Internationalization of Higher Education

Issues and Concerns

Domestic Regulation

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Foreword

The two-day national conference on ‘Internationalisation of Higher Education – Issues and Concerns’ was held at NIEPA during 26-27th August 2004. The present report is on the Domestic Regulation in the emerging context of privatization and internationalisation of higher education. In bringing out the report the care was taken to understand the views and arguments presented in the conference. Some additional inputs were further more added to clarify the issues in a total perspective. I thank Prof. Sudhanshu Bhushan, Senior Fellow & In charge, Higher Education Unit and the members of the project staff who helped in the preparation of the report.

I do believe that in view of the need to have a domestic regulation in India, the materials contained in the report will be of great value to the educational policy makers of the country.

Prof. Marmar Mukhopadhyay
Director
NIEPA
Preface

The need was felt to have a relook at the issue of domestic regulation in higher education in the context of emerging privatisation and internationalisation of higher education. So far India had a long tradition of public and private providers of higher education within a regulatory framework under the Constitution of India and different regulatory bodies to maintain the standards of higher education. The issue becomes complex when in the professional colleges the practice came into conflict with the non-commercial principles as set out in the policy on higher education. The scenario was further complicated when the covert commercialisation in spite of various Supreme Court judgments went further with the establishment of private universities allowed under various Legislative Acts of the States. There are still some disputes going on with reference to whether the private universities were established in accordance with the law of the land. There also exists the difficulty of maintaining the standards by UGC, given the proliferation of private universities allowed under state legislations. The immediate concern that is expressed is that the absence of a proper regulation will not only come into conflict with the objective of wider participation of higher education but that it will also lead to lowering of the standards in higher education. Besides these concerns another argument that is placed is that there has been too much regulations and this has obstructed the growth of higher education in terms of innovations and experiments and therefore bare minimum regulations are necessary to provide autonomy to the institutions. However, the regulation of private unaided sector with respect to the standards of higher education cannot simply be done away with because otherwise there will be a chaotic growth, which might be more confusing and directionless.

Another issue with respect to the domestic regulation arises in context of GATS particularly in view of the various articles under which the foreign education providers may have to be treated. A clarification of all such issues seems eminent before gearing up to the challenges of the GATS. It is a matter of great concern that in the name of internationalisation of higher education the foreign providers of education are working in collusion with the private institutions and the regulation is not in place to control or to supervise the activities of the providers of education. This has also created confusion in the minds of the parents and the students whether to join such programs, which lead to the award of foreign degree.

In two-day conference the issue of domestic regulation in the emerging context of privatisation and internationalisation was discussed. In preparing this report care was taken to examine all related issues and accordingly policy guidelines were suggested regarding the operation of foreign universities in India.

In preparing the report I acknowledge the discussions held with the Project Staff of WTO cell at NIEPA. I thank Dr. Nilay Ranjan, Mr. Subrato Kundu, Dr. Kausar Wizarat and Mr. Vijay Vrat Arya for the useful discussions and help in the preparation of the report. Mr. D. Kamaraj helped in the entry of the report. I am also thankful to him. I have acknowledged the contributions of respective presenters of the paper in the main
I thank, in particular, P. R. Mehta for giving extensive comments on an earlier draft. Usual disclaimers apply to this report.

I acknowledge the help that I received from Prof. Marmar Mukhopadhyay, Director, NIEPA and Ms. Bela Banerjee, Joint Secretary, Ministry of Human Resource Development, Government of India.

Prof. Sudhanshu Bhushan
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Introduction

What is domestic regulation?

The state has been responsible for ensuring quality and planned growth of higher education in India, since independence. It financially supports public institutions and facilitates the growth of ‘non profit’ providers of higher education as a part of overall public welfare scheme of making available to its citizens an opportunity to educate oneself. In order to achieve the national objective of education for all and excellence in education a number of enabling actions are taken by the state including establishing universities to meet the aspirations of the people and to encourage studies in different fields. Universities are established by the acts of parliament and legislative assemblies of states that lay down the procedures for the functioning of the university and its institutions. Various statutory regulatory and professional bodies have been established under the acts of Parliament to co-ordinate, guide and regulate the standards of education and functioning of higher education providers in the country.

