

**Issue No 1 as per the show cause notice dated 10.6.2011 and the Memorandum dated 18.7.2011**

- i. KSOU is offering BE/ B.Tech/ ME/ M.Tech/ Diploma in Engg and other technical/ professional programmes through distance mode

**Response/Clarification of the University to the notice dated 10.6.2011 and the Memorandum dated 18.7.2011 on the above issue**

1. The Karnataka State Open University is established under The Karnataka State Open University Act, 1992 (Karnataka Act No. 46 Of 1994) under Schedule VII, List III, Entry 25 of the Constitution of India.
2. The Preamble of the Act states :  
"An Act to establish and incorporate an Open University at the State level for the introduction and promotion of Open University and distance education systems in the educational pattern of the State and for the co-ordination and determination of standard of such systems".
3. The UGC Act, 1956 was enacted by the parliament with the object to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission.

4. The University is recognized by the University Grants Commission under Section 2(f) of the University Grants Commission Act, 1956.
5. Section 12 of the UGC Act, 1956, while laying down functions of the Commission, inter alia, provides that it shall be the general duty of the Commission to take all such steps as the Commission thinks fit for the promotion and coordination of university education and for determination and maintenance of standards of teaching examination, and research in university.
6. Section 22 of the UGC Act, 1956 which provides for the right to confer degrees by a University established under a State Act. The said section 22 of the UGC Act, 1956 is quoted herein below:-

"Section 22. Right to confer degrees – (1) The right of conferring or granting degrees shall be exercised only by a university established or incorporated by or under a Central Act, a Provisional Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or Grant degrees.

  - 1) Save as provided in Sub-Section (1), no person or authority shall confer or Grant or hold himself or itself out as entitled to confer or grant any degree.
  - 2) For the purposes of this section "degree" means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the commission by notification in the official Gazette."

7. That it is pertinent to mention here that B.Tech and M.Tech are degrees specified by the UGC under section 22 of the UGC Act.
  
8. That Section 26 of the UGC Act gives the UGC power to make regulations by notification in the official Gazette consistent with the Act and the rules made there under. However Sub Section 3 of Sec 26 clearly lays down that the power to make regulations conferred by this section [except clause (i) and clause (j) of subsection (1)] shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act, to the regulations or any of them but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable.
  
9. That on 25.11.1985 the UGC in exercise of its powers under clause (f) of sub-section (1) of Section 26 of the UGC Act made UGC Regulations, 1985 Regarding The Minimum Standards Of Instructions For The Grant Of First Degree Through Non Formal / Distance Education (the "Regulations"). As per Regulation 1 (2) the said regulations are made applicable to all Universities established under a state Act. Regulation 2 provides for the admission procedure and eligibility of the students. Regulation 3 (2) provides for the University to set up study centers (outside the headquarters) in areas where there is a reasonable concentration of students. True copy of the UGC Regulations, 1985 Regarding The Minimum Standards Of Instructions

For The Grant Of First Degree Through Non Formal / Distance Education (the "Regulations") is annexed as Annexure A-1 to the response.

10. The University Grants Commissions vide it's letter no. F.1-52/2000(CPP II) dated 2<sup>nd</sup> November 2004 wrote that the Degrees/Diplomas/Certificates awarded by the Open Universities in conformity with the UGC notification on Specification of Degrees be treated as equivalent to the corresponding awards of the traditional Universities in the country. True copy of the letter no. F.1-52/2000(CPP II) dated 2<sup>nd</sup> November 2004 is annexed as Annexure A-2 to the response.
  
11. Vide letter Ref No. DEC/OU/RECOG/2008/7833 dated 8.04.2008 the distance education Council has accorded recognition to the University for offering programmes/courses approved by the statutory bodies/authorities of the university for a period of five years from the date of issuance of the letter. True copy of the letter Ref No. DEC/OU/RECOG/2008/7833 dated 8.04.2008 is annexed as Annexure A-3 to the response.
  
12. According to Section 5 of the KSOU Act 1992 The University shall have the following powers namely :-  
  
(i) **to provide for admission and for instruction in such branches of knowledge including technology, vocations and professions as**

**the University may determine from time to time and to make provision for research;**

(ii) to plan and prescribe courses of study for degrees, diplomas, certificates and for research or any other purpose;

(iii) to hold examinations and confer degrees, diplomas, certificates or other academic distinctions or recognitions including Ph.D on persons who have pursued a course of study or conducted research in the manner laid down by the statutes and Ordinances ;

13. The DEC displayed on it's web site www.dec.ac. in "RECOGNITION POLICY OF DEC". The policy clearly lays down that " DEC in its 28<sup>th</sup> meeting held on 23.03.2007 had taken a decision to replace earlier practice of approval of programmes with that of institutional recognition. **Therefore, the DEC does not give the approval to the programmes but the approvals are granted to the Universities, directing them to obtain the necessary approvals for their various programmes from the respective statutory bodies/authorities of the said Universities.** In case of technical/professional programmes offered by them, approval from the concerned apex/regulatory bodies in the country is required to be obtained for which responsibility vests with the university concerned. True copy of the Recognition policy displayed on the web site of the DEC is being filed herewith and marked as **Annexure A-4** to the response. And for technical education programme under distance education mode there is no statutory body

apart from the Academic Council of the University itself. In AICTE Act there is no mention of Distance Education / Study Centres. Hence the approval of Academic Council is sufficient.

14. The Government of India, Ministry of Human Resource Development has through its communication dated 17<sup>th</sup> Feb, 2004 and 8<sup>th</sup> May 2004 acknowledged the fact that the degrees / diplomas awarded by the University through its study centers etc. are automatically recognized for the purpose of employment and no formal orders recognizing such degrees / diplomas are necessary to be issued. True copy of the communication dated 17<sup>th</sup> Feb. 2004 and 8<sup>th</sup> May 2004 of the Ministry of Human Resource Development is being filed herewith and marked as Annexure A- 5 and Annexure A- 6 to the response.

15. The Union of India, Ministry of Human Resource Development, Deptt. Of Higher Education filed an affidavit Before the Hon'ble Delhi High Court in W. P. (Civil) 2403/2004 annexing letter no F. 20-71/2005-U.3(A) dated 14.07.2008 addressed to the Secretary UGC, and Director DEC whereby clarifying that The Central Government has no direct role, nor the competence, to assess the academic issues. Therefore, the University Grants Commission (UGC) and DEC are advised to assess and evaluate the programmes conducted by the AAI under the distance mode. True copy of the affidavit of the UOI dated August 2007 is being filed herewith and marked as Annexure A-7 to the response.

16. The Ministry Of Human Resource Development, Deptt. Of Education has clarified it's stand on the recognition of the Academic Qualifications and Degrees offered through the Distance learning. True Copy of the Clarification by the Ministry of HRD displayed on it's website www.education.nic.in is being filed herewith and marked as **Annexure A-8** to the response.

17. The Minister of State in the Ministry of Human Resource Development (Smt D Purandeswari) in reply to Rajya Sabha unstarred question no 3587 answered on 28.04.2008 she stated that Universities can offer distance education programmes in accordance with the provisions of their respective Act and also the guidelines and regulations notified by the University Grants Commission (UGC), Distance Education Council and other concerned statutory council, if any. True copy of the Rajya Sabha questions are being filed herewith and marked as **Annexure A-9** to the response.

18. Vide Letter No. D.O. NO. 6-7/2009-DL dated 29<sup>th</sup> July, 2009 the Joint Secretary (Distance Learning ) wrote to the Vice Chancellor IGNOU & Chairman DEC to withdraw the permission given to various institutions to conduct B.TECH/BE Program through distance education Mode. True copy of the Letter No. D.O. NO. 6-7/2009-DL dated 29<sup>th</sup> July, 2009 the Joint Secretary (Distance Learning) is annexed as **Annexure A-10** to the response.

