

Facilitating Trade in Higher Education



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The corporate sector discovered a huge and ever growing service industry in education. Global public spending on education in the beginning of this century was estimated to exceed one trillion US dollars, that is about Rs 48,00,000 crore. In this industry with huge global market students, teachers, and non-teaching employees constitute resources for profit-making. Here, the students are consumers, teachers are service providers and expert speakers, and the institutions or companies catering to education services are organisers, and the teaching-learning process is no longer for the building of a nation but a business for profit-making.

Predatory and powerful transnational corporations have been targeting public education, particularly higher education, for profit-making. Though predominantly a government supported service, most governments are, as a consequence of neo-liberal economic reforms, withdrawing from it. The government of India through extensive privatisation, commercialisation and deregulation has been encouraging this process.

The first decade of the twenty-first century witnessed world over large-scale and bitter protests from the students, teachers and people at large against the privatisation and commercialisation of higher education and bringing higher education sector under General Agreements on Trade in Services (GATS) and World Trade Organisation (WTO) by their governments. The idea behind WTO-GATS has been the creation of an open, global marketplace where services, like education, can be traded to the highest bidder¹.

1. Privatisation of Higher Education by NDA Regime

We entered the twenty-first century with unprecedented demand for higher education: general as well as professional. Instead of meeting this demand for higher education and ensuring further growth of the country, the then BJP led NDA government at the centre and the UGC resorted to several measures with ever-faster speed under the dictates of the World Bank and as a part of ongoing negotiations with the WTO on trade in services. Raising of fees, autonomy to institutions with practically no control over managements, relaxation in norms for granting deemed to be university status and funding linked to mandatory assessment and accreditation, were some of their decisions taken in order to usher in massive privatisation and commercialisation of higher education.

“Major efforts have been mounted for mobilisation of resources and it has been recommended that while the government should make a firm commitment to higher education, institutions of higher education should make efforts to raise their own resources by raising the fee levels, encouraging private donations and by generating revenues through consultancy and other activities,” said the then HRD minister, Murali Manohar Joshi in the Country Paper presented in the UNESCO World Conference on Higher Education held at Paris, in 1998². Justifying privatisation of higher education, he added, “It is not only justifiable but desirable to raise money from private sources in order to ease pressure on public spending.”

Ambani-Birla Report

Mukesh Ambani and Kumarmangalam Birla, in their Report³ on “A Policy Framework for Reforms in Education” submitted to the prime minister’s Council on Trade and Industry in April 2000 considered education as a very profitable market. These two industrialists made a case for full cost recovery from students and immediate privatisation of several segments of higher education. The Ambani-Birla Report sought to convert the entire system of higher education in the country into a market where profit making would be the only consideration. If this Report was implemented, only those who could pay exorbitant amount of fees could have enrolled in higher education. For Ambani and Birla, education was a very profitable market which the corporate sector must control. In view of this, they wanted a legislation “banning any form of political activity on campuses of universities and educational institutions”. Even the

normal trade union activities were not to be allowed. The Report was criticized by students, teachers, parents and people at large⁴.

Directions of the World Bank

In the wake of strong resistance to WTO-GATS and bitter struggles against privatization and commercialization of higher education, the World Bank came out with its Report 'Constructing Knowledge Societies: New Challenges for Tertiary Education' published in 2002⁵. It pointed out that the developing and transition countries were faced with new trends in the global environment that affected not only the shape and mode of operation but also the very purpose of tertiary education systems.

The World Bank noted that reform proposals have been met with "fierce resistance and opposition." In the formulation of a long-term vision for the country's tertiary education system as a whole, it will "play *a catalytic role* by encouraging and facilitating the policy dialogue on tertiary education reforms. This can often be accomplished through preemptive information sharing and analytical work in support of national dialogue and goal-setting efforts, as well as through project preparation activities aimed at building stakeholder *consensus* during the project concept and appraisal phases. *The Bank can bring to the same table stakeholders who would not normally converse and work together.*"

With the *diminishing* State funding of tertiary education, a coherent policy framework, an enabling regulatory environment, and appropriate financial incentives, student mobility can be encouraged by developing open systems that offer recognition of relevant prior experience, degree equivalencies, credit transfer, tuition exchange schemes, access to national scholarships and student loans, and a comprehensive qualifications and lifelong-learning framework. The regulatory environment should be one, the World Bank suggested, that encouraged the private sector to expand access to good-quality tertiary education. Rules for the establishment of new institutions, including private and virtual ones, should be restricted to outlining minimum quality requirements and should not constitute barriers to entry. In the public sector, revenue may be generated from institutional assets, students and their families, and donations from third party contributors.

Therefore, the World Bank directed the governments of these countries to "put in place *an enabling framework* that encourages tertiary education institutions to be more innovative and more responsive to the needs of a globally competitive knowledge economy and to the changing labor market requirements for advanced human capital."

The World Bank proposed to play a central role by facilitating policy dialogue and knowledge sharing, supporting reforms through *programme and project lending, and promoting an enabling framework* for the production of the global public goods crucial to the development of tertiary education⁶.

Having crippled the higher education system in India and other developing and transition countries, the World Bank evolved a 'new role' for itself in the higher education sector. But the prescriptions for the reforms in the higher education system were the same that the World Bank has been giving since 1986.

The Model Act for All Universities

The World Bank basically directed the governments of developing and transition countries to respond to the necessities of the globalisation, emerging new trends in the higher education sector mentioned above, and make an enabling framework common to the entire education system. In return, it promised to bring about consensus among the stakeholders so that new market-oriented policies are implemented and not opposed by anyone.

It is actually this background in which the then BJP led NDA Government responded to World Bank pressure through the University Grants Commission (UGC) which issued a Concept Paper⁷ in October 2003 entitled "Towards Formulation of Model Act for Universities of the 21st Century in India" with a view "*to prepare the Indian University system for the future.*"

The Concept Paper noted, "Indian Universities, like their counterparts elsewhere in the world, have been performing many additional functions now a days, e.g., undertaking sponsored R&D and continuing education, providing knowledge-based advice and consultancy, preparation / publication of educational material like books / study reports / research papers and extending services to society. Of late, the worldwide advances, particularly in new Information and Communication Technologies (ICT), are greatly influencing the University system in the country. However, major issues like **size, access, equity,**

relevance, quality and resource constraints continue to dominate the working of Indian Universities.” Since the “Universities are becoming complex institutions”, an appropriate strategy needs to be adopted “for their governance, organization and management.”

Therefore, the *Acts* of Indian Universities should be changed “to bring in some uniformity in the working of Universities” through a **Model Act framework**, so that the Universities accept “*the challenges of globalization to offer high quality education and other services in a competitive manner*”. The new *Acts* of Universities would be “flexible and responsive to rapid changes taking place in the society (*Read: market*).” According to the Paper, the new common *Act* for all the universities would help the universities to benefit from ICT revolution and to “become competitive nationally and internationally” and help “India to become a *Knowledge Super Power* by the year 2020.”

The UGC expected that “early adoption of this *Model Act* by Universities in the country will enable them to meet the X-Plan *Vision and Strategy* of UGC and to keep pace with the worldwide changes taking place so rapidly in higher education and research.” This *Vision and Strategy* of the UGC was to prepare the Universities and institutions of higher education for privatization and commercialization, and to make them financially self-sufficient and respond to the market. This X-Plan document⁸ clearly stated, “*In a way, India has partially privatized the higher education by initiating non-grantable teaching programmes and dual fees structure for professional subjects.*”

By the exercise of formulating the *Model Act*, common for all the universities, the Central Government wanted to completely withdraw from the funding of the universities, colleges and institutions of higher education, to prepare them to be part of globalisation and face the consequences in the event of India becoming part of GATS and throw open its higher education sector to the transnational providers of education for profit-making, and become part of the business. As a result, a vast majority of students who come from the disadvantaged and weaker sections and the lower middle class would have been excluded from the benefits of higher education because these sections cannot bear the exorbitant cost of education⁹. In order to create an environment for these purposes, the then BJP led NDA Government and UGC were working overtime for several years by reducing state funding of and limiting access to higher education, heavy cost recovery, loans to students, terming higher education as a non-merit good, forcing assessment and accreditation of institutions, autonomous status to colleges, starting self-financing courses and by promoting self-financing institutions, increased workload of teachers and non-teaching employees, contractual appointments and privatization and commercialisation of higher education, etc. It was clearly understood by all stakeholders that if the *Model Act* was allowed to be adopted an orderly development of higher education in India in the 21st century would not take place.

