

Unfashionable Thoughts

An ex-policymaker's perspective on
regulation in education

Dr. R.V. Vaidyanatha Ayyar I.A.S.(Retd)
Former Secretary H.R.D., Govt. of India &
Professor IIM Bengaluru

Centre for Policy Studies
Gayatri Vidya Parishad
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IN GRATEFUL APPRECIATION

'*To Russia with love*' was the first article of Dr. R. V.Vaidyanatha Ayyar, I.A.S., (Retd) then Visiting Professor at Centre for Public Policy, Indian Institute of Management, Bengaluru published in the August 2, 2008 issue of Bulletin of Centre for Policy Studies. Dr. Ayyar, the scholar-administrator, must have been pleased that by then his teacher and regular contributor to CPS Bulletin, Prof. M.N. Sastri's book '*Profligate Civilization*' had been published by Centre for Policy Studies. R.V. Vaidyanatha Ayyar's brilliant academic career reached its zenith when his doctoral dissertation, done under the supervision of Prof G. Gopala Rao, was evaluated by a panel comprising Nobel Laureate R.G.W. Norrish FRS, Sir Harry Melville FRS., and Prof. E. J. Bowen FRS of Oxford University. Dr Ayyar joined the prestigious chemistry department as a lecturer. Andhra University became famous because of its first two vice chancellors Dr. C.R. Reddy and Dr S.Radhakrishnan. A moment of glory it was for the university when India's first Nobel Laureate Gurudev Tagore gave a lecture in December 1933 on *MAN*, India's second Nobel Laureate Sir C.V. Raman was in the audience and one as eminent as these two, Vice Chancellor Radhakrishnan was in the Presidential chair. It was no ordinary coincidence that three celebrities who were on the faculty of the university, Dr. S. Radhakrishnan, Sir C.V.Raman, and Sir M. Visvesvaraya became Bharat Ratnas.

Dr Vaidyanatha Ayyar's selection as an IAS officer was, without doubt, a loss to education and gain to civil service, though Dr Ayyar with characteristic modesty wrote that he began his career as a teacher in 1966 and ended as a teacher at Bengaluru in 2009. In between he did outstanding work as an administrator, policy maker and

chairman of expert bodies. Dr. Ayyar was closely associated with the revision of National Policy on Education, 1986. His contribution to the development of primary and elementary education in India was significant, when he was Secretary HRD during 1997-2003. He was involved in both policy formulation and implementation at the national level and his expertise was recognized by the government while in service and sought by centres of higher learning after retirement. Honours and awards, like the high positions he held in government service, sit lightly on the shoulders of the self-effacing Dr. Vaidyanatha Ayyar.

CPS is deeply beholden to the well known scholar-administrator for contributing twenty seven articles, despite heavy work, to the bimonthly Bulletin during the last seven years. Dr. Ayyar's lucid style of writing, incisive analysis of complex subjects and thought provoking comments and observations have earned for him wide acclaim. Two of his books, one by the Oxford University Press, are ready for release. This small book being brought out by Centre for Policy Studies is a token of grateful appreciation of Dr. Ayyar's articles titled '*Unfashionable Thoughts*' published in ten installments in CPS Bulletin from April 2, 2014 to October 2, 2015. It is a timely critique of India's education policy which will be of immense value to all those interested in the study and progress of higher education. CPS offers its profound gratitude to Dr. Ayyar for according permission to publish these articles in the form of a book being released on the occasion of twentieth anniversary of Centre for Policy Studies on October 2, 2015.

A. Prasanna Kumar

Director

Centre for Policy Studies
Visakhapatnam
October 2, 2015

About the Author

A student of Andhra University (1957-66), R. V. Vaidyanatha Ayyar did his doctoral work under the guidance of the eminent chemist Prof. Gandikota Gopala Rao. His research opened up a new area of investigation, namely Chemical Kinetics, in the Department of Chemistry, Andhra University. His doctoral thesis was evaluated by a Board of Examiners chaired by Nobel Laureate R. G. W. Norrish, FRS and comprising Sir Harry Melville, FRS, President, Queen Mary College, University of London and Prof. E. J. Bowen, FRS, Oxford University. He began his career in 1966 as a teacher (Lecturer) in Andhra University and ended his career in 2009 as a teacher (Visiting Professor) at the Centre for Public Policy, Indian Institute of Management, Bangalore. In between, from 1996 to 2003, he was at the great university of public life and human nature that the Indian Administrative Service (IAS) is. The last fifteen years of his administrative career were devoted to education, culture, intellectual property rights, human resource development, women and child development; he was Secretary to Government of India from 1997 to 2003.

Among others, he was closely associated with the revision of the National Policy on Education, 1986 and had developed the District Primary Education Programme which along withtogether with its progeny the *Sarva Shiksha Abhiyan* significantly contributed to the universalisation of elementary education in India. After retirement from Government, he was a Member of the committee on civil service reforms set up by Government in 2004, of the Committee set up by the Government under

the chairmanship of Sri Veerappa Moily to outline the administrative and academic measures needed to implement the decision of the government to introduce reservation in Central Government higher education institutions (2006), and of the Task Force set up by the Ministry of Health and Family Welfare to revamp the regulatory architecture for medial and allied education (2009). He was also Chairman of the Committee set up by the Government to review the entry-level training of IAS officers (2005).

He has extensive experience of dealing with a variety of international organisations and of negotiating with a number of countries including China, Pakistan and Russia. Among others, he was the Chief Coordinator of the Education for All Summit of Nine High Population Countries, New Delhi (1993), a member of the World Bank External Advisory Panel on Education, and the UNESCO High Level Committee on Statistics, and Chairman of the Drafting Committee of the WIPO Diplomatic Conference on Internet Treaties (1996).

He had contributed several articles to national and international journals, and is the author of the book *Public Policymaking in India* published by Pearson Longman in 2009. Since 2009, he has been documenting the evolution as well as the politics and process of education and culture policies. His book *Holy Grail: India's Quest for Universal Elementary Education* is under publication by the Oxford University Press. His next book on education, *Education Policy from (British) Raj to (Pallam) Raju*, had been completed and is ready for publication.

Preface

This monograph grew out of a lecture I had delivered at a workshop on regulation in education at the Tata Institute of Social Sciences (TISS), Hyderabad in December 2013. As I prepared for my lecture the thought flashed through my mind that regulation of education was not studied systematically the way regulation of business or utilities was. This was in spite of the fact that regulation in education in India is co-eval with modern education and about 150 years old. British colonial administration largely relied on private initiative- be it missionaries or enlightened Indians- to spread secondary and college education through the grant-in-aid system which linked grants not only with 'inputs' like facilities and teachers but also student performance.

Strange but true, no Commission after the Kothari Commission (1964) had studied the whole gamut of education without compartmentalising the different segments of education. Similarly, over three decades had passed after Government formulated a framework policy for all stages of education. The National Policy on Education, 1986 and its revised version of in 1992 have faded into oblivion. This is understandable as the educational system of today is as starkly different from that of 1992 as chalk from cheese. What differentiates the present system from the past is not so much its size as its diversity and the nature of challenges.

Though little recognised, after a few decades all the three major sectors of education elementary, secondary, and higher education- seem poised for a significant transformation. From 1994 when District Primary Education (DPEP) was launched elementary education was

the happening sector. By 2009 when the Right to Education Act was enacted DPEP and its progeny *Sarva Shiksha Abhiyan* (SSA) had together brought about a spectacular reduction in the number of out-of-school children so much so that improvement of quality and learning achievement came to be the predominant challenge. Universalisation of secondary education was adopted as a goal with the launch of Rashtriya Madhyamik Shiksha Abhiyan (RMSA) in 2009. From mid-2000s there had been a spectacular step up of enrolment in higher education so much so by 2012-13 the Gross Enrolment Ratio crossed the threshold figure of 15% , a figure which following the well known schema of Martin Trow¹ marks the boundary between elite and mass, or more accurately democratic , higher education system. No less importantly, the Indian education system had metamorphosed from an almost exclusively public funded closed system with few linkages with foreign institutions to a mixed system with significant private participation and noticeable presence of foreign institutions.

In 1992, two exceptions apart, the educational system was close to being an exclusively public funded system. Even though privately managed, private aided institutions are virtually Government institutions as they are predominantly funded by State Governments through grant-in-aid systems and they charge the same fees as corresponding Government institutions. The exceptions which stood out in a predominantly public funded system were privately managed English medium schools which comprised about 15 % of high and higher secondary

¹ Martin Trow, 'Reflections on the Transition for Elite to Mass to Universal Access: Forms and Phases of Higher Education in Modern Societies since World War II', *Daedalus*, Volume 90, Number 1, 1970, pp. 1-42.

schools, and self-financing professorial colleges which began to grow rapidly from mid-1970s. These schools and colleges were privately funded and privately managed, and sought to recover the cost of providing education from the parents and students. Hence they were private in every sense of the term. However, the policymakers and academics did not believe that private institutions contributed to educational development; what all was needed was to regulate them so that they did not indulge in unfair exploitative practices. Private unaided institutions now outnumber Government institutions in all segments of professional education except medicine. They account for about 90% of engineering, pharmacy and hotel management institutions, about 65% of architecture, teacher education, MCA and MBA institutions and about half of the medical colleges. It is they who contributed to most of the expansion in access to professional education. Now, over a quarter of universities, deemed universities and institutions of national importance are private unaided universities. Even in school education, private unaided institutions are a conspicuous presence in all stages excepting primary education. Over a third of children are now enrolled in private unaided schools. Drawing analogy from the economic arena, it could be said that an area which was almost an exclusive preserve of the State was opened to private players and the principle that pricing of education should not be related to the cost of providing education was abandoned. It is significant that the opening up took place without an explicit policy frame. I believe that that opening also took place without any design and that attribute of that the opening to the adoption by the Government of neo-liberal economic policies is not backed by evidence. In fact there is much merit in the contention

that the term ‘neo-liberal’ is used as ‘ a footloose device to say something forceful and critical’ without exploring ‘ the genealogy of ideas and situate a term in a historical context’ on the ground that ‘this kind of search for the history of ideas is not regarded as being relevant for the study of education’.²

In 1992, the Indian education system was a closed system with few linkages with foreign institutions. The few linkages which existed before Independence were snapped after Independence, an example being English medium schools preparing their students for the secondary examinations conducted by the Cambridge University. Come 1990s, Cambridge International General Certificate of Secondary Education returned to India, and was joined by some other foreign boards of education like International Baccalaureate (IB). As India got more integrated with the global economy and as there were increasingly more and more persons who could not stay in India for a period long enough for their children to compete schooling schools affiliated to international boards began to proliferate; these schools also began to attract the children of parents who wanted to keep up with the Joneses . In 2010, even CBSE had come out with CBSE International (CBSE-i) an internationally curriculum. As 1990s rolled by India was increasingly exposed to the ongoing globalisation of higher education. Countries like Australia, New Zealand and United Kingdom began to organise education *bazars* in major cities to attract India students to study in their universities campuses. Foreign education providers also began to cater to the Indian

² Krishna Kumar, “Teaching and the Neo-liberal State, *Economic and Political Weekly*, Volume XLVI, Number 21, May 21, 2011, pp. 37-40, at p.37.

market through joint ventures such as offering of double or joint degree or validated programmes, twinning and franchising. In a double degree programme students pursue a programme jointly offered by the partnering institutions and secure one degree awarded by the foreign institution and another by the local institution. Where they secure a degree jointly awarded by the two partnering institutions it is a joint degree programme. In a validated programme a local higher education institution offers by a programme which is 'approved' by a foreign institution. In twinning, students pursue part of the programme in the local institution and the rest in the partnering foreign institution, and the degree is awarded by the foreign institution. In a franchised programme the courses are designed by the foreign institution (franchiser) and delivered by the local partner (franchisee), and the diploma or certificate is offered by the foreign institution. A survey conducted by the Association of Indian Universities (AIU) showed that the number of foreign education providers quadrupled from 144 in the year 2000 to 631 in 2010. Of these 631, 440 were functioning from their home campuses, 5 opened their own campuses in India, 60 had programmatic collaboration with local institutions, 49 were operating under twinning joint degree arrangements and 77 had arrangements other than twinning or programmatic collaboration. During the period 1995-96 to 2012, the number of Indian students studying abroad increased by nearly 63 times- from 3,500 in 1995-96 to 220,000 in 2012. In relation to gross enrolment in higher education, for every thousand students who studied in India about seven studied abroad in 1981-2 while in 2010 as many as 120 studied abroad. During the decade 1999-2000 to 2009-10, the total payments for import of educational services nearly

quadrupled from US\$61 million to US\$2.3 billion.³ Another estimate puts the foreign exchange outgo on students studying abroad was of the order of US \$4 billion dollars. Globalisation has not been a one way street, though Indian institutions could not tap the foreign markets the way foreign institutions could tap the Indian market. A few institutions like Manipal University and Birla Institute of Science and Technology had set up offshore campuses, and Indira Gandhi National Open University had been offering distant education programmes across borders. Again drawing an analogy from the economic arena all these developments amount to opening up of a hitherto protected educational arena to external players. Like domestic opening of the educational arena the external opening also took place without a comprehensive policy frame. All in all, education policy had to do a lot of catching up act as two cardinal tenets of post-Independence education policy fell by the wayside, they being that private unaided institutions and foreign education providers do not matter for educational development, and that it is the duty of the State to expand access education and provide education almost as a free good

The UPA Government toyed with the idea of setting up an Education Commission like the Kothari Commission but gave up the idea; its attempts to revamp the regulatory architecture of higher education ended in failure. Typical of a bipolar Government two expert bodies were set up, the National Knowledge Commission (NKC) by Prime Minister Manmohan Singh and the Yash Pal Committee by Arjun Singh, the Minister of Human

³S Hill, and T. Chalaux, *Improving Access and Quality in the Indian Education System*, OECD Economics Department Working Papers, No. 885. Paris: OECD, 2011

Resource Development. The remit of the Yash Pal Committee was limited to higher education while that of NKC covered the whole of education and much else. Whatever, NKC and the majority report of Yash Pal Committee had starkly different world views and the visualisation of the higher education system the country ought to have, with the NKC envisaging a significant role for private and foreign participation in higher education and the majority report of the Yash Pal Committee pitching for an almost exclusively public funded higher education system to be steered by an apex body of educationists. The grand attempt of Kapil Sibal who succeeded Arjun Singh as Minister of Human Resource Development to revamp drastically the regulatory structure of higher education ended as a failure, so much so that education policy continues to lag behind the developments, not to speak of providing a framework for steering the development of education.

Democracy, it is rightly said, is a Government by discussion; in our country it is necessary to promote a culture of evidence-based rational discussion of public policies. Such a discussion is all the more needed because the ringing declaration of the Kothari Commission that ‘the destiny of India is being shaped in her classrooms’ is an eternal verity . The high expectations of Indian people have of India emerging as a global economic and political powerhouse would turn out to be a pipe dream unless the education policy can address effectively the contemporaneous challenge, and steers the development of education in the right direction. I feel that much of the discussion about higher education is in the nature of theological disputation relying on emphatic assertion to prove the point. Many of the issues connected with

regulation in education have not been thought through enough; even if thought about they are thought about often wrongly as the conceptual models used are caught in a time warp. What we need is rational discussion. The objective of this monograph is to provide facts and perspectives which would facilitate rational discussion. To that end, I wish to be deliberately provocative not with a view to settle scores or hurt any one but to follow the Socratic tradition of being an intellectual gadfly who takes delight in ‘stinging people and whipping them into a fury, all in the service of truth’, and ‘projecting an image of arrogance’. The title of the monograph *Unfashionable Thoughts* is a modest homage to Friedrich Nietzsche justly celebrated for the utterly unconventional thoughts he articulated in his works like *Unfashionable Observations*, also called *Thoughts out of Season*. Another reason for choosing the title is because what is set out in the monograph is contrary to the predominant discourse and would be unpopular in the academia. I would be delighted if the monograph is torn to pieces based on facts and reasoned argument.

I might be faulted for not offering a blue print or at least a rough sketch of the new regulatory sketches which ought to be. This is deliberate as I want to avoid the cardinal sin of have-beens—be they retired civil servants or decommissioned generals or erstwhile Chief Executive Officers of companies—pontificating on how they would have handled matters. To repeat again, we need a rational discussion on the development and regulation of higher education, and not theological disputation. My objective is to offer some facts and perspectives which would facilitate a rational discussion, and no more.

