

INDIA POLICY FORUM 2007

**INDIAN HIGHER EDUCATION REFORM:  
FROM HALF-BAKED SOCIALISM TO HALF-BAKED  
CAPITALISM**

DRAFT PAPER

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“Our university system is, in many parts, in a state of disrepair...In almost half the districts [340] in the country, higher education enrolments are abysmally low, almost two-third of our universities and 90 per cent of our colleges are rated as below average on quality parameters... I am concerned that in many states university appointments, including that of vice-chancellors, have been politicised and have become subject to caste and communal considerations, there are complaints of favouritism and corruption.”

Prime Minister Manmohan Singh’s address at the 150th Anniversary Function of University of Mumbai, June 22, 2007<sup>1</sup>

## I. INTRODUCTION

This paper examines the political economy of Indian higher (tertiary) education. The key argument of this paper is that higher education in India is being de facto privatized on a massive scale.<sup>2</sup> But this privatization is not a result of changing ideological commitments of the key actors—the state, the judiciary or India’s propertied classes. Rather, this privatization has resulted from a breakdown of the state system. As a result, it is a form of privatization in which ideological and institutional underpinnings remain very weak. Instead of being part of a comprehensive program of education reform, much of the private initiative remains hostage to the discretionary actions of the state. Consequently, the education system remains suspended between over-regulation by the state on the one hand, and a discretionary privatization that is unable to mobilize private capital in productive ways. The result is a sub-optimal structuring of higher education. The most potent consequence of this is a secession of the middle class—ironically the very class whose interests these institutions were supposed to serve—from a stake in public institutions.

Our argument proceeds in the following steps. We first provide an empirical mapping of Indian higher education. We then demonstrate that a de facto privatization of Indian higher education is occurring as a result of the exit of Indian elites from public institutions, to both private sector institutions within the country as well as those abroad. In the next section, we examine the political economy of Indian higher education and argue that three key variables help understand the political economy of India’s higher education: the structure of inequality in India,

the principal cleavages in Indian politics, and the nature of the Indian state. We subsequently examine the hypothesis of “middle class capture.” We question this hypothesis and argue that education policy is being driven by a combination of political and financial interests rather than those of the middle class. Subsequently, we examine the role of the courts in shaping the regulatory landscape of Indian higher education and argue that they are an important actor in shaping policy in this sector, but they have done as much to confuse as to clarify the regulatory framework of education. We then examine the changing patterns of private philanthropy in education and argue that even in the philanthropic or non-profit sector there is an increasing withdrawal from public institutions.

## II. STRUCTURE AND SCALE OF INDIAN HIGHER EDUCATION<sup>3</sup>

In 1950-51 India had 27 universities, which included 370 colleges for general education and 208 colleges for professional education (engineering, medicine, education). At the beginning of the 2006/2007 academic year, India had 369 Universities (comprising 222 State Universities, 20 Central Universities, 109 Deemed Universities, 5 Institutions established under state legislations and 13 Institutes of National Importance established by Central Legislation). In addition, there are 18,064 colleges. The total number of students enrolled in the universities and colleges was 11 million of which 13 percent were in University Departments and the rest in affiliated colleges (MHRD 2007). While we don't have data for the distribution of students by discipline, in 2003 of the 2 million-odd graduates, engineering and medicine graduates accounted for 7 percent and 0.7 percent respectively.

Nearly two-thirds of the colleges in 2005 were classified by the University Grants Commission (UGC – the apex government regulatory body for higher education) as “Arts, Science, and Commerce Colleges” (Table 1). Recent growth is much greater in professional colleges (especially engineering, management and medicine), as well as in private vocational courses catering especially to the IT sector.

**[Table 1 somewhere here]**

There has been a rapid expansion in higher education, with student enrollment growing at about 5 percent annually over the past two decades. This growth is about two-and-half times the population growth rate (Table 2), and results from both a population bulge in lower age cohorts as well as increased demand for higher education. However, even today's gross enrollment ratio of Indians in institutions of higher education is approximately 10 percent of the age cohort, which is considerably higher than developing country averages, but lower than the average for Asia as a whole and much lower than OECD countries. Enrollment ratios vary across Indian states, with the southern and western states faring better than their eastern counterparts (Table 3). Women now constitute about 40 percent of all student enrollments, varying from a low of 20 percent in Orissa to a high of 58.8 percent in Kerala (Table 3). The bulk of students (nearly two-thirds) are enrolled in arts and science, with another 18 percent in commerce/management (Table 4a and b). This is of some importance because most "private investment" in higher education is concentrated in engineering, medicine and management, and consequently does little for the majority of students. Notwithstanding the great hopes reposed by a spate of committee reports on alternative sources of funding for higher education, the state will continue to have to occupy the commanding heights of at least this sector of the economy.

**[Table 2, 3, 4a and 4b somewhere here]**

Although total expenditure on higher education has risen since independence, from 483 crores to 2418.3 crores between 1980 and 1995, spending per pupil in real terms declined for nearly two decades (Tilak, 1997), before recovering modestly. Higher education occupies a low priority in public expenditure (Table 5). Its share of GNP was nearly 1 percent during the 1970s, just 0.35 percent in the mid-1990s, before increasing modestly to 0.6 by the end of the decade. After the formulation of the New Policy of Education (NPE) in 1986, the central government gradually increased its contribution to the funding of elementary education, and this trend

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continued in the 1990s. As a result, in total expenditure on education, the share of higher education spending declined from 12.2 percent during 1982-92 to 11.4 percent for the states, and more dramatically, from 36.2 to 23.3 percent for the center. Notwithstanding the high growth rate after economic liberalization, the real rate of growth of public expenditure on higher education declined from about 5.5 percent during 1982-92 to 5.3 percent 1993-2004, largely because of deceleration in spending by the states. The average real expenditure on higher education per enrolled student declined at 2.4 percent annually during this period - from Rs 8,322 in the period 1981-82 to 1991-92, to Rs 6,790 in the period 1992-93 to 2003-04 (at 1993-94 prices).

### **[Table 5 somewhere here]**

Until very recently, most state governments had virtually ceased to expand the list of government aided institutions, thereby increasing the percentage of “self-financed” or “private unaided institutions,” most noticeably in professional and technical education. In contrast to cash-strapped state governments, in June 2007 the Center announced plans to set up and fund 30 new central universities across the country. India has 20 central universities (18 funded by the UGC), spread over just 9 states, Delhi and Puducherry. The remaining 19 states of India would receive first priority in getting central universities. In addition, the central government announced that it would work with the states to support the expansion of colleges to the 340 districts that have extremely low college enrolments. To increase the likelihood of enrolment from these districts it also announced plans to set one high-quality school in every block of the country (6000) which would also establish benchmarks for excellence in public schooling.

### III. DE FACTO PRIVATIZATION

For Indians, higher education has been, in Stanley Wolpert’s evocative words, “the swiftest elevators to the pinnacles of modern Indian power and opportunity.” This realization, coupled with the severe limitations of publicly funded higher education institutions and the

greater purchasing power of the middle class, means that Indians are prepared to pay rather than be denied. According to NSS data, the government's share in overall education expenditure has been declining steadily, from 80 percent in 1983 to 67 percent in 1999. For states like Kerala, the decline is steep, from 75 to 48 percent, while for Madhya Pradesh it is from 84 percent to 68 percent. Indeed, while private expenditure on education rose 10.8 times between 1988 and 2004, that for the poor rose even faster, by 12.4 times. Many students who formally enroll in publicly funded colleges and universities barely attend classes there. Instead, they pay considerable sums to the burgeoning private sector vocational IT training firms such as NIIT and the Aptech or in new professions such as the "Aviation University" being set up by the UB group.<sup>4</sup>

However, the most noticeable trend has been the transformation in the provision of professional education, especially engineering, medicine and business schools. We analyzed data on all medical and engineering colleges in India to understand how the ownership structure has changed over the last four decades. Data for medical colleges was obtained from the Medical Council of India's website, which gives the year of establishment, an ownership classification as "Government" or "Private" (institutions set up under the Societies Act or as trusts), and the number of seats for each institution.<sup>5</sup> We examined data for 19 major states of India—Assam, Andhra Pradesh, Bihar, Chattisgarh, Delhi, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Tamil Nadu, Uttar Pradesh, Uttaranchal and West Bengal. Similar data for engineering colleges was obtained from the All India Council for Technical Education.<sup>6</sup>

The data are presented in Table 6 and Figures 1 and 2. In the case of engineering colleges, the private sector, which accounted for just 15 percent of the seats in 1960, now accounts for 86.4 percent of seats and 84 percent of all engineering colleges. In the case of medical colleges, the private sector dominance is less stark, but the trend is unambiguous: the proportion of private seats has risen from 6.8 percent in 1960 to 40.9 percent in 2003. While we

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do not have precise data, the situation in the 1000-odd business schools suggests that 90 percent are private. Even in general education, there is now a mushrooming of private, self-financing colleges. In Kanpur University (in UP), the number of such colleges outnumber state assisted colleges 3 to 1, while in Tamil Nadu, self financing colleges comprise 56 percent of general colleges and 96 percent of engineering colleges (Srivastava, 2007). Educational institutions, including private universities and coaching centres, have emerged as the largest advertising spending category in print media (which has the largest share of the advertising market in India).<sup>7</sup> Even as political parties rail against *de jure* privatization, *de facto* privatization continues unabated.

### **[Table 6, and Figure 1 and Figure 2 somewhere here]**

For long, it was taken for granted that private universities (as distinct from private colleges) needed approval from the UGC. After the break-up of Madhya Pradesh, the Ajit Jogi-led Congress government in Chhattisgarh saw a regulatory loophole and enacted the Private University Act in 2002. 108 such universities came up in the state, with 94 in the state capital (Raipur) alone. After a new BJP government came to power, it passed the Private University Amendment Bill in 2004, under which proprietors of all private universities would have to deposit Rs 2 crore with the government and prove that they have 25 acres of land for their institutions. Belatedly, the UGC came up with the UGC Establishment of and Maintenance of Standards in Private Universities Regulations 2003. Each private university would now require a separate State Act conforming to the relevant provisions of the UGC Act. Interestingly, the private universities set up were using the state's regulatory largesse, and, even to the limited extent they were delivering educational services, were doing so outside the state, under the nomenclature of these being off-campus centers. The new UGC regulations try to curb this loophole as well. A university set up under a State Act shall operate "ordinarily within the boundary of the State concerned," and can open off-campus centers (outside the home state), off-

shore (abroad) centers and study centers only “after the development of main campus ... and after five years of coming into existence.” Even then, it would require the prior permission of the UGC and the government of the host state, and such approval would be forthcoming in unspecified “exceptional circumstances.” On the other hand, the admission, fee structure and programs of study of the private university will have to conform to the norms and regulations prescribed by the UGC and other statutory bodies.<sup>8</sup>

The degree to which states have allowed the establishment of private higher education institutions varies considerably (Table 6). The number is greatest in the southern states and Maharashtra, and least in states like Bihar and West Bengal. However, most other state governments are now following suit. Caught between ballooning expenditure on higher education and Delhi’s refusal to provide the states with a financial cushion in this sector, even West Bengal has begun to reduce funds to meet the salary requirements of teachers and non-teaching employees for private undergraduate colleges in Calcutta (Mukherjee, 2004). Gradually, the state plans to eliminate its annual commitment of Rs 350 crore on the more than 240 general-degree colleges run by private bodies. However, the state government has been adamant that any self-financed undergraduate general degree colleges be affiliated with Calcutta University.<sup>9</sup>

There are three key reasons for the expansive stance of political parties from all ends of the ideological spectrum: the state’s fiscal exhaustion; partial diffusion of the reservation conundrum by expanding supply; and, with earlier sources of patronage exhausted, the search for new sources of patronage. The *license raj* may have been dismantled in industry, but it is flourishing in higher education. The non-profit status allows for tax exemption and makes it easier to launder money; it also gives access to free land without inviting a PIL; and, given the demand, virtually any institution has a market. We examine the governance of private sector institutions in greater detail in the next section.

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The exit to private suppliers of higher education is a phenomenon not limited to India's borders. While the numbers are lower, the overseas purchase of higher education has much greater financial implications. In 2006 we estimate that there were more than 150,000 Indian students studying abroad – nearly 80,000 in the U.S., about 40,000 in Australia, 19,000 in UK, and another 11,000 in Canada, New Zealand and Singapore. Pre-liberalization, the figures were barely one-fifth of this number. The main growth has been in undergraduate education and professional degrees (especially MBAs), both of which require students to put up their own money. We have two estimates of the amounts spent by Indians on consuming education abroad: invisibles data from the RBI balance of payments and our own calculations based on average costs of education in these countries with allowances for scholarships. The RBI estimate was \$1.06 billion in 2005-06, more than 10-fold the amount in 2000-01 (\$95 million). This is a lower bound, since in many cases the money is paid from overseas. Our estimate for 2005-06 is about \$3.5 billion, a staggering amount for a poor country whose own educational institutions are starved of resources (Figure 3).

### **[Figure 3 somewhere here]**

Even more important than the financial costs are the implications for public education when elites leave. Indeed, the problem is a more basic one—the consumption of public services by elites has adverse distributional effects. But when elites exit, so does their voice. The big difference between the higher education systems of Pakistan and India is that elites in the former usually send their children abroad even for undergraduate education, and consequently have little stake in the system. The results have been disastrous for higher education in Pakistan. Soon, India may face a similar problem.

This reality is lost to Indian policy elites, especially in the HRD Ministry which is strongly opposed to the GATS (although the Commerce Ministry has been an advocate). The Indian policy is expressed by the HRD Ministry: “The revised offer made by India at the GATS was to partially open up the Higher Education Sector under the condition that Higher Education

Institutions can only charge fee as fixed by an appropriate authority and that such fees do not amount to charging capitation fee or lead to profiteering. The provision of the Higher Education services would also be subject to regulations already in place or to be prescribed by an appropriate regulatory authority” (MHRD, 2006-07).

