

# COMMITTEE ON PETITIONS

(EIGHTH LOK SABHA)

NINTH REPORT



*(Presented to Lok Sabha on 3 May, 1989)*

**LOK SABHA SECRETARIAT  
NEW DELHI**

*April, 1989/Vaisakha, 1911 (Saka)*

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## CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE ON PETITIONS	(iii)
INTRODUCTION	(v)
REPORT	
I. Representation regarding recognition of Maithili University.	1
II Petition No. 14 regarding amendment/modification of the Sikkim (Citizenship) Order, 1975.	20

**COMPOSITION OF THE COMMITTEE ON PETITIONS  
(1988-89)**

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**NINTH REPORT OF THE COMMITTEE ON PETITIONS  
( EIGHTH LOK SABHA )**

**INTRODUCTION**

I, the Chairman of the Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Ninth Report of the Committee to the House on the following matters :—

- (i) Representation regarding Recognition of Maithili University.
- (ii) Petition No. 14 regarding Amendment/Modification of the Sikkim (Citizenship) Order, 1975.

2. The Committee considered the above matters at their sittings held on 29 December, 1988 and 7 and 9 February, 1989.

3. The Committee considered the draft Report at their sitting held on 26 April, 1989, and adopted it.

4. In connection with the petition No. 14 regarding amendment/modification of the Sikkim (Citizenship) Order, 1975, the Committee undertook on-the-spot study visit to Gangtok from 25 September to 27 September, 1988. During tour, the Committee held informal discussions with the Chief Minister and other Ministers of the State Government of Sikkim, Speaker, Sikkim Legislative Assembly, M.P. (Rajya Sabha) and the MLAs. The Committee also held informal discussions with the Members of the Opposition Party in Sikkim and office-bearers of the Sikkim Krantikari Parishad.

5. The Committee wish to express their thanks to the Officials of Ministries of Human Resource Development (Department of Education), Home Affairs and University Grants Commission for furnishing relevant information to the Committee in connection with the examination of the subjects.

NEW DELHI ;  
26 April, 1989

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*Vaisakha, 6, 1911 (Saka)*

**BALASAHEB VIKHE PATIL,**  
*Chairman,*

*Committee on Petitions.*

## **REPRESENTATION REGARDING RECOGNITION OF MAITHILI UNIVERSITY**

1.1 Shri V. Balakrishnan, Secretary-General, All India Maithili Vishwavidyapith Student Council, Coimbatore, in a representation to the Committee dated 21 November, 1988 stated that upto December, 1986 the so-called Maithili Vishwavidyapith had been awarding degrees/diplomas, which were accepted by several employing agencies and other institutions. However, in December 1986 the University Grants Commission through announcements made on Radio and Television declared that the so-called Maithili University was illegal as it was not functioning under the UGC Act and had not been recognised by it. With the announcement of UGC, thousands of innocent and poor students who had spent lot of money and secured degrees/diplomas from the so-called Maithili University have been put to lot of embarrassment and inconvenience. The petitioner had prayed that the so-called Maithili University should be declared as a deemed University and the degrees/diplomas already awarded by this University may be recognised.

1.2 Another petitioner Shri Krishan Kant Verma in his representation dated 4 November, 1988 stated as under :—

“Maithili University Darbhanga (Bihar) had been awarding degrees since 1962 and conducting examinations throughout the country. Suddenly during November/December, 1986, the University Grants Commission declared that Maithili University had no legal existence and was not thus authorised to award degrees.

A writ against this announcement was admitted by the Honourable High Court Patna.

The University Grants Commission issued fresh instruction after the verdict of the Honourable Court during January, 1988. Thousands of innocent and poor students who had spent their hard earned money and most valuable years for the degrees are nowhere on account of the UGC's vague decision in an autocratic way. I request

your kind intervention and ask the Government to make it clear that the degrees awarded by Maithili University before January 1988 are recognised automatically as per Ministry of Home Affairs Notification No. 26.4.1952 dated 20.9.1952”.

1.3. Another representation was received from Shri K. Sree Kumar from Quilon (Kerala) on 16.3.1989. The petitioner *inter-alia* stated that he had been working in the Commerce Ministry in the same cadre for a very long time. In order to get promotion he joined a tutorial college which was affiliated to the so-called Maithili University, Darbhanga, Bihar, whose degrees had been recognised for the purpose of examinations conducted by the UPSC. He got his B.Sc. degree from the Maithili University but following the announcement of the UGC in regard to the status of the Maithili University, his Department informed him as follows :

“You are not considered eligible for appointment to the post of Technical Officer as it has been ascertained that the Maithili University from which you obtained the degree has neither been established nor recognised by the Government of Bihar”.

1.4. The Ministry of Human Resource Development (Department of Education) in their factual comments on the points raised in various representations stated as under :—

“Section 2(f) of the UGC Act 1956 defines the term ‘University’ as a university established or incorporated by or under a Central Act or Provincial Act or a State Act including any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under the Act. Section 3 of the UGC Act empowers the Central Government to notify, on the recommendations of University Grants Commission, any institution of Higher Education other than a University as an institution deemed to be a University. Section 22(1) of the UGC Act states that the right of conferring or granting degrees shall be exercised only by a university established or incorporated by or under a Central Act, or a State Act or an institution deemed to be a university under Section 3 of the UGC Act or an institution especially empowered by an Act of Parliament to confer or grant degrees. The so-called Maithili University does not fall under any of the aforesaid categories and is not therefore, empowered to award degrees.

It had come to the notice of the Department of Education, the University Grants Commission and the Association of Indian Universities that the Maithili University, Darbhanga was giving advertisements in the press for award of degrees/diplomas to various courses such as B.A., B. Ed. and M.A. The Registrar of the institution was requested by the University Grants Commission in September, 1985, to delete the "University" from its existing name and stop awarding degrees forth. A copy of the aforesaid letter was also endorsed to the Secretary, Education, Department Government of Bihar and the Inspector General of Police, Bihar for urgent necessary action. The University Grants Commission again wrote to the Government of Bihar in October, 1988, to take legal action against the so-called Maithili University under intimation for violating the provisions of the UGC Act.

The University Grants Commission had issued a press release in November, 1986, stating that the Maithili University is neither a University established by a Central or a State Act nor a deemed to be university under section 3 of the University Grants Commission and as such is not empowered to award degrees.

A complaint was received by the Monopolies and Restrictive Trade Practices Commission from Consumers Education Trust of Mangalore that Vijay Tutorials, a teaching shop was misleading students by issuing letters that they could obtain B. A. and B. Ed. and other degrees by Maithili University, Darbhanga by post or by personal coaching. After investigation, an order was passed by the the Director General (Investigation and Registration) on 12.7.88 restraining the Maithili University, Darbhanga from describing it as a University or having the word "University" with its name. The Commission has also restrained the institution from conferring degrees awarded by it.

The so-called Maithili University/Maithili Vishwa Vidyapith had sent a proposal to the Government/UGC for declaring it as an institution deemed to be a university under section 3 of the UGC Act. The Chancellor of the so-called University was advised to send the proposals duly recommended by the Government of Bihar in the prescribed performa in accordance with the guidelines laid down by the University Grants Commission in this behalf. The

proposal in the prescribed proforma in the light of the UGC guidelines has not been received through the State Government. The institution has not, therefore, been notified as a deemed university under section 3 of the UGC Act.

The institution filed a writ petition in the Patna High Court for declaring it as a deemed University. In its judgement passed in November 1987, the High Court without expressing any opinion on the merits of the proposal passed an order that if any such application has been filed on behalf of the petitioner the Central Government on the advice of the Commission shall pass an appropriate order in accordance with the law. Since then, no such application for declaring the institution deemed to be university under section 3 of the UGC Act has been received from the institution either in the Department of Education or the University Grants Commission.”

1.5 The Committee examined the representatives of the so-called Maithili University on 7 February, 1989. From the evidence tendered by the representatives of the so-called Maithili University and other written material made available to the Committee, the position that emerged is described in the succeeding paras.