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I. First Principles of Regulation

Let me begin from first principles. Any analysis of regulation should begin by seeking answers for the questions: Why regulate? Whom to regulate? How to regulate? What to regulate?

Turning to the first question why regulate, in the field of education there could be four objectives: first planned and coordinated development, secondly ensure quality of education, thirdly promote equity and social justice by way of quotas and other affirmative policies which seek to promote the participation of socially and economically disadvantaged students, and lastly prevent unfair practices by regulating admissions, fees, and service conditions of faculty and turning to the second question whom to regulate those who are regulated could be individuals or institutions. Thus a person who wishes to teach is required to possess the qualifications prescribed by the competent authority: State Governments and Secondary Education Boards in respect of schools and UGC in respect of universities and affiliated colleges. Interestingly, unlike in schools teaching in a college or university does not require any training in teaching methodologies either before joining the teaching profession or later. And further, unlike in schools academic supervision of and guidance to teachers are not considered necessary in colleges and universities. Why is it so, is an important question for which I can think of no answer except the belief that college students can learn by

themselves and need only a little bit of guidance from the teacher. This is to a certain extent true if higher education were selective as is the case with the undergraduate programmes of IITs. Asked to explain the glaring discrepancy between the under graduate programmes of IITs and the postgraduate and doctoral programmes of IITs an alumnus who became a faculty member of IIT replied: ‘when we undergraduates enter the IIT, we are so good that the system is unable to do much damage, and the end product is still very good!’ As enrolments in higher education expand and the system becomes democratised the assumption that all students are capable of self- learning is questionable, and teaching abilities of the faculty become critical to the quality of education. It is said that in the past the Royal Navy used to train its new cadets by throwing them in deep sea expecting that the cadet would either learn swimming or sink. The induction of lecturers in the higher education system implicitly follows the same principle, but then it is the students who sink and not the teacher. It is known but not accepted by the academic establishment that not everyone is a Paul Samuelson or Richard Feynman¹ and that a brilliant mind and outstanding research capability do not necessarily make a good teacher. Improving the quality of higher education is inconceivable without in-built mechanisms for grooming the fresh entrants to become good teachers through academic supervision and mentoring in the first couple of years of service.

¹ Paul Samuelson is a Nobel laureate in economics and Richard Feynman in physics.

Let me say a little bit about academic supervision in schools. Academic supervision by officials of the State Education Departments had collapsed by early 1980s. To the extent officials carry out inspections these days they are administrative in nature and they neither guide the teachers nor contribute to school effectiveness. In private schools the purpose of inspection is to scrutinise whether these schools fulfil the conditions necessary for recognition. And in government schools the purpose is to collect information which schools are supposed to send but often do not. With so many schemes in operation in Government schools a major task of school inspectors is to collect information on different schemes and pass it on to superiors. Recently, I had an occasion to speak to the Director of the Andhra Pradesh SCERT, who informed me that she was recruited when I was State Education Secretary and spoke nostalgically of the training I organised for her and her colleagues who joined service along with her, and my lectures in the training. I asked her whether in retrospect the training was adequate. She told me that as a trainee she was advised not to neglect academic supervision, but over few years she found that her job was more and more programme management. I wondered how good would these officials would be as programme managers when their academic background does not equip them to be a manager, and there is no entry level training worth the name, not to speak of in-service training. Whatever, information on different schemes is collected separately without any effort to assess the impact of all

these interventions on the functioning of a school? Given the massive expansion of schools, there is no way of reviving the good old academic supervision. In regard to elementary education, DPEP, and later SSA put in place an alternate system of academic support and supervision through Block Resource Centres (BRCs) and Cluster Resource Centres (CRCs). These centres have come to be an important part of the Indian educational landscape covering every nook and corner of the country; in 2008 there were about 6,500 BRCs and 70,000 CRCs. Mechanisms like monthly meetings and school visits were expected to guide the teacher in improving his classroom practices and facilitate community involvement. There have been many instances of the beneficial impact of these new institutions, and even of innovations like *Nalli-Kalli* in Karnataka. However, as far as I know the *Rashtriya Madhyamik Shiksha Mission* has not yet addressed the question of rejuvenating the system of academic support and supervision, or deepening training infrastructure the way DPEP and SSA did in respect of elementary education. If this were so, that Mission had to earnestly address that question without any delay. The experience with the functioning of BRCs, CRCs and in-service training validates the iron law of organisational development that even the best designed institutional innovations as well as training modules get routinised and jaded over time, and that periodically institutions need to be rejuvenated and training modules refurbished.

So far I spoke mainly of regulation of the

qualifications needed to teach. Moving to regulation of institutions, regulation of educational institutions, particularly private institutions has a long history of about 150 years. With the coming into vogue of rights and entitlements even the State could be regulated as the Right to Information Act and the RTE Act do. Turning to the third question how to regulate, regulation could be self-regulation, or regulation by an agency external to the institution or individual regulated. External regulation could be through a heavy handed command and control system which can be readily comprehended if we use the name popularised by Rajaji: license-permit-control *raj*. Instead of this *raj*, regulation could be effected through creating conditions which eliminate the need for heavy handed regulation, or provide incentives and disincentives which encourage the regulated to comply with the regulations. The Indian university system was modelled after the British system wherein each university was conceived essentially as a self-governing community of teacher and students with the right to decide its own admission criteria, curricula and hiring of faculty; the Government and the University Grants Committee (the model for our University Grants Commission {UGC}) attempted gently nudge the universities to function in the manner it thought was necessary in national interest using grants as a policy lever. However, professional education, particularly medicine and allied disciplines like dentistry and nursing, had been an exception to the principle that a university was a self-governing community with freedom

to choose what to teach, how to teach and whom to teach. Professional Councils like the Medical Council had the right to license practitioners and lay down the standards of professional education. Like UGC, professional councils were established in India with functions similar to those of their British counterparts.

The last question of what to regulate is of importance because whether it is self-regulation or external regulation it is necessary to identify what needs to be regulated. Conceptually, four aspects of an institution could be regulated: its establishment (or using economic jargon entry), its expansion (intake of students) or starting a new course, its academic and managerial functioning and its overall performance. There are three types of entry conditions: justification for establishing yet another institution with reference to need the legal structure of the institution proposed to be established, and lastly the infrastructure, facilities, faculty and staff to be provided. In principle, need could be determined with reference to one of three criteria: norm, manpower needs of planned development, and manifest demand from students and parents. Thus if the norm is that there should be a school within a walking distance of three kilometres no school should be established if there is already one such school unless the school is not large enough to cater to the student population in its catchment area. Alternately the need for an institution, particularly a higher education institution could be determined with reference to the manpower needs of the economy, the underlying assumption being that it

is possible to accurately forecast the manpower needs. Normatively, regulation had proceeded from the premise that establishment or expansion of educational institutions should be guided by a norm or manpower need, and that it is undesirable to be guided by manifest demand from parents and students; such a manifest demand was derisively called 'paper chase'. Going by a norm and manpower planning is expected to ensure planned and coordinated development of education. Traditionally only Governments (Central, State and local bodies) and private societies or public trusts could establish schools and colleges; the establishment of a university requires a Central or State legislation, and only a university or an institution declared by the Parliament to be of national importance can award degrees. The Central Government could deem an institution to be a university whereby that institution acquires the power to award degrees without being required to affiliate itself to a university. Recent regulations such as the UGC's regulation in respect of private universities allow the establishment of an institution by a not-for-company which falls under S.25 of the Companies Act. The premise underlying the stipulation of the legal structure a private educational institution could have is that education and money-making, or figuratively Saraswathi and Lakshmi, do not mix. In addition, it is assumed that a private organisation that is legally a not-for-profit organisation would not pursue profits. The establishment of an institution or its expansion is subject to multiple regulations and requires multiple approvals.

In addition to approval by the State Government under the State Education Act the establishment of a professional education institution requires the approval of the AICTE in respect of technical education, MCI in respect of medical education and so on. In addition, a secondary school requires to be affiliated to one of the boards of education having jurisdiction in the State in which the school is located; likewise a college requires to be affiliated to a university and the universities regulations regarding affiliation are themselves subject to the regulations made by the UGC. Regulations for affiliation usually stipulate the infrastructure, facilities, faculty and staff to be provided.

Moving on to regulation of functioning, academic regulation relates to the content and process of education such as syllabus and curriculum, textbooks, academic calendar and so on. These are regulated by the State Governments in respect of elementary education, boards of secondary education in respect of secondary education and universities in respect of colleges. Traditionally universities are autonomous and can decide what to teach, how to teach and how long the duration of a course should be. However, from the 1990s onwards the UGC has been increasingly laying down regulations on many academic matters over which universities had unfettered authority. Such regulations include recruitment and promotion of teachers, research involvement of teachers, duration of different courses, instruction hours, manner and procedure of admission and examinations, and so on. Further, the idea that there should be external evaluation of the

performance of universities acquired legitimacy through the establishment of the National Assessment and Accreditation Authority. A key contested area in the current efforts to restructure the regulatory framework are questions like what universities can do on their own, for what do they need to obtain the approval of a regulator, and how their performance should be evaluated.

The regulation of functioning is not limited to academic matters. The State Education Acts and rules framed thereunder lay down many stipulations regarding the management of a schools and colleges such as the service conditions of teachers and staff, reservations in admissions for socially and economically disadvantaged students, and the fees collected from students. All these types of regulation had been the subject matter of extensive litigation, and are therefore subject to case law which strange but true is not always settled. The administrative and financial control of State Universities by State Governments had been a contentious issue, and the main thrust of the Majority Report of the Yash Pal Committee is to free universities from the control of both Governments as well as of for-profit private agencies not only in the matter of academics but also finance and administration. Till 1986, regulation of educational institutions in our country proceeded on the premise that once the conditions for the setting up or expansion of an institution are fulfilled and once an institution functions in accordance with the relevant regulations there is no need to separately evaluate the performance of an institution.

In contrast, external evaluation of the performance of institutions on the whole and of the courses it conducts, or to use jargon *accreditation*, is being practiced in the United States for over a hundred years. The necessity for accreditation arose from the fact that without any approval institutions could be established and could award degrees, and consequently a reliable certification of the content and quality of the courses offered by various institutions was needed by employers as well as educational institutions themselves to assess the eligibility of graduates of other institutions for admission to the courses offered by them. Accreditation also came to be used as a mechanism for quality of improvement as the minimum standards set by accrediting agencies serve as goals which institutions should attain if not exceed. The defining characteristics of the American accreditation system are the range of institutions covered (from schools to universities), the coverage of institutions as well as individual programmes, the multiplicity of accrediting organisations all of which are non- governmental , and the professional integrity brought to bear on their work by most accrediting organisations. The Council for Higher Education Accreditation, a non-governmental organisation with a membership of about 3000 educational institutions, defines standards for approval of accrediting organisations, and recognises organisations which meet those standards. The US department of Education offers grants only to those institutions which are accredited by accrediting organisations approved by it; only students of such

institutions are eligible for student loans provided by the Department. In all there are over ninety accrediting organisations and sixty accredited programmes. The idea of external assessment of the quality of the courses and research of universities was adopted in United Kingdom the 1989 when the UGC was abolished and the Higher Education Funding Council (HEFC) was set up; the members of the Council included those drawn from the world of business. It was an idea whose time had come for there was widespread concern about the quality and relevance of higher education and the lack of accountability of universities and other institutions. In 1997 the quality assessment function of HEFC was transferred to an independent agency the Quality Assurance Agency for Higher Education (QAA). Ideas do not respect boundaries; accrediting organisations had therefore come up in several countries including Germany and Canada. Similar institutions have come up in countries like Australia which set great store on attracting foreign students; quality assurance is expected to help foreign students assess whether they would have value for money. Needless to say, these moves were bitterly resented by academics, particularly those from arts and humanities. Stefan Collin, the eminent literary critic rued the fact that humanities are being flattened by runaway tanks designed for other purposes. Collin's lament is a reminder of the fact that moderation is a virtue indeed and that there are limits to exercises like assessment of research.

The idea of accreditation made its appearance in our

country through the National Policy on Education, 1986. That Policy postulated that mandatory periodic evaluation of technical education institutions would be conducted. Accordingly one of the functions entrusted to the AICTE by the AICTE Act 1987, was evolving 'suitable mechanisms for performance appraisal of universities and institutions imparting technical education, incorporating norms and mechanisms for enforcing accountability. To its credit, AICTE established the National Accreditation Board (NAB) within a few months after it was vested with statutory powers. However, even a quarter of century after it was set up the NAB is yet to implement the NPE postulate of mandatory periodic performance appraisal of technical institutions. Only about 40% of the engineering, 10% of management, 8% pharmacy and 5% MCA courses are accredited. The history of technical education development would have taken a different course if mandatory periodic evaluation had fallen in place by mid-1990s. As envisaged by POA 1986, UGC set up a National Assessment and Accreditation Council (NAAC) in 1994. NAAC could not make as much progress as NAB. As of August 2013, less than one-third of all universities and only 13% (5156 out of 35,539) of colleges have been accredited either to NAAC or NAB or both. A voluntary accreditation system results in adverse selection of sorts; only 'better' institutions opt for being subjected to assessment and rating while those which ought to have been kept under close watch do not.

There are as yet no established mechanisms for performance appraisal of schools.

Of late, a few States had begun assessing and monitoring the effectiveness of elementary schools. It would be imperative to institutionalise these initiatives. The parameters for evaluating school effectiveness should include outcomes such as the reach (whether all children in the catchment area are enrolled), grasp (whether all children enrolled complete elementary education without dropping out) of the school and the learner achievement in comparison with the Minimum Levels of Learning (MLL). It is imperative to return to conceptualisation of Universal Elementary Education (UEE) outlined by the National Programme of Action (NPA), 1986 as revised in 1992. So conceptualised, UEE would comprise not only universal access, enrolment and retention but substantial improvement in the quality of education so as to enable all children to achieve essential levels of learning. The quality of elementary education is thus no longer a standalone objective. Linkage of quality with learning achievement enables claims about improvements in quality of learning to be reliably assessed; it could prevent the pursuit of nostrums under the guise of quality improvement. The NPE's Programme of Action (POA), 1992 spelt out in great detail the strategy to be followed for ensuring that MLLs are achieved; that strategy linked MLL with all aspects of pedagogy such as syllabus and curriculum, and teaching- learning material and processes. A NCERT Committee specified the *competencies* every

student was required to acquire in language, mathematics and environment. District Primary Education Programme (DP EP) which operationalised the strategy spelt out by the POA, 1992 to achieve UEE, took concrete measures to improve levels of learning. Many States successfully undertook a number of MLL-related activities including preparation of competency based text books, introduction of competency-related teaching methodologies, and revision of the content of teacher training so as to familiarise teachers with the new textbooks and new teaching methodology. However, during the 2000s MLLs faded away from Indian educational discourse perhaps because of the feeling among some educators that the target of educational achievement ought not to be MLLs. There are no doubt higher pedagogical objectives than MLLs; these include critical thinking, creativity, problem solving and 'learning to learn'. But then as Karl Marx wrote famously in *The German Ideology*, before mankind can think and ideas can be made, man must be first fed, clothed, and sheltered. Likewise, children, particularly from disadvantaged background, must be helped to acquire *basic learning* of writing, reading, and numerical skills of a satisfactory level before they realise higher order pedagogic goals. To insist that it be either all of the higher order pedagogic goals or not at all is an example of the saying that the best is an enemy of the good. Irrespective of one's ideological position on MLLs no one can dispute the proposition that it is imperative to take expeditious measures to improve basic learning in primary classes, and

at the upper primary stage to correct the failure to acquire basic learning at the primary stage. A life without purpose could be meaningless; likewise an activity not directed towards a goal could drift and yield suboptimal results. Therefore from the administrative point of view purposive action is facilitated by specifying the levels of learning to be achieved, measuring how each child is progressing towards the attainment of the levels of learning laid for the Class in which he is studying, and measuring how every school as well as every administrative region like block, district, State and the country as a whole is performing in the matter of ensuring that each of its students is achieving the stipulated levels of learning. To that end, Comprehensive and Continuous Evaluation mandated by the RTE Act needs to be complemented by the specification of levels of learning in different classes, and individual student evaluation complemented by conduct of annual learner achievement surveys which make possible comparing the performance of one school with another, and of one administrative unit like say Uttar Pradesh with another administrative unit like say Kerala. We also need to know whether disparities in learning achievement by gender and social groupings are increasing or decreasing. In short, we need to have data on learner achievement similar to that reported year after year by NUEPA's DISE in regard to school facilities and participation data. Without such data attempts to improve learning outcomes, reducing learning disparities, and or improving quality is like flying blindfolded without navigational aids. However, a singular

focus on measurement of learning outcomes alone is not a panacea for quality or improving learning outcomes. Learner achievement surveys by themselves serve no purpose unless they are linked with attempts to improve pedagogy, training and classroom practice. Without such linkages the surveys would be like navigation aids without actual flying taking place.