19. The Vice Chancellor IGNOU in response to the letter No. D.O. No. 6-7/2009-DL dated 29<sup>th</sup> July 2009 wrote back to the Joint Secretary Distance Learning, MHRD stating that many universities are offering BE/B.Tech program through distance mode and the decision of the Ministry will be detrimental to the open University system. Further it was stated that that the matter was placed before the DEC and it was decided that the implementation of the MHRD directive would be difficult. True copy of the letter no DEC/2009/2418 dated 11.08.2009 by the Chairman DEC is being filed herewith and marked as **Annexure A-11** to the response.

20. Apparently under the instructions and pressure from the Ministry of Human Resource Development, the Director DEC in a hasty and unreasoned manner vide its letter No. DEC/2009/2830 dated 26.8.2009 wrote to all the Universities including the KSOU that the Joint Committee of UGC-DEC-AICTE has not yet accorded approval to B.E./ B.TECH program of any University offered through Distance education mode in gross violation of the Recognition Policy of the DEC and the Joint Committee of UGC-AICTE-DEC. True copy of the letter dated 26.8. 2009 by the Director DEC is being filed herewith and marked as **Annexure A-12** to the response.

21. That in Civil Writ Petition No. 11957 of 2009, titled J R N Rajasthan Vidyapeeth (Deemed) University, Distance Education Council & Ors., the Petitioner University challenged the validity of the letter NO. DEC/2009/2830 dated 26.8.2009 issued by the Director DEC to all the Universities stating that the Joint Committee of UGC-DEC-AICTE has



- not yet accorded approval to B.E./ B.Tech program of any University offered through Distance education mode and any such programs offered by a University are hence illegal and not approved by the DEC. That it has been further clarified that no University should offer B.E/B.Tech program through distance mode and any deviation from this policy may invite de-recognition of the concerned University.
22. That the Hon'ble Delhi High Court vide it's order dated 24 September 2009 stayed the effect of the letter No. DEC/2009/2830 dated 26.8.2009. True of the order dated 24 September 2009 of the Delhi High Court is being filed herewith and marked as **Annexure A- 13** to the response.
23. That the DEC has itself not acted on the directions issued by the MHRD and has neither withdrawn the permission given to various institutions to conduct B.TECH/BE Program through distance education Mode nor acted on any other directions contained in the letter No. D.O. NO. 6-7/2009-DL dated 29<sup>th</sup> July.
24. On the contrary the DEC to avoid any confrontation with the MHRD made a lame excuse that the DEC had not granted any specific approval to the B. Tech courses conducted by any University. This act of Director DEC itself shows that the Director, DEC has misled the MHRD, various institutions and universities as well as thousands of students who have enrolled in various programs in the institutions and the universities.
25. The DEC has accorded recognition to KSOU all the programs/courses that are approved by the statutory bodies of the Universities. There is

no ambiguity in interpretation of the above letter because the B.Tech, M.Tech etc courses are being offered after the approval from of the Academic Council as well as the Board of Management of the University.

26. It is specifically admitted by the University that the University is offering only those technical and professional programs that are approved by its statutory bodies and do not require any approval from any other statutory bodies i.e. AICTE (Probably).

27. The illegal act of the Director, DEC violates the Fundamental Right under Article 19(1)(g) of the institution **to conduct its own affairs as a University, to admit students {Bharati Vidyapeeth v. State of Maharashtra, (2004) 11 SCC 755 at Paras 22, 23, 24, & 26}, to have its own curriculum and syllabi, to conduct its own examinations and to award its own degrees, by reason of the fact that the decision to be taken to withdraw the recognition granted to the University is based on the executive instruction, which is contrary to the principle that a fundamental right under 19(1)(g) cannot be restricted other than by a statute or statutory rules.**

28. There have so far been mainly two comprehensive statements of the National Policy on Education, viz. those of 1968 and 1986. The former contained decisions of the Central Government on the recommendations of the National Commission on Education, 1964-66. The latter was a result of the renewed priority assigned to Education by the government during 1984-89. The 1986 policy was reviewed by a Committee constituted in 1990 under the chairmanship of Acharya

Ramamurti. On the basis of the recommendations of this Committee, certain provisions of the 1986 policy were modified in 1992. Thus, in all, the following three comprehensive national policy statements **ADOPTED BY THE PARLIAMENT** exist on Education:

- A. National Policy on Education, 1968
- B. National Policy on Education, 1986
- C. National Policy on Education, 1986, as modified in 1992

29. The Government of India operates and frames its policies within the Board framework of the National Policy of Education. The National Policy of education, 1986, as modified upto 1992 that is force at present focuses on open and distance learning specially in the field of vocational and technical education. The relevant paragraphs of The National Policy of education, 1986, as modified upto 1992 are reproduced below:

3.11 *Life-long education is a cherished goal of the educational process. This presupposes universal literacy. Opportunities will be provided to the youth, housewives, agricultural and industrial workers and professionals to continue the education of their choice, at the pace suited to them. The future thrust will be in the direction of open and distance learning.*

5.35 *The open learning system has been initiated in order to augment opportunities for higher education, as an instrument of*

*democratising education and to make it a lifelong process. The flexibility and innovativeness of the open learning system are particularly suited to the diverse requirements of the citizens of our country, including those who had joined the **vocational stream**.*

6.4 Continuing education, covering established as well as **emerging technologies**, will be promoted.

6.6 In view of the present rigid entry requirements to formal courses restricting the access of a large segment of people to **technical and managerial education**, programmes through a distance learning process, including use of the mass media will be offered. **Technical and management education programmes**, including education in polytechnics, will also be on a flexible modular pattern based on credits, with provision for multi-point entry. A strong guidance and counseling service will be provided.

6.8 **Appropriate formal and non-formal programmes of technical education** will be devised for the benefit of women, the economically and socially weaker sections, and the physically handicapped.

30. Hence the executive decisions taken by the officers of the Central Government or the Director, Distance Education Council in contrast of the National Policy of Education would be ultra vires to the National Policy on education of the Central Government and therefore illegal and unconstitutional. True copy of the National Policy of education 1986, as modified in 1992 is being filed and marked as **Annexure A-14** to the response.

31. The Ministry of Human Resource Development, Government of India, On the recommendations of High Level Committee for recognition of educational qualifications, Government of India has decided to recognize the following 15 courses of Section A & B Examination as revised, conducted by the Institution of Engineers (India), Kolkata as equivalent to Degree in the appropriate branch of engineering of the Recognized Universities of India:-

- i. Aerospace Engineering.
- ii. Agricultural Engineering.
- iii. Architectural Engineering.
- iv. Chemical Engineering.
- v. Civil Engineering.
- vi. Computer Science & Engineering.
- vii. Electrical Engineering.

