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BETTER LAWS. BETTER GOVERNANCE

A PROPOSAL TO REFORM THE UNIVERSITY GRANTS COMMISSION

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CHAPTER I: INTRODUCTION

The purpose of this vision document is to consider how a new regulator to replace the University Grants Commission (“UGC”) should be structured. This document is neither a holistic vision for higher education in India, nor does it attempt to take sides on the myriad contentious issues that need to be addressed in the higher education sector. Rather, its aim is more modest – it is a vision for what a pan-India regulator should look like if the higher education sector in India is to truly flourish.

The UGC today finds itself in an environment for which it was not designed. In terms of quantity, the UGC has to regulate many more institutions than it had to at the time of its establishment in 1956. Just to give a flavour of what this means statistically – as of today, over 3.6 crore students are enrolled in various universities and colleges in India, i.e. an approximate increase of 1700 percent of students since independence.¹ Equally, in terms of quality, the UGC has to regulate different kinds of institutions, offering a diverse number of courses which did not exist even a few decades ago. To add to this, the UGC has to coordinate its efforts with a number of other regulators in the space which have emerged since 1956. The UGC’s task, thus, has become extremely complex. Not surprisingly, its institutional structure is creaking under the weight of this enormous burden placed upon its limited capacity.

Critically, the challenge before the UGC today is not simply about the resolution of particular discrete issues (for example, what should the policy relating to fee regulation be; how must new pedagogical methods be introduced in universities; how must the grant-disbursement system be fine-tuned etc.), but rather, about the regulation of a *complex system* of higher education which has developed around it. In short, we must think about how one can design a strong institutional structure that is capable of handling the systemic challenges, and providing direction to the future growth of higher education in India. The UGC was a lone house in a desert, whereas a regulator today needs to find its place in a messy metropolis.

A vast literature attests to the myriad problems faced in the higher education sector. Many of these go beyond what a singular legislative reform Bill can effectively address. Our purpose here, thus, is to identify only those issues which pertain to the UGC and consider how these

¹ Chauhan, ‘Foreword’, in Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi), xvi; See also, statistics on the number universities and colleges provided in the All India Survey of Higher Education Report for the year 2017-2018, available at <<http://aishe.nic.in/aishe/viewDocument.action?documentId=245>> (last accessed on 28 October 2018).

challenges can be met in terms of putting in place an appropriate and effective institutional structure armed with the appropriate regulatory tools. In brief, in our view, a reformed regulator must be internally decentralised (as opposed to being a single monolithic body which decides on all issues), possess an array of regulatory tools to work *with* higher educational institutions (rather than simply command them to operate in certain ways through rule-based compliance), have clear processes in place to work with other regulators to simplify the bureaucratic hurdles faced by higher educational institutions (as opposed to the current framework where no clear processes for co-ordination exist), and have the capacity to plan for the future of India's higher education in a clear and systematic manner (a function which is not performed in any significant way by the UGC currently).

With this aim, this vision document first outlines the institutional problems faced by the UGC, and then proposes an alternate framework by which they may be addressed in any reform Bill seeking to replace the UGC, as for example the recent Higher Education Commission of India Bill, 2018. It is our view that such a reform Bill must not only focus on the *what* of regulation, i.e. the principles that the sector should aspire to adhere to, but also the *how*, i.e. what should the institutional structure of the regulator be and what tools must it have at its disposal to achieve its objectives.

CHAPTER II: THE FAILINGS OF THE UGC

This chapter first discusses the context in which the UGC was instituted in 1956 and the paradigm changes that have occurred in the higher education landscape since then. On this basis, it identifies the regulatory issues that need be addressed in a reform Bill.

