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Regulation and Higher Education: The Imperative

Soumini Ghosh

Doctoral Research Scholar, Centre for Political Studies, Jawaharlal Nehru University, New Delhi, India

Corresponding author: souminighosh6@gmail.com

ABSTRACT

This paper delves into regulation and higher education in India, through three phases: a loosely regulated transitory phase from British India to independent India; a phase of strong regulation by the state in post-independence India; to a dispersed yet still not so easily discernable phase of regulation post-1986 till date. In the wake of rapid changes in higher education, the paper considers it an imperative on the part of the state to play a more pro-active role in regulation of higher education.

Keywords: higher education, regulation, education policy, India, private, regulatory state

Indian higher education has witnessed rapid changes. As far as regulation of the sector is concerned, there is a definite rationale for it, namely its public good characteristics and the externalities flowing out of it, the prevalence of information asymmetry, enabling inclusive, qualitative and coordinated development, among others. This paper looks at three phases of regulation of higher education in India, in the way it has been guided, or rather not guided definitively. However, the regulatory intent of the state is visible in both explicit and implicit ways through each phase. The paper calls for the need for the regulatory concerns to be addressed with a much stronger role for the Indian state.

Regulation mainly concerns correcting for market failures, by the promulgation and enforcement of rules to alter the performance of a market, constraining the behaviour of some or all of the participants in it (Roger Noll, 1983); the various types of market failure meant to be corrected including monopoly power, negative externalities, incomplete information, insufficient provision of public goods (Giandomenico Majone, 1997); redressal of market failures and inefficiencies by ensuring a level playing field in those activities that are susceptible to abuse of the resulting monopoly power and to introduce competition where none existed before (Saugata Bhattacharya and Urjit Patel, 2007); employing legal instruments for the implementation of social-economic policy objectives (Johan den Hertog, 2012); controlling the market place when it fails for some reason to produce behaviour or results in accordance with the public interest (Robert Baldwin and Martin Cave, 1999); whose purposes range from market control to market enhancement, and include, especially in the public services, accountability, an enhancement of quality and standards, and social or national steerage (Roger Patrick King, 2007).

Higher education is also in a sense a market, involving interactions between various stakeholders, i.e. students, teachers, institutions and to a great extent the society too. David Dill (1997) goes a step further in suggesting how in the field of higher education, there is no single market, but rather multiple and interrelated markets, i.e. a market for programs of tertiary education, a separate market for research, a labour market for academic professionals. While it is not really easy to predict exactly what a market failure in higher education prompting regulation would be, but the rationale emanates from its public good characteristics and the externalities flowing out of it (Paul A. Sameulson, Simon Marginson, Jandhyala B.G. Tilak, Joseph E. Stiglitz, etc.); the prevalence of information asymmetry and possible systematic instabilities (Malcolm Abbott, Dill); to ensure planned and coordinated development, with focus on areas such as granting permission to enter (open an institution), permission to operate – decide on the intake of students and introduction of courses, monitoring its overall performance, including issues related to governance and management and levels of student learning (N.V. Varghese, 2015); expanding access, ensuring quality of education, promoting equity through equalization of educational opportunities and preventing unfair practices by regulating admissions, fees and service conditions of faculty and staff (R.V.V. Ayyar, 2015).

The public good character of higher education emerges from the idea of it being a good characterized by non-rivalrous consumption, whose consumption by one individual does not detract from consumption by another individual- and non-excludability –whereby it is difficult if not impossible to exclude an individual from enjoying the good (Paul A. Samuelson,1954); aspects of the knowledge individuals acquire in higher education that others in society get to consume (Martin Carnoy, Isak Froumin, Prashant K. Loyalka and Jandhyala B.G. Tilak, 2014); its public character grounded in social practices and policy-determinations (Simon Marginson, 2011); benefiting not only the individuals but also the whole society by producing a wide variety of externalities or social and public benefits, available to all equally, whose production has to be financed by the state out of general revenues as neither do individuals completely reveal their preferences nor will market mechanisms provide public goods efficiently by ensuring optimum levels of production (Jandhyala B.G. Tilak, 2009); which often acquires the features of a private good (demanded privately) too and is often argued to be a mixed or quasi-public good, for, while the benefits accrue to the students who pursue higher education in terms of higher future stream of earnings, at the same time, it shares the feature of a public good with positive externalities accruing to the society (Saumen Chattopadhyay, 2007; R. Musgrave and P. Musgrave, 1989); which sometimes also takes on global proportions, and is thus also a global public good (Joseph Stiglitz, 1999). Malcolm Abbott (2005) points to how the need for effective allocation of social return on investment (in higher education) that exceeds that of the individual returns in a sense prompts regulation, for a market failure, (in higher education too) generally embodies some force that prevents the efficient allocation of resources from occurring. For Dill (1997), regulations seek to alter the *conduct* of market behaviour, primarily of sellers, given the dynamics of a sector such as higher education, in turn affected by the *structure* of the relevant market, and above all the *basic conditions* such as the general framework of law within which higher education operates.

