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A Case for For-Profit Private Higher Education in India

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ABSTRACT

India has the second largest higher education system in terms of institutions worldwide, despite having only 26.3% Gross Enrollment Ratio (GER), including vocational education. It aspires to achieve a target of 50% GER by 2035. It means it would require a larger number of higher education institutions (HEIs), public and private, in addition to huge fiscal resources. At present about 75% of the HEIs are privately managed with about 66% of student enrolment. Though there is no provision of for-profit higher education institutions in India, many non-profit private HEIs are actually working as for-profit. They are growing fast and are visible too. Therefore, it is high time now to think seriously about the pros and cons, causes and consequences of for-profit and non-profit private HEIs in India. India provides a big market for non-profit and for-profit higher education to domestic and foreign stakeholders. Already 160 foreign universities are working in collaboration with public or private limited companies in India. This essay provides an analysis of issues related to for-profit and non-profit HEIs, including desirability, size, funding, transparency, accountability, quality, feasibility and sustainability, government policies, regulation, foreign collaborations, private investments, and incentives. The methodology adopted is analytical, comparative, and empirical.

Keywords: Emerging trends, defining for-profit, constitutional provisions, court interpretations, pros and cons of for-profit private, international trends, regulatory framework, recommendations.

India has a long tradition of private higher education dating back to the *gurukul* system thousands of years ago. There is a more general acceptability of non-profit private higher education today than the trepidation felt at their mushroom growth in the wake of new liberalization policies adopted in 1991. Seen as a public good mostly, for-profit private higher education is still a taboo in India, although it has been legitimized in many advanced, developing, and emerging economies worldwide including the United States, UK, France, Germany, Brazil, Chile, Argentina, Russia, China, Japan, South Korea, Australia, New Zealand, South Africa, Middle East, Pakistan, Bangladesh, and Malaysia. In the wake of knowledge-based and technology-driven economies, there is a surge in the demand for higher education and vocational

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skills but cutbacks in public funding. The void has been filled by the private higher education including both the non-profit and for-profit private higher education institutions (HEIs).

This essay provides an analysis of issues related to for-profit and non-profit HEIs in India, including desirability, size, funding, transparency, accountability, quality, feasibility and sustainability, and government policies and regulation, foreign collaborations, private investments and incentives, on the other. The methodology adopted is analytical, comparative and empirical.

A. INDIA'S HIGHER EDUCATION CONTEXT

India possesses the second largest higher education system in the world in terms of higher education institutions, 75% of which are under private management with approximately 66% of student enrolment. As of June 1, 2020, India has 54 central universities, 411 state universities, and 123 “deemed” to be universities, 361 private universities, 81 institutions of national importance and 708 autonomous colleges.² In 2018, the Gross Enrolment Ratio (GER)—the total enrolment in post-secondary education as a percentage of the age group—was approximately 26.3%, including vocational and online higher education. India is planning to have 50% GER by 2035 which is not possible without a proactive role by the private sector, including non-profit as well as for-profit foreign HEIs (Mony, 2020).

The state cannot meet the rising demand for higher education on its own. So far it has been spending just 1% of the GDP on higher education which does not match India's aspiration of becoming a rising economy and world power in coming decades. Similarly, it spent just 0.7% of the GDP on Research and Development which is very low in comparison to the developed countries (Mohan, 2018). In fact, the government has no other choice but to accept the presence of the private sector in the field of higher education in a big way. About 75% of the expenditure on higher education is born by the state governments (Balodi and Srivastava, 2021: 232). Since most of the states have been facing financial crunch, they had to resort to privatization of higher education, willingly or unwillingly in the last few years.

In the absence of any national legislation on private higher education, various states have taken the lead in establishing private universities under their laws. Prior to 1976, education was a topic prescribed under the State List, implying that only the various states as federal units could pass legislation, as with all topics prescribed under the State List. After the passage of the 42nd amendment in 1976, education was transferred to the Concurrent List, implying that both the Union and state governments could pass education-related legislation; in case of any conflict, the federal legislation would prevail. After the rise in the number of students completing school education under the national policy of free and compulsory education till the age of 14, the demand for higher education grew manifold. The public universities were unable to meet this surge in the demand for higher education and vocational skills (Tobenkin, 2022).

Twenty-four out of 28 states in India then passed legislation to establish private universities in their respective states when the Private Universities (Establishment and Regulation) bill introduced in the Rajya Sabha on 25th August 1995 could not be passed. Rajasthan has 52, Gujrat has 42, Madhya Pradesh has 36, Uttar Pradesh has 29, Karnataka has 19, Maharashtra has 18, Uttarakhand has 18, Punjab has 15, Chhattisgarh has 12 and West Bengal has 10 private universities. However, none of the 8 union territories managed and administered by the Union Government, has any private university so far.

Under the current provisions, the University Grants Commission (UGC) can declare a private university included under 12(B) of the UGC Act of 1956 but no private university is allowed to affiliate colleges under it. All private universities are regulated under the UGC (Establishment and Maintenance of Standards in Private Universities) Regulations Act of 2003. However, since 2012, companies under section 25 of the

Companies Act of 1956 are allowed to run professional programs to meet the surge in demand for skilled workforce. Under Section 8 of the Companies Act (2013), direct foreign investment was allowed in non-profit sectors through automatic route (Singh, 2018).