A. The UGC in 1956 and Today: Paradigm Changes in the Higher Education Landscape

In 1956, the UGC came into being as the sole regulator in the higher education sector. This was independent India's first attempt at regulation of the higher education sector. At that point in time, the sector was relatively homogenous and small: India had 20 universities, 500 colleges and about two hundred thousand students.² The primary concern of higher education regulation and the primary function of the UGC was the disbursement of funds and the regulation of fees in the interests of access to education for all.³ Although the UGC's domain also included the "promotion and co-ordination of University education and ... the determination and maintenance of standards of teaching, examination and research in Universities,"⁴ comparatively limited forays were made into these matters in the actual operation of the UGC. Importantly, the primary regulatory tools envisaged in the University Grants Commission Act, 1956 ("UGC Act") were the UGC's power of inspection of universities (to ascertain financial needs and academic standards),⁵ and the power to "recommend to any University the measures necessary for the improvement of University education and advise the University upon action to be taken for the purpose of implementing such recommendation", coupled with the power to withhold funding if such recommendations were not met.⁶ Given the relatively small number of universities and limited variety of courses offered in 1956, it was plausible for the UGC to act as an apex entity regulating all universities through focused grant-making, close inspections and tailored recommendations.

The higher education landscape has, however, seen drastic changes since 1956. The number of universities and colleges has exponentially increased.⁷ Today, India has about 903

² Chauhan, 'Foreword', in Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi), xvi.

³ Sections 12(a)-(c), (cc), (ccc), 12A and 12B, University Grants Commission Act, 1956.

⁴ Section 12, University Grants Commission Act, 1956.

⁵ Section 13, University Grants Commission Act, 1956.

⁶ Section 14, University Grants Commission Act, 1956.

⁷ Based on statistics on the growth of universities and colleges provided by the All India Survey of Higher Education (AISHE) Report for the year 2017-2018; Ellie, 'India will have the largest student population by 2025, study predicts', *Times Higher Education* (10 December 2015) <

universities and 39,050 colleges with an enrolment of over 3.6 crore students.⁸ The variety of courses offered bear little resemblance to what existed six decades ago; increased, and contentious, privatisation looms large,⁹ and the haphazard emergence of technical/professional/skill-based educational institutions to cater to employability concerns are some of the major shifts in the higher education landscape.¹⁰ Despite this growth and such shifts, the sector is still unable to keep pace with the demands of population growth.

Equally, major developments have occurred in the regulatory space: a variety of supplementary regulatory systems have emerged around the UGC, some of which have been outlined in this part. First, the National Accreditation and Assessment Council (“NAAC”) was instituted as an autonomous institution of the UGC to ensure “conformance to the standards of quality in terms of ... performance related to the educational processes and outcomes, curriculum coverage, teaching-learning processes, faculty, research, infrastructure, learning resources, organisation, governance, financial well-being and student services.” Second, the Ministry of Human Resources and Development established the Rashtriya Uchchar Shiksha Abhiyan (“RUSA”), administered by a National Mission Authority to cater to funding shortfalls at state universities. Third, the All India Council for Technical Education (“AICTE”) was formed to ensure proper planning and coordinated development of the technical education system throughout the country. Fourth, various professional councils, such as the Bar Council of India, the Medical Council of India, the Council of Architecture etc. were established to, *inter alia*, regulate technical education in their particular fields. Fifth, the National Testing Agency (“NTA”) was established as an autonomous organisation to conduct entrance examinations. For simplicity, this complex regulatory architecture is explained pictorially in the Annexure.

Thus, today, the UGC no longer regulates a set number of universities, as much as it regulates an entire *system* of higher education with enormous internal complexity.

<https://www.timeshighereducation.com/news/india-will-have-the-largest-student-population-by-2025-study-predicts> (last accessed on 5 November 2018).

⁸ Based on statistics on the number of universities and colleges provided in the All India Survey of Higher Education Report for the year 2017-2018, available at <<http://aishe.nic.in/aishe/viewDocument.action?documentId=245>> (last accessed on 28 October 2018)

⁹ Agarwal, ‘Higher Education in India: The Need for Change Working’, Working Paper No. 180, Indian Council for Research on international Economic Relations (2006).

¹⁰ Agarwal, ‘Higher Education in India: The Need for Change Working’, Working Paper No. 180, Indian Council for Research on international Economic Relations (2006).

