

LAW COMMISSION OF INDIA

ONE HUNDRED AND SIXTIETH REPORT

ON

AMENDMENTS TO THE ALL INDIA
COUNCIL FOR TECHNICAL EDUCATION
ACT, 1987 (ACT 52 OF 1987)

1998

JUSTICE
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Dear Dr.M.Thambi Durai,

August 6, 1998

I am forwarding herewith the One Hundred and Sixtieth Report on "Amendments to the All India Council for Technical Education Act, 1987 (Act 52 of 1987)".

The subject was taken up suo moto by the Commission in pursuance of the terms of reference of the Government's order under which the Law Commission of India was constituted.

This report addresses itself primarily to ensure coordinated and integrated development of technical education and for maintenance of standards in the context of the objectives of the All India Council for Technical Education Act, 1987. Among other clauses under section 10 of the Act, the power of the Council specified in clause (k) relates to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. The exercise of this power and function pre-supposes the ensuring of the coordinated and integrated development of technical education in consultation with the concerned authorities viz., affiliating university and the concerned State Government. Since the Supreme Court of India has interpreted the said provision in a particular manner clothing the AICTE with absolute powers, the Commission was induced to take up this matter suo motu in order to remove the doubts which have cropped up in view of the decisions of the Supreme Court referred in para 3.1 of the report. The subject is of great importance from the point of view of ensuring coordinated and integrated development of technical education, in the true spirit and to allay the apprehension that the AICTE enjoys absolute power in matters specified in the said clause, excluding any say of the affiliating university or State Government therein notwithstanding with the statutory requirement of consultation with the concerned agencies. The importance of technical education in the present day world and particularly in the Indian context needs no emphasis.

With regards,

Yours sincerely,

(B.P.JEEVAN REDDY)

Dr.M.Thambi Durai,
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and Company Affairs,
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CHAPTER-I

INTRODUCTION

1.1 The Fifteenth Law Commission was constituted with the following, inter alia, terms of reference:-

"To revise the Central Acts of general importance so as to simplifying them and to remove anomalies, ambiguities and inequities."

This report addresses itself primarily to ensure coordinated and integrated development of technical education and for maintenance of standards in the context of the objectives of the All India Council for Technical Education Act, 1987 (hereinafter referred to as the Act). Amongst other clauses under Section 10 of the Act, the power of the Council specified in clause (k) relates to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. The exercise of this power and function presupposes the ensuring of the coordinated and integrated development of technical education. The Supreme Court of India has interpreted the said provision in a particular manner discussed in succeeding chapter III and it is the interpretation placed by the Supreme Court on clause (k) of section 10 that has induced the Law Commission of India to take up this matter suo motu. Certain doubts

have cropped up in view of the decisions of the Supreme Court (see pr.3.1, infra) wherein the court held that the power to grant approval for starting new technical institutions and for introduction of new courses or programmes is vested with the Council. It may be pointed out that the true import of the expression "in consultation with the agencies concerned" occurring in section 10(k) of the AICTE Act did not receive adequate focus and consideration by the honourable Supreme Court in the said cases. The subject is of great importance from the point of view of ensuring the coordinated and integrated development of technical education in the true spirit to allay the apprehension that the AICTE enjoys the absolute power in the matters specified in the said clause excluding any say of the affiliating university or the State Government therein notwithstanding the statutory requirement of consultation with the concerned agencies. The importance of technical education in the present-day world and particularly in the Indian context needs no emphasis.

1.2 Working Paper

The Commission had prepared and circulated a working paper (Annexure-I) for eliciting the views of interested persons and bodies (paragraph 4.1, infra) the Commission is grateful to all those who have responded

by sending their views on the working paper. A gist of the comments received will be given in a later Chapter. IV of this Report.

CHAPTER-II

PURPOSE OF THE AICTE ACT, 1987 AND THE EXISTING LAW

The AICTE Act, 1987, hereinafter referred to as 'the Act', was enacted by the Parliament in the year 1987 to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is further required to evolve suitable performance appraisal system incorporating such norms and mechanism in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or detonative grants and to derecognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed.

The Council has been constituted under Section 3 of the Act comprising of the specified persons/bodies. It discharges the functions as enunciated under Section 10 of the Act as discussed elsewhere in this report.

OBJECTS AND REASONS OF THE ACT:-

The statement of objects and reasons of the Act are reproduced below from the provisions of the Bill:

"The All India Council for Technical Education (AICTE) was set upon in 1945 by a Government resolution as a National Expert Body to advise the Central and the State Governments for ensuring the coordinated development of technical education in accordance with approved standards. During the first three decades the Council functioned quite effectively and there was phenomenal development of technical education in this period. However, in recent years, a large number of private engineering colleges and polytechnics have come up in the complete disregard of the guidelines laid down by the AICTE. Most of these institutions have serious deficiencies in terms of even the rudimentary infrastructure necessary for imparting proper education and training. Barring some exceptions, there is scant regard for maintenance of educational standards.

2. Taking into account the growing erosion of standards, the Council at its meeting held in 1981 came to the conclusion that a stage had been reached when it should be vested with statutory powers to regulate and maintain standards of technical education in the country. In pursuance of these and other recommendations, a National Working Group was set up in November, 1985 to look into the role of the AICTE. The National Working Group recommended that in order to enable the AICTE to play its role effectively, it shall have to be vested with necessary statutory authority. The National Policy on Education, 1986 also stipulated that the AICTE will be vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding or priority areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the coordinated and integrated development of technical and management education.

3. The Bill seeks to provide statutory powers to the All India Council for Technical Education to ensure:

i) proper planning and coordinated development of the technical education system throughout the country.

- ii) promotion of qualitative improvement of technical education in relation of planned qualitative growth, and
- iii) regulation of the system and proper maintenance of norms and standards.

Accordingly, the power and function assigned to the AICTE, inter alia, provide laying down norms and standards for programmes and institutions, giving approval for setting up of technical institutions, prescribing guidelines for admission of students and the charging of fees, and inspecting and evaluating institutions periodically with a view to maintaining standards and to provide recognition or withhold recognition of programmes and institutions. As part of this overall coordination and development responsibilities, the AICTE will also give grants to institutions for identified development purposes. In addition, the AICTE will promote innovation, research and development, linkages with industry and greater access to technical education by women, handicapped and the weaker sections of the society."

