
**LAW COMMISSION OF INDIA**

# ONE HUNDRED TWENTY-THIRD REPORT

# ON

# DECENTRALISATION OF ADMINISTRATION OF JUSTICE: DISPUTES INVOLVING CENTRES OF HIGHER EDUCATION

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January 15, 1988.

*My dear Shri Shiv Shanker,*

Almost covering up major part of the terms of reference formulated by the Government of India for studying judicial reforms, specifically concentrating *inter alia* on decentralisation of administration of justice, I am happy to forward today One Hundred Twenty-third Report of the Law Commission on "Decentralisation of Administration of Justice: Disputes Involving Centres of Higher Education".

By now you must have taken cognizance of the known fact that the task of recommending judicial reforms was assigned to the Law Commission in February 1986. Giving up the idea of setting up a separate Judicial Reforms Commission and simultaneously assigning the task to the Law Commission, the Government of India desired as per the letter of the then Minister for Law and Justice to accord top priority to this assignment.

The crisis in justice delivery system has acquired high visibility. The Law Commission could, therefore, appreciate the anxiety on the part of the Government of India to accord top priority to recommending radical reforms in judicial system from bottom to top. Accordingly, the Law Commission drew up its own perspective plan touching various factors which have contributed to the present malaise in the justice delivery system and proceeded by separate reports to deal with each such factor. The approach of the Law Commission was moulded to be in tune with article 39A of the Constitution which requires 'the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for seeking justice are not denied to any citizen by reason of economic or other disabilities'. To translate this goal into action-oriented programme, the justice system as at present operating must be rid of four corroding factors namely: dilatoriness, prolixity, formalism and unbearable cost. The reports submitted herebefore and the one in continuation have kept in focus the goal.

Décentralisation by providing specialist tribunal would reduce delay, cost and techno-formal approach. On this assumption, the present report deals with specialist tribunal for disputes arising in the field of education which cover very wide area. It along with other inter-linked reports when implemented, would

achieve the desired goal of reducing the inflow of work in the High Courts and the Supreme Court, which is one of the goals set by the Government as part of the judicial reforms.

I have therefore to request you to set up a special cell to study these reports as integral to reclaiming the judicial system which is under unbearable burden and pressure by the backlog of cases as having almost become dysfunctional.

The Law Commission would be interested in knowing the action-oriented programme of the Government for implementing these reports.

With regards,

Yours sincerely,

(Sd.)

(D. A. DESAI)

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Encl : A Report.

Copy to: Shri H. R. Bhardwaj,
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## ERRATA

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# CHAPTER I

## INTRODUCTION

1.1. Continuing the search for identifying areas where decentralisation of monolithic justice system can be effectively introduced, this report seeks to take a significant step in that direction in an area which has in recent years acquired high visibility profile because of numerous disputes arising in that area and landing into courts. Since the advent of independence, there has been tremendous upsurge in the thrust for higher education. Institutions providing professional courses in specialist branches, such as, medicine, engineering, agriculture, and science and technology in general, have multiplied many times. However, the demand for admission to such professional courses far outweighs the availability of seats. There is keen and ferocious competition in obtaining admissions in such institutions. Consequently, numerous disputes arise between the institutions and the candidates seeking admissions, between university and such institutions, and even between the Government and those seeking admissions. In the absence of a specialist forum, these disputes are taken to civil courts at all levels, including the High Court and the Supreme Court of India. The courts, because of their clogged dockets, have not been in a position to accord top priority to these disputes. Consequently, these disputes drag on and create more problems. The Law Commission, therefore, in its search for specialist tribunals, focussed its attention on different types of disputes arising in the field of education with a view to finding out whether the resolution of these disputes in the field of education requires any specialised training, the expediency of its early disposal and, consequently, reducing the pressure on the High Courts and the Supreme Court.

1.2 The Law Commission accordingly issued a working paper (Annexed hereto) with a questionnaire annexed to it on March 9, 1987, and gave it wide publicity. The working paper was sent to universities, teachers' associations, students' associations, Univesity Grants Commission, Association of Indian Universities, etc. Wide publicity was given to the working paper in print media.

1.3. The response of the affected interests in the field of education was very encouraging. The Association of Indian Universities circulated this working paper to all the universities with a request that every university may discuss the working paper in a one-day seminar in which all members of the university community may participate and forward their recommendations to the Law Commission. As a follow up action, the Association of Indian Universities organised a seminar on May 2, 1987, at Delhi. More than 61 Vice-Chancellors including Directors and Heads of various Departments of the universities participated in the seminar. The seminar took each question from the questionnaire annexed to the working paper and responded to it. Forwarding the recommendations of the seminar, the Secretary of the Association of Indian Universities informed the Law Commission that the President of the Association of Indian Universities, Prof. G. Ram Reddy, has set up a working group to study the matter in depth and establish liaison with the Law Commisison. Amongst others, the seminar endorsed the Law Commission's proposal to set up a Central Educational Tribunal which should deal with alleged miscarriage of justice involving concerned Governments, universities and teachers and students in the universities and colleges. Such a tribunal, according to the seminar, would provide an all-India perspective to educational problems and, to this end in view, a multi-level and integrated judicial system should be designed in such a way that the objective of decentralisation of administration of justice is fully realised. On the composition of the tribunal, the Seminar expressed itself unequivocally saying that it should comprise of eminent educational administrators, Vice-Chancellors, Professors and Judges. It expressed an opinion that all disputes pertaining to educational matters should be under the purview of the tribunal. However, property matters should be dealt with by civil courts. The seminar was of the view that such a tribunal would be able to tackle educational disputes expeditiously which will go a long way in ensuring peace in university campuses and contribute to

academic standards. A working group was set up to follow up this important matter with Law Commission, University Grants Commission, Government of India, etc. The Association of Indian Univesities promised that it would collect information pertaining to educational disputes of universities and colleges pending with various courts. Numerous other bodies representing affected interests responded to the working paper of the Law Commission. Even though there was near unanimity in favour of setting up a Central Educational Tribunal, as tentatively described in the working paper, a dissent was expressed by some university teachers and associations of university teachers. Their apprehension was that such a tribunal would be over-shadowed by retired Vice-Chancellors and administrators in the Education Department and it would fail to inspire confidence about its integrity, impartiality, efficiency and capacity to fairly resolve the disputes.

1.4. The Law Commisison immensely benefited itself from this comprehensive debate on the topic under discussion. With this acquired knowledge, it would be advantageous to first consider whether decentralisation in the administration of justice in the field of education is necessary. Would it be helpful both to the disputants and the society in general? Would it assist in speedy and fair resolution of disputes in the field of education? Should the forum be a participatory one? At what level should it operate? What must be the criteria for selecting the personnel to man this tribunal? Who should be the appointing authority? In answering these questions, the Law Commission must bear in mind the objections raised by certain affected interests and must convince itself that there are rational and scientific answers to the dissent filed and that the experiment would far outweigh the supposed disadvantages. Thereby, the Commission must allay their apprehensions.

## CHAPTER II

## HAS A CASE FOR CHANGE BEEN MADE OUT?

2.1. The first question that must engage the attention of the Law Commission is whether any case is made out for setting up a specialist tribunal for dealing with disputes arising in the field of education. The answer to this question lies in ascertaining the nature of disputes and the technical knowhow necessary for their speedy, scientific and fair resolution. This aspect must be examined in the light of the fact whether a mere legalistic approach disclosed in law courts would be adequate to bring about a scientific, sensible and just resolution of these disputes. Would a specialist tribunal be more competent than State courts to deal with this problem?

2.2. The Law Commission in its just preceding report[1] has, while recommending setting up of Industrial Relations Commision at the Central and State level, given extensive and adequate reasons for setting up specialist tribunals. These reasons will, *mutatis mutandis*, support the approach in this report about setting up a specialist tribunal for problems in the field of education. It would be merely adding to the length of this report if all those reasons are reiterated here. One of the guiding considerations of the Law Commission is that such specialist tribunals are less formal, less technical, speedy and result-oriented. This is part of a significant social movement aimed at reforming the legal system. Institutions such as the police, prisons, legal services, therapeutic and educational agencies have been given aid to expand their capacities, broaden services and develop new alternatives for coping with disputes.[2] Whether all these actions actually lead to improvements remain problematic, as more often than not, the problems tackled are rooted in the structure of society while the solutions build up existing pillars of these structures.[3] It is beyond controversy that the justice system has become too complex and unresponsive to meet community needs. Efforts are being made in the directions of simplifying and streamlining court structures and procedures. However, there is another effort of vital importance of which a note must be taken. Attempt must be made to remove disputes from the court entitrely by taking them to less formal, more responsive forums. The current movement for delegalisation, simplification and informality has been directed at a wide variety of activities ranging from simplifying procedure to decentralisation of administration of justice.

2.3. It is, therefore, necessary to examine whether disputes arising in the field of education are such as would necessitate specialist forum to be manned by people imbued and acquainted with the problems of education. The importance of education may be noticed by reference to a specialist report in this behalf. It says:

> "Education has always been important but, perhaps, never more so in man's history than today. In a science-based world, education and research are crucial to the entire developmental process of a country, its welfare, progress and security. It has characteristic of a world permeated by science that in some essential ways the future shape of things is unpredictable. This emphasises all the more the need for an educational policy which contains a built in flexibility so that it can adjust to changing circumstances."[4]

2.4. Consequent upon the report of the Kothari Commission, Government of India declared the national policy on education in 1968 which marked a significant step in the history of education in post-independent India. It aimed to promote national progress, a sense of common citizenship and culture and to strengthen national integration. It laid stress on the need for a radical reconstruction of the education system, to improve its quality at all stages, to give much greater attention to science and technology, the cultivation of moral values and a closer relation between education and the life of the people.[5] Since the adoption of the 1968 policy, admittedly there has been a vast expansion in the educational facilities in all branches of education all over the country. In January 1985, Government of India announced that a new education policy would be formulated for the country. A country-wide debate ensued. After a careful study, National Policy on Education—1986 was announced in May 1986. It is founded on a national perception that education is essentially for all and this is fundamental to all-round development, material and spiritual. It was accepted that education has an acculturating role. It refines sensitivities and perceptions that contribute to national cohesion, a scientific temper and independence of mind and spirit—thus furthering the goals of socialism, secularism and democracy enshrined in our Constitution.[6] With this laudable aim in view, the policy deals with education at all levels. It is assumed that while implementing the new policy, basic changes will occur in management systems. The need to equip students with the ability to cope with them is felt. The policy covers education in early childhood, elementary education, secondary education, vocationalisation, higher education and setting up of rural universities. The policy aims at providing facilities for technical and management education. This comprehensive policy has also taken note of the management of education itself. The Central Advisory Board of Education has to play a pivotal role in a comprehensive developmental programme of education as outlined in the policy statement. The policy also envisages setting up of Indian Education Service as an all-India service. The policy envisages setting up of State Advisory Boards of Education as also District Boards of Education.

2.5. Education was a topic in the State List at entry No. 11. By the Constitution (Forty-second Amendment) Act, 1976, the entry was deleted and 'Education' was inserted at entry No. 25 in the Concurrent List. During the interregnum between 1968 and 1986, there was a massive expansion of educational facilities throwing up numerous disputes in the field of education. Surprisingly, the National Policy On Education—1986 has not taken note of this phenomenal rise in disputes in the field of education and has not suggested any alternative to the existing mode of resolution of disputes in this behalf. The omission may not be accidental. It may have been assumed that the change in the pattern of education would, by itself, be sufficient to eliminate the disputes. It is a consummation devoutly to be wished.

2.6. The expectations from the welfare State in the field of education as hereinabove set out, coupled with explosion of population, a keen and unquenched thirst for higher education, the slow pace of coming up of educational institutions commensurate with the demand for them and a highly competitive society, all combined to make entry in educational institutions from kindergarten to the top professional courses very very competitive and not within the easy reach of everyone seeking the admission. This has provided a fruitful field for rising crescendo of disputes in this field.

2.7. There is another factor which accentuated the problem of which note must now be taken. Indian society was both feudal and hierarchical in character. At the lowest end of the spectrum were the Scheduled Castes and Scheduled Tribes, the victims of exploitation for thousands of years. Socially speaking, they lived in semi-slavish condition and had been denied entry both to services and educational institutions by the upper crust of the society. They were the victims of discrimination. Independent India cannot tolerate such a situation for a day. While undertaking to transform a feudal society into an egalitarian one, one of the limitations on State's power was that it shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. To dilute this constraint, sub-article (4) of article 15 conferred power on the State to enact laws or make special provisions for the advancement of any socially and educationally backward classes of citizens or for members of the Scheduled Castes and Scheduled Tribes. The power was thus conferred on the State to undertake affirmative action even if by measures, apparently discriminatory, for the advancement of members of Scheduled Castes and Scheduled Tribes and socially and educationally backward classes of citizens. Armed with this power, a number of States enacted laws or made special provisions for reservations of seats in favour of members of Scheduled Castes and Scheduled Tribes and socially and educationally backward classes of citizens. This started a chain of litigation commencing from 1951 and down to 1985. What must be the percentage of reservation for different classes of people for whom it can be made within the parameters of article 15(4) was a policy decision, the choices and options being covered by the availability of seats and the demand from members of Scheduled Castes and Scheduled Tribes and socially backward classes of citizens? Soon after the enforcement of the Constitution, State of Madras issued an order reserving seats for admission into medical colleges on communal lines. The Supreme Court struck down the order as being violative of the fundamental rights and rejected the submission that the order is in implementation of the Directive Principles of State Policy by observing that "the Chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive act or order except to the extent provided in the appropriate article in Part III. The directive principles ..... have to conform to and run as subsidiary to Chapter on Fundamental Rights".[7] Numerous disputes on the question of reservation, both about the power to reserve, the class in whose favour the reservation was made and the percentage of reservation, landed in the courts. Only some may be referred to here just to give a glimpse of the nature of the controversy which would indicate the expertise required to deal with the same.