- viii. Electronics & Communication Engineering.
- ix. Environmental Engineering.
- x. Marine Engineering.
- xi. Mechanical Engineering.
- xii. Materials & Metallurgical Engineering.
- xiii. Mining Engineering.
- xiv. Production Engineering.
- xv. Textile Engineering

It is pertinent to mention here that the above courses in engineering are offered by the Institute of Engineers, Kolkatta through correspondence mode of education and there is no component of theoretical as well as practical training involved. The above courses have been recognized by the Government of India as equivalent to degree courses in the relevant engineering streams demonstrates biasness in the act of MHRD. Therefore the action of MHRD. Its irony that MHRD has empowered autonomous institutions like Institutions of Engineers, Kolkatta, The Institute of Electronics & Telecommunication Engineering, New Delhi, Institution of Mechanical Engineers, Mumbai to award certificate equivalent to Degree in Engineering without theoretical & practical training on the other hand restricting KSOU which is empowered to conduct technical and professional programmes under Section 5 of KSOU Act. in order to protect the

interest of these Institutions. Therefore the action of MHRD to ask the DEC to withdraw the recognition already granted to the University is unconstitutional and contradicting the article 14 of the constitution of India. True copy of the Notification No. No.F.24-6/2002-TS.III. dated 16.01.2006 is being filed and marked as Annexure A-15 to the response.

32.The engineering Programmes are offered at various IGNOU-VIEP Centers for Engineering Studies across the country. Currently the degree and diploma engineering programs are being offered through 150 study centres in the following streams :

- I. Civil Engineering
- II. Mechanical Engineering
- III. Electrical Engineering
- IV. Electronics and Communication Engineering
- V. Computer Science and Engineering

True copies of the details of the details of the IGNOU-VIEP, Engineering Studies along with various Admission Notifications Published in various newspapers by the IGNOU for admission to Session 2009, 2010 and 2011 are being filed herewith and marked as Annexure A- 16 (Colly.) to the response.

33.IGNOU in this regard has signed a MOU with Shri Angala Parmeshwari Educational Trust (SAPET) for offering engineering programs through various study centres across the country. The study centres are

identified by Shri Angala Parmeshwari Educational Trust (SAPET) on behalf of IGNOU. A percentage of fees is paid to SAPET out of the total fee collected from the students enrolled in the Engineering programs. The application form for becoming a Program Study centre and a work Centre is also available on the website of ignou i.e. www.ignouveip.org. IGNOU enters into a separate Memorandum of Understanding (M.O.U.) with every Programme Study Centre. The MOU is also available on the website of IGNOU

34. True copies of the format of MOU for the program study centre, application form for establishment of study centre along with list of study centres of IGNOU set up by SAPET in collaboration with IGNOU available on the website of IGNOU are filed herewith and marked as **Annexure A- 17 (Colly.)** to the response.
35. On the face, such an alliance of IGNOU with SAPET and other Program study centres for offering Engineering Programs is the purest form of franchising as stated by the Director, DEC in the notice and Memorandum. If the MHRD has issued a directive not to conduct engineering courses through distance education mode, why IGNOU itself is conducting courses in Engineering. The question arises why no show cause notice has been issued to IGNOU for conducting Engineering courses through study centres in collaboration with SAPET.
36. It is an extreme act of biasness on part of the Director, DEC as he has apparently misused his official capacity to grant undue favour to certain



institutions and organizations. It is apparent that there is element of vested interest as the Director DEC has issued the show cause notice as well as memorandum to KSOU only to benefit IGNOU and SAPET.

37. SAPET has also signed a similar MOU with Manonmaniam Sundaranar University, Tirunelveli, Tamil Nadu, to offer the following course.

- I. 2 Years MBA (Industry Interactive): (13 Specializations)
- II. Executive MBA (1 Year + 3 Months Project) (Industry Interactive): (13 Specializations)
- III. Engineering Integrated MBA, (11 Specializations)

38. Under the MOU the above programs technical courses are offered by Manonmaniam Sundaranar University through the study centres in different parts of the country. The study centres are identified by Shri Angala Parmeshwari Educational Trust (SAPET) on behalf Manonmaniam Sundaranar University and the delivery of the technical programs is also managed by SAPET. True copy of detail of MOU between Manonmaniam Sundaranar University and SAPET available on the website of Manonmaniam Sundaranar University is filed herewith and marked as Annexure A- 18 to the response.

39. The Director, DEC is well aware of the all such activities, yet no action has been taken against the IGNOU and Manonmaniam Sundaranar University. The obvious doubt arises that the show cause notice was issued by the Director, DEC is to grant illegal favor organizations like SAPET, so that they could gain admissions by restricting the students

to take admission in KSOU, by publicizing that the courses are not approved by the DEC.

40. Serious doubts arise about the **conduct, integrity and functioning of the Director, DEC for the reason that a number of state universities and private universities like the Sikkim Manipal University and the Annamalai University, Punjab Technical University, Manonmaniam Sundarnar University, Alagappa University, BITS Pilani** amongst others are offering distance education programs in technical as well as non technical courses through their network of study centres located throughout the country. But the Director DEC has not initiated any kind of action against them nor has issued them any kind of show cause notice, for reasons known best to him.

41. Issuing a show cause notice by singling out the KSOU and displaying the show cause notice on the web site of the DEC and taking no action against the defaulter universities mentioned above demonstrates that the Director DEC is biased and has apparently favored the above mentioned universities and organizations amongst others for apparent ulterior motives.

42. That the B.Tech courses are conducted by many Universities across the country including IGNOU. In fact after the issuance of the letter dated 26.8.2009 by the DEC, IGNOU itself issued notification for admission for January 2010 in the B.Tech Courses and recently issued notification for admission to Academic session 2011-12 in all the leading newspapers of the country.

43. Serious doubts arise about the **conduct, integrity and functioning** of the Director, DEC for the reason that certain institutions like the Institution of Engineers, Kolkata, The Institution of Electronics & Telecommunication Engineers, New Delhi, Institute of Mechanical Engineers, Mumbai, as well as The Indira Gandhi National Open University, BITS Pilani amongst others are offering distance education programs that been recognized equivalent to degree in engineering in respective streams by the MHRD through their network of study centres located throughout the country, but the director DEC has not initiated any kind of action against them nor has issued them any kind of show cause notice.

44. Issuing a show cause notice against the KSOU and displaying the show cause notice on the web site of the DEC and taking no action against the defaulter institutions mentioned above demonstrates that the Director DEC is biased and has apparently favoured the above mentioned private institutions as well as the IGNOU.

45. It is submitted that the distance education is the need of hour. The number of Universities with regular campuses and intake capacities is not sufficient to provide education to all students passing in the country. Further with advent of technology and other modes of interaction between the students and faculty are available besides contact programmes. It is pertinent to point out herein that distance education is a genre and correspondence education is a species, there

are many modes of education under the distance education and one of them is correspondence education. Under distance education there is provision of regular classes and practical training in the study centres. Further, in case of regular mode of education, the campus may be separated from the main University by miles, similarly under distance education mode study centre is at a distance from the main university, the mere reason that the distance could be few miles or hundred miles would not change the quality of education. There are no objections to quality of education only to the mode of education by the MHRD or the DEC.

46. Unlike correspondence education, Distance Education uses a multi-media approach, namely print, various electronic media as well as face-to-face instruction / interface. For the purpose of education, Distance Education goes beyond mere preparation for public examinations and set new goals: updating education, education for social up-liftment, for job and life enrichment and for democratization of education etc. The orientation in distance education is fundamentally pedagogic, unlike correspondence Education, which prepares only for formal examinations.

47. The National Knowledge Commission (NKC) carried out comprehensive appraisal of the medical education system. The Commission constituted a Working Group which included some of the most distinguished members of the medical profession in India, chaired

by Dr. Sneha Bhargava, former Director, AIIMS. Based on the inputs provided by the Working Group and consultations with concerned NKC among others recommended *"Continuing Education: There is a need to revamp continuing Medical Education (CME) based on distance learning. All professionals should be required to undergo a re-certification process every five years, which can be evaluated by credits earned through CME. ICT can be used extensively to provide CME at the convenience of the learner."*

48. Various research and studies have been conducted by academicians and medical professionals on the need of offering Medical and Paramedical education through distance education mode. The researches and studies have emphasized on importance and need of offering medical and paramedical education through distance learning and e-learning. True copy of the various research papers published in various journals are being filed and marked as **Annexure A-19 (Colly.)** to the response.