Section 10 occurring in CHAPTER III of the Act sets out the powers and functions of the Council. Since this report is concerned only with clause (k) in Section 10, only the relevant portion of Section 10 is set out hereinbelow. It reads:

"10. It shall be the duty of the Council to take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may
(k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned".

(Emphasis laid)

Section 11 empowers the Council to cause inspection of any institutions, university or their departments to ascertain the financial needs of

technical institutions and universities and also to ascertain the standards of teaching, examination and research in such institutions. Section 22 confers the rule making power upon the Central Government to carry out the purposes of the Act while Section 23 empowers the Council to make regulations for the very same purpose.

It would be evident from a reading of the objects and reasons appended to the Bill, the Preamble to the Act and Section 10 of the Act that the primary purpose of the Council is to ensure coordinated and integrated development of technical education and maintenance of standards. This is the oft-repeated theme and objective of the Act. The several powers specified in Section 10 including the power specified in clause (k) are subsidiary to the said purpose and object. Indeed, it is possible to reach Section 10(k) as saying that the power to grant approval for starting new technical institutions, etc., is to be exercised only when it is necessary for ensuring the coordinated and integrated development of technical education and for maintenance of standards. It is also worth mentioning that the expression "technical education" is not defined in the Act. In the interest of preserving University autonomy and with a view to avoid inconsistency between the Act and the various University Acts in force all over the country, it may be possible to read the expression "technical institution" as not including technical colleges. Be that as it may, the Supreme Court of India

has interpreted the said provision in a particular manner and it is the interpretation placed by the Supreme Court on clause (k) of Section 10 that has induced the Law Commission to take up this matter suo motu and submit this report suggesting an amendment.

CHAPTER-III

ATTENTION NOT DRAWN TOWARDS THE MATERIAL WORDS IN CLAUSE
(K) OF SECTION 10 IN CASES BEFORE THE SUPREME COURT

3.1 In UNNI KRISHAN J.P. AND OTHERS v. STATE OF ANDHRA PRADESH & OTHERS ((1993) 1 SCC 645), decided by a Constitution Bench, the broad scheme of the Act was considered in paras 189 and 190. After noticing the relevant clauses in Section 10 of the Act, the Court observed:

"Section 3 of the Act provides for the establishment of the Council while Section 10 specifies the functions of the Council. Apart from directing generally that the Council shall take all such steps as it may think fit for ensuring coordinated and integrated development of technical education and maintenance of standards, the Act specifically empowers the Council, inter alia, to "(j) fix norms and guidelines for charging tuition and other fees; (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned, and (n) take all necessary steps to prevent commercialisation of technical education. It is true, there is no express provision in the Act which says that no engineering college or any other college or institution imparting technical education shall be established except with the permission of the Council. But this may be for the reason that such a power was intended to be exercised by the Council itself if it thinks necessary to do so. We are of the opinion that the vast powers conferred upon the Council by Section 10, including those specified above, do extend to and entitle it to issue an order to the above effect. It can also say that even in the existing institutions, no new course, faculty or class shall be opened except with its approval....".

Unfortunately, no adequate focus and consideration was endowed upon the words "in consultation with the agencies concerned" occurring at the end of clause (k) of Section 10 or upon the subsidiary nature of the clause to the main object underlying the Act - much less upon the meaning and scope of the expression "technical institutions" probably for the reason that in case the Court was merely concerned with examining the general scheme of the Act and the facts of the cases before the Court did not call for an examination of the aforesaid words occurring in clause (k) of Section 10.

3.2 In the State of Tamil Nadu and Another v. Adhiyaman Educational & Research Institute and Others (1995) 4 SCC 104, a two-Judge Bench of the Supreme Court examined at length the scheme and sweep of the Act as well as the scheme and ambit of two State enactments, namely, Tamil Nadu Private Colleges (Regulation) Act, 1976 (and the rules made thereunder) and the Madras University Act, 1923 (and the rules and statutes made thereunder). The Court held that the Act is relatable to and has been enacted under and in pursuance of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule to the Constitution. The Court also found that the aforesaid two Tamil Nadu enactments were relatable to Entry 25 of List III and accordingly held that in so far as the said enactments occupy the field occupied by the Act, the State enactments are void and inoperative

by virtue of Article 254 of the Constitution of India. It was pointed out that the said enactments had not obtained the assent of the President as contemplated by clause (2) of the said Article. The observations made in para 27 of the judgment (page 124) are relevant and are being extracted hereinbelow. Dealing with the conflict between T.N. Private Colleges (Regulation) Act and the Act, the Court observed:

"27. The provisions of the State Act enumerated above show that if it is made applicable to the technical institutions, it will overlap and will be in conflict with the provisions of the Central Act in various areas and, in particular..... granting approval for starting new technical institutions and for introduction of new courses or programmes What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable.....".

(Emphasis laid)

While examining the conflict between the Act and the Madras University Act, the Court made the following observations in para 30:

"A comparison of the Central Act and the University Act will show that as far as the institutions imparting technical education are

concerned, there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which is entrusted with the power, particularly granting approval for starting new technical institutions or introducing new courses or programmes..... Thus, so far as these matters are concerned, in the case of the institutions imparting technical education, it is not the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges..... The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University, shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act".

(Emphasis supplied)

Unfortunately again, in this decision too, no proper focus was endowed upon the last words in clause (k) of Section 10, namely, "in consultation with the agencies concerned" nor upon the other matters relevant in construing Section 10 and clause (k) therein. Evidently, they were not specifically brought to the notice of the Court while considering the issue of power to grant approval for the establishment of a technical institution. It may be noted that according to the Act, the power and function of the Council to grant approval for starting new technical institutions and for introduction of new courses or programmes is not absolute or exclusive; the Act contemplates this power being exercised "in consultation with the agencies concerned" and only for achieving the main purpose and

object of the Act. The "agencies concerned" must necessarily include the University which has to grant affiliation and the State Government wherever there is a State enactment governing or touching upon the grant of approval for starting new technical institutions and for introduction of new courses or programmes.

3.3 Effect of the decisions of the Supreme Court on the role of Universities with regard to function under clause (k) of Section 10

The restriction placed upon the University not to stipulate any condition for affiliation different from the conditions imposed by the Council renders the Universities mere appendages to the Council and their powers nugatory. So far as the State Governments are concerned, their statutory powers under the State enactments like the Tamil Nadu Act of 1976 are completely rendered ineffective and unenforceable. It is arguable whether the Act contemplated such a serious and all-pervasive consequence and to say that had it intended to do so, it would have expressed its intention in clearer and emphatic language.