2.8. The reservation in favour of Scheduled Castes and Scheduled Tribes more or less remained unquestioned. But when the State, in exercise of the power conferred by articles 15(4) and 16(4), started making reservation in educational instittutions and public services of seats in favour of socially and educationally backward classes of citizens, the challenge surfaced. Initial approach was to treat a caste label as an insignia of social and educational backwardness. This was questioned on the ground that caste alone cannot be the sole determining factor for determining the social and educational backwardness of the members of a particular caste. The court foresaw the danger in treating caste as the sole criterion of determining social and educational backwardness.[8] A suggestion was also made that a 'means test' be also applied. As the reservation in favour of a caste or a class would cut down the area of seats available on open merit competition the court suggested that the Government must strike a reasonable balance between the claims of the backward classes and the claims of others.[9] Proceeding along this line of thinking while considering that the caste of a group of citizens may be a relevant circumstance in ascertaining their social backwardness, it cannot be the sole or dominant test in that behalf. Additionally the criterion of 'means test' can also be validly applied.[10] Noting that the expression 'caste' is not used in article 15(4) and contrasting it with the comprehensive expression employed therein, namely, 'socially and educationally backward clases of citizens', a view was expressed that the expression 'backward class' cannot be used as synonymous with 'backward caste' or 'backward community'. Realising that members of a caste may not be treated as backward class merely because they belong to a particular caste, it was pointed out that the members may, in the social, economic and educational scale of values at a given time, be backward and, therefore, are entitled to affirmative action. The development of law on this line shook the proponents of canvassing caste

alone as the basis for determining backwardness.[11] Moving a little backward, a view was expressed that in India there are numerous castes which are socially and educationally backward and to ignore their existence is to ignore the realities of life.[12] State of Andhra Pradesh prepared a list of backward classes, more or less employing the caste test. When challenged, the court found that the caste mark is merely a description of the group following the particular occupations or professions referred to by the Commission which drew up the list. Looking at the report, the court said that the caste remained the criterion for determining social and educational backwardness[13]. The wheel moved the full circle when it was said that mere poverty cannot be a test for determining backwardness because in India, except for a small percentage of the population, the people are generally poor—some being more poor, others less poor. The 'means test' got shaken.[14] An attempt to make reservation in favour of people coming from rural areas was held to be unconstitutional on the ground that it cannot be said as a general proposition that rural areas represent socially and educationally backward classes of citizens.[15] The debate continued with unabated ferocity whether reservation on a caste label alone can stand the scrutiny of article 15(4). A realisation grew that the problem of determining who are socially and educationally backward classes is undoubtedly not simple. Chartering a central path which will keep not only the debate open and the inflow of disputes in the courts, it was observed that it may not be irrelevant to consider the caste of a group of citizens claiming to be socially and educationally backward.[16] If total abolition of social and economic inequalities was to be aimed at, it has to be realised that social backwardness is not the cause but the consequence of economic backwardness. Even a man coming from castes which are generally designated as depressed classes, if he is economically well-placed, he would never suffer social backwardness. Therefore, elimination of economic inequality may be aimed at in translating the promise of article 15(4) into action.[17]

2.9. A dispute with a different facet but inter-related with the question of reservation cropped up. The question was whether consistently with the constitutional values, admissions to medical colleges or any other institution of higher learning situate in a State can be confined to those who have their domicile within the State or who are resident within the State for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess domicile or residential qualification within the State, irrespective of merit. Condemning the wholesale reservation made by some of the State Governments on the basis of domicile or residence requirement within the State or on the basis of institutional preference for students who have passed the qualifying examination held by the university or the State excluding all others not satisfying this requirement regardless of merit, the court held that preference to local residents may not be an anathema if the reservation is partial. Having regard to all circumstances, the court fixed an outer limit at 70%.[18] It may be interesting to recall at this stage the debate on clause 5 of para 8 of justiciable fundamental rights, as proposed by the Advisory Committee of the Constituent Assembly. It would appear that there was a germ of 'sons of the soil theory' in the debates themselves. An amendment was moved to clause 5 by Shri Mahavir Tyagi which would have permitted the State Government to give preference over others to such citizens as are *bona fide* domicile residents of its own territory. He said that his real intention was that, as far as possible, the administration of a Province should be run by officers and employees who are residents of that Province; otherwise the residents of the Province shall not be able to enjoy self-Government.[19] To some extent, this found an echo in the judgment of the court when it felt that it would not be constitutionally invalid to grant partial reservation to the tune of 70% in favour of those having domicile qualification.

2.10. Even after this herculean effort by the court to find a workable norm and viable solution on the question of preference in admissions so as to avoid future disputes, the exercise has either proved futile or is still open ended. After upholding reservation to the tune of 70%, the court thereafter gave a direction that an all-India entrance examination be held to fill in 30% of the non-reserved seats for MBBS course and 50% open seats for post-graduate courses. Either the Indian Medical Council or the Central Government were directed to hold a single all-India based examination common to all medical colleges with centres in different States. Further, direction was given that admission must be granted

to various medical colleges in the country on the basis of comparative evaluation of marks obtained at such examination having regard to preference expressed by students for any particular State or university and speciality or specialities in case of post-graduate courses. These directions were given in the year 1984. Further directions were given on May 1, 1985.[20] A direction was given that the judgment must be implemented from the academic year 1985-86. It appears that the Indian Medical Council and the Central Government failed to take any steps to implement the judgment. A direction was given to the Indian Medical Council to come forward with a positive scheme for holding all-India entrance examination for regulating admissions to the minimum 30% of non-reserved seats for MBBS course and 50% for the post-graduate course. Difficulties were experienced in implementing the directions and the matter was again brought before the court.[21] The court gave further detailed directions as per order dated 21st July, 1986. To conclude this point briefly, the scheme has still not been implemented.

2.11. One can confidently conclude how the pendulum is moving backward and forward keeping those affected interests in a confused state which would necessarily encourage disputes coming to courts. What havoc such disputes may cause may be illustrated by two cases. Admissions to medical colleges in the State of Kerala were decided on the merits acquired at a common test. For the academic year 1981-82, a test was held and admissions were given on the merits acquired at that test. This came to be challenged in Kerala High Court and the method of holding the test and assigning merit revealed numerous infirmities. The Kerala High Court gave certain guidelines in this behalf. The matter landed in the Supreme Court,[22] which suggested a formula in this behalf which, amongst others, provided that 50% of the examiners shall be from outside the State. The result of the entrance examination on the basis of centralised evaluation will be declared by a certain date and admissions will be granted on the basis of such result subject, of course, to the reservations already made. This approach reveals that the local examiners could not be fully trusted. The charge, therefore, of unfair practice in evaluating examination results was impliedly accepted. The order of the court was pronounced on January 28, 1982. The test was to be held on 27th and 28th Feb., 1982. The result of the test was to be announced on or before 2nd March, 1982. Admissions were then to follow according to the merits keeping in view the reservations. The net result was that the first two semesters of 1981-82 were not available to any student. The students lost one year. The nation was denied services of incoming doctors by one year. The university lost credibility and fees. These are ascertainable losses. The second instance is still more glaring. Admissions to P.T.C. course in Gujarat by those who failed to secure the same for the year 1980-81 were challenged in the High Court of Gujarat. Those unsuccessful in obtaining admission were the petitioners. State of Gujarat was the respondent. Those who had secured admission on invalid, illegitimate and illegal grounds were not impleaded as respondents. The High Court struck down the admissions as being invalid and illegal. Those who had secured admissions filed a separate bunch of petitions questioning that they had been denied the opportunity of being heard as they were not joined as respondents in the earlier petition and they were directly and adversely affected by the decision of the court. They were heard and their petitions were dismissed and they came over to the Supreme Court.[23] By that time, one full year had expired and the examination at the end of first year of the two years' P.T.C. course was due. Under interim orders of the court, they were allowed to appear at the examination. Ultimately, even though it was held that their admissions were invalid and illegal, nothing more could be done except saying that they may not be given preference for admission to second year course.

2.12. Digressing a little to draw attention to other set of disputes arising in the field of education, it may at once be stated that the disputes arose out of policy decisions taken by the Government or by the universities. In order to defeat the charge of arbitrariness in granting admissions, the authorities concerned with admissions will have to prescribe some objective standard applicable to all seeking admission. Those seeking admission must have opportunity to satisfy the standard and must have access to the system by which satisfaction of the standard is arrived at. When applicants seeking admission came from different universities, they cannot be merit listed by reference to their achievement at

the qualifying examination held by each university. A common test therefore had to be devised. In order to be more objective, it has to be a written test. Such a test has been prescribed for admission to various disciplines. Occasionally Government and sometimes universities added *viva voce* test and final merit list was prepared in accordance with total marks obtained at both the tests. *Viva voce* suffers from the vice of subjectivism and is open to the charge of nepotism and even indulgence. Indulgence manifests itself in myriad terms. To a candidate who is a favourite, very simple questions may be asked. Some marks are reserved for personality evaluation. What appeals to one may not appeal to another. Thus there is tremendous element of subjectivism in these matters. The moment *viva voce* test was introduced, the same was challenged in courts. The Government of the State of Mysore prescribed that 25% of the maximum marks for the examination of the optional subjects taken into account for making the selection of candidates for admission to engineering and medical colleges shall be fixed as interview marks, simultaneously laying down the criterion for allotting marks in the interview. One of the contentions canvassed before the Supreme Court of India was that the system of selection by interview and *viva voce* examination is illegal inasmuch as it enabled the interviewers to act arbitrarily and to manipulate the results and, therefore, it contravenes article 14 of the Constitution. The contentions failed.[24] The challenge later on took a different form. The bone of contention was the total number of marks reserved for interview—in other words, from no interview test to the assignment of the total number of marks at the interview test. The underlying apprehension throughout was the utter subjectivism of *viva voce* test. This was sought to be demonstrated by urging that if there are numerous candidates to be interviewed and hardly three minutes are assigned to each, what evalualtion or assessment can be done passes comprehension. The State of Tamil Nadu had in the relevant year assigned 75 marks for interview test. An attempt was made to show that those who fared well at the written test went down in the *viva voce* test and *vice versa*. Even though an apprehension was voiced that 75 marks allotted for interview are on the high side and it would be appropriate for the Government to re-examine the question, the court did not invalidate the selection on this ground.[25] Every such observation went on further complicating the matter. Reiterating that the State has power to prescribe an interview test and observing that it cannot be regarded as so defective that selecting candidates for admission on the basis of oral interview in addition to written test must be regarded as arbitrary, the court did express an opinion that allocation of more than 15% of total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.[26] Repeating the earlier criticism that oral test is a farce, a new limb was added to the controversy by saying that the court would not be able to ascertain favouritism because what questions were asked and what answers were given are not recorded and, therefore, even though unfair advantage is given, the same escapes the scrutiny of the court.[27] The State of Jammu and Kashmir was repeatedly dragged to the court year after year and almost every time the court interfered with the admissions granted by it. Therefore, for the academic year 1982-83, a direction was given that while deciding admissions to Regional Engineering College, the Committee must prepare questions in advance and put them in envelopes, keep a cassette recorder for preserving primary evidence of answers given and maintain other records. Even then the admissions were questioned.[28] The Supreme Court called upon the State to produce cassettes recording answers and the questions kept ready in advance. The records were produced for the court's inspection. The court was satisfied that if questions are drawn up in advance and the candidate is asked to pick up the envelope, the charge of discriminatory and unfair treatment can be avoided. The record of the answers given in the voice of the candidate would put the matter beyond the pale of controversy. But how much time, money, energy and avoidable litigation are spent into these disputes can be gauged.

2.13. A different type of controversy altogether in the field of education arises while determining the adequacy of experience or qualification, wherever it is prescribed as an essential one. Two persons having post-graduate qualifications in the field of medicine were selected by the Public Service Commission of a State. Their selection was questioned on the ground that the post-doctoral experience in some foreign hospitals would not satisfy the prescribed requirement.

The High Court, in a writ petition, quashed the selections. The Supreme Court while restoring the selections observed that the court should keep in view the twilight zone of interference in appointment to posts requiring technical experience made consequent upon selection by Public Service Commission, aided by experts in the field, within the framework of regulations framed by the Medical Council of India. When, thus, a selection is made by the Commission aided and advised by experts in technical experience and high academic qualifications in the specialist field probing teaching/research experience in technical subjects, the court should be slow to interfere with the opinion expressed by experts unless there are allegations of *mala fides* against them.[29]

2.14. While numerous cases landed in the court questioning the grant or refusal of admission to Medical and Engineering Colleges, a few illustrative cases are referred to here to show the inordinate delay in disposal of cases resulting sometimes in getting unjust enrichment by a non-deserving person. Without dilating upon the topic itself which has been discussed herein, the first case to which attention must be drawn involving gross delay in disposal is the one in which one Vishan Kumar Agarwal applied for admission for the degree of M.D. (Physiology) in October, 1974 and his result was not declared on the ground that he was ineligible for admission. In October, 1983 he finally got his result declared and got the degree and in this period of nine years, he was without a degree which he had earned and having not been awarded, he could not get the benefit out of it.[30] Some students claiming to be eligible for admission to Post-Graduate Course in Kashmir University in July, 1980 were told in August, 1984 that they are not eligible.[31] In 1981, some students applied for admission to Post-Graduate Medical Course and having failed to obtain the admission moved the High Court and obtained interim relief for provisional admission. When the petitions finally came-up for hearing in Supreme Court in 1985, the court declined to interfere with the question of legality of their admission on the only ground that they had already completed the study during the interregnum. The court accordingly directed that the provisional admission of such of these petitioners who had obtained interim relief by way of provisional admission should be regarded as an admission of final validity entitling them to consequential benefits including appearing at the examination for obtaining degree.[32] The last in the line is the case in which the court reached the affirmative conclusion that the petitioners were not eligible for admission but as they were admitted under the interim orders of the court, the court observed that because of the fault of the Principal of the Engineering College, these petitioners who were otherwise ineligible should not suffer and allowed the petitioners to continue their studies in the respective Engineering Colleges in which they were granted admission. Admission was sought in the academic year 1981-82 and the matter was finally disposed of in May, 1986.[33] The cases briefly referred to above are merely illustrative and not exhaustive.