The domestic regulations in higher education in our country fall under the scope of constitutional provisions, particularly entry 66 of list I and entry 25 and 26 of list III of the Seventh Schedule of the Constitution of India. Various Acts of Parliament and State Assemblies enacted under the scope of these entries, policy statements issued by the Central Government, regulations made by the regulatory bodies and the universities in India, and judgments of Supreme Court of India provide details of measures to be taken to achieve excellence in education and to curb malpractices.

These domestic regulations not only lay down the framework for the functioning of the higher education system in the country but also prescribe the minimum standards of education to be maintained by the institutions for grant of qualifications and conferment of degrees. These also make regulators and providers accountable. The guiding principle is that every citizen of the country has access to affordable quality higher education in his chosen field, so that he could pursue a career by choice and share the benefit of his knowledge with others and make his contribution in overall development of the society.

Objectives of domestic regulation

Objectives of domestic regulations in education sector of any country are to achieve an envisioned goal of enlarging the frontiers of knowledge, in a systematic manner, for the service of humanity. It, thus, would be a framework of opportunities, possibilities and limitations, prescribed in the larger interest of public in a transparent manner, bringing in certainties in defining obligations of every player (i.e. regulator, provider and receiver) in the system; so that time and money invested for sharing and acquisition of knowledge is meaningful. The changing context of Internationalization of higher education imposes an additional obligation upon regulatory authority to regulate different modes of supply of higher education. The changing context also demands that regulation of Indian and foreign education providers in the country be facilitating to meet the objectives of higher participation, equity and quality. Given the objectives set forth in the National Policy on Education, the objectives of domestic regulation are:
(i) To simplify regulation and relax supply constraints.
(ii) To allow greater academic freedom and autonomy
(iii) Make regulations implementable
(iv) To maintain transparency
(v) To impose accountability upon regulatory bodies. Improve coordination among and institutional capacity within domestic regulatory and professional bodies
(vi) To maintain highest academic standards and quality
(vii) To increase competitiveness
(viii) To check any malpractices operating within education system. Ensure academic considerations supersede commercial ones in provision of higher education services by private suppliers
(x) Reduce number of unapproved institutions to reduce scope for substandard foreign and domestic partnership arrangements—Prevent selling of degrees or marketing of degrees of questionable standard by non recognized institutions/even recognized institutions
(xi) Provide comprehensive information to consumers on foreign courses and institutions to enable informed choice
(xii) Take prompt punitive action where registration and other norms are violated

Currently there is no regulation in place even to monitor the presence of foreign programmes in India, not to speak of assessing their quality and credibility. The removal of these needs to be addressed urgently.
Forms of Domestic Regulation

Constitutional Provision

Under Indian Constitution, as amended by the 42nd Amendment in 1976, education is in the concurrent list. Under Article 246 in the VIIth Schedule, entry 25 of list III vests the state government with the power to legislate upon “education, including technical education, medical education and the universities, subject to the provisions of entries 63,64,65,66 of list I and vocational and technical training of labourers.” Entry 66 of list I in the VIIth Schedule of the Constitution of India vests Central Government with the power to legislate for “Co-ordination and determination of standards, in institutions, for higher education or research and scientific and technical institutions”. The Constitutional provision clearly lays down that entry 25; list III by which the state government has the power to establish university is subject to the power of Parliament to legislate under entry 66 to maintain the required standards of higher education. This point was made clearer by the Supreme Court of India (1987) in the landmark case of Osmania University Teachers Association versus State of Andhra Pradesh and Another. It is thus the constitutional obligation upon the Central government to regulate maintenance of the standards of higher education. The UGC Act, 1956 says “the Constitution of India vests Parliament with exclusive authority in regard to “co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions”. UGC Act, clause (f) and (g) of Section 26 guides UGC regarding minimum standards and its maintenance in universities.