Under the current law, a private university can be run by a trust, society or non-profit entity. It can be established by an Act of the Parliament or State legislature. No private university has been set up by the Parliament, though the central government has accorded the status of 'deemed to be university' or '*de nova*' to those existing higher education institutions which were found to be (i) 'engaged in teaching program and research in chosen fields of specialization, which are innovative, and of very high academic standards at the Master's (or equivalent) and/or research levels'; (ii) 'making distinct contribution to the objectives of the university education system through innovative programs' and 'strengthening teaching and research its area of specialization'; (iii) 'competent to undertake application-oriented programs in emerging areas, which are relevant and useful to various development sectors and society', and/or (iv) 'having the necessary viability and management capable of contributing to the university ideas and traditions' (Gupta, 2015: 360).

Even before independence, the private sector played a substantial role in supporting higher education in India. Gradually the government nationalized many private HEIs during 1950-1970s. During 1970s and 1980s, a trend began of self-financing professional education emerged, especially in the Southern states of Andhra Pradesh, Kerala, Karnataka, Tamil Nadu and Western state of Maharashtra. More than 80% enrolment was in private affiliated colleges. During the 1980-1990s, self-financed courses were introduced within the ambit of public universities as cost sharing measures (Varghese, 2013: 149).

Today, there are some prestigious and elitist private universities set up by the corporate sector such as O. P. Jindal University in 2009, Jaypee University in 2010, Azim Premji and Shiv Nadar Universities in 2011, G. D. Goenka University in 2013, Ashoka University in 2014, and Jio University in 2021. Enrollment demand is driven by the tremendous rise in the middle class in India that is willing to spend huge amount on quality and professional education for their wards. (Gupta, 2015).

Also, in the wake of geo-politics, geo-economics, geo-strategic and high-risk and well-informed societies, it is now generally accepted that the private non-profit and for-profit HEIs, including foreign entities, is in public interest! They can absorb enrollment demand on the one hand, and provide skilled human capital for knowledge-based and technology-driven economies, on the other. It was observed recently that the online education in India was expected to grow up to US \$1.96 billion by 2021 (Alva, 2017).

At the same time, most of the non-profit and foreign collaborations are actually working for-profit in practice. They hire the faculty on contractual basis to save the costs on tenured posts involving various perks but charge very high fees from the students. Most of them do not provide transparency and/or accountability towards their stakeholders. Nor do they pay dividends to them to maintain their status as 'non-profit'.

B. FOR-PROFIT VERSUS PRIVATE NON-PROFIT

It is very difficult to differentiate between public versus private universities or private non-profit *versus* for-profit universities in clear terms. It is equally difficult to distinguish 'for-profit private HEIs' from 'profiteering'. Although there is a long tradition of for-profit higher education in the United States, there is very little data available on for-profit private higher education worldwide. Many countries, including India, do not permit for-profit higher education institutions legally, whereas some countries allow it in non-university institutions which are mostly into vocational training and grant only the diplomas. In fact,

the size and scope of for-profit and non-profit HEIs depends on the definition of 'for-profit' which often is murky. Generally, the legal delineation of for-profit institutions suggests that they can distribute profit to their owners although the precise nature of 'profits' and 'owners' remains elusive. Most legal frameworks ignore this definition and take education, by default, for a 'charitable endeavour' (Ramakrishna, 2014: 5).

In the case of the United States, the profit status of any higher education institution is identified by the tax code. The not-for-profit institutions are known as 501(c)(3) organizations and they cannot benefit private interests. They are supposed to be serving charitable purposes and their net earnings cannot be distributed to their owners or shareholders. However, the for-profit educational institutions need not meet these stipulations. They can distribute profits to their owners or stakeholders as compensation for 'assuming risks' (Kinser and Levy, 2005: 7). These profits can also be invested into the activities outside the domain of education (Kinser and Salto, 2017).

In the US and in many other developing countries, such as Poland and South Korea, the rise in for-profit private HEIs in the last few decades can be seen as a 'modern feature of changing market dynamics' based upon demand and supply. According to John Aubrey Douglass, the US version reflects the earlier 'Brazilian Effect' where the public higher education could not meet the rise in demand for higher education and technological skills. The market opportunity, and profits largely based on federal grants and subsidized loans to individual students, online education, and a neo-liberal faith in the private sector to solve social problems, all contributed to the significant expansion of the for-profit private sector (Douglass, 2012: 242).

Among the dynamics of the for-profit sector in India: (1) The profits earned by private HEIs are made largely from tuition from lower-income students with generally high attrition rates. Some providers might pay commission to agents to recruit students despite their incompetence or lower grades to make more profits. (2) In most countries the majority of for-profit institutions engaged in 'vocation' or 'trading schools' beyond the jurisdiction of regulatory bodies responsible for accreditation for various degree granting universities. (3) In many countries, including India, we might find foreign entities working for profit despite the local law banning them. Such countries allow international management of certain HEIs without providing for international ownership or repatriation.