2.15. Indian Council of Agricultural Research is a Society registered under the Societies Registration Act. It is comprehended in the expression 'State' as used in article 12 of the Constitution. Its two subsidiaries, viz., Indian Agricultural Research Institute and Indian Veterinary Research Institute, enjoy the status of deemed university. There were numerous skeletons in its cupboards exposed by the suicide of Dr. V. H. Shah leading to the appointment of a Committee under the chairmanship of Dr. Justice P. B Gajendragadkar to investigate in its affairs. Things appear not to have improved very much thereafter, even though it made extensive recommendations including restructuring of it. Numerous complaints were voiced by the members of the faculty of ICAR and its affiliate—Indian Veterinary Research Institute. The dispute dragged on for a number of years commencing from 1972. Absolutely frivolous objections raised by ICAR contributed to the delay in disposal of the case. Ultimately it was found that the stand taken by ICAR was unjust and unfair and relief was granted in the year 1983.[34] Highly talented agricultural scientists were made to suffer injustice and languish in rancour for a period of over a decade. Agriculture, being of primary importance in the national economy, such a deplorable state of affairs arising out of an absence of machinery for speedy resolution of disputes is likely to cause national loss.

2.16. Very recently, the country suffered a prolonged strike by university teachers and teachers of colleges affiliated to universities. The dispute related to the revised scales offered to them. The strike lasted for more than two

months. It was undertaken at the commencement of the academic year. Is it not necessary to devise a forum for resolution of disputes which must be resorted to before direct action is undertaken?

2.17. The direction in which wind is blowing can be ascertained by reference to section 9(1) of the Telugu Universities Act, 1985 (Act 27 of 1985) which provides that Chief Minister of Andhra Pradesh shall be the Chancellor of the University. Power is conferred on the Chancellor to appoint a Vice-Chancellor from out of panel to be drawn up by a committee comprising (i) a nominee of the Chancellor; (ii) a nominee of the Government (headed by the Chief Minister); and (iii) a nominee of the syndicate. Indisputably Chief Minister will decide who should be Vice-Chancellor.

2.18. The university, though is expected to be an autonomous body, in the absence of financial autonomy, merely enjoys paper autonomy. An incident occurred in one State where the grant of a university was not released even though the condition precedent for the same, namely, raising of the examination fees, was fully satisfied. It is reported that the Vice-Chancellor had to threaten to take the matter to the court. This raises the vital issue of State control over universities.

2.19. Disciplinary jurisdiction over the students and the members of the faculty of the university and the affiliated colleges is another area where numerous disputes arise. In one case in Gujarat, when an invigilator caught an examinee resorting to unfair practice and made him leave the examination hall, the next day he appeared with a stay order of the court restraining the authorities of the examination centre from preventing him in appearing at the examination.

2.20. A Vice-Chancellor, who, of course, has relinquished the post of a leading university in the Capital, in an off the record chat, related an incident which is worth recalling. He said that he has taken disciplinary action against a member of the faculty, who has rushed to the court and obtained an injunction. The matter, according to him, is now being delayed deliberately so that the delinquent officer would await the expiry of the term of the Vice-Chancellor and then seek for an unfair compromise. His agony was against such stay orders.

2.21. The Vice-Chancellor of Aligarh Muslim University has given information to the Commission about the writ petition filed by Mohd. Abbas Zamir who, though according to the Vice-Chancellor, was not eligible to appear in the examination, was allowed by an interim order to appear at the examination. According to the university, Mohd. Abbas Zamir 'was expelled from the university on 5th January, 1981, for a period of four years for indulging in acts of indiscipline, creating lawlessness and assaulting teachers in gross violation of the rules and regulations of the university'. Thereafter, he filed numerous petitions and ultimately succeeded in appearing at the examination.[35]

2.22. Numerous cases of mismanagement of collegiate institutions by management bodies surface frequently. The statute setting up universities provides for conferment of a supervisory jurisdiction on the universities over such affiliated institutions. Amongst others, the power to constitute and reconstitute governing body on the proof of mismanagement is conferred on the university. Bihar University directed the re-constitution of the governing body of the Rajendra Prasad College, Chapra. This was challenged. The Supreme Court, while setting aside the order of the University, expressed an opinion that autonomous bodies which set up colleges and thereby help the progress of higher education are generally run by disinterested persons and it is of some importance that the autonomy of such bodies should not be unduly impaired. It was conceded that the university, while granting affiliation, may impose conditions which will enable university to exercise powers of supervision, yet when a dispute arises, the university should respect the autonomy of the colleges and reconcile the same with the supervisory powers of the university which are intended to be exercised in order to make the functioning of the affiliated colleges efficient and progressive.[36] But when it came to interference by the university in the established mismanagement of minority institutions, the court, while conceding that the right to manage minority institution does not inhere the right to mismanage,

yet was loathe to interfere. The regulatory measures framed by the university for the purpose of regulating the appointment and domicile of teachers in minority institutions were held to interfere with the autonomy of minoriy institution.[37] The hands off attitude of the court went to such length that the teachers and employees of the minority institutions were denied equality in the matter of remuneration with their counterparts in educational institutions similarly situated. Recently the court lifted the veil of the minority institutions and extended such basic benefits to its employees, directing that they cannot be discriminated against and the principle of equal pay for equal work will equally apply to them.[38]

2.23. The yardstick applied for determining the status of institutions claiming to be minority institutions has not been uniformly applied. Aligarh Muslim Universiy was held not to be a minority institution on the ground that it was brought into existence by a parliamentary statute.[39] On the other hand, educational institutions set up by followers of Arya Samaj in Punjab were treated as such.[40]

2.24. A Vice-Chancellor, in the hope of getting an assignment for six years, though the statute prescribed tenure of three years, resigned from the State Assembly and was appointed as Vice-Chancellor of Maharshi Dayanand University at Rohtak. As the renewal of the term was not forthcoming, he approached the court for a *mandamus* calling upon the university to renew his term. In the meantime, the State Government issued an Ordinance fixing the age of Vice-Chancellor at sixty-five years. He also challenged the validity of the Ordinance. The court directed the Chancellor to renew the term basing its finding on the doctrine of promissory estoppel.[41]

2.25. Very recently a dispute arose between the Haryana Government and Vice-Chancellor of Kurukshetra University. The Vice-Chancellor wanted to proceed on medical leave on full pay and reimbursement of medical expenses. The same was rejected by the Chancellor who is none other than the Governor of the State. Has the Vice-Chancellor any forum where he can get relief?[42]

2.26. It thus becomes manifestly clear that numerous different types of disputes in the field of education land in the court and remain unattended for a long time causing dislocation in the teaching schedules and occasionally generate a disturbed environment in the halls of education. The conclusion, however, is inescapable that the disputes arising in the field of education are numerous. They are not resolved in time. The delay causes distress and hardship to many. The system suffers. And, as pointed out earlier, there is national loss. The case, therefore, for speedy disposal of educational disputes does not need any more justification.

## CHAPTER III

## DATA COLLECTION AND ITS INADEQUACY

3.1. At the outset, it must be confessed that the effort to collect up-to-date data relating to the number of matters pending in courts at various levels, the time spent in litigating processes, the cost involved in processing the litigation and its overall effect on educational institutions is an uphill task. The Association of Indian Universities, New Delhi, had taken the task to collect the data and to furnish it to the Law Commission for its consideration. The Commission is awaiting the information. But it cannot standstill. From a study[43] undertaken to assess the impact of litigation on university autonomy, keeping in view the magnitude of litigation to which the universities are exposed, some information is available. The study covers four universities. Allahabad University was impleaded in 124 writ petitions, 15 appeals and 56 civil suits between 1969 and 1980. According to the Registrar of Kerala University, roughly 70 to 100 cases challenging actions of the University were currently on the file of the Kerala High Court. The Madras High Court Advocates' Association estimated that the High Court receives about 20 matters per year involving universities. The figure given by the consulting attorney of the university was approximately 300 potential and actual legal cases during the period of four years prior to 1981.

The Pune University had about 60 cases by the end of 1980. These statistics pertain to the matters brought before High Courts. But numerous cases are filed in subordinate courts also, of which it is difficult to gather information.

3.2. Some scanty material is available relating to expenditure incurred by a few universities in litigation. To illustrate, Pune University had provided in its budget an amount of Rs. 5,000 in the year 1975 in expenses on fees payable to lawyers. By the year 1981, the provision had to rise up to Rs. 20,000. In fact, it is pointed out that an amount of Rs. 30,000 had to be paid to a firm of lawyers at Bombay in one case. Kerala University exceeded its budget allocation of Rs. 30,000 for fees payable to lawyers even before the expiry of the fiscal year 1981. There is thus a constant struggle for allocation of scarce resources of the university to unproductive litigation costs. It is difficult to assess the time spent by university officials cooling their heels in courts to the detriment of university administration. As far back as 1966, a serious grievance was voiced in a Conference of Vice-Chancellors that multiplying litigation impeded their ability to maintain discipline on campuses.[44]

## CHAPTER IV

## EXISTING INFRASTRUCTURE FOR RESOLUTION OF DISPUTES AT UNIVERSITY LEVEL

4.1. Numerous disputes arose between the universities and their karamcharis, universities and their members of teaching faculty, universities and students, apart from disputes with the Government and the Vice-Chancellor. When the disputes arose between the universities and their karamcharis, an attempt was made to find a firm set up under the labour laws for resolution of disputes. Questioning the power of the Government to make a reference in exercise of the power conferred by section 10 of the Industrial Disputes Act, 1947, in respect of disputes between universities and their karamcharis, it was contended that the activities of the university cannot be comprehended in the expression 'industry' as defined in section 2(j) and, therefore, reference was incompetent. This contention found favour with the courts because, in its view, education seeks to build up the personality of the pupil by assessing his physical, intellectual, moral and emotional development. They found it incongruous to speak of this educational process in terms of industry. It was held that education itself is not within the scope of the Act.[45] This approach held the field for a period of one and a half decades with the result that a forum for compulsory adjudication of disputes with a view to preserving harmony and avoiding confrontation in the educational institutions was made unavailable to the karamcharis of the university, leaving them the only option to resort to direct action. During the interregnum, the dynamics of emerging scenario necessitated a radical rethinking. A question was posed as to what is strange in regarding education as an industry. The answer was its respectability, its lofty character, its professional stamp, its cloistered virtue which cannot be spoiled by commercial implications and the raucous voices of workmen. Negativing all these inhibitions, the court held that the realists have now asserted 'in the cultural field, educational managements depend so much on governmental support and some of them charge such high fees that schools have become trade and managers merchants'. The court concluded that, 'with evening classes, correspondence courses, admissions unlimited, fees and Government grants escalating and certificates and degrees for prices, education—legal, medical, technological, school level or collegiate—is riskless trade for cultural entrepreneurs and hapless nests of campus (industrial) unrest. Imaginary assumptions are experiments with untruth.'[46] Approaching thus, the court overruled the earlier judgment in Delhi University case.

4.2. The decision in *Bangalore Water Supply and Sewerage Board* case, which overruled numerous earlier decisions disclosing an elitist approach founded on unwarranted assumptions, however, generated a fierce debate in the society. The court rejected those unwarranted assumptions in holding that Government and charitable hospitals which render service without any intention of earning profit, liberal professions like the office of solicitors, clubs like Madras Gymkhana Club and Cricket Club of India, Khadi and Village Industries Board and education are not comprehended in the expression 'industry' as defined in

section 2(j). In the process, the court overruled as many as seven earlier judgments. This radical stance of the court so much upset a former Chief Justice of India that 'Industrial Disputes Act was intended to resolve matters not between employers and employees in 'grotesquely inflationary latitude' (as the learned Judge expressed himself) but in the setting of capitalist system, which even a tyro knows, led to fight between the owners of land and means of production on the one hand and the wage earners on the other.[17] He was so much worried at the lengthening of the list of industry by court's judgment that, according to him, it will come to an end when the enthusiastic but fallacious and populist judicial activism gets tired. Ultimately in a democracy, pressure groups do succeed when those chagrined by the overruling of the earlier judgments lend support to a demand that the Parliament should set right the matter by denuding the effect of the judgment which overruled earlier judgments.[18] Accordingly, Government of India introduced a Bill, styled as the Hospitals and Other Institutions (Settlement of Disputes) Bill, 1982, in the Parliament. That it has still not been processed further effectively supports the earlier statement, namely, pressure groups often appear to succeed. By the Bill, the Government of India wanted hospitals, educational institutions, institutions owned or managed by an organisation wholly or substantially engaged in charitable, social or philanthropic activities, institutions engaged in khadi or village industries and every institution engaged in any activity of the Government relatable to the sovereign functions of the State, including all activities carried on by the Departments of the Central Government dealing with defence research, atomic energy and space, to be excluded from the operation of the Industrial Disputes Act and to be governed by the Act which may come into force after the Bill is passed by the Parliament. The proposed Act envisaged a Grievance Settlement Committee or a Consultative Council or a Local Consultative Council to be set up, which will have jurisdiction to settle disputes between the employer and workmen of the employer of such institutions governed by the Act. As the Bill has not become law, the machinery therein envisaged has not come into existence. However, to the extent the decision in Bangalore Water Supply holds the field, provisions of the Industrial Disputes Act are available to the employees of all such institutions provided they fall within the definition of workman. The situation at present is wholly unsatisfactory.