#### IV. POLITICAL ECONOMY OF HIGHER EDUCATION

The case for public investment in higher education is well established. Higher education suffers from a variety of market failures. But what should be the extent of public investment in higher education? And in which areas, at what levels, and on whom? The answer to these questions depends in part on what a society takes to be the purpose of higher education. This question is not an easy one to answer. It is easier to account for individual motives for pursuing higher education, including a desire to increase one’s social mobility. But what are the goals of higher education for society at large? Is the goal of higher education to solely increase economic growth? Is it to create better informed citizens, a merit-based competitive social space and expansive social opportunities? Or does it reflect a commitment to equality? Is it fuelled by a commitment to the cause of education itself, independent of any serious consideration of returns? Arguably, higher education is propelled by all of these considerations, but the regulatory structure will depend in part on which considerations are paramount. In this section we argue that a misguided form of egalitarianism has marked India’s policies in higher education, and that this form of egalitarianism has been self-defeating for the education sector.

To understand the political economy of higher education in India requires an examination of the case for government subsidies for higher education. Policy discussions on this issue are extremely unclear on the distinction between subsidy and investment, exemplified by two World Bank documents that have informed the GOI’s higher education funding policy discussions. These documents highlight the ambivalent place of higher education in the overall political economy of development, an ambivalence that marks Indian higher education policy.

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In 1994, the World Bank produced a report entitled, *Higher Education: The Lessons of Experience*, and followed-up with another report in 1995, *Priorities and Strategies for Education: A World Bank Review*. The 1994 report emanates confusion, obfuscation, and a general uncertainty about its subject matter, and ultimately stresses that higher education should not have much priority in development strategies. To quote:

Indeed, it is arguable that higher education should *not* have highest priority claim on incremental public resources available for education in many developing countries, especially those that have not yet achieved adequate access, equity and quality at the primary and secondary levels. This is because of the priority these countries attach to achieving universal literacy; *because the social rates of return in investments in primary and secondary education usually exceed the rates of return on higher education* and because investment in basic education can improve equity because it tends to reduce inequalities. (World Bank, 1994, p.3)

Ironically, the executive summary of the same document reads:

Higher education is of *paramount* importance for social and economic development. Institutions of higher education have the main responsibility for equipping individuals with advanced knowledge and skills required for positions of responsibility....*estimated social rates of return of ten percent or more in many developing countries also indicates that investments in higher education contributed to increase in labor productivity and to higher long term economic growth essential for poverty alleviation.* (World Bank, 1994, p.1)

There is a substantial technical literature debate on the social rates of return on investment in higher education, which is not our concern here. The manner in which this debate was carried out in India provides a window into the political economy of higher education. The allegedly low social rates of return on higher education were frequently deployed during 1990s to reallocate public expenditure away from higher education. It has become commonplace to argue that India was anomalous in the emphasis it placed on higher education at the expense of elementary and secondary education. While the unconscionable neglect of primary education has distorted India's social policy, it is difficult to make a case that this is because of an overemphasis on higher education. India's gross enrollment ratios in higher education are still relatively low (around 10 percent) and, as the Table 5 shows, since 1999s, expenditure on higher education as a percentage of total expenditure on education remained roughly 18-19 percent, or about 0.6-0.7 percent of GDP. These ratios hardly signal an overemphasis on higher education.

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The modest expenditures on higher education were concurrent with a rapid increase in enrollment in higher education. Furthermore, there was little move by the government to remove subsidies and recovering user costs. The recovery of user costs (or costs recovered from students) remained at roughly 5 percent during the entire decade, substantially less than the Punayya Committee's recommendation that the government aim at recovering 25 percent of costs from students.<sup>10</sup> A third hypothesis might argue that the government was genuinely moving toward giving a relative priority to primary education. What this suggests, however, is that while there was great pressure on the state to expand higher education, this pressure has been largely expressed as a demand for more seats rather than as a demand for higher quality or greater expenditure. Indeed, it could be argued that the 1990s allowed the government to expand higher education without increasing spending because of a conjuncture of factors. First, the demand for higher quality education is muted by the secession of the best of the middle class from public institutions. If the best graduates can seek education abroad, or are reconciled to private education, there is less pressure to reform quality. Second, insofar as there is pressure to have good quality institutions of higher education, this pressure is expressed in the form of a desire to attend prestige institutions (IIT's and IIM's) rather than in pressure to enhance the median quality of education. Third, the inability to increase spending also paralleled the biggest expansion of affirmative action ("reservations") in higher education. Is this merely a coincidence?

Inspired by the same World Bank documents mentioned above, the Department of Economic Affairs, in its 1997 discussion paper, *Government Subsidies in India* (GOI, 1997), argued for a reduction of subsidies to higher education. It claimed that education beyond the elementary level is a "non-merit" service, because the benefits of the subsidy accrue primarily to the recipients. It argued that the private rates of return are greater than social rates of return in higher education; hence, subsidies should be phased out.

One of the assumptions of this paper was that "most subsidies to higher education accrue predominantly to the better off sections of society." This argument has been frequently deployed

and has become a staple criticism of government subsidies to higher education. And it has been used to explain the contours of India's Higher Education Policy. But this argument has to be taken with a grain of salt. For one thing, there is little doubt that marginalized groups have been given much greater access to education as a result of government subsidies. The ratio of male to female students in higher education dropped from 8.3:1 in the 1950s to almost 1.5:1 by the late 1980s. All the evidence from studies of primary and secondary education suggests that the place where parents discriminate most against a female child is in the preference for public versus private expenditure. Parents are more likely to incur private expenditure for sons than daughters. If this is the case, it is difficult to imagine these ratios dropping in the absence of public subsidies.

Another piece of evidence against the proposition that education subsidies go largely to the privileged is the increase in enrolment of India's most marginalized social groups, namely Scheduled Castes (SC) and Scheduled Tribes (ST). The ratio of general to SC/ST students has dropped from almost 12:1 in the late 1950s to 8:1 during the late 80s to just above 6:1 in 2004.<sup>11</sup> There is no reliable study on this, but there is strong suggestive evidence to show that the proportion of first generation graduates in universities has been rising dramatically in both state and, to a somewhat lesser degree, Central Universities. If one uses the fact that at least one parent was a graduate as a proxy for privilege, then the dramatic increase in the proportion of first generation graduates belies the claim that state expenditure only subsidizes the privileged.

Global patterns of funding clearly show that higher education remains very much a state-dominated sector. In OECD countries such as Denmark and Holland, public funding provides 98 percent of the resources for higher education; the figure is almost 90 percent for Canada. Even in the United States, the figure is as high as 78 percent. There is absolutely no doubt (the Bank's rhetoric on social returns notwithstanding) that the public sector has a preeminent role to play in higher education.

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Three key variables help understand the political economy of India's higher education: the structure of inequality in India, the principal cleavages in Indian politics, and the nature of the Indian state. While India is not exceptional by conventional measures of income inequality, it is an outlier when measured by educational inequality. Indeed, India is to educational inequality what Brazil is income inequality (Kapur, 2007). Such extreme inequalities inevitably result in populist redistributive backlash. However, the specific redistributive mechanisms are conditioned by the principal cleavages in Indian politics and the nature of the Indian state. The growth of identity politics has sharply enhanced political mobilization around two key cleavages in Indian society: caste and religion. Consequently, redistributive measures follow these two cleavages rather than other possibilities such as income and class, region (urban-rural), or gender. Moreover, given the fiscal constraints of the Indian state and the shifting locus of rents, since the resources available for redistribution are very limited, redistribution focuses on much more "visible" forms. This explains why India's poverty alleviation programs focus on "visible" club goods (NREGA) rather than less visible public goods such as health and education. And this is also why in recent years India's politicians have obsessed over reservations in elite institutions in higher education rather than improve the quality of primary, secondary schooling and the thousands of colleges of abysmal quality.

The battle over admissions to higher education institutions in India is as old as independent India. In 1951 a Brahmin girl was denied admission to a medical college in Madras even though she had scored sufficient marks. The student appealed to the Supreme Court claiming she had been discriminated only based on her birth (caste). The Court agreed and struck down the Madras government order.<sup>12</sup> Major agitations broke out in the state and the resulting pressure forced India's first constitutional amendment even before the Lok Sabha had been formed. The amendment (adding Clause 4 to Section 15 of the Constitution) now read: "Nothing in this Article or in Clause 2 of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or

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for the Scheduled Castes and the Scheduled Tribes.” The unambiguity implied in “nothing” combined with complete ambiguity of the term “socially and educationally backward classes” would prove fertile terrain for political populism.

The social reengineering that began in Madras province gradually spread to the rest of India over the next half century. The confluence of identity and redistributive politics meant that higher education – the erstwhile preserve of India’s upper castes – would inevitably become the battle ground of politics, especially as the “silent revolution” empowering lower castes gathered force. Indeed the mismatch between new social groups holding political power and erstwhile dominant social groups entrenched in universities led the former to deliberately undermine state universities (exemplified in Bihar in the 1990s), since in doing so they were also undercutting the social power of old upper caste elites.

The other cleavage of Indian politics – religion – is also manifest in higher education policies. The India Constitution (Articles 29, 30) provides special protection to linguistic and religious minorities in the country, allowing them to preserve their culture and traditions through minority institutions with few government controls. However, when government controls are circumscribed for “minority” institutions but mount for all other private higher education institutions, the incentives for each group to classify itself as a minority are obvious. Meanwhile, those minorities for whom the original protection was put into place – Muslims – get little more than symbols. The HRD Minister Arjun Singh’s declaring AMU “a minority” – later declared unconstitutional by the courts – even when the Muslim community was not pushing for it, is a case in point. When the Sachar committee on the status of India’s Muslims showed that the socio-economic status of Muslims was relatively lowest in the states ostensibly most committed to secularism – the SP-governed UP, and the CPM governed West Bengal – the states rushed to announce the creation of special universities for Muslims. A day after the final exit polls for UP elections in 2007 showed the SP losing, the government of Mulayam Singh Yadav called a special session of the State Assembly whose sole agenda was to pass a bill granting minority

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status to the Mohammad Ali Jauhar University in Singoor in Rampur (the constituency of his Urban Development Minister, Azam Khan) and making Khan the University's lifelong chancellor. With the University having been accorded minority status, any irregularity in its functioning can now be probed by the University Grants Commission only after being cleared by a three-fourth majority in the Assembly.

In 2007, India's best know liberal arts college, St Stephen's College announced a new reservation formula for Christians and the introduction of a separate quota for Dalit Christians citing the college's "Christian foundation" and unambiguous identity as a "mission college" to justify the new quotas. 40 percent of the seats in the college will now be reserved for Christian students as against the earlier 32 percent, and 25 percent of these will be set aside for Dalit Christians. Quotas for SCs, STs, disabled, sports and children of defense personnel will add another 20-odd percent. Only 40 percent will be purely on test results—this, in an institution where 95 percent of the funding of the college is from the Government of India (via the UGC).

The creation of many new central universities are also driven by similar motives. The Babasaheb Bhimrao Amedkar University and Mahatma Gandhi Antarrashtriya Hindi Vishvavidyalaya have total enrolments of 435 and 200 respectively, a decade after they opened – hardly the sorts of numbers that would enhance the ostensible social goals underlying their creation.

Nonetheless, the choice of instruments used by the Indian state to advance the cause of "backward classes" remain puzzling. Consider the recent extension of reservations to OBCs in the Indian institutes of Technology (IITs) and Indian Institutes of Management (IIMs) on grounds of helping India's "depressed classes." The total number of annual admissions in the IITs are just 5500 and the IIMs a further 1200. The second-tier national engineering colleges (the National Institutes of Technology (NIT)) have another 11,000. The number of engineering colleges in India nearly tripled in the last decade – from 562 in 1997-98 to 1522 in 2006 – while their annual

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intake grew from 134,298 to 550,986 (MHRD 2007). Thus, although the IITs account for just 1 percent of all engineering graduates – they attract most of the attention.

Entrance Exam	Number of Examinees	Successful candidates	Percentage successful
CAT (IIM)	180,000	1200	0.66
JEE (IIT):	300,000	5500	1.8
All-India PMT	214,503	1654	0.77
All-India Engineering Exam (NIT)	490,193	11,000	2.24

Prima facie it may appear that equity goals may be better pursued in expanding the size and quality of the base. The dismal condition of public primary education is a stark testimony to the level of commitment to this ideal. However, it could be argued that even with the best of intentions the sheer magnitude of the task means that it would take a long time. Why not try something that would promise faster, though more limited results? If that were the case, then interventions at the secondary school level would be warranted. The gross enrollment ratio in Class IX-X is 51.65 percent but drops sharply to 27.8 percent at XI-XII. Even a modest reduction in the dropout ratio could significantly increase the potential college-going pool among the backward classes. But there has been little effort directed to this end. Lets suppose that there is an imperative need to immediately improve access to tertiary education to the backward classes. Clearly, sharply increasing the resources directed for this purposes would a beginning. At the secondary level, the Annual Plan expenditure for the purposes of improving “Access and Equity” is Rs 3.9 crores while another Rs. 3.7 crores has been earmarked for “Quality Improvement in Schools.” At the tertiary level, UGC’s entire expenses to this end are Rs 84 crores: Rs 26 crores for special development grants to universities and colleges in backward areas; Rs 25.6 crores for remedial coaching of SC/ST students and disadvantage minority communities; and Rs. 8.8 crores for coaching SC/ST students and disadvantage minority communities for entry into services. There is no evidence of the effectiveness of these programs.

