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Report

Private Higher Education in India: *Status and Prospects*

July 2007

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Private Higher Education in India: Status and Prospects

Abstract:

India's higher education system is now the third largest in the world. Its capacity has been increased largely by the activities of private providers over the past twenty years, transforming the higher education landscape. Private higher education is the most dynamic and growing sector of Indian higher education today, but it is often viewed with suspicion. Whilst the actions of certain private operators are to blame for some of this suspicion, another factor is that the development of the private higher education sector has taken place largely in a policy vacuum in which the judiciary intervenes routinely to resolve inconsistencies in existing legislation. This creates further complications and a climate of uncertainty affecting, among others, foreign private education and foreign investment. Through the analysis of existing data from official Indian sources as well as the author's own new data compiled for a forthcoming book, this report provides a comprehensive overview of these developments, assesses the current status of foreign and domestic private higher education provision in India, and outlines its future prospects.

About the author:

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Acknowledgements:

The author wishes to offer sincere thanks to Line Verbik, past Deputy Director of the Observatory, and Kathryn Prince, the Editor, for their invaluable assistance in bringing out this report. He is also grateful for the general encouragement of professional colleagues and friends, many of whom continue to inspire his research on higher education. Finally, and importantly, he thanks his wife Monika, a constant source of support and understanding throughout the writing of this report.



*The Observatory is a joint initiative
between the Association of
Commonwealth Universities and
Universities UK*



1. Introduction

As knowledge replaces physical capital as a major source of present and future wealth, higher education has come to occupy centre stage in the development strategies of countries the world over. Some countries were able to react quickly to the rise of the knowledge economy by enhancing the public provision of higher education, encouraging private investments, and intervening on behalf of the collective citizenry to address issues of access, equity and quality. Developing nations like India, however, faced a dilemma. Whilst the need for increased capacity and new programmes was undeniable, a significant increase in public funding was not feasible due to a paucity of resources and competitive pressures from other sectors.

Since the public system could not meet the rising demand for higher education, the expansion of private higher education met both the need for increased capacity and the desire for innovative, often employment-oriented, programmes. Whilst privately-funded institutions were a solution to the capacity issue, ideological considerations about the privatisation of higher education hampered the unrestricted growth of private initiatives. Public policy sent out conflicting signals and private higher education developed in an uncertain environment.

This report maps the growth of private higher education in India within the context of overall developments in Indian higher education and considers how current policy, legislative and social factors might shape its future development. It has been organised as follows: section 2 sets out the terminology applicable to Indian higher education; section 3 provides an overview of Indian higher education; section 4 maps the growth of private provision and the private financing of higher education in India; section 5 describes the policy environment as it evolved over the years; section 6 analyses emerging trends, evaluates private provision, and outlines its future; finally, section 7 draws some conclusions. Unless otherwise stated, all tables and data are the author's own.

2. Terminology

Higher education in India covers all post-secondary education beyond class twelve, with three levels of qualifications: Bachelor's or undergraduate programmes, Master's programmes, and pre-doctoral and doctoral programmes. These are provided by universities, which award their own degrees, and colleges, which award degrees through the university with which they are affiliated. A few universities and colleges use the word 'institute' in their titles, but this does not make them different from other universities and colleges. Though there is no absolute distinction between them, colleges mainly focus on undergraduate education whilst universities impart postgraduate education and conduct research. In addition, many institutions like the Indian Institutes of Management (IIMs) award diplomas which are considered equivalent to degrees granted by the universities. There are also open universities that offer distance education programmes.

Because they share constitutional responsibility for education, both the national parliament and the state legislatures can authorise the establishment of universities, whether public or private. In addition, the national government can grant 'deemed university' status to an institution initially founded as a private or public college (discussed more fully in section 4.4).

Whilst the above constitutes the formal higher education sector, there is also a large and growing training sector in India to fill the demand for short-term, job-oriented training. Some training providers have entered into partnerships with higher education institutions, with the result that the distinction between the formal higher education sector and the training sector is now blurred.

Similarly, it is increasingly difficult to distinguish between private and public higher education because of the fundraising activities of ostensibly public institutions. Increasingly, public institutions have shifted the cost of education to students and parents and have also sought supplementary outside funding, thus behaving in a manner similar to the private institutions. Keeping in mind the

sometimes-blurred distinctions between the two categories, Figure 1 below shows four possible types of public and private institutions.

Figure 1: Public and private institutions

		Ownership	
		<i>Public</i>	<i>Private</i>
Financing	<i>Public</i>	Government Institutions	Private Aided Institutions
	<i>Private</i>	Government (Unaided) Institutions	Private Institutions

As Figure 1 indicates, a government-owned institution is referred to as a public institution even if it is able to generate its own operating expenses and therefore is not (or no longer) funded by the government. It is sometimes also called a government unaided or government self-financing institution. A small but increasing number of government institutions (for example, the Indian Institutes of Management at Ahmedabad, Bangalore and Kolkata) are able to generate their operating expenses internally.

An institution established by a private operator, even if it receives some government funding, is referred to as a private institution (a private aided institution in this case). This report follows the common practice of using 'public' to include all institutions owned by the Indian national government, and 'private' to include all those owned by non-government operators, keeping in mind the possible permutations outlined in Figure 1.

All institutions in the formal system of higher education are by law non-profit whether they are operated with public funds or on a self-financing basis, though many, particularly the private ones, exhibit characteristics of for-profit entities. This is discussed in sections 4.1 and 4.2 that track the growth of private colleges in the 1980s and in section 5.2 on admission and fee regulations.

Academic control over these institutions depends upon their degree-granting power and the programmes of study they offer. The university-level institutions have degree-granting powers and are subject to the (generally weak) oversight of the University Grants Commission (UGC). The UGC is the apex body for determining and coordinating academic standards in universities and colleges throughout India. The colleges are subject to academic control from their affiliating universities, which are in all cases public universities, with the result that all colleges, even private ones, are subject to at least indirect control by the UGC. In addition, some programmes of study lead to professional degrees that are subject to regulation from professional councils.

Table 1 illustrates the terms used in India to refer to higher education institutions according to the nature of their ownership and financing and the extent of academic and administrative control over them. Note that the status of foreign institutions is unclear. They are currently outside the existing regulatory framework and not subject to academic or administrative control except perhaps from their parent institution abroad. However, draft legislation exists that may bring foreign institutions under the control of the UGC, discussed in section 5.3.

Table 1: Ownership, financing and control of institutions

Type of Institution	Ownership	Financing	Control	
			Academic	Administrative
University	Public	Public	Weak	Strong
Private University	Private	Private	Weak	Weak
Public Deemed University	Public	Public	Weak	Moderate
Private Deemed University	Private	Private	Weak	Weak
Public College	Public	Public	Strong	Strong
Private Aided College	Private	Public	Strong	Moderate
Private College	Private	Private	Strong	Weak
Foreign Institutions	Private	Private	None	None

Over the past twenty years, higher education in India has followed a trajectory away from public ownership, financing and control, although a change in one category does not necessarily imply a change in the other two.

As Table 1 indicates, there is no definite boundary between private and public institutions. Indeed, further complicating the distinction, public-private partnerships are now commonplace. Public and private institutions each have their strengths, and partnerships between the two offer exciting potential for harnessing the strengths of each sector. The establishment of India's National Law School in 1986, described in section 6.1 (Box 4), is a successful example of such a partnership.

3. Overview of Indian higher education

3.1 Size and structure

The higher education system in India is large. In terms of enrolment, it is the third largest system in the world, after China and the United States, comprising more than 18,000 institutions. This gives India the distinction of having the largest number of institutions of higher education in the world, almost four times the number in the US or Europe and more than seven times that in China.

The system is, however, fragmented. The average enrolment in a higher education institution in India is 546 students, which includes several institutions with more than 10,000 students but also many with fewer than 100. Many of these smaller institutions are understaffed and ill-equipped; two-thirds do not even satisfy the minimum norms of the UGC. Of the total, only 371 are universities and the remainder are colleges which do not award degrees but conduct the teaching of programmes for which graduates are awarded a degree from the affiliating university. Colleges enrol 90% of the total number of students at the undergraduate level and 66% at the postgraduate level. The current gross enrolment ratio (GER) in higher education is around 11%¹.

The country has an enrolment of 10.41 million students and produces 2.46 million graduates each year. The total stock of graduates in India is around 37 million. The distribution of capacity across subject areas and at different levels is uneven. The majority of enrolment is at the undergraduate level, with 89% of all students enrolled in undergraduate programmes, only 9.4% in postgraduate programmes, and less than 1% in doctoral programmes. Of the total enrolment, 45% of the students are in arts, 20.4% in sciences, 18% in commerce and 17% in professional programmes².

With such a high level of enrolment in arts programmes, there is a mismatch between the available capacity and the skill requirements of the economy. This problem is exacerbated because Indian

¹ UGC data.

² UGC data.

higher education is built around rote learning, with a heavily theoretical curriculum. As a result, the pool of graduates trained for the modern workforce is small. Many sectors of the economy face severe skill shortages, and at the same time there is an acute problem of graduate unemployment. This has given rise to a demand for vocationally-oriented programmes, traditionally the purview of the non-formal sector but increasingly provided by formal higher education institutions, sometimes in partnership with vocational training providers. The demand for increased capacity and more employment-oriented programmes is now being met both by many students going abroad for higher education and by the increasing number of private institutions operating in India, some in partnership with foreign providers.

3.2 Growth pattern

Higher education has seen an impressive growth since independence in 1947. Overall, the number of universities has increased from 25 in 1950 to 371 in 2006, the number of colleges has increased from 700 to 18,064, and enrolment has increased from a tiny base of 0.1 million to a whopping 11.2 million. Table 2 below shows the growth pattern of institutions of higher education.