Needless to say, performance appraisal of secondary and higher secondary schools should begin soon; without such appraisal attempts to universal secondary education through the *Rashtriya Madhyamik Shiksha Abhiyan* would be figuratively flying blindfolded without any navigational guides, and is likely to waste lot of time and money in the pursuit of nostrums.

II. Regulation of Higher Education: New Lamps for Old

Looking back, the approach of Central Government to regulation of higher education institutions swung back and forth between a 'hard' and 'soft' approach. The Medical Council of India, the first regulatory body to be established as early as 1933, has statutory power to lay down norms and standards of medical education, recognise degrees, and more importantly to derecognise the degrees of any institution which does not conform to the norms and standards laid down by it. A medical college could be established or expanded only after MCI was satisfied that the infrastructure, facilities and faculty conformed to its norms and standards, and the Central Government sanctioned the establishment of the medical colleges based on the recommendation of the MCI. When after Independence, the Central Government sought to enact legislation to regulate higher education, it initially sought to put in place a regulatory system analogous to medical education, with a Central Council of University Education playing a role similar to MCI. The Bill drafted proposed that the approval of the Central Government was required for an institution to be deemed to a university; mere legislation by a State would not be adequate. The Central Government could derecognise a degree awarded by a university if the Central Council noticed any lapse in the maintenance of standards by a university and if that university failed to comply with the directions of the Central Council to rectify the lapse. The proposal created

a furore for in 1952 which now seems to be a remote past the idea of external regulation of a university seemed to be an abomination. Just three years earlier, the University Education Commission chaired by S. Radhakrishnan declared 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 leave it free from interference’. The opposition of a solid phalanx of irate Vice-Chancellors doomed the attempt to keep higher education on a tight leash. Having failed in its attempt to stringently regulate higher education, the Central Government swung to the other extreme and enacted the UGC Act wherein the regulator had to rely on persuasion and a weak fiscal lever to get the higher education institutions to fall in line. It had no powers to issue any directives to any institution or derecognise degrees of any institution. The only power it has to discipline a university or college is to withhold grants, which in any case are meagre for a State University. No wonder a noted wrier on higher education described the UGC as toothless, and that it ‘made a virtue of leaving the universities to act on their own’, and ‘elevated non-intervention into a principle’. From 1990s, UGC became a little pro-active and began laying down regulations; yet its willingness and ability to enforce regulations remain weak so much so figuratively it is more barking without biting. A good example is accreditation. A few years after NAAC was formed, UGC made accreditation mandatory. It even issued a regulation to that effect in 2009. However,

as I set out a little while ago, even now less than one-third of all universities and only 13% (5156 out of 35,539) of colleges have been accredited.

The Central Government swung again to the MCI model during the formulation of NPE, 1986. By 1986, when Independent India's second NPE was laid down, the growth of private self-financing institutions in Karnataka, Maharashtra and Tamil Nadu was too conspicuous to escape the notice of policymakers. The policymakers equated the growth of such institutions with commercialisation of education, and came to the conclusion that the UGC model of persuasion and offer of grants as an incentive to maintain standards were inadequate to curb commercialisation, and that a more direct physical regulation was necessary. To that end, in 1987 the AICTE was vested with statutory licensing powers to regulate the establishment and expansion of technical and management institutions as well as starting of new courses. As originally envisaged, no institution impairing technical and management education was exempt from its purview, not even universities. In 1993, similar powers were vested in the National Council of Teacher Education. By early 2000s, all the licensing organisations in higher education such as MCI, AICTE, and NCTE fell into disrepute. AICTE presided over the largest ever proliferation of institutions, with engineering and MBA colleges, dime a dozen, sprouting in cubbyholes. So much of power was centralised in it that even for a nominal increase in the number of seats in an engineering

college anywhere in the country, institutions had to court the AICTE for its approval. Vesting too much licensing power in a body, even if it were composed of professionals, leads to arbitrariness and rent seeking behaviour inherent to the license-permit- control *raj*. No wonder that in 2009 the Chairman and Secretary of AICTE were arrested on corruption charges. So was the Chairman of MCI in 2010. The functioning of the National Council of Teacher Education was no different so much so that in 2011 the Ministry of Human Resource Development MHRD superseded it for irregularities.

The search for alternate models of regulation began around 2004. Three agencies were involved in that search, the Ministry of Health and Family Welfare (MOHFA), the National Knowledge Commission, and the MHRD. The National Knowledge Commission (NKC) was constituted as a high level advisory body to the Prime Minister. Its remit was to outline the reform measures needed in different areas such as education for transforming India into a knowledge economy. The NKC had four academics as members including the eminent political scientist Pratap Bhanu Mehta and the eminent sociologist André Béteille. However, its composition was broad based and was not limited to academics. In November 2006, NKC submitted its report on higher education, and six months before that Mehta and Béteille resigned from NKC in protest against the decision of the Government to provide for reservations to other backward classes in Central Universities and other institutions of

higher learning. However, rather than act on the recommendations of the NKC, Arjun Singh the then Minister, MHRD, chose to appoint a committee headed by Yash Pal, former Chairman UGC to suggest the measures needed for the renovation and rejuvenation of higher education. It was a body predominantly comprising academics with 19 of the 24 members being academics. The appointment of the Yash Pal Committee is an example of the fact that contrary to the opinion of those who have no direct experiential knowledge of how Government functions no Government is a homogeneous entity with a single directing mind. The career of Arjun Singh subsequent to 1991 can be admirably summed by the one-liner that the gifted Telugu journalist Tirumala Ramachandra came up with to explain frequent change of political parties by Acharya N.G.Ranga till 1980 when Ranga moved to Congress Party and stayed put in that Party till his death: *prathama sthanam raadu, dwitheeya sthanam paniki radu* (cannot get the first position but cannot be reconciled to the second position). As Minister in the Congress-led Governments dirge 1991-96 and 2004-09, Arjun Singh was an inveterate challenger within the Congress Party, using his championship of secularism, leftist economic ideology, and social justice as a tactical weapon to discomfit at every opportunity Prime Minister P.V.Narasimha Rao and alter Manmohan Singh. The fact that NKC was a high level advisory body to the Prime Minister in fact encouraged him to set up his own committee. Whatever, the recommendations of the NKC

and the Majority Report of the Yash Pal Committee differs substantially in respect of many issues such as the role of private organisations in the development of higher education, the conceptualisation of the new apex body to be constituted, and the development of the higher education system as a destination for students from all over the world. The approach to regulation adopted by the little known Kausik Basu's Note of Dissent to the Yash Pal Committee is closer than that of NKC. While both NKC and the Yash Pal Committee proposed a new apex body which would cover all areas of higher education excluding agricultural education, the MOHFA was particular that in view of the distinctiveness medical education should be excluded from the purview of the apex body. It came up with a proposal to establish a National Commission for Human Resources for Health (NCHRH). That commission would take over the functions of the MCI, Dental Council and Nursing Council in regard to the regulation of medical, dental and nursing education. In May 2009 Kapil Sibal succeeded Arjun Singh as Minister, MHRD, and this transition brought about a sea change in the Ministry's approach to issues like the regulation of private and foreign education providers. However, it did not put an end to the turf battle between MHRD and MOHFA over the regulation of medical education. It would be unfair to dismiss off the MOFHA as mere possessiveness over turf because no other area of higher education are practice and teaching so inextricably intertwined as in medical education, and further as was

mentioned above professional education had historically been treated as distinct from general higher education.

Let me now briefly outline the divergent views of the Majority Report of the Yash Pal Committee, Basu's Note of Dissent, and NKC Report. The Majority Report articulates the long-standing belief of most academics. That belief system has three tenets. First, higher education should be preferably, if not exclusively, funded by Central and State Governments. Secondly, if private participation is absolutely unavoidable for expanding the higher system it should be allowed with a great deal of circumspection. The functioning of private institutions should be strictly controlled so that there is no scope whatsoever for profiteering. Thirdly, all the ailments of the higher education system in general and of universities in particular are due to intrusion of politics and too much interference by Governments. All would be hunky dory if two conditions are met. First, higher education should be insulated from politics, and universities freed from control by Governments. Secondly, Governments should provide whatever funds are needed without asking any questions. The policy prescriptions of the Majority Report follow from the belief system I have outlined now. Thus it recommended that only not-for-profit organisations should be permitted to set up institutions, and that their accounts should be subject to exacting audit. Private institutions should be compelled to offer courses which might not be commercially viable, to offer scholarships and stipends to a stipulated proportion of students admitted, and to pay

faculty salaries stipulated by Government. It also recommended that the promoters and their family members who do not have 'experience or competence relating to education' should be debarred from holding positions in governing bodies of the institutions. Many of these recommendations in regard to private institutions are incompatible with the decision of the Supreme Court in the Inamdar Case (2005)² which is still the law of the land in regard to private unaided colleges and universities. The Court held that the right guaranteed by the Constitution to carry on an occupation or business included the right to establish self-financing educational institutions. Therefore legally there is no bar on a for-private organization setting up an educational institution. By virtue of the constitutional right to set up an educational institution as an occupation or business, the Government has no right to impose on institutions to which it does not provide any grant its reservation policy or fix fees lower than that necessary to recoup the cost of education. Such an imposition would amount to expropriation without compensation. Whatever, the private-scepticism of the Majority Report is not shared by Basu or NKC. The NKC was categorical that so huge is the need to expand the higher education system that every possible source of financing investment in higher education needs to be explored. In his dissent note, Basu contended that it would be a fallacy to think that if someone is interested in profit, that person

² *P.A. Inamdar and others v. State of Maharashtra and others*, 2005 (6) SCC 537.

will not be interested in providing good education. It is like assuming that if Tata Motors is interested in making profit it will not be interested in producing a good small car. In reality, it is precisely because it is interested in making profit and do better than its rivals did Tata Motors come up with an innovative product, namely good yet cheap small car. That being so, there is no reason why a profit-making company should not be allowed to start a university or a college. In his view a disproportionate amount of energy is being spent on setting up barriers for establishing and expansion of universities. Therefore, licensing of educational institutions should be abolished as was the case with industrial licensing in 1990s. Far more important is the establishment of a system which would provide information to the parents and students about the quality of education imparted by institutions. Further, one should not be flustered over the fact that private institutions would offer only commercially attractive courses and cater to the relatively rich. Thereby Government could use its resources better to promote other courses and assist the poor to have access to higher education rather than spread its resources thin. The NKC, however, does not go as far as Basu to suggest doing away with the entry licensing system.

At the heart of the Majority Report is the 'idea of university', and that idea is heavily influenced by the fact that Yash Pal was an alumnus of the Massachusetts Institute of Technology (MIT). MIT is one of the finest examples of the well-known Humboldt model of a research-cum-

teaching university. The Humboldt model has three organising principles; first, the unity of teaching and research, secondly, the freedom to teach and to learn, and thirdly, the principle of self-governance within the confines of a single institution, for the cultivation of all significant branches of knowledge. The idea of university espoused by the Majority Report goes beyond Humboldt model in that it envisions a 'universal' university whose remit would extend to the 'vocational education sector' comprising polytechnics, industrial training institutions, and so on. No wonder that the Majority Report strongly recommended that IITs, IIMs, and even agricultural universities should diversify and transform into full-fledged universities of its conceptualisation. With relentless logic, the Majority Report carried forward its uncompromising commitment to its idea of university, and came out strongly against institutions engaged solely in research. It recommended that research institutions should associate themselves with universities nearby, and thereby create teaching opportunities for their researchers. As it expected that all existing and new universities should sooner than later conform to its idea of university, the Majority Report was particular that all universities should be treated alike in the matter of funding and relationship with Governments. The Majority Report's idea of university was not embraced by Basu. In his Note of Dissent, he forcefully put forth the view that no Government could finance three hundred odd universities with equal generosity without triggering a fiscal breakdown or

dooming the university system to mediocrity. To expect the *outcome* to be the same across individuals and universities is to court failure. Therefore a differential treatment of institutions and universities and also of individuals is unavoidable. By recommending the establishment of 50 national universities which were to provide education of the highest standard and serve as exemplars for the rest of the nation, the NKC implicitly took the position that all universities cannot be equal. NKC expressed the view that some of the existing universities were much too large, for ensuring academic standards and providing good governance, and that it was necessary to establish universities which would be smaller, more nimble, responsive to change and easier to manage. The 1500 universities it recommended are presumably such universities.

There is yet another difference in the conceptualisation of the Indian higher education system by the Majority Report and the other two. The Majority Report implicitly assumes that the higher education system would cater to Indian students. Even when it spoke of promoting global connectivity it was particular that we should create our own world class standards. In contrast to the Majority Report Basu and NKC were quite enthusiastic of the possibility of India as a major destination for students from all over the world. No wonder, they suggest Government taking up pro-active measures for Indian to emerge as an 'exporter' of education.

The conceptualisation of the apex body suggested by the Reports of the Majority members of the Yash Pal Committee and NKC differ starkly excepting in two aspects. The apex body recommended by each one of them is an epitome of centralisation with little regard to the federal nature of the polity. The Independent Regulatory Authority for Higher Education (IRAHE) proposed by NKC is envisaged as a regulatory body which would have the exclusive power to regulate the establishment of Government as well as private institutions in accordance with transparent criteria laid down by it, issues licenses to institutions to grant degrees and to accrediting organisations to evaluate the performance of institutions, monitor standards and settle disputes.. The UGC's role limited to that of disbursing grants to universities and institutions while that of a professional body like AICTE or MCI or Bar Council of India would be limited to conducting nationwide examinations to license those who could practise the profession in its remit. The Chairman and Members of IRAHE would be appointed by the Prime Minister based on the recommendations of a selection committee. IRAHE would be at an arm's length from the Government and independent of all Ministries. In contrast to the IRAHE, the Majority Report's NCHER is not so much a regulatory body as a *de facto* constitutionally guaranteed institution of governance responsible for strategising and steering the expansion of higher education in the country. Its conceptualisation of National Council of Higher Education and Research (NCHER) proceeded

from the premise that university ought to be a self-governing organisation which would ensure the academic excellence of not only of its constituent colleges but also of colleges and vocational institutions affiliated to it. The higher education system is a constellation of self-governing universities, and that being so the system as a whole should be equally self-governing. The paramount mission of NCHER is to protect the self-governance of the system as a whole as well as of its constituent universities. The Majority Report's design of NHERC is a logical sequel of that mission. NHERC would lay down regulations covering every aspect of higher education including establishment of institutions, academic and research standards, accrediting universities and institutions, financing and governance. Within the framework of the regulations laid down by NHERC, universities alone should be responsible for the academic contents of all courses and programmes of study. Therefore, all professional councils such as those of Architecture, Bar, Dental, Medical, Nursing, Pharmacy should be divested of their academic functions. NHERC would develop benchmarks on various aspects such as student and university performance, salaries and so on. It would also indicate future research directions and manpower needs. It would contribute to the capacity development of universities by organising programmes for new vice-chancellor, and various aspects of university administration. It would provide funds to universities and manage the accreditation system in the country. Thus it

would lay down norms for accreditation, and certify accrediting agencies all of which would be independent of Government. The NHERC would be accountable only to the Parliament and it would secure funds directly from the Finance Ministry, and would be independent of all Ministries of Government of India. Its remit would cover the entire gamut of higher education including agricultural education. It would replace existing bodies like the UGC, AICTE, NCTE and Distance Education Council. It would be the guardian angel of universities and would free universities from the control of both Governments as well as of for-profit private agencies not only in the matter of academics but also finance and administration. Suffice to say, the NCHER along with universities would manage higher education system in the country, and steer its development. Basu did not spell out his ideas on NCHER. However, as the proposed reforming the UGC and AICTE it could be inferred that he was not in favour of NCHER.