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An insight that might explain the choice of instruments comes from Mani and Mukand (2007), who argue that a “visibility effect” distorts governmental resource allocation and explains why governments neglect provision of essential public goods, despite their considerable benefits. Greater democratization widens the gap in resource allocation between more visible (such as specific poverty projects) versus less visible (such as malnutrition prevention) public goods, up to an intermediate level of democracy (after that this gap decreases). The specific instruments to address distributive issues in India illustrate this trend.

The university system in India is the collateral damage of Indian politics. The vast majority of government colleges in small towns offer dismal educational outcomes, the result of tight control of appointments, fees, curriculum, capital improvements. With fees in some of these colleges capped as low as Rs 9 per month, and the state picking up salaries for civil service like faculty jobs, with little work burden, there are considerable rents around to get those jobs. Running government higher education institutions to the ground is not the result of limited resources but a matter of deliberate strategy. For politicians, there are four benefits of the license-control raj:

1. *Old-fashioned rent seeking on contracts, appointments, admissions and grades:*<sup>13</sup> At the Centre the HRD Ministry appoints more than 100 heads of the key higher education institutions. There are hundreds of discretionary grants to government-aided institutions and building contracts. The situation is far worse at the state level as the following examples illustrate.

Karnataka. The credentials of the nominees of JDS (Janata Dal Secular)-BJP coalition government to the governing syndicate of Bangalore University were so dubious as to be rejected by the previous vice-chancellor. A new more pliable VC has accepted all of them – and their power to steer contracts and appointments despite the Karnataka Universities Act, 2000 which requires all members of the governing syndicate of Bangalore University to be “eminent educationists.” The first vice-chancellor of the all-women Karnataka Women’s University, Bijapur has been indicted by the Justice S.R. Venkatesh Murthy Committee for large scale misappropriation and maladministration. Despite this indictment she remains in office. In Tumkur University, which exists on paper, the vice-chancellor is under investigation for running up huge personal bills on the university account. At the Rajiv Gandhi University of Health Sciences, Bangalore, the Central Bureau of Investigation has recommended the filing of criminal charges

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against the vice-chancellor, former registrar and 30 other officials for deliberately leaking question papers to favored students writing the University's postgraduate entrance test and tampering with their answer papers.

Uttar Pradesh. In September 2005, the vice-chancellors of four universities — Mahatma Jyotiba Phule University, Rohilkhand, Bareilly; Veer Bahadur Singh Purvanchal University, Jaunpur; Sardar Vallabh Bhai Patel University of Agriculture & Technology, Modinagar; and Chandrasekhar Azad University of Agriculture & Technology, Kanpur — were dismissed by state governor T.V. Rajeshwar Rao on corruption charges. In August 2006, Class V students were found grading the postgrad answer papers of LLB, BCA, MCA and nursing students of Chaudhury Charan Singh University, Meerut.

MP. In Ujjain University in 2006 a professor of Madhav College was beaten to death in daylight by student activists of the BJP-affiliated ABVP. Even as the trial of the accused is being held in BJP-ruled Madhya Pradesh, all witnesses in the case have turned hostile.

Maharashtra. Following numerous complaints of corruption and malpractice, the pro vice-chancellor of Bombay/Mumbai the university was dismissed in 2002. Shortly thereafter he was appointed chairman of the Maharashtra Public Services Commission and promoted to the Union Public Services Commission before he was arrested by the Anti-Corruption Bureau for large-scale corruption while he was chairman of MPSC. The chairman of Bharatiya Vidyapeeth (Deemed) University, which has branches across Maharashtra, a former education minister of Maharashtra, has been named in a CAG report for misusing his political influence to obtain land in Navi Mumbai at way below market price from MIDC (Maharashtra Industries Development Corporation) for the university.

Jharkhand. The chancellor recently froze the administrative and financial powers of the VC following charges against him include “wilful violation of rules and directions from the Raj Bhavan, making illegal appointments, making exorbitant payment to a private architect and unauthorised delegation of power.” Among other things, he had paid a Chandigarh-based firm of architects Rs 80 lakhs, solely at his discretion, for submitting plan for a building that would cost Rs 550 crore. The university's annual budget is only about 1 percent of this building's cost.

Bihar. A police raid on Magadh University in 2007 unearthed a “huge” volume of blank degree certificates, including those meant for MBBS and Ph.D scholars. The incriminating and unaccounted documents were found in two private printing presses, both owned by relatives of university officials and employees. The evidence collected so far indicate tampering with tabulation registers, addition of new pages and handwritten pages attached to printed documents. The team stumbled upon records of students declared to have passed the BEd examination but from colleges that do not exist. Answer scripts without names of the candidates were discovered by the team. A preliminary scrutiny revealed that students who had actually failed were declared to have been successful. The modus operandi, sources said, was to withhold results on flimsy grounds and negotiate with candidates to allot them marks. No entry had been made in the registration sheets since the year 2001. The registration documents of even previous years were found to contain blank spaces, which would have allowed for tampering and manipulation in future. Although MU has a printing press, it had outsourced the printing and binding of answer sheets – but the private contractors were using the university's printing press to do the work and raising bills, as if they were doing the work outside. Old and outdated books by foreign authors, published three decades ago, worth Rs 53 lakh were purchased for the MU library.

2. *Old fashioned patronage and partisan politics*: The use of state resources on higher education directed for partisan purposes has been an accepted practice ever since Mrs. Gandhi put large resources into the creation of JNU to buy out intellectuals of a specific ideological bent. In the last decade this has become more blatant, ranging from Murli Manohar Joshi's attempts to pack various ICSSR institutions with academically inept partisans to the Left Front government in West Bengal refusing to grant autonomous status to the venerable Presidency College, since it would then be unable to pack the faculty with its own supporters.

However, the demand-supply imbalance for affordable quality institutions has also led to bitter battles on the location of brand name central educational institutions. This ranges not just the IITs and IIMs, but central universities. Recently members of the Left parties and the Dravida Munnetra Kazhagam – fellow travelers in the UPA government -- nearly came to blows in the Lok Sabha over the introduction of the Indian Maritime University Bill, 2007 which sought to locate a national-level maritime university in Tamil Nadu (the state from which the minister is from) rather than Kolkata (which has had a long standing marine engineering college).<sup>14</sup>

3. *New entrepreneurial activities*: Parliament in independent India was initially dominated by lawyers. Subsequently, agriculturalists became dominant. Today “educationists” are probably the most prominent. In many cases they have a direct interest.<sup>15</sup> In other cases their names are used to signal protection, be it the Sharad Pawar University or the Arjun Singh Street in Jamia Milia University. The promotion of professional (medical, engineering, business management, etc.) colleges has become the private preserve of small-town politicians doubling as educationists. It makes good financial sense to run government-run higher education institutions to the ground since it forces students and parents to look for more meaningful alternatives in the private sector – which are controlled by them. Politicians have emerged as the singly largest provider of new higher educational institutions. The *license control raj* in higher education and the apparent horror of education becoming a commercial enterprise results in capitation fees driven

underground, thereby ensuring large amounts of untaxed income. And since the institutions are classified as Trusts and Societies, their reporting requirements are much less than if they were under the more transparent Companies Act.

4. *Colleges as screening mechanisms for politics:* It is usually assumed that an important function of higher education is to act as a signaling device to potential employers and labor markets. The better institutions indeed play that role in India. But the majority of government institutions (where the education is a farce) appear to serve a signaling role to an entirely different audience: political parties and politics. Since the education in these colleges – mostly in small towns and cities – have little effect in job markets, especially in the growing private sector, student politics serves as the signaling mechanism for aspiring politicians. The ability to win student elections and resort to street violence is an asset to all political parties.

#### *The Role of the Middle Class*

This paper argues that the political economy of higher education defies any easy explanation. Despite much talk about consideration of social returns on higher education, such rational calculations have rarely figured in the formulation of policy. The discussion of the “social returns” to higher education in almost all the relevant policy documents or committees has been nothing more than a passing gesture. This is not entirely surprising because the debate on the precise returns of different forms of education remains vague. Indeed, it is difficult to find evidence that the formulation of educational policy, at the level of the state, has been consciously responsive to changing market needs or expected returns. Indeed, as we shall give evidence below, the state has often done its best to stymie the market’s responsiveness of higher education.

In the past it was argued that higher education policy was driven by the needs of the middle class and reflected their dominance in the state. There is some truth to this explanation, but in its simple form it verges almost on a tautology. Because higher education almost by definition creates a middle class, any investment in this area is automatically seen as evidence of

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capture by the middle class. On what will higher education concentrate if not on either benefiting or creating a middle class? Our sense is that the story of the middle class relationship to higher education policy is somewhat more complex and paradoxical. On the one hand, the middle classes clearly have been a powerful lobby in maintaining lower fees and lower recouping of costs by the state. The middle classes have as much of a stake in preventing a regime in which higher fees are collected as newly aspiring entrants do. On the other hand, the middle class is de facto paying much higher costs for education. The only difference is that much of what the middle class pays will not accrue to *public* institutions of higher education. The complicated nature of the middle class's relationship to higher education can be understood with reference to three vicious circles within which Indian higher education is trapped.

The first such vicious circle is the *diminishing signaling effect*. As evident from Table 4, more than four-fifths of Indian students in higher education are not in professional schools like engineering or medicine. Investment in these institutions, on a per capita student basis, has been declining. In addition, most of 300-odd universities (especially state universities) to which the bulk of the student population is affiliated have stopped performing the essential functions of a university. The primary purpose of a university is to provide a minimal signaling effect to the job market. Most observers agree that Indian universities, with a few exceptions, do not perform this signaling effect. A degree from any of these universities could mean anything in terms of quality. Anyone familiar with the Indian education system knows that competitive exams have virtually replaced performance at the university level as a passport to further education or jobs. University degrees serve as formal minimal requirements but little else. A tacit acknowledgement of the breakdown of signaling effects of degrees comes from the principal regulatory authority of higher education, the University Grants Commission (UGC). For instance, in order to be eligible to teach at a public university, candidates with even a PhD have to take another qualifying test; this test was introduced to remedy the fact that the candidate's PhD in and of itself did not indicate anything about his or her abilities.

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Once the signaling effect of a university system breaks down, three consequences follow. First, the curriculum and pedagogy of the university become less compelling. There is little incentive to take education at the college degree level seriously, because these degrees are no more than purely formal requirements- they do not signal quality. Hence, there is no compelling demand for quality improvements in the bulk of higher education. Second, greater attention and resources are devoted to those arenas which now de facto perform signaling functions, such as entrance exams and competitive tests. This leads to the creation of an almost unparalleled system of education. Since the formal institutions are disconnected from these signaling mechanisms, informal institutions such as coaching classes dominate the intellectual space. Third, there is an attempt to secede from the system. The breakdown of the signaling system is such that Oxford Brookes University or Deakin University are thought to be more credible signal providers than most Indian institutions. But of equal importance is the fact that almost all of these institutions incur huge private expenditures (systematic data is not available), which are largely borne by the middle class. Indeed, if the middle class were influential, one would expect that there would be great pressure and momentum to restore the credibility and signaling effects of higher education.

A second vicious circle stems from an *ideological entrapment between half-baked socialism and half-baked capitalism*, with the benefits of neither. In some ways this is best exemplified by the fact that officially there is an enormous reluctance to see education as an industry or business. Officially, as per the Supreme Court's mandates in cases ranging from the Unnikrishnan case to the recent Minorities Institution case (discussed further in the next section), education can still not be a "for profit enterprise," though the Court will allow institutions to deduct "reasonable operating and other capital expenses." Second, the Courts have been very strict about merit-based admissions (except in cases of affirmative action). In public institutions the Court has come down severely on discretionary power of institutions in admissions policies. In the case of "private" institutions the situation remains murky, but the Court has tried a compromise formula whereby half the seats are reserved for pure merit and half are based on the

ability to pay. The details of regulatory control over education are complex but a few points stand out quite starkly.

First, there was a severe prohibition on public institutions mobilizing private resources in any form—higher fees, licensing arrangements, or philanthropy. While some of these regulations have been relaxed somewhat—we discuss them in the section of the paper concerned with philanthropy in the political economy of higher education—the net result was that a vast pool of private resources available could not be mobilized for public institutions. Although it seems only fair that no one ought to be able to “buy” one’s place into an institution of education, from another angle this prohibition seems almost perverse. It has the consequence of saying, “If you have money, you can spend it on education abroad, you can come to a private arrangement, or even waste it on any form of consumption, but the one thing you will not be allowed to do is to spend it at public institutions or on getting an education in India.” In effect, ideological commitment to some principle of equality has precluded the state from mobilizing the vast reservoirs of private money available for higher education. In a context where the sum total of private expenditures considerably exceeds expenditures by the state, this policy needs to be rethought. One would have thought that it would be in the interest of both the middle classes and newly rising social groups to find ways to access these resources. But ideological commitments have precluded such a mobilization. But because these funds have not been mobilized, the system of education deteriorates which, in turn, necessitates even higher private spending by the very classes that the egalitarian system was meant to protect.

Second, there has been a proliferation of private institutions, largely in the area of professional education. But again, the pattern of this expansion suggests that the middle class had very little influence on this policy. The rapid expansion of “capitation fees colleges” came about not as a result of great middle class pressure, but rather from the entrepreneurial activities of politicians.<sup>16</sup> While there is no systematic data on this trend, there is little doubt that a majority of these institutions have been supported or made possible by the direct involvement of politicians.