Table 2: Capacity expansion in higher education³

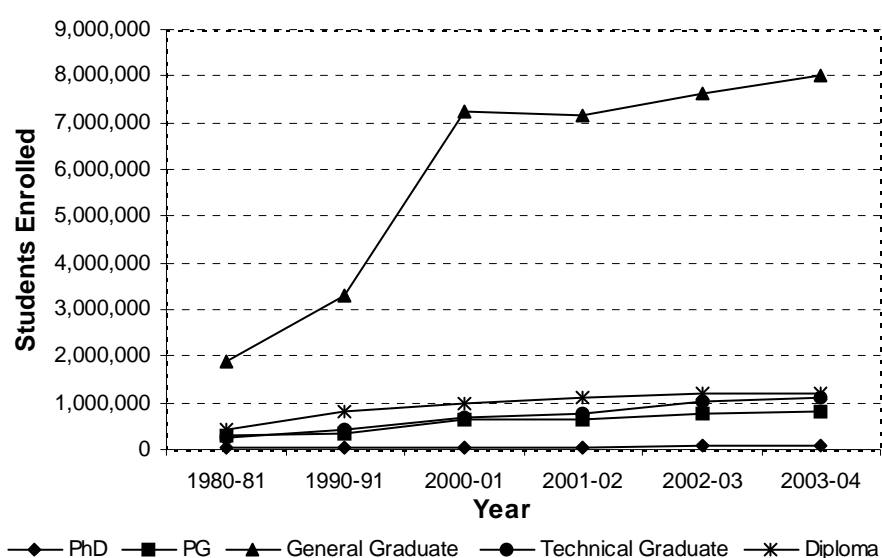
	1950-51	1990-91	2003-04	2006-07
University-level institutions	25	177	320	371
Colleges	700	7346	16,885	18,064
Teachers (in thousands)	15	272	457	488
Students enrolled (in millions)	0.1	4.9	9.95	11.2

There have been two distinct phases of growth. Phase 1, from 1947 to 1980, saw a steady increase. Many colleges were created, affiliated to new or existing universities. The government set up universities and colleges in locations lacking higher education facilities. Courses in new and under-represented subject areas were launched. From 1980 onwards, expansion has been largely driven by private initiatives and is the subject matter of this report.

Despite the recent growth of private professional education since the 1980s, enrolment is still primarily at the undergraduate level in arts, science and social sciences, whilst postgraduate and professional education continues to account for a small proportion of enrolments. Figure 2 shows the growth of enrolment by type and level of programmes over the years.

³ UGC data.

Figure 2: Enrolment growth by type and level of programmes⁴



3.3 Financing

Public expenditure on higher education has hovered around 0.4% of the GNP for more than two decades. This constitutes around 12% of the total public expenditure on education at all levels. Since public expenditure has not increased at levels commensurate with the expansion of enrolment in higher education, over the years there has been a decline in per student expenditure, seriously affecting the quality.

The role of the national government in funding higher education in India is limited. Of the total government support for higher education, only about a quarter comes from the national government and the balance comes from the state governments. Nearly a third of the institutions do not receive government funds at all. Of the remaining two thirds, only about half receive national funding. A small number of central institutions that cater to less than 2% of the total number of students get 85% of national funds, leaving just 15% distributed among the rest. Since the state governments provide the bulk of the higher education funding but are themselves facing financial constraints, there is a severe crisis in government-funded higher education.

As a result of this generally inadequate level of public funding combined with rising enrolment rates, tuition fees have constituted an increasing share of university budgets. A study on the financing of 39 universities found that six of them were recovering as much as 50% of their recurring costs from tuition fees and another thirteen were generating 20% of recurring costs this way⁵. This is corroborated by a recent study of more than 100 universities showing that except for national institutions and state institutions in Bihar and Uttar Pradesh, all others have raised their tuition fees in recent years⁶. In addition to increased tuition fees, new self-financing courses and self-financing institutions have been established.

Overall, private spending on higher education is estimated to be as much as 50% of the total expenditure on higher education⁷. Many new universities and colleges are financially independent.

⁴ UGC data.

⁵ Tilak, JBG & G Rani (2002), "Changing Pattern of University Finances in India", *Journal of Services Research*, Vol.2, No.2, pp.5-46.

⁶ Based on a forthcoming study by the author.

⁷ Agarwal, P (2006), *Higher education in India: The need for change*. ICRIER Working Paper No. 180, New Delhi. URL: www.icrier.org/publication/working_papers_180.html. Last accessed 30 May 2007.

This has made higher education increasingly expensive, well beyond the reach of the poor. The problem is exacerbated by the private tuition and test coaching available to wealthier pupils. Despite the fact that India has consistently supported equity and access over excellence, existing schemes to provide financial aid to poor students are generally small-scale and under-funded.

3.4 Governance and regulation

Responsibility for governance is shared between the national government and the 34 state and territorial governments. Of 18,435 institutions, all except 170 universities are under the state governments, including 100 deemed universities and 80 colleges⁸. The national government has the role of coordinating and determining standards in higher education. The central government discharges this responsibility through the UGC and thirteen professional councils for different disciplines at the national level. Some states also have a council for higher education and councils in different professional fields. Where state governments provide the bulk of funding, they have the main say in all administrative and operational matters. In the case of colleges, the universities to which they are affiliated control academic matters.

In addition, there are three agencies that evaluate the quality of institutions / programmes through an external quality assurance process. The National Assessment and Accreditation Council (NAAC), set up by the UGC in 1994, undertakes institutional accreditation. The National Board of Accreditation (NBA), established by the All India Council of Technical Education (AICTE) in 1994, accredits programmes in engineering and related areas. The Accreditation Board (AB), established by the India Council of Agriculture Research (ICAR) in 1996, accredits agricultural institutions.

Accreditation is voluntary, without much consequential benefit, and its coverage is limited so far. As a result, the impact of accreditation in raising academic standards has been minimal. Moreover, substandard provision continues to be a problem. The regulatory mechanism has gaps and overlaps. It has become obsolete with the emergence of new types of providers and new forms of delivery. It lacks transparency and is not predictable. A series of judicial interventions over the last two decades and the government's short-sighted reactions to them has added further confusion. On the whole, Indian higher education is now over-regulated and under-governed.

4. Growth of private higher education

4.1 Emergence of private higher education institutions

By the 1980s, improvements in basic education and Indian society's growing aspirations had resulted in a huge capacity gap in higher education. The changing structure of the economy demanded new skills which the public institutions were not able to provide. Because of a general rise in income levels, private higher education was within reach for many who wanted it. The private sector had already proven itself with successful forays into the primary and secondary education markets and was poised to venture into the awaiting higher education market. The growth of private higher education at this time was rapid.

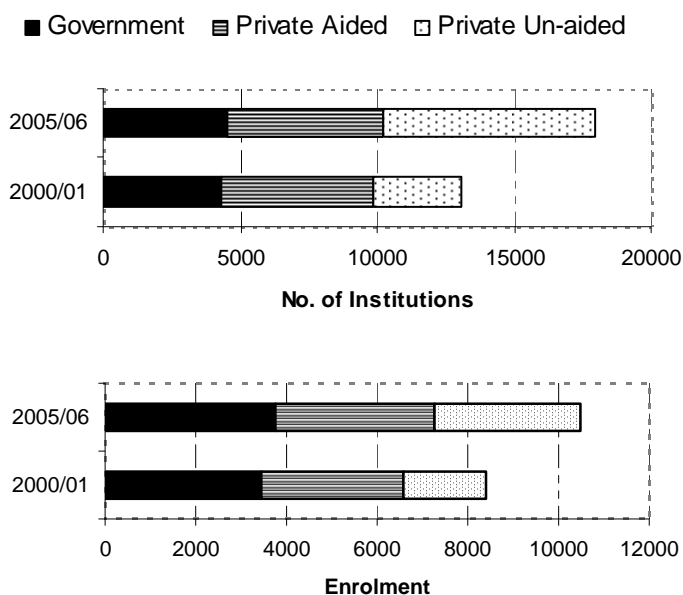
Most private higher education institutions are colleges, 72 have become deemed universities, and ten are private universities established by the state legislatures. There are institutions set up by various religious and linguistic minorities that enjoy certain privileges under law. Private institutions are usually established and operated under the provisions of charitable societies or trusts. There are genuine not-for-profit private institutions, many even funded by the government (private aided institutions) or supported by charitable and religious trusts. A large number of private institutions run self-financing programmes that meet all of their expenses from tuition revenue, reinvesting any surpluses in programmes and facilities. In contrast to these not-for-profits, a significant number of private institutions

⁸ The majority of deemed universities are financially self-sufficient .
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are run as business enterprises, many among them owned by powerful families⁹. There are also private training centres that are legally for-profit entities. In all, private higher education is a large and diverse sector.

Figure 4 shows the growth of various types of institutions over the past five years. It indicates that whilst both the number of institutions and enrolment levels have stagnated in both government and private aided institutions, the private unaided sector has grown rapidly and this growth is of recent origin. Currently, 43% institutions and 30% of enrolments are in the private unaided institutions. A large proportion of these institutions offer programmes in professional streams.

Figure 4: Growth of institutions and enrolment (by type of management)



In addition to the private unaided sector, more and more public institutions have started offering self-financing programmes. Together, these trends indicate a substantial shift away from government funding. With this decreased dependence on the government for money comes a serious challenge on the regulatory front.

4.2 Private aided colleges

Many of the 496 colleges that existed at the time of independence were private, and their number continued to increase even after independence. However, as part of its policy to promote higher education the government took on much of the financial responsibility for these colleges through a grant-in-aid (GIA) system during the 1960s and 1970s. The GIA system is a form of supply-side financing. Whilst the private sector finances the bulk of capital costs including the construction of facilities, public subsidies are provided to meet recurrent costs and occasionally for capital works such as improving existing facilities. The GIA model was responsible for a major portion of the expansion in the private higher education system until the 1980s.