There are a multitude of examples throughout the world where the non-profit HEIs are working for-profit in actual practice. In some countries, such as Eastern and Central Europe, South Africa and India, self-financing students are being admitted even in public and non-profit HEIs. Hence it becomes very difficult to differentiate between for-profit private and non-profit public universities. There is often similarities between the two in ownership, mission, curricula, pedagogy, clientele and prestige. Some universities might be sponsored or owned by the corporate sector. These can be degree granting or non-degree granting. Some universities might cater to local or specific needs; others might be spread beyond the national borders. Some might be owned by individuals, families, or ethnic and religious groups. It is also possible to have both operating under public-private partnerships (Levy, 2003).

Hence for-profit and non-profit higher education institutions remain a multidimensional phenomenon. Much depends on how the money is earned and used. For-profit HEIs can use the profits earned for any purpose, whereas non-profit HEIs can use the surplus for the development of their institutions, educational or charity purposes only.

For-profit higher education is relatively a new type of private higher education worldwide. In Brazil, the government itself is encouraging for-profit private higher education as a policy to meet the GER targets by providing necessary incentives and tax exemptions (Salto, 2018: 822). In some countries, for-profit

companies are found taking over 'non-profit private' institutions and continue running them as non-profit under the national law. In some other cases, we find some non-profit institutions contracting with for-profit management. Legally they remain non-profit even if managed by for-profit corporate sector. Generally, they run short term training courses and almost never on research. They tend to deliver the fixed curriculum on standardized basis instead of creating innovative ones. In New Zealand, 46% of the for-profit HEIs were limited liability companies and 37% were trusts in 2016 (Kinser and Salto, 2017).

In the US, we find a long tradition of for-profit private higher education. This trend started in the 19th century itself when for-profit colleges started preparing students for entrance exams for professional courses (Hanford, 2012). However, in India, the tutoring and programs for entering engineering, medical, management, teaching, and health sectors is a recent phenomenon, It is now a multi-million-dollar enterprise with an increase in enrollment of 235% between 2008-2010. We find a hypergrowth in the for-profit HEIs in part to accommodate 'laid off workers' and for retraining. During 2000-2010, the market share of this sector grew from 3% to 9.1% (Zhao, 2011). It includes publicly traded corporations and institutions supported by venture funds. They may be entitled for federal aid for students and face the regulatory scrutiny in the same way like any other company to protect the interests of students as consumers.

In the US, most of the large 'for-profit' private universities are listed publicly, such as the University of Phoenix, run by Apollo Group. Even some public universities have invested in them or arranged partnerships (Gupta, 2008a: 182). Most cater to the needs of non-traditional working adults, on anytime, anywhere basis. They are supposed to be more adaptable to market needs, innovative and flexible. They can take quick decisions and are cost-effective. They are out-put oriented and pay faculty on a performance basis. Though countries such as France does not publish data on for-profit private higher education, it is assumed that in 2016, about 25% students in private sector attended for-profit institutions (Casta and Levy, 2016). About 70% students were attending for-profit private HEIs in the Philippines at the same time. Many Asian countries, such as China, Malaysia, Japan, Singapore, Vietnam, have already allowed for-profit HEIs to earn 'reasonable returns' (Heller and Callander, 2016: 98-114).

There have been many court cases in India to clarify 'reasonable returns' on the investments made in private higher education institutions. Though there is no legal provision for for-profit private higher education, we find a nexus among the politicians, industrialists and academia behind the setting of low-quality private colleges with the help of public resources with the sole purpose of 'profiteering' which is quite different from 'profit-making' (*EducationWorld*, 2009).

In India, investors take advantage of their status under the law to grab free land, tax benefits, even when they lack the proper infrastructure or faculty. In the absence of proper regulatory framework, we find an explosive growth of private self-financed colleges charging huge amount as a capitation fee (onetime fee at the time of admission) during the 1980s and 1990s, thereby indulging in commercialization of higher education, especially in the fields of engineering, medical science, and management. In the early 2000s, a medical seat in a privately-managed college could be auctioned for as high as US \$54,000-64,000 (Katakam, 2003), beyond the reach of most middle-class families in India.

During this period, many fake universities (private or foreign) sprang up to fill the gap between demand and supply by using unscrupulous means. In the *Mohini Jain vs. State of Karnataka* case (1992), the Supreme Court of India banned the capital fee but allowed 'paid seats' up to 50% in private professional colleges. This paved the way for self-financed colleges and courses in India. For instance, the National Institute of Information Technology (NIIT) and Aptech, both for-profit institutions, provide training in

computer application, a much sought-after career those days, and set up franchises in more than 30 countries.