As far as information asymmetry is concerned, Abbott (2004) maintains that it arises in a situation where most consumers have little ability to reliably gauge the quality of a particular product or service, and it may possibly result in less efficient allocation of resources. Even in tertiary education markets, for students (the consumers) to make rational choices about which qualification they would like to enrol and study in, it would be thought necessary for them to have sufficient information about the quality of the alternative courses available to them. For Dill (1997), the importance of information on academic programs, particularly on quality, is pertinent because academic quality was historically deemed to be difficult to measure, and thus governments have traditionally relied upon indirect information provision on academic quality through government licensing or accreditation, which provides an exclusive right to offer an academic program. Abbott (2005) also mentions another form of market failure that might occur in higher education markets, that is, of 'systematic instability". This involves the collapse of a single very large institution in a particular country which could lead to a general aversion on the part of students for other higher education institutions.

In keeping some of these regulatory rationales in mind, when one looks at how regulation has unfolded in higher education in India, there are three phases (in no way being presented as the most definite phases but broadly so)which emerge: between 1857- 1947; 1947- 1986; and 1986 onwards.

Trajectory of Regulatory Shifts

While the likes of Furqan Qamar (2017) talk of four phases of regulation of higher education, with the idea mainly veering around the number of regulators in a particular phase (from no regulator, to loose coordinator, to sole regulator to multiple regulators in the phases ranging from 1925 or prior, 1926-1956, 1957-1992, 1993 onwards respectively), the point is regulators in higher education are only one part of the larger concern of regulation, which also includes the various education policies, commissions and committees which reflect the regulatory intent of the state.

Pre- Independence (1857-1947)

The year 1857 marked the first initiative for developing higher education in India, with the coming up of the first three universities, at Calcutta, Bombay and Madras.

Some of the notable commissions and acts in this phase include: the *Indian Education Commission, 1882*, which called for- the improvement of the affiliated colleges, the local government to provide as well as extend the means of collegiate education, determining the rate of aid to each college by the strength of the staff, the expenditure on its maintenance, the efficiency of the institution, all in tune with the wants of the locality, special grants for the supply and renewal of infrastructure; the *Indian Universities Commission, 1902*, which mainly referred to the reorganization of university government, for a more strict and systematic supervision of the colleges by the university and the imposition of more exacting conditions of affiliation, paying closer attention to the conditions under which students live and work; teaching functions by the university, etc.; the *Indian Universities Act, 1904*, which though rejected setting up new universities at Aligarh, Dacca, Benaras, Patna, Rangoon and Nagpur, it called for enlarging the functions of the universities, empowering them to appoint their own professors and lecturers, to undertake research, to hold and manage educational endowments, to equip and maintain their libraries, laboratories and museums, limiting the size of the Senate, etc.; the *Calcutta University Commission 1917-1919*, which thoroughly assessed the entire university system in the country, recommending for: the creation of new universities and the reorganization, as far as possible, of the existing universities, on a unitary, teaching and residential basis; the institution of honours courses distinct from pass courses; the appointment of a Director of Physical Education and a Board of Students Welfare in each university; holding of informal periodical conferences of the different Indian Universities for the coordination of their curricula and courses and the discussion of matters of common interest; etc. (Kuldip Kaur, 1985)