1.6 Maithili Vishwavidyapith was established in Darbhanga in 1962 and was registered with the Registrar of Patna in 1972 under the Societies Registration Act, 1960.

1.7 Maithili Vishwavidyapith is claimed to have been set up by linguistic minority which speaks Maithili language. It has also been claimed that since Maithili is recognised minority language, the minority community has a constitutional right to set up educational institutions as envisaged under Article 30(1) of the Constitution of India. Claiming to be an institution run by a linguistic minority, Maithili Vishwavidyapith authorities were satisfied with its legal existence after it had been registered under the Societies Registration Act of 1860.

1.8 Maithili Vishwavidyapith claimed to have introduced several academic and non-academic courses for its degree and post graduation studies. Maithili Vishwavidyapith changed its title from “Maithili Vishwa-



vidyapith' to 'Maithili University' and started awarding degrees/diplomas for a number of courses such as :

Maithili Madhyma	Matriculation
Maithili Visharad	Intermediate
Maithili Shastree	Graduate
Maithili Acharya	Post Graduate
Maithili Vidya Ratna	M. Lit.
Maithili Vidyabhaskar	M. Phil.
Maithili Vidyavarithi	Ph. D.
Midya Vachaspati	D. Lit.
Maithili Mahamahopadhyay	F.R.O.S.

1.9 Ministry of Home Affairs O.M.No. F. 26/4/52-CS dated 30 September, 1952 on the subject of recognition of degrees/deplomas/certificates for the purpose of employment under the Central Government *inter alia* states "It has been decided in consultation with the UPSC that in the case of degrees/diplomas awarded by universities in India which are incorporated by an Act of the Central of State Legislatures in India and other educational institutions established by an Act of Parliament, no formal orders recognising such degrees/diplomas need be issued by Government. Such degrees/diplomas should be recognised automatically for the purpose of employment under the Central Government." Since Maithili University had been registered under Societies Registration Act of 1860 (which is a Central Act), the Vishwavidyapith authorities claimed that its degrees/diplomas were covered for the purpose of recognition in term of above referred O.M. of the Ministry of Home Affairs.

1.10 The Degrees Diplomas awarded by Maithili Vishwavidyapith were recognised by some employing agencies like Nationalised Banks and Public Undertakings and even Government departments for the purpose of employment. Even U.P.S.C. has recognised degrees awarded by the Vidyapith for the purposes of its examinations. In a letter No. F. 22/10/85-E1(B) dated 11.4.85 the UPSC *inter-alia* stated : "Since Maithili University is one of the recognised universities, the degrees awarded by them are acceptable to the Commission for various competitive examinations conducted by them."

1.11 The certificates awarded by the Maithili Vishwavidyapith were accepted by many universities for the purpose of higher education. Osmania University, Hyderabad have recognised B. Ed. of Maithili as equivalent to

their B. Ed. *vide* letter No. 1762/1/1505 ACAD-86. Similarly the University of Kerala in their letter AC. C1/901/87 dated 9.9.1987 *inter-alia* stated that "the MA (Public Administration degree) through correspondence course awarded by the Maithili University Darbhanga, Bihar has been recognised as equivalent to the MA degree of the University of Kerala for the specific purpose of promotion only."

1.12 The name of the so-called Maithili Vishwavidyapith was included alongwith the names of the examinations being conducted by it and the date of its establishment in the publication entitled 'Directory of Institutions for higher education' brought out by the Department of Education, Ministry of Education and Culture. This information appeared in 1979-80 edition of the publication and was again repeated in the 1981-82 and 1984-85 editions of the Directory. The representative of the Maithili University stated before the Committee that this added to the popularity of the institution and as a result thereof several schools and colleges affiliated to the Maithili University started operating in every nook and corner of the country.

1.13 During evidence before the Committee, a representative of the so-called Maithili University stated that the Maithili Vishwavidyapith had an annual budget of Rs. 1.32 lakhs only, it had a staff of only 17 persons and it was not getting any grant-in-aid from any source. In reply to a question, the representative of the Maithili University informed the Committee that the Maithili University was having both regular and correspondence courses. The University was conducting its own examinations and awarding degrees/diplomas to about 500 to 1,000 students every year.

1.14 The representative of the Maithili University also informed the Committee that memoranda had been sent to the UGC through the State Government from 1973 onwards and up to 1985 for granting recognition to the University as a deemed university. In 1985 Department of Education, Govt. of India directed the Maithili University to route their application for recognition through the State Governments. According to the representative of the Maithili University, an application for the recognition of the University as a deemed university was forwarded to the State Government for onward transmission to the Ministry of Education, Government of India.

1.15 In 1986 the UGC took action against the Maithili University by making announcement through Radio, Television and newspapers stating that the Maithili University had not been recognised as a deemed university

for the purpose of award of degrees/diplomas. The Maithili University authorities filed a writ petition in Patna High Court which ordered that if any application for declaring the Maithili University as a deemed university under Section 3 of the UGC Act was filed on behalf of the Maithili University the Central Government should pass appropriate orders in accordance with the law.

1.16. The Committee also examined the representatives of the Department of Education, Government of India and Chairman, UGC.

During evidence, the Committee desired to know as to when the Department of Education/University Grants Commission noticed for the first time that the Maithili University had not been given the status of a Deemed University. The Chairman, UGC stated :

“As far as University Grants Commission is concerned, there was no question of not noticing it. We know that we have not given the status of deemed University to Maithili University. The reason is that we have no proposal before us. We had never considered this case because no proposal came as such and there was no question of noticing for the first time that we have not given the status of a “deemed University.”

He added :

“I would like to submit that no institution can call itself as a “deemed University” and start awarding degrees unless it is either established under the Act of a State or through an Act of Parliament. It cannot itself call as a “deemed University”. It cannot give degrees like that. In the case of registered Societies or any other institution which apply to the Government, the Government on the basis of University Grants Commission, after examining that they have got sufficient criteria, may recommend that they may be declared as “deemed Universities.” Then they can give degrees. In this particular case, a proper application to the UGC was not even received. Secondly, even if we had received it, probably it would not have met our criteria.....How do we know when somebody has set up something like that ? There is an Act for this purpose. There is a law existing today in this country. So, we do not really go round the

country ourselves looking at every institution whether they are complying with the provisions or not. We are not a policing agency. But when it comes to our notice at that time we take action. We are also going to the Press and telling people that such and such institution, which calls itself a "deemed University" has not set up that institution under an Act of Parliament or a State Legislature nor has it been deemed as a University."

1.17. The Committee pointed out that although the University Grants Commission may not be in a position to monitor the affairs of all the universities there ought to be some authority which could keep a watch whether an institution started by somebody and proclaimed as a university actually fulfilled the conditions for being recognised as a University. A representative of the Ministry of Education thereupon stated :—

"Under the Act, for purposes of employment a university degree is prescribed as a qualification. What is a university degree? For that purpose, the word 'university' is defined in the UGC Act. A university is defined as a university established or incorporated by a Central Act or a Provincial Act or is a deemed university. Degrees which are recognised by the Government are degrees awarded by universities established by the Central Government or by the State Government or institutions which have been deemed to be the institutions. This is the position. Besides that, the Government can also recognise any educational institution under the Central Government/or the State Government or any specific institution for purpose of employment. What is happening is that since the word 'university' is used, some of the students and the employers feel that this is a degree from an institution which is a recognised institution. But it is not correct. In the UGC Act, legal provisions are quite adequate. Section 23 of the UGC Act, legal provisions are quite adequate. Section 23 of the UGC Act says that no institution can use the word 'university' in any manner. Then there are penalties provided in Section 24. Section 24 says :

"Whoever contravenes the provisions of Section 22 or 23 shall be punishable with fine which may extend to one thousand rupees. And if the person contravening is an association or other body, all individuals, every member of such association or other body who knowingly or wilfully

authorises or permits the contravention shall be punishable with fine which may extend to one thousand rupees.”