49. On 1<sup>st</sup> October 2010, the Prime Minister of India, in his speech at the convocation All India Institute of Medical Sciences, New Delhi, urged the need of developing distance learning programs in medical education. True copy the convocation speech of the Hon'ble Prime Minister are being filed and marked as **Annexure A-20** to the response.

50.A Working Group on Higher Education was set up by the Planning Commission under the Chairmanship of Secretary (HE), vide order no. M-12015/2/2005-Edn.Subsequently, it was decided to constitute seven Sub-Working Groups on the following sectors of higher education :

1. Central Universities
2. Deemed to be Universities
3. State Universities
4. Colleges
5. Distance Education
6. Quality of Higher Education
7. Research

The Working Group considered the recommendations of the Sub-Working Groups submitted its observations / recommendations to the planning commission. The working group emphasized the need of distance education in the Field of Higher education to increase the gross enrollment ratio. True copy of the Draft Report of working group on higher education, 11<sup>th</sup> Five Year plan, Planning Commission of India is being filed and marked as **Annexure A- 21** to the response.

51.Various reputed institutions and universities in India and abroad are offering courses in technical fields like Engineering, Management and Law through Distance and Online Mode. Some of these reputed institutions include the **Machechushet Institute of Technology,**

**Stanford University, Yale University, Indian Institute of Technology, Indian Institute of Management, National Law University and Indian Law Institute among many others.**

52. From what has been stated above it becomes clear that the KSOU is running the B.Tech course through distance education mode in accordance of Section 5 of KSOU Act 1996, Section 22 UGC Act 1956, UGC regulations 1985, IGNOU Act, 1985, DEC Guidelines and National Policy of Education adopted by Parliament and has been granted recognition by the UGC, DEC.

53. The very act of the DEC in issuing the show cause notice and subsequent memorandum is totally illegal, arbitrary, unconstitutional, biased and a resultant of non application of mind as they have been issued in blatant disregard of the UGC Act, UGC Regulations, UGC Guidelines, IGNOU Act, DEC Guidelines, KSOU Act 1992 and statutes made there under.

54. That from the above facts and provisions of law it is evident that the allegation made by the Director DEC related to issue 1 in the Show Cause Notice and the memorandum are baseless and devoid of any merit and hence specifically denied.

**Issue No 2 as per the show cause notice dated 10.6.2001 and the Memorandum dated 18.7.2011**

- ii. KSOU is offering BE/ B.Tech/ ME/ M.Tech/ Diploma in Engg and other technical/professional programmes through face to face mode through franchisee;

**Response/Clarification of the University to the notice dated 10.6.2001 and the Memorandum dated 18.7.2011 on the above issue**

KSOU is established under The Karnataka State Open The University Act, 1992 (Karnataka Act No. 46 Of 1994) under Schedule VII, List III, Entry 25 of the Constitution of India.

1. The Preamble of the Act provides:  
"An Act to establish and incorporate an Open University at the State level for the introduction and promotion of Open University and distance education systems in the educational pattern of the State and for the co-ordination and determination of standard of such systems".
2. The UGC Act, 1956 was enacted by the parliament with the object to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission.
3. KSOU is recognized by the University Grants Commission under Section 2(f) of the University Grants Commission Act, 1956.
4. Section 2 of the Karnataka State Open University Act defines:



(d) "Distance Education system" means the system of imparting education through any means of communication such as broadcasting, telecasting, instruction media or print media, seminars, contact programmes or the combination of any two or more of such means

5. Section 4 of Act deals with the objects of the University. As per Section 4

"The objects of the University shall be to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology, to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally, to encourage Open University distance education system in the educational pattern of the State and to co-ordinate and determine the standards in such systems, and the University shall in organising its activities, have due regard to the objects specified in the First Schedule."

6. **The Director DEC has miserably failed to understand and appreciate the concept of "Face to Face" learning under the distance education mode. In case of technical programs especially in courses where practical work is required the students have to attend classes at the study centre as well as attend the practical sessions, unlike in certain courses where the students can take their instruction by broadcasting, telecasting, instruction media or print media without being actually present at the site of instruction.**

7. Face to Face mode is one of the media of learning for programs conducted by the university under the distance education mode.

8. In the memorandum the Director DEC has stated that "The claim made by KSOU that they are offering programmes though **REGULAR** face to face mode" is absolutely false, frivolous and untrue. The Director DEC has with

ill motive and malicious intentions in a premeditated manner used the word "REGULAR" to create an impression that the university has been conducting courses under "REGULAR" mode. The University in its reply has nowhere used the word "REGULAR" as is evident from the reply sent by the University, that is also displayed on the website of the University. It seems the word "REGULAR" has deliberately been used by the Director DEC to malign the reputation of the University.

9. The Director DEC in the most bizarre and irresponsible manner has stated in the memorandum that **"As Per Section 10(k) of the AICTE prior approval of the AICTE is needed to offer technical/professional courses by institutions/ study centre"**. It seems that the Director DEC has become over adventurous and wants to frame laws on his own in deliberate disregard to the law making institution i.e. Parliament. The entire AICTE act does not contain the word "study centre" as stated by the Director DEC in his memorandum.
10. The All-India Council for Technical Education Act, 1987 (hereafter referred to as the AICTE Act) was enacted by Parliament to provide for establishment of an All-India Council for Technical Education, herein referred to as 'AICTE', with a view to the proper planning and coordinated development of the technical education system throughout the country, the promotion of qualitative improvements 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 matters connected therewith.

11. The aforesaid AICTE Act, 1987 has been enacted by Parliament in terms of Entry 66 of List 1 of Seventh Schedule to the Constitution of India.
12. Section 2 (h) of the AICTE Act, 1987 provides that 'technical education institution' means "an institution, not being a university which offers courses or programmes of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical education institutions".
13. On the other hand, under Section 2 (i) of the Act the word university means a university defined under clause (f) of Section 2 of the UGC Act, 1956 and includes an institution deemed to be a university under section 3 of that Act. Therefore, KSOU being a university established by a State Act as provided under section 2(f) of the UGC ACT is outside the purview of "technical education" as defined under the AICTE Act, 1987.
14. However, Section 10 (1) of the AICTE Act, lays down the functions of the AICTE, the relevant functions as provided in the said Section, for the purpose of the present opinion, are quoted herein below:-

"10. (1) 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 and management education and maintenance of standards and for the purposes of performing its functions under this Act, the Council may-

- (a) undertake survey in the various fields of technical education, collect data on all related matters and make forecast of the needed growth and development in technical education.
- (b) coordinate the development of technical education in the country at all levels;
- (c) allocate and disburse out of the fund of the council such grants, on such terms and conditions as it may think fit to-
  - (i) Technical institutions, and
  - (ii) Universities imparting technical education in coordination with the commission;
- (g) evolve suitable performance appraisal systems for technical institutions and Universities imparting technical education, incorporating norms and mechanisms for enforcing accountability
- (k) grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned;
- (n) take all necessary steps to prevent commercialization of technical education;
- (o) provide guidelines for admission of students to technical institutions and Universities imparting technical education;

(t) advise the Commission for declaring any institution imparting technical education as a deemed university; The Section 11 (1) of AICTE Act, 1987 is also quoted below:-

"11. (1) For the purposes of ascertaining the financial needs of technical institution or a University or its standards of teaching, examination and research, the Council may cause an inspection of any department or departments of such technical institution or University to be made in such manner as may be prescribed and by such person or persons as it may direct."