A decade later, in October 2002, the Supreme Court extended the right to establish higher education institutions to all citizens of India in *the T. M. A. Pai vs. State of Karnataka*. Earlier this right was provided only to the minorities based on language or religion. A serious debate took place during this case hearing on the issue whether to treat higher education as a 'profession', 'trade', 'occupation' or 'service' under Article 19(g) of the Indian Constitution, or merely as 'public charity' pertaining to Indian culture and ethos. In this case, the Supreme Court held that:

the establishment and running of an educational institution, where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. 'Occupation' would be an activity of a person undertaken as a means of livelihood or as a mission of life. (Gupta, 2008b: 250)

Though in this case, India's Supreme Court recognized education as falling within the expression of 'occupation', it refused to regard it as a 'trade or business' where profit is the main motive. It also refused to uphold its own decision of treating education as an 'industry' in the *Bangalore Water Supply and Sewage Board vs. A Rajappa and Others* in 1978.

Previously in 1957, in the *State of Bombay vs. R. M. D. Chamarbaugwala* case, the Supreme Court took a strong stand against 'for-profit higher education' (Gupta, 2008b: 249-50). Pointing out the dismal condition of some of the private colleges in India, the Supreme Court in the *Unni Krishan vs. State of Andhra Pradesh* (1993, quoted by Gupta, 2008b: 250) had held:

Private colleges...are felt necessities of the time. That does not mean that one should tolerate the so-called colleges run in thatched huts with hardly any equipment, with no or improvised laboratories, scarce facility to learn in an unhealthy atmosphere, for (sic) from conducive to education. Such of them must be put down ruthlessly with an iron hand irrespective of who has started the institution or who desires to set up such an institution. They are poisonous weeds in the fields of education. Those who venture are the financial adventurers without morals or scruples. Their only aim is to make money, driving a hard bargain, exploiting eagerness to acquire a professional degree, which would be a passport to employment in a country rampant with unemployment. They could even be called pirates in the high seas of education.

At that time, the private stakeholders were quite unhappy due to frequent judicial interventions in higher education in India. They were neither allowed autonomy nor fiscal incentives. They could neither grant degrees and diplomas on their own nor reap any profit officially or legally. In the absence of any sustained educational policy on higher education at the national level, most issues related to private higher education remained controversial and unresolved. We notice consistent resistance being shown towards the role that the private capital could play in uplifting India's 'dilapidated higher education system' (Kumar, 2004).

In the opinion of Anand Sudarshan and Sandhya Subramanian (2012), the income generated by for-profit private universities could result into huge revenues that could be ploughed back to the growth of higher education sector itself. According to an analysis by Jitendra K. Das published in the *Financial Express* (2018), by providing just 'tax rebate incentives to private funding' for non-profit HEIs, the Indian

government could mobilize approximately three times more money for higher education than what it had to forego as tax revenue.

Projections are that the enrolment in the HEIs is likely to double by 2035 from the current base of 35 million students (McKenzie, 2020). Therefore, India needs a huge investment in the higher education sector now for the overall progress of our country because human mind has already become a direct resource in knowledge-based economy. As such, the private and foreign stakeholders in the higher education enterprise and vocational training can play an important role the India's economy.

In addition, 'self-interest' does not necessarily equate to 'selfish interest.' Similarly, 'reasonable surplus to meet the cost of expansion and augmentation of facilities does not amount to profiteering' (Mitta, 2009). Generally, by profiteering we imply 'unreasonable' or 'unfair profits' that cannot be justified by the corresponding assumption of risk taken or by implying unethical means. On the other hand, by profits we imply the difference between the cash flow minus expenditure in exchange for a product sold or service delivered. In fact, profits do not amount to the same as earnings. In a balance sheet, net earnings are always shown as 'retained earnings', whereas net profits imply 'operating profit minus interest and taxes.'

C. PROS AND CONS OF PRIVATE FOR-PROFIT HIGHER EDUCATION

This paper aims to highlight the pros and cons of 'for-profit' private higher education in the wake of their recent surge and apparent visibility worldwide without taking any side. For instance, in the US, during 1990-2010, the enrolments in for-profit private HEIs grew about 600% (Beaver, 2017). In Brazil, after legalization of for-profit private higher education in 1997, enrolment grew from 12% in 2000 to 28.6% in 2009 (Salto, 2018: 814). In 2014, there were 42.1% for-profit HEIs, 45.35% non-profit and only 12.6% for public universities. About 40.5% students were enrolled in for-profit private, 34.6% in non-profit and 25% in public universities. The increase in the size of 'for-profit private' was 877% during 2010-2014 (Salto, 2018: 815). However, the concentration of students was in a few large conglomerates run by for-profit transnational companies such as Whitney International, DeVry, Apollo International, and Laureate (Salto, 2018: 825).

In comparison to the US where just 5% of all students are in for-profits, in Brazil they enrolled more than 40% students, with a focus of the latter on short term vocational courses than long term or cost intensive research (INEP, 2014).

Like Brazil, many other countries have allowed for-profit private higher education institutions primarily to provide incentives to the private stakeholders in order to meet not only the excessive demand beyond the capacity of public HEIs but also to encourage them to prepare their students for the immediate needs of the gig economies. It has also helped in saving scarce public resources. It was easier for the government to provide land free or at concessional rates along with relaxation in taxes and block grants in the form of students aid or guaranteed loans than establishing new universities with latest technological, sports and other facilities for laboratories, hostels, recreational clubs, placement cells or highly qualified and experienced faculty themselves. In some cases, depending on the Indian state, the private sector played a leading role in improving the quality of higher education by being elitist, innovative, creative, enterprising, market-ready and/or 'futuristic in orientation' (Gupta, 2008a).