In exchange for this GIA funding, the government sought increased administrative control over the colleges. Faculty and staff salaries, as well as tuition levels, were brought into line with those at public institutions. The government regulated recruitment and admissions to ensure quality and equity. The colleges maintained some ability to levy additional charges such as admissions, library

⁹ There is a global trend towards family-owned higher education institutions noted in Altbach, Philip G (2005), 'Universities: Family Style', *International Higher Education*, Vol.39, Spring. URL: http://www.bc.edu/bc_org/avp/soe/cihe/newsletter/News39/text006.htm. Last accessed 6 June 2007.

and development fees. Salary discrimination between government college teachers and private college teachers was abolished. This hybrid between public and private institutions was not a great success. The efficiency gains expected from private management were lost and quality deteriorated. These private aided colleges dominated the higher education landscape until the 1980s, bringing the drawbacks of the public system into the private system and effectively altering the landscape from a state-supervised system to a state-controlled system¹⁰.

The *de facto* “publicisation” of private higher education has not generally had positive results. As Box 1 suggests, slipping standards and a decrease in interest among prospective innovators in the private sector seem to have been the consequences in at least one documented case.

Box 1: Private aided institutions in Bihar

In the 1970s, setting up of private colleges was a gainful business in Bihar. Given the large unmet demand for higher education, colleges were set up without proper infrastructure and facilities in the hope that the government would soon take over the responsibility of running them. Between 1975 and 1978, the state government took over the responsibility of running 286 private colleges, whereas in the thirty years prior to that only 17 private colleges were taken over by the state government.

Teaching in such colleges became a much sought after source of employment for mediocre housewives and indolent heirs of the power elite. Given the fact that such teachers got permanent tenures and government pay scales once government took over, this mode of employment as teachers became available for a price. This proved to be a de-motivating factor for the deserving ones who consciously opted for teaching as a career. Parasitism, patronage and sycophancy became accepted practice in the academic world. This killed private initiatives and led to retreat of community from an area, which rightly belonged to them¹¹.

In the 1990s, with the squeeze on public funds, there has been a significant reduction of funding through GIA with the exception of West Bengal. Faculty attrition has been one consequence, with the newer GIA institutions that possess little in the way of infrastructure or facilities, particularly those in rural areas, worst affected. Despite this, nationally more than one third of total higher education enrolment was in private aided institutions in 2000-01.

There has as yet been no systematic study of quality among GIA institutions. However, a World Bank Study has drawn a few tentative conclusions:

Where private managements are interested in providing the educational service (for whatever reason – political, cultural or religious), and where general demand for education is high, the quality and performance of private aided institutions on an average tends to be higher than that of government institutions. In this case, greater management control over teachers enables greater accountability and management also invests their own resources in improving quality. On the other hand, where the purpose of establishing aided institutions is not primarily educational but motivated by capturing public subsidies through employment of teachers, private management control actually seem to lower accountability and there is insignificant investment by the private management¹².

¹⁰ Neave, G & F Vught (1994), 'Conclusion', *Government and Higher Education Relationships Across Three Continents: The Winds of Change*, Oxford, Pergamon, 1994, p.309.

¹¹ VS Jha committee report, quoted in *Times of India* (2005), 'Higher Education in Bihar', 21 March, p.10.

¹² World Bank (2003), *Report No.3, South Asia Human Development Sector, A Policy Note on the Grant-in-Aid System in Indian Education*. World Bank.

4.3 Private (unaided) colleges

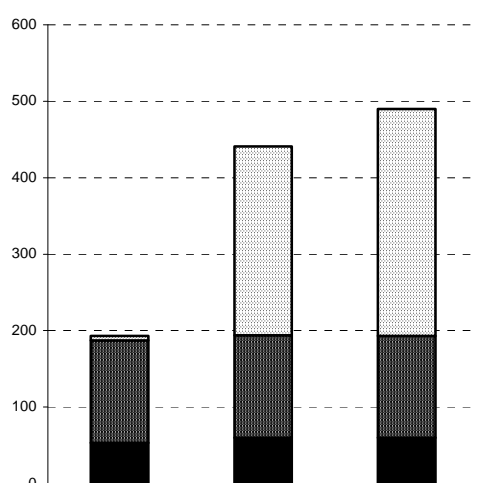
Most of the expansion of higher education even after independence occurred through private initiatives. Those able to thrive without government subsidies were mainly those that offered professional courses, for which students were prepared to pay higher fees in anticipation of lucrative careers. The first of these were established in Karnataka, which had a liberal policy for private professional colleges. Maharashtra, Andhra Pradesh and Tamil Nadu quickly followed. When the Supreme Court accorded legitimacy to self-financing institutions in 1993, other states also started encouraging self-financing institutions. The northern states were the slowest to allow them, doing so only once it had become clear that many of their students were going to other states for professional education. The states of Kerala and West Bengal were the most reluctant. Significant regional imbalances remain.

Private interests were largely confined to subject areas with good employment prospects, ideally combined with a low initial investment in facilities and infrastructure and a liberal regulatory regime. Consequently, a large number of private colleges were set up in engineering, management, hotel management, computer applications, pharmacy, medicine and other professional disciplines. To facilitate the creation of such private professional colleges, many states established new affiliating universities exclusively for technical and/or medical programmes.

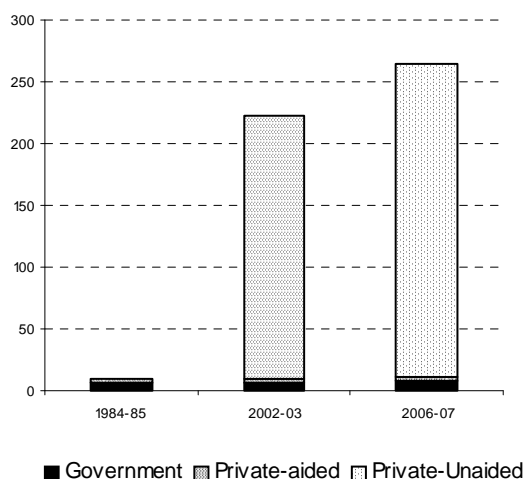
Whilst private colleges were confined to the professional education sector in most states, some found that there was sufficient demand for colleges of general arts and sciences. For instance, as Figure 5 shows, in Tamil Nadu the number of arts and science colleges increased from 6 in 1984-85 to 297 in 2006-2007, whilst the number of government and private-aided colleges increased by only 6 (from 187 to 193). During the same period the number of private engineering colleges increased from none in 1984-85 to 254 in 2006-07. Tamil Nadu along with Karnataka, Andhra Pradesh and Maharashtra may be extreme cases of the privatisation of higher education, but recent trends in other states are similar, particularly for professional education. Though the overall expansion in terms of subject matter as well as quantity differs from region to region, it is clear that the centre of gravity of higher education is shifting from the public to the private sector.

Figure 5: Growth of higher education institutions by management in Tamil Nadu¹³

General Arts and Science Colleges



Engineering Colleges



¹³ Data from the Higher Education Department, Tamil Nadu (author's table).

Private provision continues to grow, but in some states that saw early growth saturation already seems to be setting in. In Tamil Nadu, for instance, thousand of seats in private engineering colleges remain unfilled, as Box 2 describes.

Box 2: Engineering seats go a-begging in Tamil Nadu

Out of the 43,346 government quota seats available at the Bachelor's level for engineering education, 11,059 (25.5%) seats – all in self-financing colleges – remained vacant in Tamil Nadu in the year 2005. The situation was however better than previous year when nearly 20,000 seats had gone a-begging. Though 61,529 candidates applied, 29,242 (47.5%) either did not turn up or take a seat that was on offer. In about a dozen colleges, less than 10 students joined, in 14 others, the number of students that joined was in double digits and in one college only one student turned up. Whereas some joined their preferred courses and colleges under management quota [explained in 5.2], others preferred arts and science courses. In many cases, high tuition fee of Rs.75,000 per annum put them off¹⁴.

These unfilled seats are a worrying sign, but among the unaided colleges market conditions prevail. Whilst some colleges do not enrol adequate students, others are able to charge a premium for admissions. Fierce competition in many disciplines has shown these colleges that in order to survive they need to provide better infrastructure, ensure that the quality of education is good and charge reasonable fees.

For those private colleges that are successful, the status of deemed university (described in section 4.4) is worth pursuing. For one thing, the control exerted by the government via the public universities with which the colleges must affiliate do not apply to deemed universities. For colleges which have maintained a certain degree of control by remaining self-financing, deemed university status provides a further level of freedom. The transition from private college to deemed university is a new and growing trend in Indian higher education.

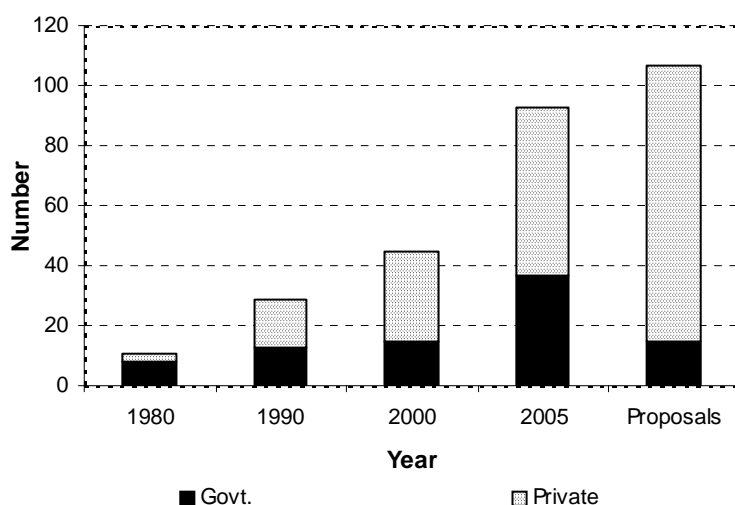
4.4 Deemed universities

Only the national or a state government can establish a degree-granting university in India. Private providers have traditionally been limited to creating colleges affiliated with public universities. However, the national government has the power to grant deemed university status to public and private colleges by an executive order on the recommendation of the UGC. Initially this provision was used sparingly to acknowledge leading institutions offering programmes at an advanced level in a particular field or specialisation. The Indian Institute of Science at Bangalore and the Indian Agricultural Research Institute at Delhi were the first two institutions to be declared deemed universities in 1958. The number increased to 29 in 1990-91 and 38 in 1998.