3.4 In practice how the decisions of the Supreme Court is being understood:-

However, the decision of the Supreme Court in State of Tamil Nadu & Another v. Adhiyaman Educational and Research Institute and others (supra) is being

interpreted and understood as conferring upon the council the sole, exclusive and absolute power in the matter of grant of approval for starting new technical institutions including engineering colleges and for introduction of new courses or programmes in existing technical institutions. In other words, the University and the State Governments have been left with no say in the matter. Though the words "in consultation with the agencies concerned" do occur in clause (k), they are being ignored in the light of the aforesaid decision. As a matter of practice also, it appears, the Council first grants the permission to start a technical institution or a new course or programme and it is only thereafter that the institution approaches the University for grant of affiliation. The University thinks that it is faced with a "fiat accompli". It is well to recall that prior to the enactment of 1987 Act, and particularly the decision of the Supreme Court aforesaid, the grant of approval for establishing a new technical institution or for starting new courses or programmes in existing technical institutions was within the exclusive domain of the University and/or the State Government. But, after the enactment of the said Act and particularly after the judgment aforesaid, the State Government has been excluded altogether from the arena and the role of the University has also been reduced almost to nothing. Having obtained the approval from the Council, the institutions are demanding affiliation as a matter of right. It is this position which the Law

Commission thought was not consistent with the spirit and object of the 1987 Act nor with the "University autonomy" nor with the provisions of the various State enactments.

3.5 Relevant constitutional provisions and their effect:-

In this connection, it may be recalled that 'Education' was previously in the State List and it is only by virtue of the 42nd Amendment that the subject of Education was brought into the Concurrent List. Prior to the said Amendment Act the power of Parliament, in the matter of education, was confined to Entries 63 to 66 in List I. Entry 63 deals with certain specified Universities like Banaras Hindu University, Aligarh Muslim University and Delhi University while Entry 64 deals with institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance. Entry 65 deals with Union agencies and institutions for professional, vocational and scientific or technical training, promotion of special studies or research and scientific or technical assistance in the investigation or detection of crime. Entry 66 which is the only relevant entry in this behalf reads: "Coordination and determination of standards in institutions for higher education or research and scientific and technical

institutions". In other words, prior to the 42nd Amendment Act, the power of the Parliament was confined only to coordination and determination of standards in the institutions mentioned in Entry 66 while the 'Education', as a subject, was solely within the sphere of the States. By virtue of the said Amendment Act, the Parliament has been empowered to make a law on the subject of education as well which necessarily means that any law made by a State Legislature, whether prior to or after the Parliamentary enactment, inconsistent with the Parliamentary enactment, is void to the extent of inconsistency. It is this principle which has been relied upon by the Supreme Court in Adhiyaman case and in yet another later decision in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamikal Medical Educational Charitable Trust v. State of Tamil Nadu & Ors (1996(2) SCALE 103) to hold that the provisions of the State enactments including University enactments, in so far as they are inconsistent with 1987 Act are void by virtue of Article 254 of the Constitution. It appears that the State enactments including those pertaining to the Universities have not obtained the assent of the President within the meaning of clause (2) of Article 254. As a matter of fact, however, several enactments made by State Legislatures require the permission of the State Government for establishing an educational institution which may include a technical institution as well. Similarly, State enactments pertaining to Universities (i.e., State enactments establishing

Universities within their respective territories) empower the Universities to stipulate such conditions for grant of affiliation by the University as they think appropriate consistent with the enactment.

3.6 Need to clarify the aforesaid doubts:-

It is obvious from the scheme and content of 1987 Act, that the said Act did not contemplate the undoing of all the aforesaid State enactments and to confer exclusive power upon the Council to grant approval for starting technical institutions or for starting new courses and programmes in the existing institutions though it may be that is said to be the unintended effect. In the above situation, the Law Commission has been of the opinion that it is not advisable to eliminate the Universities and the State Governments altogether in the matter of grant of approval. It has been also of the opinion that conferment of absolute authority on the individual or agency in such important matters is not conducive to public good. The Law Commission has also been of the opinion that it is necessary to emphasise and restore the concept of 'University autonomy' and its power as well as the role of the State Governments in the matter. The Law Commission also took notice of the provisions contained in Sections 10A to 10C of the Indian Medical Council Act (and similar provisions in the Dentists Act) and the Regulations made thereunder which confer the power to

grant approval for establishing a medical college upon the Central Government alone no doubt in consultation with the affiliating University, Indian Medical Council and the concerned State Government.

3.7 Gist of the questionnaire:-

Accordingly, a questionnaire was prepared and circulated by the Law Commission. The questionnaire (Annexure-I) was to the following effect:

"(a) Whether the proposed amendment should be in the following manner:

'(k) grant approval for starting new technical institutions and for introduction of new courses or programmes --

(i) in consultation with the agencies concerned, and

(ii) in the case of institutions proposed to be affiliated or already affiliated to a University, with the concurrence of that University.'

(b) Whether the existing Section 10(k) should be deleted and instead a new Section 10A on the lines of Section 10-A of the Indian Medical Council Act, 1956 cited above, should be incorporated to carry out these functions?

(c) Whether there is necessity of making any other radical changes in the Act to achieve the objectives for improving the technical education in the country?"

CHAPTER-IV

GENERAL FEATURES OF RESPONSE ON THE WORKING PAPER

4.1 In response to the above questionnaire the Law Commission has received a large number of responses. The All India Council for Technical Education, Association of the Indian Universities representing the Universities in the country, State Governments of Kerala, Tamil Nadu, Orissa, Jammu & Kashmir, Himachal Pradesh, Punjab and West Bengal, the All India Management Association, Indian Society for Technical Education, the Director General of Employment & Training, Ministry of Labour, Government of India, the Ministry of Urban Affairs, Government of India, the Ministry of Industry (Industrial Development), Government of India and the University Grants Commission (U.G.C.) have sent their responses which are analysed hereunder:

4.2 A I C T E:

The Council has staunchly opposed any move for amending the Act. The Council has stated that the Act and the Regulations made thereunder by it do provide for consultation with the agencies concerned and in particular with the affiliating Universities and the State Governments and that in fact the Council is

consulting them in every case of approval. Accordingly, the Council says that the proposal put forward by the Law Commission should be dropped. The Council has further stated that so far as the affiliation of colleges is concerned it is the exclusive prerogative of the Universities and that is in no way interfered with by the 1987 Act. Similarly, it is stated, in respect of polytechnics it is the State Government or the Directorate of Technical Education which has the right to affiliate them and their programmes and that power too has not been interfered with in any manner by the 1987 Act.