The attempt to introduce a *Model Act* was a desperate attempt of the BJP-led NDA government towards all round commercialization of higher education in the country. All stakeholders, students, teachers, parents and people at large fought all over the country against such a draconian proposal.

2. The UPA Agenda: ‘Reform’ or ‘Deform’

The congress led UPA government came into power in 2004. It had the outside support of the left parties. This government continued the drive of privatization and commercialization of higher education launched by the previous NDA government. A large number of private institutions were given deemed university status. It had to withdraw Foreign Educational Institutions Bill in May 2007 due to the strong opposition of CPI(M). The *Model Act* was also not pursued by it and was abandoned. The enabling framework common to the entire education system could not be made.

Initiative under GATS

The UPA government gave initial offers in August 2005 to WTO under GATS which was protested by all stakeholders¹⁰. However, the commerce ministry circulated in 2006 a consultation paper on trade in education services¹¹. Titled “Higher Education in India and GATS: An Opportunity,” it was in preparation for the then ongoing services negotiations at the WTO.

The commerce ministry recommended “services negotiations (in WTO) could be used as an opportunity to invite foreign universities to set up campuses in India, thereby saving billions of dollars for the students travelling abroad.” Therefore, the consultation paper recommended striking “a balance” between

“domestic regulation and providing adequate flexibility to such Universities in setting syllabus, hiring teachers, screening students and setting fee levels”.

The WTO had identified certain barriers to trade. These barriers/obstacles include the restrictions on free movement and nationality requirements of students and teachers, immigration regulations, types of courses, movement of teachers, modalities of payments or repatriation of money, conditions concerning use of resources, direct investment and equity ceilings, existence of public monopolies, subsidies to local institutions, economic need tests, exchange controls, non-recognition of equivalent qualifications, etc. The goal of ‘free trade’ regime under the WTO was to get these barriers removed in order to further liberalise the world economy. Therefore, the commerce ministry’s recommendations about ‘adequate flexibility’, ‘balance’ between domestic regulations and ‘removal of barriers’ could prove disastrous for the Indian higher education system¹².

The trade in education has adopted an alternative route outside the ambit of WTO-GATS. The developed countries and education providers now directly negotiate with sovereign states wanting to import higher education. Quite often they put pressure on developing and transition countries to open up their education sector to the foreign educational players. Such pressures were mounting on UPA government. It could not do much due to strong resistance of the left parties on whose support it depended.

Alternative Framework: 100-Day Agenda

The UPA-2 government came into power in May 2009. It knew that a Model Act like enabling framework, as directed by WTO, was not possible due to the resistance of all stakeholders. Therefore, its 100-day agenda¹³ announced by the minister of human resource development included introduction of several bills in parliament and so called academic reforms. Accordingly, four bills regarding entry and operation of foreign educational providers, mandatory assessment and accreditation, prevention and prohibition of malpractices, and establishment of a tribunal to fast-track adjudication have been introduced in the budget session of parliament on 3 May 2010. Academic reforms agenda included introduction of semester system and choice based credit system in all institutions of higher education as recommended by WTO.

In addition a draft bill was issued for the constitution of an overarching authority National Commission for Higher Education and Research (NCHER) based on the recommendations of Yashpai Committee and National Knowledge Commission. In the wake of strong criticism, this draft was revised and selectively circulated. Another draft bill for starting innovation universities has been circulated.

The UPA-2 government is changing the entire framework of higher education system in the country without required consultation and debate. The minister is pushing this so called “reform agenda” with tremendous haste without any regard to opposition of academia and states. It is being questioned whether this agenda will ‘reform’ higher education system in India or ‘deform’ it. The compulsion of the minister and central government for pushing these “reforms” can be understood if we know the situation obtaining abroad in higher education sector after the recent economic meltdown particularly in USA and UK. We should also know the initiatives and pressures built by these countries on Indian government in order to bail out the higher education sector of their own countries.

3. Crisis of Higher Education in USA and UK

Education Budget Cuts in USA

In the United States the higher education system is in deep crisis since the last recession and meltdown. The universities and colleges across the country are facing tremendous problems due to large scale budgetary cuts. At least 43 states have implemented cuts to public colleges and universities and/or made large increases in college tuition to make up for insufficient state funding¹⁴. States made these cuts because revenues from income taxes, sales taxes, and other revenue sources used to pay for these services declined due to the recession. At the same time, the need for education services did not decline and, in fact, rose as the number of families facing economic difficulties increased.

Due to budget cuts by states, in Alabama tuition hikes for 2010-11 range from 8 percent to 23 percent, depending on the institution. In Arizona’s three public universities this hike is between 9 to 20 percent alongwith salary cut by 2.75 percent. The University of California increased tuition by 32 percent and reduced enrollment by 2,300 students; the California State University system cut enrollment by 40,000

students. Colorado funding for higher education was reduced by \$62 million from 2010. Florida's 11 public universities raised tuition by 15 percent for the 2010-11 academic year. This tuition hike combined with a similar increase in 2009-10, results in a total two-year increase of 32 percent.

Georgia cut state funding for public higher education for 2011 by \$151 million, or 7 percent. As a result, undergraduate tuition for the fall 2010 semester at Georgia's four public research universities will increase by \$500 per semester, or 16 percent. Michigan reduced student financial aid by \$135 million (over 61 percent), including decreases of 50 percent in competitive scholarships and 44 percent in tuition grants. New York's state university system increased resident undergraduate tuition by 14 percent beginning with the spring 2009 semester. University of North Carolina has raised tuition by \$750 in the 2010-2011. Funding for the University of Washington has been reduced by 26 percent for the current biennium. Washington State University increased tuition by almost 30 percent over two years. The budget for public colleges and universities in Washington has also been reduced by 26 percent. Over the next two years, the University of Virginia will see a cut of \$27 million; Virginia Tech, \$32 million; and James Madison University, \$14.5 million. The state's Community College system will lose a total of \$66 million.

Like many other prestigious American institutions, MIT was hard hit by the recession¹⁵. Its endowment, which funds about 20% of the university's annual operating budget, decreased by about 25% during the crisis, falling from a pre-recession high of US\$10.1 billion to just \$7.6 billion. In Harvard and Yale's endowments, the endowment reached top values of \$37 billion and \$23 billion prior to the recession fell by 23% and 30% respectively.

Protest Actions in USA

Therefore, these institutions have been forced to take measures such as academic reorganization, layoffs, furloughs (leave without pay), position eliminations, hiring fewer tenure-eligible faculty, and higher teaching workloads, larger number of students in a class, higher employee contributions to health and retirement benefits, elimination of scholarships, cut in need-based aid, administrative cuts, salary cut and other cuts. The students have been worst hit who faced decreased number of seats and large scale rise in fees.

These measures angered the students, teachers and parents and resulted in widespread unrest amongst them. Protests have been going on for over two years now across the colleges and universities in the United States. Tuition fee for students at the 23 California State University campuses, including San Francisco State, was increased by 30 percent in 2009. After months of actions against the steep decline in state financing for public universities, the students occupied a building of San Francisco State University canceling classes for 3,200 students. They locked themselves inside that building by chaining the doors from inside for about 24 hours to protest budget cuts and tuition fee increases across the state's public university system¹⁶. The police broke through a window to get in and arrested twenty-six students on 10 December 2009. On this day students on at least three campuses, including Berkeley, took over buildings and many were arrested. They also raised the issues of layoffs, faculty furloughs and other cuts and demanded forgiveness of all student loans.

The protests in California against \$1 billion in budget cuts to the state's university system grew into a nationwide movement. Students and teachers in many states organized demonstration against budget cuts and tuition fee hikes on 4 March 2010. Thousands of students, parents and faculty members protested across California at colleges, universities and even elementary schools¹⁷. In Oakland, California, police arrested 160 protesters who blocked a major interstate highway. Protesters in Davis, outside Sacramento, also tried to block an interstate highway but were prevented by the authorities using pepper spray. Protests were held in other states, too, with at least 16 people arrested at the University of Wisconsin, Milwaukee, when protesters tried to force their way into administration offices and threw ice chunks at campus officers.

Called a "strike and day of action to defend public education" by organizers, campus and building entrances were blocked at several places. One of the largest demonstrations in California took place on the north steps of the Capitol, where more than 1,000 people used drums, bullhorns, and scores of young

voices to try to get their message across. Protesters said they would continue to press their case with more demonstrations.