Initially, only public and government-aided institutions became deemed universities. Manipal Academy for Higher Education (MAHE), a pioneer in private higher education, became the first financially independent institution to be declared a deemed university in 1976. In 1998, to encourage the development of educational opportunities in emerging subject areas, the procedure was changed to favour new institutions. As a result there has been a sudden increase in the number of private deemed universities, as Figure 6 indicates.

¹⁴ *New Indian Express* (2005), 29 August.

Figure 6: Growth of deemed universities¹⁵



The liberal granting of deemed university status, particularly using the new provisions, has raised many issues. The process was temporarily suspended in 2002 and efforts were made to frame more stringent guidelines, which the government did not approve. Efforts were also made to increase the transparency of the process by introducing a system of screening in 2005, but this was also abandoned. The process of granting deemed university status remains somewhat opaque and arbitrary, leading to a perception that it is susceptible to political manipulation. Meanwhile, the number of private deemed universities continues to increase.

Between 2000 and 2005, 48 institutions including 26 private ones were declared deemed universities and 107 proposals were pending. By the end of 2005, there were as many as 93 deemed universities. This number now stands at 110. Besides 17 public Regional Engineering Colleges that became deemed universities renamed National Institutes of Technology, the number of public and aided institutions declared deemed universities is minute. A large proportion of the private colleges seeking this status are in Tamil Nadu and Maharashtra, states that also have the highest proportion of private colleges and a history of political patronage for them.

Deemed universities have no affiliating powers and thus cannot serve as the degree-granting partner of colleges. Most run undergraduate programs in professional disciplines and have very little research activity. They enjoy freedom in matters of fees and admissions, and as a consequence large non-refundable deposits are the norm for gaining admission and tuition fees tend to be high.

Private deemed universities are mostly run by powerful families who either play an important role in politics themselves or earn political patronage by dispensing favours like preferential admissions. It is therefore not surprising that they wield great influence in shaping policy on private higher education, aimed at consolidating their own operations. Recently, deemed universities were able to obtain many concessions from the UGC and the government. Such institutions can now use the term “university” in their title and initiate teaching programmes at both the undergraduate and the postgraduate levels in disciplines of their choice. This brings them at par with the public universities, with the added advantage that the government has also authorised the UGC to exempt sponsoring bodies from creating a separate trust or society for the establishment of a deemed university. The result is that whilst some private deemed universities are undoubtedly innovative and entrepreneurial, meeting market demands, they are also susceptible to cutting

¹⁵ UGC data, compiled by the author.

corners in regards to infrastructure or staffing in order to increase profits. In fact, aside from the extra word, private deemed universities often differ little from private universities.

4.5 Private universities

A proposal to permit the establishment of private universities has been around for more than a decade, introduced in Parliament in 1995 as the *Private Universities (Establishment and Regulation) Bill*. The bill included specific provisions to maintain academic standards and prevent commercialisation and mismanagement. Teacher and student organisations, academics and some political parties opposed the bill on the grounds that despite safeguards such universities could compromise academic standards and that it could lead to gross commercialisation. The private sector, in contrast, found the proposed legislation too restrictive. An attempt to build consensus through consultation with the state governments added further confusion. As a result, national legislation on private universities is still pending. Granting deemed university status to private institutions is an interim measure that has eased pressure on the government, yet the issue which the proposed legislation was meant to resolve has not disappeared.

Meanwhile, state governments have begun to realise that they are able to establish private universities through state legislation. The states of Uttaranchal, Gujarat, Himachal Pradesh and Uttar Pradesh have already done so through case-by-case state legislation¹⁶, whilst the state of Chhattisgarh passed an omnibus act that enabled it to set up any number of private universities by executive order. The Chhattisgarh government received 134 applications within a week of this enactment and went on to approve 97 of them. The resulting problems serve as a warning: many of these new universities set up off-campus centres and study centres outside the state without any operations in Chhattisgarh, creating a chaotic situation.

The UGC was forced to respond, issuing regulations for self-financing universities governing their establishment and their standards¹⁷. The regulations required a private university to be set up only by a separate act, not an omnibus bill as in Chhattisgarh, and restricted their operations to within the state enacting such legislation. Many private universities opposed the UGC regulations, claiming that as they received no funding from the UGC they were not subject to UGC oversight. They also argued that the regulations were discriminatory, imposing regulations on private universities but not on public ones. A parliamentary committee concluded that although these universities were established under state rather than national laws, they were nevertheless obliged to comply with the guidelines laid down by national regulatory bodies including the UGC¹⁸. Despite this, the national government has taken an ambivalent stand on their proliferation.

Meanwhile, responding to the chaos its omnibus legislation had created, Chhattisgarh had revoked its approval of all but 37 of the new universities by the end of 2004. The UGC started inspecting private universities, approving only seven nationally, but the others continued to operate nonetheless. Box 3 illustrates the untenable situation in Chhattisgarh at this time¹⁹.

¹⁶ The first private university, Sikkim-Manipal University of Health, Medical and Technological Sciences, was established in Sikkim by the Manipal Group in 1995 and started operations in April 1997. A small operation, it is considered a private university by the UGC.

¹⁷ UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003.

¹⁸ The 150th Report on Demand No.58 of the Parliamentary Committee on Human Resource Development.

¹⁹ Supreme Court's 2004 Judgement in Writ Petition No.19.

Box 3: Chhattisgarh private universities

Supreme Court while striking down the Private Universities Act of Chhattisgarh observed that the State Government had simply issued notifications in stereotyped manner in the Gazette, establishing universities (to conduct the syllabus and to grant degrees / diplomas) in an indiscriminate and mechanical manner without having slightest regard to the availability of any infrastructure, teaching facility or financial resources; all types of degrees were awarded by these universities. They were running professional courses without taking prior permission of the regulatory bodies. The legislation was enacted in a manner that had completely done away with any kind of control of the UGC. It was noted that many of these universities were functioning from small premises which are some times single small rooms in commercial complex or a small tenement on the first or second floor of a building or an ordinary flat. These universities were issuing advertisements for opening up study centres in different parts of the country for award of any number of degrees or diplomas. They were alluring people all over the country to open study centres for which they were charging huge amount and also befooling students to apply for admission to unknown and unheard of courses that were not recognized by any statutory body.

In February 2005, a measure of order was restored when the Supreme Court intervened. In its judgment, the Supreme Court struck down the omnibus Private Universities Act of Chhattisgarh and upheld the validity of the UGC Regulations²⁰. In addition to its corrective function, the ruling also had the knock-on effect of bringing into national legislation private universities in the state sector. Today, there are ten such universities in the country.

4.6 Foreign institutions in India²¹

Foreign institutions have operated in India for many years now. Initially, they were merely recruiting students for their home campuses abroad, but gradually they started offering programmes in India itself. The programmes were mostly offered with Indian partners, operating outside the national regulatory system. Since there is no system even to register such operations, information on the size and scope of foreign providers is patchy, with many discrepancies and information gaps.

A study by India's National Institute of Educational Planning and Administration (NIEPA) and another by Powar and Bhalla together give some sense of the extent of foreign provision in India²². The NIEPA study identified 131 foreign education providers enrolling several thousand students in India. The study did not record any branch campuses and only two franchise operations of foreign providers; the remainder were collaborative programmes or twinning arrangements. Most of these partnerships were with US universities (66 partnerships) and UK universities (59 partnerships). The study further noted that out of the total sample of 131 institutions in India, 107 were providing professional programs, 19 technical programmes, and only 5 general education programmes. Business management and hotel management constituted approximately 80% of the total. The geographical distribution of these programmes was uneven: Maharashtra had the most programmes in hotel management, for instance, whilst Delhi had the most in business management²³.

²⁰ Writ Petition No.19 of 2004 brought before Supreme Court through a public-interest litigation.

²¹ Sudhanshu Bhushan's 2006 report for the Observatory offers an earlier but more comprehensive analysis of foreign education providers in India at URL: <http://www.obhe.ac.uk/products/reports/pdf/March2006.pdf> (last accessed 11 June 2007). In order to avoid unnecessary duplication, the present report focuses chiefly on foreign providers comparatively, as one kind of private provider.

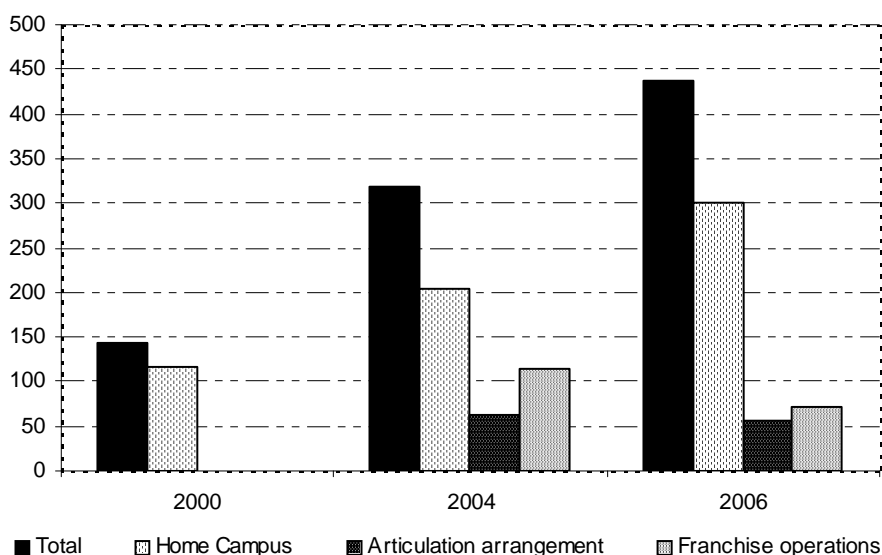
²² NIEPA (2006), *Report of the National Seminar on Privatisation and Commercialisation of Higher Education*. New Delhi; Powar, KB & V Bhalla (2006), *Foreign Providers of Higher Education in India: Realities, Implications and Options*. Position Paper 1/2006, Dr. DY Patil University and Edupro Foundation, Pune.