4.2 Government of Punjab and West Bengal

These two Governments have supported the first alternative (a) in the questionnaire issued by the Law Commission.

4.3 Governments of Himachal Pradesh, Jammu & Kashmir and Orissa.

These three Governments have opted for proposal (b) contained in the questionnaire of the Law Commission. In other words, these Governments want the present clause (k) in Section 10 be deleted and in its place a new Section on the lines of Section 10-A of the Indian Medical Council Act, 1956 be incorporated.

4.4 Governments of Tamil Nadu and Kerala

These two Governments have stated that besides the Council and the University concerned, the State Governments should also have a say in the matter of establishment of technical institutions while affiliation should be left to the University concerned. According to them, the consent of State Government should be obtained before any technical institution is allowed to be established or any new course or programme is allowed to be introduced in an existing technical institution. Subject to the above, the Tamil Nadu Government has supported proposal (a) in the questionnaire.

4.5 Association of Indian Universities

After receiving the questionnaire from the Law Commission the AIU appears to have communicated the said questionnaire to all the Universities in the country. Many of the Universities have sent their responses to the AIU which in turn has apprised the Law Commission of the said views. While some of the Universities have supported proposal (a), some other Universities have supported proposal (b) in the questionnaire. All the Universities, however, have agreed that the power to grant approval for establishing technical institutions or for permitting introduction of new courses/programmes should not be left to the Council and not, at any rate, to the Council exclusively. They have pleaded strongly

for the concept of 'University autonomy' and have also explained the significance of the role of the State Governments in the said matter. By and large, their submission is that while establishment of technical institutions must be left to the State Governments, affiliation and introduction of new courses/programmes should be within the exclusive domain of the University.

Some of the Universities, however, have put forward certain definite proposals which may be mentioned in brief.

4.5.1 The North Gujarat University has submitted that as a matter of policy the Council should operate only at the macro level while the Universities should be allowed freely to operate at the micro level. In other words, according to this University, the Council should concern itself only with the coordination and maintenance of standards of education, inspection and monitoring of the quality of instruction but not with the establishment of the technical institutions, introduction of new courses or with the affiliation. These matters, says the University, must be left to the Universities and the State Governments, as the case may be, as provided in the relevant State enactments.

4.5.2 The Kumoan University has submitted that by conferring the power of establishment of technical institutions upon the Council, the University autonomy

has practically been destroyed which, according to it, is wholly undesirable. It has also submitted that under the Council's regime there has been a mushroom growth of technical institutions which has in no way contributed to the maintenance of standards and quality of education.

4.5.3 The Satya Sai Institute of Higher Learning has expressed the apprehension that the Council may be influenced by the philosophy of the market place as against the Universities which are wedded to the pursuit of knowledge. The University must be left free to evolve its own syllabi and courses of study, etc. It has also expressed an apprehension that unless checked now, the Universities will be reduced to the position of hand-maiden of a regulatory authority.

4.5.4 The Kuvempu University has submitted that the Council should have no say whatsoever in the matters within the seisin of University according to the concerned University Act. According to this University, the Universities should be left free to affiliate as well as to permit the establishment of colleges, universities and courses.

4.5.5 The Osmania University has submitted that a University is an independent and autonomous body created by a statute and has been conferred with exclusive power to permit the establishment of colleges and introduction

of courses under the Act. This power of the University should in no way be taken away, says this University. It is also submitted that power to start institutions and courses cannot be vested in the Council and that it is structurally not equipped to deal with the said aspect.

4.5.6 Devi Ahalya University has submitted that while the establishment of technical institutions should be within the exclusive jurisdiction of the University, the Council should concern itself only with inspection and maintenance and coordination of standards of education in these institutions.

4.6 All India Management Association

This association has supported proposal (a) in the questionnaire. At the same time it has suggested that the law should provide a time limit for grant of approval or refusal as the case may be, of affiliation by the University and for grant of permission by the University and/or by the State Government. It has also suggested that the Council should create a monitoring body, preferably presided over by a retired High Court Judge, to keep an eye upon and to monitor the standards of education in the technical institutions in the country.

4.7 Indian Society for Technical Education

This Society has supported proposal (a) in the questionnaire.

4.8 Director General of Employment & Training,
Ministry of Labour, Government of India.

The Directorate has supported proposal (a) in the questionnaire.

4.9 Ministry of Urban Affairs, Government of India
has supported proposal (b) in the questionnaire.

4.10 Ministry of Industry (Industrial Development),
Government of India:

This Ministry has taken the view that apart from others, the Ministry of Industry should also be consulted before granting approval for the establishment of a technical institution or for introduction of new courses.

4.11 The University Grants Commission: The U.G.C. has expressed the view that while the Council should concern itself only with coordination and maintenance of standards, the State Governments should be empowered to permit the establishment of technical institutions and

that the affiliation as well as introduction of new courses should be within the exclusive province of the University.

CHAPTER-V

RECOMMENDATION

5.1 Need for reform of law:- The various view points placed before the Commission have been considered. While it is not possible to agree with all the differing and varying view points, it appears abundantly clear that clause (k) in Section 10 of the Act does require to be amended and clarified. Of course, it is not possible nor desirable to say that the expression "technical institution" should be so defined as to exclude engineering and other technical colleges from its purview. In view of the dominant object and purpose underlying the Act, it is not possible or desirable to exclude institutions of higher learning from its ambit. At the same time, it is eminently desirable and necessary to balance the power of the Council with the powers of the Universities and the State Governments. The various State enactments which provide for the permission of the State Government for the establishment of these institutions and the University enactments which empower the Universities to stipulate appropriate conditions for affiliation and for introduction of new courses/programmes, should be respected, no doubt, in consonance with the dominant and primary object and purpose of the Act. At the same time it is necessary to introduce an element of openness, transparency and fairness in the working of the Council, University and

the State Government concerned. None of them should be allowed to sit over a proposal indefinitely. Each of them should exercise its power keeping in mind the cause of education and public good. They should also be free to devise policy decisions on questions like the number of technical institutions to be permitted in a State, region or district (to check mushroom growth as has happened in the case of legal education in some States like Andhra Pradesh). They should accord equal rights to all in the matter of establishment of technical institutions and other allied matters irrespective of caste, creed or religion. No preference or special rights should be recognised for the reason that considerations of caste, creed or religion have no relevance to the establishment of, or to the quality of education imparted in a technical institution.