MHRD did not go the whole hog with the Majority Report and propose in the *Higher Education and Research Bill, 2011* (NHERC Bill) submitted to the Parliament the establishment of NHERC as a constitutional body which would have nothing to do with MHRD. Further the role of NHERC in policymaking was limited to tendering advice as and when called for. Lest it should be inferred that the refusal to accept in full the Majority Report's conceptualisation is due to the self-interest of venal politicians and civil servants, it should be said that the

Majority Report's conceptualisation sits uneasily with the principles and practice of democratic governance, and a body like the NHERC it proposed does not exist anywhere in the world. To demand that educational institutions are allowed to be professionally managed and that professional bodies have the freedom to set the academic norms and standards in their domains is not the same thing as asserting that higher education should be *imperium in imperio*, a State within a State. Further, the report has a section entitled 'Request of Yash Pal' which lists 'the basic elements of a new reorganisation of our higher education'; one of the elements is that NHERC would be self-renewing'.³ The structure and process of a democratic Government are deliberately designed to disperse power, and to prevent abuse of power and tyranny. Checks and balances among and within the three branches of Government (executive, legislature and judiciary) are intrinsic to democratic functioning. That is the reason why the virtual appropriation by the Supreme Court of the power to appoint judges of the Supreme Court and High Courts through the *Judges Cases* had alarmed many thoughtful individuals.⁴ One need not necessarily take the extreme view that 'the nature of appointments made in the last two decades had shown, the decisions exemplified a concern expressed by James Madison in the American context: "The accumulation of all powers,

³ Ministry of Human Resource Development, *Report of the Committee to Advise on the Renovation and Rejuvenation of Higher Education*, 2009, p.82.

⁴ *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441; *In re Presidential Reference*, (1998) 7 SCC 739.

legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective may justly be pronounced the very definition of tyranny”⁵ The recent controversies triggered by Justice Markandey Katju’s revelations validate the principle that checks and balances are essential in a democratic polity. It does not seem appropriate to extend to higher education an exemption from the principle of checks and balances that ought not to be available even to judiciary. As Harold Macmillan famously put it, ‘We have not overthrown the divine right of Kings to fall down before the divine rights of experts’. No Government, democratic or otherwise, would disagree. Politics and governance as they operate are no doubt full of aberrations. However, the right step is to reform them and not substitute a rule of judges or of experts for democratic governance. Such an assertion, if you pardon me saying, is hubris. Lest I should be accused of hubris, let me quote J.P.Naik the ultimate educationist who was Member Secretary of the Kothari Commission and loomed so large on the Indian educational landscape during the 1960s and 1970s as to be called Mr. Education. Commenting on ‘a widely shared view’ that ‘education is meant for academics only and that politicians should keep their hands off it’, he wrote:

This isolation makes educationists blind to many aspects of the educational reality which are basically

⁵ Cited in Suhrith Parthasarathy, ‘Safeguarding Judicial Autonomy’, *The Hindu*, August 25, 2014.

political... (many issues) cannot be solved except jointly by politicians and educationists. On the one hand, politicians remain largely ignorant of basic educational problems because of this very isolation so that when they interfere with education they do more harm than good. [on the other hand] educationists desire full political support without any political interference ... [that] is their concept of autonomy...A situation of this type does immense harm.⁶

Further, notwithstanding the Majority Report's expectation from NHERC , in actual practice, however, the way parliamentary democracy functions direct accountability to Parliament would not secure NCHER freedom from 'political interference'. Post-Independent Indian history has many occasions when the ruling party has such a commanding majority in the Parliament that the distinction between the legislature and executive is notional. Suffice to say, contrary to the expectations of the majority of YPC, NCHER would either be not accountable to anyone or would have only a façade of autonomy.

Just as nowhere in the world does judiciary appoint by itself judges, a body similar to NHERC does not exist anywhere in the world. A consequence of the colonial era is that the angle of vision of intellectuals and policymakers in the erstwhile colonial countries is usually restricted to their own country and the erstwhile colonial

⁶ J P Naik, *The Education Commission and Thereafter*, New Delhi: A.B.H. Publishing Corporation, 2nd edition, 1997, pp.238-9.

power. That is the reason why their idea of university is limited to that of a self-governing community of scholars with little or no supervision of the States. Most are not aware that universities are organised differently in many European countries. In countries like France, the National Ministry of Education regulates access conditions, the curriculum, the degree requirements, the examination systems, and the appointment and remuneration of academic staff. Degrees are often awarded by the State rather than higher education institutions. The faculty is considered civil servants. Parallel to the authority of the bureaucracy in the ministry is that of the faculty guilds. Senior professors have enormous power while the power of the university administration is weak. In contrast, British universities are chartered corporations responsible for their own management. Each university and college decides its own admission criteria, curricula and hiring of faculty. Traditional faculty guilds have considerable power while trustees and administrators (vice-chancellors) have limited power. In contrast to the British universities, in American institutions the trustees and university administrators have more power. Even in India, historically universities were allowed to exercise self-governance only under the watchful eye of Governments. Only exceptional vice-chancellors could stand their ground against the Government. It was the country's good fortune that till about late 1960s there were many such exceptions. Over the last two decades, there is a trend towards convergence of the two main systems. In State-controlled

systems the State had been devolving more autonomy on institutions. On the other hand, in countries like the United Kingdom which hitherto largely left the universities to themselves the State had been demanding from universities better performance and accountability. The main driver of change had been necessity to improve global competitiveness of countries in an increasingly interdependent world and to that end improve the education system, or to use jargon develop a knowledge economy. In France and elsewhere Governments have been granting more institutions administrative and financial flexibility. The once-sacred principle of equal treatment of all universities had been blown away, and competition is being promoted. The opposite trend is particularly evident in the United Kingdom. Block grants had given way to performance-linked challenging grants. Power had shifted considerably away from faculty guilds to the university administration. The University Grants Commission was replaced in 1992 by the Higher Education Funding Councils (HEFC), for England and Wales and another for Scotland. In England and Wales, the HEFC is a 'non-departmental public body' which means that it works within a policy framework set by the Government. After a series of reorganisations, higher education is now looked after by the Department for Business, Innovation and Skills (DBIS). DBIS lays down the policy and performance framework within which HEFC would have to function. However, HEFC has distinct statutory duties in the discharge of which it is free from direct political control.

While HEFC works at arm's length from Government, DBIS is ultimately responsible for the effectiveness and efficiency of HEFC. To that end DBIS approves the HEFC's key performance targets, and monitors the performance for keeping Parliament informed about the HEFC's performance. Any suggestion to make the HEFC directly accountable to the Parliament on the lines the Majority Report recommended for NHERC would be laughed out of court. Another important change had been the introduction of the assessment and accreditation system. While the primary responsibility for academic standards and quality rests with individual universities and colleges, the Quality Assurance Agency for Higher Education (QAA), an independent body set up in 1997 checks how well they meet their responsibilities, identify good practice and makes recommendations for improvement. All in all, there is a shift from a system of self-regulation and accountability to peers towards a new system of accountability based upon results, defined in terms of outcomes. Suffice to say that the Majority Report's conceptualisation of NHERC is not in synch with these international developments. Nor is it in synch with the federal and democratic nature of our polity.

There is yet another reason which makes me wary of the idea of NCHER outlined by the Majority report. No one can be a judge in his cause is a golden rule which applies to every segment of society be they civil servants or academics. To expect that any organisation or system could reform itself without an external impulse is

unrealistic as well as unhistorical. In his magisterial survey of Whitehall, Peter Hennessy, scholar *extraordinaire* of British government and civil service concluded that no genuine reform is possible unless the incumbent prime minister drove the reform process. Further, it was perilous to allow the British Civil Service to conduct itself as a self-regulating organisation, and to yield to the preference of the Civil Service that reform should be undertaken by the Civil Service itself rather than imposed from outside. Even if there were to be an internal impulse for reform within an organisation, external pressure is helpful for overcoming the forces of resistance to change. One is not sure that academics are such exceptional people, and universities such exceptional organisations that they can reform by themselves without any external impulse. The impulse for the reform of British Universities had come not from the universities but from the British Government. Margaret Thatcher is a much hated figure among British academics; her notoriety is no less in Indian academia. Yet the circumstances which impelled her to take head-on the reform of higher education were outlined by her predecessor James Callaghan of the Labour Party, a Prime Minister 'who could truly be said to have emerged from the bowels of the Labour movement'. In his famous lecture at Ruskin College, Oxford, in 1979 he gave a clarion call for introspection and change. He maintained that public interest (in education) was strong and legitimate as Government spent £6bn a year on education. Discussion should be rational. 'If everything is reduced to such phrases

as 'educational freedom' versus State control' he counselled. , we shall get nowhere'. He asserted that parents, teachers, learned and professional bodies, representatives of higher education, industry, and the Government, all had an important part to play in formulating and expressing the purpose of education and the standards that we need. What was a matter of concern was that 'many of our best trained students who have completed the higher levels of education at university or polytechnic have no desire to join industry', and 'their preferences are to stay in academic life or to find their way into the civil service'. It was necessary to have more technological bias in science teaching that would lead towards practical applications in industry rather than towards academic studies. He was frank enough to say that those who were opposed to debate and claimed to defend standards were simply 'seeking to defend old privileges and inequalities'. It would be to the advantage of all involved in the education field if all the concerns were aired and shortcomings righted. It was incumbent on the teachers to satisfy the parents and industry that 'what you are doing meets their requirements and the needs of our children'.⁷ Suffice to say, if war is too important to be left to generals, education is too important to be left to educationists.

My exposition would be incomplete if I do not touch three other aspects. Regulation is not an end in itself, and it has to go hand in hand with the educational development

⁷ Full text published in 'Towards a National Debate', *The Guardian*, 15 October 2001.

the country requires. This fact necessitates my commenting on the Majority Report's idea of university. I also wish to outline the functioning of the AICTE and the lessons which could be drawn from that its functioning while designing the new regulatory systems for higher and professional education. And then, any discussion of policymaking or regulation is incomplete without considering the role of judiciary as the ultimate regulator. I'd also outline the efforts made by Kapil Sibal as Minister of Human resource Development to act on the Majority Report's recommendation in regard to NHERC. Therefore let me now move to these aspects one by one.

III. Idea of University

Now let me turn to the idea of university. Here I should plead your indulgence as I propose to go personal. The idea of university with which I grew up is precisely the idea espoused by the Majority Report, and yet I had to give it up over time. Andhra University where I spent nine formative years of my life from 1957-66 was a manifestation of the very idea espoused by the Majority Report. It was a great seat of learning with many departments nationally renowned for their excellence. Most professors were Titans in their fields. They led a rich life of the mind- *vita contemplativa*- oblivious of the lure and dazzle of the tinsel world outside the academia. They treated their profession as a calling: expanding the boundaries of knowledge, and passing on the tradition of scholarship to future generations. With such eminent faculty, curriculum was not student-centred but knowledge-centred, driven not by the instrumental criterion of immediate relevance but by the larger purpose of skill, knowledge, value, and cultural transmission. Research was a major activity. Most teachers were engaged in research, and a considerable proportion of students who passed the honours course straight moved on to research. Deference to, if not reverence of, teachers was the reigning norm that guided student behaviour. On the flip side, however, the ethos of the university was provincial and paternalistic. Many teachers were like jealous warring Gods on Mount Olympus. Like the *doktorväter* of the old German universities professors had almost complete power

and control over the lives and careers of students and research scholars. They were extraordinarily generous to those who were with them and waging a vendetta against those with others. Anecdotal evidence as well as memoirs like those of Milton Friedman the Noble Laureate in Economics bring out those academic feuds was not unique to my university. Suffice to say; even if a university were to be wholly insulated from the political system outside, it would not be free from the politics within, from organisational and personality politics. Before I moved out of the University, I was witness to the end of an era, a witness to the office of the vice-chancellor ceasing to be an exalted office that exuded gravitas, and vice-chancellors turning into birds of passage. In the first thirty- five years of the University's existence, there were just three Vice-Chancellors including S.Radhakrishnan. The last of these three left in the fourth year of my stay in the university, and during the last five years of my stay there were two vice-chancellors. The first of these two had to go through the ordeal of facing an inquiry into the countless allegations levelled against him by a rival for his office. He was succeeded by a scholar of scholars and one of the most eminent professors who ever adorned the University. However, he resigned his office before completing his tenure, thereby establishing that even if a Professor of long standing revered for his scholarship were appointed as Vice-Chancellor the old order cannot be restored.

About two decades after I left the Andhra University, I had the good fortune of being closely associated with

universities and the higher education system here in Andhra Pradesh. Apart from being State Education Secretary, I also had the privilege of officiating as vice - chancellor of a few universities for quite long spells. It did not take much time for me to discover that the universities I was handling were a starkly different species. Even Andhra University was not what it used to be during my earlier stint of association. The appointment of a Vice-Chancellor had come to be guided solely by political considerations; the selection process came to be more a ritual to be gone through to affix the imprimatur on the person already chosen. The infusion of political patronage for appointment to the post of Vice-Chancellor, and of caste politics further aggravated the pervasive campus politics that no university is free of. University governance got inextricably intertwined with management of assertive interest groups who viewed their causes as paramount national concerns. The decision-making process was prolonged by negative obstructionism. As officiating Vice-Chancellor, I found a decision on award of contracts for executing works costing Rs. fifty to sixty lakhs, petty works which would not hold my attention for more than a few minutes in Government, were being dragged on for months in the Executive Council even as the funds were about to lapse and the students were agitating for lack of facilities. Only one or two exceptional vice-chancellors among the baker's dozen could resist the temptation of cultivating political support to secure the appointment in the first place, and later after appointment to keep political

powerbrokers in good humour for sheer survival and warding off challenges to their authority from within the campus. Research came to be an exceptional activity. The student politics of my days was ideological, the traditional divide between the Left and the Right. Now it was not ideological but casteist. I could not help thinking that like Humpty Dumpty the higher education system had a great fall, but being young and idealistic I thought it should be possible to put together Humpty Dumpty again. During my occasional association with higher education in MHRD as Chief of the Policy Planning I was greatly anguished by the fact no earnest consideration was given to put Humpty together.

As State Education Secretary, I had the privilege of meeting Yash Pal who was then Chairman, UGC to plead for recognition of Telugu University by the UGC so that it could receive grants from the UGC. Even though Yash Pal's stand ran counter to what I was striving to secure as State Education Secretary, I was personally delighted for what Yash Pal was saying was entirely in synch with my own experience as a student, research scholar, and faculty in the Andhra University. Looking back, there were two strands of education I received in the university: the education I received in the Chemistry Department, and a broad general education that unconsciously seeped in from living on a university campus with students belonging to different disciplines and opportunities plenty to know about each other's studies and to casually engage in interdisciplinary chat, from a rambling study of books of all

types in the University Library, and more significantly from the all-pervasive ambience of cultural and political ferment that pervaded the university. The ambience of the Andhra University in those happy, less constrained days is captured by what 'Professor' C.E.M. Joad said about the Oxford University:

One is surrounded by the visible loveliness of the places; there are also invisible influences by which the very texture of existence is pervaded. These together form an atmosphere by which dwellers in the University are unconsciously impregnated; and just as a fire of leaves in autumn may smoulder for hours and then break suddenly into flame, so, as one gets about one's business,...one may find one's senses, suddenly unsealed and one's spirit flaming out to meet the beauty with which one is surrounded.⁸

The ambience was so overpowering that it planted in me the Baconian ambition to take all knowledge to be my province, and to straddle the two cultures of science and humanities. As I navigated life and came to know more and more of educational systems in different countries I had to reconcile with the harsh reality that the University of my Student Days is now just no more than a memory, a Past which is a different territory.

