The purpose of this monograph is to present such an examination and assessment through the study of cases of the Supreme Court and the High Courts relating to educational matters. The following scheme has been adopted:

1. Conflict between regional and national interests.
2. Conflict between public and private interest.
3. Are educational institutions 'industries'?
4. Courts and autonomy of educational institutions.

I. National and Regional Interests

Entries[1] in Lists I and II of the Seventh Schedule of the Constitution divide spheres of action in educational matters between Central or State Governments. This division is now, however, functionally clear and the Supreme Court had occasions[2] to show and define when action by one Government would amount to an encroachment in the sphere of another.

Entry 11 of List II confers on State Governments power in regard to all educational matters except those which have been allotted to the Central Government under Entries 63-66 in List I. Entry 66 of List I keeps for the Central Government 'co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.'. The Gujarat University[3] had prescribed

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1. Entires 63, 64, 65 and 66 in List I, List II Entry 11.
2. Joshi v. Madhya Bharat, AIR 1955 S.C.334, State of Gujarat v. Srikrishna AIR 1963 SC 703, Chitralekha v. State of Mysore AIR 1964 SC 1323.
3. State of Gujarat v. Sri Krishna AIR 1963 SC 703

under the Gujarat University Act, 1949, that in place of English as medium of instruction all affiliated colleges were to adopt Hindi or Gujarati in Devnagri script. These statutes which were passed by the Senate of the University were challenged inter-alia, on the grounds that the Statutes were ultra vire the Gujarat University Act, 1949. That the State Legislation authorising change in medium of instruction was ultra-vires the Constitution in as much as question of appropriateness of medium of instruction and examination in institution for higher education is a concern of the Union Government under its power for "coordination and determination of standards." The Supreme Court held that the Statutes providing for the change in the medium were ultra vire the Gujarat University Act,1949 as amended by S. 4 of the Act of 1961. Speaking for the Court, Justice J.C. Shah (K. Subba Rao J dissenting) expressed himself on the competence of the State Legislature to legislate on the subject matter of medium of instruction and examination. He interpreted the power to coordinate as 'not merely power to evaluate but also to harmonise or secure relationship for concerted action.'[4]

Medium of instruction is a necessary incident of power to legislate on education and falls at both places namely under entry 11 of list II and entries 63-66 of List I. On the one hand, power to legislate

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4Ibid p. 716.

for medium of instruction, for primary and secondary education lies exclusively with the States; while on the other, entries 63-65 of List I deal with institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour and therefore power to legislate in respect of medium of instruction, having regard to the width of those items, must be deemed to vest in the Union.[5] With respect to institutions which are covered both by Entry 66 of List I and entry 11 of List II, His Lordship held:[6]

" ....Power to legislate in respect of medium of instruction insofar it has a direct bearing and impact upon the legislative head of coordination and determination of standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by item 66 list I to be vested in the Union".

Apprehending that the change in medium is likely to result in lowering of standards[7] and may 'render

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5. Ibid p. 715
6. Ibid. p. 715
7. Ibid. p.717 "If legislation relating to imposition of an exclusive medium of instruction in a regional language or in Hindi, having regard to the absence of textbooks and journals, competent teachers and incapacity of students to understand the subjects, is likely to result in the lowering of standards, the legislation would in our judgment, necessarily fall within item 77 of List I and would be deemed to be excluded to that extent from the amplitude of the power conferred by item No.11 of List II."

the coordination of such standards either on All India or other basis impossible or even difficult[8] the Court observed:

" ....(T)he validity of State legislation would depend upon whether it prejudicially affects coordination and determination of standards, but not upon the existence of some definite union legislation directed to achieve that purpose. If there be union legislation in respect of coordination and determination of standards, that would have paramountcy over the state law by virtue of the first part of Art.254(1), even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the union field would still be invalid.[9]

Soon in another case[10] the Supreme Court had to consider whether a State legislation prescribing a higher percentage of marks for extra-curricular activities in the matter of admission to colleges (Medical) falls within entry 11 of list II or entry 66 of List I. Justice K. Subba Rao (who had delivered a diseenting judgment in the Gujarat case, referred to the majority judgments in that case) and (after quoting from Justice J.C.Shah's judgment)[11] observed:

" This and similar other passages indicate that

8. Ibid p. 715-716
9. Ibid p. 715
10. Chitralekha v. State of Mysore AIR 1964 SC 132
11. Mudholkar J. dissented.

if the law made by the State by virtue of entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry "Coordination and the determination of standards in institutions for higher education or research and scientific and technical institutions" reserved to the union, the State law may be bad. This cannot obviously be decided on speculation and hypothentical reasoning. If the impact of the State law providing for such standards in entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case. It is not possible to hold that if a State legislature made a law prescribing a higher percentage of marks for extra-curricular activities in the matter of admission to colleges, it would be directly encroaching on the field covered by entry 66 of List I of the Seventh Schedule to the Constitution. If so, it is not disputed that the State Government would be within its rights to prescribe qualifications for admission to colleges so long as its action does not contravene any other law". [12]

