to be touched upon or dealt with by Union legislation if it is necessary to do so for determining standards and/or for co-ordination. Normally it is for the State to regulate the imparting of education and maintaining of standards. Parliament’s power in this matter is limited to co-ordination and the fixing of standards. As pointed out by the Supreme Court when legislation is passed by Parliament and/or the State, it would be a question of ascertaining the pith and substance of each so as to determine whether it falls properly within Entry 66 or Entry 11. The Centre cannot be permitted in the name of co-ordination to legislate so as directly to interfere with education. It is obvious that it is a matter of the utmost difficulty to draw a clear line at a place where the State’s function ends and the Centre’s function begins. This much however can be said that the Centre’s power cannot go beyond what is strictly necessary for legislating under Entry 66. The interference with education must be limited to the purposes mentioned in that Entry and not step into the field covered by Entry 11 by direct interference, or deprive Entry 11 of all its content.

4. If it were that Entry 66 contemplated only remedial measures, that is to say, where there is no approach to co-ordination or where standards are so diverse as to require fixation, the difficulty would not be so great, but the Supreme Court has said that the Centre has not to wait until there is a distinct want of co-ordination or a lowering or variation of standards in order to act. The Centre can act also anticipatorily. In any such anticipatory legislation even more care would have to be taken to see that Central legislation is kept strictly within the bounds of Entry 66.

5. Universities are intended to be autonomous bodies and the management of their affairs is essentially their proper function. Education primarily is their affair. Obviously the Central legislation cannot, under the guise of co-ordination or fixing of standards, give power so as to deprive Entry 11 of all or substantially all its content.

6. The very regulation of a university by its own authorities entails, to some extent, a fixing of standards and co-ordination. While under Entry 66 it may be that intra-mural co-ordination or determining of standards may, by stretching the content, be included, it would appear that the Entry is principally concerned if not wholly with an equation and co-ordination between the standards of different universities State-wise or country-wise.

7. Coming to the items in question 8 of the Questionnaire issued by the Sapru Committee, it is not easy to determine in which side of the rather shadowy line each matter falls. Dealing first with visitatorial powers the President is already the Visitor of the four Universities mentioned in List I. Chancellors of several universities (in most cases the Governors) are also invested under the respective Acts with visitatorial powers. In England all corporations are strictly speaking liable to visitation including ecclesiastical or lay. Lay Corporations are either civil or eleemosynary. Briefly speaking, the question there is one of the foundation of the institution. The founder himself is a visitor and in default of any, the Crown is the visitor. The power of the visitor has been described as "an authority to inspect the actions and regulate the behaviour out of the members that partake of the charity, to prevent all perverting of the charity or to compose the differences that may happen amongst the members". Where a statute governs a corporation, the visitor's power is to see that the statute is observed and to determine the disputes which will arise in the working of the statute. It will thus be seen that strictly speaking the powers are of a supervisory and appellate nature generally and aimed at maintaining a regular working of the institution according to the Statute. The powers given to the respective visitors in the existing statutes are broadly of this kind. It is open, however, by legislation to invest a visitor with wider powers, but if they are powers for the purpose of co-ordination or fixing of standards within the meaning of Entry 66, it must be done by Central legislation. If those powers are to be properly exercised that legislation will have to appoint the President generally as the visitor for all the universities. I think no question should arise as to such legislation being discriminatory as vesting unguided power since the powers would have to be exercised only for the purpose of co-ordination and fixing of standards which should be a sufficient all over guidance to validate the exercise of powers vested in the visitor.

Questionnaire Question 8

Item (a). The powers will have to be specified. It will have to be considered in this connection whether the U. G. C. has not all the necessary powers. Those powers are, of course, with references to the grants made and to be made by the U. G. C. and I think it is desirable to enumerate and consolidate the powers of co-ordination and maintenance of standards in one person such as the visitor to the extent it is possible.

Item (b). The connection of this item with Entry 66 appears to me to be extremely remote.

Item (c). This seems to me to be well within Entry 66.

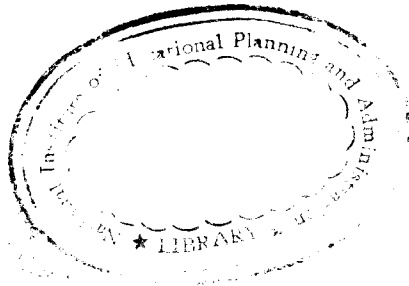
Item (d). This seems to have little or no connection with Entry 66. No doubt an efficient Vice-Chancellor is better than one who is not and an experienced one better than one who is not, but since the visitor will have the necessary powers to give directions and see that they are carried out, it does not appear to me that this item has any reasonable relation to the needs of Entry 66.

Item (e) appears to me to be well within Entry 66.

Item (f) (i). General directions could have a relation to the maintenance of standards.

Item (f) (ii). This to my mind is far too remote. The method of election to the various bodies etc. are obviously within the functions of university itself and if these are all taken over, one may well ask what is left to the university.

I would suggest that the exercise of power by the Centre, by legislation directly or executively through the visitor, should be restricted to curative action, *i.e.*, restoring co-ordination where it has failed and bringing existing standards into line except when broad principles have to be enumerated as a guidance for the future and that interference should be as little as possible. The autonomy of universities (on the legislative items as they stand) should be respected.



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