4.3. Some States have enacted statutes providing for setting up of tribunals for the adjudication of disputes or differences between the teachers and the management of any affiliated college or recognised institution or between the university and members of its teaching faculty. Some illustrative cases may be examined.

4.4. Section 42A of the Poona University Act, 1974, provides for setting up of such tribunals. A tribunal was actually set up by an order dated 28th Feb., 1979, and it became operational from 1st March, 1979. A retired District and Sessions Judge was appointed as the Presiding Officer of the Tribunal. Broadly stated, the jurisdiction of the tribunal, as spelt out in section 42B, extended to the disciplinary matters between teachers and karamcharis of the affiliated college and university on the one hand and the management of the affiliated college or university on the other, as the case may be. This tribunal was to have only an appellate jurisdiction over the decisions of the disciplinary committee set up under the university statutes.

4.5. There are parallel provisions in statutes setting up Shivaji University and Nagpur University and similar tribunals have been set up with almost identical jurisdiction covering the same subject matter.

4.6. There is also an Educational Tribunal set up by the Government of Gujarat almost on the same lines.

4.7. It is necessary to recall here that every Act setting up a university makes provision for setting up a domestic disciplinary tribunal for deciding disciplinary matters. The educational tribunals set up by the States generally enjoy appellate jurisdiction. It is not the intention of this report to deal with disciplinary tribunals set up by the universities under the Act under which they are set up. In fact they are to be retained as grassroot fora.

4.8. Educational tribunals set up by the States have by and large very limited jurisdiction. More or less they deal with disciplinary matters relating to the members of the teaching staff or the karamcharis. They have no jurisdiction over disputes involving students, examination malpractices or where the dispute is between the university and the State Government. By and large, these tribunals are manned usually by retired Judges belonging to the cadre of District and Sessions Judge who, one can say with no disrespect, would have no experience of the administration of universities and the problems encountered by them.

4.9. The decisions of these tribunals are subject to judicial review by the High Court. The area of interference by the High Court would certainly be restricted because ordinarily the High Court, in exercise of the power of judicial review under articles 226-227, would not interfere with findings of fact recorded by the tribunal. These tribunals, to some extent, enjoy the confidence of the teachers of the university and of affiliated colleges. Available information shows that tribunals for Shivaji and Poona University set aside the order of discharge of teachers and directed reinstatement in 32 out of 63 cases brought before them.[49]

4.10. Before we conclude on this point, it would be fair to point out that there is a body of opinion which views with certain amount of trepidation justice rendered by tribunals. Tribunals are indisputably proliferating. The Law Commission, in its pursuit for decentralisation of monolithic administration of justice in this country, has tended to support the tribunalisation of justice. Even outside the periphery of the recommendations of the Law Commission, tribunals have been operating in India since a long time. To illustrate, Income Tax Appellate Tribunals came into vogue on 25th Jan., 1941. Then there is a Customs, Excise and Gold Control Tribunal. There is a Railway Rates Tribunal. There are Industrial Tribunals. Very recently Administrative Tribunals under Administrative Tribunals Act have been set up to deal with disputes between the Government and its employees. Undoubtedly, these tribunals enjoy the judicial power of the State. Their decisions are subject to judicial review by the High Court under articles 226-227 and the Supreme Court under articles 136 and 32 of the Constitution.

4.11. Before the relevant question is posed whether tribunalisation of justice diminishes the value of justice compared to one rendered by courts, it is necessary to point out that in U.K. alone, there are as many as two thousand tribunals operating in various fields subject to the supervision of the Council on Tribunals. The Council on Tribunals was first set up under the Tribunals and Inquiries Act, 1958, which was repealed and replaced by the Tribunals and Inquiries Act, 1971. The principal functions of the Council are: (a) to keep under review the constitution and working of the tribunals; (b) to consider and report on such matters as may be referred to it from time to time; and (c) to consider and report on administrative procedures. Administrative law and administrative justice require strict compliance with not only prescribed procedure but by and large the procedure must inhere principles of natural justice. A compliance with an established procedure and a speaking order would at least have the tendency to disclose how the decision making mind has worked in reaching the conclusion and at any rate the decision has to be plausible. The Council thus co-ordinates the work of different tribunals and its role is found to be important in impartial dispensation of justice by tribunals. The Council is not without its critics in that it has been said that it is the toothless lion and its opinions are often ignored by the Government. It has no participatory role in drafting legislation for any new statutory tribunal. At some later date, Law Commission will have to plan a report on a body having supervisory jurisdiction for proliferating tribunals.

4.12. Returning to our country, it must be pointed out that tribunals have never been looked upon with disfavour generally. In fact, functioning of the Income Tax Appellate Tribunal has been admired by many tax experts. Even then there is undoubtedly a tilt in favour of courts and against tribunals.

4.13. Why this element of suspicion creeps in needs not only examination but the criticism must also be properly and effectively met or it must be accepted. Courts of law, in contradistinction to tribunals, are generalist courts. Tribunals

can be said to be specialist courts in a limited sense. The apprehension is not to tribunals taking over the function of the courts but the apprehension stems from the fact about the control exercised over the tribunals by the Government, about the manner, method and power of appointment of personnel manning the tribunals, and by and large their independence from governmental pressures. The fasciculus of articles bearing the heading 'TRIBUNALS' comprised in Part XIVA of the Constitution envisages setting up of tribunals for adjudication of disputes, complaints or offences with respect to matters set out in article 323B(2). The items set out therein cover a large area. Examining the scope and ambit of article 323A, which enables the appropriate Government by a suitable legislation to set up service tribunals for dealing with controversies relating to conditions of service, including the vexed question of seniority of the Government employees, the Supreme Court observed that such tribunals may save the courts from the avalanche of writ petitions and appeals in service matters. The proceedings of such tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many.[50] Later on, when the Parliament enacted the Administrative Tribunals Act, 1985, its constitutional validity was questioned and upheld with certain observations by the Constitution Bench of the Supreme Court of India.[51] The court did not disfavour tribunalisation of justice but only concentrated its attention on areas which permit tribunals to be looked upon with a certain amount of suspicion. After observing that judicial review is a basic and essential feature of the Constitution and, therefore, no law passed by Parliament in exercise of its constituent power can abrogate it or take it away, the court proceeded to observe that Parliament can set up effective alternative institutional mechanisms or arrangements for judicial review without dispensing with judicial review itself. Approaching the matter from this angle, the court observed that the Act provides for another mechanism instead of the High Court which would be exercising the power of judicial review with a view to enforcing the constitutional limitations and maintaining the rule of law. It was further observed that if, by law, the jurisdiction of the High Courts under articles 226 and 227 is excluded and which is permissible, the law must not create a void but set up another effective institutional mechanism or authority and vest the power of judicial review in it. The law did pass the test of constitutionality subject to certain amendments which the court indicated. Thus, tribunalisation of justice, simultaneously excluding the jurisdiction of the High Court, was not looked upon with disfavour. The real test to be kept in view is that the tribunals would be courts' substitutes and, therefore, it must not be such as to give an appearance that the court justice would no more be available. On the contrary, instead of the generalist courts, such tribunals will have special experts manning it. The tribunals having jurisdiction over specified areas can be manned by specialists in the field and, therefore, it is likely to acquire relative speed and informality of procedure in resolution of disputes. The crux of the matter is not that tribunals are substitutes for courts but it is as to who mans them and what procedure would be followed and whether it would be totally free from Governmental control. Once care is taken to ensure non-encroachment into these grey areas, tribunal justice may be found to be more acceptable, welcome and effective than the generalist court justice. While recommending, therefore, a tribunal for resolving disputes in the field of education, the Commission would point out what effective steps must be taken on the question of selecting personnel for manning the tribunal, the procedures to be followed by tribunal and its insulation against governmental interference or interference by affected interests.

## CHAPTER V

## THE DEBATE

5.1 Interests directly affected by the subject matter of this report being a highly vocal segment of our society, in order to avoid the charge of rushing into something without giving an adequate opportunity to such affected interests to participate in the tentative thinking of the Law Commission, a comprehensive working paper, to which a questonnaire was annexed, was drawn up and given wide publicity on March 9, 1987. It was given to the print media and copies were despatched to the Association of Indian Universities with a request to communicate the same to all the universities. The working paper was also sent to

the University Grants Commission, to every university and to the teachers' associations about which the information was available. The Association of Indian Universities publishes a weekly journal, styled as 'University News'. In its issue dated March 23, 1987, the salient portions of the working paper were published for the benefit of wider audience with a request to send the suggestions on the various issues raised in the paper latest by April 30, 1987.[2] The Vice-Chancellors of various universities, to each of which working paper was sent, were requested to communicate the working paper to the association of teachers of the same university as well as to the associations of karamcharis of the university and the association of students of the university, inviting them to submit their views to the Law Commission. The print media also published a gist of the working paper. Public intimation was given that anyone interested in the subject is welcome not only to write to the Law Commission but can ask for copies of the working paper. The Association of Indian Universities also requested the Vice-Chancellor of each university to hold a one day seminar to discuss the working paper and to forward the views to the Association as well as to the Law Commission.

5.2. The Association of Indian Universities took a lead in this behalf and organised a group discussion on May 2, 1987, on the working paper issued by the Law Commission. The panelists at the discussion, amongst others, included Chairman and Member Secretary of the Law Commission, Prof. Yash Pal, Chairman U.G.C., Prof. G. Ram Reddy, President of the Association of Indian Universities, Prof. Moonis Raza, Vice-Chancellor, University of Delhi, Prof. S.K. Aggarwal, Vice-Chancellor, Agra University, Prof. M.V. Mathur, former Vice-Chancellor, University of Rajasthan and Member of Fourth pay panel, Prof Rais Ahmed, former Vice-Chairman of U.G.C., and Shri G.B.K. Ahuja, former Vice-Chancellor. Undoubtedly, one or two amongst the panelists were not able to remain to present. More than 61 Vice-Chancellors including Directors and Heads of Departments attended the discussion. There were certain heads of institutes who also attended the same. It was an in-depth discussion, all pervasive in character, accompanied by scintillating analysis and simultaneously unravelling the present distressing situation in the area of resolution of disputes in the field of education. Vice-Chancellor after Vice-Chancellor supported the proposal. There was near unanimity because only one Vice-Chancellor opposed the proposals made by the Law Commission in its working paper. The President of the Association of Indian Universities, Prof. G. Ram Reddy, Vice-Chancellor of Indira Gandhi National Open University, who presided over the group discussion, emphatically said that the proposal mooted for setting up a Central Education Tribunal was 'just the medicine needed' to rejuvenate the varisities. He proceeded in the same vein and expostulated that 'if you can make the Government appoint such a tribunal, you will be doing a service to university education'.[3] The deliberations at the group discussion were widely reported in newspapers, generally under the banner heading 'Experts Find Indian Universities Sick'.[4] Briefly, experts and Vice-Chancellors favoured setting up of Central Education Tribunal.[5] The group discussion examined each question appended to the working paper and tried to give its point of view on each question. The journal of the Association carried the summary of discussion in its issue dated May 11, 1987.[6] Immediately thereafter, the Association forwarded to the Law Commission the recommendations of the Vice-Chancellors participating in the group discussion organised by the Association of Indian Universities for the consideration of the Law Commission. Briefly stated, the Association appreciated the initiative taken by the Law Commision in regard to decentralisation of administration of justice pertaining to disputes involving centres of higher education. All the expert panelists and Vice-Chancellors endorsed the Law Commission's proposal to set up Central Education Tribunal which would deal with alleged miscarriage of justice involving concerned Governments, universities, teachers and students in the universities and colleges. They were of the opinion that the internal system of removing grievances and solving disputes should be made fully operational and the tribunal may take up only those cases which have gone through the university system for removal of grievances. They agreed with the working paper that such a Central Education Tribunal would provide an all-India perspective to problems in the field of education and, with this end in view, a multilevel and integrated judicial system should be designed in such a way that the objective of decentralisation of administration of justice is fully realised. On the composition of the tribunal, they were of the view that the tribunal

should comprise of eminent educational administrators, Vice-Chancellors, professors and Judges. In constituting the tribunal, they said, utmost care should be exercised in choosing persons of high integrity and the tribunal should be assisted by a strong secretariat. They were of the opinion that while all the disputes pertaining to educational matters should be under the purview of the tribunal, property matters should be dealt with by the civil courts. They unanimously felt that the tribunal would be able to tackle educational disputes expeditiously which will go a long way in ensuring peace in university campuses that contributes to academic standards. As a follow up action, they resolved to set up a working group to further make concrete suggestions in this behalf to the Law Commission. Such a group was set up under the chairmanship of Prof. G. Ram Reddy. The group submitted various suggestions.

5.3. The group recommended that the Law Commission's model for university tribunal is generally acceptable. They classified the disputes in which universities are involved on the basis of the respective constituencies affected. Broadly, according to them, the problems can be grouped to fall into three categories, namely:—

(1) student problems—admissions, rustication, copying, etc.;

(2) problems of teachers and administrative staff—seniority, promotion, service conditions, etc.; and

(3) problems concerning Vice-Chancellors, the relationship between the university and the State Governments, Chancellors regarding matters of finance and other issues of policy.