15. The provisions of the above-mentioned two Acts came up for consideration before the Hon'ble Supreme court in the case of **Bharathidasan University & Anr. Vs. All India Council for Technical Education & Ors. [2001 (8) SCC 676]**. The Hon'ble Supreme Court laid down its view in the following words:-

*"10. .... All these vitally important aspects go to show that AICTE created under the act is not intend it to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting teaching in technical education or programmes in many of its departments or units. A careful scanning-through the provisions of the AICTE Act and the provisions of the UGC Act in juxtaposition, will show that the role of AICTE vis-à-vis the universities is only advisory, recommendatory and a guiding factor and thereby sub serves the cause of maintaining appropriate standards and qualitative norms and not as an authority empowered to issue and enforce*

*any sanctions by itself, except submitting a report to UGC for appropriate action. ....*

*12. .... The guarded language employed for the set purpose and deliberate omission to refer to the universities in section 10 (1) (K) of the AICTE act while empowering AICTE to grant approval for starting new technical institutions cannot be ignored to be of any significance. A careful analysis of the various provisions contained in section 10, 11 and 22 will further go to show that the role of interaction conferred upon AICTE vis-à-vis universities is limited to the purpose of ensuring the proper maintenance of norms and in standards in the technical education system so as to conform to the standards laid down by it, with no further or direct control over such universities or scope of any direct action except bringing it to the notice of UGC or other authorities only, of any lapse in carrying out any direction of AICTE in this regard, for appropriate action.....*

*13. The AICTE cannot, in our view, make any regulation in exercise of its powers under Section 23 of the Act, notwithstanding subsection(1), which though no doubt enables such regulations being made generally to carry out the purposes of the Act, when such power is circumscribed by the specific limitation engrafted therein to ensure them to be not inconsistent with the provisions of the Act and the rules. So far as the question of granting approval, leave alone prior or post, Section 10(1)(k) specifically confines the limits of such power of AICTE only to be exercised vis-à-vis technical institutions, as defined in the Act and not generally. When the language is specific, unambiguous and positive, the same cannot be over-looked to give*

*an expansive meaning under the pretext of a purposive construction to perpetuate an ideological object and aim, which also, having regard to the Statement of Objects and Reasons for the AICTE Act, are not warranted or justified.*

*Therefore, the regulation insofar as it compels the universities to seek for and obtain prior approval and not to start any new department or course or programme in technical education (Regulation 4) and empower itself to withdraw such approval, in a given case of contravention of the regulations (Regulation 12) are directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the Act and consequently void and unenforceable.*

15. *To put it in a nutshell a reading of Section 10 of the AICTE Act will make it clear that whenever the Act omits to cover a "university", the same has been specifically provided in the provisions of the Act. For example, while under Clause (k) of Section 10 only "technical institutions" are referred to, Clause (o) of Section 10 provides for the guidelines for admission of students to "technical institutions" and "universities" imparting technical under section 2 (h) of the Act, it is clear that a "technical institution" cannot include a "university. The clear intention of the legislature is not that all institutions whether university or otherwise ought to be treated as "technical institutions" covered by the Act. If that was the intention, there was no difficulty for the legislature to have merely provided a definition of "technical institution" by not excluding "university" from the definition thereof and thereby avoided the necessity to use alongside both the words "technical institutions" and university in several provisions in the Act. The definition of "technical*

*institutions" excludes from its purview a "university". When by definition a "university" is excluded from a "technical institution", to interpret that such a clause or such an expression wherever the expression "technical institution" occurs will include a "university" will be reading into the Act what is not provided therein. The power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned is covered by section 10 (k) which would not cover a "university" but only a "technical institution". If section 10 (k) does not cover a "university" but only a "technical institution", a regulation cannot be framed in such a manner so as to apply the regulation framed in respect of "technical institution" to apply to universities when the Act maintains a complete dichotomy between a "university" and a "technical institution".*

16. The AICTE vide its letter dated May 11, 2005 clarified that *"technically and legally speaking Universities are not required to have AICTE's approval for starting any technical programme."* That AICTE in its reply to a query under Right to Information Act, 2005 vide letter No. AICTE/RTI/2006/185 dated 20.11.2006 has categorically stated that *"AICTE does not grant approval to courses conducted by the Universities/ Deemed Universities/Institutions under distance education"* The AICTE vide its letter dated April 12, 2007 has again stated that *"courses offered by distance education mode do not come under purview of AICTE"*. That AICTE in its reply to query under Right to Information Act vide letter No. dated 04.10.2007 has stated that *"Degree/Diploma obtained through Distance education mode and approved by DEC does not require AICTE approval"*.



17. From what has been stated above it become clear that the KSOU is offering technical courses through distance education mode only and not through regular mode. The face to face mode is only one of the medium of instruction adopted by the University to conduct technical courses through the distance education mode. The University also does not require any approval from the AICTE for conducting courses in technical education through distance education mode.
18. That the very act of the DEC in issuing the show cause notice and subsequent memorandum is totally illegal, arbitrary, unconstitutional, biased and a resultant of non applicant of mind as they been issued in blatant disregard of UGC Act, UGC Regulations, UGC Guidelines, IGNOU Act, DEC Guidelines, KSOU Act 1992 and statutes made there under, AICTE Act 1985 as well the law laid down by the Hon'ble Supreme Court in Bharathidasan University & Anr. Vs. All India Council for Technical Education & Ors. [2001 (8) SCC 676].
19. Furthermore, we have obtained a specific opinion from the Additional Solicitor General on the Topic regarding Need to Obtain Permissions from AICTE which completely vindicates our stand.
20. That from the above facts and provisions of law and above referred Opinion of Additional Solicitor General it is evident that the allegation made by the Director DEC related to issue no. 2 in the Show Cause Notice and the memorandum are baseless and devoid of any merit and hence specifically denied.

**Issue No. 3 as per the show cause notice dated 10.6.2011 and the Memorandum dated 18.7.2011**

- iii. KSOU is offering M.Phil. and Ph.D. programmes

**Response/Clarification of the University to the notice dated 10.6.2011 and the Memorandum dated 18.7.2011 on the above issue**

KSOU is established under The Karnataka State Open The University Act, 1992 (Karnataka Act No. 46 Of 1994) under Schedule VII, List III, Entry 25 of the Constitution of India.

1. The Preamble of the Act provides:  
"An Act to establish and incorporate an Open University at the State level for the introduction and promotion of Open University and distance education systems in the educational pattern of the State and for the co-ordination and determination of standard of such systems".
2. The UGC Act, 1956 was enacted by the parliament with the object to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission.
3. KSOU is recognized by the University Grants Commission under Section 2(f) of the University Grants Commission Act, 1956.

4. According to Section 5 of the KSOU Act 1992 The University shall have the following powers namely :-
  - (i) to provide for admission and for instruction in such branches of knowledge including technology, vocations and professions as the University may determine from time to time and to make provision for research;
  - (ii) to plan and prescribe courses of study for degrees, diplomas, certificates and for research or any other purpose;
  - (iii) to hold examinations and confer degrees, diplomas, certificates or other academic distinctions or recognitions including Ph.D on persons who have pursued a course of study or conducted research in the manner laid down by the statutes and Ordinances ;
6. The M.Phil and the Ph.d programs conducted by the University are conducted in accordance with the UGC (Minimum Standards and Procedure for award of M.Phil/Ph.d Degree) Regulations 2009 and are not conducted under distance education Mode.
7. This stand of the University was specifically communicated by the University, to the Director DEC in reply to the show cause notice issued by the DEC. But it seems that the Director DEC has even failed to understand the clear and simple language of the reply.