The above-referred Constitutional provisions have implication on the entry of foreign universities in India. As education falls under the Concurrent list both union and state governments alone can pass legislations for establishment of universities, which in turn could confer Degrees on students upon attainment of qualifications. Further UGC Act lays down that a university has to be established by an Act of Parliament or Assembly. This situation requires that the UGC Act needs to be amended to create room for the foreign universities to operate in India, to enable the central or the state government to allow a foreign university to confer degree to the students or title to the teachers on Indian soil. This argument is reinforced by the fact that the Constitution of India in the Article 18 (1) stipulates, “No title, not being a military or academic distinction, shall be conferred by the State”. This article imposes the necessity to amend UGC Act to allow the foreign university to be included in the definition of university or by creating special provisions for foreign universities and recognition of their Degrees. Only then by means of Article 18 (1) the State can legally delegate its power, through a statute, to any foreign university to confer degree to the students and title to the teachers in India.

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Present System of Universities in India

Under the Constitutional provision given in entry 25 of list III under the seventh schedule (Article 246) central and state governments establish Multi faculty conventional universities. These are of both, unitary and affiliating types. Nearly 50% of Universities in India belong to this category. There are also professional universities such as technical, medical, law, agricultural, which are established by state governments. They are also of unitary and affiliating types. The third category is of open universities established by central and state governments. These offer open and flexible education through distance mode using correspondence courses/modern educational technology like interactive TV, etc.

The practice of establishing deemed to be universities under private/joint sector began in 1986. These are established under Section 3(f) of UGC Act. Recommendation of UGC for according the status of a deemed to be university to an institution is to be accepted and notified by the Central Government. These may have single or multiple faculties. Apart from Universities and Deemed to be Universities, there are also some institutions offering professional UG, PG and research programmes established as Centre of Excellence, some by an Act of Parliament such as IITs and others at the instance of the Central Government such as National Law Institutes, National Institute of Design, Indian Institute of Management, National Institute of Fashion Technology, etc.

Chhattisgarh state\(^2\) has recently promulgated an act to allow private universities to be established in the state, although Private Universities (Establishment and Regulation) Bill of 1995 is still pending before the Rajya Sabha. \textit{Chhattisgarh government may by notification in the Gazette establish a university with the recognition and authorization to conduct a syllabus or to grant degrees or diplomas or awards. Such notification shall then be tabled in the Legislative Assembly. The Act allows, with the prior approval of the state government to affiliate any college or other institution or to set up more than one campus. The act allows the state government to inspect the university for the purpose of ascertaining the standards of teaching, examination and research. In its December 2003 notification UGC has mentioned some norms and conditions for the private university to be followed. Failing to maintain such conditions may invite punitive measures.}

In the Indian system of higher education every university is to be established by the separate act – central or state – as stipulated in the section 2f of the UGC Act. Universities have to function according to the provisions of these Act. These Acts allows the universities to formulate its own statutes and ordinances, which have the character of quasi law for the university system. Till the recent initiative of the UGC towards prescribing a Model Act\(^3\), there was nothing for the legislature to follow other than conventional practices and ideas about the provisions to be made in such Acts, while

\(^2\) Chhattisgarh Niji Kshetra Vishovidyalaya (Sthapana Aur Viniyaman) Adhiniyam 2002 is one such act passed by Chhattisgarh government. Many other states are also in the process of passing the acts allowing private universities to impart education in India.

\(^3\) University Grants Commission, (2003), The Model Act for Universities of the 21\textsuperscript{st} Century in India, October 2003, at the UGC website: www.ugc.ac.in
framing an act for establishing a university.\textsuperscript{4} As a result of this process there has been a wide variation in prescribing the functions of the universities.

Notwithstanding the variations there exists the domestic regulation in India that allows the public universities and all the colleges and institutes affiliated to the universities to grant degrees for the different qualifications earned by the students in the higher education system. The Deemed to be University established under the trust has further been given the authority to grant degree.