What can be done under the circumstances—number of cases where some people were running institutions as universities and misleading the students—punishment which is prescribed can be enhanced. At present, punishment which is provided in the Act is not adequate. That is the only difficulty. Legally, there is no problem except to the extent of what I have stated.”

1.18. The Committee pointed out that the so-called Maithili University was functioning from 1973 onwards and awarding degrees in an irregular manner, but no action was initiated at any stage. Asked whether the law was inadequate, the Chairman, UGC stated :—

“Firstly about the question of penalty. I agree with the Joint Secretary that penalty should be made more stringent. If one can make a provision somewhere that if an educational society is established as a university anywhere in the country under the State Government or the Central Government, it would be appropriate—before it is registered—if a reference is made to the University Grants Commission or to the Central Government so that such kind of a thing does not recur in future. Otherwise, if they keep the word ‘university’, it is quite possible that people will be fooled. We have to let the people know through a campaign that whether certain institution is established according to the State Legislation or the Central legislation or whether they have a proper status or not.”

1.19. The Committee pointed out that as claimed by the authorities of the so-called Maithili University, this university was protected under article 30 of the Constitution being an institution of the minority community. A representative of the Ministry stated :

“As a minority, they have a right to get their society registered. But they have no right to use the word ‘university’ or mislead the people that it is a university.”

In the same context the Chairman, UGC stated :

“One finds that a large number of students, who are supposed to have registered with this so-called university, come from very far

away places in South India, like Coimbatore. Secondly, they have been partly confused from the fact that in the same place, Darbhanga, there is the university established through State legislation. That is the L. N. Maithili University. It is a proper university and people have probably been confused between the two. May be that was also partly the reason for the error which was committed in the UPSC. This has been one of the unfortunate circumstances. This organisation has done a tremendous harm, particularly when they write in their prospectus saying that passing is very easy, hardly anybody fails and so on. This is no education."

1.20. The Committee desired to know why no investigation was started and action taken against the university after it had come to the notice of UGC that law had been violated by the so-called Maithili University. In reply, a representative of the Ministry stated :—

"It was in February 1984 that the Government of India forwarded a copy of the letter of the Vice-Chancellor, Maithili Vishwa Vidyapeeth. The request made therein was to recognise it as deemed university under Section 3. On July 27, 1984, the Vice-Chancellor of this institution was requested to send the proposal in the prescribed performa which has not been received so far.

It was again on 24.7.1985 that we received a letter which carried the name of Maithili Vishwa Vidyapeeth as also Maithili University in English. Therefore, it became operative. We approached the institution on 4th September, 1985. We wrote through Dr. Ashok Kumar Jha, Registrar, Maithili University (so-called), Darbhanga. In that letter we have pointed out Sections 22 and 23 of the UGC Act. We also listed there the penal clauses. A copy each was given to the State Government and the IG, Police."

The Chairman, UGC further stated in this connection as under :—

"We came to know about these operations only in 1984. In any case we do not conduct inquiries into institutions which are not universities. We are sure that it is an illegal institution. So, there is no question of conducting an inquiry for finding out whether it is legal or not."

1.22. The Committee were informed that UGC had informed the Government of Bihar in September, 1985 about the un-lawful activities of

the institution being run by the Maithili University. The matter was also followed up through letters written in January, 1986 and October 1988. Referring to the above, the Committee pointed out that some policing seems to have been done by the UGC even though it was claimed on behalf of UGC that it was not the responsibility of the UGC to police the un-lawful activities of such institutions. To this the Chairman, UGC replied :—

“The UGC has been set up under an Act and if somebody contravenes the provisions of that act and when it comes to light, I think, it is our responsibility to bring it to the attention of all concerned that somebody has contravened the law and for that purpose, I think, it was proper for us to inform the authorities. When I said that we are not an institution to police the whole country to find out who are contravening the law, it was because we are not such a large organisation spread over the whole country.”

1.23. On the question of respective responsibilities of the UGC and the Department of Education in the matter of regulating activities of institutions like Maithili University, a representative of the Department of Education stated during evidence :—

“As the Chairman, UGC, just pointed out, on the 4th September, 1985 they wrote a letter to the Registrar of Maithili University.

The last para clearly reads as follows :

“In view of the above provisions, you are advised to delete the university’s very existing name and also to stop awarding degrees etc...”

They are empowered to award such degrees and the so-called Maithili University does not come under the above category. This was the letter they sent. A copy was marked to Education Department of the Government of Bihar and to the Inspector General of Police for urgent necessary action. Following it up, we have taken up with the Ministry of Home Affairs. In the meantime the Department had concurrently come to know, based on correspondence with the Government of India, that the Department of Personnel wrote to the Government of Bihar stating that the degrees awarded by the institution were not recognised by the Govt. and they were requested to make a thorough inquiry in regard to the

existence of this institution and its activities. We also requested the State Criminal Investigating agencies to be put into action. This was the action that we took. These are the facts which I submit regarding what the UGC and the Government of India did together.”

1.24. The Committee desired to know which authority was responsible for implementing the UGC Act. The Committee also wanted to know whether there were any loopholes in the Act which needed to be plugged. In this connection, a representative of the Ministry stated :—

“There is no doubt that so far as the UGC Act is concerned, it governs the University Grants Commission and its activities. They are the implementing authority for the Act. As regards the offences that have come to the notice of the UGC, and the Government now, they have got two dimensions—preventive dimensions and penal dimensions. So far as preventive dimensions are concerned, UGC have been very prompt. Whenever the offences have come to the notice of the UGC, they have intimated to the Government of India and the Govt. of India have taken action so that in future the students do not get enticed to go in for the degrees that are granted by this institution. As far as penal dimension is concerned, the moment it came to the notice of the UGC, they should have got it investigated through some Central investigating agency. They should have registered an FIR against that institution and they should have got the necessary prosecution proceedings launched.”

1.25. On being asked whether at any time UGC considered entrusting a Central agency like CBI with the work of investigating unlawful activities of the so-called Maithili University, the Chairman, UGC stated :

“As far as UGC is concerned, since we were definite that this was not a university as defined in the Act, there was no question of trying to establish that. We brought this to the notice of the State Government and the State authorities. So, we did not have to do any other investigation from this point of view. On the other hand, if there are any other criminal things—cheating and so on and so forth—in that we are not involved. So, we cannot say there is an institution which is not even a university. That is for the State Government or for the local law maintaining authorities to say.”



1.26. In reply to a question why action was not initiated as soon as it came to notice that the so-called Maithili University was indulging in unlawful activities, the Chairman, UGC stated :—

“As soon as we became aware of this, soon after that, in 1984, we took action and informed the appropriate authorities in the State. Before that, unless we are aware of this, we cannot inform anybody about this. If the State authorities felt that cheating was done, it was for them to initiate legal action against them. As far as we are concerned, we said it was illegal, it was not a university and it should not give degrees. That we pointed out to the State Government, with a copy to the police. That is all we could do.”

1.27. The Committee enquired under what circumstances UPSC issued a letter to the effect that the students having degrees from the so-called Maithili University were entitled to appear for examinations held by UPSC. The representative of the Department of Education stated :—

“There appears to have been a *bona fide* error on the part of the UPSC. Their earlier reference to degree etc., was a mistake. It seems to be the *bona fide* mistake and *bona fide* mistakes committed even by constitutionally established body do not necessarily mean that such wrongly issued orders have the legal validity.”

1.28. The Committee desired to know whether Government was aware as to how many institutions were there in the country which were functioning as Universities on the lines of so-called Maithili University. The Chairman, UGC stated in this connection :

“We are not aware of every thing. But we have noticed the following fake universities/institutions :

- (i) National University of Electro Complex Homoeopathy, Kanpur;
- (ii) Commercial University Ltd., Daryaganj, Delhi
- (iii) Takshila Kendriya Vishwavidyalaya, Uttam Nagar, New Delhi.
- (iv) Mahila Gram Vishwavidyalaya (Women's University), Varanasi;
- (v) Varanaseya Sanskrit Vishwavidyalaya, Varanasi.”