B. Regulatory Challenges Faced by the UGC

With these developments, the UGC today finds itself facing enormous challenges. While the emergence of parallel regulators has eased its burden to an extent, it has come under severe criticism for failing to discharge its duties effectively. Detailed literature records the following major criticisms:

- (a) the UGC's lack of capacity and competence to effectively regulate thousands of higher educational institutions in India, offering a diverse variety of courses;¹¹ here, the UGC's usual method of inspections and tailored recommendations runs into capacity problems, or involves an unfeasible, and often counter-productive scheme of micro-management.
- (b) inefficient coordination with other bodies and councils inhabiting the regulatory space, owing to multiplicity of regulators;¹² leading to an unplanned development of higher education and bureaucratic hurdles for universities regulated by multiple bodies;¹³
- (c) inability to create facilitative spaces for universities and colleges to innovate, expand and acquire a certain level of administrative, financial and academic autonomy, where basic academic standards have been surpassed;¹⁴
- (d) nepotism, corruption and bad governance in the functioning of the UGC itself.¹⁵

¹¹ See generally, Report of the Committee to Advise on the Renovation and Rejuvenation of Higher Education (Yashpal Committee) 1993, and National Knowledge Commission's Report to the Nation, 2009.

¹² See generally, Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi); '*The making and unmaking of UGC*', June 24 2016, LiveMint, available at <<https://www.livemint.com/Opinion/e14HCY9YVd87gtpVAf0xGP/The-making-and-unmaking-of-UGC.html>> (last accessed on 5 November 2018); See, for example, Report of the Committee to Advise on the Renovation and Rejuvenation of Higher Education (Yashpal Committee) 1993, available at <<https://www.aicte-india.org/downloads/yashpal-committee-report.pdf>> (last accessed on 29 October 2018).

¹³ Centre for Civil Society, Report on Regulatory Structure of Higher Education India, available at <<https://ccs.in/sites/default/files/research/research-regulatory-structure-of-higher-education-in-india.pdf>> (last accessed on 03 November 2018).

¹⁴ See, for example, Report of the Committee to Advise on the Renovation and Rejuvenation of Higher Education (Yashpal Committee) 1993, available at <<https://www.aicte-india.org/downloads/yashpal-committee-report.pdf>> (last accessed on 29 October 2018); Agarwal, 'Higher Education in India: The Need for Change Working', Working Paper No. 180, Indian Council for Research on international Economic Relations (2006). The recent University Grants Commission (Categorization of Universities (only) for Grant of Graded Autonomy) Regulations, 2018 are a notable exception.

In our view, the various shortcomings of the UGC can be condensed into seven themes: first, problems with the capacity of the UGC; second, problems with its institutional design in terms of excessive centralisation of functions; third, the absence of clear co-ordination with other regulators in the field; fourth, the absence of appropriate regulatory tools to deal with the changed higher education landscape; fifth, its failure to attend to the planning of India's higher education future; sixth, the need for greater transparency and good governance in the UGC; and finally, the absence of basic principles representing best practices in the field of higher education and national policy concerns in the parent legislation of the UGC to guide its regulatory activity.

Importantly, we note at this juncture that what we have enumerated above, and what we are concerned with in this document, are *first* order problems with the UGC, i.e. issues that are required to be dealt with at the level of the parent legislation, i.e. a reform Bill. This means that a host of *second* order problems, which are no doubt critical, are excluded from our discussion. Thus, for example, criticisms on the precise content of the UGC's recent Graded Autonomy Regulations, the specific norms regulating the disbursement of funds, i.e. whether they are scheme-based, need-based, outcome or performance based, whether the norms required for the first academic operation of a university are too stringent or too lax etc. are not issues that are relevant in the design of the reform Bill.¹⁶ Rather, these are matters that a new regulator must decide through regulations in its wisdom (subject to public debate and participation). All that the reform Bill can ensure is that the first order issues are dealt with properly, so as to provide a sound platform for the effective and principled resolution of second order problems.

We now turn to these seven first order problems.

First, the UGC as an institution suffers from a general lack of capacity. It simply does not have sufficient staff, infrastructure and financial and human resources required to handle the sheer amount of work it is required to do.¹⁷

¹⁵ See, for example, Report of the Committee to Advise on the Renovation and Rejuvenation of Higher Education (Yashpal Committee) 1993, available at <<https://www.aicte-india.org/downloads/yashpal-committee-report.pdf>> (last accessed on 29 October 2018).