However, in most of the countries, especially the developing ones, we still find a lack of trust in 'for-profit private' HEIs. They are believed to be solely focusing on profiteering by using unscrupulous, unethical or illegal means. Some still believe that education has to be seen as a public good without any scope for profits (Chhappia, 2010; Balakrishnan, 2014; Kumar, 2013). Just as most of us take 'self-interest' for 'selfish-

interest', similarly we often mistake for-profit higher education for anti-public interest (Sudarshan and Subramanian, 2012: 180; Ramakrishna, 2014).

For-profit private higher education can be in the public interest if properly regulated like any other industry. Higher education is a trillion-dollar industry worldwide and India provides a lucrative market. It is 'an emerging economy' and 'world power-in-making'. The Indian higher education market size is likely to grow manifold in the next five years. During January to August 2020, venture capital investors invested US \$1.19 billion against US \$409 million in 2019 (IBEF, 2020).

It is also true that the rise of for-profit private HEIs in most countries has been controversial. In many cases non-profit HEIs are found working for-profit *de facto* despite legal ban. For instance, in India there is no legal provision for for-profit higher education yet NIIT and APTEC were working for profit offshore. Manipal Academy of Higher Education is working as a for-profit company abroad. It worked in collaboration with a Melaka-Manipal Medical College in Malaysia, but its degree was not even recognized by the Medical Council of India (Nagra, 2008: 147-161). In fact, there are many non-profit institutions which are found working for-profit outside their own country.

Similarly, we find some for-profit institutions managing certain non-profit HEIs abroad. Although we find a lot of public trust for for-profit private schools, there is complete lack of trust in for-profit higher education institutions in India. The latter are believed to be money-laundering, dubious and low-quality (Kumar, 2013). Typically, they are resource-starved and small in size and charge relatively huge fees from disadvantaged sections of society. It is difficult to keep a track of 'fly by night' or 'diploma mills' kind of for-profit HEIs working in India. Such institutions can easily dupe the masses by making false promises and/or commercialization of higher education (Sardana and Hothi, 2011: 165).

Often, we hear about many scams and malpractices involving the non-profit and for-profit HEIs in India. In 2005, in the *Yashpal Sharma and Others vs. the State of Chhattisgarh*, the Supreme Court had declared all 117 private universities null and void set up under the state law (Gupta, 2008b: 247). Similarly, in 2014, in the *Viplav Sharma vs. Union of India* case, the Supreme Court declared all 44 'deemed to be universities', out of which 41 were under private management, as unfit.

The UGC too has declared the lists of fake universities from time to time. Even the Supreme Court has endorsed the regulatory role of the UGC as far as the private universities are concerned, even if they are established under the state law to prevent unscrupulous activities and 'check commercialization' (MHRD, 2014). There are many universities set up by shrewd politicians in connivance with local administration and dominant 'political class' without having necessary competence and/or requisite experience, with the sole aim of converting their black money into white and evading the taxes in the name of charitable trusts (Kumar, 2013).

Many HEIs are found operating offshore without being recognized as 'for-profit' in their home countries. For instance, Manipal Academy is making profit through twinning programs by having collaborations with HEIs abroad in the fields of medicine, engineering, communication and culinary arts. It made a conscious choice of setting campuses abroad to avoid too much regulations at home (Sudarshan and Subramaniam, 2012: 182). Similarly, the Amity University has entered into collaborations with many universities abroad and charges huge fees but still treats itself as non-profit for not distributing the surplus to the owners/stakeholders but utilizing it for educational purposes *per se*. In fact, we find similar 'commercialization, differentiation and internationalization' in non-profit and public universities as well, blurring the line between public and private on the one hand and 'for-profit' and 'non-profit' higher education institutions, on the other.

For instance, in early 2000s, following changes in government policy in the wake of liberalization, Chaudhary Charan Singh University - a public university in Meerut, started giving contracts to local industrial houses to run some vocational courses and impart certificates to generate additional resources. Overnight many tutoring institutes sprang up in just a one-room tenement and were converted into vocational colleges. Surprisingly, in India public resources were used for promoting private for-profit HEIs (Kumar, 2013: 19-20). On the contrary, we find a glaring example of a for-profit chain, Education Management Corporation, trying to sell campuses to a company in India to breathe new life, such as Art Institutes in Massachusetts and New York, though there was resentment against this move at the local level (Stratford, 2016). As a result, there is growing pressure to regulate 'for-profit' private higher education HEIs worldwide.

On the other side of the argument about the bad and good of the for-profit sector, some Indian scholars cite the example of the telecom sector which has made tremendous contribution to the growth and development of the Indian economy after deregulation in 1991. They lay emphasis on the need of deregulating the higher education sector as well. They believe that it can play an important role in uplifting the Indian economy and help the country find its due place on the world map (Jain and Dhar, 2022). Already India aspires to become an educational hub as early as possible (www.business-standard.com, 15 October 2020).