**Private Universities and Issues of Domestic Regulation**

From the point of view of domestic regulation, normally a university is established by a separate act of Parliament or State Legislature. The Chhattisgarh Act, 2003 provides for the establishment of private universities under this act by the simple notification by the Government. Hence each private university need not be established by a separate Act. On the other hand, UGC Regulation, 2003\textsuperscript{5} states, “Each private university shall be established by a separate State Act and shall conform to the relevant provisions of UGC Act, 1956, as amended from time to time”. This contradictory position that a university should be established by an independent Act or by the provisions of the Act under Societies Registration Acts, the Trust Act or the Companies Act needs to be sorted out. If this issue is not sorted out and lack of co-ordination between the central, state governments and apex regulatory authorities continues, anomaly with respect to the establishment of private universities will persist creating a confrontation between UGC and the respective governments.

Under the existing provision as stipulated in the section 2f of the UGC Act spelling the need of a separate Act for the establishment of a university has the advantage that it will put a check on the over/unplanned expansion of universities. Though there has been a very slow pace of growth of Universities, there has been a disproportionate growth in the number of institutions, affiliated to existing universities, sometimes making academic administration completely unmanageable. On the other hand, the supporters of private initiatives in higher education argue that the establishment of private universities needs to be facilitated to meet the demand but at the same time necessary measure have to be taken to regulate the same to ensure required standards of education. In this context, many feel that the requirement of setting up a University by an act is un-necessary. Later proposition will mean that the provisions of UGC Act will have to be amended. Furthermore UGC may also find it difficult to regulate the standards of education of private universities and the state will have to undertake the burden of maintaining the standards of education. If liberal establishment of private universities is permitted and the respective statutory bodies and governments fail to ensure maintenance of the standards by such private (unaided) Universities, inevitable consequence will be dilution of standards and confusion amongst the stakeholders. It may defeat the very purpose of expansion of higher education.


Territorial Jurisdiction

Territorial Jurisdiction is yet another feature of traditional universities. The reason must have been that in a federal setup the jurisdiction of a university established by a state act cannot be applied to other state. Further within a state there is no territorial jurisdiction, yet for the purposes of avoiding confusion ordinarily territorial jurisdiction is followed for each university. The Model Act of UGC\(^6\) states that the concept of territorial jurisdiction is no more relevant in the age of borderless education, triggered by the ICT revolution.

In the case of private university UGC, 2003 regulation prohibits off campus and study centres of private universities in other states. The recent norm of UGC\(^7\) states that franchising through off campus study centres is restricted only to the courses of universities conducted under distance learning.

The off-campus centres and study centres, functioning as separate entities engaged in teaching, are supposed to come under the purview of Section 2f of the UGC Act. It may be very difficult for the UGC to oversee the maintenance of standards at study centres, as against the affiliated colleges are regulated by UGC under Section 2f of UGC Act in respect of standards. However, in actual practice UGC has not been successful in effectively overseeing the maintenance the standards by the colleges and this task is to be handled to some extent by the respective universities.

The dilemma with respect to the territorial jurisdiction is that “off campus centres” may be desirable in the present context of cross border education, yet it throws open the problem of regulating the standards at these centres. In case of public universities it may be possible to fix accountability, with regard to standards, of a university or that of respective state governments for a “off campus study centres”. However, in case of a private university and its off-campus centres or its affiliated institutions, it may be difficult to the standards by any central regulatory body. The challenge of domestic regulation is that territorial jurisdiction of universities and affiliated institutions may be extended in a manner that the standards of education are maintained and regulated by UGC, Universities, governments or other regulatory agencies. The situation with respect to study centres with franchisee arrangement under private sector is still more difficult to manage, yet due to its growing presence probably unlawfully or in the absence of any regulation, franchisee mode through the study centres needs to be restricted till the mechanism for regulating the standards are established for this category of institutions.