The resasons which support setting up of university tribunals, according to them, include:—

(a) the over-crowding of courts—this is a matter which has, rightly and naturally, engaged the attention of the Law Commission. This, however, is relevant to universities only so far as they want speedy disposal of educational disputes;

(b) the delay in disposal of cases which is the cause of much confusion and uncertainty in universities;

(c) The need for specialist attention when dealing with matters concerning education. The absence of such element in judicial decision-making, which has been strongly portrayed in the Law Commission's working paper, has resulted in avoidable confusion; and

(d) the desire of preserving the autonomy of the universities.

Referring to the existing grievance handling machinery in most universities for students and staff, it was pointed out that the participation of the same hierarchy in the complaints context as in the original cause (admissions, copying, rustication, etc.) or their various levels and texts or inter-action have taken away the appearance of objectivity and impartiality from the process. According to them, the student seeks a neutral body which will give him a decision on the merits of his case alone, regardless of extraneous personal/professional/hierarchical factors. This is enough justification from the point of view of the Law Commission for setting up a Central Education Tribunal. The group suggested a three-tier grievance handling machinery. At the grassroot level, it was suggested that every university should provide a grievance cell or forum for students for dispute settlement. This cell or forum should be independent of the university hierarchy and should comprise of people who are conversant with problems relating to education and who fulfil the aspiration for justice not only being done but being seem to be done. After voicing their apprehension for tribunals being set up as substitutes for courts, it was suggested that there should be regional and central tribunals which would hear appeals from university level grievance-handling machinery and the central tribunal would furnish a second level of appeal. If this is undertaken, according to them, the High Court jurisdiction would become redundant and only one appeal to Supreme Court under article 136 would survive. On the question of composition of the tribunal, they adopted the norms enunciated by the Supreme Court in Sampath Kumar's case.[57] According to them, both the regional and central tribunal would have two

independent wings—one for students' matters and the other for teachers' and karamcharis' matters. The power to appoint personnel manning the Tribunal must be vested in much a body as would inspire confidence in the selection of personnel but the matter has been left at that without specifying in what body the power should be vested. At any rate, one can read between lines to say that the power should not be vested in the Government. On the question of jurisdiction of the tribunal, they were of the opinion that the issue concerning the relationship of Vice-Chancellor with the State Government, matters of finance, the relationship of the university with the UGC, the relationship between the Chancellor and the Vice-Chancellor are matters of policy and, therefore, models based on the Press Council and Bar Council should be considered to meet the need. They also expressed an opinion that a code of conduct for Chancellors, Vice-Chancellors, State Governments and Central Government should precede the setting up of the forum, to be called "Collective Ombudsman".

5.4. The debate at the group discussion as well as the recommendations of the participants in the group discussion and the recommendations made by the group set up by the participants as a follow up action have been extensively examined in this report for one specific reason that Association of Indian Universities represents a vitally affected interest and has taken keen interest not only in the working paper issued by the Law Commission but on all relevant aspects relating to the subject matter of this report.

5.5. Apart from the Association of Indian Universities, the Commission received replies from Registrars of the universities, Deans, Heads of Departments, Chairman of the Centre and Directors, Ministry of Education, Government of India, and UGC, teachers, a Judge and advocate, Association of Non-teaching Employees and others. It would not be proper to dissect the replies statistically but the broad current of thinking appearing from them should be referred to. Barring some teachers and teachers' associations, there has been not only appreciation but general agreement with the proposals mooted in the working paper of the Law Commission. A few teachers have also broadly agreed with the proposal but made certain further suggestions to curb the apprehension that such tribunals would be over-awed by Vice-Chancellors with whom generally the teachers have the disputes. The body, according to them, would, therefore, be biased in favour of the Vice-Chancellors and, therefore, the universities. Two associations of karamcharis have generally supported the tentative proposal set out by the Law Commission. It is not necessary to re-state the reasons which have appealed to those who have broadly accorded their approval to the proposal.

5.6. It is absolutely necessary to highlight the objections, apprehensions and reservations of those who are opposed to the proposals of the Law Commisssion. Again avoiding the statistics, the objectives and grounds for reservation common to those who disfavour the proposal may be looked into.

5.7. The first and the foremost reservation stems from the fact that tribunalisation of justice simultaneously removing the shield of the High Court would adversely affect the quality of justice. The members of the teaching faculty of the university and karamcharis of the university voiced a fear that they are the victims of university authorities and in the absence of the shield of protection of High Court, their position would be very vulnerable. The genesis of the apprehension is not in the concept of tribunal but in the composition of the tribunal—an aspect which the Law Commission is giong to seriously look into. And the second limb of the apprehension is as to who would enjoy the power to appoint the personnel to man the tribunal. Avoiding any repetition, let it not be forgotten that justice at the hands of specialist tribunal has found favour with the apex court in the country. If judicial review is not taken away, then instead of the High Court, there can be any other forum or mechanism or authority in which power of judicial review can be vested by the Parliament.[3] In fact, there is a body of opinion current in the country that specialist tribunals, in comparison to generalist courts, would be better suited to resolve disputes requiring specialist knowledge of the field of activity in which disputes have arisen, to resolve which tribunals can be set up.

5.8 The second limb of the apprehension was that the proposed Central Education Tribunal would be dumping ground for retired Vice-Chancellors,

Judges, bureaucrats and others, and that their appointment will be attributable to political largesse. Care will be taken in this behalf to find a body in which power will be vested to select the personnel for manning the tribunal. But it would be wasting the accumulated experience of the senior citizens of the society, such as, retired Vice-Chancellors, Judges and even bureaucrats, if their services cannot be utilised in the field in which they have some expertise. In fact, Law Commission is at a loss to understand why there is such a feeling of distrust against retired Judges. Article 128 of the Constitution confers power on the Chief Justice of India with the previous consent of the President to request any person who has held the office of a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court. If so appointed, he can deal with cases pending in the Supreme Court. If a retired Judge can be thus trusted to deal with cases in the Supreme Court itself, the Law Commission is at a loss to understand why he cannot be trusted to use his expert knowledge and rich experience by being appointed to a tribunal. In the past, there are illustrious cases of retired Judges being recalled to work in the Supreme Court and no grievance has been heard in this behalf. Article 224A makes an identical provision for utilisation of services of a High Court Judge to work in the High Court. This very reasoning should *mutatis mutandis* apply to retired Vice-Chancellors, men of eminence in the field of education and even bureaucrats.

5.9. The next grievance entertained was that there is not enough workload to warrant establishment of such a tribunal and, consequently, the establishment of the proposed tribunal would be an uneconomic venture. This raises a vital issue of expenditure on administration of justice. It is at present being treated as non-development expenditure. A radical re-thinking is absolutely necessary in this behalf. A society without a system of efficient administration of justice in a parliamentary democracy is inconceivable. Expenditure on justice is a social overhead in a developing country. And diversification and decentralisation of administration of justice may necessitate specialist tribunals in certain well-defined areas where even if the workload is not sufficient, tribunal must set up so as to relieve the congestion and burden on the generalist courts, to be precise, High Courts and Supreme Court, thereby achieving the more desired result of speedy and expeditious disposal of disputes, avoiding strife and tension in the society. Every confrontation certainly adds to disharmony and strife in the society, the genesis of which is ordinarily in an unresolved dispute. Therefore, this workload argument need not be given importance. There is an additional reason not to attach any worthwhile importance to it for this reason that full statistical material is not available in this behalf.

5.10. There is a third limb to this aspect of the matter. The proposed tribunal is likely to be invested with an expansive jurisdiction. The courts at at present hardly deal with disputes between the university and the Government, the disputes arising out of the appointment or non-appointment of Vice-Chancellors and the disputes between Chancellor and Vice-Chancellor which are proposed to be brought within the purview of the tribunal. At present these disputes ordinarily do not reach the court and those affected live with them. The worry on account of non-availability of enough workload disappears forthwith.

5.11. One more grievance has been voiced. It has been emphatically stated that the moment you remove the shell of court protection and introduce a tribunal, it would not be long before it is politicalised and would lose its credibility. This apprehension is attributable to the lack of knowledge about the body in whom the power is to be vested for selecting personnel for manning the tribunal. In a one man, one vote, one value society, there is hardly an individual who has no political views. Intelligent political views is a barometer of awakening in the society. Holding political views does not make a man, a politician. The situation referring to politicisation cannot be wished away but must be protected against.

5.12. The balance sheet of advantages and disadvantages emerging from the debate clearly tend to indicate that the balance tilts in favour of positive approach. The anticipated apprehension should not be ignored but care must be taken to see that it does not materialise. Therefore, the Law Commission must proceed to examine its own proposals now on merits.

## CHAPTER VI

## THE APPROACH

6.1. Since the British consolidated their hold over India, in order to complete their conquest they introduced numerous institutions in this country modelled on parallel institutions in U.K. One such field in which the entire English model was planted was legal justice system in India. Numerous laws were enacted, most of which were copybook reproduction of the statute on the same subject as in U.K. Once the laws were enacted in this manner, the machinery for enforcement of laws as also forum for resolution of disputes arising by the enforcement of laws followed in the wake of the legal system. The justice system in this country was almost a replica of British courts. It is unnecessary to go into the parallelism save and except saying that the British model of court of justice was a State-appointed Judge in a court set up by the State exercising state judicial power. Appellate forums were created more or less on the lines of U.K. Court of Appeal and the Privy Council fulfilled the role of the House of Lords for the appeals from colonies. This model made almost a compelling necessity of following British precedents without question.

6.2. Since the advent of independence till today, with minor variations the same models are operating. There are State courts at the grassroot level. There are district courts enjoying original as well as appellate jurisdiction. There are High Courts at State level having both original and appellate jurisdiction and the Supreme Court is at the apex of judicial pyramid.

6.3. It is universally accepted that this system has become dysfunctional, ineffective and is unable to deliver goods. This situation has been analysed threadbare by the present Law Commission in its first report.[59] Therefore, the Law Commission was in search of a new model. The search for the model had to satisfy primarily two objects for which the Law Commission was asked to recommend judicial reforms. The first and important one was to introduce decentralisation in the monolithic administration of justice. Secondly, to devise participatory models wherever it is possible. The Law Commission accordingly devised a participatory model which is fully set out in its reports.[60] The grounds and the reasons which appealed to the Law Commission to recommend such a participatory model simultaneously introducing decentralisation in the administration will *mutatis mutandis* apply here and, therefore, it would be idle parade of familiar knowledge to recapitulate them here.

6.4. Briefly stated, the approach of the Law Commission is that where specialist knowledge is a pre-requisite in resolution of disputes arising in a certain area, the forum for resolution of disputes must not be monolithic, State set up judicial courts but a participatory model wherein specialists having requisite knowledge of the nature of the disputes arising in that field may interact with judicial personnel in the resolution of disputes. Experts' association would make available their expertise in the resolution of disputes. And by that very fact, the resolution of disputes could be expeditious and effective. The Law Commission, having examined various suggestions made to it in the debate, is fully convinced that disputes which arise in the field of education do require specialist knowledge for their resolution. It is further convinced that such disputes be excluded from the jurisdiction of generalist courts, including the High Court. Let it be stated clearly, specifically and confidently that by and large there was unanimous support, including the one from the Association of Indian Universities, a body representing all the universities of the courty, for such a participatory model. The divergence of opinion is on the question of the constitution of the forum, not the model. In other words, there was near unanimity that the forum for resolution of disputes arising in the field of education must be participatory in character. There was equal unanimity in opinion that once such a forum is devised, the jurisdiction of generalist courts, including that of the High Courts, should be excluded.

6.5. The approach must also indicate the direction and specify the method by which the Government of India can, if so minded, implement the recommendations made herein. This report is a link in a chain of reports submitted

by the Law Commission in fulfilment of its assignment of recommending comprehensive judicial reforms. In the debate, it was pointed out that subject of 'education' is generally dealt with by States and in the absence of the topic of 'education' in article 323B, the Central Government would not have power to undertake any legislation to set up the educational tribunal envisaged in this report and recommended as part of it. Indisputably, article 323B, which enumerates the topics on which appropriate Legislature may, by law, provide for adjudication or trial by tribunals of any disputes, complaints or offences, does not specify 'education' as one such topic. After pointing out this aspect, it was asserted that even if the Law Commission were to recommend setting up such a tribunal, the Union Government to which it submits its report would be, in the absence of power, incapacitated from implementing the recommendations in the report and that the report would be an exercise in futility.

6.6. The task of recommending exhaustive and comprehensive judicial reforms for saving the justice system from utter collapse has been assigned to the Law Commission. The primary aim of this report is to take one more step in the direction of recommending judicial reforms. The Terms of Reference for Studying Judicial Reforms assigned to the Law Commission specify that the Commission may suggest other tiers or systems within the judicial hierarchy to reduce the volume of work in the Supreme Court and High Courts and with this end in view may recommend the matters for which Tribunals as envisaged in Part XIVA of the Constitution need to be established expeditiously. Judicial reforms aim at reforming the system of administration of justice. Prior to the enactment of the Constitution (Forty-second Amendment) Act, 1976, which came into force on Jan. 3, 1977, entry 3 in the State List read as under:—

> "Administration of justice; constitution and organisation of all courts except the Supreme Court and the High Court, officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court."

Since the amendment, the words "administration of justice: constitution and organisation of all courts except the Supreme Court and the High Court" were omitted. Simultaneously, effective from the same date, by the same amendment Act, entry 11A was introduced in the Concurrent List which reads as under:—

> "Administration of justice; constitution and organisation of all courts except the Supreme Court and the High Courts".

Again, entry 11 in the State List prior to the aforementioned constitutional amendment read as under:—

> "Education, including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III".