Let me now briefly explain why I turned an apostate. I changed my ideas for the same reason which Keynes put forth rhetorically: 'When the facts change, I change my mind. What do you do, sir?' When one looks around, one

⁸ Cited in *Andhra University, Silver Jubilee Souvenir, 1926-1951*, p.18.

notices that diversity in every respect is the defining characteristic of higher education systems. This diversity is accentuated as a meritocratic, elite education system gets transformed into a democratic system – or to use the popular expressions massification and post-massification stages- that aspires to provide access to higher education to everyone who seeks admission, and whose values came to resemble more and more those of the democratising society in which it is embedded. Just as the British model of governance of universities is just one model of governance a research-cum-teaching university model is just one model. Given its success in Germany and later the United States, a research-cum teaching university has come to be the ideal of what a university ought to be. However, in actuality a research-cum teaching university is a statistical exception. Even in the United States, only about 200 of the 3-400 universities and colleges can be considered as knowledge producers at various levels. Further, in most European countries like France, Spain and Italy, research had been institutionally separated from higher education, and confined to secluded ‘national scientific research centers’ as universities are considered to be too vulnerable to students’ pressures. The same was the case till recently in Japan; private firms had distrusted universities as research-oriented organisations, and carried out research in in-house laboratories supported by government funds, and directly linked to the needs and orientations of large private firms. Suffice to say, not every university need be or could be a research-cum-teaching

university. A university may as well be just a teaching institution, and a teaching institution is not something to be looked down upon for precisely good teaching is what most students of today require. As enrolments grow higher and higher the student body gets more and more diverse. Students who seek knowledge for knowledge's sake and researchers who seek to expand the boundaries of knowledge or search for truth or beauty have not vanished. However, they are vastly outnumbered by those who pursue higher education for academic credentials which enhance their economic prospects. The requirements of these growing mass of students had led to greater diversity in programmes offered, and institutional setting. In response to the demand for job-oriented short-duration programmes, institutions unrelated to universities have sprung up in many countries including India. The vast majority of students require good teachers and not necessarily star researchers. Even the conventional universities are increasingly differentiated along four dimensions: geographic scope, aspirations, functions and areas of study. Depending upon the geographic area from which draws its students and faculty, a university could be global like Oxford or Harvard, national like the Delhi University or JNU, or local like Meerut University or Nannayya University, Rajahmundry. A university may aspire to be world class, or a premier institution nationally, or a generic institution with no particular distinction. Further, a university or institution of higher learning may cover all branches of knowledge or be specialised eg., the

London School of Economics (LSE) whose ambit is limited to social sciences. There is the distinct possibility that in seeking to broaden their mission, these specialised institutions may lose their focus, élan and the immediate priority of scaling up their activities in terms of size and research. One is not sure if LSE and the world at large stand to benefit if LSE diversifies into natural sciences, or for that matter IITs and IIMs as recommended by the Majority Report. As many public intellectuals tend to compare India and China, it would not be out of place if I mention that in its aggressive effort to expand its higher system China is consciously developing a differentiated system. A few universities chosen for development as world class research universities receive extraordinarily generous funding by the Central Government. In addition 150 research universities are funded by the Central Government 1700 regional universities are funded by provinces and municipalities. All in all, the principle of equality and uniformity had been deliberately given up in favour of differentiation for promoting excellence along with expanding enrolment

Suffice to say, the holistic and universal concept of university outlined by the Majority Report is not universal in reality. In his Foundation Day Lecture at NUEPA (2009) the distinguished sociologist André Béteille had sketched the transformation of the university system into a ‘mass university’ and its implications.⁹ Concluding his

⁹ André Béteille, *Universities in the 21st Century*. Third Foundation Day Lecture, August 11, New Delhi: NUEPA, 2009.

lecture, he spoke of the nostalgia for a different kind of university, in which teaching and research are combined at the most advanced level in all significant branches of knowledge, surviving in the minds of many who have been exposed to the experience of such universities in India and abroad. And then he went on to counsel against such nostalgia becoming 'an impediment to the creation of more purposeful though perhaps less ambitious institutions of teaching and research in the twenty-first century'. Given my own experience, I cannot agree with him more. Development and regulatory policies have to proceed on the premise that we would have and would require a variety of universities and higher education institutions. Regulatory and promotional policies should necessarily reflect the diversity of the higher education system. A one size fits all type of financing, governance and regulation is inappropriate. It is a happy augury that financing by RUSA is proposed to be based on the principle that institutional differentiation and distinctiveness should be encouraged, and that the spectrum of higher educational institutions must include multidisciplinary research universities as well as short-cycle vocational education institutions.

IV. The Genesis and Growth of Private Institutions

Ever since English education was introduced in the country, a defining characteristic of higher education has been that the demand for higher education, particularly for courses which held out attractive job opportunities, was always ahead of supply. This was in contrast to the deficient demand in elementary education particularly among girls and in rural areas. In the euphoric years after Independence there was a tremendous surge in demand for higher education arising from a revolution of rising expectations and the belief that with the foreigner who milked Indian's wealth gone after *Swaraj* milk and honey would flow. The Central and State Governments did not fail their citizens. The twenty years from Independence to 1966 when the Kothari Commission submitted its Report witnessed a spectacular expansion of educational institutions of all types as well as of enrolment at all levels. Limiting my observations to higher education the number of colleges for general education from 370 to about 1,600, engineering colleges from 33 to 97, medical colleges from 30 to 99, agricultural colleges from 16 to 52, and universities from 27 to about sixty. It was during this phase prestigious institutions like agricultural universities, IITs, and AIIMS were set up. In fact, this was the heyday of manpower planning, and the anticipated manpower demands played an important role in the expansion of professional education. The expansion of universities and professional

education institutions was an exclusive effort of the Central and State Governments and its main objective was to provide the critical manpower needed for planned economic development. In fact till mid-1970s private medical and engineering colleges were rare. What is remarkable in retrospect is the willingness to avail foreign assistance for establishing institutions, and the eclecticism of academics and policymakers. Thus technical and financial assistance was utilised for establishing IITs, agricultural universities as well as the two IIMs set up during this period. UNESCO and UNDP assistance was utilised to set up centres of advanced study in universities and thereby strengthen the research infrastructure in the country. The landmark Kothari Commission was international in composition with five of the fifteen members drawn from countries as diverse as the United States, U.S.S.R, France, Japan, and the United Kingdom. While the legendary J. P.Naik was the Member Secretary, the Associate Secretary was a UNESCO official. The Kothari Commission engaged twenty international consultants had extensive consultations with a number of well-known educationists and scientist. The Kothari Commission's eclecticism is in keeping with the spirit of those times which deftly balanced the views of Tagore and the Mahatma, and sought to 'open the window to the world outside so that fresh breeze can waft through' without being blown off one's feet. It is unfortunate that since then there has been a closing of the academic mind so much so many are in the grip of the *East India Company*

syndrome and are suspicious of any idea emanating from the West.

In this phase, while the expansion of professional education was an exclusive effort of Governments, private aided institutions contributed significantly to the expansion of colleges of general education and all schools excepting primary schools. The grant-in-aid policies inherited from the British came in handy for this purpose. What is remarkable about these grant-in-aid policies is that they practised concepts like private provision and public funding, outsourcing, private-public partnership and performance linked matching grants a century before the modish New Public Management elevated them into cardinal principles for organising the delivery of basic services like education. The payment of grants to an institution was conditional on satisfactory performance of the students in the tests administered by the inspecting officers. The annual inspection of school was a big event that sent a shudder down the spine of the management and teachers. Encouraging private parties to establish institutions was cheaper for the State Governments than to establish them by itself as the Government did not reimburse capital expenditure at all; it did not even fully reimburse the teacher salaries even though they were lower in private institutions than those in Government schools. In other words, private philanthropy contributed considerably to the establishment and management of private aided institutions. Given the high capital and operating costs few private parties ventured to establish

medical and engineering colleges. The quantitative expansion of educational facilities was at the cost of quality; however, professional education was to some extent an exception. With the expansion of institutions rigorous inspections became a rarity. The collapse of academic supervision impaired the quality of education in Government and Government-aided institutions even as education was being transformed from an elite to democratic (mass) education, and extra efforts were needed to ensure effective learning by the bulk of students who were either first generation learners or whose home environment did not support the learning process or both. In their eagerness to satisfy the public demand for opening new institutions State Governments themselves did not comply with their own regulations for establishing new institutions, and did not provide adequate facilities. That being so they could not be strict with private organisations which established institutions. Suffice to say, grants were provided as a matter of course without insisting either on performance or provision of the facilities mandated by the State Education Acts and Rules, and consequently quality was a big casualty. Over time the failure to enforce rules and regulations without fear or favour came to be a systemic deficiency.

The Golden years came to an end in 1966 which incidentally was the year in which the Kothari Commission submitted its Report. In that year the economy was in the grip of such an acute economic crisis that the planning process had to be interrupted till 1969-

70. Even as the Fourth Five Year Plan started belatedly the country drifted towards the Bangladesh War, and all through the 1970s the country was stuck with the Hindu rate of growth of 3.4 % increase in GDP a year. The 1970s also witnessed the beginning of the deterioration of the finances of the State Governments, and the deterioration continued unabated till about mid-2000s. Suffice to say, the fiscal capacity of the Central and State Governments could no longer sustain the spectacular expansion of educational institutions of the first two decades after Independence. Further, the expansion of technical education did not appear to make much sense as by 1964 when the Kothari Commission began its work, educated unemployment loomed large as a national problem, and among such unemployed were engineers. The large number of unemployed engineers was a strong evidence of the limitations of manpower planning as the basis for the establishment of higher education institutions. Manpower planning presumes that it is possible to accurately foresee the structure of the economy fifteen to twenty years hence, that it is possible to deduce from that structure the demand for different types of manpower. It was inevitably overambitious as it is not possible to accurately foresee the future because of the inevitably large errors in the scale of different activities, changing skill inputs of each activity, and unforeseeable technological developments which unleash gales of creative destruction which sweep away many economic activities and usher new activities. A very good example of the limitation of

manpower planning is the emergence of a strong Information Technology service sector in the late 1990s; no one foresaw that emergence. The proliferation of engineering colleges which professional educators bemoaned turned out to be a blessing in disguise as those colleges provided the much needed manpower for the IT sector. Whatever, the acute resource crunch the Central and State Governments faced together with the unemployment of engineers led to professional education ceasing to be an investment priority of Governments.

Complementing this development was a paradigm shift in development praxis and the emergence of poverty reduction and provision of basic needs as development priorities. From the First Five Year Plan to 1968-9 the shares of higher and professional education in total plan expenditure of the Central and State Governments continued to increase at the expense of elementary education and the paradigm shift of mid-1960s led to the reversal of trend. As a result of the confluence of all these factors few professional institutions were established by Central and State Governments after mid-1970s. Thus till 1970 Central and State Governments established 69 medical colleges with over 8,500 seats, and during the next three decades they added barely 2,000 seats. From Independence till 1975, 121 engineering colleges set up by Governments while thereafter almost all engineering colleges established were private engineering colleges. Planned and coordinated development is possible only if parents and students are satisfied with the educational facilities created in accordance

with norms and manpower planning, and demand no more. If they demand more, the demand in excess of supply should be curbed by rigorously enforcing a policy of restricting admissions or by enhancing fees so as to lower demand or both. The Kothari Commission estimated that if the then prevailing rate of expansion of enrolment continued for the next twenty years the enrolments would be more than twice the estimated requirement manpower for national development. A developing economy like ours could neither have the resources to expand higher education so as to fully meet the demand for it nor could it provide suitable employment for all those who pass out from higher education institutions. The Commission therefore strongly recommended a policy of selective admission in all areas and institutions of higher education. The expansion of higher and professional education was to be strictly limited to the manpower requirements. Quality should on no account be compromised; the intake of every course in every institution should be rigorously determined with reference to the faculty and facilities available. Admissions should be strictly based on merit subject to reservations for SCs and STs. The recommendation of the Kothari Commission was outright rejected by the Committee of Members of the Parliament which examined the report as degrees were perceived as a passport to employment and social mobility. The backward classes were in particular opposed to selective admissions below the postgraduate level. Babu Jagjivan Ram threatened to launch a *Satyagraha* if the government

accepted the recommendation. Unlike a totalitarian state, a democratic polity finds it difficult to peg down the demand for higher education by the cold logic of manpower planning. In China for example, the available seats were strictly rationed so much so that till mid-1990s enrolment in Chinese higher educational institutions lagged behind that in their Indian counterparts. However, what aggravated the problem was an economically irrational policy of misguided egalitarianism which fuelled the demand for higher education by pegging fees at levels that bore no relationship either to the cost of providing the education or to the expected benefits, and which did not differentiate between the rich and poor in the matter of fees. A case in point is the ridiculously low fees charged by Delhi University. The fees were a negligible fraction of what most students paid in their schools, or as was being said jocularly those days on what the students spent on Coca Cola.

Mid-1970s constitute a watershed in so far as professional education is concerned. The target of paper chase slowly but steadily shifted from a BA degree to engineering and medical education, and more importantly parents were willing to pay fees which were commensurate with the cost of providing the education. Needless to say, such fees were far higher than those charged by Government professional institutions. Private entrepreneurs would not have been human if they failed to take advantage of an emerging opportunity. While private engineering and medical colleges were rare before

1970s, during 1975-85 one hundred and seventy-eight engineering colleges were set up in the country as a whole as compared to one hundred and twenty-one colleges set up from Independence till 1975; most of them were private unaided institutions which received no grant-in-aid from State Governments, or to use an expression in vogue self-financing institutions. The trend initiated in the 1970s picked up momentum in the years which followed later. Karnataka was a pioneer in that it was willing to tap private enterprise for establishing professional institutions, and its neighbouring States Andhra Pradesh, Tamil Nadu, and Maharashtra followed suit. They had not much choice. As Education Secretary here I found that hundreds of students from my State were migrating to Karnataka for pursuing professional education. This was because N.T. Rama Rao put an end to the policy of the previous Government to permit private professional colleges, and at the same time could not establish new institutions or expand the intake in existing institutions. The way and means position was very grim as the policies of his Government like change in liquor policy and supply of rice at Rs.2 a kilogram shrunk revenue and at the same time enhanced expenditure. The policies put in place by State Governments were rather ingenious. Though the specifics varied from State to State there were a few common features. The institutions to be established were to be self-financing in that they could not expect to receive any grant-in-aid and had to fully recoup costs from fees they charged. In turn, the State Governments fixed fees

permitted such institutions to collect fees which effect full recovery of costs. The State policies did not permit collection of amounts -by whatever name called- over and above the fees fixed by the Government. The policies of Karnataka and Maharashtra were rather ingenious. The State Government had a significant 'quota'. That is to say there were two categories of seats in these institutions: 'Government' seats, and 'management' seats. Government seats were also called 'free' seats, and management seats 'payment' seats presumably because the fees charged for Government seats was the same as in a corresponding Government institution, and the institution did not collect any amount in addition to tuition fees by way of donation or capitation. The consequence of enforcing the Government quota system was that the private sector financed the expansion of seats in the public domain. A minimum proportion of the management seats were required to be filled with candidates belonging to the State. Students belonging to other States were required to pay higher fees than those belonging to the State. Given that a significant proportion of the total seats comprised Government seats the fees charged for management seats cross-subsidised the students who were allotted Government seats, and the extent of cross-subsidisation by students from other States was higher than that by students from the State who were allocated. This differential fees is similar to that China introduced a decade later in 1985; 'ultra plan' seats were provided for 'self-supporting' students who had to pay fees unlike other

students. Broadly speaking, the admission cum fees policy adopted by State Governments sought to square the circle; they attempted to balance different considerations like merit, equity, ability to pay, and the financial viability of institutions which were avowedly self-financing and did not depend on grants from the State Government.

The surge in the demand for technical manpower witnessed from mid-1970s picked up further momentum from mid-1990s, and turned into a tsunami because of the IT boom. Thus in 1985, there were over three hundred odd engineering colleges; 190 more colleges were established during the decade 1987-97, 193 during the three year period 1997-2000 itself, 373 over the next three years 2000-3, 251 during 2003-6, 877 during 2006-9, and 421 during 2009-12. The demand for professional education received a further boost from late 1990s because of the economy moving to high trajectory of growth, benefits of development increasingly accruing to middle and lower middle classes, and raising expectations of economic opportunities from good education. Before 1992, average annual increase in the per capita income during a five year plan never exceeded 3.3%. It registered a growth of 4.6% during the Eighth Five Year Plan (1992-97), 3.5% during the Ninth Five year Plan (1997-2002), 5.9% during the Tenth Plan (2002-07) and 6.3% during Twelfth Five Year Plan (2007-12). The huge surge in the demand for professional education and even general education courses perceived to secure good employment was ahead of the enhancement of the fiscal capacity of Central and State

Governments so much so that the demand could be met only by self-financing institutions and courses. The self-financing model which began with engineering and medical education rapidly spread to other areas like management, computer applications, pharmacy, dentistry, nursing and so on. The huge surge in demand also led to the proliferation of private universities. It was only from 2005 that the country began to witness another bout of spectacular expansion of Central Government technical institutions. In 2006 the intake of the existing institutions was enhanced by 54% so as to ensure that the seats available for the non-reserved categories were not reduced because of the introduction of reservation of OBCs. A little later, Central Government decided to increase at one stroke the number of IITs from seven to sixteen, National Institutes of Technology (formerly called Regional Engineering Colleges, RECs) from twenty to thirty, IIMs from five to thirteen, and Central Universities from 24 to 40. The present NDA Government continued the policy of its predecessor to establish more IITs, IIMs and other Central Government institutions. The pace of expansion is reminiscent of the first phase of educational development. Though it might not be fashionable to say this boom was possible because of the economic reforms undertaken from 1991, the consequential escape for the Hindu growth rate of about 3.5%, and the enhanced fiscal capacity of the Central Government.