D. THE ROLE OF REGULATION

As noted, for-profit private or foreign higher education institutions should not always be equated with lower quality than that provided by the public or non-profit private HEIs. In fact, there is an urgent need to change this mindset. Many public universities can be low quality, whereas many private non-profit or for-profit HEIs can be highly quality conscious, elitist or catering to the true 'idea of university' in terms of academic freedom, inquiry and innovation. Harvard University, a private Ivy League Research University in the USA, falls in this category. Most for-profit schools, on the other hand, such as University of Phoenix, Kaplan university, DeVry, cater to adult students, already working, but wish to improve their job prospecting by enhancing their skills.

For-profit university have become synonym with profit-making chains with large enrollments, such as Pheonix University run by Apollo Group. Many public universities are found investing in stocks owned by the for-profit private universities for safe returns. We find a nexus and burring of the, for-profit and non-profit private universities these days. For instance, Harvard University is accepting funding towards the start- up fellowships even from the University of Pheonix. In fact, it has stolen the business model of Pheonix University online (Williams, 2020).

However, as a non-profit university, Harvard does not distribute its operating profits as a dividend. It has been rated the top university in the USA according to the Times Higher Education Rankings for 2020-2021 (www.timeshighereducation.com). But we also find a large number of 'for-profit' private universities doing a good job by providing degrees at graduate level at lower costs and making their students 'job-ready' in order to obtain federal grants. Students prefer them as they are likely to get due economic returns on the money/time spent by them in pursuing vocational training and/or 'career-oriented courses' there. Moreover, they often provide more flexibility, wider choice, and better networking and placement opportunities (Deming, Goldin and Katz, 2013: 157).

On the contrary, the relatively poor performance in terms of completion rates, default rates, and labor market outcomes of those attending for-profits among seekers of bachelor's degrees is troubling because

the for-profit sector seems to be heading in that direction (Deming, Goldin and Katz, 2013: 158). However, in view of a highly differentiated education system in the USA, and the prestige accorded to some top elite universities like the Harvard, it is difficult to compare public and private for-profit universities.

In India, some private universities have succeeded in building a brand name for themselves by following a 'high fee, high quality model'. Whereas in the USA, there are very few public universities among the top twenty, in India, we find the people trusting public universities more than the private ones. Surprisingly, people in India show more trust in private schools with English medium than government school with regional language as a medium of instruction at primary level (Sharma, 2019).

Only recently, private universities have started picking up as demand-absorbent and cost-effective in terms of higher education abroad. According to the NIRF (National Institutional Ranking Framework) Rankings 2022, more than a dozen private universities were found to be amongst top 100. These were chartered, licensed or accredited by relevant bodies and were allowed to offer four-year undergraduate and postgraduate degree courses in traditional, face-to-face and non-distance mode (<https://www.4icu.org>).

In India, it is time to engage in the debate on the feasibility of for-profit higher education with an effective regulatory model like the USA or Brazil. We need to move with the times. We cannot stick to socialist provisions as laid down in the preamble of the Indian constitution while following neoliberalism in actual practice. It amounts to 'half-baked socialism' or 'half-baked capitalism' (Kapur and Mehta, 2004). It also makes the rise of for-profit higher education controversial, forcing the government to take one step forward and two steps backward like most privatization and deregulation deals since 1991 (Gupta, 2000).

Instead of over-regulating the private, non-profit as well as for-profit HEIs, the government in India should provide them the necessary incentives so that they can help in taking the load off the state by meeting the rising demand for higher education, vocational training and online education. They can also help in enhancing the quality by bringing the necessary investment, infrastructure and technology as is evident from the efforts made by the International Finance Corporation in Africa (Sharma, 2013). Necessary efforts should also be made towards preventing the UGC, judiciary, and governments from playing obstructive roles. India must provide the necessary legal basis for for-profit private HEIs in the public interest.

There is a burgeoning middle class in India, to the tune of 500 million people. It is predicted that by 2030, about 80% of the households in India will be middle class, up from the current 50% in 2020. Improvements in Indian higher education could result in promising students staying in India and investing, via tuition, in home institutions, Indian students currently contributed US \$7.6 billion to the American economy between 2019-2020 (Kumar, 2020).

India can save huge resources annually by letting for-profit higher education institutions provide career-oriented courses, may be in foreign collaborations in the areas of health, teaching, information and communication, hotel management, tourism, recreation, horticulture, service sector, etc. India has an increasing demand for higher education, including vocational skills, artificial intelligence and lifelong learning, yet declines in public funding.

Instead of costing money to the national exchequer, for-profit HEIs can actually help in generating additional revenues. Though some private bodies can be very small, we find the big ones as publicly-listed corporations, such as Phoenix in the USA, six private for-profit universities run by government utility corporations in Malaysia as early as 1999. These corporations believe that higher education can be

organized to earn profits as a matter of right. In many countries, private for-profit HEIs are owned by corporates, such as the USA, Australia, South Africa, etc.