²³ Bhushan, S (2006), *Foreign Education Providers in India: Mapping the Extent and Regulation*, OBHE. URL: <http://www.obhe.ac.uk/products/reports/pdf/March2006.pdf>. Last accessed 11 June 2007.

The study considered 50 of these operations in detail. Of these, 60% (30) were twinning arrangements with the triple benefit that whilst the foreign institutions are able to attract students to the home campus, part of the programme is completed within India, benefiting both Indian institutions and Indian students who pay less than they would by studying abroad for the entire duration of a degree programme. The remaining 40% (20) were collaborative programmes with joint-degree provision.

Based on scrutiny of advertisements published in national newspapers and scrutiny of institutional websites in 2000, 2004 and 2006, Powar and Bhalla have put together information on foreign providers in India. The trends are shown in Figure 7 below. Whilst the number of institutions recruiting students for study on their home campuses has increased steadily, there has been a marginal reduction in the number of articulation arrangements. The number of institutions having their presence in India through franchise operations has decreased substantially. Ten foreign distance education providers have also been recorded in the survey. The media sometimes report that universities from the West are planning to establish a branch campus in India, most recently the Georgia Institute of Technology in Hyderabad, but only one, Western International University of the United States, has actually opened²⁴.

Figure 7: Foreign providers in India (2000, 2004, 2006)²⁵



The survey noted that foreign providers generally offer programmes in professional disciplines, chiefly management and business (principally through franchise operations) and engineering and technology (through articulation arrangements). A notable feature of the survey is that whilst almost all foreign providers are recognised higher education institutions, their Indian partners are

²⁴ See the Observatory's coverage of the Georgia Institute of Technology branch campus, *A careful and timely vision? US-based Georgia Institute of Technology eyes a branch campus in India* (2007). URL: <http://www.obhe.ac.uk/cgi-bin/news/ftarticle.pl?id=649&mode=month>. Last accessed 26 June 2007. For the experience of Sylvan Universities International, which closed down its Indian operations in 2004 citing obstruction from the UGC, see OBHE (2004), *Sylvan closes India campus citing lack of co-operation from UGC- a victory for quality or confusion?* URL: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=262&mode=month>. Last accessed 11 June 2007.

²⁵ Powar, KB & V Bhalla (2006), *Foreign providers of higher education in India: Realities, implications and options*. Position Paper 1/2006, Dr. DY Patil University and Edupro Foundation, Pune. For more on the Western International University, a subsidiary of the Apollo group, see OBHE (2002), *Apollo International Opens First Branch Campus of an American University in India*. URL: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=133&mode=month>. Last accessed 11 June 2007.

largely commercial institutions. The United Kingdom is the most active in the Indian market, followed by Australia, the United States and Canada.

Recently, the author collected data from the British Council at New Delhi on UK universities offering programmes in India either by themselves or in partnership with an Indian institution. From the data, it is seen that 12 UK-based universities are offering or are in the process of offering joint programmes with Indian partner institutions in India. Two of the programmes will be at the undergraduate level and ten at the postgraduate level. Whilst many of the programmes are in the hospitality sector, there are some in business administration, computing, nursing, and fashion design. In all, these programmes would enrol about 5,000 students.

From the information above, it is clear that almost all foreign providers are offering programmes in partnership mode. These are all small operations and at the moment remain largely peripheral to domestic provision. It is estimated that altogether, only 10,000 to 15,000 students are enrolled in programmes offered by foreign providers, whether alone or in partnership with Indian institutions.

4.7 Growth of professional courses

Before 1980, the expansion of higher education was largely confined to undergraduate programmes in arts, science and commerce. In these subject areas, private institutions could be set up with very little investment, and they fit in with India's tradition of liberal education, based on the view that learning should take place for its own sake, without reference to economic or other external factors. However, the changing structure of the Indian economy saw a need for the development of more professional programmes, leading to the rise of financially independent private professional colleges to answer this unmet demand.

The rise of professional higher education in India follows trends seen elsewhere in the world, with a shift away from liberal education towards professional programmes. In India, this was seen first with the liberal professions, then the technical professions (principally the many branches of engineering and the technical sciences) accompanying the successive waves of industrialisation including the latest wave of the information sciences. Next were the caring professions, stimulated by the growth of the welfare state. Most recent is the upsurge in enterprise professions, including management and accountancy.

When this change was visible elsewhere in the world, some of the state governments, especially the governments of Karnataka, Maharashtra, Tamil Nadu and Andhra Pradesh, took the bold decision to permit private registered societies and trusts to establish and run professional institutions on a self-financing basis. As a result, a large number of private unaided colleges were established in the early eighties, first offering degree programmes in engineering. Programmes in architecture, pharmacy, management, hotel management, computer applications, medicine, nursing, dentistry, physiotherapy, and teacher education followed. Over time, other states followed suit. Now, states with the highest concentration of professional institutions are also the ones with larger numbers of private institutions. There are large regional imbalances, since the growth of private initiatives did not occur uniformly across all states and regions of the country. Please see Figure 8, the growth of degree-level engineering institutions, as an example.

Figure 8: Growth of degree-level engineering institutions²⁶

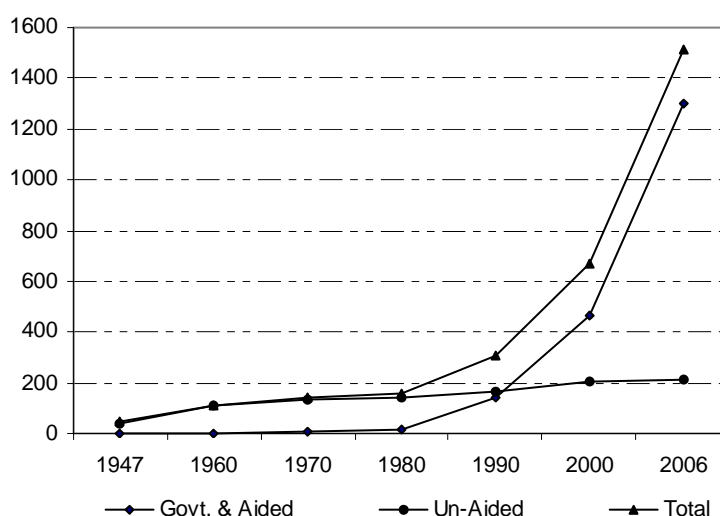


Table 3 shows that professional education has grown rapidly over the past five years across a range of disciplines. This growth has largely been achieved without public funds. In engineering, pharmacy, dentistry and physiotherapy, growth has been high and as much as 90% of the institutions offering these programmes are private. A few programmes such as computer applications, management, and teacher education grew in the public as well as the private sector. In the public sector, these were started as self-financing courses. In disciplines like architecture and hotel management, growth has been moderate.

Table 3: Growth of professional higher education institutions²⁷

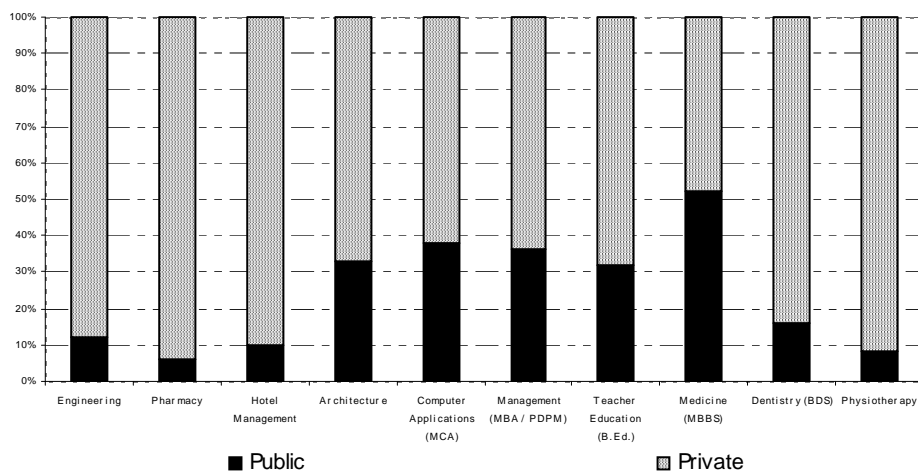
Name of Course	Number of Institutions (1999-00)	Number of Institutions (2006-07)	Percentage increase
Engineering	669	1511	121
Pharmacy	204	665	208
Hotel Management	41	64	70
Architecture	78	116	51
Computer Applications (MCA)	780	1003	25
Management (MBA / PDPM)	682	1132	55
Teacher Education (B.Ed.)	1050	5190	395
Medicine (MBBS)	174	233	32
Dentistry (BDS)	45	189	420
Physiotherapy	52	205	294
Total	5774	12307	213

²⁶ Compiled by the author based on data from AICTE, URL: <http://www.aicte.ernet.in>. Last accessed 11 June 2007.

²⁷ Compiled by the author based on data from AICTE, URL: <http://www.aicte.ernet.in>, and other professional councils.

Figure 9 shows the distribution of professional education in public and private institutions.