Since the amendment, entry 11 in the State List has been omitted and entry 25 in the Concurrent List, which prior to the amendment provided for only 'vocational and technical training of labour', has been re-enacted as under:—

> "Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I".

The original topic 'vocational and technical training of labour' is retained.

6.7. Having referred to the entries, let it be pointed out that if the Parliament desires to enact a law which, in pith and substance, deals with the administration of justice in its various manifestations, entry 11A would clothe Parliament with power to enact such a law. The matter does not rest here. If the educational tribunal herein recommended in respect of disputes in which universities are involved apart from other educational institutions and primarily deals with the topic of education, the subject being in the Concurrent List, Parliament will be competent to enact the law dealing with the topic of resolution of disputes arising in the field of education in discharge of its obligation to provide for administration of justice. Briefly, a combined reading of entry 11A and the amended entry 25 in the Concurrent List would unquestionably clothe Parliament with power to enact the legislation for setting up the tribunals dealt with and recommended by this report. In this view of the matter, the absence of the topic of 'education' in article 323B is of no consequence.

## CHAPTER VII

## CONCLUSIONS AND RECOMMENDATIONS

7.1. Approaching the matter with an open mind, free from bias or prejudice, and after taking into account the arguments for and against and pros and cons of all aspects, the Law Commission is convinced that in the larger interests of the justice system as well as in the interest of the centres of education and in public interest, a separate and specific model for resolution of disputes arising in the field of education is the felt need of the time. Once such a forum is to be devised, the Law Commission, in order to be comprehensive in its recommendations, must set out its structure, composition, jurisdiction and the authority invested with power to make appointments of persons who will be manning the tribunals.

### STRUCTURE

7.2 The Law Commission is of the opinion that a three-tier structure would be necessary for effectively handling all sorts of disputes in the field of education. The three-tiers would include the grassroot level, State level and an all-India level.

7.3. Dealing with the question of structure, it must at once be stated that the proposed Central Educational Tribunal is not to replace the grievance handling machinery which each university must provide for settling the disputes arising between the university and its students, university and members of its teaching faculty, university and its karamcharis as a forum at the grassroot level. It must be easily and expeditiously accessible and must be of such a nature as to inspire confidence among the disputants coming before it. Therefore, as the first step, every university must set up a grievance handling forum. It must be of a participatory model inasmuch as all the affected interests in the university should be represented in it, the access to which must be unimpeded by any technicalities. It must follow principles of natural justice. It must handle disputes expeditiously. It must give reasons for its decision. The Law Commission need not suggest any specific model. The model to be devised by each university must answer the aforementioned minimum requirements. The most important thing a university must provide is that the disputes coming before it must be resolved within a reasonably short time, not exceeding in any case six months.

7.4. Broadly stated, the grievance handling machinery must be in a position to deal with admissions to the university and affiliated colleges, malpractices at examinations, disciplinary action against students and even students' complaints against the members of the teaching staff or even such problems as inadequacy of facilities for effective educational programme. This forum must have a separate wing for dealing with the disputes between the university and members of its teaching faculty as well as between the affiliated colleges and teachers employed therein, covering all aspects of general conditions of service but excluding pay scales, dearness allowance and other perks.

7.5. The next tier in the vertical hierarchy must operate at the State level At one stage, the Law Commission was not impressed by the suggestion that there must be a State level tribunal. But it was said that for easy accessibility, a State level tribunal is a *sine qua non*. It was apprehended that otherwise all the petty disputes dealt with by grassroot level tier will land into the Central Educational Tribunal and unnecessarily clog its dockets. This approach discloses sensitivity and logic. Therefore, even though the working paper issued by the Law Commission did not envisage a State level tribunal, the national debate supports setting up of such a tribunal. Accordingly, every State shall set up a State level educational tribunal. It will have both original and appellate jurisdiction. Where vital matters of policy are involved affecting teachers, students and university administrators, the matter can be brought before the State level educational tribunal enjoying original jurisdiction. What the Commission has in mind is this. There are numerous universities in every State. Vice-Chancellors of these universities try to co-ordinate their activities. Even then

there are problems where the university administrators on the one hand, teachers on the other and students on the third hand in respect of common problems may not be able to arrive at a solution, such as, the date of examination or postponement of the same. Such problems can be brought before the State Educational Tribunal. This approach would help in removing areas of frustration and every potential dispute can be the subject matter of discussion and satisfactory solution.

7.6. The State level tribunal will also have appellate jurisdiction over the decisions of the university level grievance handling forum.

7.7. At the apex level, there should be a Central Educational Tribunal or National Educational Tribunal, whatever name befits its status and position. The national level tribunal will also have both original and appellate jurisdiction. Appeals against the decision of the State level tribunal would lie to the national level tribunal. Its original jurisdiction would be extensively set out under the heading 'jurisdiction' in this chapter.

## COMPOSITION

7.8. This is a grey area. The reservations against the proposal of the Law Commission to recommend setting up of tribunals stem from the possible composition of such tribunals. Largely, it is not the model that is objected. The apprehension is that the tribunal which will replace courts would be manned by people who would not inspire confidence. This condemnation in advance is unwarranted. But the apprehension behind it must be take note of. Undoubtedly, it is true that the tribunals would replace courts and they will operate under the umbrella of the Supreme Court supervising their function under article 136 of the Constitution. Even then, undoubtedly, the jurisdiction of all courts up to the level of High Court would be excluded once these tribunals as herein envisaged are set up. As the jurisdiction of all courts up to the High Court is being excluded, the caution uttered by the Supreme Court in recommending the composition of these tribunals must not be lost sight of. To recall, it has been said that judicial review is the basic and essential feature of the Constitution and it cannot be dispensed with. However, it was conceded that if the judicial review is not being dispensed with, it will be within the competence of Parliament to substitute in place of High Court another alternative institutional mechanism or arrangement for judicial review provided it is not less efficacious than the High Court. In order to provide for such a forum as an alternative to the High Court, it was suggested that what is needed in a judicial tribunal which is intended to supplant the High Court is legal training and experience. Accordingly, the court struck down clause (c) of section 6(1) of the Administrative Tribunals Act, 1985.[61] To inspire confidence in the tribunal, the court suggested that the Chairman and Vice-Chairman of the Administrative Tribunal must be either a District Judge or an advocate who is qualified to be a Judge of the High Court. The court directed that such amendment must be carried out to make the provision constitutionally valid. The Law Commission has kept this suggestion in view while recommending the composition of the tribunal.

7.9. It must be conceded that the composition of the tribunals must inspire confidence amongst the disputants coming before the tribunal. But merely providing for appointment of judicial members would defeat the other end in view of the Law Commission, namely, that of replacing the generalist courts and to associate specialists with the tribunal. The tribunals have to have the character and composition of specialist courts. Both these objectives must be fulfilled while determining the composition of the tribunal.

7.10. Accordingly, it is recommended that the State level tribunals should have as a Chairman a sitting or retired Judge of the High Court and two other members who are eligible for being appointed as High Court Judges. The remaining two must be from the rank of former Vice-Chancellor and an eminent professor. The tribunal would thus consist of five members.

7.11. The Central/National tribunal must also reflect the same features. It must have as its Chairman a sitting or retired Judge of the Supreme Court of India, two other members who are eligible for being appointed as Judge of

the Supreme Court of India, the remaining two must be from the rank of distinguished educationists, former Vice-Chancellors and administrators who have dealt with the problems of education and eminent professors.

7.12. It is needless to say that both the State level tribunal and the national level tribunal must have a secretariat of its own.

7.13. The strength of the State and Central/National Educational Tribunal herein indicated is to be observed in the first instance at the time of commencement. Depending upon the workload and other incidental requirements, the strength may be increased commensurate with the workload, but retaining the essential features of the Tribunal in the matter of composition. To be precise, selection from any one sector need not be disproportionately heavy compared to other sectors. It must also be clarified that the Tribunal need not sit *en banc*, but can sit in benches with this pre-requisite that one of the members of the Bench must of necessity be a Judicial Member.

## JURISDICTION

7.14. The jurisdiction of the State level tribunal has been specified a little while ago. The national level tribunal must have original jurisdiction where vital policy questions may be examined. In this respect, the working group set up by the Association of Indian Universities has expressed an opinion that 'issues concerning the relationship of Vice-Chancellors with the State Government, matters of finance, the relationship of the university with U.G.C., Vice-Chancellor with Chancellor, etc., are matters of policy'. It suggested that models based on Press Council and Bar Council could be considered to meet the need. In the view of the Law Commission, even policy matters on which a difference of opinion emerges depending upon its State level coverage or national level coverage can be brought before this State level tribunal or national level tribunal, as the case may be. Just to illustrate the point, one may profitably refer to the recent all-India teachers' strike which lasted for about two months. It may be that the view of the Government of India was that the strike was not justified. It is equally possible that the teachers believe that a raw deal has been done to them. These are not individual grievances. There may be different shades of opinion on policy matters. But ultimately, there is confrontation which implies there is a dispute and which can be resolved. The national level tribunal can be invested with jurisdiction even with matters of policy. To take one more illustration, gradually a grievance has developed that in the matter of selection of Vice-Chancellors, certain unhealthy practices have developed and this reflects upon the selection which ultimately devalues the office of the Vice-Chancellor. Undoubtedly, there is a body like the University Grants Commission. But the national level tribunal by and large representing affected interests and presided over by a highly trained judicial mind can be trusted to lay down guidelines in the matter of selection of Vice-Chancellors. Similarly, in the near future, a proposal to set up an all-India educational service may have to be seriously considered. The problems in setting up such a service can be well sorted out by the national level tribunal. Even the code of conduct which is suggested by the Association of Indian Universities can be drawn up by the national level tribunal. Such jurisdiction of widest amplitude must be conferred on the national level tribunal.

## POWER OF APPOINTMENT

7.15. Both the State level tribunal and the national level tribunal would be manned by judicial and non-judicial members. It is easy to locate the centre of power for recommending appointments for judicial members.

7.16 The Law Commission has submitted a comprehensive report for setting up of a National Judicial Service Commission. That body is going to have an effective voice in the appointment of Judges in regular hierarchy of courts at all levels. Therefore, that body can be confidently trusted to make recommendations for appointment of judicial members of the State level and national level tribunals.

7.17. With regard to the appointment of non-judicial members, the Governor, in consultation with the University Grants Commission, will appoint non-judicial members of the State level tribunal. Similarly, the President of India, in consultation with the University Grants Commission, will appoint non-judicial members of the national level tribunal. This method of appointment will allay any apprehension in this behalf.

7.18. Looking to the expansive jurisdiction conferred on the State-level and national level educational tribunal, there is going to be enough workload at both the levels. However, it is also necessary to transfer all pending matters in all courts, excluding the Supreme Court, to the tribunals that may be set up. Therefore, all education matters pending in all courts, excluding the Supreme Court, shall stand transferred to the respective tribunals having jurisdiction in this respect.

7.19. Education is a social overhead in a developing economy and, therefore, the expenses of the State level tribunal shall be borne by the State Government and of the national level tribunal by the Union of India.

7.20. The jurisdiction of the Supreme Court of India under article 136 remains unimpaired by the changes herein indicated.

7.21. We recommend accordingly.

(D. A. DESAI)
*Chairman*

(V. S. RAMA DEVI)
*Member Secretary*

NEW DELHI,
January 15, 1988.

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52. University News dated March 23, 1987, pp. 5-10.
53. Times of India dated May 4, 1987; Statesman of the same date.
54. Zerox copies of extracts from leading national dailies.
55. Patriot dated 3rd May, 1987.
56. University News dated May 11, 1987, pp. 12-13.
57. *S.P. Sampath Kumar* Vs. *Union of India*, AIR 1987 SC 386.
58. *Ibid.*, at 389.
59. LCI 114th Report.
60. LCI 114th and 122nd Reports.
61. *S.P. Sampath Kumar* Vs. *Union of India*, AIR 1987 SC 386.

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(Para 1.2)

ANNEXURE

Immediate

No. 6(2) (3)/87-L.C.

LAW COMMISSION OF INDIA

GOVERNMENT OF INDIA

Shastri Bhavan
(Floor No. 7),
New Delhi-110 001.

*March* 9, 1987.

To

Subject:—Working Paper on Decentralisation of Administration of Justice: Disputes Involving Centres of Higher Education.

Sir/Madam,

The Law Commission of India has been entrusted with the task of studying and suggesting judicial reforms *inter alia* with a view to find out the need for decentralisation of justice by establishing other tiers or systems within the judicial hierarchy. In pursuance thereof, the Commission intends to undertake a study of the need to have a Central Education Tribunal to deal with causes, controversies and disputes involving concerned Government, universities, professors in the universities and affiliated colleges and students, with comprehensive jurisdiction to deal with disputes involving the aforesaid parties. Accordingly, the Law Commission has drawn up a Working Paper containing a questionnaire for this limited purpose and is interested to have the views of all interested persons/bodies on the subject. A copy of the Working Paper is enclosed.

2. The Commission would, therefore, request you to convey your views on the questionnaire so as to reach the Commission early, and in any case, *not later than 30th April*, 1987. The Commission would also be grateful if copies are made and distributed to the concerned teachers associations, students associations and other academic bodies with a request to directly transmit their views to the Law Commission.

Yours faithfully,

(Sd.)

(V.S. RAMA DEVI)

Encls.: As stated.