1.29. When asked as to what action had been taken by the UGC against these institutions, the Chairman UGC stated :

"Now we have issued some press statements. We think we will go on issuing advertisements so that people are aware that the authorities check the *bona fides* of the new institutions which want to award degrees. When they become aware of this essentiality we educate the public that they do not become victims."

In the same context, the representative of the Department of Education stated :

"Whenever anything comes to our light we will inform everybody concerned in the widest possible way so that the Universities, employment agencies and the general public should know about it. I may mention one of the provisions made in regard to the new education policy. One of the suggestions is that there should be State councils of higher education in all the States which would locate any institution which has been established and in that Council, U.G.C. will also be represented and I think we do it a way so that we can know what has been happening in the institution which has been established. In this way we can have much better hope of controlling such irresponsible activities and I think we will do that."

1.30. The Committee pointed out that UGC had sufficient powers to exert pressure on the State Governments for taking action against educational institutions which are committing such frauds. The Chairman, UGC stated :

"Thank you for suggesting that we are powerful. But I do not think that we have too much power. We don't work on the basis of power. I think we have a limited power in that we draw their attention and normally if there is contravention of law some action has to be taken. We can go to a court, but we cannot really be involved in litigation in thousands of cases. It is for the local authorities to go to the court. On the other side we must bring about better awareness so that people won't fall a prey to this. May be this will also help if there is a discussion on this for people to know that this kind of thing would be very bad for them if they fall prey to it. Unless the public is made more aware, the people who want to cheat can always cheat."

The representative of the Department of Education added :—

“Now we will write to all the Chief Secretaries bringing to their notice the relevent provisions and we will tell them that this is a very serious matter involving not merely the institutions and the UGC but also thousands and thousands of students and it should be taken very seriously and the Police machinery should be given appropriate power to act promptly. We can give instructions to all the authorities legally constituted for the purpose of registering societies to ensure that whenever a society is registered for educational purposes, prior consultation with the UGC is to be made. When it comes to our notice, the Central Government themselves even without referring to State Government, can think of taking action.”

*Observations/Recommendatio. s of the Committee*

1.31. The Committee find that the so-called Maithili Vishwavidyapith or Maithili University started functioning as an educational institution as far back as in 1962, primarily for the propagation of Maithili language. It was registered in 1972 at Patna under the Societies Registration Act, 1860. Claiming protection under article 30 of the Constitution, as an institution run by a linguistic minority, the Maithili Vishwavidyapith authorities were fortified about its legal existence after it had been registered under the Societies Registration Act of 1860. During course of time the title 'Maithili Vishwavidyapith' was changed to 'Maithili University' and the so-called university started awarding degrees/diplomas for a number of courses including graduation and post graduation courses. Thus the so-called Maithili University, which according to its self-proclaimed Vice-Chancellor had an annual budget of Rs. 1.32 lakhs only and a staff of only 17 persons and was not getting any grant-in-aid from any source started functioning as a full-fledged University from 1972 onwards.

1.32. The so-called Maithili University was having both regular and correspondence Courses and conducting its own examinations for the purpose of awarding degrees/diplomas to about 500 to 1,000 students every year. According to the Chairman, UGC the so-called University proclaimed through its prospectus that passing of examination was very easy and hardly anybody failed. No wonder this caught the fancy of a large number of young students, who eagerly wanted to have a degree/certificate which was sure passport for securing appointment in any Government or semi-Government organisation. A large

number of tutorial or teaching shops came up in every corner of the country to train students for obtaining degrees/diplomas being issued by the so-called University and did flourishing business. A very old circular of the Ministry of Home Affairs issued in September, 1952 on the subject of recognition of degrees/diplomas/certificates for the purpose of employment under the Central Government provided that degrees/diplomas issued by universities in India which are incorporated by an Act of the Central or State Legislatures in India and other educational institutions established by an Act of Parliament would be automatically recognised for the purpose of employment. The so-called Maithili University fully exploited the aforesaid circular by proclaiming that the University or Vishwavidyapith set up under the Central Act viz., Societies Registration Act, 1860 was competent to award degrees/diplomas which were also recognised for the purpose of employment. Over the years the degrees/certificates issued by the so-called University attained such respectability that even UPSC started accepting these for the purpose of various competitive examinations conducted by them. The name of the so-called Maithili Vishwavidyapith alongwith the names of examinations conducted by it somehow found a place in the publication entitled "Directory of Institutions for higher education" brought out by the Department of Education from year to year. This provided a legitimacy and added to the popularity of the institution. No wonder, the certificates awarded by the so-called University also came to be accepted by other Universities for the purpose of higher education and by various employing agencies like Banks and public undertakings for the purpose of employment. There was thus a *de facto* recognition of the degrees/certificates issued by the so-called University.

1.33. Unfortunately, however, neither the Central Department of Education nor the University Grants Commission or the State Government of Bihar took any action to see whether the so-called Maithili University was a University in terms of Section 2(F) of the UGC Act 1956 or whether the same had been notified under Section 3 of the UGC Act as an institution deemed to be a University. This was imperative as under Section 22(1) of the UGC Act, the right of conferring of degrees could be exercised only by a University established as such or an institution deemed to be a university. Even though it had come to the notice of the Central Ministry of Education, the University Grants Commission and the Association of Indian Universities that the Maithili University, Darbhanga was giving advertisements in the Press for award of degrees/diplomas for various courses such as BA, B.Ed. and MA., it was only in September, 1985 that the Registrar of the so-called Maithili University was requested for the first time by the University Grants Commission to delete

the word, 'University' from its existing name and stop awarding degrees forthwith. Thus the so-called Maithili University continued to defraud people from 1972 onwards. Apart from writing to the so-called university in September, 1985 and endorsing copies of the same letter to the Secretary, Education Department, Government of Bihar, and the Inspector General of Police, Bihar, the UGC did not initiate any legal action contemplated in Sections 23 and 24 of the University Grants Commission Act. Only in November, 1986 the University Grants Commission issued a Press Release stating that the Maithili University was neither a university established by a Central or a State Act nor a deemed university under Section 3 of the UGC Act, and as such was not empowered to award degrees. Meanwhile a complaint had been received by the Monopolies and Restrictive Trade Practices Commission from Consumers Education Trust of Mangalore that Vijay Tutorials, a teaching shop was misleading students by issuing letters that they could obtain B.A. and B.Ed. and other degrees from Maithili University, Darbhanga by post or by personal coaching. After investigation an order was passed by the Director General (Investigation and Registration) on 12 July 1988 restraining the Maithili University, Darbhanga from describing it as a university or having the word 'University' with its name. The MRTP Commission has also restrained the institution from conferring degrees awarded by it. Thereafter in October 1988 UGC again wrote to the Government of Bihar to take legal action against the so-called Maithili University for violating the provisions of the UGC Act.

From the above it is clear that from 1972 to 1985, no action whatsoever was taken by any authority with a view to restraining the so-called Maithili University from misleading young students all over the country by giving false advertisements and awarding degrees, which it was not authorised to give and which were for all practical purposes useless. Had timely action been taken by UGC or the Central Department of Education who were well aware of the unlawful activities of the so-called Maithili University, a large number of students who got only fake degrees after spending lot of money could have been saved the embarrassment which they now face.

1.34 The Committee feel that both the UGC and the Central Department of Education are equally responsible for the failure to take timely action in this case even while they were fully aware that the so-called Maithili University was operating in an illegal manner for a number of years and was jeopardizing the future of a large number of students by awarding fake degrees and diplomas. This is a matter of deep distress to the Committee. Had the authorities concerned been vigilant as is expected of them, such a situation would surely

not have arisen. Their utter failure in this regard is compounded by the revelation made by the Chairman, UGC to a query from the Committee that it had come to their notice that it was not an isolated case and that several other institutions were also functioning as Universities though they were neither Universities nor deemed Universities within the meaning of the UGC Act. Two of such institutions viz., Commercial University Ltd. Takshila Kendriya Vishwavidalaya have been functioning in the capital city of Delhi but yet no tangible action seems to have been initiated by the UGC or any other authority in this respect as yet.