Figure 9: Public-private share in professional education, 2005-6



In the 1990s, a large number of professional programmes were started in the self-financing mode. Most universities did not bother to get prior approval from the professional councils such as AICTE before starting these programmes, which generally used existing infrastructure and facilities²⁸. The fees for these programmes were usually comparable to those at the self-financing institutions, thus generating substantial amounts of supplemental income for otherwise publicly-funded institutions. No data on the extent of self-financing programmes in the public universities has been compiled, but most universities are believed to have started at least some self-financing courses which in many cases now outnumber government-subsidised courses. The rise of self-financing courses in public universities has created a divide between departments, with those possessing the potential to run lucrative courses better endowed. Often, however, this financial advantage does not result in higher quality, particularly as they tend to use existing facilities and visiting faculty. The UGC issued regulations for self-financing courses in 2002, but the impact has yet to be seen.

Overall, the financial appeal of self-financing professional courses has resulted in the growth of professional education in India and has reinvigorated the higher education system.

4.8 Distance education and vocational training

Whilst the private higher education sector and professional courses were growing, distance education also saw a major expansion. Distance education has its origins in correspondence courses, which in India was a sector dominated by public universities in contrast to the West, where the private providers initially dominated. It started in 1962 when the University of Delhi began offering Bachelor's degrees by correspondence in arts, sciences and social sciences. Now there are 106 conventional universities that offer distance education programmes, as well as 12 open universities of which the major provider is the Indira Gandhi National Open University (IGNOU). Together they enrol over 2.8 million students, with nearly 1.3 million new enrolments each year. Often distance education programmes generate huge surpluses with fee levels usually higher than fees in similar regular programmes. Whilst most open universities are able to generate all their operating expenses this way, conventional universities generate huge surpluses that for some is the main source of revenue. Some deemed universities have large distance education programmes and earn huge sums of money. There are also a few private providers outside the formal system that offer distance education programmes.

²⁸ According to the verdict of the Andhra Pradesh High Court in the Bharatidasan case, universities are not required to seek prior approval of the AICTE for starting professional courses, though they are expected to meet AICTE standards. © Observatory on Borderless Higher Education, 2007

Overall, there are different types of providers offering a variety of distance education programmes of uneven quality. Unlike the UK's Open University, which ranks fifth out of 100 British universities for the quality of its teaching programmes, neither open universities nor distance education programmes are rated highly in India. One problem is that these programmes have expanded beyond the states in which they were established, with little if any quality assurance. Indeed, the entire regulatory framework for distance education in India is weak. There is an anomalous situation with its regulator, in that the Distance Education Commission is part of IGNOU. In the absence of better regulation, maximising student success often takes second place to maximising profits. Some distance education providers, for instance, are reputed to collect all fees up front and rely on early student dropouts to boost profits.

A huge vocational training sector has also grown over the years in the country. Hundreds of Industrial Training Institutes (ITIs) were established to provide practical and apprenticeship training, whilst new polytechnics met the training needs of the industry at the supervisory level. As with the formal higher education sector, the expansion of vocational provision from 1980 onwards was almost entirely through private initiatives. In 1980 there were 830 ITIs, but by 1987 this had risen to 1,900 and there are now 4,040 ITIs in the country (65% in the private sector) with capacity of over 700,000 seats. Similarly, from 332 polytechnics in 1980, there are now nearly 1,200 polytechnics, 51% in the private sector.

A large private IT training sector emerged in the late 1980s, pioneering the franchising route to expand quickly and tap the geographically-dispersed demand. Private providers also offer training for hospitality, media and journalism, animation, aviation, event management, fitness consultancy, fashion designing and clinical research. The private training sector is completely outside government control, with fees and quality determined on the basis of market competition. In general this system has worked well.

The vocational training sector is now large, costing the government nothing in terms of higher education funding and responding in more direct and usually more effective ways to the needs of industry and the labour market. With the narrowing gap between training and education, this has eroded the traditional monopoly that universities have enjoyed in providing training and granting respected credentials.

5. Evolving policy environment

5.1 Tracking the policy debate

Public policy on higher education in India has traditionally focused on the activities of the public institutions. In 1985, the activities of private institutions were addressed for the first time in the government discussion document *Challenges of Education: A Policy Perspective*. The document warned that the private institutions were charging high additional fees for admission (called 'capitation' fees) and were providing access to education on the basis of ability to pay rather than academic merit. Whilst the National Policy on Education of 1986 made no direct reference to these reservations, two committees that reviewed that policy realised that with public spending on higher education grossly inadequate, self-financing programmes might provide a solution by expanding capacity without increasing the government's financial contribution²⁹. Whilst making the case for a larger government allocation for higher education, the committee also suggested that this could be complemented, among other things, by making higher, technical and management education self-financing through higher fees. This gave legitimacy to the principle of full cost-recovery from

²⁹ These were the Ramamurti committee in the report *Towards an Enlightened and Humane Society* and the Central Advisory Board for Education committee.

students, making private self-financing institutions viable in fields of study for which students or their parents were willing to pay.

Whilst private institutions were emerging in different parts of the country, the government was coming around to the view that rapidly-growing demand could not be met solely by the public sector. There was direct reference to private higher education in policy discourse during the 1990s. The first indication of this paradigm shift became evident from the recommendations made in the government's Eighth Plan (1992-97) document. Whilst discouraging the opening of new conventional universities and colleges, the plan recommended the involvement of voluntary agencies and the private sector in higher education, with proper provisions for quality assurance. The idea was to make higher education as far as possible self-financing.

Over the last decade there have been several policy statements that accept the role of private education. In 1998, the Prime Minister's Special Action Plan for Education recognised the role of the private sector in providing quality and cost-effective education. It called for a comprehensive review of any laws and procedures that might hinder private participation in all segments of education. Whilst addressing the Joint Session of Parliament in 1999, the President of India categorically stated that the government would actively pursue private investment in higher and technical education. In the same year, the tenth Five Year Plan went a step further by defining the nature and scope for regulation of private higher education. According to this:

Laws, rules and procedures for private, cooperative and NPO (not for profit organizations) supply of education must be modernized and simplified so that honest and sincere individuals and organizations can set up universities, colleges and schools. Oppressive controls on fees, teacher salaries, and infrastructure and staff strength must be eliminated. The regulatory system must be modernized based on economics of information and global best practices. Given the weak criminal justice system in our country, the regulatory system must also put greatest emphasis on fraud detection and punishment while letting normal individuals to function normally³⁰.

The controversial Birla-Ambani Report of 2001 suggested that a private universities bill should be passed and that the user-pay principle should be enforced in higher education. More recently, this issue was hotly debated at the meeting of the State Ministers for higher education organised by the Government of India at Bangalore on 11 January 2005. There was general consensus that there should be a greater role for the private sector in higher education, particularly to expand opportunities in the face of increasing pressure on public finances. However, there were differences in matters of details and in perceptions of the role of private initiative, and apprehensions about quality control and gross commercialisation if the private sector was allowed to operate unhindered. Later the same year, 64 eminent Indian educationists deliberated on the issue at a National Seminar organised by NIEPA in New Delhi. They favoured private investment in higher education, but wanted privatisation to be restricted to a minimum desirable level.

Despite these examples suggesting that policymakers realise some private investment in higher education is inevitable, there continues to be a lack of clarity in attitudes towards it. Private higher education is viewed with suspicion, and there is a notion that all private activities are motivated solely by considerations of profit and greed. It is also argued that encouraging private provision would amount to a dilution of the state's constitutional responsibility in this area. As a result, private higher education has continued to grow in a policy vacuum in which judicial interventions rather than firm policies serve to resolve any conflicts that arise.

³⁰ Para 3.64 of Planning Commission (1999), *Approach Paper for the Tenth Five Year Plan*.
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5.2 Admissions and fee regulations

When private professional colleges began to be established in large numbers in the 1980s, there was no effective mechanism to control their functioning, nor was there a systematic admission procedure, except in Andhra Pradesh, where all admissions were by merit. In other states, the private universities were able to reserve a major proportion of seats, referred to as the 'management quota'. In contrast to the merit-based admission requirements outside the management quota, these reserved seats were generally filled through the collection of large capitation fees³¹.

Over the years, there was a general concern that private professional colleges were charging overly high capitation fees. In response, several state governments enacted laws to regulate admission and prohibit capitation fees in private professional colleges, Andhra Pradesh in 1983, Karnataka in 1984, Maharashtra in 1987 and Tamil Nadu in 1992. The provisions of these laws were challenged in court, initiating an era of judicial interventions which to this day continues. The issue of capitation fees routinely comes up before the Supreme Court.

In 1993, the Supreme Court determined that the commercialisation of education, including capitation fees, was not permissible³². Instead, the Court laid down a framework to regulate admissions based on the principle of merit, with a differential fee structure in which the fees of some deserving students would be subsidised by those paying higher fees³³. During the 1980s and 1990s, when most private institutions were colleges affiliated to the state universities and thus under the indirect control of the state governments, most states evolved a merit-based admission policy with fixed differential fees in private professional colleges within their respective jurisdictions. Despite initial teething problems, this system was institutionalised over the years and remained in operation until 2002 when the Constitution Bench of Supreme Court determined that this differential fee structure was unreasonable, amounting to compelling one citizen to pay for the education of another³⁴. It could, theoretically, result in a situation in which a marginally less meritorious but poor student would be required to subsidise a richer one. The court therefore declared the 1993 arrangement unconstitutional, but noted at the same time that preventing the private institutions from selecting their students and setting their own fees would be unconstitutional. It decreed that fees could be determined in a manner generating a reasonable surplus for the purposes of institutional development and expansion.

The Supreme Court's decision was interpreted by private institutions as giving them unbridled power to admit anyone by charging any fee they chose. The entire system of admission and fees that had evolved over the years started to fall apart. Realising this, another bench of the same court was set up in 2003 to interpret the meaning of autonomy in admission and fees³⁵. This bench endorsed a cost-plus system in private institutions, with reasonable fees determined by a committee in each state, headed by a retired High Court judge. It also established the need for common entrance tests for merit-based admissions.