In a country like India, almost a continent in terms of population and vast diversities, some of the HEIs can be allowed to operate on business model. Instead of using tax money, they can contribute to tax like private holding companies and publish their balance sheets online to maintain transparency and accountability. It will help in stopping inegalitarian use of limited sources by those who can very well afford for-profit quality education.

State government, on the other hand, can take better care of those who are meritorious but can't afford quality education by providing scholarships or loans. It can also impose certain conditions, such as 'retention of prescribed percentage of students in order to enhance capability' and/or 'fix the percentage of students to be employed after the completion of their education' so that the for-profit HEIs remain eligible for financial support from the government in national interest (King, 2003: 8). Most Indian states are facing the dilemma of encouraging and controlling the for-profit HEIs simultaneously.

Looking globally, most countries have had an unplanned emergence of private higher education institutions with an absence of any regulatory framework. Most have fly by night, dubious, and fake institutions without any track record depleting the faith of the masses. Therefore, it has become essential to regulate them within the framework of 'established practices', 'quality assurance', 'resourcing confidence', 'consumer protection', 'avoidance of unfair competition at domestic level', etc. There are many regulatory models that India should contemplate.

In most of the countries, we find 'command and control' model prevailing to contain negative features, usually backed up by legal provisions, penalties, accreditation by independent bodies, etc. In other cases, regulatory model for for-profit private HEIs can be different from the one adopted for non-profit private or public universities to give opportunities to for-profit private HEIs to be innovative, distinct, market-oriented and adept in making their clients capable for the 'real world' by equipping them with 'just-in-time' knowledge and training (King, 2003: 10-11). In fact, for-profit private HEIs can be provided a safe passage to be able to focus on curriculum more suitable for business management or market needs. They can be more professional and business-like in their approach by having very good network with the industries, corporate sector and entrepreneurs. They can help their students find better placements with a lot of scope for future growth.

However, in the context of India, instead of discarding the for-profit private HEIs, we need to adopt right regulatory model if we really wish to provide wider choices to our students. The government can make it mandatory for the for-profit and non-profit HEIs to get themselves accredited by independent bodies to prove their legitimacy and quality, on the one hand, and build confidence of their stakeholders, on the other. However, they may have to face difficulties in the cases of off-campus, transnational, or multinational settings due to conflict of opinions, cultural values and/or legal provisions.

As in some countries, they may be encouraged to adopt the practice of 'self-regulation' or 'voluntarism'. It is possible if an educational institution subscribes to the principle of 'doing the right thing' unilaterally, without being enforced (Gunningham et al, 1998). Singapore provides such an example. In Argentina too, private HEIs offer themselves for accreditation by the national bodies voluntarily. Malaysia too, has vouched for shared recognition in case of its for-profit HEIs (King, 2003: 19). India can learn a great deal from international experiences.

E. ISSUES AND FUTURE PROSPECTS

If India wants to achieve the target of 50% GER by 2035, and, if the government is unwilling or not capable to meeting the costs on its own, there is no harm in roping in for-profit and non-profit private HEIs in a big way, including the foreign ones, by laying the requisite legal and regulatory framework in a planned way and by creating proper balance between autonomy and accountability. Higher education in India would be required to play a role to meet the needs and aspirations of an emerging economy in the wake of neoliberalism pursued both by the Modi Government and its predecessor UPA (United Progressive Alliance), then headed by Manmohan Singh.

Indian higher education cannot disguise itself behind the rhetoric of a 'socialist society,' while actually following the capitalist path. This ideological mismatch has to be taken care of in public interest. Even a communist country like China has already allowed 'reasonable return' by for-profit private HEIs up to the tune of 10% (King, 2003: 16). India can take advantage of its sound technological position in order to achieve leapfrogging effect as far as 'capacity-building' and 'access' is concerned. With proper policy making and regulatory provisions, 'equity' and 'quality aspects' can also be taken care of.

For-profit and non-profit private sector can provide a leading role in economic growth and national development through remote control. They can be encouraged to provide alternate choices, better prospects of employability, better infrastructure, state of art facilities and faculty of international standard. They can prove their worth by getting quality clearances from independent accreditation bodies to overcome scandals and distrust, on the one hand and maintain sustainable growth and legitimacy, on the other. A huge country like India would have to rely on various permutations and combinations.

If we can trust an active involvement of private sector in defense and telecom sector, why can't we trust it in education sector? We have examples of budget being published, entrance exams for public services being conducted and prisons being maintained safely by the private sector (Gupta, 2000).

India and its lawmakers need to change their mindset. It is possible to use economic instruments as a 'means of regulation'. The government can provide tax breaks and other benefits and withdraw them in case of defaulters. In the case of for-profits, the shareholders can exert due influence on corporate behavior. In fact, it can assert positive influence on conventional universities as well in terms of quality control and employability, but it would also need some drastic and positive changes in academic culture as well.

It is also possible that for-profits may look very different in the initial stages, but over time become like conventional universities and more homogenized in terms of internal organization and structures since they have to work under similar socio-economic and governmental pressures. Even normative pressures, such as rising professionalism, can lead to 'isomorphism' (DiMaggio and Powell, 1983: 147-160). They need to work very hard to build prestige for themselves to be able to draw the confidence of other universities, consumers and government.