5.2 Recommendations: Accordingly, the Law Commission recommends that present clause (k) in Section 10 of the All India Council for Technical Education Act be deleted and the subsequent clauses in Section 10 be appropriately re-alphabeted and a new section - Section 10-A, be inserted to the following effect:

"10-A. Grant of approval for starting technical institutions and new Courses and Programmes:

(1) A person desiring to establish a new technical institution shall apply to the Council for approval in accordance with the provisions of this Act

and the Rules and the Regulations made thereunder. The Council shall dispose of the application according to law within four months of the receipt of the application provided the application complies with all the requirements of law. If there are any defects in the application (or if it is found to be incomplete in any respect) the same shall be pointed out to the applicant within a period of three months and if the application is received by the Council after removal of such defects, the same shall be dealt with and disposed of according to law within four months of such receipt.

(2)(a) The application mentioned in sub-section (1) shall be accompanied by a letter of consent from the concerned State Government or the Administration of the Union Territory, as the case may be;

(b) An application for grant of consent made to a State Government shall be considered fairly and promptly and in accordance with law in force in the State. The State Government shall communicate its consent or refusal, as the case may be, to the applicant within a period of 90 days of the receipt of the application.

(c) In case the application contemplated by sub-section (1) is found to be defective (or incomplete for non-compliance with any of the provisions of the law or the Rules applicable in that behalf) the same shall be communicated to the applicant within 90 days of the receipt of the application. In such a case, the

time-limit and the consequence provided in clause (b) of this sub-section shall not operate. The period of 90 days shall again be calculated from the date of receipt of the application after removing the defects.

(3)(a) Where the technical institution proposed to be established proposes to affiliate itself to a University, the application contemplated by sub-section (1) shall be accompanied by a letter of the University, agreeing to consider the request of the institution for affiliation after it obtains the approval from the Council. In such a case, the approval granted by the Council shall become effective and operative only on the grant of affiliation by the University, whether provisional or final.

(b) The provisions contained in clauses (b) and (c) of sub-section (2) shall apply equally in the case of an application for grant of affiliation to be submitted after obtaining the approval of the Council provided that the time limit in the case of University shall be 180 days.

(4) No technical institution shall commence functioning except after obtaining the approval of the Council under this section and the affiliation of the concerned University wherever affiliation is proposed with a University.

CHAPTER-VI

CONCLUSION

6.1 The Law Commission recommends that present clause (k) in Section 10 of the All India Council for Technical Education Act be deleted and the subsequent clauses in Section 10 be appropriately re-alphabeted and a new section - Section 10-A, be inserted to the following effect:

"10-A. Grant of approval for starting technical institutions and new Courses and Programmes:

(1) A person desiring to establish a new technical institution shall apply to the Council for approval in accordance with the provisions of this Act and the Rules and the Regulations made thereunder. The Council shall dispose of the application according to law within four months of the receipt of the application provided the application complies with all the requirements of law. If there are any defects in the application (or if it is found to be incomplete in any respect) the same shall be pointed out to the applicant within a period of three months and if the application is received by the Council after removal of such defects, the same shall be dealt with and disposed of according to law within four months of such receipt.

(2)(a) The application mentioned in sub-section (1) shall be accompanied by a letter of consent from the concerned State Government or the Administration of the Union Territory, as the case may be;

(b) An application for grant of consent made to a State Government shall be considered fairly and promptly and in accordance with law in force in the State. The State Government shall communicate its consent or refusal, as the case may be, to the applicant within a period of 90 days of the receipt of the application.

(c) In case the application contemplated by sub-section (1) is found to be defective (or incomplete for non-compliance with any of the provisions of the law or the Rules applicable in that behalf) the same shall be communicated to the applicant within 90 days of the receipt of the application. In such a case, the time-limit and the consequence provided in clause (b) of this sub-section shall not operate. The period of 90 days shall again be calculated from the date of receipt of the application after removing the defects.

(3)(a) Where the technical institution proposed to be established proposes to affiliate itself to a University, the application contemplated by sub-section (1) shall be accompanied by a letter of the University, agreeing to consider the request of the institution for affiliation after it obtains the approval from the council. In such a case, the approval

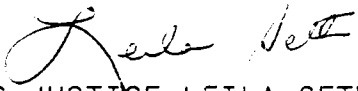

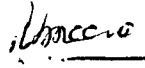
granted by the Council shall become effective and operative only on the grant of affiliation by the University, whether provisional or final.

(b) The provisions contained in clauses (b) and (c) of sub-section (2) shall apply equally in the case of an application for grant of affiliation to be submitted after obtaining the approval of the Council provided that the time limit in the case of University shall be 180 days.

(4) No technical institution shall commence functioning except after obtaining the approval of the Council under this section and the affiliation of the concerned University wherever affiliation is proposed with a University."

We recommend accordingly.


(MR. JUSTICE B.P. JEEVAN REDDY) (RETD)
CHAIRMAN

 (MS. JUSTICE LEILA SETH) (RETD) MEMBER
 (DR. N.M. GHATATE) MEMBER
 (R.L. MEENA) MEMBER-SECRETARY

DATED: 28th July, 1998

F.No.6(3)(45)/98-LC(LS)



R. L. MEENA
Member - Secretary &
Secretary to the Govt. of India
Tel. 3383382

विधि आयोग
LAW COMMISSION
भारत सरकार
GOVERNMENT OF INDIA
शास्त्री भवन
SHASTRI BHAWAN
नई दिल्ली
NEW DELHI-110 001

January 29, 1998

To

(as per list enclosed)

Subject:- Working Paper on amendments to the All India Council for Technical Education Act, 1987 (Act 52 of 1987).

Sir/Madam,

The Law Commission of India has been entrusted, inter alia, with the task of revising the Central Acts so as to simplify them and to remove anomalies, ambiguities and inequities. In pursuance thereof, the Commission intends to undertake a study of the AICTE Act, particularly Clause (k) of Section 10 thereof to allay the apprehensions that All India Council for Technical Education enjoys the vast powers in the matter specified in the said clause notwithstanding the statutory requirement of consultation with the concerned agencies.