¹⁶ For such criticisms, see generally, Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi).

¹⁷ This is based on our discussions with an ex-member of the UGC.

Second, the UGC currently functions as a singular body comprising 12 individuals with the power to create and enforce regulations. This means that any and all matters within its mandate must pass through this single centralised channel. This level of centralisation bottles up tasks and brings inordinate bureaucratisation to the working of the UGC. Moreover, aside from the appointment of ad-hoc experts, there is no institutional space for those with specific competencies to perform tasks that fall within the ambit of the UGC.¹⁸ This monolithic institutional structure is unnecessarily narrow.

Third, there are currently no clear processes by which the UGC interacts with the various other regulators in this field, leading to regulatory overlaps.¹⁹

Fourth, the only two regulatory tools envisaged in the UGC Act are rule-based compliance by universities on pain of withdrawal of funding, and tailored recommendations based on inspections of individual universities.²⁰ These regulatory tools are insufficient to deal with the complex higher education landscape in the country.²¹

Fifth, owing to capacity constraints, the UGC has ceded its space of planning the growth of higher education in India in light of pressing needs of the population to a range of ad-hoc committees. The complete abdication of the critical planning function has meant that the higher education sector in India is on auto-pilot, with its objectives not being set by design but unwittingly.

Sixth, the general concern of corruption, nepotism and lack of transparency in the UGC affects the legitimacy and effectiveness of its functioning across the board.

Finally, the UGC Act simply tasks the UGC with the “determination and maintenance of standards of teaching, examination and research in Universities”. This vague formulation does not offer any further guidance on the *basic principles* which must inform the UGC’s regulation of the higher education landscape. Given that there is a broad agreement on certain fundamental norms which India’s higher education sector ought to incorporate,²² this lack of direction at the level of the parent legislation is a lacuna which requires remedy.

¹⁸ This is based on our discussions with an ex-member of the UGC.

¹⁹ See, for example, Julian, ‘Future of Indian Universities: Need for a Liberalized Legal Regime’, in Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi) 131.

²⁰ Section 12, 13 and 14, University Grants Act, 1956.

²¹ See generally, Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi). This point is explained further below.

²² These are discussed below.

Crucially, in the midst of these challenges, the UGC – as the primary regulator in the field of higher education – is unable to devote any serious attention to the most basic and fundamental task of a regulator in today’s India: planning, in a strategic and coherent fashion, the future of higher education in India. Far from engaging in any consultative and broad-based vision for the future of higher education in India,²³ the UGC has left the matter to be studied by an assortment of ad-hoc committees over the years.²⁴ Over the years, the general view has been that the higher education landscape is over-regulated and under-governed.²⁵ Unfortunately, the UGC owing to its structural deficiencies and issues of capacity, has been a significant part of this problem. The Government has on several occasions considered alternatives to the present UGC model, such as creating a super-regulator to subsume all activities of the UGC and other allied central bodies/councils,²⁶ scrapping the UGC and replacing it with competent decentralised structures etc.²⁷

As seen in this chapter, since 1956, the UGC has had to gradually shift gears from its role as a grant-making body for a handful of universities to the overarching authority for regulating higher education in India, amidst a host of other regulatory bodies. However, in practice, the UGC finds itself unable to effectively conduct the tasks a pan-Indian regulator must. To be clear, this does not mean that no progress has been made: the UGC must be credited with some notable innovations in regulation, such as the University Grants Commission (Categorization of Universities (only) for Grant of Graded Autonomy) Regulations, 2018 (“Graded Autonomy Regulations”), the development of institutions such as the NAAC, various Inter-University Centres etc., decentralisation by way of opening seven regional offices, regulation of new areas of study and courses, initiatives in the area of skill development,

²³ Agarwal, ‘Higher Education in India: The Need for Change Working’, Working Paper No. 180, Indian Council for Research on International Economic Relations (2006); Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi); National Knowledge Commission’s Report to the Nation, 2009.