8. In the memorandum dated 18<sup>th</sup> July 2011 the Director DEC has a stated that the claim of the University that it is not offering M.Phil and PhD programs under the distance education mode is not tenable. The director DEC has further stated that the records available with the DEC show that the M.Phil and Ph.d programs being offered by the University are on distance mode.
9. The above statement of the Director DEC is arbitrary and beyond any reasoning. The Director DEC has not disclosed about the records that he is relying upon. Without disclosing the records allegations levied by the Director DEC are like castles in the air and hold no substance whatsoever.
10. To the best of the knowledge of the University no such records are maintained by the DEC in its regular course of functioning. It would also be pertinent to know from the Director DEC that under what provision of law the DEC maintains such records.
11. From what has been stated above it become clear that the KSOU is empowered by the section 5 of its Act to award M.Phil and Ph.d degrees. It is reiterated that the M.Phil and Ph.d degrees programs conducted by the University are conducted in accordance with the UGC (Minimum Standards and Procedure for award of M.Phil/Ph.d Degree) Regulations 2009 and are not conducted under distance education mode.

6. That the very act of the Director, DEC in issuing the show cause notice and subsequent memorandum is totally illegal, arbitrary, unconstitutional, biased and a resultant of non applicant of mind as they been issued in blatant disregard of the UGC Act, UGC Regulations, UGC Guidelines, IGNOU Act, DEC Guidelines, KSOU Act 1992 and statutes made there under.
7. That from the above facts and provisions of law it is evident that the allegation made by the Director DEC related to issue no. 3 in the Show Cause Notice and the memorandum are baseless and devoid of any merit and hence specifically denied.

**Issue No 4 as per the show cause notice dated 10.6.2011 and the Memorandum dated 18.7.2011**

iv. KSOU has franchised study centres.

**Response/Clarification of the University to the notice dated 10.6.2011 and the Memorandum dated 18.7.2011 on the above issue**

KSOU is established under The Karnataka State Open The University Act, 1992 (Karnataka Act No. 46 Of 1994) under Schedule VII, List III, Entry 25 of the Constitution of India.

1. The Preamble of the Act provides:  
"An Act to establish and incorporate an Open University at the State level for the introduction and promotion of Open University and distance education systems in the educational pattern of the State and for the co-ordination and determination of standard of such systems".
2. The UGC Act, 1956 was enacted by the parliament with the object to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission.
3. KSOU is recognized by the University Grants Commission under Section 2(f) of the University Grants Commission Act, 1956.
4. On 25.11.1985 the UGC in exercise of its powers under clause (f) of sub-section (1) of Section 26 of the UGC Act made UGC Regulations, 1985 Regarding The Minimum Standards Of Instructions For The Grant Of First

Degree Through Non Formal / Distance Education (the "Regulations"). As per Regulation 1 (2) the said regulations are made applicable to all Universities established under a state Act. Regulation 2 provides for the admission procedure and eligibility of the students. Regulation 3 (2) provides for the University to set up study centers (outside the headquarters) in areas where there is a reasonable concentration of students. True copy of the UGC Regulations, 1985 Regarding The Minimum Standards Of Instructions For The Grant Of First Degree Through Non Formal / Distance Education is being field herewith and marked as Annexure D-1 to the response.

5. Section 2 of the Karnataka State Open University Act defines:

- (d) "Distance Education system" means the system of imparting education through any means of communication such as broadcasting, telecasting, instruction media or print media, seminars, contact programmes or the combination of any two or more of such means
- (e) "Regional Centre" means a Centre established or maintained by University for the purpose of coordinating and supervising the work of Study Centres in any region and or performing such other functions as may be conferred on such centre by the Board of Management.
- (f) "Study Centre", means a centre established, maintained or for valuation and for conducting the examination or recognized by the University for the purpose of advising, counseling or for rendering any other assistance required by the students;

6. Section 5 of the Act provides that The University shall have the following powers namely :-

(ix) to establish and maintain such Regional Centres as may be determined by the University from time to time;

(x) to establish, maintain and recognise Study Centres in the manner laid down by the statutes;

7. Section 23 of the Act provides that

(1) The first statutes are those set out in the Second Schedule.

8. THE SECOND SCHEDULE of the act lays down the First Statutes of the University

Section 2 of the First Statutes of the University deals with the Powers and Functions of the Vice Chancellor

(9) The Vice-Chancellor shall have the following further powers, namely:-

(i) to appoint such Professors, Readers, Lecturers and other teachers as may be necessary with the prior approval of the Board of Management.

(ii) to appoint course writers, script writers, councillors, programmers, artists and such other persons as may be considered necessary for the efficient functioning of the University.

(iii) to make short-term appointments for a period not exceeding six months at a time, of such person as may be considered necessary for the functioning of the University;



**(iv) to arrange for the establishment and maintenance of Regional and Study Centres at different places as may be required from time to time and delegate to any employee such powers as are necessary for their efficient functioning.**

9. Therefore from the mere reading of the First Statute of the University contained in the Second Schedule of the Act it is clear that the Vice Chancellor of the KSOU has the empowered to arrange for the establishment and maintenance of Regional and Study Centres at different places as may be required from time to time and delegate to any employee such powers as are necessary for their efficient functioning.
10. Similar powers have been allocated to the Vice Chancellor of Indira Gandhi National Open University in the first statute of the INOU. Section 2 of the First statute of the deals with the Powers and Functions of the Vice Chancellor of INOU. Subsection (iv) Section 2 grants the Power to the Vice Chancellor of INOU **"to arrange for the establishment and maintenance of Regional and Study Centres at different places as may be required from time to time and delegate to any employee such powers as are necessary for their efficient functioning"**.
11. Therefore all the study centres that are established by the INOU are established under the authority of the Vice Chancellor of INOU and no separate statute is required to be made for establishment of such centres. In case in the esteemed opinion of the Director, DEC any such statute has to be made, he should first give a notice to the INOU stating that all the

study centres established by them are illegal and proceed against the IGNOU.

12. All the study centres of that are established by the University following a proper procedure of inspection by the University officials. The Report of the inspection committee is placed before the Academic Council and is approved by the Academic Council. Although it is not a necessity to take any such approval from the academic council or the board of the management of the University or even to frame a separate statute for the procedure of the establishment of study centre the University has initiated the process of framing of a separate statute.
13. Even in absence of a separate statute the Vice Chancellor is empowered by the first statute of the University to arrange for the establishment and maintenance of Regional and Study Centres at different places as may be required from time to time and delegate to any employee such powers as are necessary for their efficient functioning.
14. Therefore the allegation made by the Director, DEC in the memorandum that it is illegal on the part of KSOU to have collaborations in violation of it's own Acts and Statutes in anticipation of the assent of the Chancellor is baseless and devoid of any merit. It is apparent that such vague and irresponsible allegation levied by the Director, DEC against the University are resultant of lack of any legal knowledge of the Director, DEC who it seems has not even examined the Act of the University before making such vague and baseless allegations.