No wonder they spend huge money on advertisements to build their image in the market and sustain it. They really have to struggle hard to balance academic and corporate interests. The for-profits can neither compromise on costs nor on standards. No wonder, they are found to be more efficient, cost-effective and pragmatic than most conventional universities (Bhangriya, 2015). Time is, therefore, ripe for giving a serious consideration to for-profit private, including foreign entities, by the Government of India.

In India, private for-profit has already been playing a pivotal role at the school level. The government has already allowed 100% FDI in education sector. It means that a foreign entity can directly invest in an education-related activity but the charitable trusts cannot take advantage of this provision. There is already a lucrative market ready for higher education for-profit. The Confederation of Indian Industry has already submitted proposals to the Commerce Ministry on how to attract foreign institutions and direct investment. It has proposed that private universities should be allowed to let foreign universities use their campuses and repatriate profits to their own countries. However, such changes cannot be made easily due to prevailing legal complexities and mindset.

Sushma Berlia, the co-founder of the Apeejay Satya University, suggested the formation of Exclusive Economic Zones (EEZs) where the HEIs need not follow domestic rules forbidding repatriation. Though untried in India, such zones already prevail in China, South Korea and United Arab Emirates (Niazi, 2019). During 2019-20, the proportion of FDI in education sector was ₹6.43 lac crore (Mohanty, 2020), approximately US \$86 billion at the rate of ₹75 per dollar (as on 24.11.2020). In order to attract foreign direct investment, in its draft National Education Policy 2019 (PwC, 2020) the national government expressed interest in:

- Devising a scheme for taxability of income earned by foreign universities from their India operations.
- Providing 'tax holiday' for the developer for development of educational infrastructure.
- Providing incentives for foreign investors investing in Indian educational institutes.
- Providing calculated 'deduction on expenditure' incurred by universities/educational institutes on skill development activities.
- Considering fee charged to students as 'zero rated supply' instead of exempt supply so that cost of input tax credit is not directly/indirectly passed on to students.
- Providing exemption under GST for pre-schools until higher secondary education and other approved courses.
- The government can exempt (or give concessions) in taxes to the Online Information Database Access and Retrieval (OIDAR) services provided in relation to educational/technical skill courses.

The UPA government did introduce Foreign Education Providers' Bill in 2010 and the UGC too had prepared Establishment and Operation of Campuses of Foreign Educational Institutions Rules in 2013, but neither was passed. As such, the not-for-profit tag should be re-examined more pragmatically than ideologically because such institutions can even provide admirable services by conducting research on vital socio-economic issues, such as, climate change, pollution, and public health. It can thereby improve the quality and employability quotient in knowledge-based and technology-driven economy today. Beside online education, for-profit private sector is already actively engaged in India in vocational training in information technology and hospitality, students for various entrance exams, helping them in re-skilling, providing efficiency in foreign languages and/or providing educational services and consultancy.

Investments in higher education sector are plagued with uncertainties, legal hurdles and insurmountable challenges, nevertheless it does offer abundant opportunities (Desai, 2018). For example, there was an increase of 40% in the valuation of Unacademy, an online education company in India. Both Tiger Global and Dragoneer Investment Group from the USA invested to the tune of US \$3 billion in it in 2020. To its CEO, Gaurav Munjal, its mission is 'to build iconic products that democratize education and make it more accessible and affordable'. It was also reported that the annual revenue run rate of Unacademy increased four times, from US \$30 million in February 2020 to US \$120 million in November 2020. It has been running its courses in 14 Indian languages with students spread over to 500 cities. Higher education and vocational training can also benefit a great deal from similar efforts in the era of 'platform economies' (Mishra, 2020).

There is an urgency to collaborate at the national and international levels to plug the existing gaps in demand and supply in the field of higher education and carry out the necessary reforms (Gupta et al, 2019).

Many countries generate significant revenues from Indian students going abroad due to poor quality and poor spending on higher education by India (*Financial Times*, 19 May 2020). In 2018-19, approximately 7,52,725 students going abroad at the cost of ₹13,993 crore approximately US \$1.85 billion (₹75 per dollar) in 2018-2019 as estimated by Reserve Bank of India (Bhaskar, 2020). With this money India could have built many more IITs, IIMs and other high-quality HEIs in India itself, besides providing huge job opportunities in higher education sector (Bhaskar, 2020). Following this logic, if India had utilized the US \$100 billion spent on higher education abroad between 2000-2010, the nation could have created a much more robust and high-quality higher education sector.

Instead, India's growing middle-class families are forced to spend their lifelong savings or sell property to fund the education of their children abroad, many who do not come back to India on a permanent basis. This is a model of brain drain that cannot be sustained; a tremendous loss that cannot be calculated only in monetary terms. Already, China, Malaysia and Indonesia have taken steps in checking their brain-drain problems by allowing foreign universities and faculty to their shores instead of sending their students abroad. India should do the same.

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² The concept of "deemed" to be a university is unique to India. It is the status granted to an institution for its excellent work of high standard in a specific area of study on the advice of the University Grants Commission. It is used as a shortcut to avoid tedious legislative procedure.