As a result of the 2003 Supreme Court decision, fees had to be determined again in all states. Private institutions were allowed to retain a management quota, but whilst some private providers managed to obtain a quota as high as 50% in most cases it was capped at 15%. States such as West Bengal, where no management quota has yet been determined, are now planning a 5% management quota. Students admitted as part of the management quota are still ostensibly

³¹ AICTE (1999), *Technical Education in India: 1947-1997*. New Delhi

³² In the case of JP Unnikrishnan and Others vs. State of Andhra Pradesh and Others, 1993.

³³ Both tuition and development fees for merit and payment seats (not exceeding 15%) for various professional programmes in private unaided institutions were to be fixed by the respective state governments.

³⁴ Eleven-judge bench in the case of TMA Pai Foundation, 2002.

³⁵ Five-judge bench in the case of Islamic Academy of Education and Others Versus State of Karnataka and Others, 2003.

admitted on the basis of merit, but merit in such cases can be determined through institutional admission tests and is thus susceptible to abuse. Though private institutions are not allowed to charge higher fees from students admitted through the management quota, capitation fees seem to be part of common, unofficial practice.

Whilst the government and the private institutions were addressing the challenges posed by the Supreme Court judgments of 2002 and 2003, the court intervened again in 2005, this time on the sensitive issue of caste-based reservation quotas in private unaided institutions³⁶. In a landmark ruling, the court observed that “neither the policy of reservation can be enforced by the state nor any quota of percentage of admissions can be carved out to be appropriated by the state in private unaided institutions.” According to the ruling, any affirmative action on behalf of disadvantaged castes would be unconstitutional if applied to private unaided institutions. Unwilling to accept this situation, Parliament amended the constitution to allow special provisions for the preferential admission of disadvantaged castes and tribes in all higher education institutions, including those independent of government funds.

As a result of this constitutional amendment, state governments are now expected to enact laws creating a caste-based reservation quota for private institutions within their jurisdiction. For its part, the national government is to implement this reservation policy in the nationally-funded institutions and deemed universities. The issue of reservations in central institutions raised a storm of protest, and Parliament’s reservation bill has been challenged in the Supreme Court. It would seem that once again the courts find themselves responsible for setting India’s higher education policy.

Tracing the evolution of Indian policy on tuition fees and admissions, it seems that it has been driven more by judicial interventions than by proactive public policy. These have been the two most contentious issues in higher education, with judicial interventions sometimes having the result of contradicting each other and reversing progress. Nevertheless, a broad direction for policy on tuition fees and admissions has emerged over the years. It is now established that admissions in higher education should be on the basis of merit, to be determined by entrance exams if required. The fact that tuition fees should be fixed on a cost-plus basis with some surplus for reinvestment is now accepted. The remaining issue is essentially one of implementation.

5.3 Regulating foreign providers

Foreign institutions can enter the country on “the automatic route” under the rules framed by the Foreign Investment Promotion Board, which is to say that foreign institutions do not require any approvals to set up their presence in India but operate outside the domestic regulatory framework. As a result degrees awarded by foreign institutions in India are not recognized in India. Like the issue of regulating admissions and fees, the access and operation of foreign institutions also has a long history. A proposal to regulate them has been under consideration since 1997, when the Indian Government admitted that ambiguity existed in the legal arrangements on the issue³⁷.

After almost a decade, the government has now come close to enacting regulations. According to the provisions of the *Foreign Educational Institutions (Regulation of Entry and Operation, Maintenance of Quality and Prevention of Commercialisation) Bill* currently under consideration, all foreign universities in India would be given deemed university status, and the UGC would therefore play a pivotal role in regulating them. A committee under the UGC would decide if certain prominent foreign universities could be exempted from this law, but most or all would have to follow domestic rules, which as we have seen now include the regulation of fees, a cap on the

³⁶ In the case of PA Inamdar, 2005.

³⁷ In the Writ Petition No.11416 of 1997 of the High Court at Madras.

management quota, and the implementation of a quota-based reservation for disenfranchised castes. Foreign universities would not be allowed to open satellite campuses³⁸.

There is a difference of opinion among academics, educational experts and political parties as to whether the liberalisation of foreign provision in India would be beneficial³⁹. Despite the fairly strict regulatory regime envisaged in the bill, left-wing political parties that are a part of ruling coalition are opposed to the bill on the grounds that this would damage the cultural sensitivities and educational ethos of the country. These parties opposed introduction of the bill in Parliament in May 2007. In these circumstances, there is going to be long haul before this law is passed, if indeed it is. Until then, uncertainty about foreign operations in India will continue. Further, even if it is enacted, the proposed law is unclear on how the partnerships between Indian and foreign institutions would be regulated. Since almost all foreign providers currently operate in partnership mode and are likely to continue to do so in future, there is a big gap in the proposed law⁴⁰. Whilst there is genuine concern that the quality of education offered by the foreign providers is highly variable, sometimes indifferent, there is also a realisation that foreign providers could energise local institutions through both example and competition.

Private higher education in the country has grown in an uncertain environment. A lack of clarity and an absence of consensus have marked its growth. Due to inadequacies in the legislative framework for private initiatives, it could not grow in an organised manner. Regulatory bodies have had an *ad hoc* and sometimes negative approach, acting as controllers rather than facilitators of private investment. Policy prescriptions have been brought about as reactive changes, treating issues in isolation rather than taking a holistic approach. As a result, regulation has come in bits and pieces largely through judicial interventions rather than proactive state policy.

6. Analysis

An analysis of the growth patterns and evolving policy environment relating to private higher education shows two distinct trends. On the one hand, there has been a continuous shift in the funding of higher education from taxpayers to users. On the other, expansion in higher education has been marked by a shift in sectoral balance, with the number of public institutions and enrolment in them growing rather slowly, with comparatively rapid growth in the number of and enrolment in private institutions. This shift is taking place amidst changing perceptions of private higher education in India.

6.1 Perceptions and reality

There are varying perceptions about private higher education in India. Some consider it the panacea for higher education, would not want any regulation or interference in the establishment and operation

³⁸ For further details about the reaction to this bill, see OBHE (2006), *Next stop India? A round-up of recent developments in the country's international higher education sector*. URL: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=523&mode=month>. Last accessed 6 June 2007. See also OBHE (2005), *AICTE revises regulations for foreign universities in India – but does anyone care?* URL: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=386&mode=month>. Last accessed 6 June 2007; also OBHE (2003), *India introduces controversial regulations on foreign universities*. URL: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=188&mode=month>. Last accessed 11 June 2007.

³⁹ See, for instance, Stella, A & A Gnanam (2005), 'Cross-border Higher Education in India: False understandings and true overestimates', *Quality in Higher Education*, Vol. 11, No. 3, November, pp.227-37. and Agarwal, P (2006), 'Higher education in India: The need for change', ICRIER Working Paper No.180, New Delhi, June 2006. URL: www.icrier.org/publication/working_papers_180.html. Last accessed 30 May 2007. For more on the foreign providers' responses to the bill, see OBHE (2007), *Great expectations? The Indian Government considers a new foreign education providers bill*. URL: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=628&mode=month>. Last accessed 11 June 2007.

⁴⁰ For more on foreign providers in India, see OBHE (2006), *Next stop India? A round-up of recent developments in the country's international higher education sector*. URL: <http://www.obhe.ac.uk/cgi-bin/news/article.pl?id=523&mode=month>. Last accessed 6 June 2007.

of private institutions, and would let market forces determine their survival. There are others who consider private institutions the fountain of malpractice, exploitation and poor quality, susceptible to political and financial manipulation. Though both perceptions are of course generalisations, both are also based on genuine examples.

There are certainly many private institutions committed to educational excellence, such as the Birla Institute of Technology, Thapar University and Nirma University. They are conscious of their responsibility to their students and known for transparency and academic commitment. An analysis of such institutions reveals that their governing bodies consist of eminent persons, known for their integrity and their knowledge of educational systems. Such bodies are not controlled or manipulated by private individuals. These are established as public trusts or societies true to the spirit that education is a non-commercial venture. They allow considerable autonomy to the head of the institution and the faculty and treat them with dignity so that competent teachers are attracted to such institutions. The excess incomes generated by such institutions are generally used for further growth and development of the institution, not to profit individuals. They are keen to offer postgraduate and research programmes and to maintain both their good reputation and their academic image. In such institutions, the curriculum, recruitment procedures, admission requirements, various fees, details of faculty and results are publicly-available. It is estimated that nearly 25% of private institutions fit this characterisation⁴¹. New institutions for legal education that were set up with the initiative of the Bar Council of India (or in some cases the state bar councils) fall in this category, as Box 4 describes.

Box 4: National Law School in India – a model for public-private partnership

In 1986, Bar Council of India established a model law school in the joint sector to act as a pacesetter for legal education reforms. A self-financing, privately managed Law University, independent of government control, the first of its kind in the country was established in Bangalore under the name of National Law School of India University. Today there are ten such Law Universities in different states of the country. This has changed the course of higher education in law, making it internationally competitive and socially relevant attracting the attention of industry, government and the public in the legal sector. It assiduously maintains its autonomy in academic and governance matters. Some of them are tying up with foreign universities on their own terms. National Law School accommodates access with quality and autonomy with accountability. It has influenced curriculum development even outside the National Law Schools and compelled the private un-aided institutions to improve⁴².

A large majority of the private institutions, however, do not seem to exhibit such admirable traits. Private deemed universities and the new private unaided universities are often the biggest offenders. Unlike colleges that come under the oversight of the affiliating universities, these universities are independent save for the oversight of the UGC, which, as this report has argued, seems to be weak in this respect.

Even when fees are regulated, there are large variations. The norms are unclear and the fee levels vary considerably among the states and within the states for various courses. For instance, an undergraduate course in engineering costs 20,000 Indian rupees (approximately US\$492) per annum in Chhattisgarh State but 72,000 rupees (US\$1,770) for the same degree in Chandigarh. The system of high fees charged for management quota seats continues unabated. According to one report, capitation fees can range from 200,000 to 800,000 rupees (US\$4,920-19,680) per

⁴¹ Anandakrishnan, M (2006), 'Privatisation of higher education: opportunities and anomalies', *National seminar report on privatization and commercialization of higher education*. NIEPA, New Delhi.

