

Status with regard to Distance Learning Programmes and Territorial jurisdiction of State Private Universities

A. UGC Regulation on Distance Education

The UGC vide its Regulations dated 25.11.1985 laid down the minimum standards of instructions of the grant of the first degree through non-formal/ distance education. With regard to Private Universities, the UGC laid down the UGC (Establishment of and maintenance of standards in Private Universities) Regulations 2003, which was notified in the Gazette on 12.12.2003. These Regulations, inter-alia, laid down that a Private University established under State Act shall operate ordinarily within the boundary of State concerned. However, after the development of main campus, in exceptional circumstances, the University may be permitted (by the UGC) to open off campus centres, off-shore campus and study centres after 5 years of its coming into existence, subject to certain conditions indicated therein.

B. Decision of Supreme Court and its implications

2. In the landmark Judgement of Hon'ble Supreme Court in the case of Prof.Yashpal & Anr. Versus State of Chattisgarh & others (2005), the Apex Court specifically considered the issue of extra territorial operation of State enactment in the form of establishment of Off campus centres, Off-shore campus and study centres and ultimately in the light of the constitutional mandate as contained in Article 245(1) of the Constitution, laid that "Parliament alone is competent making laws in the whole or any part of the Territory of India and the legislative of State making laws for the whole or any part of State".

3. The Allahabad High Court in its Judgement and Order dated 25.07.2005, after considering the matter in the light of the provisions of the UGC Act, 1956 and the Judgement of the Apex Court in the Prof. Yashpal case held that Rohilkhand University could not establish Study Centres in the State beyond its territorial jurisdiction and the setting up of Study Centres beyond the territorial jurisdiction of the State of Uttar Pradesh cannot also be justified even if the State Act is amended, in view of the decision of the Supreme Court in the case of Prof. Yashpal. Several other Courts, including the Division Bench of Madras High Court, the Madhya Pradesh High Court etc. have also dealt with this matter and gone in accordance with the ratio in the Yashpal case.

4. The effect and meaning of the judgement of the Hon'ble Supreme Court in the Yashpal case is that each University in the country must have its own territorial jurisdiction and the State University established under the State Act cannot go beyond the territorial jurisdiction of the State concerned to grant affiliation to any institution.

5. The UGC vide its letter dated 16.04.2009 informed all the State Governments to take suitable steps for amending the existing state Acts so as to bring the same in conformity with the observations made by that Apex Court in the Yashpal case, and with the request to the State Governments to stop all the State/ State Private Universities from operating beyond the Territorial jurisdiction of the State in any manner, either in the form of Off Campus/Study Centre/affiliated College and Centres operating through franchises. The UGC vide its letter dated 28.04.2009 informed Vice-Chancellors of all Private Universities to ensure that no off campus centre is opened outside the territorial jurisdiction of the State, in case any such Off campus centre has been started, the same should be immediately closed and further that any off campus centre within the State shall be opened only in accordance with the UGC Regulations of 2003 and with prior approval of the UGC. These were also reiterated to the Vice-Chancellors of all the State Universities vide letter of UGC dated 15.06.2009.

C. Policy of Distance Education Council (DEC)

6. The Distance Education Council (DEC) which has been regulating programmes in Distance Education in Higher Education accords recognition to the Universities/ Institutions but not to any Learning/Study Centres of such Universities/Institutions for offering programmes through distance mode. Thus, the DEC does not accord any approval to Study Centres. In the Joint Committee meeting of the DEC held on 17.08.2009, it was decided that the UGC Notifications will prevail over all previous Notifications and circulars. Accordingly, the State Universities (both Private and Government funded) can offer programmes only within the State and Deemed Universities from the Headquarters and in no case outside the State. The Territorial jurisdiction of the institutions other than Universities shall be the Headquarters and in no case outside the State concerned. The DEC vide its Notification dated 01.11.2012 notified its policy on Territorial jurisdiction to be followed by Open and Distance Learning Institutions which is as under:-

- In case of Central Universities, the Territorial Jurisdiction will be as per their Acts and Statutes for offering programmes through distance mode.
- In case of State Universities (both Govt. funded and private), the Territorial Jurisdiction will be as per their Acts and Statutes but not beyond the boundaries of their respective States.
- In case of Deemed to be Universities, the Territorial Jurisdiction will be as per the notification of Govt. of India to accord them this status until a policy decision is taken by the UGC.

- The Territorial Jurisdiction in case of Private Institutions (other than Universities) will be headquarters. In case any such institution desires to offer programmes beyond its headquarters then it should establish its new institutions as per norms.
- The study centres are simply facilitators in programme delivery. No University/ Institution will be allowed to franchise the Study centres; the Universities/Institutions will have to operate the study centre themselves.

D. Transfer of regulatory functions of Distance Learning from DEC to UGC

7. In accordance with the directions of the Central Government contained in its Order dated 29.12.2012, the responsibility of undertaking the regulatory functions of the Distance Education has been transferred from DEC to UGC. The UGC has vide its Notification dated 17.06.2013 decided that the UGC shall be formulating its Regulations with regard to the programmes in Distance Learning, and further that till such time the said Regulations are brought into force, the extant Guidelines of the DEC on the minimum requirements for recognition of ODL Institutions shall continue.

8. Vide its Public Notice dated 27.06.2013, the UGC has laid down the guiding principles with regard to the Territorial Jurisdiction of Universities on courses/ Study Centres/off campus centres. It has been, inter-alia, clarified in the said Public Notice that a University established or incorporated by or under a State Act shall operate only within the Territorial jurisdiction allotted to it under its Act and in no case beyond the Territorial Jurisdiction of the State of its location. Further, the Private State Universities and Deemed Universities cannot affiliate any college or institution for conducting courses leading to award of its diplomas/degrees or other qualifications.

9. The regulatory functions of Distance Education are now being administered and handled by the UGC. For the purpose of dealing with the pending applications, an Expert Committee has been constituted under Prof. Mohd. Miyan, Vice-Chancellor, Maulana Azad National Urdu University, Hyderabad. This Committee has held three meetings in June-July, 2013 and given its recommendations in respect of 205 pending applications. The recommendations have been considered by the UGC and a decision has been taken in the Commission in its last meeting held on 31.07.2013 in respect of these cases. The Distance Education Bureau of the UGC has already conveyed the decision of the Commission to 83 Institutions/ Universities while action is being taken in respect of remaining Universities/ Institutions.