The *Central Advisory Board of Education* (CABE), 1921, aimed at bringing about a consensus among provincial governments on policy matters pertaining to education (NV Varghese, 2015); an *Inter-University Board* post the first All India Conference of Indian Universities held at Simla in 1924; the *Hartog Committee of 1929*, which preferred unitary universities over affiliating universities, the *Sapru Committee of 1934*which called attention to the alarming extent of unemployment among university graduates (Kaur, 1985), as well as also the establishment of the *Medical Council of India (MCI) in 1934*, with the authority to lay down norms and standards, recognizing and de-recognizing courses and institutions, a regulatory body which the government in the post- independence India perhaps wanted to emulate for the higher education sector as a whole (NV Varghese, 2015), the *Sargent Plan of 1944* prepared by the CABE as the post war educational development plan were some of the other notable features of what really constituted some, yes *loosely coordinated or regulated* parts of higher education. 'No' regulation was certainly *not* the case here, in the transition from British India to independent India.

Post- Independence to New Education Policy (1947- 1986)

The phase from 1947-1986 included two education policies, and two key education commissions among others.

The *National Policy on Education, 1968,*maintained that admissions to a college or university department and starting new universities should be based on, assessing the infrastructure and adequate provision of funds and taking due care of ensuring proper standards respectively; centres of advanced study must be strengthened, a small number of 'clusters of centres' be established; that the institutions for research should, as far as possible, function within the fold of universities; that the aim should be to gradually increase the investment in education so as to reach a level of expenditure of 6 per cent of the national income, assisting the State Governments for the development of programmes of national importance.

The New Education Policy, 1986 (and Programme of Action 1992) calls for the need to tackle problems of access, quality, quantity, utility and financial outlay which accumulated over the years, assuming massive proportions; facilitate inter-regional mobility by providing equal access to every Indian of requisite merit; enable higher education to become more dynamic in the context of the unprecedented explosion of knowledge; strengthening and instituting integrated planning among institutions such as University Grants Commission (UGC), All India Council for Technical Education (AICTE), ICAR (Indian Council for Agricultural Research), Indian Medical Council, to play an important role in giving shape to the National System of Education; ensure state-level planning and co-ordination of higher education, through Councils of Higher Education, which in turn were expected to develop coordinative methods with UGC to keep a watch on standards; making provision for minimum facilities and regulating admission according to capacity; setting up *a national body covering higher education in general, agricultural, medical, technical, legal and other professional fields in the interest of greater co-ordination and consistency in policy, sharing of facilities and developing inter-disciplinary research.* While the policy calls for *curbing* the commercialization of technical and professional education, in interests of maintaining standards, it in same breath also recommends that an alternative system be devised to involve private and voluntary effort in this sector of education, in conformity with accepted norms and goals.

When one looks at the notable commissions in this phase, two education commissions become important: the *Radhakrishnan Commission, 1948-49, and the Kothari Commission, 1964-66.*

The first education commission in independent India, the *Radhakrishnan Commission* was not only focussed on higher education but makes a strong case for its concurrency too. The Commission calls for the need for the Central Government to play a strong role in universities with regard to *Finance*, *Co-ordination of Facilities in Special Subjects*, *Adoption of National Policie*s and *Minimum Standards of Efficient Administration;* recommended for a Committee or Commission for allocating both recurrent and capital grants to universities from the Centre, fundamental to proposals for improving and developing universities (in lieu of the limited powers of the University Grants Committee formed in 1945), *an expert body*- with power to allocate grants within total limits set by the Government, instead of merely re- commending their allocation, and *the duties* carried out by the appointed members who should visit universities as often as they can, always be available for consultation and advice; apart from also making recommendations with regards to *Limiting the Number of Colleges*; the *Size of Universities*; *Stages of Development*, the structure (Senate, Syndicate, Court, Academic Council, Executive Council, etc.) of universities, *financing*, whereby the State should recognise its responsibility for the financing of higher education among others.