It is common to come across what I would call 'neoliberal hypothesis'. It postulates that the growth of private

educational institutions is due to the adoption of the neo-liberal economic policies by the Government in general and market oriented reforms introduced in higher education, and retreat of the State from its obligations to the citizens and reducing the budgetary allocations for social services like education. It was in 1991 that Government had to opt for structural adjustment policies and begin dismantling the license-permit-control raj in order to extricate the economy from the unprecedented macroeconomic crisis. Ironically the growth of self-financing institutions began during the radical *Garibi Hatao* phase of Indira Gandhi's regime when she loomed large like a colossus over the Indian political landscape and put in policies which were anti-business and anti-foreign companies. The neo-liberal hypothesis does not explain the genesis of self-financing institutions and their growth before 1991.

Nor does it explain the acceleration in the growth of private unaided institutions during the 1990s and 2000s. Those who put forth the neo-liberal hypothesis miss out two vital facts: the inadequate and prolonged fiscal capacity of the Governments, and the fact that no Government is a homogeneous entity with a single directing mind. They presume that Governments *could* have expanded higher and professional education to the extent demanded if only they *would*, and further that the 'would not' is explained by wrong economic belief which possessed Governments. To believe that the State *could* step up budgetary resources for higher education if only it *would* is wishful thinking.

Many academics and public intellectuals absolve themselves of considering the problems of financing public expenditure and put forth enchanting policy prescriptions. They assume budgetary resources are perfectly fungible, and budgetary priorities can be re-ordered with ease; this is not so. The policymaker cannot wish away resource constraints and competing priorities. The policymaker does not have luxury of being able to go by what Max Weber called *Gesinnungsethik* (the ethics of conviction) whereby good intentions and mouthing uncompromising thoughts are good enough and one is not bound to act, and much less take the responsibility for the consequences of actions by others based thoughts one espouses. Once in office, even the most fervent ideologue has to occasionally deviate from his belief and adopt policies which are not consistent with his belief. He has to go by *Verantwortungsethik* (the ethics of responsibility), has to play by the cards dealt and is judged not by his intentions and ideas but what he accomplishes. To illustrate, unable to sustain the ballooning expenditure on education even the Left Front Government of West Bengal which cannot be accused of being pro-market had to opt for private self-financing colleges.

Contrary to the belief of those who have no direct experiential knowledge of how Government functions, Government is not a monolith; it is a constellation of different entities like Ministries and it is rare for all these entities to act in concert driven by a common purpose, vision and ideology. It is common knowledge that the spirit

underlying economic reforms did not extend to most *Bhavans* housing Government of India Ministries and to most of the States. Most Ministries and States went ahead as if it were business as usual. The views espoused in the documents of the Finance Ministry that higher education was a non-merit goods was view of a Ministry and not of the Central Government as a whole, not to speak of the various State Governments. Between them, Arjun Singh and Murli Manohar Joshi presided over MHRD for fourteen of the nineteen years from June 1991 to May 2009. Neither of them can be considered to be neo-economic liberal; nor were they pushovers in the Governments of which they were ministers. While Arjun Singh went out of the way to flaunt his opposition to the economic policies of the Government and did everything possible to embarrass the Government, Joshi was the ultimate votary of *Swadeshi* ideology. Few know how much freedom the MHRD had in shaping the education policy or the inter-se investment priorities in education. The decision to give priority to elementary and adult education and to induce higher and technical education institutions of the Central Government to raise fees and mobilise non-budgetary resources was not guided not by any 'neo-liberal' ideology but by the reports of the Ramamurti Committee (1990), the CABE Committee on Policy (1992), the Punnayya (1992-93) and Swaminadhan (1993) Committees. Many members of these committees had worldviews diametrically opposite to the neo-liberal point of view, and quite a few would have been at a loss if asked to spell

out what neo-liberalism is. The ultimate decision makers in MHRD were not guided by any ideology but by a conviction that one should be guided by pragmatism and commonsense. Suffice to say the neither the Central Government nor the State Governments planned any grand retreat of the State in the field of higher education nor did the State Governments. In the face of resource constraint and competing priorities the State Governments did not have adequate reassures to finance the expansion of technical education on a scale necessary to meet the demand and they, particularly the States of Andhra Pradesh, Karnataka, Kerala, Maharashtra and Tamil Nadu, pragmatically felt it would be fool hardy not to avail the willingness of private entrepreneurs to set up institutions and the willingness of parents to pay fees far higher than those charged by Government institutions. It was only after Kapil Sibal became Minister did the MHRD began to openly acknowledge a role for private and foreign educational providers.

Before moving on, I should also touch upon the question that whatever might have happened in the past, is it possible for the role of private and foreign providers to be reduced? My answer has to be regrettably no, even if the Indian economy moves out of the present morass and gets back to the trajectory of high economic growth. My reply is based on the comparative experience of other countries. Yet another factor driving the diversification is the inability of Governments in developed countries to fund universities on the scale needed for near-universal

enrolment is one of the reasons for the increasing role of private players in higher education, and for the pressure on public institutions to generate more and more own resources. In Britain and elsewhere in Europe, even those inclined to the Left are grudgingly getting reconciled to the fact the treasured principle of higher education as a public good entitled to unstinting public support had gone into the dustbin of history, and that denouement which is unavoidable.¹⁰ The winds of change are sweeping even countries like France with a deep rooted tradition of unrestricted admission of everyone with a *baccalauréat* to State universities and receive free education. It is increasingly recognised that behind the facade of an ostensibly egalitarian system is gross iniquity. While brightest students compete for places at the elite, fee-paying *grandes écoles* the rest are consigned to overcrowded institutions with few facilities, and high rates of dropouts and failures. A defining feature of the French higher education system is dualism; a vast chasm separates run-of-mill universities (82 in number accounting for 90% enrolment) from the prestigious *grandes écoles* established by Napoleon to provide privileged higher education to the nation's future elites - *haut fonctionnaires* (senior civil servants), leaders of industry, top military brass, top politicians, engineers, physicists and others. A disproportionate share of budgetary outlays is allocated to *grandes écoles* which cater to just a lucky 4% of the

¹⁰ 'Higher Education: Open Universities', *The Guardian*, Editorial 3 March, 2011.

student population. The chasm between the universities and the grandes écoles had sharply widened akin to the chasm between the well-endowed Central Universities and the famished State Universities in our country.

Private investment in education is coming in different forms. Public institutions are under increasing compulsion to mobilise more of their own resources through various means including enhancement of tuition fees. Given the inexorable pressure to raise own revenues, a public-funded university is increasingly coming to acquire the characteristics of a University Inc., partly a community of scholars with a mission to explore, generate and disseminate knowledge, and partly a business enterprise that finances its missions through conventional businesslike revenue-generating activities. It is the relentless pressure to raise revenues which drives many institutions turns to 'markets' in countries like India. The intrinsic tension between the academic mission and the money-making poses acute existential dilemma to academics as well as top university administrators.

Lest what I say is dismissed of talking about developments in capitalist countries which is inappropriate for India, let me briefly outline the developments in China, a country still ruled by a Communist Party and which calls its economy market socialism- socialism all the same. The trajectory of the reforms of higher education initiated in 1985 follow a path similar to that in United Kingdom and elsewhere. In 1985 the establishment of private

universities was permitted, and the concept of ‘ultra-plan’ enrolment of ‘self-supporting’ students was introduced. This concept is similar to that underlying the practice followed in our country of private institutions collecting higher fees than corresponding Government institutions. In 2002, the *Law for Promoting Private Education* was promulgated to provide a more solid legal basis for the governance of private universities. By 2008, China had 640 private universities and degree granting colleges, and their enrolment was about 20% of the total enrolment in higher education. It is interesting that private universities are called in Chinese *Minban* meaning ‘run by the people’. The policy documents do not hesitate to proclaim that one of the objectives of reform is ‘to introduce market forces to liberate education, create impetus for change, and encourage competition for improvement’. China enacted legislation to regulate foreign institutions as early as 2003. By 2008, well over 1,000 foreign academic institutions had some kind of collaborative arrangement in China, of British universities. Among those active in China were the Johns Hopkins University, and the University of Michigan. Two British universities had full-fledged branch campuses. The reform of the higher education system included the introduction of ‘fee paying principle’, and abandoning provision of higher education as public goods for which no user fee is charged. By 1999 all university students are required to pay fees. Public universities were explicitly asked to generate more of their operating expenses so much so in the recently released THES ranking

of research universities in BRIC countries Peking University which secured the first rank got the maximum score for industry income. It has been successful in attracting money from industry and businesses for carrying out research and development. In terms of its research impact it again performed pretty well.

It is very unlikely that India could do what developed countries and China could not, and transform the higher education system from elite to a democratic system relying exclusively on Governments. It should also be remembered that unlike most developed countries, India has to invest heavily in the expansion and qualitative improvement of high and higher secondary schools. Equity demands that schools are accorded a higher priority in public investment. To think that it is possible for the State to finance by itself the expansion of higher and professional education on the scale required is to be detached from reality. All this is not to say that public funding of education should not be stepped up; it should be but by itself it would not be adequate and should be supplemented by private investment.

V. Judiciary as the Ultimate Regulator

There are many who are of the view that education is a public good and ought to be provided by Government, and further that in the interests of equity fees should be low even if the cost of providing is far higher than fees. For them the very idea of full recovery of the cost of education is an abomination. The legal validity of this view was adjudicated by the Supreme Court in the *Mohini Jain* case in 1992.¹¹ It is the first in the series of cases spanning nearly a quarter of a century which reviewed the policies of State Governments for regulating admissions to self-financing colleges and of the fees charged by those colleges. Article 45 of the Constitution (as it stood then) obligated the State to provide within ten years of the commencement of the Constitution free and compulsory education to all children until they complete fourteen years of age. In respect of other stages and areas of education Article 41, a Directive Principle, recognised an individual's 'right to education'; however, that right was not absolute and was subject to the economic capacity of the Governments. In spite of these explicit constitutional provisions the Supreme Court bench discovered an unqualified right to education in the penumbra of Article 20 the Constitution which guarantees the right to life and personal dignity. Following this discovery it held that the State was obligated to create adequate educational facilities to fulfil the right to education. The State could

¹¹ *Mohini Jain, Miss v. State of Karnataka & Others*, AIR SC 1858.

discharge its obligation either by setting up its own institutions or getting private institutions to set up institutions. By granting recognition to private educational institutions the State government created an agency to fulfil its obligation under the Constitution. As a private institution was only an agent of the State it was bound to collect the same fees as that charged by corresponding Government institutions, and no more. Any fees it might collect in excess of the fees charged by corresponding Government institutions was capitation fee, whose collection violated the right to equality guaranteed under Article 14 of the Constitution, and was consequently illegal. The Court rejected the argument that the cost of providing medical education was very much higher than the fees charged by Government medical colleges, and as fees are their main source of income self-financing medical colleges should be allowed to charge fees sufficient to recover costs. The Court did not accept the economic argument holding that Indian civilisation recognised education as one of the pious obligations of the human society, and never considered that education to be a commodity for sale. Needless to say, the judgement did not take into consideration its consequences, namely that the demand for professional education could not be met as State Governments did not have adequate resources to establish the requisite number of institutions, and few private organisations would have the deep pockets required to philanthropically provide highly subsidised professional education. Traditionally, judicial decision-making does

not take into account the consequences of a decision. Thus if a court decides that a petitioner has a right it gives direction for enforcing the right without regard to the consequences of enforcing that right. Such an approach is legitimate if a court goes by the explicit provision of the Constitution or the original intent underlying that provision. However, if it pro-actively seeks to stretch the provision and seeks to fix a problem on its own instead of reviewing the legality of Governmental policy or action to address a problem a court cannot wish away the consequences of its judgment lest the solution it offers is a solution that is worse than the problem. Whatever, within a few months of the Mohini Jain judgement, the Supreme Court realised that the Mohini Jain judgement was partly erroneous. It held in the Unnikrishnan case¹² that only elementary education was a fundamental right, and the right to other stages of education was circumscribed by the limits of the economic capacity of the State and its development. The citizens of this country could not demand that the State should provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs. The Court also held that the State had no monopoly on the establishment of educational institutions. Self-financing institutions were a necessity in the prevailing context as Governments were not in a position to meet the demand for medical and technical education. Such

¹² *Unnikrishnan, J.P. & Others v State of Andhra Pradesh & Others*, AIR 1993 S.C. 2178.

institutions could not be compelled to charge the same fee as was charged in Governmental institutions, for the reason that they had to meet the cost of imparting education from their own resources and the main source, apart from donations and charities could only be the fees collected from the students. The scheme it laid down for admissions to and fees chargeable by self-financing institutions were broadly similar to the policies of the State Governments.

To jump the story, the Unnikrishnan judgement was not the last word in the matter of regulating self-financing institutions, all the more so as the litigation was enmeshed with determination of the right minorities were provided by Article 30 of the Constitution to establish and manage educational institutions. In 2002, for the first time in the history of the Supreme Court an eleven judge constitutional bench was constituted in the T.M.A Pai Foundation case for reviewing the regulatory policies of the State Governments in regard to self-financing institutions.¹³ However, in spite of the high-powered bench definitiveness proved elusive as the bench gave six separate judgements. A year after the Pai judgement a five member bench was constituted in the Islamia Academy case to determine what exactly the import of the Pai case was.¹⁴ However consensus again eluded the bench and two separate judgements were delivered. Two years later, in 2005, in the Inamdar case a seven-Judge bench of the

¹³ *T.M.A.Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

¹⁴ *Islamic Academy of Education & Another. v. State of Karnataka & Other*, (2003) 6 SCC 697.

Supreme Court once again sought to determine what exactly the import of the Pai judgement was. Mercifully, the bench delivered a unanimous judgement holding that the right guaranteed by the Constitution to carry on an occupation or business included the right to establish self-financing educational institutions. Therefore legally there is no bar on a for-private organization setting up an educational institution. By virtue of the constitutional right to set up an educational institution as an occupation or business, the Government has no right to impose on institutions to which it does not provide any grant its reservation policy or appropriate to itself a quota of seats or fix fees lower than that necessary to recoup the cost of education. Such an imposition would amount to expropriation without compensation. Further, differential fee wherein students admitted to management seats cross-subsidise students admitted to Government seats is not legal. Suffice to say, the hoary concept of education being a religious or philanthropic activity was knocked out, and so were the admission policies of State Governments which were in vogue for over two decades and largely validated by the Unnikrishnan case. However, it is premature to hold that Inamdar judgement is the last word on the subject. In 2010, in the Society for Unaided Schools of Rajasthan case, the Supreme Court adjudicated constitutionality of the provision in the RTE Act which mandated private unaided schools to fill a quarter of the seats with children from disadvantaged backgrounds in accordance with the rules framed by State Governments.

While the dissenting judge went strictly by the Inamdar case the other two judges ingeniously distinguished the RTE provision from the law laid down in Inamdar case. Whatever, the law as it stands now is that in colleges the Government cannot impose a quota in the matter of admissions while it can do so in regard to elementary schools. It is anybody's guess in what direction the case law would evolve in future.