A call was given to organise 7 October 2010 as the ‘national day of action to defend public education.’ At Louisiana State University at Baton Rouge, for example, several hundred people gathered on the campus’s parade grounds for a jazz-inspired “funeral” for higher education¹⁸. Some participants, dressed in black carried a coffin labeled “education,” while others carried flags representing language programs that the university has cut to cope with shrinking state appropriations. More program and job cuts are likely, as the state is struggling to close a deficit in its current budget year, and Gov. Bobby Jindal, a Republican, has said that higher-education funds could be cut by as much as 35 percent in the budget that lawmakers will craft next year.

On several campuses of the University of California, which lost \$637-million in state appropriations last year, groups also held events to mark 7 October as “National Day of Action to Defend Public Education.” At the University of California at Berkeley, demonstrators at a variety of events protested the cuts and their effects on public colleges and universities. One event, a sit-in in a library reading room, drew some 500 participants before the campus police blocked access. The demonstrators banged on desks and chanted “Whose university? Our university!” and several hundred remained in the room as of late afternoon, but there were no reports of arrests, according to the university’s News Center. Such actions took place all over the United States and students, teachers and all the stakeholders are now preparing for further actions in January 2011.

Education Budget Cuts in UK

In the United Kingdom, similar situation is obtaining with large scale cuts and tuition fee hikes and rising protests of students and teachers. Struggling to reduce a large budget deficit, the government in recent months has announced some £1.1 billion (\$1.59 billion) in cuts to U.K. universities. Some university leaders fear future cuts could be even more severe and undermine one of the U.K.’s most important industries—higher education¹⁹. Anger sparked protests at many places including Middlesex. Proposals to cut more than 100 jobs at University of Sussex in southern England led students to occupy university buildings in March 2010, and break into the vice chancellor’s office. The police were called in.

Teachers at several universities, including King’s College London and Westminster University, have organized strikes in recent months to protest job cuts. According to an estimate a few thousand job cuts have been announced so far. The University of Leeds in northern England has said it may need to eliminate as many as 400 jobs if further funding cuts are announced, a warning that has provoked several student protests. Russell Group universities are lobbying for tuition fees to be gradually raised and then freed from state control, to allow the best universities to charge more.

The government announced cut in university funding in England by a total of £398m for 2010-11²⁰. In all, the budgets of around half of universities were cut, including 10 members of the elite Russell Group – Birmingham, Bristol, Imperial College London, King’s College, Leeds, the London School of Economics, Manchester, Newcastle, Sheffield and Southampton²¹.

Biggest cuts were made to the London Business School, where budgets were slashed by almost 12 per cent to £5.8 million, and Reading, which saw spending cut by almost eight per cent to £50.7 million. The LSE – ranked in the world’s top 50 – saw cuts of more than six per cent. Oxford and Cambridge universities are also hit by budget cuts.

Record numbers of students are expected to graduate with debts of more than £20,000, according to a study²². The study found that almost a third of students had considered dropping out of university at some point. Almost half of those cited “financial difficulties”. “There is clearly a large financial strain on students if they are having to reduce spend on food and are eating less healthily, which is a concern for those providing for students, especially while they are away from home.”

Some universities were preparing to increase the number of international students, who can be charged as much as 10 times that of British undergraduates, to bring in more money²³. According to Policy Exchange, an organisation interested in free market and localist solutions to public policy questions, fees should rise to a minimum of £5,000 but long-term consideration should be given to removing the existing

fees limit altogether. It said some vice-chancellors were pushing for a rise of £20,000. A many-fold increase!

Three-quarters of UK university heads who took part in a survey think public spending cuts will lead to the disappearance of some institutions²⁴. Some two-thirds of the 43 university bosses who responded said they planned to develop an international presence. Universities charge foreign students much higher tuition fees than domestic students. Therefore, *developing campuses abroad could lead to more students coming to study at their UK bases.*

Leaders of the UK's most prestigious universities have warned that government plans to cut funding will lead to a higher education "meltdown". There will be a loss of 22,584 university jobs in England alone, if the Government pushes ahead with plans for 25% funding cuts.

Protest Actions in UK

Hundreds of University and College Union (UCU) members and students on 5 May 2010, the day of action and strike, gathered at King's College London before marching to Westminster to rally at Church House. University College London, Westminster and Sussex universities and London colleges were affected, with the strike at King's College London continuing until next day.

Actions such as sit-ins, demonstrations and strikes took place in Richmond-upon-Thames College, Croydon College, Sussex University, Bradford College, Doncaster college, Loughborough College, Birmingham Metropolitan College, Bournville College, City College Birmingham and South Birmingham College.

Universities have been told to make savings of £1 billion, while further education must cut its budget by £340 million in the next academic year²⁵. After 5 May action, the UCU prepared for further actions and mobilized opinion across colleges and universities. On 21 June 2010, students and staff at 100 UK colleges and universities protested against funding cuts in higher education²⁶. The protests included a meeting at Parliament.

The protests were organised by a coalition of seven unions, the University and College Union (UCU), the National Union of Students (NUS) Unite, the Association of Teachers and Lecturers, the GMB (Workers' trade union), the Education Institute of Scotland and Unison.

While the students, teachers and workers were preparing for the future course of action, they got further devastating news with the former CEO of British Petroleum Lord Browne releasing his report on 12 October on review of university funding. He recommended a massive cut in direct state funding for university degrees and passed the burden onto students²⁷. He called for the existing £3,290 a year cap on tuition fees to be abolished, allowing universities to charge as much as £14,000, and removal of public funding from all but "priority" subjects like medicine, science and engineering. The interest rate on student loans also will be increased. This will lead to 80% cut in teaching budgets of universities in UK. They are likely to face £3.2 billion cut in teaching and £1 billion reduction in research budgets. In anticipation of further cuts, many institutions are beginning to lay off instructors, reduce the number of classes and shut down departments.

The UCU said that cuts on this scale would leave cities and towns without a local university and our students would pay the highest public fees in the world. It has described this as the most challenging time for their students, members and for movement and called upon them to act together.

On a joint call by the NUS and UCU, several tens of thousands of students, teachers, parents, workers and others will take part in a national demonstration in London on 10 November to protest against funding cuts to higher education²⁸. The march will also raise concerns about higher tuition fees and the increasing privatisation of the education sector. About 2,00,000 students could not get admission in universities this year. With multifold rise in tuition fees, many more students will be left out in future. *(As we go to the press, it is reported that a 50,000-strong demonstration has been organized in London on 10 November.)*

4. Background of UPA-2 Agenda and Negotiations

The governments of USA and UK are forcing their already crisis-ridden higher education systems to fend for themselves and reduce dependency on public funds. In the wake of rising protests of students, teachers and parents, these countries are looking for alternative destinations for export of their higher education at exorbitant costs so that their higher education systems could be bailed out. They have been pressurizing

developing countries including India even before meltdown to open up their higher education system to predatory global players for making profits. Now they have mounted tremendous pressure on the Indian government to remove barriers for foreign direct investment in its world's third largest system (after USA and China) of higher education.

It is in this background that the UPA-2 agenda of academic "reforms" was planned. In view of the fact that the BJP led NDA government could not make an enabling framework for the entire higher education system in the country despite the Ambani-Birla report and a concept paper on the Model Act, and UPA-1 could not do so due to the resistance of the left parties, the UPA-2 decided to make an enabling framework not through a comprehensive legislation but through several legislations on different issues necessary for the benefit of the private local and foreign educational providers.

This framework will enable these and other developed countries to set up their shops in India and deform its higher education system to respond to global trade in higher education for profit. The Prime Minister and HRD Minister are already engaged in high level talks with their counterparts in USA and UK.

Negotiations

Union Minister for Human Resource Development Kapil Sibal met US Under Secretary Of State William Burns for Political Affairs on October 15, 2009 in New Delhi²⁹. India and the US are proposing to set up an India-US Education Council. This Council is slated to include representatives of Industry and Education. The Council will coordinate the moving forward of bilateral relations in education between the two countries.

Prime Minister Manmohan Singh saw enormous opportunities, in November 2009, for the university systems of India and the US³⁰ to work together and launched a Obama-Singh 21st Century Knowledge Initiative between the US and Indian universities.