The *Kothari Commission, 1964-66*, emphasizes on the need for development of physical resources as well as human resources possible only when the national system of education is properly organized, from both qualitative and quantitative points of view; expansion of facilities broadly on the basis of manpower needs and with an accent of equalization of educational opportunities; that as far as the establishment of major universities is concerned, the need is to concentrate scarce human resources and not to scatter them over too wide an area, i.e. the most important reform is the development of five or six 'major' universities where conditions may be provided, both as to staff and students as well as to the necessary equipment and atmosphere; that the major universities should *have a critical mass of students of outstanding capacity and promise*; that it is necessary to strengthen and expand the UGC programme of the establishment of centres of advanced study, which will require considerable investment of funds in capital expenditure and the expenditure required for their development- both capital and recurring- should be placed at the disposal of the UGC by the Central Government; the expansion of higher education and allied sectors will involve regulation of the expansion of the university system in terms of manpower needs for national development; the selection of students; the establishment of new universities and colleges; and the development of new courses in higher education; the expansion of facilities in higher education should be planned broadly on the basis of general trends regarding manpower needs and employment opportunities; that a *stage has been reached in the process of expansion when the policy of selective admissions will have to be extended to all sectors and institutions of higher education*; there is a need to link broadly the total enrolments in higher education to manpower needs and to bridge the gap between these enrolments and the demand for higher education by adopting a system of selective admissions, for standards in higher education will tend to rise if there is competition for admission and the best students are selected on the basis of merit; that rules, regulations and techniques that hamper achievement of the real purposes of the university should be modified or scrapped- they should not be allowed to become straight-jackets into which all university activities must be fitted; that university autonomy cannot become real and effective unless adequate provision is made to meet the financial requirements of universities and colleges; that the UGC should represent the entire spectrum of higher education. It should be professionally concerned and adequately equipped to deal with all its problems.

As far as regulatory bodies were concerned, yes it was one dominated by the UGC, or (UGC as) sole regulator as mentioned by Furqan Qamar, or if we may say the substantive regulator. Among some of the UGC regulations during this period were the UGC Inspection of Universities Rules, 1960; UGC (Returns of Information by Universities) Rules, 1979; UGC Regulations of 1985 regarding the Minimum Standards of Instruction for the Grant of the First Degree through Formal Education; UGC Rules Regarding Fitness of Universities (for agricultural and certain specific universities in 1974, and for technological universities in 1978), UGC Rules for fitness of Universities for Grants, 1975, UGC Regulations for Establishment and Management of Institutions, 1985; UGC Regulations, 1985 regarding the Minimum Standards of instructions for the Grant of the First Degree through Non-formal/ Distance Education, etc. These rules and regulations somehow clearly reflecting the commitment to fund higher education, ensuring 'fitness' and information from the universities.

Despite the 1970s and 1980s witnessing some not so favourable changes, as pointed out by Varghese (2015) in terms of declining rates of growth in institutions, enrolment and a decline in the share of resources 'allocated' to higher education, what emerges from this phase is that the state determined the higher education market, albeit a public sector-led strategy of development, essentially through public institutions (Varghese, 2015). A natural monopoly of the state in higher education. So technically, there was no chance of a market failure, but ensuring effective access was not realized fully, for, the higher education sector so envisaged was selective, somewhere *excludable* too, or elite in orientation, providing minimum facilities and a critical mass (of students and institutions) only, and somehow underestimating the potential of the sector all set to be unleashed. The phase is nevertheless reflective of the strong regulatory role of the state in higher education, be it the way it was committed to funding it, the five year plan perspectives (the first plan calling for setting up of the UGC, second and third plans emphasizing on the need to improve standards of college and university and extension of facilities, plan for higher education expenditure with respect to the expansion, consolidation and maximizing utilization of facilities in the fourth, fifth and sixth plans, and reforms in higher education to make it more relevant to national needs, linking with employment and economic development as well, as seen in the seventh plan) or also in the way the key regulator, i.e. the UGC functioned, or was allowed to function. There was a definite and visible regulatory vision of the state.

Post NEP

The post-1986 phase of higher education is considered as the last phase in this paper, because that is the last time that a definite policy perspective of the state was visible. A phase that continues, after more than three decades, and despite the constitution of a committee in 2016 for the evolution of a new education policy (TSR Subramaniam Committee), as well as a new committee in 2017 under K. Kasturirangan. A New Education Policy still eludes India. As the likes of Jandhyala B.G. Tilak (2012) point out, not having an education policy has been the policy of the State.