⁴² Madhava Menon, NR (2006), 'Towards an appropriate regulatory framework for sustainable scheme of private higher education in India', *National seminar report on privatization and commercialization of higher education*. NIEPA, New Delhi.

annum for some of the courses, as high as 4 million (US\$98,360) for medical courses⁴³. Many private institutions admit students long before the actual start of the academic session, collect full fees up front, and retain original certificates in order to prevent student withdrawals⁴⁴.

Some private institutions also offer technical programmes in the distance mode without the approval of the statutory council or the Distance Education Council⁴⁵. According to the AICTE Act of 1987, no technical institution can be started without AICTE sanction, and even approved institutions need to apply before starting a new course or taking up foreign collaborations. In March 2007, AICTE published a list of 169 institutions that were offering unapproved courses; 104 of them were collaborating with foreign institutions without seeking prior sanction.

Whilst private investment in higher education has become inevitable in the current environment, the nature of private participation is so poorly or ambiguously spelled out that less-reputable ventures have come to dominate the Indian educational system. Whereas legitimate return on private investment is justifiable, there is at present no effective mechanism to check the greed of private providers, which can result in exploitation. As a result, private higher education suffers from a poor image.

Despite this perception, there is also the recognition even amongst the academic community that this inevitable private participation in higher education can have positive consequences. A Planning Commission-sponsored study in 2002 revealed that more than two-thirds of the vice chancellors, teachers, researchers and educational administrators contacted felt that privatisation would bring improvements in efficiency and effectiveness, and about half of them felt that it would also add to excellence. Almost all of them (98%) favoured the participation of industry in the financing and management of higher education. Two-thirds wanted the government to enact a private universities bill, whilst some stressed that instead of fresh legislation, changes could be made in the present framework to facilitate private participation. A large majority (88%) favoured self-financing courses. Though the study was conducted on a small sample, of a size not sufficient to enable broad generalisations, it does seem to indicate a generally optimistic view of privatisation⁴⁶.

Clearly quality assurance is an issue that remains to be resolved where private providers are concerned. Public policy has thus far allowed the market to determine the value of degrees awarded by private institutions and has failed to recognise several peculiarities about private higher education delivered in an unregulated market environment. Unlike other services, competition between private providers fails to set prices in higher education because there is no reliable way of determining their relative value. In this context, sporadic interventions by the courts for over a decade combined with the national government's ambivalence have not helped to check the errant behaviour of unscrupulous private providers, and even credible private providers are driven to exploit loopholes in the existing regulatory environment, if only to survive. The principle of Gresham's Law, with bad providers driving out good, seems likely to apply. In the absence of credible information sources and an objective, transparent process for the determination of institutions' comparative merit, this situation seems likely to continue, all the more so because there is a general feeling that private higher education in India is insufficiently liberalised and that strict regulations encourage corrupt practices. Experience has shown that private providers have as yet done little to build public trust in their ability to regulate themselves. Recent efforts by two chambers of commerce to organise private higher education providers into an association may, if successful, help both to create this public trust and to achieve a more reliable way of determining value⁴⁷.

⁴³ Anandakrishnan, M (2006), 'Privatisation of higher education: opportunities and anomalies', *National seminar report on privatization and commercialization of higher education*. NIEPA, New Delhi.

⁴⁴ Based on AICTE Advt. No. AICTE/Legal/04(01)/007 issued in April 2007.

⁴⁵ Based on AICTE Advt. No. AICTE/Legal/04(02)/2007 issued in April 2007.

⁴⁶ Azad, JL & R Chandra (2002), *Partnership of private sector in financing and management of higher education – An in-depth study*. NIEPA, pp.114-47.

⁴⁷ The PHD Chamber of Commerce's Education Promotion Society of India and the Federation of Indian Chambers of Commerce and Industry's FICCI-HEN (Higher Education Network).

Private higher education has definitely helped to build capacity, particularly in professional fields. Private institutions, driven by market forces, are often more efficient than their public counterparts and even provide essential infrastructure facilities that are in many cases superior to those available in the public universities and colleges because they are purpose-built for professional programmes rather than existing facilities simply repurposed for new programmes. However, there is also large numbers of private institutions lacking even the minimum infrastructure and facilities that cut corners in everything, compromising the overall quality and reputation of higher education in the search for profits. Regulation would help to minimise the latter category of provider.

6.2 Prospects

Trends over the past two and a half decades suggest that whilst public higher education is likely to move at a glacial pace to create new capacities, private higher education will grow rapidly. Please see Table 4 below for future growth trends forecast for various types of institutions in the country.

Table 4: Current status (2006-7) and growth prospects by type of institutions

Type	Ownership	Financing	Number of institutions	Students Enrolled	Growth trends
Universities					
Govt. Universities	Public	Public	251	1,100,000	Not growing
Govt. Deemed Universities	Public	Public	38	40,000	Growing slowly
Private Deemed Universities	Private	Private	72	260,000	Growing rapidly
Private Universities	Private	Private	10	60,000	Emerging
<i>Sub total</i>			<i>371</i>	<i>1,460,000</i>	
Government Colleges	Public	Public	4,250	2,800,000	Not growing
Private Aided Colleges	Private	Public	5,850	3,550,000	Not growing
Private Colleges	Private	Private	7,964	3,400,000	Growing rapidly
<i>Sub total</i>			<i>18,064</i>	<i>9,750,000</i>	
Foreign Institutions*	Private	Private	150	12,000	Emerging
Total			18,585	11,222,000	

* Either twinning arrangements or franchise operations.

In most professional fields, higher education provision will be dominated by private provision, whilst within the public university system self-financing courses will grow rapidly, and distance education will

also expand fast. The growth of an increasingly private provision, even within the public universities, could make higher education more expensive and exacerbate the problem of equity. Government regulation will also continue to be a contentious issue, though if private providers organise themselves around ethical practices and earn the trust of the general public this regulation could become irrelevant.

Despite the common belief that private providers prefer to operate in an unregulated market, a recent survey by the Federation of Indian Chambers of Commerce and Industry (FICCI) about perceptions of higher education in India suggests that these providers prefer predictability and transparency in regulation to no regulation⁴⁸. There is a case for making the regulatory regime less burdensome, but more important is to ensure that it does not change with a change in government or at the whim of the Supreme Court and that it is uniformly applied to all. Experience in other countries has shown that the absence of regulation is not a precondition for growth in private higher education. In terms of regulation of private higher education, the example of Korea is worth noting. Korea has one of the highest gross enrolment ratios in higher education in the world, with more than 80% of it being in the private sector. With the higher education system dominated by the private sector, Korea faced difficulties in maintaining the quality and integrity of higher education, so the Korean government tightly regulated higher education. It was only in 1995, once this regulation had achieved its objectives, that Korea moved towards liberalising the private higher education to make it more competitive. This two-step process towards liberalisation might be a reasonable approach in India as well.

The National Knowledge Commission (NKC), in its *Report to the Nation* submitted in November 2006, argued for a restructured regulatory framework. The report notes that the existing framework, rather than fostering accountability, constrains the supply of good-quality institutions whilst excessively regulating the existing institutions in the wrong places and is not conducive to innovation or creativity. The commission has recommended an Independent Regulatory Authority for Higher Education (IRAHE) to replace the existing flawed system with its multiplicity of agencies with confusing and overlapping mandates, formidable entry barriers and absence of competition.

The Commission report was marred with controversy as soon as it was released, with the Vice-Chairman of the commission disowning its recommendations. Moreover, as the Nodal Ministry of the Indian government has been lukewarm to the NKC since its inception, the report's thoughtful analysis and recommendations seem unlikely to have any impact. Unless circumstances change, Indian public policy seems likely to continue being driven by a combination of ideology and vested interests, with judicial interventions confusing rather than clarifying the role of private initiatives.

7. Summary and conclusions

This report shows that higher education in India is being *de facto* privatised on a massive scale. Among the countries for which information has been gathered by the Program for Research on Private Higher Education (PROPHE), India's level of private enrolment exceeds 35 countries and trails just 12⁴⁹. Signs point to an increased role for private providers, despite some justifiable concerns, particularly in the government. The growth of the private higher education sector in India has been simply allowed to happen for more than two decades, with few measures aimed at enabling, promoting or directing it. Most private institutions are commercially-oriented (though they may claim to be otherwise) and prepare graduates for job markets. This private boom in India has been among institutions that absorb demand that the public sector could not or would not meet.

⁴⁸ This was the finding of the survey *Understanding of private higher education in India: A stockholder's perspective* conducted on behalf of FICCI in 2006.

⁴⁹ Data is quoted from Levy, DC (2007), 'Commonality and Distinctiveness: Indian Private Higher Education in an International Perspective,' in A Gupta, D Levy and K Powar, eds, *Indian and International Private Higher Education*, Shipra Publishing, New Delhi (forthcoming).

To date, private higher education in India has developed in an environment almost amounting to a policy vacuum, largely in low-risk, high-profit segments of the sector that essentially train the workforce of the future. In that context, the continued unchecked expansion of private higher education would leave large gaps that public higher education would be required to fill, such as the liberal arts, humanities and languages as well as postgraduate education and research. Public funding would also remain necessary to provide an education for those who cannot pay. Foreign providers have a role to play as well, by energising local providers through both example and competition. A pragmatic approach is required in the formulation of public policies to govern these three important components of higher education. Whilst appropriate regulations could help to eliminate profiteering and poor quality, all efforts to burden the overloaded regulatory bodies to maintain quality standards and ethical practices would be wasted unless accompanied by a clear understanding of the roles of private, public, and foreign provision in higher education. What is required now are coherent policies that recognise the complementarities of public and private higher education, and a sound regulatory framework that keeps the interests of the students at the centre for domestic as well as foreign providers.

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