15. The Director DEC has stated in the notice that DEC does not allow any franchising of study centres by any University. **The Study centres are necessarily to be owned/ managed by the concerned University and must be opened with prior permission of the concerned statutory authority of the University in accordance with the norms and guidelines of the UGC and DEC.** Neither the IGNOU ACT 1985 under which the DEC is established nor the UGC ACT 1956, and the regulations made there under define what "FRANCHISING". The Director DEC has neither in the Notice nor in the Memorandum defined franchising or elaborated the meaning of Franchising.
16. The IGNOU Act, defined study centre under Section 2 (o) as:  
*"Study Centre" means a centre established, maintained or recognized by the University for the purpose of advising, counseling or for rendering any other assistance required by the students.*
17. Section 5(1) of the IGNOU Act enables the IGNOU (*besides others*) with power to determine the manner in which distance education in relation to the academic programmes of a university may be organized to establish, maintain or recognize study centers as may be determined by the university from time to time.
18. In the year 1988 the UGC framed the Fitness of Open Universities for Grants, Rules, 1988. The UGC Rules, 1988 and defines a  
*"study centre" as a centre established and maintained or recognized by the open university for the purpose of advising, counseling or for rendering any other assistance required by the students used in the*

*context of distance education.*

19. In the year 2003 the UGC framed the Regulations, for Establishment of and maintenance of standards in private universities Regulations 2003. The UGC Regulations, 2003 defines a

*"study centre" as a centre established and maintained or recognized by the university for the purpose of advising, counseling or for rendering any other assistance required by the students used in the context of distance education.*

True copies of the UGC (Fitness of Open Universities for Grants) 1988 and U.G.C. Regulations, for Establishment of and maintenance of standards in private universities Regulations 2003 and, are being filed herewith and marked as **Annexure D- 2 (Colly.)** to the response..

20. In the year 2004 the UGC issued Guidelines For Establishing New Departments Within The Campus, Setting Up Of Off-Campus Center(S) / Institution(S)/ Off-Shore Campus And Starting Distance Education Programmes By The Deemed Universities, The guidelines defines study centre as

*"Study Centre means a centre established, maintained or recognized by the University for the purpose of advising, counseling or for rendering any other assistance required by the students.*

True copy of the UGC Guidelines For Establishing New Departments Within The Campus, Setting Up Of Off-Campus Center(S) / Institution(S)/ Off-Shore Campus And Starting Distance Education Programmes By The Deemed Universities is being filed herewith and marked as **Annexure D-3 (Colly.)** to the response.

21. From the above it is clear the Director, DEC has become a self styled law making as well a law enforcing authority by itself. The statement of the

Director Dec that **"The Study centres are necessarily to be owned/ managed by the concerned University"** is absolutely vague and in contrast of the definition of study centres as laid down under the UGC Act, the KSOU Act and the IGNOU Act that provide that the Study Centre can be *"established, maintained or recognized by the University"*. **The Director DEC has conveniently avoided the word "recognized" in the definition of Study Centres.**

22. This also shows the lack of knowledge that the Director DEC possesses about the norms and standards of UGS, IGNOU and other statutory bodies.
23. The Distance Education Council has conveniently over-looked the power vested with the University under the Act viz., KSOU Act 1992, vide Sec. 5(1)(xxi), wherein it is clearly provided that the University could recognize any institute of higher learning or studies for such purposes may determine and to withdraw such recognition. This Section clearly empowers the University to recognize institutions of higher studies for the purpose of imparting courses approved by the Academic Council of the University through MOU. This power is exercised by the University very carefully by inspecting those institutions by sending Expert team to make sure that, those institutions have all the infrastructure to run the courses of the University.
24. In case the **"Study centres are necessarily to be owned/ managed by the concerned University"** the Director DEC should in first place take steps to issue an immediate advisory to more than 10 Lac students of

IGNOU that are studying in hundreds of study centres located in India and abroad that are not **owned/ managed by the IGNOU**.

25. From what has been stated above it become clear that the KSOU has established the study centre as per the provisions of it's Act and has not franchised them
26. The very act of the DEC in issuing the show cause notice and subsequent memorandum is totally illegal, arbitrary, unconstitutional, biased and a resultant of non applicant of mind as they been issued in blatant disregard of the UGC Act, UGC Regulations, UGC Guidelines, IGNOU Act, DEC Guidelines, KSOU Act 1992 and statutes made there under.
27. From the above facts and provisions of law it is evident that the allegation made by the Director DEC related to issue no. 4 in the Show Cause Notice and the memorandum are baseless and devoid of any merit and hence specifically denied.

**Issue No 5 as per the show cause notice dated 10.6.2011 and the Memorandum dated 18.7.2011**

- V. KSOU is not observing the policy of Dec on territorial jurisdiction in true spirit.

**Response/Clarification of the University to the notice dated 10.6.2011 and the Memorandum dated 18.7.2011 on the above issue**

KSOU is established under The Karnataka State Open The University Act, 1992 (Karnataka Act No. 46 Of 1994) under Schedule VII, List III, Entry 25 of the Constitution of India.

1. The Preamble of the Act provides:  
"An Act to establish and incorporate an Open University at the State level for the introduction and promotion of Open University and distance education systems in the educational pattern of the State and for the co-ordination and determination of standard of such systems".
2. The UGC Act, 1956 was enacted by the parliament with the object to make provision for the coordination and determination of standards in Universities and for that purpose to establish a University Grants Commission.
3. KSOU is recognized by the University Grants Commission under Section 2(f) of the University Grants Commission Act, 1956.

4. On 25.11.1985 the UGC in exercise of its powers under clause (f) of sub-section (1) of Section 26 of the UGC Act made UGC Regulations, 1985 Regarding The Minimum Standards Of Instructions For The Grant Of First Degree Through Non Formal / Distance Education (the "Regulations"). As per Regulation 1 (2) the said regulations are made applicable to all Universities established under a state Act. Regulation 2 provides for the admission procedure and eligibility of the students. Regulation 3 (2) provides for the University to set up study centers (outside the headquarters) in areas where there is a reasonable concentration of students. True copy of the UGC Regulations, 1985 Regarding The Minimum Standards Of Instructions For The Grant Of First Degree Through Non Formal / Distance Education is being filed herewith and marked as **Annexure E- 1** to the response.
5. The University grants commission "Guidelines for formulating Model Act for the 21st Century Universities". The guidelines are suggested as the basis for formulating a Model Act for the 21st century Universities in India. Some of these guidelines depend on the traditions prevailing in the University system in India; But, some others are necessary to meet the various expectations from Indian Universities in the 21st century. As per the Model Act Continuing Education and extension as one of the Key



functions of a 21<sup>st</sup> Century university. The guidelines also state that the Jurisdiction of a university is no longer relevant due to influence of ICT on education. True copy of the University grants commission "Guidelines for formulating Model Act for the 21st Century Universities". is being filed herewith and marked as **Annexure E- 2** to the response.

6. Section 2 of the Karnataka State Open University Act defines:
- (d) "Distance Education system" means the system of imparting education through any means of communication such as broadcasting, telecasting, instruction media or print media, seminars, contact programmes or the combination of any two or more of such means
  - (e) "Regional Centre" means a Centre established or maintained by University for the purpose of coordinating and supervising the work of Study Centres in any region and or performing such other functions as may be conferred on such centre by the Board of Management.
  - (f) "Study Centre", means a centre established, maintained or for valuation and for conducting the examination or recognized by the University for the purpose of advising, counseling or for rendering any other assistance required by the students;

7. Section 3 of the Act deals with Establishment and Incorporation of the University. According to subsection 1 of section 3 "There shall be established a University by the name of the "The Karnataka State Open University"
8. According to subsection 2 of section 3 "**The head - quarters of the University shall be a such place as may be specified by the Government by notification and it may establish, maintain or recognize colleges, Regional Centres and study centres at such places in Karnataka and may also open centres outside Karnataka at such places as it deems fit**".
9. From the reading of subsection 2 of section 3 of the Act it is evident that the KSOU Act empowers the University to recognize colleges, Regional Centres and Study Centres within the state of Karnataka. The University may also open either it's Regional Centres and Study Centres beyond the state of Karnataka at such places as the university deems fit.
10. The University may open such regional centres beyond the State of Karnataka for the purpose of coordinating and supervising the work of Study Centres in any region and study centres beyond the State of Karnataka for the purpose of advising, counseling or for rendering any other assistance required by the students.