Kapil Sibal met US Secretary of State Hillary Clinton on 2 June 2010 in Washington and discussed a wide range of issues related to bilateral cooperation in the field of education³¹. Welcoming the Singh-Obama knowledge initiative, Sibal said that we need to establish a bi-national India-US Education Council having academics, entrepreneurs and government representatives as members. Sibal also mentioned about the 14 Innovation Universities that are being set up in India and said, "The two nations could partner in setting up some of these Innovation Universities, one of which could be announced during the proposed visit of President Obama to India later this year." They also discussed the interest shown by US universities in establishing institutions in India.

Hillary Clinton wrote in Times of India on June 4, 2010 that this week, a delegation from India's government arrived in Washington for the first-ever strategic dialogue between India and the United States³². The new Obama-Singh 21st Century Knowledge Initiative will build partnerships between Indian and American universities. And India is now poised to undertake a significant educational reform: allowing foreign universities to open campuses in India.

The Bureau of South and Central Asia Affairs, U.S. Department of State, hosted a higher education roundtable on 16 September 2010 to identify successful and sustainable models for collaboration and partnerships³³ in all types of higher educational institutions in India including research institutions, professional schools, undergraduate liberal arts schools and community colleges.

UK Prime Minister David Cameron who visited India in July 2010 alongwith a big trade delegation said: "Education is not just vital for national success, it is one of the best growth businesses of the 21st century³⁴. I want us in Britain and India to pool some of our advantages for our mutual benefit."

Through the UK-India Education and Research Initiative (UKIERI) collaboration the two nations will join hands to set up new institutes, increase skills development programmes, hold leadership programmes and work on quality assurance of courses offered to students. UK has formally expressed interest in developing Innovation Universities and other institutions.

UK Higher Education and Science Minister David Willetts, who accompanied Cameron, said: "Oxford, Cambridge, Imperial, Essex, Birmingham, Newcastle, Exeter and the Open University are eager to forge links during the design and eventual creation of the new innovation universities." He would be visiting India again in November 2010, accompanied by leading British vice chancellors, to establish a framework for collaboration between British institutions and the innovation universities.

5. Spate of New Bills

In the scenario described above, the Ministry of Human Resources Development (MHRD) has introduced four Bills in parliament on 3 May 2010 – i) The Foreign Educational Institutions (Regulation of Entry & Operations) Bill, 2010, ii) The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutional Institutions and Universities Bill, 2010, iii) The Educational Tribunals Bill, 2010, and iv) The National Accreditation Regulatory Authority for Higher Education Institutions Bill, 2010. Other two Bills which have been circulated are draft v) The Higher Education and Research Bill, 2010 and vi) The Universities for Innovation Bill, 2010.

Through these bills, the UPA-2 government is creating a framework that would enable the implementation of its agenda of neo-liberal reforms in higher education system and for meeting the requirements of foreign educational institutions.

On the Foreign Educational Institutions Bill, 2010

According to the Statement of Objects and Reasons of the FEI Bill, 2010³⁵, a number of Foreign Educational Institutions (FEIs) have been operating in the country and some of them may be resorting to various malpractices to allure and attract students. Further, there is no comprehensive and effective policy for regulation on the operations of all the FEIs in the country. It has given rise to chances of adoption of various unfair practices besides commercialisation. Therefore, the enactment of a legislation is to “maintain the standards of higher education within the country as well as to protect the interests of the students and in public interest.”

Foreign Educational Institution (FEI) has been defined as “an institution established or incorporated outside India which has been offering educational services for at least twenty years in the country” of its origin and “which offers educational services in India or proposes to offer courses leading to award of degree or diploma or certificate or any other award through conventional method including classroom teaching method not including distant mode in India independently or in collaboration, partnership or in a twinning arrangement with any educational institution situated in India.”

No FEI will admit any student, or collect any fee from such students in India for any course of study leading to the award of a degree or a diploma, by whatever named called, unless such institution has been notified by the central government as a foreign education provider (FEP).

A FEI can be recognised as FEP by the central government, if established for 20 years in the country of its origin and deposits a sum of Rs 50 crore as corpus fund. Given the profits involved in the business of education, this sum is a pittance. If accreditation is not applicable in a country, then no rating is required.

Under ‘twinning programme’, students enrolled with a FEP complete their study partly in India and partly “in any other educational institution situated outside India.” Given this definition, any predatory FEP might offer part of its programme in a country which is more profitable.

No part of surplus in revenue generated in India by such FEP after meeting all expenditure in regard to its operations in India, will be invested for any purpose other than for the growth and development of the educational institutions established by it in India. This provision means that surplus in revenue generated in India cannot be repatriated outside India. This is actually not for implementation. This has been included by the central government deliberately to divert the attention of the people from the ills of foreign direct investment (FDI) in education and implement its neo-liberal agenda and commercialisation of education³⁶. The FEPs will find many ways to reinvest the surplus in profit making ventures including real estate business.

A FEP will have to declare fee and other charges payable by students, conditions of eligibility for admission as a student, process of admission, details of teaching faculty including their qualification and whether they are regular or visiting members, minimum pay and other emoluments payable to teachers and other employees. Thus a FEP will be free to charge any fee, select any student, and have its own norms regarding pay of teachers and employees.

If a FEP violates any provisions of this Act or the UGC Act, 1956 or any other law, then its FEP status can be withdrawn after due process. In such a situation, the central government will ensure alternative and

appropriate educational facilities for the affected students. The central government may attach its corpus fund and such other property as it deems fit to make payments to any person employed in India by such FEP and for making appropriate educational facilities for concerned students. It will also be liable to refund fees collected and a penalty of ten to fifty lakh rupees. This is a meagre penalty given the scale of business such institutes do and dupe the students. There is no provision for any criminal action under IPC as is provided for in the AICTE Regulation 2005 or 2010.

Any person, associated with an educational institution or a FEI not being a FEP or a FEP whose recognition has been withdrawn releases misleading advertisements or gives wrongful information in the print, electronic or any other media will be liable to refund the fees collected, confiscation of any gains made and a penalty of ten to fifty lakh rupees. However, in case a FEP releases misleading advertisements or gives wrongful information in the media, no penalty has been prescribed.

Having regard to the reputation and international standing of foreign educational institution and “such other criteria as may be prescribed”, the central government, on the recommendation of the Advisory Board, may “exempt” such institution from any provisions of this Act except the provision in relation to surplus and corpus fund. This is nothing but giving overriding powers to the central government and Advisory Board. The 5-member Advisory Board will have three national research professors (one of whom will be chairman), UGC chairman and chairman of one of the statutory authority like AICTE, MCI, etc. by rotation.

A FEI which is imparting education leading to award of certificate or any other qualification *not* being a degree or diploma can continue doing business and making profits and repatriating them. No provision of this Act shall apply to them.

The FEPs are not required to submit reports to the UGC or the central government. Then on what basis the UGC will satisfy itself as to whether a FEP has violated the provisions of this Act or not. In the circumstances, it will be almost impossible to withdraw the recognition given to a FEP. There is no provision for the reservations for SC, ST, OBC and other deprived sections in the Bill.

In this context, note some of the comments³⁷ of American educational tycoons: “some for-profit schools are already bypassing the bureaucratic roadblocks”, “given the US economy and shrinking endowments, (US) colleges may need incentives from the government of India to be able to afford to open”. In the US, “college tuitions have risen faster than inflation.” The FEIs violating local laws is thus known to all. Given the eagerness of Sibal and UPA government, the aggressive FEIs will bargain hard to get more ‘incentives’ than even suggested by the commerce ministry and loot the students and their families.

The FDI in any field, in fact, does not have an attached objective of fulfilling the social agenda of a welfare state. It is guided by profit and market alone and if these are not fulfilled, the investors look for other destinations for FDI. Foreign investors aim to increase their profits. In the field of higher education, FEPs would launch courses which the market needs, create false impression about their courses through advertisements, charge exorbitantly high fees for courses which have immediate employment potential.

It would lead to unhealthy competition among unequals. Since competition entails reduction in costs, infrastructure, laboratories and libraries would find least investment and the teachers and non-teaching staff would be appointed without necessary qualifications on such terms which would be exploitative as is in existence in most private institutions today.

On the Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutional Institutions and Universities Bill, 2010

There has been a long pending demand of all stakeholders in the institutions of higher education that a comprehensive enabling legislation should be enacted by the central government in order to bring private general and professional higher educational institutions under social control. This should include regulation of fees and charges levied from students, admissions of students with reservations, course contents, examination, service conditions of teaching and other employees, and infrastructural facilities.