LAW COMMISSION OF INDIA

WORKING PAPER

ON

## DECENTRALISATION OF ADMINISTRATION OF JUSTICE; DISPUTES INVOLVING CENTRES OF HIGHER EDUCATION

The task of devising and recommending judicial reforms for which a separate Commission was to be set up was later on assigned to the Law Commission with a request to give top priority to the same. Amongst the various terms of reference drawn up for the proposed Judicial Reforms Commission, the one with which the Law Commission is primarily concerned in this Working Paper reads as under:—

"1. The need for decentralisation of the system of administration of justice by—

(i) establishing, extending and strengthening in rural areas the institution of 'Nyaya Panchayats' or other mechanisms for resolving disputes;

(ii) setting up of a system of participatory justice with defined jurisdiction and powers in suitable areas and centres; and

(iii) establishing other tiers of system within the judicial hierarchy to reduce the volume of work in the Supreme Court and the High Courts."

The choice may be dictated by term No. 2, which reads as under:—

"The matters for which Tribunals (excluding services Tribunals) as envisaged in Part XIVA of the Constitution need to be established expeditiously and various aspects related to their establishment and working."

2. The judicial system in this country is a highly centralised and integrated one from bottom to top. The constitutional power of issuing prerogative writs conferred on the High Courts by article 226 of the Constitution and on the Supreme Court of India by article 32 of the Constitution has tended to make the High Court an institution in which all sorts of disputes converge. The High Courts, in charge of administration of civil and criminal justice, enjoy appellate and revisional jurisdiction under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1973, respectively. The High Courts also enjoy original jurisdiction under special statutes like the Companies Act, 1956, Patents Act, 1970, and Designs Act, 1911, etc. It also enjoys aavisory jurisdiction under various tax laws such as the Income-tax Act, 1961, the Gift Tax Act, 1958, the Wealth Tax Act, 1957, Customs Act, 1962, and the Central Excise and Salt Act, 1944. The decisions of all quasi-judicial tribunals are subject to judicial review by the High Court in exercise of constitutional power of issuing high prerogative writs. Even administrative decisions are subject to review within the narrow confines of jurisdiction as well as violation of fundamental rights. The fall-out of the various jurisdictions which the High Courts enjoy has been torrential inflow of work in the High Courts. The decisions of the High Courts are questioned before the Supreme Court in exercise of the jurisdiction conferred by article 136 of the Constitution. The mounting arrears in the High Courts is causing untold anxiety. As many as 13,23,719 cases were pending in the High Courts as on 30th June, 1985 and over 1,66,319 cases were pending in the Supreme Court of India as on December 31, 1985. Out of 13,23,719 cases pending in the High Courts, 2,32,492 cases were pending over five years and 32,794 cases were pending over ten years.[1] In fact, the unmanageable backlog of cases and the inordinate delay in the disposal of cases attracted the attention both of the suffering, litigating public and the Government of India. These two ugly features of the present day justice system have provoked a strident demand for judicial reforms.

1. Source : 31st Report of the Estimates Committee of Lok Sabha, pages 39-40

3. The Law Commission, on being required to deal with the malaise in the administration of justice, concentrated its attention, first on the litigation emanating from rural areas. An extensive working paper was prepared and published by the Law Commission of India devising a participatory model of justice for disputes emanating from rural areas. After a national debate, a detailed report has been submitted in this behalf.

4. The Law Commission was of the tentative opinion that the centralised system of justice where every nature of dispute tends to land in the High Court, would never be able to meet the requirement of easily accessible, inexpensive, informal, expeditious justice. Some decentralisation was inevitable. One can take due from Chapter XIVA of the Constitution introduced by the Constitution (Forty-second Amendment) Act, 1976. The object underlying introduction of Chapter XIVA in the Constitution was to empower the Parliament to enact a law for setting up tribunals for various special kinds of disputes. This power was acquired to achieve the avowed object of decentralisation of the system of administration of justice.

5. With a view to carrying the process of decentralisation a step further, the Law Commission recommended National Tax Court simultaneously removing the advisory jurisdiction of the High Courts. The Law Commission was further of the opinion that some more decentralisation would not only reduce the pressure on the High Courts and the Supreme Court of India, but would permit association of experts with tribunals set up for resolving disputes of a specialist nature. The twin objects behind this approach is not merely lightening the burden on the High Courts caused by torrential inflow of work from various tribunals, but also to achieve the object underlying article 39A of the Constitution, namely, to provide equal opportunity in the matter of access to justice. Such specialisation would inevitably reduce long-winding arguments and assist in expeditious disposal of causes and controversies which, in turn, would reduce the cost of litigation. While conferring extensive power of issuance of high prerogative writs on High Courts under article 226 of the Constitution and all-enveloping superintendance over all courts and tribunals under article 227 of the Constitution, it was assumed that a High Court Judge would be able to deal with not merely civil and criminal cases but also cases requiring such specialised knowledge as tax references, labour disputes, educational disputes, *et el.* While it may be that the Judge of a High Court may, in course of time, develop capacity to deal with all kinds of specialist disputes, yet it cannot be gainsaid that in this process, long time would be spent in familiarising oneself with specialist knowledge. Further, there is a system of rotating judges in all branches in High Courts. Specialisation in this background is not possible. Inevitably, every time the bench is changed, even with regard to the same nature of the dispute, arguments will start over again and all available precedents will be cited *ad infinitum.*

6. In the old days a Member of the Bar could accept any brief without any attempt at specialisation. But as the law became more complex, and the litigating techniques became more comprehensive and judicial approach acquired more scientific overtones and the precedents poured in, slowly specialisation appeared in the legal profession. However, it was assumed without justification that no specialisation is necessary for a High Court Judge. The recruitment to the High Court is from two known sources:—

(i) Elevation to the Bench from the Bar; and

(ii) Promotion from the rank of district judge.

By the very nature of the jurisdiction enjoyed by a district judge, he has little or no opportunity to deal with constitutional matters, tax matters labour matters, and disputes involving corporate laws. It may be that, in course of time, he may acquire working knowledge of all these laws, but long time will be spent in becoming wholly familiar with the same. And during these formative years, he will be subjected to all sorts of arguments which, before a specialist, will have no place. Similarly, a Member of the Bar who has specialised in one branch will have to acquire knowledge of other branches. It is, therefore, undeniable that specialisation would certainly be conducive to better administration of justice helping in overall improvement of speedy disposal of causes and controversies which tend to reduce backlog of cases which is the bane of the present day administration of justice.

7. The next question, therefore, is how do we provide for specialisation? The Law Commission found a tentative answer in the decentralisation of the system of administration of justice. Imbued with this idea, the Law Commission submitted a comprehensive report dealing with setting up of National Tax Courts simultaneously abolishing jurisdiction of the High Courts. This will achieve decentralisation and grant a measure of relief to the High Courts. Carrying further this very process, the Law Commission issued a Working Paper and a questionnaire on January 27, 1987, for a debate in devising a forum for national uniformity in labour adjudication at a stage midway between the Labour Courts/Industrial Tribunal at the base level and the Supreme Court of India at the apex, simultaneously abolishing the jurisdiction of the High Courts.

8. The approach as discussed in the just preceding paragraph was indicated by the introduction of Part XIV-A in the Constitution by the Constitution (Forty-Second) Amendment Act, 1976 which enabled the appropriate Legislature to provide for the adjudication or trial by tribunals of any disputes, complaints or offences, with respect to various matters enumerated therein. In the Objects and Reasons accompanying the Bill, it was stated that "(t)o reduce the mounting arrears in the High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution." This envisages setting of tribunals with all-India jurisdiction for matters of special importance. Disputes involving universities would qualify for being considered matter of special importance. It would achieve the twin objects of specialist treatment, speedy disposal, all-India outlook and decentralisation of judicial administration.

9. The present working paper accordingly concentrates on a new set of disputes requiring specialist knowledge to deal with, which have prominently figured in the High Courts in the last decade. Numerous disputes land in the High Courts involving the Universities on the one hand, and the alumni on the other, or between the Universities and the teaching staff as well as ministerial staff. Almost allied to the same are the disputes involving University and the Government in the matter of affiliation of colleges, autonomy of the University, financial independance of the Universities, appointment of Vice-Chancellors and similar disputes. Disputes in this behalf are of recent origin. But as years roll by, they tend to multiply.

10. The thrust for higher education is growing at an accelerated speed every year. As the demand for seats in institutions of technical learning such as engineering, medicine, agriculture, etc., is increasing, the area of conflict is widening. The situation becomes acute when the Government in discharge of its obligation under Article 15(4) of the Constitution reserves certain number of seats for socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes. Article 15(4) provides as under:—

> "15(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."[1]

In order to give opportunity to the members of socially and educationally backward classes of citizens or members of the Scheduled Castes and Scheduled Tribes, to advance and intermingle with the mainstream of life, Government reserves certain percentage of seats in institutions of technical education and higher education in favour of members of such classes. To that extent, the seats available for entry on merit get reduced. The competition gets accentuated. Further, the number of seats in such institutions have not expanded or proliferated in relation to the demand for such seats. All these contribute to a keen tussle for acquiring a seat in such institutions. This tussle more often leads to confrontation or court cases. Practically, for over the last ten years, admissions to medical colleges and engineering colleges have landed in the High Courts and the

1. Added by the Constitution (First Amendment) Act, 1951, s.2

Supreme Court of India. Frankly, the courts are ill-equipped to deal with these disputes expeditiously and with a sense of urgency. A brief resume of the important decisions of Supreme Court and High Court would bear out what is stated herein above.

11. There are numerous decisions of the Supreme Court of India and High Courts bearing on the question of admissions to professional institutions, more especially the Engineering and Medical faculties. There are decisions also dealing with the policy of reservations in favour of the members of socially and educationally backward classes and Scheduled Castes and Scheduled Tribes. It is not proposed to discuss all the decisions in this working paper. Only some will be referred to highlight the tentative approach of the Law Commission that disputes involving University Administration, admission to university courses, disciplinary proceedings against university teachers, cannot be dealt with effectively like the run-of-a-mill, small petty legal squabble, the decision in such disputes must be informed by the wider perspective of role of education in a developing country, discipline in the formative years, future leadership and enthroning of values. If handled differently, it is likely to cause dislocation in the University administration.

12. To begin with, a reference to one such case would be instructive. There were two vacancies in the cadre of Professor of Medicine in the State Medical Colleges in the State of U.P. As both the posts were within the purview of the State Public Service Commission, the Commission advertised posts inviting applications from eligible candidates, the eligibility criterion having been set out out in the advertisement itself. The Public Service Commission selected two persons for the aforementioned two posts. The selection was challenged by one of the competing candidates *inter alia* contending that the selectees did not satisfy the eligibility criteria inasmuch as they lacked the requisite teaching experience, which was one of the minimum qualifications. The matter was argued before a single Judge of the High Court who upheld this contention and the view of the learned Judge was affirmed in the appeal before the Division Bench. In other words, three Judges of the High Court came to the conclusion that the selectees did not have the requisite teaching experience. Two appeals came to be preferred to the Supreme Court. Reversing the two decisions of the High Court, the Supreme Court observed that:

> "when the selection is made by the Commission, aided and advised by experts having technical experience and high academic qualifications in the specialist field, probing, teaching/research experience in technical subjects, the court, should be slow to interfere with the opinion expressed by the experts unless there are allegations of *mala fides* against them. It would normally be prudent and safe for the courts to leave the decision on academic matters to experts who are more familiar with the problems they face than the courts generally can be. Undoubtedly, even such a body, if it were to contravene rules and regulations binding upon it in making the selection and recommending the selectees for appointment, the court in exercise of extraordinary jurisdiction to enforce Rule of Law, may interfere in a writ petition under article 226 of the Constitution. Even then, the court, while enforcing the Rule of Law, should give due weight to the opinions expressed by the experts and also show due regard to their recommendations on which the State Government acted. If the recommendations made by the body of experts, keeping in view the relevant rules and regulations, manifest due consideration of all the relevant factors, the court should be very slow to interfere with such recommendations."[1]

However, the courts, especially the High Courts and the Supreme Court of India, are flooded with disputes involving technical considerations and the courts entertain and occasionally interfere which disturbs the administration of the Universities. It may be pointed out here that universities are expected to be autonomous bodies set up under State statutes and are required to provide for planning of education, organisation of the body, staff requirements, direction and development of education and keeping in touch with the hitherto unexplored areas of performance, vigilance and co-ordination with other universities. It also must

1. *Dr. M. C. Gupta* vs. *Dr. Arun Kumar Gupta* (1974) 2 SCC 339.

have its own management structure, forum for resolving problems arising out of affiliation of privately managed colleges, management of university departments its relations with the students and its relations with the State Government especially in the matter of financial autonomy. Universities cannot be modelled for their internal management as well as to meet the expanding horizons of knowledge on profit-oriented corporate approach. The rapidly developing political and economic situation and trends in other countries have indicated that the university has also an obligation to the larger community in addition to its functions of teaching the young and conducting research[1]. If such is the role of universities, the disputes arising in the field of activities of the university cannot be adequately dealt with by purely legalistic approach generally visible in court rooms. Yet, in the absence of a specialist forum, the disputes involving universities land in the courts.