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In fact, we would argue that the growth of private colleges, while it helps relieve the pressure on public institutions, is not simply a rational response to expanding demand, but an opportunity to collect rents. This explains a couple of features of the rapid expansion of private colleges. First, all of these, in principle at least, come under the same panoply of regulations as state colleges. For instance, unless an institution is declared a deemed university (there are only sixty such institutions), the formal degree that is granted through these colleges is actually given by one of the existing state universities. The result is that there is virtually no pedagogical innovation or excellence associated with private institutions, because they are all determined by roughly the same curricular guidelines and rubrics as public institutions. Rarely—except perhaps in the case of management institutions—are these institutions driven by a sense of creating a market niche. Indeed, contrary to expectations due to the great middle class demand for education, it has not been a pressure group behind the deregulation of the education sector as a whole. The result is that Indian higher education is in a regulatory environment in which the private sector will not be deregulated, FDI will not be permitted (even “closed” China permits more FDI in education), the state sector is strapped for resources because of the government’s fiscal constraints, and public education cannot mobilize higher funds because of ideological commitments. It is something of a mystery (other than due to problems of collective action) why the middle class has not been more active in breaking this deadlock in line with its interests.

There is an inherent tension in the ideology of the Indian state towards higher education. On the one hand, education was going to be a means towards creating social mobility and equality of opportunity. But to create the conditions under which the education system can effectively serve these purposes requires a vast mobilization and commitment of resources. Since the state has been patently unable to do that, it interpreted equality of opportunity in almost a formalistic, even formulaic manner, where any difference or distinction was regarded as inimical to these goals. The state used the education system to *express* these commitments by insisting that there be no differentiation of fees, or even substantial differentiation of curriculum across two

hundred and fifty odd universities. Indeed, the crisis of standards that afflicts Indian universities is in part sustained by an ideological commitment to the myth that education should not be made into an arena of difference. This aspiration is in principle flawed, because higher education is, among other things, about creating distinction and excellence. It is true that the mandate of the state ought to be to enhance the median level of skills among citizens, but it is hard to imagine a robust system of higher education that does not perform the function of distinguishing the skills and qualities of its students. The suspicion of excellence in Indian higher education was a result of this commitment, and was in part instrumental for destroying its signaling functions. Normally, the middle class is supposed to have a great commitment in a system where degrees provide signaling functions. The emphasis on leveling rather than distinction is perhaps another indication of the weakness of middle class hold on education.

The third vicious circle follows from the previous two and might be called the *circle of statism*. One of the subtexts of the above argument is that higher education policy is being driven less by a clear ideological vision or class interest than by the state's own interest (or perhaps its own ideological whims). Indeed, the surprising constancy in education policy and expenditures over time reinforces the argument that this arena is not susceptible to an overtly demand-driven calculus. Much of what goes in the name of education policy is a product of the one overriding commitment of the education bureaucracy—namely state control in as many ways as possible. State control can take various forms, including direct regulatory control, where the setting up of an institution requires a whole set of clearances or is required to conform to a set of norms set by state bodies. Arguably, the one sector where *dirigisme* has increased rather than decreased is higher education. We are not just referring to ideological battles over the curriculum in history, but to the many ways in which state bodies have sought to increase administrative control over institutions of higher education through a web of regulations. In a way, the ideological commitments mentioned above neatly dovetail into the ideology of state control (competition equals distinction, which is antithetical to leveling; deregulation would allow monetary

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considerations some place in the system and that would be intolerable). The incentives for increasing state control come from two directions. Over the course of the 1970s and 1980s, politicians acquired a great vested interest in the affairs of universities, seeing them as possible sites for not just political recruitment, but expanding patronage. The direct interference of the state has implied that in most states, universities have become appendages of government offices.

To more precisely illustrate what we are referring to, we turn to two examples. In 1999, the GOI issued a circular requiring all appointments at the level of joint secretary and above to be cleared by the ACC (Appointments Committee of the Cabinet). The government then argued that since the rank and pay scale of professors was equivalent to those of the joint secretary, India's most prestigious medical college, All India Institute of Medical Sciences (AIIMS), did not have the power to appoint professors. Added to the anomaly of bureaucrats and politicians deciding who was good enough to be a professor at AIIMS was the reality that there were huge delays inherent in the procedure—the ACC was just one of many tasks a cabinet charged with running the government of a billion people has to do, and appointments of AIIMS professors was just one of hundreds of appointments it controlled. The policy was changed only after the AIIMS director managed to personally persuade the Prime Minister. Indeed, it became clear that the 1999 circular was in fact illegal, because the institute was created under AIIMS Act 1956, which provided that only the director would have to be appointed with the ACC's clearance, while all other appointments would be made by the Institute Body, which is, in effect, the board of governors of AIIMS. Exercising its newfound autonomy, AIIMS appointed over 50 professors on March 11, the very day it received the authorization from the Government (Mitta, 2004). But that autonomy was short-lived. After the new UPA government came in, battles between the Director and the Health Minister amplified caste-based cleavages with protests, legal actions and bitter recriminations weakening this once august institution.

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West Bengal, the state most associated with an intellectual ethos, has also witnessed a flight of talent that is unprecedented (other than perhaps from Bihar). It is a testament to the degree of political control of higher education by the ruling party in that state, and reflects what is happening elsewhere. Banerjee et al. (2002), put the onus on the:

trend in the last two decades towards excessive egalitarianism and politicisation in education. To begin with, the process of hiring of teachers is hopelessly politicised. After that, unconditional job security, use of criteria unrelated to merit such as political connections and seniority in promotions and transfers imply that teachers have no accountability. The government owns or funds most institutions of higher education and so it can get away with whatever it wants – just look at the sorry states that Presidency College and Calcutta University find themselves in today, in contrast to their past glory.

In both examples, talented individuals have taken the path that is relatively easy for them, which is to move. Over the long run, an adverse selection effect has meant that the universities themselves have played a large role in the abdication of university autonomy and professionalism. The reasons for this are complex, but they arise in part from incentives that are internal to the functioning of the university itself. The enemy of the academy has not been an evil state, but the opportunism and supine attitude of boards of trustees and university administrators.

One of the striking features of university expenditure is that most of it goes to salaries; in some instances as much as 95 percent of total expenditure. The result is, to put it mildly, very poor infrastructure and intense competition for scarce resources resulting in higher politicization. The second feature leading to a dramatic politicization of university life was the introduction of the so called “promotion schemes” during the late seventies. Under this scheme university promotions were considered analogous to civil-service promotions, in that one ought to be entitled to promotion if one had demonstrated minimal competence. In principle, this scheme had all kinds of review mechanisms built into it, but it essentially resulted in two things. It enabled many less-serious academic professionals to rise to top positions of responsibility, and decreased the mobility of individuals who were seeking promotions across universities. In some ways, this scheme did most damage not by removing incentives for performance (it could, in principle have attracted more talent to universities), but by ensuring that non-academically oriented

administrators got the upper hand in university administration. There is some argument over whether this scheme was a response to real pressure from the teaching community or a preemptive attempt by the state to buy them off as it were. But the net result is that the clout of the teaching community is considerable. It does not take the form of policy formation (teachers unions do not have that sense of corporate identity), but as a powerful lobby that has resisted attempts at change and reform in the education system. One striking feature is that of the ten universities we surveyed, it was almost always teachers who went on strike rather than students during the past decade. The point is that a nexus of state power and the entrenched educational establishment more or less governs policy in the area of education, contrary to the widely held notion of the middle class subsuming these responsibilities.

#### V. THE LEGAL CONUNDRUM

As with other aspects of India's reforms, the courts have played an important role in shaping the political economy of higher education reforms in large part because the executive and legislative branches as well as statutory authorities have failed miserably in their responsibilities, pushing matters of policy and administrative detail to the courts. Politicians and bureaucrats find it more convenient to pass the buck to the judiciary, and they can now conveniently point fingers at the judiciary, accordingly blaming it for misplaced activism. In the process, there has been a distinct shift in the Supreme Court's stance in the past decade, from an undisguised suspicion of the private sector, to a grudging acceptance of the emerging reality. But in some ways, the Court's intervention in this matter is a classic example of what we might call non-consequential analysis. Both in the phase when it was hostile to private enterprise in education, and in its grudging acceptance, its primary response does not center on what will enable the education system to respond to demands. Rather, it has uneasily and often confusingly attempted to reconcile disparate principles.

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Shortly after India's economic reforms commenced, in 1992, in its judgment in *St. Stephens v. University of Delhi* the Supreme Court ruled that "educational institutions are not business houses; they do not generate wealth." The following year, in the landmark *Unni Krishnan v. Andhra Pradesh*, the Court reviewed the state's right to interfere in the admission policy and the fee structure of private professional institutions. It held that education, being a fundamental right, could not be the object of profit-seeking activity. (That millions of poor households are deprived of any modicum of this fundamental right even in primary education, forcing many to seek private education, presents a stark contrast to such lofty rhetoric). On this ground, the Court sought to regulate the activities of what came to be known as capitation fees colleges, which charged students high fees to recover costs. In the view of the Court, the government would continue to have jurisdiction over these colleges in two respects. Entrants would have to qualify under an exam common to these and all other colleges. At least 50 percent of seats in these colleges would be reserved for students who qualified on the basis of merit, and the college would be entitled to charge only the level of fees prescribed for government institutions. 25 percent of seats would be reserved for admission with merit, but the college would have discretion over the fees, while over the remaining 25 percent, the college would have jurisdiction with respect to both admission criteria and fees. The Supreme Court argued that all private colleges would be subject to the constraint that education cannot be the object of "profiteering" and the fee structure should be compatible with the principles of "merit and social justice alike." The judgment argued that all colleges offering professional courses would have to reserve 50 percent of the seats for candidates selected through an entrance examination conducted by the government. In its ruling, the judgment opined, "Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sense of this nation. The argument on the contrary has an unholy ring to it." If anything, this ruling only confirmed the unholy lack of clarity in the Court itself. Its redress for admissions and fees was deeply flawed

and mirrored the ingrained habits of India's intellectual elites. The best of intentions thus resulted in lofty sentiments that had little to do with reality or the behavioral consequences of a law.

However, given the extent to which the private sector is involved in education, is it a "service" which would allow disgruntled consumers to seek legal redress? On the one hand, students are spending large sums for education services. But since the courts think this is "unholy" (not illegal), poor service was effectively not justifiable in consumer courts and the Monopolies and Restrictive Trade Practices (MRTP) Commission refused to entertain any cases on this subject. It was not until 2003 that the MRTP Commission issued a notice of enquiry against an education institution in Delhi issuing an injunction restraining the institute from conducting courses.<sup>17</sup>

Both the MRTP Commission and consumer forums had been receptive to complaints against educational institutions until the early 1990s—just when private educational services began to explode. In the Holy Angels School case, the Commission held that education was not a service under the MRTP Act. Since service was defined in similar terms in the Consumer Protection Act, the view found its way to the consumer forums too, keeping out all aggrieved students and candidates. The Karnataka High Court also ruled that the MRTP Act was not applicable to educational institutions, as they were not providing a "service" as defined in the Act.

The main problem has been the courts' definition of "service," which covers only commercial transactions. Can education be a service, and hence a commercial transaction if, as the Supreme Court ruled, it is "unholy" to bring in commerce into educational institutions? The High Courts have been divided. While the Madras and Calcutta High Courts held that the term "service" in the Consumer Protection Act excluded education from its ambit, the Kerala High Court allowed the petition of a student who had paid a capitation fee. The consumer forums have been ambivalent in their attitude towards complaints against educational institutions. While state level forums have occasionally granted relief to the students, the National Commission has not

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been receptive. Even as commercialization of education continues unabated, the state, regulatory authorities and the judiciary have become prisoners of their own rhetoric.

The Court revisited its own judgment in the Unni Krishnan case soon after it was delivered, and in revising (if not reversing it), the series of judgments made apparent the ambivalence and confusion on the issue. In 2002, a majority of an eleven-judge constitution bench of the Supreme Court headed by Justice B. N. Kirpal in *TMA Pai Foundation vs State of Karnataka* (popularly known as the Minorities case) ruled on whether the special educational rights given by the Constitution to religious and linguistic minorities was also applicable to members of the majority. The verdict of the review (given by Justice Kirpal) found the Unnikrishnan judgment to license interference in private professional institutions in an unreasonable manner. The Court held the scheme to be unconstitutional on two grounds: first, it violated the right of private, unaided institutions to set their own criteria of admission; second, while formally upholding “the principle that there should not be capitation fee or profiteering is correct,” the Court went onto argue that “reasonable surplus to meet the cost of expansion and augmentation of facilities, does not however, amount to profiteering.” The restrictions on fees and admission imposed in the Unnikrishnan case prevented the accumulation of “reasonable” surplus. In its ruling, the Court extended the freedom accorded to minority rights to all religious denominations under the broad banner of freedom of occupation. The Court ruled that the freedom to pursue an occupation granted under Article 19(g) gives all citizens the right to establish educational institutions of their choice. Part of the conceptual difficulty lay in defining whether education is a “profession” (teaching) or an “occupation” (namely the enterprise of the setting up of an institution where teachers are hired). The decision appeared to read Article 19.1(g) of the Constitution (granting the right to carry on any occupation), with Article 26 (which grants to citizens belonging to any religious denomination or its sections the freedom to establish and maintain institutions for ‘religious or charitable purposes’). The verdict highlighted the

essentially charitable nature of educational activity in order to assign to all religious communities the right to establish educational institutions.

In sharp contrast to the Unni Krishnan verdict, the TMA Pai judgment had an extended discussion extolling private enterprise in education as “one of the most dynamic and fastest growing segments of post-secondary education for which ‘a combination of circumstances and the inability or unwillingness of government to provide the necessary support’ are responsible.” This became the Court’s justification for restraining state interference in the running of private institutions. The verdict referred to “the logic of economics and the ideology of privatization” as having contributed to the resurgence of private higher education. It cited the 1948 Radhakrishnan Commission, which cautioned that the exclusive control of education by the state was a recipe for “totalitarian tyrannies” and warns against “bureaucratic or government interference” that could undermine the independence of all private unaided institutions, but left unspecified how these institutions could be held to account from exploiting students, staff and faculty:

The state says that it has no funds to establish institutions of the same level of excellence as private schools. But by curtailing the income of such private schools, it disables these schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the state has to provide the difference, which, therefore, brings us back to a vicious circle to the original problem, viz, the lack of state funds. The only solution would appear to lie in the states not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidising the fees payable by the students there. It is in the interest of the general public that more good schools are established; autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such schools are established.