The draft of the Private Professional Educational Institutions (Regulation of Admission and Fixation of Fee) Bill, 2005 was put on the website by the ministry of HRD was very weak and did not fulfill the objective of social control. The UGC also came out with a draft regulation in 2007 regarding Admission and Fee Structure in Private Aided and Unaided Professional Educational institutions. Both the

documents were allowed to lapse. The AICTE also notified several regulations about technical institutions including the one in February 2010. The issue of social control still remained.

According to the statement of objects and reasons of the present bill³⁸ states, there is public concern that technical and medical educational institutions, and universities should not resort to unfair practices, such as charging of capitation fee and demanding donations for admitting students, not issuing receipts in respect of payments made by or on behalf of students, admission to professional programmes of study through non-transparent and questionable admission processes, low quality delivery of education services and false claims of quality of such services through misleading advertisements, engagement of unqualified or ineligible teaching faculty, forcible withholding of certificates and other documents of students.

However, all these are not included in the body of the Bill. No institutions will charge admission or other fees more than that published in the prospectus and issue receipt in writing for such charges. They will also admit students through a transparent process through competitive test or *interse* merit as the case may be. The institutions will give detailed information through their websites and printed prospectuses six months in advance in relation to fee and other charges, admission process, number of seats, eligibility criteria, teaching faculty, pay and emoluments payable to teachers and other employees, physical and academic infrastructural facilities, etc.

The institutions have to just inform these details. They are not even required to have these in accordance with some statutory norms. Even the rationale of their fee and other charges structure is not required. It is enough to declare fee, howsoever exorbitant it may be compared to the actual cost. Only in case of prospectus, it is stated that its price should not be more than the reasonable cost. In private institutions, it is well known that ineligible faculty is appointed and even if the faculty is qualified, the salary paid is far less than that stipulated by the statutory authority. It is known that teachers have to teach in several institutions. Under the bill, it is enough for the institutions to declare their infrastructure, etc., even if that is of low quality. If any institution does anything contrary to the information published in its prospectus, it will be liable to a penalty which may extend to fifty lakh rupees. If the institution has all kinds of facilities and faculty even far inferior to statutory requirements and has declared so, then there is no penalty.

The “capitation fee” has been defined as the amount demanded or charged or paid which is in excess of the fee and other fees payable (on which there is no control) as declared by any institution in its prospectus. No institution can demand or charge, and no person can offer or pay capitation fee for admission. If the institution contravenes this provision, then a penalty may extend to fifty lakh rupees and if it is offered by a person then the bill is silent. The institutions may exorbitantly raise their fees taking into account the extra money they used to charge under the table and publish in the prospectus. If they have not done so then under the table transactions are known to be even more than twenty lakh rupees. In that case, this amount of fifty lakh rupees as penalty is insignificant. It will promote low quality education at exorbitantly high cost to the students. This bill will promote commercialization of education.

Institutions have been barred to refuse to return degree, certificate or document which they kept at the time of admission, to students with a view to induce or compel them to pay any fees for any course they do not intend to pursue in those institutions. If a student withdraws from the institution, then no institution can refuse to refund such percentage of fee deposited by such student which has been mentioned in the prospectus of such institution. Any institution violating this norm will be liable to a penalty which may extend to one lakh rupees.

Institutions have also been barred to publish misleading advertisement about their recognition or in respect of their infrastructure or academic facilities, etc. If this provision is violated then penalty can be up to fifty lakh rupees. There is no provision for any penalty for unrecognized institutions misleading the students. Recently, the UGC issued an advertisement in all major newspapers about Indian Institute of Planning and Management (IIPM) warning students that it was not a recognized University and does not have the right of conferring or granting degrees is neither entitled to award MBA/BBA/BCA degree³⁹. The website of AICTE has a list of more than hundred institutions which are unrecognized and action against them could be taken as per UGC and AICTE norms⁴⁰. But no action has been taken so far except the warning to the students about their unrecognized programmes⁴¹. Therefore all these penalties are there

to show to the people some seriousness of the government against unfair practices by the institutions of higher education. They are actually not for implementation.

The demanding or accepting capitation fees is cognizable offence, section 19, and all others offences are non-cognizable under the code of criminal procedure, 1973. However, a person or every person responsible for an institution can go scot free if it can be proved that the offence was committed “without his knowledge” or that he exercised all due diligence to prevent the commission of that offence.

Most undemocratic, rather most atrocious, is section 18 of the bill. It says, “no court shall take cognizance of any offence under this Act which is alleged to have been committed by any institution or director, manager, secretary or other officer thereof, except on the complaint in writing of such person authorised by the Central Government or the State Government in that behalf or by such person authorised by the concerned appropriate statutory authority, as may be prescribed.” A student or a parent who is victim of the unfair practices of the institution cannot go to the lower court, High Court or Supreme Court. Such a student or parent can take recourse to these courts only through such authorized persons and only when these persons are convinced to do so.

Thus the provisions of this bill do not regulate admission, fees, content of courses, examination, service conditions of teachers and other employees. Larger issues of social justice and academic accountability of educational institutions and excellence in education are totally ignored. It takes away the rights of students and parents to take recourse of courts to seek justice. The operation of admission and fee regulatory committees set up by various State governments, including Kerala, in accordance with the judgment of the Supreme Court could possibly be challenged, once the Central law comes to occupy the field⁴². In short, the bill seems to be highly inadequate to tackle the host of corrupt and unfair practices being adopted by many of our institutions of higher education⁴³.

On the Educational Tribunal Bill, 2010

The Educational Tribunal Bill, 2010⁴⁴ was introduced for establishment of educational tribunals at the national and state levels for “effective and expeditious adjudication of disputes” in the higher education sector. All kinds of disputes are covered under the Bill involving teachers and other employees of higher educational institutions and other stakeholders (including students, universities and statutory regulatory authorities). It will also provide penalties for indulging in unfair practices.

State level tribunals will have three members including its chairperson, a judge of the High Court, a Vice Chancellor and a person of the rank of a Chief Secretary of the State Government. At least one of them will be a woman. They should have at least twenty five years of experience and should be of age not less than fifty five years. They will hold office for a period of five years and can be reappointed, but cannot hold office after attaining the age of seventy years.

State Educational Tribunal will exercise powers in relation to a) service matters of teachers and other employees of higher educational institutions, b) affiliation of an institution with the affiliating university, and c) unfair practices by any higher educational institution which has been prohibited by any law. While appeal can be preferred to National Educational Tribunal against the order of the state tribunals in relation to (b) and (c), but in case of (a) the decision of the state tribunal will be final and no appeal can be made.

A nine-member National level tribunal will consist of chairperson and two other judicial members, judges of the Supreme Court. It will have three academic members (vice chancellors) and three administrative members (secretary to government of India or equivalent rank). At least one-third of its total members will be women. A bench may be constituted by the chairperson consisting of three members with one member each from three categories. Bench members can be transferred from one bench to another. Their term, experience, reappointment and minimum and maximum age will be same as in case of members of state tribunal.

National Educational Tribunal will exercise powers in relation to disputes between a) higher educational institutions and any appropriate regulatory authority, b) affiliated institution and affiliating Central University having affiliating jurisdiction over two or more states, and c) constituents units of deemed to be university or a central educational institution located in two different states. It can also take up issues of the similar nature pending before two or more state level tribunals. It will also take up the service

matters of teachers and other employees only in case of (c) above. An appeal against the decision of the National level tribunal can be made only to the Supreme Court.

Thus, the Educational Tribunals Bill, 2010 seeks to set up an alternate dispute redressal mechanism at the state and national level by denying the right of all concerned to go to the High Courts.

This bill seeks to accommodate retiring or retired judges, vice chancellors, and secretary level IAS officers up to the age of seventy years. This bill also contravenes the judgments of the Supreme Court about the constitution of such tribunals in which majority of members should be judicial.

State and National level tribunals will have the powers of a civil court and can punish anyone who fails to comply with any order made by them with imprisonment for a term up to three years or with fine up to ten lakh rupees or with both. The collector of the concerned area will execute the order. If the institution or the person against whom the order has been made fails to pay then such amount will be recoverable from the institution or person as arrears of land revenue.

No court can take cognizance of any offence punishable under the chapter on penalties unless a complaint is made by an officer authorized by the either of the tribunals. No civil court will have jurisdiction to entertain any suit in respect of any matter falling under the purview of these tribunals.