13. As pointed out here-in-before, since there is a great rush for admission to professional colleges, especially engineering and medicine, the universities, in order to forestall any charge of nepotism or subjective preferences, proceed to introduce a written entrance test and would regulate admissions according to the merit disclosed by the test. The written entry test extends equal opportunity to every one taking the test to establish his/her merit. This test was challenged on the ground that a test prescribing proficiency in technical subjects cannot be ordered by the Government. At best, it can be done by the Academic Council of the University. The Court held that the Government which run the colleges had the right to make a selection out of a large number of candidates and for this purpose, the Government can prescribe a test of its own, which was not against law.[2] Some of the Universities prescribe written test as well as *viva voce* test. The *viva voce* test was challenged on the ground that the questions and answers being oral and the view about personality being highly subjective, it must be rejected as arbitrary and untenable. The court undoubtedly negatived the argument.[3] However, in the same case, the court observed that once the order prescribing criteria for admission laid down the objective criteria and entrusted the matter of selection to the qualified persons, the court cannot obviously have any say in the matter[4] However, at a later stage, the controversy developed about the total marks assigned for *viva voce* test in relation to written test. In some cases, it was found that those who performed well in the written test went down in the merit list on account of their inadequate performance in *viva voce* test. Once this ugly feature developed, the courts again interposed by observing that:

> "When there is deterioration in moral values and corruption and nepotism are very much on the increase, allocation of a high percentage of marks for the oral interview as compared to the marks allocated for the written test cannot be accepted by the court as free from the vice of arbitrariness."[5]

The largest number of cases that flooded the court year after year commencing from 1951 till now centres round the policy of reservation of seats for members of socially and educationally backward classes of citizens, Scheduled Castes and the Scheduled Tribes. It would again not be worthwhile to refer to all the decisions save a few. In order to establish clear cleavage of opinion on a policy decision between Executive and Judiciary, one may refer at once to the earliest decision in which the Supreme Court struck down the classification in the Communal G.O. of Madras founded on the basis of religion and caste on the ground that it is opposed to the Constitution and constitutes a clear violation of the Fundamental Rights guaranteed to the citizen. The court while rejecting the submission on behalf of the State that the reservation was prescribed to give effect to Directive Principles of State Policy as envisaged in Part IV of the Constitution, ruled that the Directive Principles of State Policy have to conform to, and run as subsidiary to, the chapter on Fundamental Rights.[6] As the

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1. Dr. A.H. Hommadi, University Administration in Developing Countries.
2. *State of Andhra Pradesh* vs. *Narendra Nath*, AIR 1971 SC 2560, and the view therein expressed was re- affirmed in *Ajay Hasia* vs. *Khalid Mujib*, AIR 1981 SC 487.
3. *R. Chitrale kha* vs. *the State of Mysore*, AIR 1964 SC 1823.
4. *Ibid.* page 1831
5. *Ajay Hasia* vs. *Khalid Mujib*, AIR 1981 SC 487.
6. *State of Madras* vs. *Champakam Dorairajan* (1951) SCR 525.

State in the discharge of its Constitutional obligations increased the percentage of reservation, the courts got into deeper mire of these Policy decisions. Even though article 15(4) uses the expression, 'socially and educationally backward classes of citizens'. Caste was taken as a label indicative of such backwardness. The courts interposed saying that caste cannot be the sole or dominant test to determine social backwardness of groups or classes of citizens, while conceding that the classes of citizens who are deplorably poor automatically become socially backward. The criterion for determining social and educational backwardness was confined to caste-tag. Then the court further proceeded to decide what ought to be the fair percentage of reservation;[1] and observed that any reservation above 50% would not be fair or constitutionally valid. As the dispute repeatedly raised its head in courts, it became necessary to draw a distinction between caste and class and a set of objective principles for ascertaining social and educational backwardness. This approach of the court was reflected in a later case in which the majority decision upheld the validity of the orders made by the Government of Mysore in respect of admissions to engineering and medical colleges and observed that a classification of backward classes based on economic conditions and occupations is not bad and does not offend article 15(4) of the Constitution.

The caste was considered to be a relevant consideration but cannot be the sole or determining factor.[2] The pendulum swung the other way round when the court fell back on caste as a tag for determining social and educational backwardness. It said that there was no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the realities of life.[3] If social and educational backwardness is determined by the membership of a caste, obviously, it will have to be presumed that every member of the caste is socially and educationally backward. The assumption is not well founded.[4] In view of the vacillations of the courts, both with regard to the caste test and means test, one State made an order that cultivations of land the size of whose holding was below the prescribed minimum must be treated as socially and educationally backward and eligible for reserved seat. The court struck it down.[5] Similarly, reservation in favour of rural areas was held to be impermissible on the ground that poverty in rural areas cannot be the basis of classification to support reservation for rural areas.[6] Reservations in favour of Scheduled Castes and the Scheduled Tribes have, more or less, been upheld on the ground that the political democracy was merely a means to an end to set up a social democracy by which it was meant the social fabric resting upon the principle of 'one man, one value' which would require total abolition of social and economic inequality.[7] To conclude on this point, as late as 1985, a Constitution Bench of the Supreme Court delivered five different opinions which have not helped in improving the situation.[8]

Every State has its own local problems and has to provide for their satisfactory solution. Every State takes policy decisions and ultimately, the policy decision is interfered with by the courts. The State of Jammu & Kashmir, in order to rectify the regional imbalance in the allocation of seats for admission to the medical college, made reservation of 80% seats without identifying the areas suffering from imbalances. The court declared the reservation unconstitutional under article 14.[9] Similarly, the State of Tamil Nadu, failing in its attempt to give preference on the basis of residence in the State, adopted a novel method of creating units for admission to the medical colleges in the State. The units comprised various undergraduate colleges. The intending applicants were asked

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1. *M.R. Balaji* Vs. *State of Mysore* (1963) Supplement[1] SCR 439.
2. *R. Chitralekha* Vs. *State of Mysore*, AIR 1964 SC 1823.
3. *A. Periakaruppan* Vs. *State of Tamil Nadu*, AIR 1971 SC 2303.
4. *State of Andhra Pradesh* Vs. *U.S.V. Balram*, AIR 1972 SC 1375.
5. *Janaki Prasad Perimoo* Vs. *State of J. & K.*, AIR 1973 SC 930.
6. *State of U.P.* Vs. *Pradeep Tandon*, AIR 1975 SC 563.
7. *Akhil Bharatiya Soshit Karmachari Sangh* Vs. *Union of India*, AIR 1981 SC 298.
8. *K.C. Vasant Kumar* Vs. *State of Karnataka*, AIR 1985 SC 1495.
9. *Nishi Maghu* Vs. *State of J. & K.*, AIR 1980 SC 1973.

not to apply for any of the units but were advised to apply to that unit which was near to their place of residence, as far as possible. The unitwise preference was challenged as being violative of articles 14 and 15 on the ground that the State's action was discriminatory in character. The challenge met with the approval of the court and the order was struck down.[1] Occasionally, some reserved seats for Scheduled Castes and Scheduled Tribes were claimed by converts to Hinduism which claim was rejected by the court on the ground that a convert must be accepted by the other members of the said caste and admitted within their fold.[2] It is not intended to cover all cases but the specimen herein referred to would show the divergence in the views even in the matter of policy decisions between the Executive and the Judiciary and it is notorious that the judiciary takes time to render its decisions and the whole policy gets nullified after years leaving a number of victims who suffer on account of this uninformed judicial intervention.

14. In all cases of judicial intervention, assuming that it is right and justified, relief could never be given to those who came to the court in search of relief and to whom the court lent its helping hand. In Kerala, some years back, a common entrance test was held for admissions to the medical colleges and on the results being declared, numerous writ petitions came to be filed in the High Court of Kerala alleging nepotism and rampant malpractices. The High Court of Kerala was convinced but could not give the relief to the petitioners except saying that it would give certain directions for voiding malpractices in future. The matter came up to the Supreme Court and the entire test, its results and admissions based thereon were set aside. Now those who were admitted and whose admissions were found to be invalid lost the year and those who would have been entitled to admission but did not get them could not be given benefit of one year. This is a national loss without corresponding national gain.

15. Even in the matter of disciplinary measures, the situation is far from satisfactory. Numerous cases have come to the court questioning the decision of the University Authorities imposing punishment. Two of them may be referred to. An examiner appointed by one University in Gujarat allegedly so manipulated the marks that the gold medal in the subject could be awarded and was in fact awarded to his own student. An inquiry revealed the misconduct and after giving the concerned professor an opportunity to explain his conduct, the University Authorities imposed punishment of withdrawal of his recognition as a University teacher for a period of a few years. This decision was questioned by the professor in the High Court. The High Court desired the University Authorities to re-consider the quantum of punishment. The Executive Committee of the University, after considering the weighty observations of the High Court, reiterated its earlier conclusion. The High Court, in exercise of its extraordinary jurisdiction under article 226, interfered with the punishment leaving open an unanswered question whether the High Court in exercise of its extraordinary jurisdiction can tinker with the quantum of punishment imposed by a body like the University.

The Aligarh Muslim University expelled about 13 students for a period varying from five years to the rest of the academic session, after a detailed enquiry and notice. The charge was that the students on whom punishment was imposed and several others mobbed the lodge of the Vice Chancellor, manhandled him and threatened him with his life. Some of the students from amongst the expelled students approached the High Court of Allahabad, a division bench of which after detailed analysis and examination of the points raised in the petition, dismissed the same. The petitioners before the High Court then approached the Supreme Court under article 136. The court did not decide the appeal on merits but imposed a working solution which left both sides partly dissatisfied.[3]

16. Occassionally, right to claim registration for postgraduate degree examination in the specialist branch of the post graduate medical colleges is brought to the court. Experience shows that the Court would admit the matter and

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1. *A. Periakaruppan* Vs. *State of Tamil Nadu*, AIR 1971 SC 2303.
2. Principal, *Guntur Medical College* Vs. *Mohan Rao*, AIR 1976 SC 1904.
3. *Sarvesh Narain Misra Vs. Vice-Chancellor A.M.U.*, AIR 1982 SC 843.

grant interim relief. The grant of interim relief would be more or less in terms of permitting the petitioner to attend classes. Now, it is well known that in the specialist branch for post graduate degree, the seats are very limited and they are directly linked to the available facilities. One more student participating in the courses imposes an additional burden on limited resources. In this fashion, such an outsider taking classes under the orders of the court would finish all the semesters. He is permitted to appear at the examination under the orders of the court. The feeling is that those who can afford to fight court cases can enjoy undeserved benefit of occupying a seat to which one is not entitled.

17. There are numerous other heads under which disputes involving universities are brought to the court. They drag on for years. In fact, one Vice-Chancellor narrated an interesting anecdote. He said that he has taken disciplinary action against a professor and the matter is pending in the court with a stay order and it is likely to be continued till the term of office of the Vice chancellor expired. Thereafter, some injudicious compromise may be worked out. Is this a satisfactory situation?

18. University administration is a dynamic subject because of its philosophical and methodical implications. It is philosophical because it is a way of thinking about extremely complex systems such as mangement sciences and education.[1] A sound, efficient and well-planned university administration programme is very necessary for a stable and meaningful higher education growth and development in the developing countries. Moreover, a systematic university administration programme will not only contribute to the best development of the higher educational system, but will also help the development of education as a whole with a strong filial generic relationship between higher education and general education. University administration must cater to the supervision of performance programme of the professors, development of faculties of the students, prescribed admission standards, a continuous reform of curriculum so as to keep it up-to-date, updating the library and arranging workshops and seminars. This requires specialist knowledge. Disputes involving universities have, therefore, to be handled not by a purely legalistic approach but keeping in view the obligations of the universities to the society and to the nation. Therefore, both from the point of view of specialist approach in the matter of resolving disputes involving universities and decentralisation of administration of justice with a view to reducing the pressure on High Courts and the Supreme Court, it is time to devise a forum with all-India jurisdiction in which all disputes involving universities and its affiliated colleges may be brought for their resolution.

19. The jurisdiction of such a centralised tribunal must be all enveloping. It must include disputes, controversies and causes involving universities, their financial autonomy, appointment of Vice-Chancellors, their administrative functions, their inter-relation with the State Governments, their inter-relation with affiliated colleges, admissions, disciplinary proceedings, *et al.*

20. The composition of such a tribunal can be tentatively considered. One-third members may come from the cadre of Vice-Chancellors and former Vice Chancellors, and the rest comprising of few legal academics, judges who have functioned in the High Courts, a few professors and retired officers who have worked in the Ministry of Education. It can sit in benches at various places. The jurisdiction of all courts including the High Courts to deal with disputes falling exclusively within the jurisdiction on such a tribunal must be ousted. Only an appeal to the Supreme Court of India under article 136 can be preferred against any of the decisions of the tribunal.

21. The issues which would arise for consideration in this behalf may be briefly set out:—

(a) Should there be a central educational tribunal to deal with causes, controversies and disputes involving concerned Government, universities, professors in the universities and affiliated colleges and students, with comprehensive jurisdiction to deal with disputes involving the aforesaid parties?

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[1] A. H. Mommadi, University Administration in Developing Countries, page 25.

(b) Would such a tribunal provide an all-India perspective to educational problems which to-day it sadly lacks in view of the fact that education has more or less remained a State subject even after the amendment of Entry 25 in the Concurrent List?

(c) What ought to be the composition of such a tribunal? Should it include educationists, Vice-Chancellor, present and former, Government servants who have dealt with problems of education, lawyers and judges who have worked at the High Court level and oven social activists?

(d) Would it be conducive to improving administration of universities if the jurisdiction of the High Courts to deal with such disputes is abolished?

(e) Would decentralisation of administration of justice brought about by establishing such a tribunal achieve the desired result of expeditious disposal of such disputes so as not to render university administration stagnant?

(f) Would such a tribunal help in reducing the area of conflict between the State Government and the university in the matter of appointment of Vice Chancellors, affiliation of colleges, internal autonomy and financial autonomy?

(g) Would such a tribunal help in introducing undisturbed atmosphere in universities for pursuit of excellence?

(h) Keeping in view the fact that all sorts of corrupt influences have reduced the credibility of examination system, would such a tribunal help in restoring credibility?

(i) Would the tribunal help in resolving disputes about admission to professional colleges which is a recurring phenomenon?

The Law Commission seeks the co-operation of university administrators, teachers, students, India Association of Universities and the University Grants Commission in this behalf and every suggestion will be highly appreciated.

MGIPCBE—S2—1 M of L & J/88—7-12-88—1000.