This judgment had several anomalies necessitating a clarification issued by a Constitutional bench headed by Justice V. N. Khare (*Islamic Academy of Education vs State of Karnataka*, 2003). It deliberated on two distinct questions: first, the educational rights of religious minorities in comparison to the majority; and, second, the freedom available to private, unaided institutions. On the first of these issues the five-member bench led by Justice Khare clarified that the right

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given by Justice Kirpal's verdict to the majority community was not on par with the right given specifically by the Constitution to religious minorities under Article 30. Justice Khare's verdict concluded:

It is unfortunate that a Constitution Bench had to be constituted for interpreting an 11 Judge Bench judgment. In judicial history of India this has been done for the first time. It is equally unfortunate that all of us cannot agree on all the points, despite the fact that the matter involves construction of a judgment. In the name of interpretation we have to some extent, however little it may be, rewritten the judgment....<sup>18</sup>

Time and again the courts have been drawn into defining the rules for the allotment of seats in professional colleges and setting the fee structure for different categories of candidates. In 2003, in *Saurabh Chaudri v. Union of India*, the Court had to rule on the constitutional validity of reservation, whether based on domicile or institution, in the matter of admission to post-graduate courses in government-run medical colleges. In this case, three judges of the Court delivered separate judgments of their own, though they concurred in reducing the quota for super-special subjects from 75 to 50 percent for in-house candidates and opened the other half to all-India candidates. Justice A. R. Lakshmanan's observations captured the chaotic state of affairs:

Every year during the admission season, several lakhs of students undergo immense suffering and harassment in seeking admission to professional courses. This is caused by uncertain policies, ambiguous procedures and inadequate information. The miseries of the students and parents are escalating year after year due to the boundless expansion in the number of professional institutions and their intake capacity, emergence of a large variety of newer disciplines and mobility of students seeking admission beyond the boundaries of their states.

The Court recognized the rampant reality of the "many unfair practices in admissions and devious ways of fee collection exploiting the anxiety of the students and uncertainty of procedures." This was compounded by State governments continuing to try to force "deemed universities" (an official recognition granted by the regulator, UGC) to implement their directives to allot 50 percent of seats for admission through a common entrance test conducted by the states. In 2004, the Supreme Court (citing its 1999 verdict in the Preeti Srivastava case) ruled that state governments have no control over deemed universities in the state, which are recognized by the UGC.<sup>19</sup> But the implications for private autonomous colleges were confusing, since no sooner

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had the Supreme Court, in principle, given them autonomy than controls were imposed on them once again. Even in the judgment most supportive of private initiative in education, the Minorities case, the Court had left open the door on fees caps and regulation of admission, in the name of clamping down on excess profiteering, and the High Courts promptly followed by curbing the autonomy of private higher educational institutions.

Subsequently, in August 2005, the Supreme Court, in *P.A. Inamdar & Ors. vs. State of Maharashtra & Ors* ruled that private colleges, or those that do not receive government aid, are not required to meet reservation quotas, and further maintained that these schools have full autonomy in their admission of students. This is arguably the strongest property rights-based judgment given by any Court in India to date. Its central premise was that if the state determines the criteria of admission for more than 50 percent of the seats, that would be tantamount to nationalizing the institution. Schools were also given independence in the setting of fees, with the caveat that such tuition could be regulated to prevent “unreasonable profits.” Curiously, the Court suggested that the schools set aside 15 percent of seats for non-resident Indians, to be charged higher fees to subsidize poorer students, allowing for the possibility of cross subsidies in the setting of fees.

Establishing and administering educational institutions is protected by Article 19(1)g, and in case of non-profits, Article 26(a) of the Indian Constitution. In addition, minorities are given additional protection under Article 30. But what would the freedom to establish and administer educational institutions mean if unaided institutions did not have the right to make two basic decisions: who to educate and what to charge them? For decades these two rights were not given to institutions. This judgment is part of a trend that is gradually restoring these rights to institutions. The State can no longer regulate admissions made by unaided institutions; it can no longer enforce reservations or appropriate a quota for itself. The Court still does not treat them as absolute rights. While institutions can finally design their own admission procedures, these must

now be fair and transparent. The Court will now, give more leeway in the setting of fees, but these should not amount to profiteering and certainly prohibit capitation fees.

Apart from restoring greater autonomy, the Court has also been, in a roundabout way, trying to narrow the gap between the liberties enjoyed by minority institutions and the freedoms enjoyed by non-minority unaided institutions. *Inamdar* is premised on a simple thought: if an institution does not take state aid, it should have the maximum freedom possible, whether it is a minority or a non-minority institution. Article 30 on this view simply gives minorities additional protection. It ensures that minority institutions are not subject to take over by non-minorities and it allows that minority institutions can retain their minority character even when aided by the state. But even the latter aspiration is slightly attenuated. There is an inner tension in the Indian constitution between Article 29(2) which enjoins that the state shall not discriminate on the basis of religion etc, and Article 30(1) which protects the rights of minority institutions. Does a state aided institution run afoul of the non-discrimination provisions of the Constitution, if it is allowed to give members of certain communities preferences in admission? This tension in the constitution is succinctly brought out in the contrasting arguments of Justice Ruma Pal and Justice Variava in the *Pai* case. Their respective opinions are as good an introduction to two different conceptions of secularism at work as any. But in the end the Court, as it often does, did not settle the matter on first principles, but opted for something like a *modus vivendi*. Aided minority institutions should be allowed to retain their minority character. But to prevent these institutions from falling afoul of the non-discrimination provisions, they should admit a sprinkling of non-minority students. While the statement of principle in *Inamdar* towards greater autonomy is more emphatic, its practical implications are, however, still unclear.

This particular set of cases arose in part because the Islamic Academy case had made provisions for States to set up committees to regulate institutions to prevent “profiteering” and capitation fees. But the line between preventing profiteering and unduly regulating fees is a very thin one. Invariably these committees impinged upon the freedom of institutions to set their own

fees. For the time being the Court has let these Committees stand. It enjoins states to come up with a suitable regulatory mechanism to prevent profiteering. But as the Court acknowledges, Higher Education is not easy to price. Suppose an institution wants to attract back extraordinary talent, or provide unrivalled infrastructure in terms of libraries, or invest greatly in research. These objectives can potentially absorb as much resources as they are fed. Would an institution be legitimate in charging higher tuition to meet these objectives? In other countries, the non-profit status is determined, not by looking at quantum of fees but by the legal and governance structure of the institution. For instance, Trusts (where private individuals cannot take out profits in a conventional sense) are given greater leeway in making their decisions. But in the absence of greater conceptual clarity of “non-profiteering” a good deal of regulatory ambiguity is likely to remain.

*The Politicians strike back.* The Inamdar ruling prompted a storm of protest from lower caste groups. A weak UPA government rushed to amend the Constitution, allowing parliament to enact legislation mandating reservations in private higher educational institutions. This amendment allowed for the subsequent passage of the *Central Educational Institutions (Reservation in Admission) Act, 2006* providing for 49.5 percent of seats in higher educational institutions to be reserved for SCs, ST, and OBCs, in aggregate.<sup>20</sup> (These reservations are applicable to all but sixth schedule institutions, institutions of excellence, and minority institutions). The fact that the act was passed unanimously by the Lok Sabha – and in record time – was indicative just how much reservations has become the third rail of Indian politics.

In March 2007 a two member bench of the Supreme Court stayed the particular provision for 27 percent reservations for OBCs in elite higher education institutions such as the Indian Institutes of Technology and Management, on the grounds that the government could not implement OBC reservations without accurate data and the 1931 Census could not be the basis for numerically identifying OBCs. The Court did, however, reaffirm the validity of reservations for SCs and STs. It concurred that the State could pursue ameliorative measures for disadvantaged classes but not

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at the expense of those not included. Such measures, it argued, risked becoming “permanent and appear to perpetuate backwardness.”<sup>21</sup> In May 2007, given the gravity of the matter and its far reaching implications, the issue was referred to a larger bench. This referral will address four critical issues facing Indian higher education: the power of the government to impose and amend reservation policies in light of possible conflicts with fundamental rights found in Articles 14, 15, 21, and 22 in the Constitution; whether minority institutions can be excluded from implementing the quota policy; whether measures to prevent the “creamy layer” from benefiting disproportionately are mandatory; and last, but not least, the constitutionality of the 93rd amendment itself.

Admissions criteria are become increasingly politically contentious – and inevitably end up in courts. In December 2006, the government of Tamil Nadu banned the common entrance test (CET) for professional courses with the *Tamil Nadu Admission in Professional Education Institutions Act*. Instead, applicants to courses in medical, dental, and engineering were to be considered for admission based on their scores on the qualifying examination at the Higher Secondary level of the state board or any equivalent exam. The legislation implemented a tenuous normalization formula to compare marks obtained by students in other state boards or authorities with those received in the Tamil Nadu state exam. The bill had substantial political support as its purpose was to curb inequality in the admissions process for poor students who otherwise could not gain access to expensive coaching centers for CET (Common Entrance Test) preparation. Curiously, when the CET was originally introduced in Tamil Nadu, it was justified on the grounds that it would help the poor access higher educational institutions.

This legislation was challenged in courts as well on the grounds that the constitution gives exclusive power to the central government with respect to laws pertaining to professional education, and that state governments cannot override these provisions. From 2005-2006, the Court had struck down similar legislation passed by the AIADMK and DMK governments, referring to All India Council for Technical Education (AICTE) and Medical Council of India

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(MCI) rules, which call for a CET if the applicants to schools are under the purview of more than one examining board or if the university to which they are applying has more than one college offering the same program. However, breaking from past precedent, the Madras High Court dismissed the batch of petitions that challenged the law, but it has now gone to the Supreme Court.

In June 2006, the Supreme Court allowed an association of Muslim minority technical education institutions in Maharashtra to administer their own entrance examinations. The state claimed that the association was not authorized to administer the tests. The association countered by claiming that as all members of the association are minority institutions, it had the right to admit students on the basis of their own exam. In November of the same year, the Delhi High Court eliminated the interview process for nursing schools in the city and made the selection process entirely quantitative, purportedly in the interests of reducing bias in the admissions process. In late 2006, the Bombay High Court specified that private engineering colleges should conduct five rounds of the Centralized Admissions Process (CAP). Earlier, the Court had directed that the CAP be pursued until all seats were filled. However, at the time of passage, three rounds of CAP had concluded and only 20 percent of seats were filled. As a result, the Court stated that after a fourth round of computerized selection, the remaining seats should be decided through personal interviews

In July 2006 the Kerala Assembly adopted the *Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act, 2006*, designed to stifle the profiteering behavior of private college managements throughout the state, many of which had flourished since 2001 due to heavy investment in private education by the previous United Democratic Front government. The bill amounted to de facto nationalization of the privately run higher education institutions within the state. 50 percent of seats were to be reserved for disadvantaged groups, as determined by economic, social, and physical handicaps.

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An additional 20 percent of seats were to be reserved for students from the general merit list and those with distinction in sports and culture. Of the remaining 30 percent of seats, half could be filled by NRIs.<sup>22</sup>

Institutions were no longer able to charge capitation fees and were required to submit fee structures before a state committee to ensure that capitation fees and unreasonable profits were not being extracted. The institutions were only allowed to collect a maximum of one year's tuition at a time and this fee was required to be fixed for three years of enrollment. Furthermore, the institutions were required to provide reduced tuition to members of SCs, STs, and OBCs for a minimum of half of the students admitted, utilizing the increased tuition levied on NRIs.

Admissions for all seats, save those for NRIs, were to be based on a common entrance exam administered by the government, and the admissions process as a whole was subject to supervision by a government advisory committee. Violations of any of these provisions were to be punishable by hefty fines, revocation of recognition for particular areas of studies, and other damages.

Moreover, in order to curb the inevitable tendency of private colleges relabeling themselves as minority institutions to escape state regulation, the government of Kerala imposed three criteria to denote minority status. The linguistic or religious minority must comprise less than 50 percent of the state population; the number of institutions run by the minority community must be proportionately smaller than those administered by the non-minority community; and the population of students in professional education belonging to the community must be smaller than the population belonging to the non-minority community. Given the large number of higher educational institutions administered by communities claiming minority status in Kerala, the passage of this bill unsurprisingly met with great resistance, primarily by the Catholic Church, the most prominent minority group, and a leading provider of educational opportunities in the state.

The provisions of the bill pertaining to mandatory government sponsored entrance examination, fee structures and discounts for specified categories of students and reservations of

seats were struck down by the Kerala High Court (and later upheld by the Supreme Court). Perhaps most critically the state government's definition of a minority was deemed unconstitutional.

What does this brief history of the intervention of the courts tell us? A couple of points stand out. First, while the courts have been historically suspicious of private enterprise in education, they have shifted their stance. However, the Court is still trying to reconcile it with some formal equality in the admissions process. Second, the courts interventions are more about procedural aspects of equality. They do very little to enable higher education to be more widely available or have little impact on quality. Third, there is an overemphasis of concern about professional education in medicine and engineering, even though the majority of students are enrolled in traditional science and arts courses (see Table 4). There is a PIL pending with the courts on the establishment of more general private universities, and it will be interesting to see what the courts allow by way of private universities. Forth, there is a peculiar public-private split that the courts have also reinforced, and this split can be understood in terms of levels of user charges. By and large, the courts, like the government, have been reluctant to sanction fees hikes in public institutions (even based on the proposal that university fees be pegged at least to the level of fees paid in high schools).