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\(^6\) UGC 2003, The Model Act for Universities of the 21\textsuperscript{st} Century in India, October 2003 at the UGC Website: \texttt{www.ugc.ac.in}

 Apex Institutions of Higher Education for Maintenance of Standards

After the lawful establishment of institutions, various apex institutions have been entrusted, either by an Act of Parliament or by an Act of Legislative Assembly or by central or state governments, with the responsibility to regulate the standards of education. For example, UGC was established by UGC Act, 1956 to coordinate and maintain standards of university education. NAAC was established in 1994 under 12cc of UGC Act to assess the standards of quality. It assesses and accredits Universities along with its constituent and affiliated colleges. Similarly AICTE, established under AICTE Act 1987 for planned and coordinated development of technical education system in the country. Under Section 10 (U) of AICTE Act, National Board of Accreditation has been set up to assess and accredit the technical institutions in the country and to make recommendation to the concerned authorities for recognition and derecognition of qualifications. Further, National Council of Teacher Education, Medical Council of India, Dental Council of India (DCI), Indian Nursing Council (INC), Council of Architecture, Bar Council of India (BCI), Pharmacy Council of India (PCI), Indian Council for Agriculture Research (ICAR), Rehabilitation Council of India (RCI), Central Council of Homeopathy (CCH) and Central Council of Indian Medicine (CCIM), Distance Education Council, etc., are the apex statutory bodies which regulate the standards of education in various Professional fields. The following table gives the lists of institutions, the date of its establishment and important functions.

### Apex Institutions and Functions

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<th>Institution</th>
<th>Date of Establishment</th>
<th>Important Functions</th>
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<tbody>
<tr>
<td>University Grants Commission</td>
<td>UGC Act, 1956</td>
<td>Co-ordination and maintenance of standards of university education</td>
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| National Accreditation and Assessment Council   | Established in 1994 under 12cc of UGC Act, 1956 | • To maintain standards of quality  
• Function of accrediting and assessing institutions of liberal arts, science and other disciplines  
• Recently teacher education institutions to be assessed  
• Accredited 261 institutions (61 universities and 200 colleges)  
• Not obligatory |
<p>| All India Council for Technical Education       | AICTE Act, 1987             | Planning, co-ordination, promotion of quality and maintenance of standards of technical education system in the country |</p>
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<th>Institution</th>
<th>Date of Establishment</th>
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| National Board of Accreditation | Established in 1994 Under section 10(u) of AICTE Act, 1987 | • To assess standards of quality of education  
• Assessing and accrediting institutions imparting technical education in India  
• Recommending body regarding recognition and de-recognition of institutions |
| National Council of Teacher Education | NCTE Act, 1987 | • Statutory body to develop norms and standards of teacher education  
• Powers to give recognition to teacher education institutions offering various courses  
• Planned and co-coordinated development of teacher education institutions |
| Medical Council of India | Established in 1934, operational by new act in 1956 | • Maintenance of uniform standards of medical education  
• Recommendation for recognition/de-recognition of medical qualification of medical institutions of India or foreign countries  
• Registration of doctors  
• Mutual recognition of medical qualifications of foreign countries |
| Dental Council of India (DCI) | 1948 | 1. To regulating the Dental Education, Dental Profession, Dental ethics in the country  
2. To recommend to the Government of India to accord permission to start a Dental College, start higher course and increase of seats in a college.  
3. To inspect Dental Colleges and institutions. |
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<th>Institution</th>
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| Indian Nursing Council (INC)        | 1947                  | 1. To regulate and maintain the uniform standard of training for Nurses, Midwives, Auxiliary Nurse-Midwives and Health Visitors.  
2. The Council prescribes the syllabus and regulations for various nursing courses.  
3. To inspect Nursing Schools and Examination Centers. |
| Council of Architecture (COA)       | Architects Act 1972   | 1. To register Architects  
2. To prescribe standards of education, recognition of Indian and foreign qualifications  
3. To prescribe standards of practice to be complied with by the practising architects.  
4. To regulate the standards of education and practice of profession throughout India besides maintaining the register of architects. |
2. Rule-making power to laying down guidelines for the standards of professional conduct and etiquette to be observed by advocates.  
3. To specify the conditions subject to which an advocate must have the right to practice and the circumstances under which a person must be deemed to practice as an advocate in a court.  
4. To make rules regarding the duties that an advocate must perform in his interaction with colleagues in the profession.  
5. It can only specify conditions that are applicable at the post-enrolment stage and not at pre-enrolment stage. |
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| Pharmacy Council of India (PCI)                  | 1948                  | 1. To regulate the profession of pharmacy whereas it is expedient to make better provision for the regulation of the profession and practice of pharmacy.  
2. To control Pharmacy education and profession in India up to graduate level. |
| Indian Council for Agriculture Research (ICAR)   |                       | 1. To establish various research centers to meet the agricultural research and education needs of the country.                                           
2. Activity involve in human resource development in the field of numerous agricultural universities spanning the entire country. |
| Rehabilitation Council of India (RCI)            | 1992                  | 1. Prescribes that any one delivering services to people with disability, who does not possess qualifications recognized by RCI, could be prosecuted.   
2. It has twin responsibility of standardizing and regulating the training of personnel and professional in the field of Rehabilitation and Special Education |
| Central Council of Homeopathy (CCH)              | 1973                  | 1. To evolve uniform standards of education in Homoeopathy.                                                                                           
2. The registration of practitioners on the Central Register of Homoeopathy will ensure that medicine is not practiced by those who are not qualified in this system, and those who practice, observe a code of ethics in the profession |
2. It maintains a central register on Indian Medicine and prescribes standards of professional conduct, etiquette and code of ethics to be observed by the practitioners   
3. It Provides and maintain the list of colleges recognized by the Council for education in Indian Systems of Medicine. |
An important point to note is that the standards of education in various fields cannot be expected to be uniform throughout the country, although some minimum standards of education must by all means be maintained. The term standard is as dynamic as the term development. Hence there is bound to be differences in standards depending upon the Mission and Goal of Universities/institutions, availability of resources, geographical location of institutions, management etc. However, the most worrying fact is that many institutions established within the framework of domestic regulation do not maintain the minimum standards of education. Various reasons are cited for such a situation including non-availability of qualified teachers, lack of financial resources, administrative procedures, continuous pressure to increase the intake without augmenting physical and academic facilities etc. The argument of mal-practices and falling ethical standards are only secondary arguments to the falling standards of higher education. The fact of the mater is that there exists domestic regulation for regulating standards, however, apex-regulating bodies have not been fully successful in ensuring maintenance of minimum standards in higher education system. The issue of accountability of the regulatory authorities also needs to be looked into.