²⁴ A compilation of these reports is available on the website of the UGC. <<https://www.ugc.ac.in/page/Reports.aspx>> (last accessed on 12 November 2018), Space precludes a detailed discussion on previous efforts made in this direction. For more information see, Radhakrishnan Commission (1949), Kothari Commission, 1964, Yashpal Committee (1993), Knowledge Commission (2009), Hari Gautam (2016).

²⁵ Agwarwal (ed.), *A Half-Century of Indian Higher Education: Essays by Philip G Altbach* (2012, SAGE: New Delhi).

²⁶ The proposed Higher Education Empowerment Regulation Agency (2016).

²⁷ Most recently, the Higher Education Commission of India Bill, 2018 (“HECI”); Prior to the HECI - An effort at streamlining regulatory bodies such as the UGC and AICTE was made in 2011 with the introduction of the Higher Education and Research Bill, 2011. The Bill had sought to establish a National Commission for Higher Education and Research to determine, coordinate, maintain and promote standards of higher education and research, except agricultural education and medical education. The Bill was later withdrawn as it had ignored larger questions of federal distribution of authority in higher education. The Bill also sought to do away with the UGC, the AICTE and the NCTE. The scrapping of bodies such as the UGC and AICTE was strongly opposed.

open and distance education, and a host of other reforms well-documented in its Annual Reports.²⁸ The point, rather, is that these developments have not kept pace with the paradigm changes in the underlying landscape. Indeed, the UGC has not ‘failed’, as much as run its course.

With that said, if the UGC has run its course, what then is needed? In the next chapter, we provide an alternate framework in which the issues identified above can be addressed.

²⁸ A compilation of these reports is available on the website of the UGC. <<https://www.ugc.ac.in/page/Annual-Report.aspx>> (last accessed on 12 November 2018).

CHAPTER III: THE PROPOSAL FOR REFORM

Any reform Bill must address the seven first order problems identified in the previous chapter. Accordingly, in this chapter, we propose an alternate framework which accommodates these concerns, and paves the way for a robust and effective regulator to replace the UGC. We propose that a reform Bill structure the regulator in the following manner.

The regulator should comprise 5 bodies divided on the basis of their specific tasks and competencies. The first body is a Governing Council, which stands at the helm. The Governing Council is tasked primarily with: (i) planning, in a clear and coherent fashion, India's higher education future, including making provisions for adequate funding, general capacity issues etc. (ii) coordinating efforts with other regulators (such as the AICTE, NTA, NAAC etc.) and state and central governments (including the National Mission Authority under the RUSA and key functionaries in the state governments), (iii) granting authorisation to universities for first academic operation; and (iv) resolving disputes / and ensuring an integrated functioning amongst the four bodies noted below.

These four bodies are independent Offices, dealing exclusively with matters pertaining to their specific competencies. These are: (i) the Office of Academic and Quality Standards, (ii) the Office of Financing and Fee Regulation, (iii) The Office of Administrative Affairs and, (iv) the Office of Transparency and Good Governance.

While one could no doubt divide the workload of the regulator in a number of different ways amongst the various bodies, the work streams represented by the five bodies provide — in our view — a clear and effective working division which encompass all issues that a regulator must deal with.

Broadly, the four Offices should perform the following functions:

- (a) *The Office for Academic Quality* should address matters concerning the maintenance and promotion of academic standards, including broad specifications for learning outcomes which are in consonance with the needs and realities of the different categories of higher educational institutions and cognisant of the distinctions in academic instruction, monitoring of academic performance, norms for award of degrees, norms for facilitation of higher educational institutions to innovate in matters of curriculum and course development, guidelines for faculty recruitment, improvement in pedagogical methods etc., introduction of a regime of graded

autonomy for universities, specification of the minimum eligibility conditions for the appointment of faculty, teaching and non-teaching staff etc. With the exponential growth in the number and type of institutions and courses, this is a vast field in itself and deserves dedicated attention.