Finally, the courts have been party to the mess of regulatory jurisdiction. Two examples are illustrative. In *State of Andhra Pradesh v/s J.B. Education Society*, the Supreme Court held that the consent of the state government is necessary before starting an engineering college and the AICTE cannot grant approval without this consent. But one of the grounds on which this determination was made is astonishing. The judgment says, "the State authorities alone can decide about educational facilities and the needs of the locality. If there are more colleges in a particular area the state would not be justified in granting permission to one more college in that locality." Imagine what this might mean for competition or agglomeration! A second example concerns the judgment in upholding the jurisdiction of the UGC in approving private universities

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in the Chhattisgarh case. While the legislation passed by the state of Chhattisgarh's approving nearly 200 private universities was appalling, the premises which the Court brought to bear on the Chhattisgarh case should also be a cause of worry. Relying on its own earlier judgment in *Tamil Nadu and Anr. V. Adhiyaman Educational and Research Institute*, the Court has defined the power conferred on the UGC under Item 66 List 1 as follows:

“The expression ‘coordination’ used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to form a uniform pattern for a concerted action according to a certain design scheme or plan of development. It therefore includes action not only for the removal of disparities of standards, but also for the occurrence of such disparities.”

On one level it is difficult to fathom what this means. If one takes the most obvious interpretation then this claim makes little sense. Higher education is fundamentally about distinction. What would an education system where there was no disparity of standards across institutions look like?

Currently there is great regulatory uncertainty stemming from multiple jurisdictions and where institutional ownership rather than the function of the educational programs is the basis for regulation. The AICTE is charged with regulating technical education, but that simply begs the question what is technical education in this day and age? A diploma course (mostly offered by private institutes) comes under the purview of AICTE, while degree courses (mostly given by state-run institutions) are regulated by the UGC. For instance, management education post-graduate programs offered by universities are “degrees” and therefore regulated by the UGC, while all other management programs are regulated by the AICTE. However, the IIMs are directly regulated by the HRD Ministry. And an institution like the Indian School of Business that does not seek approval for its management program from anyone, can find itself being harassed by the AICTE on why it should not be closed down. High Courts in different states have come to a different determination over whether AICTE should have jurisdiction over technical courses run by universities, which by definition have degree granting power. Indeed for professional courses

other than the professional body concerned (example accounting or architecture), one might wonder if judgments of quality are best left to potential employers and markets rather than regulators of indifferent quality.

One curiosity needs highlighting. While the primary and secondary school sector has been left replete with freedoms (although strictly speaking these are also non-profit sectors), higher education is regarded as the arena in which a formal principle of equality of opportunity is most vigorously asserted. We call this principal “formal” because it upholds the defensible idea that ability to pay should not determine access to institutions. But the manner in which this principle is implemented ensures that adequate resources will not be mobilized for expanding the quality and quantity of education, and that *de facto* inequalities in education will increase, because private spending outside regular institutions greatly determines future prospects. It is difficult to see what legal principles or logic of political economy determines the courts interventions. If the executive and legislative branches of government are principally responsible for the travails of Indian higher education, it is fair to say that the Court’s contribution has been more confusion than clarity.

## VI. PHILANTHROPY OR PRIVATIZATION?

In discussions of the privatization of education, a good deal of emphasis is placed on the potential of private philanthropy to make up for the deficiencies of the state or the market. It is for this reason that we decided to examine some of the broad trends in philanthropy in education. To put it briefly, there is very little evidence so far that philanthropy has been able to even make a dent in the deficits bequeathed by the state in this sector. Indeed, we argue that the structure of philanthropy has only exacerbated the distorted forms of privatization we discussed above. In particular, the following claims are evident:

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- 1) There is a good deal of confusion in Indian official assessments and public discourse at large between philanthropy and not-for-profit educational institutions.
- 2) Philanthropic commitment to public institutions of higher education has been steadily declining since the middle of the century. Philanthropy is being “privatized” in two senses. First, donors to higher education are more likely to retain effective control over the resources they donate. Second, philanthropy is being conflated with creating not-for-profit, but financially sustainable institutions. In these institutions, financial sustainability does not refer to receiving income from endowments and investments, but to charging the beneficiaries for the services being provided to them.
- 3) This form of philanthropy is having many adverse consequences for the credibility of public institutions and philanthropic activity related to higher education in general.
- 4) Public institutions of higher education are unlikely to, in the near future, attract significant amounts of philanthropic investment because of their own weaknesses and the lack of a philanthropic ideology amongst most potential donors of the kind that existed in pre-independence India.
- 5) Philanthropy can still play a significant role in higher education in India, but it will have to take different organizational forms than the ones we have seen in the recent past.

Philanthropy is one of the ways in which the relationship between public and private is negotiated. All philanthropic activities, or non-profit organizations claiming tax benefits, must pass the following two tests:

1. The Public Purpose Test: The organization that claims tax exemption must operate *primarily* for some purpose other than private gain. The idea is not that such organizations avoid profit (understood as excess of revenues over expenses), but rather on the existence of a substantial benefit purpose.

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2. Non-Distribution of Surplus: Such organizations are barred from distributing its net earnings, if any, to individuals who exercise control over it, such as members, officers, directors, or trustees. This is known as the “non-distribution constraint.”

A major difficulty in the Indian case is whether most private institutions that claim tax-exempt status qualify as “philanthropic.” This has been a major legal conundrum and, as we have noted in another section, judicial decisions have done little to add clarity on the issue. There are major legal and conceptual difficulties in fixing the boundaries of what ought to be regarded as tax-exempt, philanthropic or non-profit activity in the field of higher education. By definition, all Indian universities and private colleges (excluding non-degree giving diploma institutes like computer training conglomerates NIIT, APTECH) are “non-profit” organizations, but this category is too blunt and does not distinguish between say, capitation fees colleges in the south and a regular college run out of trust funds that does not charge students. Technically, both are non-profit institutions and qualify for tax exemptions. But there is a good deal of suspicion whether investment in private unaided colleges can be called “philanthropic” at all, even though they are formally not-for-profit.

Indeed, it was the recognition of this difficulty that led a GOI committee (the Parthasarathi Shome Committee) to propose an amendment to the legal definition of the term “charitable.” The Shome Committee recommended that only organizations that receive 90 percent of their annual receipts through donations or grants be treated as organizations for a charitable purpose. The underlying rationale is that donors are best placed to judge whether the activities of an organization are charitable or not. To the extent that an organization receives the bulk of its income from donations, the activities of the organization could be perceived to be predominantly charitable in nature. However, the criterion presented by Shome Committee’s definition of “philanthropic” or “charitable” would disqualify most existing organizations. Donations are an uncertain source of income for most organizations; free-rider incentives often

keep the flow of funds to organizations below the socially optimal level; trusts run on donations are only part of the spectrum of philanthropic activity; and many NGO's are engaged in economic activities designed to generate incomes to make the poor self-reliant. The Shome Committee wanted a criterion of charitable that was based on *source of income rather than end purpose*.

But whatever difficulties with the Shome Committee's recommendations, it did highlight a central issue in the field of higher education and philanthropy: *Should institutions of higher education that derive almost 100 percent of their revenue from charging for goods and services to students be classed as "philanthropic"? Or should a classification of "philanthropic" take into account some criteria of the source of income?*<sup>23</sup> The extent of philanthropy in higher education in India depends upon whether or not one classifies a large number of private colleges as surrogate businesses or as genuinely philanthropic. This phenomenon is of some interest because it helps shed light on an apparent paradox— while the number of "trusts" set up for philanthropy in higher education has consistently been steadily rising, the total share of "endowments and other sources" in higher education (that is resources excluding government expenditure and fees) has been consistently falling and is now 2.74 percent of all education expenditure, down from a high of 11.62 percent in 1951 (Modi and Mukhopadhyay, 2000). In other words, *while the number of educational trusts is increasing, most of them are generating revenue by charging for services rather than through donations or endowments*. Although one needs more comprehensive data on this, it appears that philanthropy in higher education has increased, if one uses as a measure the total number of trusts and volume of activity. However, the picture is the opposite if the measure is the source of income.

The pre-independence period, or that between 1892 and 1947, has been termed as the "Golden Age of Indian Philanthropy" (Sundar, 2000). Indian philanthropy not only made the transition from merchant charity to organized, professional philanthropy, but did so on an impressive scale. This period saw the establishment of some of India's most enduring trusts and foundations and public institutions of enduring significance. Aligarh Muslim University, Banaras

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Hindu University, Jamia Millia, Annamalai, Indian Institute of Science, among others, were created largely through voluntary donations. Higher education, especially institutes of research were widely considered to be “pioneering.” Of the sixteen largest, “non-religious” trusts set up during this period, fourteen were major patrons of higher education.<sup>24</sup> India’s most renowned research university, the Indian Institute of Science, is a case in point. The then Maharaja of Mysore, Krishnaraja Wadiyar, advised by his diwan-cum-chief engineer, M. Visvesvaraya, instituted several initiatives to improve the quality of higher education in the state, with a particular emphasis on technology and the sciences. In 1905 the government of Mysore persuaded J N Tata to locate the Indian Institute of Science in Bangalore, subsidized by a land grant and an annual government subsidy of Rs 50,000. These initiatives produced generations of highly trained engineers and scientists in the state and an environment conducive to scientific and technological innovation, both of which, arguably, contributed to Bangalore’s “take-off” (Bhagavan, 2003).

What is even more striking, *a major proportion of their grants went to “public institutions” such as universities that were either directly under state control or some form of public authority.* It is not only the *object* of their spending that is of interest, but also the *manner* in which money was spent. Arguably, *philanthropy had much closer links with public institutions in the most literal sense of that term.* Grants, although emanating from family trusts were, once made, not under the control of family trusts and were deployed for specific purposes by the terms set buy the receiving institutions and not the trust itself. The net result was that the net share of private philanthropy in shouldering the burden of public institutions was as high as 17 percent in 1950, and is now down to less than 2 percent. That this share would decline does not come as much of a surprise as the government has expanded its role in higher education. Even so, the extent of the decline is striking.

Alumni contributions are beginning to creep up but have been most noticeable only in the case of IIT’s (since about the mid-1990s), which have been able to tap into a large base of

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professionalized alumni among the Indian diaspora. However, even as this effort was gathering pace, the Indian government's Human Resource Development Ministry formed the *Bharat Shiksha Kosh* (India Education Fund) in 2003. The Indian Parliament's Standing Committee on Human Resource Development simply noted that "the contribution of the Government to the Bharat Shiksha Kosh should definitely have been more than Rs. 1.00 crore considering the mammoth task of funding from the Kosh."<sup>25</sup> But by centralizing all overseas donations for education to the fund, the move effectively denied would-be donors any say in the purposes for which the money was used. Since the fund was set up, individual contributions to IITs dropped dramatically. Kanwal Rekhi, a founder member of TIE (The Indus Entrepreneur) who had funded an IT school at his alma mater IIT-Mumbai, called the Fund "the most asinine thing I ever heard in my life." He went on to say, "Donors are making voluntary gifts because of emotional attachment or commitment to the institutes. They will not hand off money to a nameless bureaucrat or a feckless politician."

While the decision was reversed by the successor UPA government, allowing alumni to contribute directly to their alma maters, its populist stance on reservations for OBCs at the IITs and IIMs has hardly helped in this regard, underscoring the uncertainties of the regulatory structure in this sector. The lack of autonomy of educational institutions has been one of the biggest impediments in attracting diasporic philanthropy for higher education. Alumni who are prepared to give substantial resources also want to have a say in its use and an institutionalized mechanism to have their voice heard. However, the governance structures of most higher education institutions are so poor that such mechanisms are non-existent. Nearly half of the alumni of the All India Institute of Medical Sciences are overseas, but they have balked at contributing since they have little say in the governance of that organization (Kapur et. al, 2004). The recent intrusiveness of the Health Ministry in the institution's governance, has all but paid put to any possibility of alumni contributing to the institution.

VII. CONCLUSION

The rapid rise in skill premiums in India in the last few years has exposed an important paradox about India's labor markets. Despite its enormous size, the pool of skilled labor is relatively shallow, the result of a deep crisis in higher education despite the success of a few professional schools. The veneer of the few institutions of excellence masks the reality that the median higher education institutions in India have become incapable of producing students with skills and knowledge. The process neither serves a screening or signaling function, nor prepares students to be productive and responsible citizens. Consequently, students are forced to spend more years (and, increasingly, larger resources) to acquire some sort of post-graduate professional qualification, as they desperately seek ways to signal their qualities to potential employers. It would not be an exaggeration to say that India's current system of higher education is centralized, politicized and militates against the production of general intellectual virtues. The fact that the system nonetheless produces a noticeable number of high-quality students is due to the sheer number of students and the Darwinian struggle at the high school level to gain admission into the few good institutions.

The most acute weakness plaguing India's higher education system is a crisis of governance. Its most visible manifestation is a crisis of faculty. The generation that was inspired by a broad commitment to the public good has retired or will do so soon. There is little likelihood of sufficient replenishment, given entrenched mediocrity in institutions with lifetime appointments, few competitive pressures and abysmal governance. The result has been the academic equivalent of Gresham's law—the bad drives out the good. The prevailing political ideological climate in which elite institutions are seen as anti-democratic, finds its natural response in political control to influence admissions policies, internal organization, and the structure of courses and funding. As quality deteriorates, students are less and less willing to pay the very resources without which quality cannot be improved. In India's case, the answer has

been the growth of private sector higher education institutions and increasingly the consumption of education abroad. However, as our analysis suggests, private sector investment has been confined to professional streams, bypassing the majority of students. Furthermore, private institutions are also plagued by severe governance weaknesses, raising doubts as to their ability to address the huge latent demand for quality higher education in the country.