1.35. The Committee are of the view that UGC Act provides adequate framework within which action can be taken against any institution which though not so constituted claims to be university and issues degrees/certificates which it is not authorised to issue. Under Section 24 of the UGC Act, provision has been made for imposing penalty on persons/institutions that contravene the provisions of Sections 22 and 23. What is needed is that institutions indulging in such illegal activities should be identified promptly and proceeded against in right earnest.

1.36 With a view to cheking the activities of institutions/universities, which do not fulfil the conditions laid down in Sections 2 and 3 of the UGC Act, the Committee suggest as follows :

- (i) It may be provided in the UGC Act that all universities should be formally registered with the UGC and no university which is not, so registered may be authorised to issue degrees/certificates.
- (ii) A comprehensive survey may be carried out by UGC with the assistance of the State Governments with a view to identifying the institutions/organisations, which are functioning as educational institutions and issuing degrees/certificates illegally. Such of the institutions which do not fulfil the requirements of a University should be ordered to desist from issuing degrees/certificates and if considered necessary prosecutions may be launched against them under Section 24 of UGC Act.

A list of unrecognised or illegal universities running in various States may be prepared and publicised for the information of general public. This will serve as an eye opener for the public and student community in particular. Issue of degrees etc., in an unauthorised manner should be made a cognizable offence,

- (iii) Information about the institutions already functioning as universities in an illegal manner or such institutions which may come to notice in future may be widely disseminated through media, radio and television for the information of all concerned. UGC should in concert with the State Governments take steps to educate the general public about the harm being done by such institutions/organisations by issuing degrees/certificates in an illegal manner.
- (iv) The machinery for watching implementation of the provisions of the UGC Act may be streamlined and made more effective and purposeful. If need be the provisions of UGC Act may be suitably amended so that there is a self-working system aimed at checking the activities of institutions/organisations which tend to exploit the gullible youth by resorting to illegal methods.
- (v) The penalty envisaged in Section 24 appears to be too mild. In order that it may have a deterrent effect. It may be suitably enhanced and even imprisonment may be provided for by amending the relevant section of the Act.

1.37 The Committee would also like Government to initiate necessary legal action against institutions whose illegal activities have already come to notice without any further delay.

1.38 The Committee have received petitions from the most vitally effected interests viz., persons who obtained employment etc. on the basis of degrees awarded by the so-called Maithili University but who now face embarrassment because the University has been declared illegal and its degrees etc. are no longer valid. The Committee feel that these persons as a class deserve a sympathetic treatment. Even though the Maithili University was functioning in an illegal manner, the acts of omission and commission on the part of Government agencies such as the Central Department of Education, the UPSC and some of the universities in the country had undoubtedly lent a semblance of legality to the institution. As such it would be unfair to leave such persons to fend for themselves. The Central Department of Education and UGC must give serious consideration to the problem of these unfortunate degrees/certificates holders and find a way out to save their careers by allowing them to appear in a University or any competitive examination. The careers of these unfortunate victims cannot be allowed to be ruined for reasons for which Government agencies and Statutory Bodies are equally responsible.

PETITION REGARDING AMENDMENT/MODIFICATION OF  
SIKKIM (CITIZENSHIP) ORDER, 1975

2.1. A petition seeking amendment/modification of the Sikkim (Citizenship) Order, 1975 with a view to conferring Indian citizenship on all persons residing in the State of Sikkim upto 5 years prior to 26 April, 1975 was presented to Lok Sabha by Shrimati D. K. Bhandari, M.P. on 13 May, 1988. The petition was signed by Shri Dilli Ram Basnet and 30 other members of the Legislative Assembly of Sikkim. The petitioners *inter alia* stated:—

“In the Royal State of Sikkim, citizenship which was otherwise known as ‘Sikkim Subject’ was regulated by the Sikkim Subjects Regulation, 1961. This was a law promulgated by the Sikkim Durbar of the Chogyal. Under this law citizenship was conferred upon a person who either himself or his parents acquired the qualification of being a resident of Sikkim for a continuous period of fifteen years prior to 1961. Thus only those persons who were residents of Sikkim State prior to 1945 were conferred the right of being Sikkim Subjects. People who have been residing in Sikkim subsequent to 1945 were not granted the right to be the Sikkim Subject. Sikkim became the twenty second State of the Indian Union from 26th April, 1975 under the Constitution (Thirty Sixth Amendment) Act, 1975, The Government of India in exercise of its powers under Section 7 of the Citizenship Act, 1955, issued Sikkim (Citizenship) Order, 1975 conferring citizenship on every person who immediately before 26th day of April, 1975 was a Sikkim Subject under Sikkim Subjects Regulation, 1961’. Thus the Government of India conferred Indian citizenship on the Sikkim Subjects under the Regulation, 1961 and ignored all other residents of Sikkim during 1946 to 1975. By this act of the Government of India all those persons who were residing in Sikkim between 1946 and thereafter till the date of merger have become foreigners in their homes and homeland, We submit that such an attitude towards these Sikkimese people is unjustified and improper...The Government of India departed from the method and basis adopted



by it in conferring citizenship on the people of Goa, Daman and Diu, Dadra, Nagar Haveli, and Pondicherry when they became parts of India under respective citizenship orders.....”

2.2. The Committee visited Gangtok for an on-the-spot study of the issues raised in the petition. On 27 September, 1988 the Committee had informal discussions with the Chief Minister, and other Ministers of the State Government of Sikkim as well as the MLAs.

2.3. During informal discussions, the Chief Minister (Shri Narbahadur Bhandari) made the following points :—

When Sikkim became the twenty-second State of India in 1975, all the people of Sikkim (*i.e.* those who were Sikkimese subjects) should have automatically become Indian citizens in accordance with the provisions of Section 7 of the Citizenship Act, 1955. However, the Sikkim (Citizenship) Order, 1975 issued by the Government of India on 16 May 1975 conferred citizenship only on those persons who had been residents of Sikkim for a continuous period of 15 years prior to 1961 and were borne on the Sikkim Subjects Register prepared by the Sikkim Darbar under Sikkim Subjects Regulation, 1961.

The Sikkim Subjects Register did not take note of all the persons domiciled in the territory of Sikkim for various reasons. Even at the time of preparing the Sikkim Subjects Register during the Chogyal Regime there were about 18,000 applications pending consideration for registration.

According to the Chief Minister the total number of persons who were eligible for being conferred Indian citizenship but who have not been covered by the Citizenship Order, 1975 was approximately 54,000. It was also stated that there was an anomalous situation in that a large number of persons who had been registered as voters and had been exercising their voting rights all along had not been covered by the Sikkim Citizenship Order, 1975.

It was stressed that the Sikkim Citizenship Order 1975 should be amended suitably so that the persons residing in the State of Sikkim 5 years prior to 25 April 1975 should be conferred Indian Citizenship. For this purpose the cut off year should be 1970.

2.4. The Committee also held informal discussion with the Members of the Opposition Party in Sikkim. The points made out by the representations of the Party were as under :—

The figure of 54,000 persons left out from the purview of the Sikkim Citizenship Order, 1975 was inflated. According to them this figure could not exceed 10,000.

It was stated that there was no problem of citizenship in the rural areas. The problem related only to Gangtok city. It was further stated that during the tenure of Kazi Government (1974—79) influx of outsiders had been the maximum. A large number of Nepalese immigrants had settled in Sikkim for the purposes of trade, business, road building etc. The settlement of these immigrants had been encouraged by political leaders of that time who played a dominant role in using these people for their own gains. Many of these people after being enlisted in the voter's list through various means had been given Government jobs and other facilities to settle in Sikkim.