The National Educational Tribunal will have administrative control over all the state level tribunals and will oversee their functioning, that is centralizing the whole mechanism.

The kinds of problems and disputes the students face on which either of the tribunals should adjudicate have not been spelt out in the bill. The word 'student' appears only on first page after the title of the bill and in first para of statement of objects and reasons. In the main body and provisions of the bill 'student' is missing. There is no section in the bill in which the disputes between students and their institutions are mentioned. In its absence tribunals might refuse to entertain their disputes. This means an aggrieved student can neither go to either of the tribunals and nor go to the courts of law. This bill is most authoritarian as far as students are concerned.

This bill was presented in Lok Sabha overlooking the series of objections by the Parliamentary Standing Committee on Human Resource Development and passed. In Rajya Sabha, where the UPA-2 does not have majority, the minister had to withdraw this bill in view of protests not only from the opposition but from his own party.

The Parliamentary Standing Committee on Human Resource Development⁴⁵ had rightly said that the bill was introduced without a wider consultation process involving all the State Governments and Union Territories. Central higher educational institutions have also not been consulted. The whole exercise seems to be a hurried affair. Three-member tribunal cannot take up all conceivable aspects of higher educational institutions. Only one tribunal per state is allowed whether the state is small or big. The majority of the membership of the tribunals is non-judicial contrary to a ruling of the Supreme Court. This is a legislation meant to accommodate retired vice chancellors and top bureaucrats leading to bureaucratization of the tribunal. Prescribing the minimum age limit to fifty five years could lead to ineligibility of otherwise competent and younger people. The term 'unfair practice' has not been defined in the Bill. Without defining the term, 'unfair practices', it will be open to interpretation by the tribunals and courts. The students are the soul of an institution and their interests should be protected and taken care of. This could only be made possible by including the word 'students' in the substantive clause.

This bill in the name of "effective and expeditious adjudication of disputes" presents an alternative system in which the disputes between teachers or other employees and institutions of higher education are stopped at the tribunal level and teachers and other employees are denied their constitutional right to take recourse to high courts. This is atrocious.

One of the objects of this bill is that the expansion of higher education to effectively "compete with other countries" can be achieved only if the "regulatory regime and dispute-settlement process engender credibility and assurance." Therefore, the bill proposes a two-tier "system through a fast track, speedy recourse to justice delivery." However, the provisions of the bill do not match the objects of the bill. This bill, in fact, has been designed to keep the teachers, other employees and students away from courts and high courts and provide the foreign educational institutions an environment in which they do not have to bother much of the litigations.

On the National Accreditation Regulatory Authority For Higher Educational Institutions Bill, 2010

The National Accreditation Regulatory Authority For Higher Educational Institutions Bill, 2010⁴⁶ was introduced in Lok Sabha on 3 May. According to statement of objects of the Bill, assessment and accreditation in the higher education, through transparent and informed external review process, are the effective means of quality assurance in higher education to provide a common frame of reference for students and others to obtain credible information on academic quality across institutions thereby assisting student mobility across institutions, domestic as well as international. Presently, accreditation is voluntary as a result of which less than one-fifth of the colleges and less than one-third of all universities have obtained accreditation. Mandatory accreditation in the higher education would enable the higher education system in the country to become a part of the global quality assurance system.

The UGC established National Assessment and Accreditation Council (NAAC) in September, 1994 at Bangalore. The theme paper on NAAC⁴⁷ clearly stated, while analyzing the systems prevailing in the USA, UK, Australia, France, etc., that “..... assessments for teaching are now taking place, initially on a 3-point scale: excellent, satisfactory, unsatisfactory. Assessors will visit and sit in during lectures and seminars.” It went on to say that after assessment and accreditation in UK, “Government funding per student has declined in real terms, so that universities have been forced to seek other sources of funding....” In France, the document said “They (the Ministry) control the appointment and promotion of teaching and administrative staff” Further, the document of NAAC was prepared “after taking into consideration the existing methods of quality assessment and quality control and accreditation of higher education in USA, UK, Canada, Australia ...”

The theme paper said the assessment and accreditation of institutions would take place “without interfering with their autonomy and funding.” It was voluntary and NAAC could assess only those institutions that apply for assessment and pay prescribed fees.

Five years after its establishment, in 1999, NAAC made it clear⁴⁸ that it would “make the report available to UGC, government and other funding agencies,” promote a culture of “positive competition” among institutions, evaluate the institutions “for purpose of funding, developmental activities or introducing innovations” on the request of state governments, and that the NAAC’s reports would be useful to funding agencies in obtaining “dependable profiles of institutions, and possible patterns of assistance” and that the UGC had already indicated that its plan-based developmental support to educational institutions would be related to the outcome of assessment and accreditation.

In December, 1999, secretary, union ministry of human resource development, had announced that universities and colleges have to get themselves mandatorily assessed and accredited by National Assessment and Accreditation Council (NAAC)⁴⁹. The deadline for this purpose was fixed 31 December, 2000 for universities and 31 December, 2003 for colleges. He stated that the institutions getting rank 0 would be “disaffiliated and closed down”, and those getting rank 2 or 1 would be under watch or special watch respectively. If they did not improve in due course of time, he added, they would face similar action. Institutions getting rank 5, 4 and 3 were to be rated outstanding, very good and good.

The whole concept was basically to reduce the state funding of institutions of higher education. First starve the institutions of funds, and then starve them with ranks. Then it was easier for the government to close down some of the institutions on the basis of ranks. The institutions in towns, tehsils and villages catering to the needs of disadvantaged sections were to be the worst victims. The teachers’ movement fought against the move and demanded self assessment of higher educational institutions for improvement and not linking it with funding⁵⁰.

Mandatory accreditation in the higher education, according to the Bill, would require a large number of competent and reliable accrediting agencies to be recognised, monitored and audited for academic competence through an independent but accountable institutional mechanism. Such a mechanism would find acceptability among peer group of international accreditation bodies, necessary for student and teacher mobility and institutional collaborations, within and across borders. Consequently, there is a need

for an autonomous institutional structure with statutory backing to recognise and regulate competent professional agencies charged with the task of accreditation.

Registered agencies would accredit higher educational institutions through transparent processes. The assessment would include physical infrastructure, human resources (including faculty), administration, course curricula, admission and assessment procedures, infrastructure and governance structures of the institution.

Therefore, the bill has been proposed to establish a regulatory authority to register, monitor and audit the functioning of accreditation agencies which would be invested with the responsibility of accrediting higher educational institutions including universities, colleges, institutes, institutions of national importance and programmes conducted therein. Institutions imparting higher education beyond twelve years of schooling would be *mandatorily* accredited. Higher educational institutions engaged mainly in agricultural education and research have been kept out of the purview of the proposed legislation.

Every higher educational institution, existing before the commencement of this Act, will have to apply for accreditation, within a period of three years from the date of its commencement. However medical educational institutions have been given a time of five years. Any person responsible for an institution who fails to do so will be punishable with imprisonment up to two years or with fine up to ten lakh rupees or with both.

The Central Government will establish “the National Accreditation Regulatory Authority for Higher Educational Institutions”. The Authority shall consist of a Chairperson and four other Members, of whom at least one shall be woman, to be appointed by the Central Government. The chairperson will be a Vice Chancellor (whether in office or retired) and other four members will be professors in the fields of medical education, science or technology, social sciences and legal matters, They should have at least twenty five years of experience and should be of age not less than fifty five years. They will hold office for a period of five years and cannot be reappointed, but cannot hold office after attaining the age of seventy years.

The Authority shall register and regulate accreditation agencies, lay down norms and policies for assessment of academic quality in higher education institutions and recommend improvement of quality, undertake audit on matters related to conflict of interest, disclosure of information and transparency, levy of fees, advise central and state government, and collect and disseminate information on accreditation of higher educational institutions.

The accreditation agencies have to be non-profit organizations registered as a company under Section 25 of the Companies Act, a society or trust formed or controlled by the central or state government or any authority or board or institution established under any Central or State Act. They should be professionally competent and financially sound. This means that any central or state university can also float an accreditation agency.

Only registered accreditation agencies can undertake accreditation of higher educational institutions. The Bill lays down detailed eligibility criteria and the procedure of application for registration. The certificate of registration will be valid for a period of ten years unless it is revoked in accordance with law. There are provisions for suspension or revocation of certificate of registration. In case the certification of any accreditation agency has been revoked, the Authority will conduct an audit of all the higher educational institutions accredited by such agency within a period of one year before the date of such revocation. Any person, aggrieved by the accreditation decided by any accreditation agency may apply to the Authority for withdrawal of such accreditation or its modification.