Accordingly, the Law Commission has drawn up a Working Paper containing the questionnaire for the 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, request you to convey your views on the questionnaire so as to reach the Commission at the earliest and in any case not later than 15th March, 1998. The Commission would also be grateful, if copies of this Working Paper are made and distributed to the concerned with a request to directly transmit their views to the Law Commission.

Yours faithfully,

(R.L.Meena)

Encl: As stated

Working Paper on Amendments to the All India Council for
Technical Education Act, 1987 (Act 52 of 1987)

CHAPTER I

1.1 Background of the Paper:-

This paper is primarily concerned with making amendment (as proposed in para 2.8, *infra*) in clause (k) of Section 10 of the All India Council for Technical Education Act, 1987 which specifies one of the functions of the All India Council for Technical Education (AICTE) viz., to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. The proposed amendment is conceived to allay the apprehension that AICTE enjoys the absolute power in the matters specified in the said sub-clause excluding any say of the affiliating university therein notwithstanding the statutory requirement of consultation with the concerned agencies. Such doubts have cropped up in view of the decisions of the Supreme Court in cases (see pr.2.2., *infra*) wherein the court held that the power to grant approval for starting new technical institutions and for introduction of new courses or programmes is vested with the Council. It may be pointed out that the true import of the expression "in consultation with the agencies concerned" occurring in section 10(k) of the AICTE Act did not receive adequate focus and

consideration by the honourable Supreme Court in the said cases.

1.2 Purpose of the AICTE Act, 1987:-

The AICTE Act, 1987, hereinafter referred to as 'the Act', was enacted by the Parliament in the year 1987 to provide for the establishment of an All India Council for Technical Education with a view to the proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matter connected therewith. The Council is also required to regulate and ensure proper maintenance of norms and standards in the technical education system. The Council is further required to evolve suitable performance appraisal system incorporating such norms and mechanism in enforcing their accountability. It is also required to provide guidelines for admission of students and has power to withhold or discontinue grants and to derecognise the institutions where norms and standards laid down by it and directions given by it from time to time are not followed.

The Council has been constituted under Section 3 of the Act comprising of the specified persons/bodies. It discharges the functions as enunciated under section 10 of the Act as discussed elsewhere in this paper.

1.3 Objects and reasons of the Act:-

The statement of objects and reasons of the Act are reproduced below from the provisions of the Bill:

"The All India Council for Technical Education (AICTE) was set up in 1945 by a Government resolution as a National Expert body to advise the Central and the State Governments for ensuring the co-ordinated development of technical education in accordance with approved standards. During the first three decades the Council functioned quite effectively and there was phenomenal development of technical education in this period. However, in recent years, a large number of private engineering colleges and polytechnics have come up in complete disregard of the guidelines, laid down by the AICTE. Most of these institutions have serious deficiencies in terms of even the rudimentary infrastructure necessary for imparting proper education and training. Barring some exceptions, there is scant regard for maintenance of educational standards.

2. Taking into account the growing erosion of standards, the Council at its meeting held in 1981 came to the conclusion that a stage had been reached when it should be vested with statutory powers to regulate and maintain standards of technical education

in the country. In pursuance of these and other recommendations, a National Working Group was set up in November 1985 to look into the role of the AICTE. The National Working Group recommended that in order to enable the AICTE to play its role effectively, it shall have to be vested with necessary statutory authority. The National Policy on Education, 1986, also stipulated that the AICTE will be vested with statutory authority for planning, formulation and the maintenance of norms and standards, accreditation, funding of priority areas, monitoring and evaluation, maintaining parity of certificates and awards and ensuring the co-ordinated and integrated development of technical and management education.

3. The Bill seeks to provide statutory powers to the All India Council for Technical Education to ensure:

- (i) proper planning and co-ordinated development of the technical education system throughout the country.
- (ii) promotion of qualitative improvement of technical education in relation of planned quantitative growth, and
- (iii) regulation of the system and proper maintenance of norms and standards.

Accordingly, the power and functions assigned to the AICTE, inter alia, provide laying down norms and standards for programmes and institutions, giving approval for setting up of technical institutions, prescribing guidelines for admission of students and the charging of fees, and inspecting and evaluating institutions periodically with a view to maintaining standards and to provide recognition or withhold recognition of programmes and institutions. As part of this overall co-ordination and development responsibilities, the AICTE will also give grants to institutions for identified developmental purposes. In addition, the AICTE will promote innovation, research and development, linkages with industry and greater access to technical education by women, handicapped, and the weaker sections of the society."

CHAPTER-II

Provision regarding the role of affiliating Universities in the performance of the function of the AICTE in granting approval for starting new technical institutions and for introduction of new courses or programmes

2.1 Section 10 occurring in Chapter III sets out the powers and functions of the Council. The Act provides for obtaining consultation by the Council from the concerned agencies, which includes the affiliating university also, for granting approval for starting new technical institutions and for introduction of new courses or programmes. In so far as is relevant for the present purpose, Section 10 reads as follows:-

"10. It shall be the duty of the Council to take all such steps as it may think fit for ensuring co-ordinated and integrated development of technical education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned:"

(Emphasis laid)

Section 11 empowers the Council to cause inspection of any institution, university or their departments to ascertain the financial needs of technical institutions and universities and also to ascertain the standards of teaching, examination and research in such institutions.

It may not be necessary to notice the other provisions of the Act except Sections 22 and 23. Section 22 empowers the Central Government to make rules for carrying out the purposes of the Act, while Section 23 empowers the Council to make regulations for the very same purpose.

2.2 Attention not drawn towards the material words in clause (k) of Section 10 in cases before the Supreme Court:-

In Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others [(1993) 1 S.C.C. 645] (decided by a Constitution Bench), the broad scheme of the Act was considered in paras 189 and 190. After noticing the relevant clauses in Section 10 of the Act, the Court observed:-

"Section 3 of the Act provides for the establishment of the Council while Section 10 specifies the functions of the Council. Apart from directing generally that the Council shall take all such steps as it may think fit for ensuring coordinate and integrated development of technical education and maintenance of standards, the Act specifically

contd....

empowers the council, inter alia, to "(j) fix norms and guidelines for charging tuition and other fees; (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned, and (n) take all necessary steps to prevent commercialisation of technical education. It is true, there is no express provision in the Act which says that no engineering college or any other college or institution imparting technical education shall be established except with the permission of the Council. But this may be for the reason that such a power was intended to be exercised by the Council itself if it thinks necessary to do so. We are of the opinion that the vast powers conferred upon the Council by Section 10, including those specified above, do extend to and entitle it to issue an order to the above effect. It can also say that even in the existing institutions, no new course, faculty or class shall be opened except with its approval...."