We wish to emphasize that quite apart from the political economy reasons that make reforms difficult, there are serious analytical lacuna in higher education as well. Take two central questions. One, what is the relationship between a system of higher education and the wider economic environment within which it is situated? Two, what are the objective indicators of the “quality” of human capital produced by a higher education system? The current state of knowledge does not allow us to answer even these basic questions. The possibilities of tailoring higher education systems to putative labor market requirements are limited, except in specific sectors. Even if it were possible to match a higher education system with labor market outcomes, it would still not be enough to get at the counterfactual, namely what difference would a change in the education system make to economic outcomes? Industry groups project labor requirement in certain sectors and then assess whether the education system is producing the volume of human capital for their needs. These standard “manpower planning” exercises assume certain elasticity of demand of specific types of human capital with the overall growth of the economy and of particular sector. There may be something useful about this exercise, but it often raises more questions than it answers. When we posit a shortage what do we mean? Do we mean that there is potential supply of trainable employees, except that industry does not want to make the investment in training them? Or do we mean that there is, at least in the short to medium run, not even a supply of potentially trainable employees? Both have different implications for higher education policy.

There is also little agreement over exactly what skills do well in an economy. There is some data on the EU for instance that suggests that investment in basic skills such as mathematics

or writing are still much better predictors of success in an economy than investment in domain-specific skills (Wolf, 2002); there is a considerable but deeply indeterminate debate over what architectures of knowledge are appropriate for higher education in the 21<sup>st</sup> Century. There is also considerable debate over whether off the job vocational training is, as a general rule, successful. These debates are themselves limited in that they confine themselves to an instrumental view of education. While such a narrow view may be seriously misleading, and in principle higher education can (and should) also have other larger aims, exactly what these aims ought to be and how to achieve them are deeply complex and contentious issues.

But whatever its aims, instrumental or otherwise, the question of the “quality” keeps resurfacing in higher education. And quality turns out to be an even trickier issue than labor markets. We are flagging the issue of “quality” because this issue needs much more research if we are to make any headway in debates over higher education. It is worth having a discussion over what quality benchmarks to use. But this issue of quality is implicitly part of the political economy story we are telling about the evolution of Indian higher education, and it resurfaces in many different forms.

At one level there is a great concern with quality. But the credibility of institutions depends largely on *selection mechanism* for students. In fact, part of the ideological evolution of the system has been the displacement of debates over pedagogy to debates over selection mechanisms. But even this focus on selection mechanism is largely at the top institutions. There is a potentially radical conclusion that could be drawn from the Indian experience. Rather than worry about the quality of higher education institutions per se, India should simply replicate the success of IIT or IIM selection mechanisms on a larger scale and across different domains across the country. The success of the National Law Schools in resuscitating legal education is an example. As a thought experiment, suppose India simply abolished most of its non-performing universities and dispensed with formal requirements of having a degree and instead put in place a series of well-designed exams, which students can take at periodic intervals. How they choose to

“study” for these is left entirely up to them. These exams would be such that they would carry the kind of credibility IIT-JEE does at the moment; except that they would send credible signals to employers about the “quality” of recruits. To be sure, there are soft skills that may not be captured by this process, but its hard to see how it could be worse than the status quo. On this view, what India needs is simply a deepening and widening of some objective “selection mechanisms;” the focus on institutions is of comparatively less consequence.

This might also explain another missing piece of the puzzle. We have stressed how incentives and ownership of institutions militates against *pedagogical* diversity and debate. Currently the “legitimacy” of academic institutions in India are entirely premised on their selection mechanisms, and very little on pedagogic achievements (which in any case are difficult to benchmark). The political, policy and ideological debates in higher education in India pay virtually no attention on pedagogical debates to what it is that college educators claim to be providing. It is perhaps a sign of how low the system has sunk that, at least in the “public” system, the debate over what it means to be a university in the 21<sup>st</sup> Century has barely begun.

**Table 1. Type-Wise Number of Colleges in the Country: 2004-2005**

TYPE	NUMBER
Arts, Science, & Commerce Colleges	10377
Teachers Training	1082
Engineering/Technology/Architecture	1302
Medical	817
Others*	2431
<b>Total</b>	<b>16009</b>

Source: Government of India, Department of School Education and Literacy, 2007. *Annual Report 2004-2005* URL: <http://www.education.nic.in/AR/AR0607-en.pdf>.

\*Others includes Colleges exclusive for Law, Management, MCA/IT, Agriculture etc.

**Table 2. All India Growth Of Student Enrolment**  
(1983-84 to 2004-2005)

Year	Total Enrolment	Increase over the preceding year	Percentage
1983-84	33,07,649	1,74,556	5.6
1984-85	34,04,096	96,447	2.9
1985-86	36,05,029	2,00,933	5.9
1986-87	37,57,158	1,52,129	4.2
1987-88	40,20,159	2,63,001	7.0
1988-89	42,85,489	2,65,330	6.6
1989-90	46,02,680	3,17,191	7.4
1990-91	49,24,868	3,22,188	7.0
1991-92	52,65,886	3,41,018	6.9
1992-93	55,34,966	2,69,080	5.1
1993-94	58,17,249	2,82,283	5.1
1994-95	61,13,929	2,96,680	5.1
1995-96	65,74,005	4,60,076	7.5
1996-97	68,42,598	2,68,593	4.1
1997-98	72,60,418	4,17,820	6.1
1998-99	77,05,520	4,45,102	6.1
1999-2000	80,50,607	3,45,087	4.5
2000-2001	83,99,443	3,48,836	4.3
2001-2002 *	88,21,095	4,21,652	5.0
2002-2003 *	92,27,833	4,06,738	4.6
2003-2004 **	100,09,137	7,81,304	8.5
2004-2005 **	117,77,296	17,68,159	17.7

Source: University Grants Commission

\* Provisional

\*\*Source: Government of India, 2007. *Selected Educational Statistics 2004-2005*

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**Table 3: State-Wise Student Enrolment  
(2004-2005)**

<b>S. No.</b>	<i>State/UT</i>	<i>Total Enrolment</i>	<i>Women Enrolment</i>	<i>Women %</i>
1.	Andhra Pradesh	1,056,719	397,103	37.58
2.	Arunachal Pradesh	6,745	2,519	37.35
3.	Assam	214,342	88,732	41.40
4.	Bihar	553,693	135,423	24.46
5.	Chhattisgarh	163,254	60,028	36.77
6.	Goa	21,643	12,569	58.08
7.	Gujarat	645,689	274,198	42.47
8.	Haryana	264,331	113,939	43.10
9.	Himachal Pradesh	103,628	48,813	47.10
10.	Jammu & Kashmir	80,405	36,327	45.18
11.	Jharkhand	209,176	76,559	36.60
12.	Karnataka	706,241	313,202	44.35
13.	Kerala	313,155	184,170	58.81
14.	Madhya Pradesh	758,418	237,364	31.30
15.	Maharashtra	1,534,613	577,892	37.66
16.	Manipur	38,679	17,422	45.04
17.	Meghalaya	30,716	14,284	46.50
18.	Mizoram	12,180	4,325	35.51
19.	Nagaland	13,644	6,139	44.99
20.	Orissa	367,187	73,332	19.97
21.	Punjab	279,707	143,422	51.28
22.	Rajasthan	394,478	131,986	33.46
23.	Sikkim	6,596	2,711	41.10
24.	Tamil Nadu	809,366	379,493	46.89
25.	Tripura	22,447	9,491	42.28
26.	Uttar Pradesh	1,507,991	581,460	38.56
27.	Uttaranchal	131,742	62,447	47.40
28.	West Bengal	746,509	276,298	37.01
29.	A & N Islands	2,706	1,479	54.66
30.	Chandigarh	51,309	25,329	49.37
31.	D&N Haveli	0	0	0
32.	Daman & Diu	619	325	52.50
33.	Delhi	709,169	342,469	48.29
34.	Lakshadweep	0	0	0
35.	Pondicherry	20,199	10,326	51.12
	<b>Total</b>	<b>11,777,296</b>	<b>4,641,576</b>	<b>39.41</b>

Source: Government of India Annual Report 2006-07, URL: [www.education.nic.in/AR/AR0607-en.pdf](http://www.education.nic.in/AR/AR0607-en.pdf).

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**Table 4a. Student Enrolment by Academic Discipline**  
(2002-2003)

<i>No.</i>	<i>Faculty</i>	<i>Total Enrolment</i>	<i>Percentage Of Total</i>
1.	Arts	41,58,606	45.07
2.	Science	18,34,493	19.88
3.	Commerce/Management	16,60,238	17.99
4.	Education	1,32,572	1.43
5.	Engineering / Technology	6,92,087	7.50
6.	Medicine	3,00,669	3.25
7.	Agriculture	55,367	0.60
8.	Veterinary Science	14,765	0.16
9.	Law	2,98,291	3.23
10.	Others	80,745	0.88
	<b>Total</b>	<b>92,27,833</b>	<b>100.00</b>

Source: University Grants Commission

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**Table 4b. Student Graduation by Academic Discipline**  
(2002-2003)

No.	Faculty	Undergraduate		Graduate	
		Total	%Female	Total	%Female
1.	Arts	<b>972,720</b>	<b>43.7</b>	<b>306,416</b>	<b>45.2</b>
		<i>of which:</i> B.A. 843,073 ; B.A. Hons. 114,596			
2.	Science	<b>327,775</b>	<b>40.2</b>	<b>74,295</b>	<b>43.0</b>
		<i>of which:</i> B.Sc. 280,982 ; B.Sc. Hons. 38,698			
3.	Commerce	<b>373,192</b>	<b>40.0</b>	<b>94,426</b>	<b>37.4</b>
		<i>of which:</i> B.Com. 330,664; B.Com. Hons. 23,690			
4.	Education	<b>106,048</b>	<b>45.1</b>	<b>4,713</b>	<b>35.4</b>
5.	Engineering / Technology	<b>127,610</b>	<b>20.7</b>	<b>12,370</b>	<b>17.5</b>
		<i>of which:</i> B.Tech: 22,070; Civil: 9,179			
		EE 21,745; ECE 13,042; Mech 19,844 CS: 13,943			
6.	Medicine	<b>38,787</b>	<b>41.3</b>	<b>8,219</b>	<b>29.0</b>
		<i>of which:</i> Dental: 3,764; B. Pharm. 5,751		<i>of which:</i> M.D. 3,441	
		Nursing: 3,260; MBBS: 14,182			
7.	Agriculture	<b>7,801</b>	<b>16.4</b>	<b>3,716</b>	<b>19.0</b>
		<i>of which:</i> B.Sc. Ag. 6,892			
8.	Veterinary Science	<b>1,497</b>	<b>23.1</b>	<b>700</b>	<b>17.6</b>
9.	Law	<b>58,228</b>	<b>19.3</b>	<b>2,193</b>	<b>35.5</b>
10.	Others	<b>38,539</b>	<b>28.7</b>	<b>33,607</b>	<b>29.8</b>
		<i>of which:</i> BCA (Comp.App.): 17,248		<i>of which:</i> BCA 20,972	
	<b>Total</b>	<b>2,052,197</b>	<b>39.8</b>	<b>540,658</b>	<b>41.3</b>
	<b>GRAND TOTAL ALL GRADUATES:</b>			<b>2,592,855</b>	<b>40.1</b>

Source: University Grants Commission

**Table 5. Public Expenditures on Higher Education<sup>1</sup>**  
(Share of GDP and Total Education Expenditures)

Year	Expenditure on Education as percent of GDP	Expenditure on Higher Education as percent of Expenditure on Education	Expenditure on Higher Education as percent of GDP
1981-1990 <sup>2</sup>	3.59	15.6	0.34
1991-2000	3.77	19.3	0.72
2001-2002	3.82	17.9	0.69
2002-2003	3.80	18.5	0.70
2003-2004	3.50	17.8	0.62
2004-2005 (RE)	3.68	18.0	0.66

Note: Based on the new series of GDP with base 93-94=100; \*\* Quick estimates of GDP

<sup>1</sup> Source: Selected Educational Statistics 2004-05, Ministry of Human Resource Development

<sup>2</sup> Source: Analysis of Budgeted Expenditure on Education, Ministry of Human Resource Development

RE: Revised Estimates

**Table 6. Management structure of Engineering and Medical Colleges across States (2003)**

S <sup>26</sup> tate	Medical Colleges		% Private	Engineering Colleges		% Private
	Government	Private		Government	Private	
Andhra Pradesh	14	14	50.0	10	213	95.5
Assam	3	0	0.0	3	0	0.0
Bihar	6	2	25.0	4	3	42.9
Chattisgarh	2	0	0.0	2	9	81.8
Delhi	5	0	0.0	7	7	50.0
Gujarat	8	4	33.3	9	16	64
Haryana	1	2	66.6	7	29	80.5
Himachal Pradesh	2	0	0.0	2	3	60.0
Jharkhand	0	2	100	4	2	33.3
Karnataka	4	22	84.6	13	99	88.4
Kerala	7	8	53.3	31	51	62.2
Madhya Pradesh	5	1	16.7	6	47	88.7
Maharashtra	19	18	48.6	16	133	89.3
Orissa	3	0	0.0	6	38	86.4
Punjab	3	3	50.0	11	27	71
Tamil Nadu	12	7	36.8	16	234	93.6
Uttar Pradesh	10	2	16.7	25	58	69.9
Uttaranchal	0	2	100.0	5	4	44.4
West Bengal	7	0	0.0	15	37	71.2

Source: Medical Council of India and AICTE

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Fig 1: Private Engineering Seats (% of total)