It was stated that before granting citizenship all cases should be verified. In this context it was demanded that the Government of India and the State Government of Sikkim should first evolve the modalities, for verification of the claims for citizenship and members of Opposition Parties should also be consulted in this regard. It was also pointed out that most of the Sikkimese owned some land. The verification of claims for citizenship could therefore be done on the basis of the land records and those who did not own any land within the territory of Sikkim could be identified by the Mandal Panchayats, Police or the Village Headman etc.

2.5. The Committee also held informal discussions with the office bearers of the Sikkim Krantikari Parishad. The representatives of the Parishad informed the Committee that the figure of 54,000 persons given by the Chief Minister for grant of citizenship was incorrect. It was also stated that in Sikkim all the Sikkim Subjects were getting domicile certificates easily from the Deputy Commissioners. Their claims for citizenship would, therefore, have to be thoroughly screened.

2.6. During informal discussions held with the officers of the State Government, when the Committee asked why the State Government of Sikkim was not in favour of a Committee proposed by the Central Government

comprising of the representatives of Union Government and the Government of Sikkim for dealing with the citizenship issue, a representative of the State Government informed the Committee that their main objection to the appointment of such a Committee was that it would deal only with the left out cases. The Chief Secretary, Sikkim also suggested that with a view to solve the citizenship issue in Sikkim it was imperative that the terms of reference of the Committee should be decided first. This Committee should be given clear parameters on which the issue could be decided. It was also stated in this connection that an acceptable formula regarding grant of citizenship could be worked out after discussions between the Government of India and Sikkim Government. It was also suggested that if a person could prove that he owned some land at the time of proclamation of the Sikkim Subjects Regulation, 1961 that was a conclusive proof that he was a Sikkimese Subject and he should be given Indian citizenship.

2.7. The Ministry of Home Affairs, while giving factual comments on the points raised in the petition, stated as under :—

“Prior to the merger of Sikkim with India, under the Sikkim Subjects Regulation, 1961 every person who had his domicile in the territory of Sikkim immediately before the commencement of the Regulation was a subject of Sikkim and was resident therein or had been ordinarily resident in the territory of Sikkim for a period not less than 15 years immediately preceding such commencement, The Regulation also provided that every person born after the commencement of the Regulation was to be a Sikkim Subject if at the time of his birth, his father was a Sikkim Subject under the said Regulation whether or not the birth took place in the territory of Sikkim. Thus all such persons who had migrated to Sikkim subsequent to 1946 did not enjoy the status of Sikkim Subjects. Such migrants have been Nepalis barring a very few Bhutias and Lepchas. From out of total population of 2.10 lakhs as per 1971 census, about 1.76 lakhs persons were registered as Sikkim Subjects under the said Regulations.

On merger of Sikkim with India *w.e.f.* 26 April, 1975, India as a successor State, inherited a certain situation which was obtaining as a result of the policy followed by the Sikkim Darbar and it was not considered necessary to take any special measures for grant of citizenship to persons who were not Sikkimese Subjects on the said date. The Central Government order dated 16 May, 1975

issued in pursuance of Section-7 of Citizenship Act, 1955, therefore, provided that 'every person who immediately before the 26th day of April 1975 was a Sikkim subject under the Sikkim Subjects Regulation, 1961 shall be deemed to have become a citizen of India on that day'. Under the Sikkim Subjects Regulation, 1961 only those persons who had been living in Sikkim for at least 15 years prior to its promulgation and whose names were registered in the Sikkim Subjects Registers maintained by the then Sikkim Darbar, were Sikkim Subjects. Thus the persons who were not Sikkim Subjects on the date of merger did not become the citizens of India on the said day.

The situation in Sikkim at the time of merger was qualitatively different from that prevailing in Goa, Daman and Diu, Dadra and Nagar Haveli and Pondicherry at the time these territories were granted independence by the concerned Foreign powers. Unlike Sikkim, these territories did not face the problem of influx of migrants from outside. It would not, therefore, be correct to say that any injustice was perpetrated on the stateless persons in Sikkim.

In 1981 a Committee appointed by the State Government had recommended that every person who had been ordinarily resident in the territory of Sikkim for not less than 5 years immediately preceding the commencement of the Constitution (36th Amendment) Act, 1975 that is, 26th day of April, 1975 and every minor child of such person born before such commencement should be deemed to have become a citizen of India on that day.

A team of officers of the Home Ministry was, sent to Gangtok in January, 1987 to study the issue of citizenship in all its aspects. The team held discussions with the Governor, Chief Minister and the M.L.A.s and perused the registers maintained by the Administration of the then Chogyal under the Sikkim Subjects Regulations, 1961. A memorandum was presented to the team during the discussions with the MLAs. It was suggested in the memorandum that the notification dated 16th May, 1975 may be amended by adding 'explanation' as follows :

'Provided that every person who had his domicile in Sikkim at the commencement of the Constitution (Thirty-Sixth Amendment) Act, 1975 (*i.e.* 26th April, 1975) and was other-

wise eligible to become a Sikkim subject under any regulation or usage having had the force of law, although not included in the Sikkim Subjects Register and every minor child of such person born before the aforesaid announcement shall also be deemed to have become a citizen of India on that day.'

In the light of detailed discussions, the Team felt that some of the persons might not have been registered in the Sikkim Subjects Register during Chogyal's time even though they were eligible to be so registered, for various reasons such as lack of knowledge among eligible persons about the procedures, administrative slackness etc. The team, therefore, recommended that genuine cases of omission in the Sikkim Subjects Regulation, 1961 in regard to persons who were pre-1946 entrants or their descendents and were otherwise eligible for registration in the Sikkim Subjects Registers, should be looked into for rectification by a Committee comprising representatives of the Central Government and State Government of Sikkim. The recommendation of the Team has been accepted by the Government.

The decision of the Central Government referred to in the preceding paragraph has been taken after careful consideration of the likely reactions and repercussions and having regard to trans-national implications of the demand for grant of citizenship. The following are some of the important points which have been kept in view while taking the decision :

- (i) Grant of citizenship to persons of Nepali origin could raise similar demand from such persons in other States especially in the North East as also by migrants from Bangladesh.
- (ii) Growing dominance of Nepalis in Sikkim, proximity of Sikkim to Nepal and apprehensions among Bhutia-Lepchas had to be considered (in 1951 the Nepalese constituted 27.99% of the population in Sikkim while in 1971 their number rose to 63.97%).
- (iii) Article-6 of the Treaty of peace and friendship (1950) between India and Nepal provides that each Government will give to the nationals of the other in its territory national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such develop-

ment. Under Article-7 each Government is to grant on reciprocal basis to the nationals of one country in the territory of the other, the same privileges in the matter of residence, ownership of property, participation in the trade and commerce, movement and other privileges of a similar nature. While the Government of India, by and large have observed the obligations of the Treaty, the Government of Nepal have enacted laws which run counter to the Treaty in regard to the Indians in Nepal and discrimination is practised by them against the people in the Terai region who have close connections with India across the border. The matter had to be looked into from the point of view of reciprocity as to what concessions have been granted by the Government of Nepal to the people of Indian origin in Nepal Terai.

The decision of the Government to rectify the cases of omission in the Sikkim Subject Registers maintained according to the Sikkim Subjects Regulation, 1961 should help in alleviating genuine cases of hardship. No discrimination whatsoever has been shown in the matter of conferment of citizenship on persons who were Sikkim Subjects during the pre-merger days.....”

2.8. During evidence, the Committee pointed out that in Sikkim, there was a funny situation in that persons who were not treated as citizens of Sikkim had been enrolled as voters and had even become legislators. The Committee desired to know whether the Citizenship Order of 1975 had not been properly drafted or there was any other lacuna which had led to this situation. The Home Secretary replied :—

”.....here is a case where, on a particular day in 1975, there is a change of status. On that particular day you took a decision which recognised a legacy that existed at that time. What existed at that time was that the previous regime, that is, the Chogyal regime, had obviously contained the problem of migration. Therefore, they had taken in 1961 a restrictive policy with regard to special status being given to them. This legacy continued till 1975 when we took over. So, we recognised that legacy and passed the order in the context of taking over the existing position.”