Unfortunately, no adequate focus and consideration was endowed upon the words "in consultation with the agencies concerned" occurring at the end of clause (k) of Section 10 probably for the reason that in that case the Court was merely concerned with examining the general scheme of the Act and the

facts of the cases before the Court did not call for an examination of the aforesaid words occurring in clause (k) of Section 10.

In the State of Tamil Nadu and Another v. Adhiyaman Educational & Research Institute and Others, (1995) 4 S.C.C. 104, the two-Judge Bench of the Supreme Court examined at length the scheme and sweep of the Act as well as the scheme and ambit of two State enactments, namely, Tamil Nadu Private Colleges (Regulation) Act, 1976 (and the rules made thereunder) and the Madras University Act, 1923 (and the rules and statutes made thereunder). The Court held that the Act is relatable to and has been enacted under and in pursuance of Entry 66 of List I and Entry 25 of List III of the Seventh Schedule to the Constitution. The Court also found that the aforesaid two Tamil Nadu enactments were relatable to Entry 25 of List III and accordingly held that in so far as the said enactments occupy the field occupied by the Act, the State enactments are void and inoperative by virtue of article 254 of the Constitution of India. It was pointed out that the said enactments had not obtained the assent of the President as contemplated by clause (2) of the said article. The observations made in para 27 of the judgment (page 124) are relevant and are being extracted out below, dealing with the conflict between T.N.Private Colleges (Regulation) Act and the Act:-

"27. The provisions of the State Act enumerated above show that if it is made applicable to the technical institutions, it will overlap and will be in conflict

with the provisions of the Central Act in various areas and, in particular,..... granting approval for starting new technical institutions and for introduction of new courses or programmes..... What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable...."

(Emphasis laid)

While examining the conflict between the Act and the Madras University Act, the Court made the following observations in para 30:-

"A comparison of the Central Act and the University Act will show that as far as the institutions

imparting technical education are concerned there is a conflict between and overlapping of the functions of the Council and the University. Under Section 10 of the Central Act, it is the Council which entrusted with the power, particularly granting approval for starting new technical institutions or introducing new courses or programmes Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the engineering colleges The provisions of the University Act regarding affiliation of technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however, remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with the norms and guidelines prescribed by the Council in respect of matters entrusted to it under Section 10 of the Central Act."

Unfortunately again, in this decision too, no proper focus was endowed upon the last words in clause (k) of Section 10, namely, "in consultation with the agencies concerned". Evidently, they were not specifically brought to the notice of the Court while considering the issue of power to grant approval for the establishment of a technical institution. It may be noted that according to the Act, the power and function of the Council to grant approval for starting new technical institutions and for introduction of new courses or programmes is not absolute or exclusive; the Act contemplates this power being exercised "in consultation with the agencies concerned". The "agencies concerned" must necessarily include the University which has to grant affiliation and the State Government wherever there is a State enactment governing or touching upon the grant of approval for starting new technical institutions and for introduction of new courses or programmes.

2.3 Effect of the decisions of the Supreme Court on the role of Universities with regard to function under clause (k) of Section 10:-

The effect of the latter decision of the Supreme Court in the State of Tamil Nadu and another v. Adhiyaman Educational & Research Institute and Others, however, is that the AICTE has been made the sole, exclusive and the absolute authority in the matter of grant of approval for starting new technical institutions and for introduction of new courses or programmes in existing technical institutions. Prima facie,

it appears that the University and the State Government have been excluded from projecting their views in the matter of granting approval for starting new technical institutions and for introduction of new courses or programmes. Such state of affairs does not appear to be consistent with the express provisions of the AICTE Act as cited above. Such a course would have the effect of whittling down the autonomy of the university and the important role of the State Governments. It is true that it was because of the onset of the decline in standard of technical education that the said Act was brought into force and hence the role of the Council came into being. But this circumstance cannot render the role of the universities and the State Governments nugatory in expressing their side of the view, in this regard.

The important role of the universities in this regard can be pointed out in a nutshell. Unless affiliation is granted by a university, no institution including technical institution can survive. As pointed out in Unni Krishnan J.P. & Others v. State of Andhra Pradesh (supra) neither the constituent colleges (of the University) nor affiliated colleges (private educational institutions) conduct their own examinations. They prepare the students for the examination to be held by the affiliating university and the degrees or certificates are also granted by the affiliating universities (see para 204 of the judgment). The primary importance and the crucial role of the affiliating university cannot, therefore, be ignored or under estimated. Affiliation is neither a matter of course nor is it an empty formality.

Affiliation is the life-blood of any educational institution of this nature. Without it, no technical institution can exist.

2.4 Relevant provisions under the Indian Medical Council Act regarding the functions of the University concerning similar subject under consideration:According to the 1992 amendment to the Indian Medical Council Act, 1956, the power to permit the establishment of a medical college is vested in the Central Government. The provisions in Section 10A to 10C and the guidelines issued thereunder show that before permitting such establishment, the opinion and views of Indian Medical Council and the concerned university is also obtained.

An extract of relevant provisions of Section 10A of the Indian Medical Council Act, 1956 and the Regulations made thereunder is quoted below for reference:

"10-A. Permission for establishment of new medical college, new course of study, etc.-

- (1)....
- (2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of Clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.
- (b).....

(3).....

(4) The Central Government may, after considering the scheme and recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred in sub-section (7) either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned reasonable opportunity of being heard:

....."

The term "person" is explained in this section to include "university".

Para 3 of the Regulations made under section 10A, which are called "Establishment of New Medical Colleges, opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulations, 1993" prescribes the qualifying criteria. Insofar as relevant, the said para reads as follows: "The eligible organisations shall abide by Indian Medical Council Act, 1956 as modified from time to time and the Regulations framed thereunder and shall qualify to apply for permission to establish new medical colleges only if the following conditions are fulfilled: (3) the Essentiality Certificate regarding the desirability and

feasibility of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material is available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration; (4) that consent of affiliation for the proposed medical college has been obtained by the applicant from a recognised University."