- (b) *The Office of Financing and Fee Regulation* should address matters concerning the effective disbursement of grants on the one hand (which was the primary function of the UGC), and the regulation of fees for ensuring access to education for all on the other.
- (c) *The Office of Administrative Affairs* should focus on the formulation of standards for administration of higher educational institutions. This would involve looking into best practices of human resources in universities and ways in which they can be incorporated in universities, devising ways to arm the regulator with tools to identify and resolve malpractices in university administration, and developing guidelines for enforcing compliance with a range of judicial and administrative guidelines on this issue.
- (d) *The Office of Transparency and Good Governance* should focus on the transparent and open functioning of the regulator itself. This would involve ensuring that all dealings of the regulator conform to best practices of good governance, and that all information concerning the regulation of the higher educational landscape be public and easily accessible.

Importantly, we note that the Governing Council and each of the Offices must have a composition suitable to the particular function they are required to perform, and remain both independent and accountable. We are aware that, no doubt, the devil will lie in the details: the terms of reference of each of the sub-bodies/committees must be clear, precise and robust, mechanisms for communication between bodies on joint tasks must be specified and the composition of the bodies must reflect the nature of the task.

That said, we believe that an internal institutional design along these lines is a helpful way of progressing the discussion on how to replace the UGC. This is because this institutional structure addresses several first order problems enumerated above. First, it replaces the centralised decision-making structure of the UGC with a decentralised structure providing dedicated powers to bodies with competencies suited for those tasks. In this way, the institutional structure creates *space* for work to be distributed, instead of over-burdening a single body. Second, with the Governing Council freed of the specialised tasks performed by

the Offices, it can pay the requisite amount of attention to the critical issue of planning India's higher education future, including the issue of general capacity concerns in the regulator itself, and ensure proper co-ordination with other regulators — matters which are wholly neglected under the current structure of the UGC.

In our view, whilst this proposal envisages increased powers and functions of the new regulator as distributed amongst the five bodies (as opposed to the narrower formulations in Section 12 of the UGC Act), it proposes an institutional structure which allows the regulator to keep pace with the increase in its workload. It is critical, we believe, that instead of simply adding muscle by adding to the list of powers and functions wielded by the UGC, the new body must focus on the joints so as to create a nuanced institutional structure. Such a structure must be able to act with the necessary flexibility required of a pan-India regulator, and provide the necessary institutional space for dedicated efforts to be made in core areas of concern.

Third, we come to the need to arm the regulator with appropriate regulatory tools. As noted above, the UGC Act envisages two primary modes of interaction between the UGC and higher educational institutions: rule-based compliance, and inspections and recommendations. These represent what is known as a command and control model of regulation, by which the regulator specifies actions to be taken (through rules, regulations and recommendations), which are to be implemented by universities on pain of sanctions if they do not. These regulatory tools, however, represent only *some* of the ways in which the regulator may interact with higher educational institutions. Indeed, they are often highly ineffective and at times, harmful for reaching the desired outcomes. This is because, as noted above, the enormous heterogeneity and growth in the higher education landscape does not lend itself to a one-on-one parenting by the regulator. Aside from the fact that the number of institutions in existence today make the monitoring of compliance-based regulation enormously difficult, a regulator cannot possibly attend to the diverse needs of the institutions in question today by the necessarily generic character of its rules and regulations. Rather, universities ought to be facilitated to innovate internally, and be granted the maximum autonomy in matters of academic regulation, with close monitoring only of those institutions which are unable to maintain minimum standards of instruction.²⁹ Indeed, one of the primary refrains of literature concerning public policy today is also of a move away from 'compliance' and 'deterrence' approaches, towards (what are variously called) 'responsive', 'smart', 'problem-centred'

²⁹ See, for example, Julian, 'Future of Indian Universities: Need for a Liberalized Legal Regime', in Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi) 131.

regulation.³⁰ The focus of these approaches is towards *facilitating* the regulated entities to further the objectives of the system, rather than *prescribing* what is to be done.

What this means practically for the reform Bill is that the deployment of these tools be made explicit as far as the mandate of the regulator goes. For certain issues, rule-based compliance and inspections are appropriate regulatory tools. For example, issues such as permission to begin first academic operation, ensuring minimum academic standards, minimum standards in the recruitment of faculty, compliance with sexual harassment guidelines, compliance with norms for award of degrees etc. are suitable for such an approach to be adopted.