There is hardly any area of education which is not subject to judicial review, and the case law is in a state of constant flux. To a certain extent this is inevitable as legal issues are malleable and can be subdivided to successfully contend that the case under consideration has to be distinguished from previous decisions. However, to a considerable extent, what had been described as the 'episodic, uneven and unpredictable' exercise of judicial power to review Government policies is a consequence of the way judiciary is organised in our country and has been functioning. The U.S. Supreme Court has discretionary power in the matter of admitting cases it wishes to hear. However, the Indian Supreme Court is organised on the principle that anyone in the country who feels that his constitutional right was violated could approach the Supreme Court. Such organisation was indeed necessary given that for the first time in Indian history the right to equality irrespective of class, creed or caste is enshrined in the Constitution, that that right to equality outlaws a patrimonial system of administration which does not distinguish between personal and public power, and further

that it takes a long time for constitutional morality to take roots in a hierarchical society. As awareness of rights spread among the public and civil society activism gained ascendancy, judiciary came to be increasingly seen as an institutional safety net to protect the citizens from arbitrary exercise of power. That safety net became wider when in keeping with the spirit of the times the judiciary began to expand the scope of fundamental rights far beyond what was intended by the Constitution-makers. One 'right' or the other covers every governmental policy and act, and it is not difficult to find a technical hook to latch on to each and every governmental action or policy and haul it to the juridical arena. Consequently, there is hardly any question in public arena that does not turn into a judicial one, and the remit of judicial review goes on expanding without limits like the expanding universe. In turn, that the size of High Courts and Supreme Court has been expanding relentlessly and this expansion contributes to the uneven and unpredictable exercise of judicial power. The Indian Supreme Court now can have thirty-one judges as compared to the nine of the U.S. Supreme Court. A consequence of the sprawling structure is that as a legal scholar put it, there is no such thing as *the* Indian Supreme Court. The Court is a composite of variable benches, and judicial interpretation is heavily influenced by the composition of the bench hearing a case.¹⁵ A good example is the conflicting opinions in the matter of conducting

¹⁵ Nick Robinson, 'The Indian Supreme Court and its Benches', *Seminar*, No. 642, 'Constitutional Challenges: A Symposium on Democracy and Constitutionalism in India', February 2013.

suggestion of a common All India entrance test for medical education in all types of institutions in order to reduce the hardship of students face in having to appear in several entrance examinations. Such an examination was in fact suggested by a Supreme Court bench; yet a year later the majority of a three judge bench quashed a proposal of the Medical Council to conduct such an examination citing the ratio of the decision in the *Pai* case. The dissenting judge, however, held that upheld the proposal of the Medical College. Elaborating this theme and outlining the reforms needed would require a seminar by itself. That being so, I would confine myself to saying that higher judiciary is a very important player in regulation of education, and that regulation put in place by the courts themselves which exercising the power of judicial review by the court had often done as much to confuse as clarify, and had compounded rather than resolved problems.

VI. The AICTE Saga

By 1986, then Independent India's second National Policy on Education was laid down, the growth of self-financing institutions in Karnataka, Maharashtra and Tamil Nadu was too conspicuous to escape the notice of policymakers. There were two contending points of view regarding these institutions. One held that that their activities should be curbed because it was iniquitous to provide access to education on the basis of economic status of the guardians and not on the basis of merit. The other held they were serving the social objective of widening the base of technical education by making the well-to-do pay not only the full cost of education but also cross-subsidise the education of meritorious poor. Beyond outlining the alternate views the *Challenge of Education*, the discussion paper which preceded the Policy, did not examine the reasons which drove the growth of such institutions, and explore the realistic alternatives available to meet the demand for professional education. The Policy spoke eloquently of the nation assuming responsibility for providing adequate resources for development of education, and outlined in broad terms the various modalities for mobilising non-budgetary resources. It came out against capitation fees and commercialisation of education, even though neither the Policy nor its Programme of Action elaborated what was commercialisation. It scrupulously avoided the use of the expression self-financing institutions. However, the policy prescriptions suggest that commercialisation was a code

word for self-financing institutions. The Policy also held out that ‘ an alternative system will be devised to involve private and voluntary effort in this sector of education, in conformity with accepted norms and goals’- inspiring words which were not acted upon then or later. Within a couple of years of the announcement of the Policy the economy began its plunge into the macroeconomic crisis of 1991. It was only in late 1990s that the economy recovered from the crisis, and it was only from 2003-04 that the economy entered a higher growth trajectory and be acclaimed as an emerging economy, and that the finances of Governments, particularly Central Government, began to show noticeable improvement. Hence the demand for professional education could continue to be met only by self-financing institutions till mid-2000s when Central Government began to expand the intake of its technical education institutions and establish new institutions including IITs, IIMs and All India Institutes of Medical Sciences... The age-old grant-in-aid model would not work as grant- in-aid would not cover capital expenditure which is quite substantial for professional colleges except law and teacher education, and aided institutions would have to collect the same as the corresponding Government institutions, and those fees were too low to recover capital expenditure. Once self- financing institutions had to meet the emerging demand and they could recover costs the rhythm and pace of expansion of professional education was governed by the logic of markets. About half a century ago, eminent economist D.R.Gadgil characterised the

Indian 'planned' economy as an economy which operated as a laissez faire economy modified in part by specific controls. That characterisation applies equally to the development of professional education system from mid-1970s. What in retrospect the NPE, 1986 did was to add an extra and more stringent layer of control over above the regulation by State Governments and universities in whose jurisdiction self-financing institutions were located. Ever since Independence the Ministry of Education and the AICTE played an active role in promoting the development of technical education; now their role shifted from promotion to heavy handed regulation. The objectives of the regulatory system put in place by NPE included ensuring coordinated and integrated development of technical and management education, and maintenance of norms and standards in those areas of education. There were three components of the regulatory system. The first was a centralised licensing system to regulate the establishment and expansion of technical education institutions. The second was fee regulation. The third was a mandatory periodic performance appraisal system for universities and institutions imparting technical education. Fee regulation was attended to by the States subject to judicial pronouncements. The licensing system was administered by the AICTE which was vested with statutory powers by the AICTE Act, 1987. Accreditation was attended to by the NAB, an outfit of AICTE till 2010 when it was reconstituted as an autonomous body.

The emergence of AICTE, a Central statutory

regulatory authority with overriding powers in regard to sanction of new institutions, starting new courses in existing institutions, and imposing and enforcing national standards for facilities and faculty, aroused a great lot of resentment. The States resented the loss of monopoly to sanction the establishment and expansion of technical institutions. They found it irksome to approach AICTE as a supplicant even for enhancing the seats in a polytechnic, not to speak of opening new engineering and management institutions. Universities found it galling that even their long established constituent technical and management institutions would have to pass the test of scrutiny by AICTE, and further that they no longer could start new courses. They also resented the erosion of their affiliating power. Promoters of private technical institutions found the centralised process for sanction too cumbersome. Within three years of the enactment of the AICTE Act Government appointed the Ramamurti Committee to review the NPE. That Committee gave vent to the widespread dissatisfaction with the over-centralised style of AICTE's operations, and the enormous delays in disposing cases. It suggested a more decentralised functioning thorough devolution of powers to the regional offices of AICTE.

Every organisation is very possessive of its turf, and the UGC was no exception. It considered that its remit covered the entire gamut of higher education, and it therefore resented any move which might curtail its remit. Thus it strongly opposed a move in the 1980s to vest the

AICTE with statutory powers, and in the face of that opposition the Government withdrew the move. It is therefore no wonder that the enactment of the AICTE Act generated tension between the UGC and AICTE over the question as to who had the power to regulate universities which offered engineering education. Over the last quarter of a century, the regulatory power of AICTE got clarified through litigation as well as the guidelines issued by the MHRD; however, there are still a few grey areas which continue to be litigated. On the whole, the position that emerged is that AICTE has unqualified jurisdiction over all engineering and management colleges; however, its role is only advisory in regard to universities, including deemed universities. Consequently a deemed university status came to be a regulatory haven subject to the soft regulation by UGC, and in effect exempt from the stringent regulation of AICTE. The deemed university status conferred another great advantage in that a private institution could thereby cater to the entire national 'market', instead of having to limit its operations to the region of the university to which it was earlier affiliated. Consequently, acquiring the deemed university status came to be a preferred strategy for self-financing engineering and medical colleges. The exuberant proliferation of deemed universities is an unintended consequence of the regulation put in place by AICTE and similar bodies for regulation of professional education. The moral of the story is that no regulation, however well conceived, can eliminate the human tendency to evade the regulation, and

consequently is not exempt from the law of unintended consequences. The resentment of the States came to a boil in 1992 when the NPE, 1986 was revised. The attempt to divest the AICTE of statutory powers was close to success. As Member Secretary of the Committee on revision of policy constituted by the Central Advisory Board of Education (CABE) I was closely associated with that revision and hence have first-hand knowledge about the course of events. The CABE Committee was headed by N. Janardhana Reddy who unusual for a Chief Minister also retained the education portfolio. He was a trained teacher who set up and managed several educational institutions, and genuinely loved education. As is often the case with CABE Committees the Janardhana Reddy Committee was representative of different regions and different political parties. The six ministers represented the entire political spectrum and the different regions of the country. Janardhana Reddy went by the advice of the Education Secretary on all matters excepting AICTE. As Chief Minister he was much concerned that hundreds of students from his State were going to neighbouring States like Karnataka and Maharashtra to pursue engineering and medical education as Andhra Pradesh did not have enough institutions As a realist and as an experienced educationist he recognised that the finances of the State Government were inadequate to establish new educational institutions, and that the only way the excess demand for dental, engineering, and medical education in his State could be met was by reviving the policy of the State Government

to permit the opening of private professional institutions. However, he felt that the over-centralised style of functioning of AICTE irksome and came up with a formula of decentralisation far beyond what the Ramamurti Committee suggested. He was fully supported by all the ministers and expert members of the Committee except officials. The Committee recommended that AICTE should be divested of statutory powers and that only State Governments should have the power to sanction establishment and expansion of technical and management institutions. However, the State Governments were required to go by the recommendation of the Regional Councils of AICTE. State Governments were to be represented on the Regional Councils, and the Chairman of the Regional Committee was to be the Education Minister of a State in the region by rotation. I personally felt that this recommendation finely balanced the imperative of maintaining standards, and decentralising decision-making. However, it was not for me to take a stand on behalf of the Department, and my boss went by Mile's Law which has near-universal validity. The law states that where you stand depends upon where you sit. Most officers and ministers while working in the State Governments feel that the Central Government, its organisations and functionaries are overbearing and detached from reality. When they move to the Central Government they feel that State Governments are irresponsible and too politicised. Whatever, my boss was convinced that the recommendation of the CABE

Committee would defeat the very objective of the regulation envisaged by the NPE. A couple of days before the CAGE met to consider the report of the Janardhana Reddy Committee the Department made a presentation to Prime Minister P.V.Narasimha Rao (PV). PV was Minister of MHRD when NPE was formulated, and played a major role in the drafting of the Policy. When AICTE came up for discussion, he cryptically observed, 'Let us not touch what Rajiv started', and that settled the matter. What followed is an interesting story by itself. On the eve of the meeting of CAGE, I met Janardhana Reddy in the Andhra Pradesh Bhavan to brief him on the meeting. I told him that his plan of divesting the AICTE of statutory powers was lost. The Prime Minister was not in favour of any change in the status of AICTE. I also told him that if he wanted to have his way thorough he should meet and speak to the Prime Minister that very moment. Janardhana Reddy would not believe. A few weeks earlier, he helped the Prime Minister get elected to the Lok Sabha seat in a bye-election in the State with an impressive majority. 'How could it be?' he wondered. 'You know, I spent long hours with the Prime Minister during his bye-election campaign. I had a long chat with him on AICTE and he agreed with me,' he said. The next day, as is customary the CAGE divided itself into different working groups to consider the Committee's Report. With his customary thoroughness, my boss chose the Chairmen of the Working Groups with great care, and his choice of Surendra Nath as chairman of the Working Group on

technical education was an inspired choice. Surendra Nath had been chief of the Intelligence Bureau, was a past master in managing matters to the satisfaction of political bosses, and was rewarded for his services by being appointed as Governor, Punjab as Governor after retirement. During the discussions in the Working Group all the State Ministers supported the change in the status of the AICTE while 'experts' opposed the change. Surendra Nath delivered his judgment: 'as there is no unanimity the status quo would continue.' He would not allow even a change in the composition of the regional committees of the AICTE so that State Education Ministers of the region could be chairman by rotation. He said that he was given to understand that the organising principle of AICTE was that education should be de-politicised and entrusted to professionals. As the Working Groups broke for lunch and members and officials were going for lunch, Janardhana Reddy nudged the author to whisper, *nuvvu Bordia kalisi police vanni petti nannu kottesthara? Eithe, Nenu Kendra Vidya Mantri ayithe AICTE marchanu alage pettsthanule* (So Bordia and you got a policeman to put me down? Of course, if I were the Central Minister for Education I also would oppose the change, and would like keep AICTE as it is.' The author replied, 'Did I not tell you that you have no support of the Prime Minister?' Reddy would not give up and threw a challenge, *Sare, Emchesthava choostham. Nenu collegilu sanction chestha. Prosecute chesthava emiti?* (OK, let me see what you would do if I sanction colleges. Would you prosecute me?). He

was true to his word, and went on to sanction eight dental and twelve medical colleges, and that was his undoing. It is an irony of history that P.V.Narasimha Rao who as Prime Minister was dismantling industrial licensing and import controls gave a new lease of life to an over-centralised licensing system in technical and management education.

The failure of Janardhana Reddy to decentralise the power of sanctioning the establishment and expansion of institutions meant that AICTE had to bear the regulatory burden all by itself. State Governments, State Councils of Higher Education and universities did not see themselves as partners of AICTE in ensuring orderly growth of institutions and maintenance of standards. They were keener to push through as many cases from their jurisdiction as possible through the AICTE process. By 1997, a decade after the enactment of the AICTE Act the burden on AICTE became very heavy as the demand for technical education turned into a tsunami because of the IT boom. The expansion of technical and management education was anything but planned and coordinated development steered by AICTE for no one anticipated the IT boom, and there were no manpower estimates for any of the areas of education within its remit to guide approvals. Even with the strengthening of its national and regional offices AICTE could not cope with the regulatory burden. Inspections of AICTE came to be perceived as a farce. It was widely rumoured that institutions put up a Potemkin show of being well equipped and well- staffed,

that inspecting teams were willing to suspend disbelief, and that the faculty and equipment moved a little ahead of the inspecting team from the institution inspected to the next one scheduled for inspection. There was also anecdotal evidence that there were 'service providers' who provided for fee equipment, books and other desiderata on the eve of a scheduled inspection, and removed the supplies as soon as the inspection was over. It is not surprising that engineering, MCA and MBA colleges, dime a dozen, sprouted in cubbyholes. With the wisdom of hindsight it can be said that the AICTE committed Type I as well as Type II errors, doing what it ought not to and not doing what it ought to. It ought not to have exclusively focused on regulating the establishment and expansion of institutions for which it had no guideposts by way of reliable manpower requirements. If trying to exclusively focussing on the establishment or expansion of institutions was a Type I error the failure to adequately monitor the way institutions functioned and to continually assess the quality of education imparted was Type II error. Once it gave its approval, AICTE lost sight of an institution. What was a crying need was a credible, mandatory, stringent accreditation system which would have compelled substandard institutions to close shop, and help the parents and assess the value that would accrue from different institutions for the money they spent. Accreditation by NAB even now continues to be voluntary. A voluntary accreditation system results in adverse selection of sorts; only 'better' institutions opt for being subjected to

assessment and rating while those which ought to have been kept under close watch do not. With enforcement of pre-entry conditions being reduced in effect to an empty ritual and with lack of any regulation of the quality of the instruction imparted establishing a private unaided technical and management institution came to be a no-risk, relatively low-end cost, high profit business so long as there was excess demand for technical education. The way AICTE regulation functioned served no purpose other than constricting supply, and sustaining excess demand. Because of the enormous excess demand, self-financing institutions had the opportunity to charge what the market could bear through 'donations', and clandestine collection of capitation fees. As demand outstripped supply, *rentier* profits were there for the asking. It is therefore no wonder that many enterprising and politically well connected individuals and groups saw the establishment of a technical institution as good business. Legally, these institutions are not-for-profit institutions; however, it did not prevent them from functioning like private-for-profit institutions.

