

# WEST BENGAL COLLEGE & UNIVERSITY TEACHERS' ASSOCIATION

(REGISTERED UNDER ACT XXI 1960)

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## **Respected Sir/Madam**

We, on behalf of our age old Teachers' Organisation, would like to draw your attention regarding our observation on the Draft **Higher Education Commission of India Act 2018.**

### **WBCUTA observation on The Higher Education Commission of India Act 2018**

The idea of reforming higher education has not come as a bolt from the blue. The debate started in 2006 when National Knowledge Commission was set up under Mr.Sam Pitroda who was instrumental for revolution in communication technology in India. NKC was established directly under the Prime Minister. The report to the Nation by NKC led to a nationwide debate. Though NKC opined that, "An Independent Regulatory Authority for Higher Education (IRAHE) should be formed. IRAHE should be independent of all stakeholders and be established by an Act of Parliament. The UGC would focus on disbursement of grants and maintaining public institutions of higher learning."

The Government of India was forced to establish another committee under the Chairmanship of Prof. Yashpal, former Chairman of UGC. Prof Yashpal's recommendation was "The academic functions of all the professional bodies (such as UGC, AICTE, MCI, and BCI) should be subsumed under an apex body for higher education called the National Commission for Higher Education and Research (NCHER), formed through Constitutional amendment." But he never opined for delinking power of granting funds from this central regulatory authority.

By withdrawing financial powers from the regulator and handing them over to the central government, and by giving the HECI unilateral and absolute powers to authorise, monitor, shut down, and recommend disinvestment from Higher Educational, the Draft Bill will expose higher education in the country

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to ideological manipulation, loss of much needed diversity as well as academic standards, fee hikes, and profiteering. It will also contribute to greater marginalisation and disadvantage of millions of students, particularly from the socially oppressed sections, and imperil many educational institutions..

The terms of the proposed HECI Act 2018 are such that they may not improve the quality of education or make much needed autonomy a reality. For, the main features of the Bill tend towards centralisation of powers and control over academic initiatives. This is because of a mismatch between what is proposed by MHRD and incorporated in the body of the proposed Act. In fact, the main provisions of the Act tend to contradict the objectives it has set out to achieve.

Logically, the ideas expressed in the 'Function' clause, should lead to a decentralised structure, which would permit ample space for innovative academic practices. The draft, on the other hand, tends more towards centralisation and concentration of powers. Solving this contradiction would necessitate a much closer and self-critical review of the draft. Perhaps discarding the present draft and reworking it to realise autonomy and decentralisation could be an option worth considering.

HECI Act 2018 is mainly a management remedy, and not sufficiently rooted in academic imperatives. The problems that higher education is facing are not essentially because of inefficient management, but because of the inability of the system to ensure quality. Whether a new apex body which would exercise 'national' control is the ideal solution for it deserves very serious consideration, in a politically federal and culturally diverse country like India.

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The UGC was set up by the UGC Act 1956, with great enthusiasm and expectation. It performed two main functions—allocation of funds and academic direction. Over the years, it became very unwieldy and unable to do anything but the distribution of funds. The allocation of grant for purposes of higher education is not merely a financial transaction of apportioning the grant, but has to be based on careful academic planning. Perhaps the weakness of the UGC was its inability to establish this connection and therefore it failed to be academically innovative and creative. But this should not be the reason for repealing of UGC Act. WBCUTA opines that, rather than dismantling the University Grants Commission, the attempt must be to strengthen its consultative and enabling architecture, in such a way that promotes access, diversity, and quality.

The proposed Higher Education Commission is a highly centralised body manned by a Chairman, Vice Chairman and twelve members, supported by an Advisory Council, consisting of Union MHRD Minister in chair and Chairman/Vice Chairman of the State Higher Education Councils as members along with the members of the Commission. How could a minister act as an advisor to a Commission formed by him! The Commission is an isolated organisation without any window to the society.

The only opening is the Advisory Council which is required to meet twice in a year. But it would not fulfill the role of a democratic body, capable of providing a check to the possible exercise of authoritarian powers. The management of higher education in the country would thus be left in the hands of a committee of fourteen who have no prescribed channels of

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feedback. Therefore, even if well intentioned, the commission would be starved of necessary democratic connection.

In our opinion, academic and administrative autonomy are necessary if the universities are to become real places of learning. But autonomy without democratization and social control is likely to lead to an authoritarian system. The proposed HECI Act 2018 is silent about democratization viz state intervention. The commission's powers to make regulations are likely to impinge upon autonomy rather than promote it. It has assumed powers far greater than what was exercised by the UGC. Moreover, UGC was essentially an advisory and recommending body in academic matters.