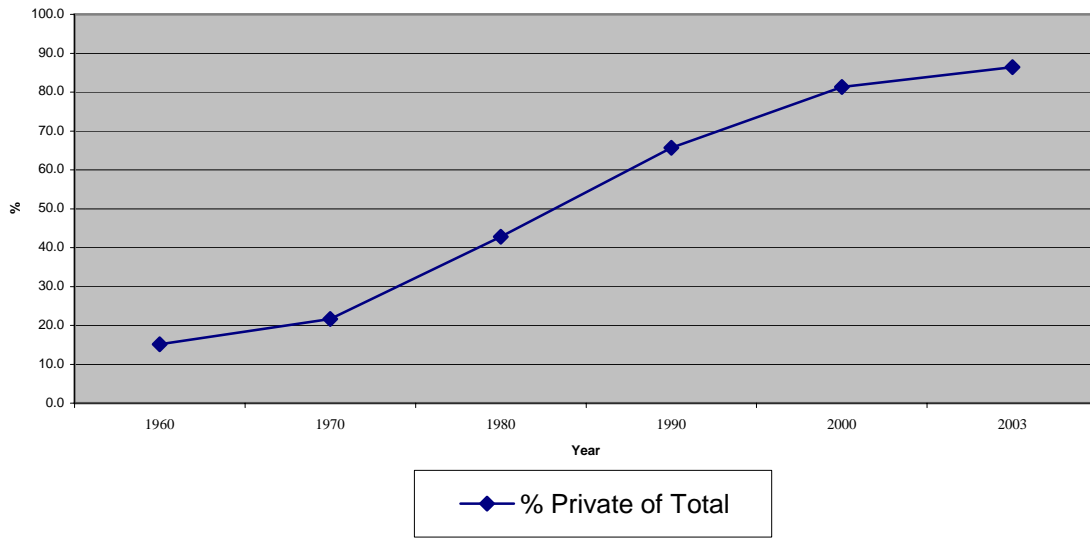
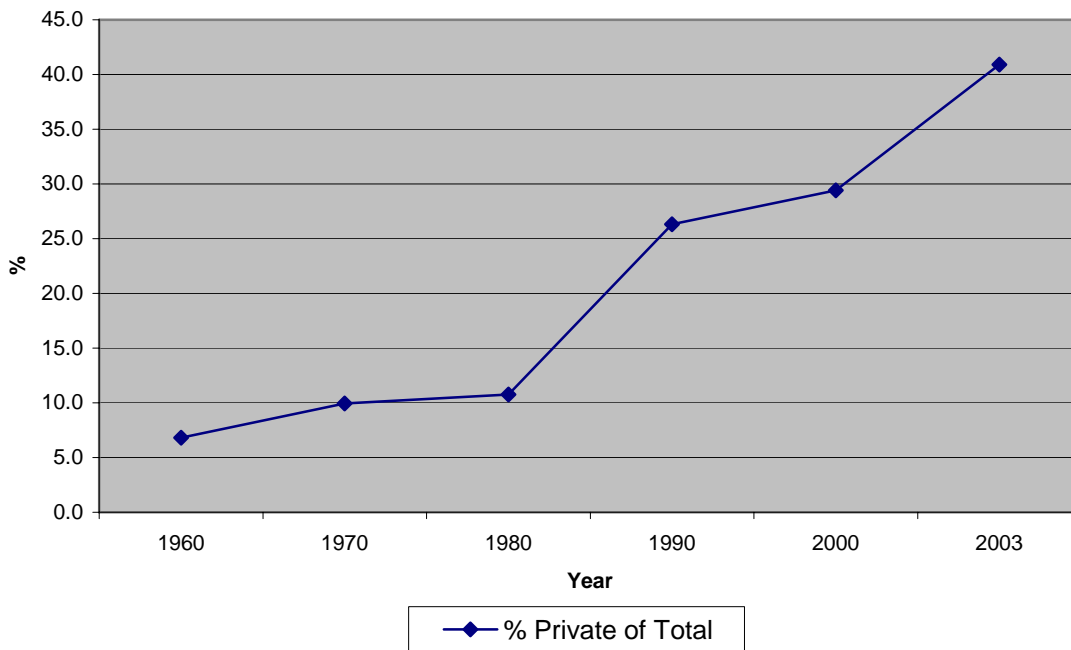
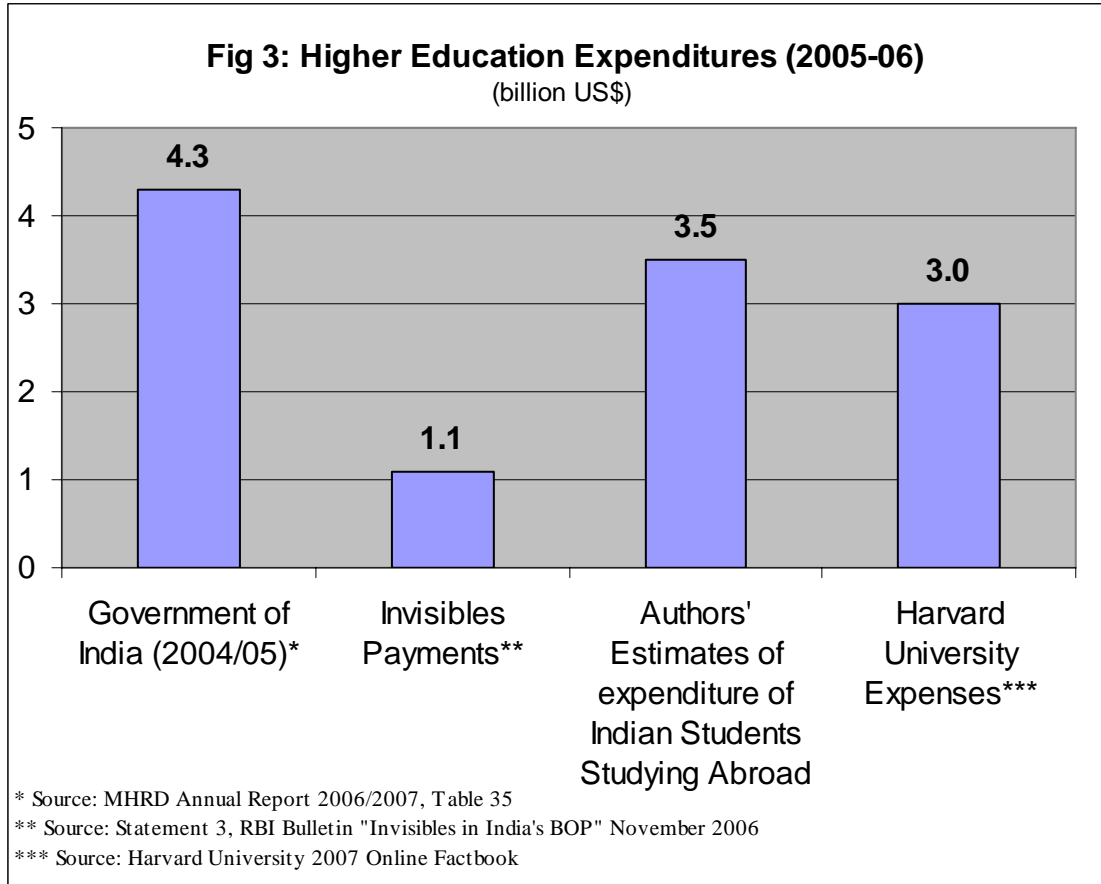


Fig 2: Private Medical College Seats (% of total)





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Kumarmangalm Birla Report on Higher Education, Prime Minister's Task Force

Annual Reports of approximately forty trusts

Directory of Donor Organizations: Indian Center for Philanthropy

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<sup>1</sup> <http://pmindia.nic.in/lspeech.asp?id=555>

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<sup>3</sup> In this paper we focus on that part of the higher (tertiary) education than encompasses colleges and universities. We do not address issues related to technical education in India's Industrial Training Institutes (ITIs) which are an important component of higher education imparting technical training in a wide range of trades and crafts.

<sup>4</sup> According to Finance Ministry data cited in *The Hindu*, since its launch in 2001 the Education Loan Scheme has grown from roughly 50,000 accounts and Rs. 670 crore loans as on March 31, to approximately 1,53,000 accounts and Rs. 2,600 crores loan amounts on March 31, 2004. "Education loan scheme simplified," *The Hindu* August 11, 2004.

<sup>5</sup> See: <http://www.mciindia.org/apps/search/>

<sup>6</sup> See: <http://www.aicte.ernet.in/>

<sup>7</sup> Nivedita Mookerji & Pummy Kaul, "Education tops ad spend in print," *Financial Express*, April 18, 2005, p.1.

<sup>8</sup> "A private university shall fulfill the minimum criteria in terms of programmes, faculty, infrastructural facilities, financial viability, etc. as laid down from time-to-time by the UGC and other statutory bodies such as the All-India Council for Technical Education, the Bar Council of India, the Distance Education Council, the Dental Council of India, the Indian Nursing Council, the Medical Council of India, the National Council for Teacher Education, the Pharmacy Council of India etc."

<sup>9</sup> The one condition on the self-financed colleges is that they have to offer courses in emerging areas like bio-technology, molecular biology and business administration. See: Mita Mukherjee, "Privatisation kickoff with two colleges," *The Telegraph*, April 4, 2004.

<sup>10</sup> The target of recovering 25 percent through fees was probably arrived at by looking at the East Asian Example: South Korea has gross enrollment ratios in higher education of 47 percent and recovers 23 percent of its expenditure as fees; Indonesia has an enrolment ratio of 11 percent and a recovery of 25 percent; Malaysia has an enrollment comparable to India's of around 8 percent and like India recovers only 6 percent in fees.

<sup>11</sup> As of 2004, total enrolment in higher education in Indian was 11.77 million of which SC was 1.26 million and ST 0.434 million. Source, MHRD Annual Report 2006-07.

<sup>12</sup> Champakam Dorairajan challenged a Government Order issued by the government of Madras Province (as it was then called), earmarking admission of students to Engineering and Medical Colleges of the State strictly on the following basis: of every 14 seats, 6 were to be allotted to Non-Brahmin (Hindus), 2 to Backward Hindus, 2 to Brahmins, 2 to Harijans, 1 to Anglo-Indians and Indian Christians and 1 to Muslims.

<sup>13</sup> The examples cited here draw from various issues of *Education World* as well as newspaper articles.

<sup>14</sup> "Left, DMK members clash," URL:

<http://www.hindu.com/2007/03/14/stories/2007031408630100.htm>

<sup>15</sup> The union Health Minister Anbumani Ramdoss's father and Pattali Makkal Katchi founder S. Ramadoss established the Vanniyar Educational Trust which has recently set up a deemed

university Jaya Menon, “Meanwhile for Papa Doc, hurdles cleared for 180-acre university,” *Indian Express* 07-09-2006.

<sup>16</sup> An example is Praful Patel, son of tobacco tycoon Manoharbai Patel in Maharashtra. Currently civil aviation minister, he was the Nationalist Congress Party’s spokesman and Sharad Pawar’s closest confidant. He also runs his family’s educational trust, the Gondia Educational Society, which is like a mini university with 70 schools and 12 colleges offering courses in arts, commerce, science and law.

<sup>17</sup> The case was against the “Indian Institute of Para Medical Training” which was offering diploma courses in paramedical technology without mandatory recognition from the All India Council for Technical Education.

<sup>18</sup> An eleven judge constitution bench was required because after the 42nd Amendment, the subject of education was transferred to the Concurrent List from the State List under the Seventh Schedule of the Constitution.

<sup>19</sup> The case was brought by the Karnataka Government challenging the High Court’s 1993 judgment on a petition from the Manipal Academy of Higher Education (MAHE). The Court had held that the Karnataka Capitation Fee Act under which the state was allocating students to MAHE was not applicable to deemed universities under the UGC Act. The State Government filed an appeal against the MAHE’s deemed university status given by the UGC. This has been dismissed by the apex court (See: “States have no control over deemed varsities: court,” *Hindu* February 27, 2004).

<sup>20</sup> “CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN ADMISSION) ACT, 2006.” *Press Information Bureau, Government of India*. 09 January 2007. 30 May 2007 <<http://pib.nic.in/release/release.asp?relid=23895>>.

<sup>21</sup> “Supreme Court stays OBC quota in IITs, IIMs.” *Rediff News*. 29 March 2007. 30 May 2006 <<http://in.rediff.com/news/2007/mar/29quota.htm>>

<sup>22</sup> “Act of promise.” *Frontline*. 28 July 2006. 30 May 2007 <<http://www.hinduonnet.com/fline/fl2314/stories/20060728003710600.htm>>

<sup>23</sup> Interestingly, the formal legal definitions of “charitable” in India are all based on objectives of the organization concerned. Formally, even the Board of Cricket Control in India is a charitable organization, because “cricket” appears to on a government list of objectives it is desirable to promote.

<sup>24</sup> These trusts are Tatas (Sir Ratan Tata, Sir Dorabji Tata and JRD Tata), Bajaj, Birla (G.D. Birla, B.M.Birla), Lalbhai, Sarabhai, Godrej, ShriRam, Singhanian, Modi, Annamalai Chettiar, Murugappa group (AAM Foundation), Naidu, Ramco, Mafatlal, Mahindra.

<sup>25</sup> Parliament of India, Rajya Sabha, 145<sup>th</sup> report on action taken by government on the Department-related Parliamentary Standing Committee on Human Resource Development recommendations/observations contained in the hundred thirty ninth report on demands for grants 2003-2004 (demand no. 57) of the department of secondary and higher education (ministry of human resource development). (presented to the Rajya Sabha on 12<sup>th</sup> december, 2003) (laid on the table of lok sabha on 12<sup>th</sup> december, 2003) Rajya Sabha secretariat, New Delhi, December, 2003.