Let me briefly outline the lessons which could be drawn from the AICTE experience, and used for the design of new regulatory structures. First and foremost is the lesson that erecting a regulatory system on the premise that in contrast to State Governments and their organisations Central Government and the organisations established by Central Government can function objectively and justly as if they are managed by Platonic

philosopher-kings is an utter fallacy and hubris. In a vast country like ours norms and standards cannot be maintained by a single organisation without forging partnership with State Governments, State Councils of Higher Education, and universities. Secondly, in terms of the first principles which I had outlined at the beginning of my lecture, the fact that an institution is legally structured as a not-for-private organisation does not preclude that institution from profiteering. In other words, it is not the legal structure but the economic structure of the 'market', that is to say adequacy of supply in relation to demand in a particular area of education, which determines conduct of institutions in that market. This proposition is proved by the fact that in late 2000s the seller's market for engineering admission in States like Andhra Pradesh turned into a buyer's market because of the global economic downturn, peaking of the Indian IT industry, and supply outstripping demand. For the last few years, a third of engineering seats in Andhra Pradesh had to remain vacant and institutions far from collecting capitation fees had to woo candidates. Thirdly, regulating entry is not sufficient; close monitoring of the functioning and assessment of outputs, particularly the relevance and quality of the courses, are imperative. I tend to agree with Basu and suggest that no one should be prevented from establishing or expanding an institution. However, no one should be permitted to start imparting education without adherence to norms in respect of infrastructure, facilities and faculty, and that the performance of every institution

and of every major should be periodically evaluated. Fourthly, it would be facile to think that regulation of private unaided institutions failed only because of political interference. A wrong approach to regulation was more responsible. Hence even if a regulatory body were hermetically sealed and insulated from the political system, as the Majority Committee proposed to do by suggesting an Election Commission like NCHER, regulation would continue to be ineffective unless the philosophical approach to regulation is changed. Old wine would not cease to be old wine merely because it is put in a new bottle. Fifthly, accreditation is the most important regulatory measure. It cannot be optional. The scale on which quality assurance and performance appraisal have to be conducted and the periodicity with which they should be conducted are such that a handful of national institutions would be utterly unable to cope with the task. In terms of the number of institutions, the Indian higher education system is the largest in the world even though the United States and China are ahead of it in enrolment. The defining characteristic of the Indian Higher Education system is fragmentation. The number of institutions (700 universities and 35,500 colleges as of now) is about five times of those in the United States and China. The average strength of an institution is 500 compared to 3-4,000 in the United States and Europe, and 8-9,000 in China. The United States has ninety plus accrediting organisations; over ninety programmes are accredited. Multitude of accrediting organisations is an absolute necessity not only

because of the sheer volume of work but also because the notion of quality itself varies from one academic programme to another. If there are just a few accrediting organisations they might not do justice to the distinctiveness of many academic programmes particularly in the field of professional education.

VII. The Tragic Hero

Kapil Sibal who succeeded Arjun Singh made a heroic attempt to square the circle by putting in place a new regulatory framework that would have encouraged private and foreign participation and at the same time established an overarching regulatory body similar to that suggested by the Majority Report of the Yash Pal Committee. As many as six bills for the regulation and development of higher education were proposed to be enacted; the NCHER Bill, new policy regimes for regulation of foreign education providers and universities of innovation; establishment of a national accreditation authority, a national educational tribunal, and a bill prohibiting unfair practices in higher education. The gargantuan scale of the reform agenda can be gauged by the fact that in the sixty-two years since Independence the only five Acts were enacted to regulate higher education.

The NHERC Bill envisaged NHERC as an overarching authority with the power to lay down regulations in respect of all areas of higher education and research. The regulations would among others cover establishment of institutions, the award of degrees, accreditation, affiliation, entry and operation of foreign educational institutions, governance, accountability, appointment of vice-chancellors. As recommended by the Majority Report, NHERC's remit would include polytechnics and other institutions imparting vocational education. Following the prolonged battle between

MHRD and MOHFA, the NCHER Bill allowed medical education to be regulated by a separate regulator - the National Commission for Human Resources for Health (NCHRH). However, NCHER and NCHRH were to have linkages. The HER Bill also proposed the establishment of a Board for Research Promotion (BRP) and a Higher Education Financial Services Corporation. Only those whose names figure in a directory of academics eligible for leadership positions could be appointed as vice-chancellors. That directory would be prepared by a collegium of thirty eminent academics constituted by the NHERC. Only a person figuring in that directory could be appointed vice-chancellor of any university in the country. In exceptional circumstances, a person figuring in that directory could be appointed provided that person appointed fulfilled the standards laid down by the NHERC for leadership positions in universities. However, the exception proves the rule. The establishment of NHERC would have constituted an extraordinary degree of centralisation that would have gone far beyond the attempt of the Central Government in 1951 to establish a Central Council of University Education, and to acquire the power to approve the establishment of universities as well as the power to recognise as well as derecognise degrees. As was mentioned above that attempt was aborted in the face of the opposition of a sole phalanx of irate vice-chancellors. The opposition to the NHERC Bill arose not so much from vice-chancellors and the academic community as from State Governments, a commentary on the fact that over

the last sixty years the position of vice-chancellors lost the eminence it once had . NHERC no doubt was envisaged as an autonomous and apolitical body with Chairman and Members appointed by the President of India based on the recommendations of a search committee which would include the Prime Minister, Speaker of Lok Sabha, Leader of Opposition in the Lok Sabha, and the Ministers in charge of MHRD and MOHFA. However, in the eyes of the State Governments NHERC is a body of the Central Government in whose constitution or functioning they would have no voice. And such a body would totally constrict the role of the State Governments even with regard to polytechnics. There was no meaningful discussion with the State Governments on the draft Bill before it was presented in the Parliament. To use the colourful expression of Sir Humphrey in *Yes Minister*, the attempt of the Minister to bring forward the NHERC Bill without adequate attempts to get most of the States on board was 'courageous'. The Parliamentary Standing Committee for Human Resource Development went by the views expressed by the State Governments who submitted representations. In its Report, the Standing Committee again and again reiterated the fact that any attempt to infringe upon the autonomy of State Governments was not a wise move and would eventually lead to failure of the legislation itself. The higher education system of a country as vast and as diverse as ours cannot be managed by a single nodal authority which is entrusted with a very big and complicated mandate of managing all

categories of higher education including professional and technical education. In fairness to the State Governments, I should say that while they had egregiously sinned by awfully mismanaging universities they were also sinned against. The MHRD as well as the UGC consistently turned a blind eye to the challenge faced by State Governments in meeting the demand for higher and professional education. 94% of students studying in Government colleges and universities study in State Government institutions, and yet for decades what these institutions received from central institutions like the UGC and the AICTE was plenty of advice and directions, and little funding. The UGC had functioned mostly as a funding agency for Delhi colleges and Central Universities. The rejuvenation of State universities had not been on the agenda all these decades. To give an example, in 1992 when the Central Government budgetary allocations for education had to be curtailed because of the macroeconomic crisis, and it was necessary to have a hard look at the financing of higher education, the UGC appointed the Punniah Committee. Its remit was limited to Central Universities alone in spite of the fact that the remit of the UGC extends to whole of higher education, and the finances of the State Universities were far worse than those of the Central Universities. The UGC was concerned with little else than protecting the maintenance grant of Central universities from the vagaries of Central Government budgets. The opportunity provided by the formulation of the NPE, 1986 and its revision in 1992 to

have a serious look at the burning issues of State higher and professional education systems was missed. Even when a normative framework needed to be established to guide the States in matters such as private universities the Carnal Government shied away from its duty. Thus a Private Universities (Establishment and Regulation) Bill was introduced in the Parliament in 1995; however, it was not enacted and eventually withdrawn in 2007. In short, the States were left to fend for themselves. Therefore it does not lie in the mouth of those who looked the other way to fault the State Governments for the mess they created.

To digress a little bit, the launch in 2013 of the *Rashtriya Utchcha Shiksha Abhiyan* (RUSA) was expected to undo the historic neglect of the State university system by the UGC and MHRD and provide strategic advice and funding for the rejuvenation of State Universities. However, one can no longer be sure that these expectations would be fulfilled because of the recent developments captured by the expression ‘cooperative, competitive federalism’. Even though SSA, RMSA and RUSA were retained as Centrally Sponsored Schemes, their Central Government budgetary outlays were reduced and the State Governments required to bear a higher proportion of the programme outlays. One is not sure whether the additional resources devolving on the State Governments because of the recommendations of the 14th Finance Commission would be sufficient to offset the reduction in the Central Government support to SSA, RMSA and RUSA. There is yet another concern. The Central Government cannot

divorce itself from its paramount responsibility of steering the nation toward achievement of overarching national goals, and to that end it would have to define the objectives, lay down a broad national strategy and use policy levers to prod the States to compete and innovate within the national frame. The Government's 'Make in India' campaign is a good example of this approach; what is good in the economic arena is equally good with education and health. Experience with elementary education vividly brings out that without the Central Government steering the nation towards universal elementary education and discerningly using the fiscal lever the counter-productive brick-and-mortar approach to education would not have been abandoned and universal participation in elementary education brought within sight.¹⁶ Improving quality and learning achievement at all areas and stages of education, universalising secondary education, development of skills and competencies of all types, expanding access to higher education, rejuvenating the moribund State universities and establishing world-class universities are transcendent national challenges which could be grappled with only by replicating the role of the Central Government in DPEP and SSA. With quest for universal elementary education at its final stage of improving quality and learning outcomes, RSMA moving towards the take-off stage and RUSA just moving out of the drawing board the need for

¹⁶ This point comes out vividly from the author's *Holy Grail: India's Quest for Universal Elementary Education*, New Delhi; Oxford University Press (Forthcoming).

Central Government's strategic, advisory and fiscal roles is definitely more and not less.

The Parliamentary Standing Committee which examined the NHERC Bill was also persuaded by the protests of existing regulatory organisations, and expressed the view that there was no reason for root-and-branch change of the 'age-old regulatory systems'. It was of the view that the existing regulatory agencies should continue to discharge their functions and the new body's role limited to play an overarching role of laying down policies for all the regulating bodies, and coordinating their work without any way impairing on the independence of those bodies. The Committee was not swayed by the views of the Majority Report or NKC, or of the Task Force constituted by MHRD to draft a Bill for establishing NHERC. In sum, the Standing Committee expressed its firm view that the Bill ought to be reconsidered in consultation with the State Governments, vice-chancellors and the teaching community.

None of the six Bills were enacted. Sibal tragically failed in his attempt not only because of circumstances beyond his control such as the UPA Government losing its will to rule because of the series of scams but also because of fatal strategic and tactical mistakes such as failure to get the State Governments on board by taking into account their concerns about over-centralisation, concentration of powers in seven individuals, erosion of the powers of States to establish universities and colleges. Given the political situation, M.M. Pallam Raju, Sibal's successor, could not

push through the legislation; however, he quietly got the UGC to frame regulations to achieve quite a bit of what the Bills intended but these regulations are at best a poor substitute for legislation which would revamp the regulatory architecture. Five Bills lapsed with the dissolution of the Lok Sabha in May 2014 following the General Elections, and the remaining Bill was withdrawn in the Rajya Sabha by the New Government. Suffice to say, education policy continues to lag behind the developments, not to speak of providing a framework for steering the development of education.

List of Acronyms

- AICTE: All India Council of Technical Education
AIIMS: All India Institute of Medical Sciences
BRC: Block Resource Centre
BRIC: Brazil, Russia, India, China
CABE: Central Advisory Board of Education
CBSE :Central Board Secondary Education
CRC:Cluster Resource Centre
DBIS :Department for Business, Innovation and Skills
DPEP: District Primary Education Programme
HEFC:Higher Education Funding Councils
IIM: Indian Institute of Management
IIT: Indian Institute of Technology
IRAHE:Independent Regulatory Authority for Higher Education
JNU: Jawaharlal Nehru University
LSE: London School of Economics
MBA: Master of Business Administration
MC A: Master of Computer Applications
MCI: Medical Council of India
MHRD: Ministry of Human Resource Development
MLL: Minimum Levels of Learning
MOHFA: Ministry of Health and Family Welfare
NAAC :National Assessment and Accreditation Council
NAB: National Accreditation Board

NCHER: National Council of Higher Education and Research

NCHRH: National Commission for Human Resources for Health

NKC: National Knowledge Commission

NPE: National Programme of Action

NUEPA :National University of Educational Planning and Administration

POA: Programme of Action

PV:P.V.Narasimha Rao

REC: Regional Engineering College

RMSA: Rashtriya Madhyamik Shiksha Abhiyan

RTE Act: Right of Children to Free and Compulsory Education Act, 2009

RUSA: Rashtriya Uchchar Shiksha Mission

SCERT: State Council of Educational Research and Training

SCs: Scheduled Castes

SSA: Sarva Shiksha Abhiyan

STs: Scheduled Tribes

THES: Times Higher Education Supplement

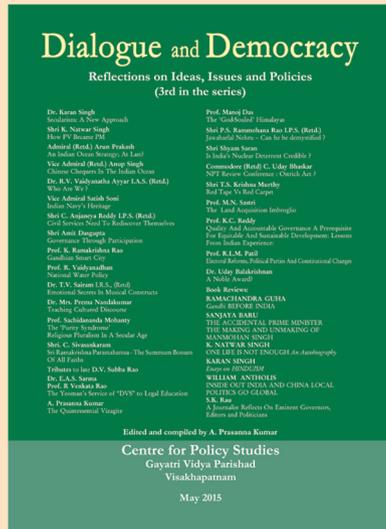
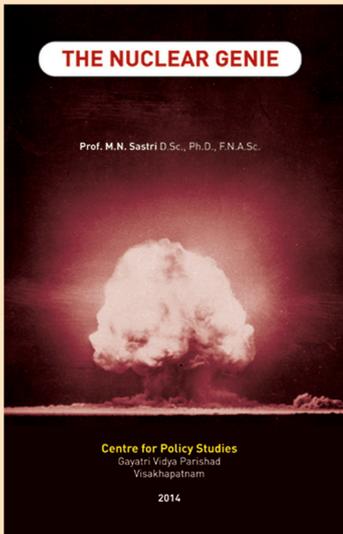
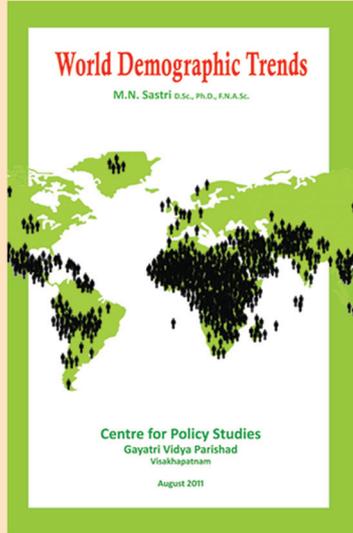
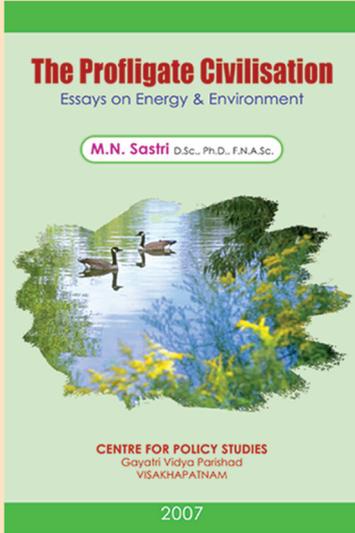
UGC: University Grants Commission

UNDP: United Nations Development Programme

UNESCO: United Nations Educational, Scientific, Cultural Organisation

Dr. R.V. Vaidyanatha Ayyar has contributed several articles to national and international journals, and is the author of the book *Public Policymaking in India* published by Pearson Longman in 2009. Since 2009, he has been documenting the evolution as well as the politics and process of education and culture policies. His book *Holy Grail: India's Quest for Universal Elementary Education* is under publication by the Oxford University Press. His next book on education, *Education Policy from (British) Raj to (Pallam) Raju*, had been completed and is ready for publication.

Some CPS Publications





Dr. R.V. Vaidyanatha Ayyar I.A.S.(Retd)

Former Secretary H.R.D., Govt. of India &
Professor IIM Bengaluru

“Over time the failure to enforce rules and regulations without fear or favour came to be a systemic deficiency. The golden years came to an end in 1966 which incidentally was the year in which the Kothari Commission submitted its Report”, says the author who concludes this work in the following words referring to the present situation.

“Five Bills lapsed with the dissolution of the Lok Sabha in May 2014 following the General Elections, and the remaining Bill was withdrawn in the Rajya Sabha by the New Government. Suffice to say, education policy continues to lag behind the developments, not to speak of providing a framework for steering the development of education”, writes Dr. Vaidyanatha Ayyar in this thought provoking book.

Dr. Ayyar has so far contributed 27 articles to the Bulletin of Centre for Policy Studies and *Dialogue and Democracy* 3rd in the series. These include : *To Russia with love, Indian Administration Service - Retrospect and Prospect, Tale of Two Committees, Engagement with West, C. Subramaniam, B. Sivaraman & the Green Revolution, No Black and White - Only Shades of Gray, Intellectual Property Rights and Their Study, Be an Intellectual Gadfly and Who are we?*