He added :

“.....After the change takes place, the Citizenship Act of 1955 applies equally to everybody who is in Sikkim, as it applies to

people anywhere else in India, and whatever benefits flow out of that, are available to them also. What I am pointing it out is that prior to 1975 a situation obtained and you froze that situation. Thereafter, you took over and extended all that is part of the Constitution. Now, what we are trying to discuss is whether we should undo something that has happened during the previous period, and in what manner and to what extent and way it should be undone."

The Home Secretary further stated :

".....The Sikkim Government itself set up some Committee which went into it in 1981. They came up with a formulation which is also before you. They came up with a formulation and said : 'Why don't you regularise everybody up to 1970 ?'. It amounted to a situation 5 years before 1975. Picking up this suggestion there have been further deliberations in the Government of India, there have been meetings at high level, then a high-powered delegation went from here to Sikkim, discussed it with the Sikkim Government, then the Chief Minister came back with a recommendation to the Government of India and consequent to that recommendation being accepted by the Government of India, the position as it stands today is that we could do only one thing and that is to remedy the errors and omissions and things like that during the Chogyal regime, about people who might have been deliberately or otherwise left out, who could have been or should have been the beneficiaries under whatever order then existing."

2.9. The Committee pointed out that although the issue of citizenship had been frozen as per merger agreement, it had not been possible to put a stop to the enrolment as voters of such persons who were not recognised as Sikkim citizens or Indian citizens and that such a situation must come to an end. In this connection, the Home Secretary stated :—

"I am not in a position to make comment on this. What I am trying to say is, I take it as a fact. The procedure by which the voters' list is prepared, the procedure by which the voters' list is validated and the procedure by which somebody can get elected or cannot get elected are all products of our laws. Anything that is challengeable under that law are challenges before the judicial system and conclusions are to come out of that system. My only point is, there cannot be extra judicial settlement in this matter. If you say there is a law and under that law. "X" should not be

a voter, "X" should not be a candidate, there must have been challenges. If there are no challenges and if things happen, what do I do?"

2.10. When the Committee pointed out that there were some MLAs and even Ministers in Sikkim who were legally and technically not citizens of the country, the Home Secretary replied :

"There are some situations which are peculiar and this is one of the situations. You might call it "aberration" which has come out of a policy adopted by a previous regime. It is a highly restrictive policy which was introduced by a previous regime."

2.11. The Committee pointed out that it was a matter of fact that at the time of merger some 18,00 applications for grant of citizenship of Sikkim were pending and, therefore, a positive approach was needed so that in all genuine cases citizenship could be conferred on persons who were eligible to become citizens of Sikkim under the 1961 Regulation. The Home Secretary stated :—

".....There is an order made in 1961. Then, certain changes, under the then existing law, ought to have been made if only there might have been some omissions and hardship created by that. We are prepared to rectify if there are any errors or omissions."

In the same context the Home Secretary added :

".....In 1961, a regulation comes into being. The idea is some subjects will be identified and then register will be prepared. Previously, these things have taken place after all the exercises which have been done in terms of discussion have naturally given rise to recommendations that there are some hardship cases and there could have been either lapses or omissions in the preparation of these registers at that time. If there are, we should correct it. I agree with the Member that in doing this, we should do it sympathetically."

2.12. The Committee pointed out that the problem appeared to be getting complicated with the passage of time and it was, therefore, necessary to expedite settlement of the issue. The Home Secretary replied :

"In 1975, when Sikkim became a part, apprehensions could have been expressed about completeness or incompleteness of that



documentation. Subsequent representations about it from the committee set up by Sikkim Government and then consideration of that matter in the Government of India, then the visit of the high-powered committee, these are all exercises of an indepth study. There must be something which requires the attention and that is where the correction, rectification, of these things come. We have come to the decision that something more is to be done. I also agree with you and we should do as fast as we can. We can do it fast if we get the Sikkim Gvhernment also to go along with us. This is a basic point. I cannot do something which is against the views of the Sikkim Government.....these decisions have not been taken in the recent past. 1987 is the Committee's recommendation ; 1988 is the Government of India's decision and we are making effort to take the Sikkim Government with us. I should be grateful if the Committee also comes and renders help... ”

2.13. When the Committee enquired why the issue of grant of citizenship to 18,000 persons stated to be under consideration in 1961 was not considered in 1975, the Home Secretary stated :—

“It is in 1981 that the Sikkim Government made available a particular view on this issue. In 1981 the Sikkim Government consituted a Committee which takes a view and gives a formulation which is an ad-hoc resolution of the problem. After that it does take time in the Government of India to consider the implication of this issue. In fact during 1983 to 1985 all the time the implications have been considered from various angles. There are some problems apart from the ones concerning Sikkim. They are the problems of the people of Nepali origin and people of other parts of the country also, as to in what manner do we change the citizenship policy. Outside the Constitution and the Citizenship Act What changes do we want to make for one set of people and for another set of people. These were some of the problems considered.”

2.14. The Committee desired to know what broadly was the point of difference between the Government of India and the Sikkim Government in regard to the question of citizenship of left out Sikkimese. The Home Secretary explained :

“The point of difference is whether we are prepared to enlarge the terms of citizenship notification of 1975. The Government of India has come to a deliberate decision after discussion with all people concerned that they are willing to go along with this enlarging

subject to the condition that anybody who missed his chance of becoming a member in that Chogyal register should be able to establish it by some procedure then only we will let him come in. This process we are accepting. For this purpose the Committee was supposed to be set-up. Earlier Sikkim Government did nominate their nominees for this Committee but then suddenly they went back saying the terms of reference are not adequate. We naturally are as anxious as this Committee in putting the kind of effort and keep the pressure to get this work done but we must remember that these developments are of very recent origin.”

2.15. A point made out by the petitioners was that at the time of issuing Citizenship Order, 1975 for grant of Sikkim citizenship, the Government of India had not followed the criteria adopted for granting citizenship rights to the people of Goa, Daman and Diu and Pondicherry etc. at the time of their merger with India. The Home Secretary explained :

“.....There was no question of migrant population. But, here you are talking about a situation in which there were people who were the subjects of this area, but were not declared subjects of that area at that time. We must also remember that after the new Constitution comes into being, the 1975 Order get applied : whatever advantages flowed to them flow to everybody born in Sikkim becomes a citizen. No legal procedures are necessary. But in 1987, we tightened up our citizenship law in the country as a whole. We decided that this kind of blanket permission to become citizen by birth would not be available and that came into effect from 1st July, 1987.”

2.16. The Committee desired to know the precise number of persons covered under the Sikkim (Citizenship) Order, 1975 and the number of those who had been left out from the purview of this order. In a note, the Ministry have explained :

“From out of a population of about 2.10 lakhs as per 1971 census about 1.76 lakhs persons were registered as Sikkim Subjects under the said Regulation when Sikkim merged with India.

Registrar General of India has estimated that there could be about 53,000 persons in Sikkim who may have been eligible for Sikkimese citizenship as per Sikkim Subjects Regulation, 1961 but could not get citizenship for various reasons such as lack of knowledge among eligible persons about the procedure, administrative slackness etc.”

2.17. In reply to a question whether the Sikkim (Citizenship) Order, 1975 was issued hurriedly without taking into consideration all the relevant factors and whether the views of the public representatives and other organisations were ascertained, the Ministry have stated :

“Before the Sikkim (Citizenship) Order, 1975 was issued, the matter was gone into carefully by the Government at the level of the Cabinet Committee on Political Affairs. The Sikkim (Citizenship) Order, 1975 was issued under section 7 of the Citizenship Act, 1955 on 26th April, 1975. The Constitution (38th Amendment) Act, 1975 was also passed by the Parliament on 26th April, 1975. The papers available in this Ministry, however, do not give any indication whether representatives of the public or other organisations were consulted in this regard.”