One discernible tendency in the draft HECI Act is to centralise the powers to shape the nature of education. Education was a State subject; it was changed into the concurrent list. The proposed Act raises the apprehension whether it would finally become a Central subject. The powers of the State governments to administer education are being severely curbed. By placing this HECI Act, MHRD, Government of India is trying to control and shape the education system. The federal system acts as a bulwark against any sorts of fascistic design in the country.

The way the draft HECI Act is subject to democratic and academic discussions country-wide is in stark contrast to the manner in which the Union government handled other similar pieces of legislation including the proposed Act to regulate the entry and operations of foreign educational service providers and the HECI Act for accreditation of educational institutions.

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In fact we are surprised to note:

- (i) the Rajya Sabha Secretary gave an insertion in the leading dailies on 10 June last on behalf of the Department Related Parliamentary Standing Committee on Human Resource Development inviting suggestions on the subject 'issues relating to functioning of UGC' and
- (ii) (ii) the suggestions were supposed to reach the Standing Committee by 25 June 2018. Then how the MHRD can prepare and circulate a Draft Act for the formation of HECI repealing the UGC Act 1956 on 27 June? Has the Government waited for the opinion of the Standing Committee before formulation of the Draft Act? So it is now clear that seeking suggestions by the Standing Committee was a ploy only and the decision for repealing the UGC Act was taken much earlier by the Union Government. We may also observe that the UGC has been made subservient to the Union Government by the ruling powers since its inception. So this was imperative on the government to create a congenial ambience so that the UGC can discharge its duties for which it was formed in 1956.

Considering the above, we urge the government to withdraw this draft HECI Act forthwith and initiate a discussion with teachers' and students' organisations, academicians and other stakeholders throughout the country for suggestions as to how the functioning of UGC and other regulatory bodies may be improved.

However, we are placing on record our observations to certain clauses proposed in this HECI Act :

**Section 3.6:** While the UGC Act 1956 clearly mandated that the Chairman of the Commission “shall be chosen from among persons who are not officers of the Government or any State Government” – precisely with a purpose to

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maintain the autonomy of the Commission from any form of direct interference by governments – Section 3.6 of the Draft HECI Bill drops this necessary condition for the Chairperson's appointment. The Chairperson of the proposed Higher Education Commission can now be selected from among functionaries of the Central or State governments, provided he/she satisfies either of two conditions listed under Section 3.6 – none of which comes into conflict with his/her holding an office of the government at the time of appointment.

Not only that, the same Section 3.6 makes the appointment of the Chairperson of HECI incumbent on the decision of a Search-Cum-Selection-Committee (ScSc), headed by Cabinet Secretary and flanked by the Secretary of Higher Education (both GoI employees). The principle of non-intervention that was enshrined in the letter of the UGC Act, as an acknowledgment of the need for autonomy in educational policy-making, is discarded by the proposed HECI Bill with regard to the very setting up of the Commission.

**Section 3.8:** It is apparent from Section 3 of the Draft Bill that teachers have been pushed out of the Commission, almost entirely. Though the total number of members of the Commission has gone up from ten to twelve, the representation of teachers has been ominously reduced to only **two**. Whereas the earlier UGC Act ensured a minimum of four teachers in the 10-member Council and that at least 6 were not officers of State/Central governments (Section 5.3, UGC Act 1956), the HECI is proposed to be packed with government nominees, chairpersons of regulatory bodies, university administrators, but no teachers. In a body that is purportedly responsible for determining quality of education, learning outcomes, and other functions of academic content, we find it shocking that university and college professors

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— the only group qualified to deliver in this respect — have been so purposely reduced to an ineffectual minority. We, therefore recommend more representation from academic communities (professors, full time researchers, independent and otherwise). We also note that the underprivileged sections have not even found mention in the Draft Act.

In the UGC Act, it is mentioned that not less than one-half of the members of the commission must not be officers of the Central Government or of any State Government has been omitted, leaving the door open for a commission comprising an overwhelming majority of government officers. Further, inclusion of a “doyen of industry”, where there are no definitions of who so qualifies to be termed as such, is highly inadvisable.

**Sections 8 and 9:** The Draft HECI Bill provides for Chairpersons and Members to declare the extent of their interest, “whether direct or indirect and whether pecuniary or otherwise, in any institution of research or higher educational institution or in any other professional or financial activity.” We find that the measures to address conflict of interest in the Draft Bill to be highly inadequate — mere publicity on the HECI website and self-recusal from participation in relevant decisions can be no deterrent to attempts to mould national educational policy for self-interest.