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8The statement was made by P R Mehta during national conference organized by NIEPA (2004).
9 How to raise the standards of education is an issue that is being dealt with in another paper dealing with the issue of raising competitiveness of higher education services.
Domestic Regulation Mode Wise

The issue of domestic regulation can be understood mode wise. There are four modes of supply of education services as recognized under GATS. The domestic regulation is considered below for the institutions, students and teachers and researchers coming to India and later it is considered for those Indian institutions, students and teachers and researchers who go abroad.

Foreign Institutions, students, teachers in India

Mode-I: Cross Border Supply

Under this mode, foreign universities can offer online admission. It can offer courses and take examinations online. Conferment of degrees is possible through physical transmission of degrees.

At present there is no domestic regulation to restrict or regulate online delivery of courses. Even if restriction is imposed, technology can defeat regulation.11

Mode-II: Movement of Students

Under this mode, foreign students can join Indian universities. The first requirement would be eligibility criteria for admission in Indian universities. It means equivalence of school education should be given for admission to higher education institutions. For this there is no national transparent mechanism. The greatest deterrent for foreign students coming to India is that once Indian degrees are acquired, recognition of Indian qualification cannot be granted abroad.

Mode-III: Commercial presence of Foreign Institutions

Commercial presence of foreign institutions in India should only be within the framework of the Constitution of India. Under Indian law, entry 25 of list III of the Constitution of India vests central and state governments with the power to legislate in higher education.

Under the law, a university is established by an Act of Parliament or by state legislation. Under UGC act central and state governments establish Multi faculty conventional universities. Under the UGC Act there is also provision of “deemed to be” Universities approved by the central government. The universities in India established by the legal procedures have the sovereign right to confer a degree to the students or to confer the title (Professor) to a teacher. Colleges affiliated to the university or centers established by the deemed to be universities can transact the curriculum, even take the examination but respective universities only confer the degree to a student. With respect to diploma, central/state can recognize and give some diploma equivalence to a degree. For example, IIM diploma is recognized to be equivalent to a degree by the government.