11. Section 6 of The Indira Gandhi National Open University Act, 1985 determines the Jurisdiction of The Indira Gandhi National Open University. Section 6 lays down that the University shall in the exercise of its powers have jurisdiction over the whole of India, and to the Study Centres outside India.
12. Section 6 of The Indira Gandhi National Open University Act, 1985 gives an extra territorial jurisdiction to The Indira Gandhi National Open University but such jurisdiction is restricted to the Study Centres of the university outside India.
13. The provision of subsection 2 of section 3 of The Karnataka State Open University Act, 1992 are similar to Section 6 of The Indira Gandhi National Open University Act, 1985 as both the acts provide for setting up of study centres beyond their territorial limits.
14. Therefore in the light of the above discussion and in view of the facts, provisions of law, it is undisputed that, the University is empowered by subsection 3 of Section 1 of The Karnataka State Open University Act, 1992 to establish, maintain or recognize colleges, Regional Centres and study centres at such places in Karnataka and may also open centres outside Karnataka at such places as it deems fit.
15. The very act of the Director, DEC in issuing the aforesaid impugned letter/ notice is totally illegal, arbitrary and

unconstitutional as the impugned notification had been issued in blatant disregard of the UGC Act, 1985 regulations, guidelines of the U.G.C. of and IGNOU Act, 1985 and Guidelines

16. It is evident the issue to territorial jurisdiction reflects non application of mind as well as poor knowledge of law, on part of the Director, DEC. It seems Director DEC has deliberately ignored section 3 subsection 2 of KSOU for reasons known best to him
17. Serious doubts arise about the conduct, integrity and functioning of the Director, DEC for the reason that certain private universities like the Sikkim Manipal University and the Annamalai University, amongst others are offering distance education programs in technical as well as non technical courses through their network of study centres located throughout the country, but the Director DEC has not initiated any kind of action against them nor has issued them any kind of show cause notice, for reasons known best to him.
18. Issuing a show cause notice against the KSOU and displaying the show cause notice on the web site of the DEC and taking no action against the defaulter universities mentioned above demonstrates that the Director DEC is biased and has apparently favored the above mentioned private universities.

19. The DEC has not been consistent with its policy on territorial jurisdiction of the Universities. From 2005 till date various conflicting policies have been notified by the DEC and subsequently amended by it. As per the notices, the DEC has changed the policy on territorial jurisdiction 3 times from between 2007 and 2010 which shows that the DEC itself does not have a firm stand on the policy of jurisdiction. However, as per the Last Declared Policy of DEC regarding Territorial Jurisdiction, the acts and Statutes of the concerned Universities shall be considered as guide to decide the Jurisdiction. Furthermore, in case of KSOU, its Act very explicitly allows opening up of Centres outside Karnataka. This makes it evident that KSOU is not violating any territorial jurisdiction, neither in word nor in spirit.
20. The DEC displayed a Circular No. F.No.DEC/Website/ dated 05.01.2006 on its website thereby informing that programmes offered through Distance Education Mode by 3 deemed universities and 1 state university are not approved by DEC and the universities were not permitted by the DEC to open study centers beyond their territorial jurisdiction of their state. True copy of the Circular No. F.No.DEC/Website/ dated 05.01.2006 is being filed herewith and marked as **Annexure E- 3** to the response.

21. The Circular No. F.No.DEC/Website/ dated 05.01.2006 by DEC along with Notification No. F.18-15/93-TD.V/TS.IV dated 01.03.1995 issued by Ministry of Human Resources Development, Govt. of India requiring approval by DEC, IGNOU or AICTE for purposes of employment to posts and services under the Central Government was stayed by Hon'ble High Court of Himachal Pradesh in writ petition bearing no. 136 of 2006. Vide it's order dated 27.03.2006, the Hon'ble High Court of Himachal Pradesh took the prima facie view that neither IGNOU, nor DEC is authorised to make any such directions. True copies of order dated 27.03.2006 passed by the Hon'ble High Court of Himachal Pradesh passed by the Hon'ble Supreme Court of India is being filed herewith and marked as **Annexure E 4 (Colly.)** to the response.
22. Against above order, the IGNOU filed a SLP Civil bearing No. 733/06 before the Hon'ble Supreme Court, but Supreme Court refused to interfere. True copy of the order dated 05.05.2006 passed by the Hon'ble Supreme Court of India is being filed herewith and marked as **Annexure E 5** to the response.
23. The validity of above stated circular issued by the DEC was also challenged by the Universities before the Hon'ble Rajasthan High Court and Delhi Court. The above circular was finally

withdrawn by the DEC before the Hon'ble Delhi High Court in WP No. 471 of 2007.

24. After the dismissal of the SLP by the Hon'ble Supreme Court the DEC granted ex post facto approval to all the 4 Universities that were named in above circular. The DEC also changed its policy on Territorial jurisdiction. True copy of the Recognition policy displayed on the web site of the DEC is being filed herewith and marked as **Annexure E-6** to the response.
25. As per the new policy of the DEC on territorial jurisdiction, The Distance Education Council decided not to insist on territorial jurisdiction to be followed by institutions in offering programmes through distance and online modes and on that matter, universities should be governed by their own Acts and Statutes in approval . This policy was mentioned in the approval letters issued to various universities. True copy of one such approval letter no. F.No DEC/JRN/RJ/08/1436 dated 8.10.2008 issued by the Dec to one deemed university is being filed herewith and marked as **Annexure E-7** to the response.
26. The DEC vide its letter Ref. No. DEC/Comm/RJ/2009/3409 dated 16 September 2009 informed the universities that a state university can offer programs only within the state. Directions regarding the territorial jurisdiction of the universities Central

universities and institutions were also given in the said letter. True copy of letter Ref. No. DEC/Comm/RJ/2009/3409 dated 16 September 2009 is being filed herewith and marked as **Annexure E-8** to the response.

27. The DEC vide its Notification F.No. DEC/2010/7060 dated 29.03.10 informed University that its 35<sup>th</sup> meeting the Council noted that distance education and online education cannot have the territorial jurisdiction. Further it was informed that the territorial jurisdiction of the State Universities will be as per their acts and statutes. True copy of letter Ref. No. Notification F.No. DEC/2010/7060 dated 29.03.10 is being filed herewith and marked as **Annexure E 9** to the response.
28. From what has been stated above it become clear that the KSOU is empowered by the subsection 2 of section 3 of its Act to **establish, maintain or recognize colleges, Regional Centres and study centres at such places in Karnataka and may also open centres outside Karnataka at such places as it deems fit**".
29. That the very act of the DEC in issuing the show cause notice and subsequent memorandum is totally illegal, arbitrary, unconstitutional, biased and a resultant of non applicant of mind as they been issued in blatant disregard of the UGC Act, UGC



Regulations, UGC Guidelines, IGNOU Act, DEC Guidelines, KSOU Act 1992 and statutes made there under.

30. Furthermore, we have obtained a specific opinion from the Additional Solicitor General on the Topic regarding Territorial Jurisdiction which completely vindicates our stand.
31. That from the above facts and provisions of law and above referred Opinion of Additional Solicitor General it is evident that the allegation made by the Director DEC related to issue no. 5 in the Show Cause Notice and the memorandum are baseless and devoid of any merit and hence specifically denied.