It would thus appear that obtaining of application from a University is a condition precedent for applying for permission to establish a medical college, apart from an 'essentiality certificate' from the concerned State Government. It is equally relevant to note that even for applying for starting new courses or for increasing the strength in a medical college, the permission of the affiliating University for the purpose is made a condition precedent under the said Regulations.

2.5 Relevant provisions under the Dentists Act, 1948 concerning the 'university':-

A reference to the provisions of Section 10-A to 10-C of the Act shows that the power to permit the establishment of a new dental college, new course of study or training (including a post-graduate course of study or training) etc. is vested in the Central Government. The provisions in Section 10-A to 10-C and the Regulations made thereunder are

in pari materia to the provisions of the 1992 amendment made in the Indian Medical Council Act, 1956 and the Regulations cited above.

2.6 Relevant provisions under some Statutes regarding the representation of the universities in the composition of respective Councils:-

(i) In fact under Section 3(3)(b) of the Gujarat Medical Council Act, 1967, it is envisaged that the Medical Council shall comprise of among others,

"(b) one member from each University established by law in the State which has a medical faculty, elected by members of the medical faculty of the University from amongst members thereof who are practitioners, and"

(ii) Similarly under Section 3(3) of the Maharashtra Medical Council Act, 1965, it is provided that the said Medical Council shall comprise, inter-alia of:-

"(b) one member from each university established by law in the State which has a medical faculty, elected by members of the medical faculty of the University from amongst members thereof who are practitioners;"

(iii) Position under the Indian Medical Council Act, 1956 regarding representation of Universities on that Council

Section 3 of this Act provides for the constitution and composition of the Medical Council of India. Section 3(1)(b) of the Act provides for inclusion of:-

"(b) one member from each University, to be elected from amongst the members of the medical faculty of the University by members of the Senate of the University or in case the University has no senate, by members of the Court:"

(iv) Position under the Dentists Act, 1948 :-

Section 3 of this Act deals with the Constitution and composition of the Dental Council of India. It provides that the Council shall comprise, inter alia, of the following members:-

"(d) one member from each university established by law in the States which grants a recognised dental qualification, to be elected by the members of the Senate of the University, or in case the university has no Senate, by the members of the Court, from amongst the members of the Dental Faculty of the

University or in case the University has no Dental Faculty, from amongst the members of the Medical Faculty thereof;

"(e) one member to represent each State nominated by the Government of each such State from among persons registered either in a medical register or a dental register of the State;"

A cursory glance to the aforequoted provisions shows that there has been statutory recognition of the representation of Universities in the respective Councils. The role of each university is crucial in evolving policies/decisions of the respective councils. Through their presence the Universities can have their say in evolving policies/decisions of the respective councils to achieve the objectives of the enactments. It goes without saying that each university has a say in making recommendations for granting approval concerning the establishment of a new institution or introduction of new courses.

2.7 Need for amending the clause (k) of Section 10 of the Act:-

It has become necessary to amend clause (k) of Section 10 of the Act to expressly restore the important role of the universities in the matter of grant of approval for starting new technical institutions and for introduction of new courses or programmes so that full meaning can be given to the aforesaid last words in clause (k) of Section 10 of the Act,

otherwise the observations of the Hon'ble Supreme Court made in the decision in Unni Krishnan, J.P. & Others v. State of Andhra Pradesh & Ors. (supra) and in the Adhiyaman Educational & Research Institute case (supra) are being understood as excluding any role to the University or the Government in the matter of establishment of new technical institutions concerned. It is also a matter for consideration whether conferment of such exclusive power upon the AICTE is advisable in the circumstances apart from the fact that such conferment of absolute power is inconsistent with the express provisions of the Act. The over-riding principle in such matters is that no power should be concentrated absolutely in the hands of one person or one agency. It is also necessary to emphasise and give full meaning to the aforesaid last words in clause (k) of Section 10. This has become necessary in view of the decisions of the Supreme Court referred to above. It is equally necessary to restore the important role of the Universities in the matter of establishment of such colleges and courses. As pointed out earlier, according to 1992 Amendment to the Indian Medical Council Act, 1956 and the Dentists Act, 1948 and the Regulations made thereunder the power to permit the establishment of a medical college/Dental college is vested in the Central Government. Before even applying for permission for such establishment, an essentiality certificate from the concerned State Government and a letter of consent of affiliation from the concerned university is made a condition Precedent. IMC is also one of the bodies to be consulted and is not made the sole authority in the matter. Besides it is also required to be considered whether there is good reason for conferment of such exclusive

power upon the AICTE when in the case of similar statutory professional Councils, only a recommendatory role is assigned to them.

It may be pointed out that the role of the AICTE is advisory in nature in many respects as is the role of Indian Medical Council. Under section 10 (1) of the AICTE Act, 1987, it may advise to the Central Government in respect of grant of charter to any professional body or institution in the field of technical education; under Section 10(t), it may advise the UGC for declaring any institution imparting technical education as a deemed university. It may be pertinent to refer to the decision in Ajay Kumar Singh v. State of Bihar, JT 1994 (2) SC 662 (673), wherein the Supreme Court interpreted the term "may also advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India" used under section 20 of the IMC Act, as of advisory in nature. Thus it may also be relevant to examine whether the role of AICTE (Council) be also organised in tune with the IMC, Dental Council of India, to have consistency in the discharge of functions as between the various statutory professional councils.

Be that as it may, it is necessary to emphasise and give full meaning to the aforesaid last words in clause (k) of Section 10 of the AICTE Act.

2.8 In order to make the position clear, the Law Commission proposes to suggest the amendment of clause (k) of Section 10 of the Act. A questionnaire in respect of the

proposed amendment is prepared below for your kind perusal:

(a) Whether the proposed amendment should be in the following manner:-

"(k) grant approval for starting new technical institutions and for introduction of new courses or programmes -

(i) in consultation with the agencies concerned, and

(ii) in the case of institutions proposed to be affiliated or already affiliated to a university, with the concurrence of that university.

(b) Whether the existing Section 10(k) should be deleted and instead a new Section 10-A on the lines of the Section 10-A of the Indian Medical Council Act, 1956 cited above, should be incorporated to carry out these functions?

(c) Whether there is necessity of making any other radical changes in the Act to achieve the objectives for improving the technical education in the country?

The Law Commission invites views/comments on the subject and requests you to send your valued opinions on the issues raised in the questionnaire within six weeks.