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10 The section draws heavily from the presentation made by P R Mehta during the conference (26-27, 2004) organized by NIEPA.

11 Mode I operation is considered in great detail in another volume (forthcoming).
With respect to the standards of education, universities in India and UGC, AICTE and various professional bodies are entitled to regulate the standards.

With respect to FDI, there is 100% limit and hence any foreign institution can come and establish branch through 100% investment.

The point to note is that both with respect to establishment and also with respect to the standards of education, there cannot be two laws - one for domestic institution and the other for the foreign institution. Any foreign institution operating in India has to be established by one of the ways mentioned above.

Any other way such as the AICTE regulation to allow independently any foreign institution to establish a campus would be extra constitutional. The government may not recognize foreign degree granted by such institutions under the present law.

**Mode-IV: Presence of Natural Persons**

Historically, the teachers, examiners, academic administrators of foreign origin have been coming to India for specific purposes such as delivery of lectures and the conduct of examination for a specific period. For occupancy, clearance from Ministry of Labour and for Visa clearance from Ministry of Home Affairs was granted. Recognition of the degree of teachers and equivalence were the issues. But it was of a minor nature.

Enabling domestic regulation mode wise for India education providers abroad:

**Mode-I:** Under this mode there are three issues.

(i) Who can confer degrees?

(ii) Who are the legitimate regulators of standards?

(iii) Issue of territorial limitation

With respect to the first issue conferring of a degree is by any educational institutions established by the procedure laid down under the law of the land (see above). The recognition of a degree conferred by Indian education providers is automatic under the existing law.

Secondly, with respect to standards, for general education it is the UGC or the Distance Education Council to regulate the standard. In professional qualification Mode I is not feasible hence maintenance of standard issue does not arise.

With respect to territorial limitation, many universities in India have such restriction to cross the territory, only deemed to be universities through centers have no territorial restriction. However, this clause under domestic regulation will have to be addressed if we want good Indian institutions to provide education abroad.

**Mode-II:** So far as it is the question of Indian students going abroad, it is a choice based issue and regulation should not come in the way of making free choice. An important issue, however, is the recognition of foreign qualifications in India (This point is taken up later).

**Mode-III:** With respect to Indian education providers abroad, there could be one of the approved or legitimate institutions, referred to above, which can confer a degree abroad.
Its recognition in India is automatic. The respective bodies such as UGC, AICTE or any other professional regulatory bodies will regulate the standards. Concern here is again recognition of Indian qualifications abroad.

**Mode-IV**: Indian teachers can go abroad. There is no domestic regulation but facilitation is not there. This is an opportunity to move abroad. There are four situations under Mode-IV

(i) Teachers of foreign origin having Indian qualification
(ii) Teachers of foreign origin having foreign qualification
(iii) Indian teachers having foreign qualification
(iv) Indian teachers having Indian qualification

Mutual recognition of qualifications is an important issue under Mode-IV.

**Recognition of Qualifications**

So far as recognition of qualifications are concerned there are social recognition as well as government recognition. With respect to social recognition, the purpose is to obtain an occupation but the mechanism is performance linked. Agency of social recognition is the user who decides whether foreign qualification is worth considering or not for the purpose of employment.

So far as the government recognition is concerned equivalence is necessary for three important purposes.

(i) **For the purpose of registration**: In this case, the eligibility of admission, course content, duration, examination and recognition in home countries, will have to be considered. For professional qualification, respective councils, on the basis of merit, recommends to the central government, which notifies that foreign degree is equivalent to given Indian degree. Association of Indian Universities is entrusted with the task.

(ii) **For the purpose of employment with government**: It is the central or state government, which may decide the equivalence of foreign degree. In the case of Pondicherry, it is the state government, which decides which qualification from France is equivalent to Indian degree for the purpose of employment of French people with government.

(iii) **For Higher Education**: It is AIU/Universities, which decide the issue of equivalence. But here domestic regulation must streamline the process of equivalence.