Referring to the financial burden and other relevant considerations borne by the Government in running the colleges, his Lordship went on to observe:

"..... They cannot obviously admit all the applicants

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12. Ibid. p. 1830

who have secured the marks prescribed by the University. It has necessarily to screen the applicants on some reasonable basis. The aforesaid orders of the Government only prescribed the criteria for making admissions to colleges from among students who secured the minimum qualifying marks prescribed by the University. Once it is conceded, and it is not disputed before us, that the State Government can run medical and engineering colleges, it cannot be denied the power to admit such qualified students as pass the reasonable tests laid down by it. This is a power which every private owner of a college will have, and the Government which runs its own colleges cannot be denied that power." [13]

Another State legislation which may be said to have a bearing on conflict between the national and regional interest on the subject-matter of education is the one which makes for discrimination among students on the basis of their places of residence.

Ordinarily a citizen coming from one part of the country is free to join an educational institution in any other part of the country at par with the local students. The Constitution itself prohibits discrimination on the basis of place of birth (as also on the basis of caste, sex or religion). [14]

However, some state prescriptions envisaged a discrimination either by imposing capitation fee on

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13. Ibid p. 1830
14. Article 15(1)

students whose domicile happened to fall outside the State,[15] or by making reservation or allotting quotas of seats in educational institutions on certain regional basis.[16]

The Supreme Court[17] distinguished between the place of birth and place of domicile and also between citizenship and domicile, and held that the classification based on 'place of domicile' is not hit by Art.15(1) as it only prohibits discrimination based on place of birth. Venkatarama Ayyar J. who delivered the judgment for the majority judges (Jagannadhadas J. dissented), took into consideration money which a State has to spend on colleges run by it and observed:

" ...(I)s it unreasonable that it(State) should so order the educational system that the advantage of it would to some extent at least ensure for the benefit of the State? A concession given to the residence of the State in the matter of fees is obviously calculated to serve that end, as presumably some of them might, after passing out of the college, settle down as doctors and serve the needs of the locality." [18] His Lordship called the basis of the classification 'quite a legitimate and laudable objective for a State to encourage education within its boarders.[19]

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15. Rustom v. State of Madhya Bharat AIR 1954 M.B.119. Joshi,D.P. v.Madhya Bharat,AIR 1955 S.C.334
16. Joseph Thomas v. Kerala AIR 1958 Ker.33,Jacob Mathew v. State of Kerala, AIR 1964 Ker.39.State of Kerala v. R.Jacob Mathew AIR 1964 Ker 316.
17. Joshi,D.P. v. Madhya Bharat,AIR 1955, S.C.334
18. Ibid at p.340
19. Ibid at p.340

Classification among students of the same State but coming from its different parts for admission in its various colleges, on the basis of geographical or historical reasons connected with the backwardness of the area, has been upheld by the law courts.[20] The High Court, however, has held invalid and unconstitutional the discrimination founded on place of domicile but not based on any scientific or reasonable grounds.[21]

Thus, the attitude of the Law Court with respect to educational matters involving national or regional interests may be summed up as follows:

1. The Union exercises exclusive jurisdiction on institutions and connected educational matters mentioned in Entries 63-65 of list I.
2. States under Entry II List II, have general power on all educational institutions and matters except those mentioned in Entries 63-66 of List I.

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20. Joseph Thomas v. Kerala AIR 1958 Ker.33. In favour of the Malabar area which had just then come into the state of Kerala, the Government had fixed the quota of seats in the State educational institutions in the ratio of 5:8, thus allotting larger number of seats to the new area.

21. Jacob Mathew v. State of Kerala, AIR 1964 Kerala 39. The Government had allotted seats in its educational institutions on district-wise basis. This allocation was neither based on the literacy census report nor on any other historical or geographical reason.

3. States have exclusive jurisdiction to prescribe medium of instruction in primary and secondary stages.

4. States may indicate medium of instruction in higher education but where it has an impact on coordination and determination of standards for higher education or research, the union has the only authority to act.

5. To arrive at a decision regarding fitness of a medium of instruction for higher education and research, availability of higher standard of reading material such as, books, journals, periodicals etc. and the facility of teaching and understanding in that medium may be taken into consideration.

6. A state action is unconstitutional and bad, if it has a tendency to make impossible or difficult the exercise of the union-power for coordination or determination of standards in institution for higher education, or research and scientific and technical institution.

7. States are justified in conferring on reasonable grounds some extra advantages or giving some concessions only to students domiciled within the State territories.

8. Place of birth and place of domicile are two different things and states can discriminate on the basis of place of domicile.

9. Discrimination to be justifiable must be based on some geographical, historical or other reasonable criteria and its objective must be reasonable.