But as regards a host of other issues, the role of the regulator must be one of a facilitator, providing the necessary ground for higher educational institutions to innovate and self-regulate. Thus, issues such as design of curriculum, adoption of new pedagogical methods, introduction of faculty-centric governance models, improving student participation in governance, introduction of faculty exchange programmes, incentivisation of research and publication are best addressed at the level of the higher educational institution, and norms cannot be imposed by the regulator on pain of sanctions. Indeed, in some instances, rule-based compliance may even *inhibit* innovation, as is the case when universities are required the approach the UGC for permission to introduce new courses.³¹ In these cases, the provision of incentives for self-regulation, introduction of self-reporting requirements, institution of knowledge sharing workshops and regional and national conferences, peer-review by other universities etc. are some of the regulatory tools which may be deployed to provide universities the necessary space to innovate, and nudge them, where necessary, to do so.³² Such ‘soft’ methods of regulation are new to the Indian regulatory sphere, but going forward, we believe that their use will be critical if the higher education landscape is to progress. A regulator may prescribe and monitor minimum requirements, but it should not go further. Without the necessary innovation *within* universities, the quality of the institutions cannot

³⁰ Gunningham, ‘Enforcement and Compliance Strategies’, in Baldwin et. al., eds., Oxford Handbook of Regulation (2010, OUP: Oxford), 120.

³¹ See, for example, Julian, ‘Future of Indian Universities: Need for a Liberalized Legal Regime’, in Kumar (ed.), The Future of India Universities: Comparative and International Perspectives (2017, OUP: New Delhi) 131.

³² This is an under-researched area as far as writing on India’s higher education landscape is concerned. Some commentary may be found in Kumar (ed.), The Future of India Universities: Comparative and International Perspectives (2017, OUP: New Delhi). The UGC’s recent Graded Autonomy Guidelines are, as far as we are aware, the only major regulatory development in this area. While this is a good start, this theme deserves much greater attention than it has from participants within the system.

progress. The use of these alternate regulatory tools is one way of facilitating such innovation.

Fourth, we come to the introduction of certain basic principles which must find mention in any reform Bill. As noted above, the UGC Act contains a broad and generally worded mandate for the UGC to take “all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities.” In today’s context, the parent legislation can and must go further, by fleshing out progressive norms which must guide this general function. These are well-documented and scarcely contentious norms,³³ which simply reflect best practices universities ought to aspire to, and those that a regulator must keep in mind in its decision-making processes. These include at a minimum: (i) the facilitation of autonomy in academic, financial and administrative matters for higher educational institutions (ii) regulation of fees to ensure equity and access to education given India’s social context, (iii) ensuring global competitiveness, (iv) developing an inclusive educational framework for access of higher education to marginalised sections of society (v) ensuring, and regulating participation by non-governmental and private organisations in the future of India’s higher education sector. The introduction of such norms will ensure that the decision-making process of the regulator is guided by certain fundamental principles that ought to form the foundation for any well-functioning higher education sector anywhere in the world. These must be recognised and set as principles that any legislation must achieve.