**Section 15:** Although the HECI Act is being touted as a means of ensuring both quality of education as well as greater autonomy to universities, Section 15.3 of the Draft Bill empowers the HECI to lead to a further degradation of both:

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**Section15.3(a):** The HECI is empowered to specify “learning outcomes”, which invokes formulaic expectations of what university education must be oriented towards. Even the UGC’s efforts towards framing model syllabi as guides for all colleges/universities across the country – under the guise of a Choice Based Credit System (CBCS) – have been severally pointed out as inadequate, given the disparate conditions and infrastructures of learning in widely divergent local contexts.

To argue that SC/ST/OBC students, with their histories of deprivation, must achieve the same “learning outcomes” as those coming from metropolitan contexts of privilege is to argue against the very logic of reservation in public institutions. This will eventually push the frontiers of higher education towards a standard quantum of ‘merit’ (measured as learning outcome), thus forcing those who cannot live up to it to either drop out of universities or fail miserably. While very general directions as what should be the curricular design of what, say, an undergraduate programme should guarantee its learners are desirable, any measure that stamps out diversity as well as innovation is unwelcome.

**Section15.3(b):** The HECI is also empowered, like the UGC was, to “lay down standards of teaching / assessment / research”. It should be noted that the UGC could, correctly, only set minimum standards, so the proposed HECI has been given extraordinary powers of undermining institutional autonomy. The substantive struggle of universities with the UGC has been in the last few years, to ensure that its minimum regulations do not achieve the status of maximality. It is imperative to maintain institutional autonomy if quality is to be ensured, and an enabling framework that allows universities to harmonise their standards with the regulator’s expectations must be created.

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**Section15.3(c):** The HECI has been given the power to carry out a yearly academic performance evaluation of universities. We find this bureaucratisation unacceptable and completely unfeasible. To audit the performance of public institutions and ascertain their fitness to function is to also come up with differential funding parameters for different orders of 'performance'. This kind of graded financial liability (on the part of the government) towards grossly disparate contexts of performance across HEIs will not only create a few centres for excellence at the cost of all others, but will also strengthen existing hierarchies between regional and metropolitan institutions. Further, it is highly unlikely that the Commission will be able to do any kind of meaningful yearly evaluation of the 789 universities that the UGC website says are in existence today. All that will result from this power is a highly partial process that will disrupt the functioning of universities, and convert 'performance' into a punitive category.

**Section15.3(d):** The Draft Bill makes the HECI inherit the UGC's function of promoting research, except that the divestment of its financial powers means that it will only be able to "coordinate with Government for provision of adequate funding for research": This will make all HEIs subject to the interests of the political parties in power, and subject directly to their ideological manipulation. Compared to the UGC, which had financial powers, and because it was composed of academics and was tasked with making decisions after consultation with universities, this will make funding for research contingent on political considerations rather than those attendant on international standards of knowledge creation. This will have an adverse effect on the standards of research carried out in Indian universities. Furthermore, it also appears that the HECI will no longer have funds of its own to promote research like the UGC did, so that the Commission's role in furthering research (through fellowships, research projects, travel grants) will be non-existent.

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**Section 15.3(e):** The HECI is supposed to evolve a robust accreditation system for evaluation of academic outcomes by various HEIs, thereby subsuming the role of the National Accreditation and Assessment Council. This proposal is to tie in NAAC scores to funding allocation, at the very least (as well as performance targets), in a manner that will only prove detrimental to the development of teaching and research in newer and less privileged institutions. One presumes that the metric that will be employed is that the lower the NAAC grade, the lower the government funding and the more impossible the improvement. Such policy direction has already been hinted at in the recommendations of the Subramanian Committee Report for New Education Policy 2016. This will only institute a terrible vicious cycle, which makes performance the policy-basis for funding – rather than the other way round.

**Section 15.3(g) and 15.4(f):** The HECI is empowered to “order closure of institutions which fail to adhere to minimum standards without affecting the student’s interest or fail to get accreditation within the specified period”. This power to close down institutions in a country that fails to provide enough HEIs has to be wielded with great caution, and with checks and balances, and a clear and detailed specification of what protecting the student’s interest must entail. While there is no question of granting impunity to incidents of fraud being perpetrated on students and their families — and it should be noted that this is a penal offence which can easily be prosecuted — the non-availability of enough publicly funded HEIs is the major reason why students flock to such institutions at exorbitant costs. Arbitrary closure, or threats thereof, shall not only deprive students of the only education that they can access, it will also put the livelihood of teachers and staff employed in these institutions in peril. Finally, such unbridled power shall in all likelihood fuel corruption.

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**Section 15.4(c) and 15.4(d):** The HECI is empowered to specify standards for grant of autonomy and Graded Autonomy. The proposed move, which has in fact already been initiated by the UGC, is intended to divest the state's investment in HEIs that perform according to standards it sets. This will entail a marketisation of HEIs, fuelling fee hikes and greater job insecurity, and will invariably lead to a complete constriction of access to the better performing institutions to poor and disadvantaged students (who constitute the bulk of the population entering higher education).