2.18. The Committee desired to know what action Government had taken particularly after the presentation of the petition on the matter before Parliament. In a note the Ministry have explained :

“The elected representatives of Sikkim had also presented copies of various resolutions including a resolution for conferment of citizenship on Stateless persons in Sikkim. As a follow up of discussions between HM and CM, Sikkim in November, 1988 discussions were held on 8th December, 1988 between officials of the Central Government and a team of officials/non-officials nominated by the Chief Minister, Sikkim for the purpose. The discussions are proposed to be continued and it is expected that as a result of discussions, it will be possible to make recommendations for conferment of citizenship on genuine cases keeping in view the national interest.”

2.19. The Committee enquired about the fate of persons who were residents in Sikkim from 1946 to 1975 but had not been covered by the Sikkim (Citizenship) Order, 1975. In this connection, the Ministry have stated :—

“The notification dated 16th May, 1975 was meant to confer citizenship on all genuine cases. All other persons are expected to apply for citizenship as per the provisions of Indian Citizenship Act.”

2.20. The Committee drew attention to a statement from the Ministry of Home Affairs that the decision of the Government to rectify the cases of

omission in the Sikkim Subjects Registers maintained according to the Sikkim Subjects Regulation, 1961 should help in alleviating genuine cases of hardship and enquired when the above decision was taken and how long it would take for the Government to complete the process of rectification. The Committee were informed that the decision was taken on 12.1.1988. It was further stated :

“This is a matter which has to be considered in consultation with the State Government. As such, it may not be possible at this stage to indicate the exact time frame for completion of this work. The State Government, however, had suggested reconsideration of the matter with the result that the Committee which was to go into rectification of omissions could not be constituted.”

2.21. From the information made available to the Committee it is seen that in a letter dated 15 February, 1988 from the Ministry of Home Affairs, the Chief Secretary, Sikkim was *inter alia* informed as under :

“A Committee comprising representatives of the Central Government and the State Government of Sikkim may be authorised to look into such cases and recommend suitable cases for conferment of citizenship. Action to amend this Ministry’s notification dated May 16, 1975 is being taken separately. I shall be grateful if in the meanwhile the name of the nominee of the State Government to represent on the Committee to be constituted as mentioned above could be sent to this Ministry urgently.”

2.22. In reply to the above letter, the Chief Secretary, Government of Sikkim conveyed on February 22, 1988 that Government of Sikkim had decided to nominate Shri K.C. Pradhan, the then Finance Secretary to the proposed Committee. In a subsequent communication dated March 17, 1988, the Chief Secretary further informed the Home Ministry that Government of Sikkim would like the Advocate General, Shri V.J. Rao as an additional member on the said Committee. On 28 March, 1988 through a telegram addressed to the Ministry of Home Affairs, the State Government conveyed that it was not agreeable to the terms of reference proposed for the Committee and convening of a meeting of the Committee may pend final decision on the subject by Government of India.

*Observations/Recommendations of the Committee*

2.23. The Committee note that consequent upon the merger of Sikkim with India on 26 April, 1975, the Central Government issued an Order dated 16 May, 1975, in pursuance of Section 7 of Citizenship Act, 1955 which provided that "every person who immediately before the 26th day of April, 1975 was a Sikkim Subject under the Sikkim Subjects Regulation, 1961, shall be deemed to have become a citizen of India on that day". Under the Sikkim Subjects Regulation, 1961 only those persons who had been living in Sikkim for at least 15 years prior to its promulgation and whose names were registered in the Sikkim Subjects Registers maintained by the then Sikkim Darbar, were treated as Sikkim Subjects. Thus persons who were not Sikkim Subjects on the day of merger did not become the citizens of India.

2.24. With the issue of Sikkim (Citizenship) Order, 1975, the question of conferring Indian citizenship on the Sikkim Subjects appeared to have been settled for all purposes. However, in 1981, a Committee appointed by the State Government recommended that every person who had been ordinarily resident in the territory of Sikkim for not less than 5 years immediately preceding the commencement of the Constitution (36th (Amendment) Act, 1975 i.e. 26 day of April, 1975 and every minor child of such person born before the said date, should be deemed to have become a citizen of India on that day. Thus an issue which had already been settled became alive once again.

2.25. The Committee have been informed that during the period 1974—79, when the Kazi Government was in power in Sikkim there had been a large influx of persons of Nepalese origin. These immigrants settled down in Sikkim for the purposes of trade and business. The settlement of these immigrants had been deliberately encouraged by the then Administration. Many of these people were enlisted as voters and given Government jobs even though they were not citizens of Sikkim or India. They also became MLAs and Ministers. The problem thus acquired political overtones and there was a clamour for grant of citizenship rights on persons who were not strictly covered by the Citizenship Order, 1975. With the passage of time, the problem assumed larger proportions and the very basis, namely, the Sikkim Subjects Regulation, 1961 on which Citizenship Order, 1975 had been issued came to be challenged. The vested interests pleaded that the Sikkim Subjects Registers maintained under the Sikkim Subjects Regulation, 1961 were not correctly prepared as a large number of Sikkim subjects domiciled in the territory of Sikkim had not been included in the Registers for various reasons. In support of this argument it

was stated that even at the time of preparing the Sikkim Subjects Registers during the Chogyal regime about 18,000 applications were pending for consideration. According to the Chief Minister of Sikkim, approximately 54,000 persons are now eligible for grant of citizenship rights. This figure, has varied from time to time and different estimates ranging from 10,000 to 54,000 persons have been projected in the past.

2.26. The Committee find that after the issue regarding grant of citizenship rights on persons not covered by the Citizenship Order, 1975 was agitated, the Ministry of Home Affairs sent a Team of officers to Gangtok in January, 1987 to study the issue in all its aspects. In the light of detailed discussions, the Team recommended that genuine cases of omission in the Sikkim Subjects Registers in regard to persons who were pre-1946 entrants or their descendants and were otherwise eligible for registration should be looked into for rectification by a Committee comprising representatives of the Central Government and the State Government of Sikkim. The recommendations of the Team were accepted by the Government of India and the State Government of Sikkim also appeared to be agreeable as it nominated two representatives to serve on the proposed Committee. Latter on, however, the State Government resiled and conveyed to the Ministry of Home Affairs on 28 March, 1988 that the terms of reference proposed for the Committee were not acceptable to it and, therefore, convening of the meeting of this Committee should pend till a final decision in the matter was reached.

2.27. The Committee are of the view that since the Government of India have accepted the position that there may be some genuine cases of omission which require to be looked into for rectification there should be no insurmountable difficulty in arriving at a mutually acceptable solution to the problem. Any exercise for identification persons left out from the purview of the Citizenship Order, 1975 will necessarily have to be with reference to the cut-off date mentioned in the Sikkim Subjects Regulation, 1961 which the Government of India as a successor Government were bound to accept. The demand for re-fixing the cut-off date as five years prior to the date of merger is obviously untenable. However, genuine cases of hardship can and must be looked into as expeditiously as possible. It has been suggested that if a person could give convincing proof that he owned some agricultural land in Sikkim at the time of proclamation of the Sikkim Subjects Regulation, 1961, it could be taken as a conclusive proof that he was a Sikkimese Subject and should be entitled to Indian citizenship. This and other relevant parameters for determining the

status of an individual could be predetermined by having discussions with all the affected interests in Sikkim and thereafter a Committee, as has been proposed by the Government of India and accepted by the State Government of Sikkim could get down to the brass tacks and decide each case on its merits. The Committee would like the Government to settle the terms of reference of the proposed Committee by mutual discussions with the affected interests so as to facilitate grant of citizenship rights to such of the Sikkim Subjects who may have been left out due to genuine reasons. The Committee hope that the Government of Sikkim would adhere to their earlier stand and take a positive attitude in the matter and help find an early solution to the problem.

NEW DELHI ;

26 April, 1989

Vaisakha 6, 1911 (Saka)

BALASAHEB VIKHE PRTIL,

*Chairman,*

*Committee on Petitions.*