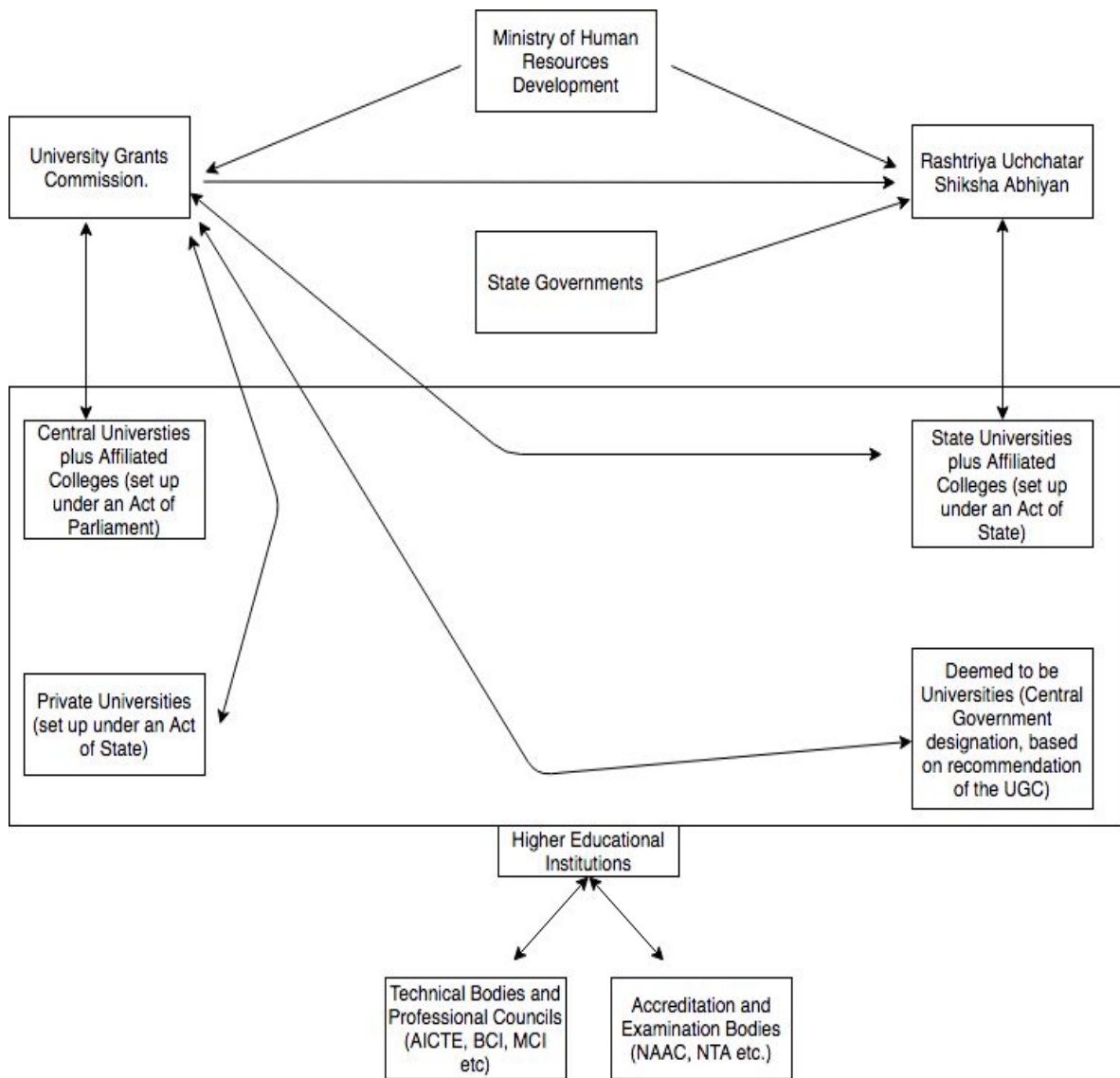
³³ See generally, Kumar (ed.), *The Future of India Universities: Comparative and International Perspectives* (2017, OUP: New Delhi).

CHAPTER IV: THE WAY FORWARD

In conclusion, we make the following short observations. Much work is required to reform and strengthen the regulatory landscape for higher education in India. Challenges abound, and any solutions will necessarily involve certain teething problems. Any regulator which replaces the UGC will find itself in a higher education landscape that is fast-changing, complex and enormously heterogeneous. A one-size-fits-all approach is paradigmatically ill-suited in this field. Any policy response must consider radical institutional innovation, particularly keeping in mind the need for decentralised and competent institutional frameworks. It must also equip any regulatory institution with a range of tools focusing on facilitation of innovation by universities themselves. If higher education in India is to flourish, it must be *because* of a facilitative regulatory environment and not *despite* it.

ANNEXURE : SNAPSHOT OF THE EXISTING REGULATORY ARCHITECTURE

Fig 1. Complexity Abounds





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