According to the bill, if an accreditation agency fails to comply with its prescribed duties, obligation and code of ethics, such as application of uniform standards, etc., it will be liable to pay such compensation to the higher educational institution, which will be determined by the State Educational Tribunal.

Any accreditation agency that contravenes any provision of the Act will be liable to a penalty which may extend to five lakh rupees. If a person, without reasonable cause, resists or obstructs any officer of the Authority he shall be punishable with imprisonment upto three months or fine of upto five lakh rupees or with both. Whoever is running an accreditation agency without registration will be punishable with imprisonment upto five years or a fine upto five lakh rupees or with both.

The Central Government has power in the name of “advancement of knowledge” or “in the interests of the general public” to exempt any class or classes of higher educational institutions from the operation of all or any of the provisions of this Act. This gives arbitrary powers to the central government which can be misused. In any case, this power makes the bill redundant if an institution is favoured by those who are part of central government. The Central Government has power to also supersede the Authority for a period up to six months.

An example how the accreditation system works in the USA is worth quoting⁵¹. In recent months, the Higher Learning Commission of the North Central Association of Colleges and Schools, one of the nation’s major regional accrediting organizations, has adopted more-rigorous policies. Therefore, Argosy University and Bridgepoint Education are applying to be accredited by the Western Association of Schools and Colleges, which oversees institutions in California and Hawaii. Therefore, these institutions are moving their headquarters under the jurisdiction of new accreditor. However, the Education Department has charged the Commission itself that it has given approval to American InterContinental University, despite a review that found the institution was awarding inflated credit hours to students for some courses.

Thus a regime is being created for the accreditation by multiple recognized agencies as exists in the USA. The central government can exempt institutions from the provisions of the bill including mandatory accreditation. This bill will help the foreign educational institutions interested in coming to India and set up their shops and get exemptions. Though there is no mention of funding linked with accreditation in the Bill, but several regulations will be made under it at a later stage about which nothing is known now. Even NAAC had come out five years after its establishment that the accreditation was linked with funding.

It is necessary, as stated by Yash Pal Committee, to allow the universities to be autonomous spaces, diverse in their design and organization, self assessing and governing, and responsible for its own curriculum framework, instructions and evaluation of students⁵². Therefore, what is necessary is to have a self-regulatory, democratic and transparent mechanism for assessment on the basis of very well defined parameters. It should be for improvement of institutions rather than linked to their funding.

On the Draft Higher Education and Research Bill, 2010

The draft of National Commission for Higher Education and Research (NCHER) Bill, 2010 was uploaded by the ministry of human resource development in February on its website⁵³ and received strong criticism and opposition from students, academia, people’s representatives and several states including West Bengal and Kerala. This draft bill, therefore, was revised and certain vital changes were made. This revised bill, re-titled as Higher Education and Research (HER), Bill, 2010, was circulated selectively for seeking opinion while the original draft bill continued to be on its website. This draft bill has been presented before CABE meeting on 19 June 2010⁵⁴. The preamble of HER bill includes all education except agricultural education.

Two main issues, apart from several others, (1) over centralisation of higher education and (2) attack on the federal structure affecting centre-state relations remain crucial. The HER bill includes cleverly drafted formulations but creating confusion by the choice of alternative words (with similar meaning as in the first draft) and creation of new bodies, the general council, inferior in its mandate compared to collegium of scholars, as well as Higher Education Financial Services Corporation.

The states will continue to be marginalised. They cannot start a university unless permitted to do so by the proposed National Commission. The states may appoint their own vice chancellors but subject to the Regulations to be made under the proposed law. The corporate culture will decide which institution, university (both central and state) and college, etc., should be funded and on what basis.

The commission will be of seven members who will be appointed by a selection committee consisting of the prime minister, speaker of Lok Sabha, the leader of the opposition in Lok Sabha and two ministers in charge of higher education and medical education. The chairperson, three whole-time members and three other members of the commission will hold office for a term of five years. The status of chairperson and whole-time members of the commission will be that of the chief election commissioner or election

commissioners respectively. The non-whole-time members will not have the status of election commissioners.

In HER bill, the distinction between members is on three counts: (1) Qualification: While the chairperson and the whole-time members were to be persons “possessing leadership abilities and proven capacity for institution building”, other members were to be with “proven contribution to economic and social development and experience of engagement with institutions of higher learning and research”. (2) The chairperson and whole-time members were to be salaried employees and other members only allowance holders. (3) Chairperson and three members will have status of election commissioners and other three will be without that status. With these three distinctions, the commission itself will not be a cohesive body and will be composed of unequals. Thus, practically four members will control the commission.

Centralising all powers in the field of higher education, a provision for the establishment of general council, as an advisory body, has been made. It appears that the general council has been created to take care of the criticism by state governments. However, the HER bill is also, by and large, against the federal structure. The general council will consist of 79 members including one representative of each state and union territory such as vice chairman of state higher education council or vice chancellor of a state university, all heads of professional bodies and research councils, and one central university vice chancellor, one IIT director, one IIM director (in rotation) and ten academics from such fields like agriculture, medicine, environment, economics, Indian languages, etc. The general council will meet once in six months.

The general council will advise the commission on enhancing access, inclusion and equity; connecting higher education and research to the practice of professions; measures to remove imbalances (including those relating to regions, academic disciplines, gender and other socio-economic factors); adequacy of funding of higher education; statement and report prepared by the commission; and on the course of reforms to rejuvenate higher education and research. It can amend every measure or regulation proposed by the commission by two-thirds majority of its members present and voting. Such amendments will be binding on the commission.

In HER bill, the ‘collegium’ has been defined as ‘collegium of scholars’ with 30-fellows which will be constituted by the central government with persons of integrity and eminence in higher education and research.

The first fellows will be persons who are or have been national research professors or recipients of Nobel Prize and Fields medal. Their membership will be for life. If no such person is willing to be a fellow, a selection committee headed by the prime minister will nominate ten persons of integrity and eminence in higher education and research who will be the first fellows of the collegium. Their term will be for a period of ten years. These fellows will propose the rest of the fellows for a ten year term.

The collegium will aid and advise the commission for the determination, co-ordination, maintenance of standards in higher education and research and recommend a vision on the emerging trends in different fields of knowledge. It will propose the names of three persons for the appointments of chairperson and other members of the commission. It will assess the performance of the commission and also make recommendations in respect of the statements and reports of the commission. It will also propose a set of names to the President of India for constituting a committee to review the performance of the commission.

From the functions of general council and collegium, it is seen that some of the powers of the two bodies are overlapping. But the functions of collegium are wider than those of general council.

There will be directory of academics for leadership positions. The collegium will recommend names for inclusion in the directory. The central government, state governments, universities, professional bodies and research councils and state higher education councils can also recommend the names for inclusion in the directory. However, such names will be forwarded to collegiums and will be included only if they satisfy the standards to be set out.

The commission will recommend a panel of five names to the central government for the appointment of vice chancellor for a central university. State governments can appoint their vice chancellors without reference to this directory of academics. But such vice chancellors must satisfy the standards which will

be set out in regulations about which at present nothing is known. Thus the freedom of the states to appoint their vice chancellors has been restricted to this extent.

The commission will “take measures to spearhead transformative change in higher education.” For this purpose, it will promote autonomy for the free pursuit of knowledge and innovation, facilitate access, inclusion and opportunities for all, and promote culture of quality, rational inquiry and reform. It will also promote accountability and curriculum frameworks, and code of good practices in leadership, governance and management. It will also develop norms for financing higher education institutions.

Interestingly, the measures taken by the commission, section 24(4), will not be obligatory for higher education institutions to adopt but will act as reference for them to advance quality, access and inclusion. This provision appears to have been made to thwart the criticism that the central government was trying to over centralise higher education and taking away the powers of the states.

This is clear from section 25. The commission will frame regulations, section 25(1), to determine, coordinate and maintain standards of higher education and research. It will have the power to regulate, section 25(2), almost everything related to higher education institution – requirements for the award of any degree, norms and standards of academic quality and accreditation, norms and process of a university to award any degree, standards of leadership positions for appointments as vice chancellors, the entry and operation of foreign educational institutions, norms for allocation of grants, etc. However, the commission will create, section 25(3) an “enabling environment for universities to emerge as autonomous and self-regulatory bodies.”