But this has also been the phase when higher education in India has witnessed immense changes. The privatization of higher education (Varghese, 2015, Pawan Agarwal, 2009, Philip Atlbach, 1999, Daniel C. Levy, 2008, Laleh Jamshedi *et al.* 2012) which became more prominent in India with self-financing courses, followed by the coming up of self-financing and/ or capitation fees colleges, deemed universities and private universities (Varghese, 2015; Pawan Agarwal, 2009), as well as an almost simultaneous emergence of a more profit oriented or profit maximizing private sector and less philanthropic in nature, (JBG Tilak, 2006; Varghese, 2015; Agarwal, 2009; Devesh Kapur and Pratap B. Mehta, 2017; Levy, 2008 etc.), the massification of higher education (Varghese, 2015; Kapur and Mehta, 2017) owing to demand and differentiated demand (Estell James, 1993; Tilak 2006, Varghese, 2015; Agarwal, Atlbach, 1999; Kapur and Mehta, 2017; Ayyar, 2015; Levy, 2008) and also more market-oriented economic reforms taking place in much of the world affecting higher education as well, causing an almost global surge of the phenomenon of privatization and private sector (Varghese, 2012).

The regulatory intent of the state, not easily discernible, is implicit in the following developments.

Firstly, the underlying regulatory intent is evident in the recommendations of committees and commissions in higher education, especially with regard to two concerns: *the regulatory bodies*, and *funding higher education*. Thus, as far as the status of regulatory bodies is concerned there has been an '*oscillating*' approach seen. While the likes of Furqan Qamar term the phase beginning from 1993 to be one of multiple regulators, and rightly so, as seen post the 1986 policy (and programme of action, 1992) which called for strengthening the role of the statutory councils of higher education, with the overarching role of the UGC, commissions like the National Knowledge Commission, 2006 and the Yash Pal Commission, 2008 suggested for an apex body, the Independent Regulatory Authority for Higher Education (IRAHE) and the National Commission for Higher Education and Research (NCHER) respectively, subsuming even the UGC. Whereby, the National Knowledge Commission envisioned the IRAHE to be at an arm's length from the Government, independent of all stakeholders including the concerned Ministries of the Government, the Yash Pal Commission, given the fallacies of both a highly over-regulated system and an under-regulated system called for a balanced, all- encompassing *new regulatory framework,* which not only treats the entire range of educational institutions in a holistic manner, but also ensures accountability and evokes confidence in the academic institutions and academic body at large. The Committee for Evolution of the New Education Policy, 2016/ TSR Subramaniam Committee recommends a new National Higher Education Promotion and Management Act, to lay down norms and standards for recognition, accreditation and evaluation of higher education institutions. The most recent attempt at an overhaul of the regulatory system of higher education came in the form of the Higher Education Commission of India (Repeal of UGC Act) Bill, in 2018, with the guiding principle of less government and more governance, with some stringent non-compliance clauses and power to close down 'bogus' institutions and with grant functions directly coming under the ambit of the Ministry, and the HECI to deal with academic matters, and in no way to be at an arm's length from the government. The Bill however, did not get tabled in the parliament session, after the (hurriedly made) draft received close to 8,000 and mostly not so supportive suggestions. This 'to-and-fro' approach of multiple, or one integrated body or commission to regulate higher education, have led to confusion, as regards the fate of regulatory bodies, with no *ideational change* whatsoever, if one were to borrow (without drawing any similarity per se) from Rahul Mukherji (2007) (as seen in the telecom sector, which, in the wake of more providers, delved deep into the very way in which regulators were formed).