**Section 15.4(g):** The HECI is also tasked with the development of “norms and mechanisms to measure the effectiveness of programmes and employability of the graduates”. The criteria used to determine “employability” do not come from within the educational domain, as the availability of employment in the country has to do with macro-economic factors. To transfer the burden of employability onto the HEIs, in the form of a conditionality for funding or as a performance index, is unfair.

**Section 15.4(i):** The HECI is empowered to “specify norms and processes for fixing of fee” and to advise governments on “steps to be taken to make education affordable for all”. While The UGC Act had a very detailed section on fees (as well as subsequent regulations) on fees and a prohibition on donations, the HECI Bill makes this singularly most important provision mere matters of advice. This also signals the move from a state subsidy model to a loan-assistance policy for select private individuals – thus making way for a general user-pay principle in the funding of public education.

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**Section 15.7:** The HECI shall also “discharge such other functions in relation to the promotion, coordination and maintenance of standards in higher education and research as the Central Government may subject to the provisions of this Act,

prescribe.” With the HECI’s forfeiture of minimum structural autonomy from the government of the day, it is now perfectly possible for the latter to dictate the terms and conditions of enrolment as well as content of academic courses in the name of ensuring uniformity.

Although the HECI Act is being publicised as giving autonomy to HEIs, the provisions of the Draft Bill actually invest the HECI and the Central Government with extraordinary powers, without any checks and balances. Individual HEIs have no power to demand consultation, inquiry, or even appeal against any of its decisions. The HECI Act sets up the regulator as a gatekeeper who manages the market and the tractability of the workforce it produces — the goal is to create an authority that has total control over the market, including the power to expel those that exact continued subsidy from the state. Compliance will demand from HEIs absolute obedience, to an authority that is ruled by political expediency and with very little expertise in education.

**Section 16.1:** By this provision, no higher educational institutions established after this Bill is passed can start awarding degrees unless it is authorised, and Universities established before it will be considered authorised for **three years** only, after which it may be revoked. This will create grave uncertainty in well-established institutions, and will certainly harm students’ interests, who may be enrolled in courses for longer than three year duration. As the section makes authorisation contingent on achieving a set of goals over a decade, this will lead to re-orientations in HEI policies based not on academic considerations, but severe pressure on administrators and teaching communities. The provision for imposition of penalties contained in Section 23 may be useful for a political party

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wishing to enforce instant obedience, but are of no value to those actually working in the education sector, where a culture of reasoned argument and careful consideration must be the norm.

**Section 24:** Sections 12(e)-(g) of the UGC Act 1956 prescribed an advisory role for the Commission, with regard to information necessary or sought by the Central or State Governments. The Draft HECI Bill 2018 performs a complete inversion of this. It mandates the setting up of an Advisory Council within the Commission, chaired by the “Union Minister for Human Resources Development” and with “Chairpersons/Vice-Chairpersons of all State Councils for Higher Education as members”. (Section 24.1) The presence of a government-controlled advisory organ in the Commission, headed by the HRD Minister, puts all pretensions of legislative autonomy to rest and structurally subordinates higher education to the political intentions of the government of the day.

**Section 26:** The provision that the HECI Act will have an overriding effect is extremely disturbing, as this will effectively nullify the various Acts of Parliament that have constituted existing universities. These acts have promoted a diversity of orientation in institutions, suited to the plural needs of our diverse country, and have maintained the distinctiveness and relevance of our institutions to their local and national milieu. Reducing all higher educational institutions to a dull uniformity will not produce a responsive higher education. Since HECI’s “Regulations relating to promoting quality and setting standards shall have prior approval of Central Government” (Section 29), it is the government who will effectively run every single HEI in the country.

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**In our opinion, the Draft HECI Act 2018 will entrench a regulatory system that will just liquidate otherwise all the investments in education that the Indian people have made through the taxes they have paid for the last seven decades. The “changing priorities of higher education” – as the Draft Bill 2018 claims to address – do not warrant the setting up of a Commission that delinks regulatory functions from funding commitments. By desiccating the UGC’s grant-disbursal powers and locating them solely in the Central government, the proposed Commission will become a means to ensuring ideological compliance from universities as the pre-condition for public funding. This further produces the risk of a punitive disciplining of institutions, through a deliberate withdrawal of funds by the government at will, on the slightest pretext. Most significantly, not only does the Draft HECI Bill violate the very idea of autonomy that the UGC was modeled on, but it also goes a long way in insisting that universities and other higher education institutions be reduced to organs of the government.**



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