The provisions of section 24(4), 25(2) and 25(3) are self contradictory. Once the regulations are made under the section 25(2), the provision of section 24(4) will not hold good. If the universities have to “emerge as autonomous and self regulatory bodies”, then there is no need to vest the commission with so much power. In fact, given the provisions in sections 24(4) and 25(3), if they are really meant for implementation, the national commission of higher education and research is not required at all⁵⁵. What is actually required is a set of guidelines for helping the universities in becoming autonomous and self regulatory.

The commission will prepare, every five years, a report on the state of higher education and research in every state and its relation to national trends. The governor of every state will get such report laid before the legislative assembly along with an explanatory memorandum on the action taken, or proposed to be taken, thereon in respect of each recommendation made by the commission. Thus the state governments will be forced to implement the agenda set by the commission and the powers of the state legislatures will be restricted.

Every university empowered by or under any law intending to commence its operation has to intimate such intention to the commission, in accordance with the regulations which have yet to be framed, along with an assessment report from a registered accreditation agency. The commission “shall not refuse commencement of academic operations in a university” established by law if it “fulfils the norms” provided in the regulations which have yet to be made. The commission will either ‘declare’ or ‘reject’. Thus, the university can start its operation only after getting “declaration” from the commission. The states cannot start universities unless permitted by the commission to do so.

The HER bill proposes for the creation of higher education financial services corporation under section 25(1) of the companies act. This corporation will have an 11-member board of directors. The chairperson or a member of the commission will be the non-executive chairperson of the corporation. It will include only two representatives in rotation from amongst the representatives of the states in general council. It will also include two nominees of the central government, and two persons as expert in finance, banking and management and a managing director to be appointed as whole-time officers of the corporation.

It will disburse grants to higher education institutions in accordance with the regulations yet to be made. It will also give proposals of grants to be allocated to each higher education institutions. It will be guided by the commission and the managing director will be responsible for the disbursement of grants. Thus corporate culture in funding of institutions of higher education is being developed.

The draft HER bill does not respond to any of the concerns of the stakeholders. It undermines the autonomy of higher educational institutions and creates an all powerful commission for the centralisation

of all aspects related to higher education. It negates the role of state governments and academia in strengthening the higher education system in their respective areas, states and country. It undermines the powers of the parliament, state legislatures and representatives of the people at large to opine and decide the education policy and administration of institutions of higher education in India.

The commission cannot be the best and only brain to shape the future of higher education in the country. If this all powerful commission or the corporation directs the universities to look towards market for its general funds, then what would happen to our higher education system?

On the Universities for Innovation Bill, 2010

The ministry of HRD has selectively circulated a draft bill in the middle of this year “The Universities for Innovation Bill, 2010”. Under the provisions of this bill, universities for innovation will be established with full public funding, private funding or public-private partnership. These universities will be set up not through Acts of Parliament, but through signing memoranda of agreement (MoA) between the central government and the private promoters/ companies/ trusts/ foreign universities.

Specific norms about the credibility of promoters, etc. have not been provided. There is no specific norm even for the scrutiny of the MoA which gives tremendous freedom to private promoters. Such MoA of each university will have to be just ratified by Parliament.

Each university for innovation will establish a university endowment fund with such initial corpus as may be provided in the MoA. Therefore, different universities will have different initial corpus fund. These so called not-for-profit legal entities will not be under the purview of the Comptroller and Auditor General of India. They will appoint their own auditors. They will have all financial powers for acquiring and disposing of properties. This provision gives indication that these universities will actually be profit making entities.

These universities, which could be based on different themes and perspectives, will enjoy unfettered freedom. They will be free to evolve their own admission criteria, determine the nomenclature of their degrees and other academic distinctions awarded by them irrespective of the provisions of UGC Act, 1956, decide their own fee structure and other charges, appoint teachers, and determine their salary and service conditions. They will also be free to appoint faculty by invitation and give them differential salary and perks.

These universities will be exempt from reservation. However, the central government will give grants to each university for funding research, fellowships and scholarships for socially and economically disadvantaged students. The central government will provide public funds in the form of land, contribution to capital investment, grants for supporting research and the promotion and development of higher education. Despite that there is no government control over them.

The universities for innovation would enjoy complete autonomy in the constitution of the Board of Governors, the members of which will be appointed or nominated as provided in the MoA. However, at least one-third of its members will be from teachers or officers of the University for Innovation. The Board of Governors will have freedom to appoint Academic Board, Schools of Studies, etc.

While enjoying full autonomy – academic, management and financial, these universities have no accountability. Giving all information about standards and fee, etc. on the website is enough of their accountability. Any dispute that arises between such university and the statutory regulatory authority in regard to standards, etc., such dispute will be referred to a committee of three persons and not even to much trumpeted educational tribunals.

These are to be institutions of national importance with full autonomy in all respects. These will be private universities financed by the central government. There is no nominee of the government on the Board of Governors despite the fact the central government will fund them. The central government will have no control, no social control and these universities will not be accountable. The promoters will have their own agenda and vision without any importance to national concerns. These universities will be for the elite and middle class of the country squeezing the requirements of higher education system in general and students in particular.

It appears that this draft bill is an alternative route to FEI Bill, 2010 for foreign universities and players that may not now need the discredited deemed universities status. However, this alternative route is going

to be with greater power, freedom and prestige. The ministry of HRD has forgotten that great universities are not established but they grow into greatness. All universities are institutions for innovation. The government could only make some norms for world-class universities which could not be established overnight but evolved over time.

Wide ranging freedom to these universities, like differential salaries to teachers and fee and other charges, etc, will set an example for all other institutions of higher education in the country to demand such freedom. Such freedom will only help private promoters, companies and foreign universities seeking to take advantage of the provisions of this draft bill.

6. In Conclusion

The UPA-2 government is changing the entire framework of higher education system in the country without required consultation and debate and with tremendous haste without any regard to opposition of academia and states. With ever growing strategic relationship with the USA in several fields, this government is also under its pressure and also of other developed countries including UK. These countries are looking for alternative destinations for export of their higher education and do business so that their crisis-ridden higher education systems could be bailed out. The Prime Minister and HRD Minister are already engaged in high level talks with their counterparts in USA and UK in this regard.

In the new framework which will facilitate trade in higher education, there will be no social control over higher education institutions and no regulation of admission, fees, content of courses, examination, service conditions of teachers and other employees ignoring larger issues of social justice and academic accountability. For adjudication of disputes, teachers or other employees will be stopped at the tribunal level and they will be denied their constitutional right to take recourse to high courts. There will be no remedial mechanism for the solution of problems of students. Instead of giving higher education institutions freedom to regulate themselves on the basis of some guidelines, they will be mandatorily accredited. However, the central government can exempt the institutions from this mandatory provision which will help the foreign educational institutions interested in coming to India and set up their shops.

The foreign educational institutions will launch courses which the market needs, create false impression about their courses through advertisements, charge exorbitantly high fees for courses which have immediate employment potential. Since competition entails reduction in costs, infrastructure, laboratories and libraries will find least investment and the teachers and non-teaching staff will be appointed without necessary qualifications on such terms which will be exploitative as is in existence in most private institutions in the country today. The Universities for Innovation Bill will provide an alternative route to foreign universities for establishing their campuses in India. This route will give them greater power, freedom and prestige with the removal of most of the restrictions, proposed in the foreign educational institutions bill.

An all powerful commission is sought to be created for the centralisation of all aspects related to higher education including starting of a university negating the role of state governments and academia in strengthening the higher education system in their respective areas, states and country. With this single-window system, the foreign educational institutions will find it easy to start their shops in the country.

Under the neo-liberal agenda of the UPA-2 government, the cherished function of higher education, for the search, creation and dissemination of knowledge and for instilling sensitivity or social awareness in its students in India is under fire today. With new agenda of the government in the name of expanding higher education and a series of bills, our higher education system is being thrown in to the hands of private players both local and foreign for its trade and all round privatization and commercialization. This will lead to the dismantling of the state funded higher education system.

As citizens of India, we have to ensure that the Government takes care of public interests and act to protect higher education from the predatory elements that preach the ideology of the marketplace as the solution to every issue. Otherwise, the country would be dependent on developed countries for its requirements in qualified manpower essential for it's all round development. It is the responsibility of the whole society to rise to the occasion and take measures so that the process of dismantling the higher education system in the country is reversed.

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