As far as *funding higher education* is concerned, there is reduced funding by the state since the late 1980s and 1990s. The likes of Vijender Sharma (2005), and Saumen Chattyopadhyay (2007), point to how the share of total Union Government expenditure on higher education in India fell from 20.57percent in 1990-91 to 16.71 percent in 1996-97; saw a rise to over 26 percent in 1998-99 and 1999-2000 and again falling down to 19 percent in 2003-04, or in real terms, a decline from ₹ 646 crores in 1990-91 to ₹ 559 crores in 1996-97, rise to over ₹ 1400 crores in 1998-99 and 1999-2000 and fall to ₹ 1006 crores in 2003-04. As a percentage of the GDP, the government expenditure on higher education was 0.46 in 1990-91 which decreased to 0.37 in 2003-04 (Sharma, 2005); even though allocation for higher education reached an all- time high of 27.9 per cent during the Fourth Plan (1969-74), there was subsequent decline to 9.2 per cent during the Ninth Plan (1997-02) (Chattopadhyay, 2007). Tilak (2006) and Varghese (2015) point to how there is increased levels of cost-sharing or cost-shifting in public institutions, and the massification of higher education mediated by market- processes is facilitated through private institutions and households respectively. For, expansion in the 1980s was no longer constrained by the fiscal capacities of the public exchequer to finance higher education (Varghese, 2015).

These developments were in a sense complimented by committees like the UGC appointed Justice K. Punnayya Committee of Funding of Institutions of Higher Education, 1992 and AICTE led D. Swaminathan Report on Mobilisation of Additional Resources for Technical Education, 1992, which as Varghese (2015) points out enabled the privatization of public institutions through reduced subsidies and increased cost-recovery from students; the Birla Ambani Report 2000, which openly called for encouraging private financing either to fund private institutions or to supplement the income of publicly funded institutions; to leave higher and professional education entirely to the private sector, de-centralizing education management; progressively, reducing the funding for universities and making them adopt the route of self-sufficiency to achieve this. In this regard, Vijender Sharma (2005) also points to how the UGC Concept Paper in October 2003 entitled "Towards Formulation of Model Act for Universities of the 21st Century in India" was meant to actually implement the plan of commercialization of higher education as proposed by the report. The TSR Subramaniam Committee of 2016 also recommends that while the Government will have to be a major source of funding for many years, universities must be incentivised to raise additional resources by starting new programs on cost recovery basis, employment of part-time and contractual staff on market-determined salaries, optimum use of buildings and other assets, and regular increase in fees without Government approval.

Secondly, the regulation of higher education has been increasingly undertaken by the judiciary. Lloyd Rudolph and Susanne Rudolph (2008) point to how the moving away of the Indian economy from central planning by an interventionist state and towards market competition, fostered by a 'regulatory state', has in institutional terms, meant a diminished executive and legislature, and enhanced regulatory institutions- one of them being the Supreme Court of India. That the role of regulatory institutions is more procedural than substantive, more rule-making and enforcing than law making and policy making. Even in the realm of higher education that has been the case. Despite the judgements sometimes being termed as confusing (Sharma, 2005), the Judiciary has been considered to have played a significant regulatory role in this field.

Devesh Kapur and Madhav Khosla (2017) point to how the Indian Supreme Court has emerged as a critical institutional actor, intervening in a range of areas traditionally regarded as the domain of the executive and legislative branches of government. Their analysis reveals a seven-fold increase in higher education cases over the last three decades, from 29 cases in 1970-79, to 206 between 2000-2009. That even the character of these disputes has changed, from the state-run character of educational institutions which made higher education disputes constitutional in nature earlier, to now when the state's regulatory role is increasingly doing so. The reasons for judicial intervention ranging from the massive growth of higher education itself, the multiple governance challenges in the sector, and a broader trend of seeking judicial remedies to the numerous governance challenges in the country, reflecting the weaknesses of the legislative and executive organs of the state and most importantly, willingness of the judiciary to translate such disputes into justiciable claims.

Some of the notable cases include, the St. Stephens College v. University of Delhi in 1992, where the Supreme Court ruled that "the educational institutions are not business houses and they do not generate wealth"; Mohini Jain v. State of Karnataka, again in 1992, where the Court ruled that the exorbitant fee demanded was in reality a capitation fee with a different tag; Unnikrishnan v. State of Andhra Pradesh, in 1993 where the court while revisiting the right of the State to interfere in the admission policy and fee structure of private professional institutions ruled that the capitation fee is patently unreasonable, unfair and unjust, and unconstitutional and practically banned high fee charging private colleges, popularly known as capitation fee colleges; slight change in stance seen in the TMA Pai Foundation v. State of Karnataka, 2002, where a majority of an eleven-judge Constitution bench of the Supreme Court, while upholding the principle that there should not be capitation fee or profiteering, argued that "reasonable surplus to meet the cost of expansion and augmentation of facilities, does not however, amount to profiteering; in P.A. Inamdar v. State of Maharashtra case, 2005, where it held that states have no power to carve out for themselves seats in the unaided private professional educational institutions, nor can they compel them to implement the state's policy on reservation, that though every institution is free to devise its own fee structure, but profiteering and capitation fee are prohibited; the strong judgement in quashing the provisions of the Chhattisgarh Private Universities Act, which allowed more than a hundred private universities to start, declaring all the private universities in the state illegal in 2003. (C.P. Chandrashekhar, 2005; Sharma, 2005; Ayyar, 2015).

Thirdly, some of the recent developments in higher education place the regulatory intent of the state in encouraging more and more of the private sector. Be it the 12th Five year plan (which in its approach paper emphasizes on encouraging private participation and the need for removal of entry-barriers to private participation), or the TSR Committee (recommending centres of excellence in both public and private sectors), the three year (2017-2020) agenda of the NITI Ayog for higher education which includes: *designation of (20) world class universities* (10 to be private universities) that can be immediately *moved out* of the regulatory system; autonomy of top colleges; a reform of the regulatory system through *a tiered system of universities*, or the grant of graded autonomy and Institution of Eminence status to private universities as well in 2018, which included some greenfield institutions as well (with two more additions in the second recommended list). Not that the private sector is entirely new, but what is new, as seen from these developments is the way the state is almost explicitly enabling a level playing field between private and public higher education.

What emerges is that the state is no more leading the regulation of higher education, but responds to the way the market (of excess and more private and profit oriented providers) expects it to (as one of its players). A response of not really openly revealing its exact ways of regulating the sector, to sometimes actually falling short of estimating its own role and in a sense causing a market failure (by not enabling effective interactions among all stakeholders of higher education), as seen in the oscillating approach of overhauling the regulatory system, passing on the role to the other institutions like the judiciary, being non-committal on funding higher education on its own and shifting the burden on households and other sources, to almost giving equal space to the ever expanding private sector.

CONCLUSION

The developments reveal that the lines (between public and private sector) are blurring in higher education, but in a detrimental way, which may be unproductive to the society. There is increasing need to revisit the concerns of public good characteristics of higher education, from where it all started. The access to higher education, and externalities associated with it somewhere still make the role of the state important. If there is any talk of enabling a level playing field in higher education, it is to do with enabling increased access to all potential students of higher education. Though limited efforts have been seen in the regulatory bills of 2010 (the Education Tribunals Bill, 2010, the Foreign Educational Institutions (Regulation of Entry and Operations) Bill 2010, The Prohibition of Unfair Practices in Educational Institutions, Medical Educational Institutions and University Bill, 2010 and the National Accreditation Regulatory Authority for Higher Educational Institutions Bill, 2010, which mostly lapsed as were also badly drafted), the 11th five year plan, termed as the education plan (constituting 19percent of plan outlay, with actual expenditure being 45.6 percent of the plan outlay and close to 4 percent of the GDP in 2011-12), to somehow bring the somewhat limited onus of funding as well as regulating higher education on the state, the point is, the 6 percent commitment remains and the higher education share is much lesser than the other levels. The need is for the state to immediately pass the new education policy with some baselines yet differentiated recommendations for the private and the public sector, increase its long promised funding to 6 percent of the GDP, regulate the private sector in such a way that they refrain from causing information asymmetry, and systematic instability (which is still not such a phenomenon in the Indian context at least), strengthening the existing regulatory bodies further to make them more adept at dealing with the changing landscape of higher education. The need is for the state to understand exactly what kinds of higher education stakeholders are involved, their specific needs and expectations and thus employ a multi-pronged approach. The imperative of regulating higher education should become centre stage to provide more teeth to the supreme regulator, so that the two sub-sectors (circumventing the private adequately) enrich higher education from their vantage points. Above all, the predominant second democratic upsurge (Yogendra Yadav, 1996) which in a sense coincided with the massification of higher education, necessitate the regulatory state to retain its critical but meaningful policy space and play a more pro-active role.

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