An important issue here is if Indian students go abroad, earn foreign qualification and comes back to India should such foreign degrees, which are sub standard, be not considered or they should be made equivalent to Indian degree by some yardstick.

Issue of foreign institutions coming to India requires a review of legislation. Can we make room for the foreign institutions in India through an amendment in the UGC Act? The issue has to be looked at from this angle alone as scope for any other way through regulation does not exist. The point is there cannot be two ways for conferring a degree or regulating the standards separately for Indian institutions or foreign institutions.
Hence the issue of foreign institutions coming to India has to be dealt with by Parliament through suitable changes in the UGC Act.

Competition should be generated and Indian consumer i.e. students must get the best. Quality institutions should be allowed to go abroad. Quality foreign universities must be allowed in India through enabling laws through the process mentioned above.

**Equivalence**

So far as the equivalence is concerned we should move from equivalence to the identification of deficiencies in qualification. There cannot be two identical standards. Standards are as dynamic as development. Hence relative positions of standards be identified and tried to make up for the deficiency. Example, if the medical degree earned by Indian students in Russia is sub-standard, we should not reject it, as it is not equivalent to Indian medical degree. We may treat that as equivalent to certain years of medical studies in India and allow the students to make up for the deficiency so that students get the chance to earn degree and get suitable employment. We cannot condemn student, saying that forever the door is shut if he has acquired a sub-standard qualification.
Existing Guidelines/Regulations\(^\text{12}\)

The statutory bodies and other organizations have been rather slow in framing regulations to regulate operation of foreign providers. The guidelines of the Association of Indian Universities (1999) and the Regulations issued by the All India Council for Technical Education (2003) are briefly reviewed below. The guidelines should be viewed in the light of discussions made in sections 2, 3 and 4 above.

**Association of Indian Universities (AIU)**

The Association of Indian Universities formulated, in 1999, guidelines for grant of equivalence to degrees awarded in India by foreign providers. The guideline presumes that the foreign university has an Indian collaborator. The main conditions for equivalence that are prescribed are:

1. The Indian institution (partner) has adequate infrastructure and facilities, as validated by the report of a Review Committee of AIU.
2. The programme is implemented jointly by the foreign university and an Indian university, or an academic institution affiliated to an Indian university, with both contributing to the academic programme in approximately equal measure.
3. The foreign university gives an undertaking, in the form of a certificate, that the degree/diploma awarded to the student in India would be considered as equivalent to the corresponding degree/diploma awarded by the University at home, and that it would be recognized in that country as being equivalent to the corresponding degree/diploma of the awarding university.
   a. Similar, but more comprehensive, criteria for regulating the operation of foreign educational institutions were suggested in a discussion paper circulated by the Ministry of Human Resource Development, in November 1999. These included the remission of fees to the country of origin.

**All India Council for Technical Education (AICTE)**

The All India Council for Technical Education issued on 3\textsuperscript{rd} April 2003 regulations for entry and operation of foreign universities/institutions imparting technical education in India. The objectives of the Regulations are to facilitate collaboration and partnerships between Indian and foreign universities/institutions in technical areas; systematize the operation of foreign universities/institutions already operating in India; safeguard the interest of the Indian student community; enforce accountability on the part of the foreign providers; to prevent the entry of non-accredited universities/institutions; and overall, safeguard the nation’s interests.

The Regulations prescribe the procedure of registration of foreign providers. A foreign university/institution has to make an application accompanied by a No-

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\(^{12}\) The section is based on K. B. Powar’s presentation of paper entitled ‘Domestic Regulations Relating to Foreign Providers of Higher Education in India’ in the conference during 26-27\textsuperscript{th} August, 2004.
objection Certificate from the concerned Embassy/High Commission in India. It has to submit a detailed Project Report which is to be examined and approved by AICTE.

The AICTE Regulations require the foreign provider to either establish operation on its own or have collaborative arrangements with a recognized Indian academic institution. The foreign institution should be accredited in its home country and should give an undertaking that the degree/ diploma will be recognised in the home country. The Indian partner has to be an Indian university or an affiliated institution, preferably accredited by the National Board of Accreditation of AICTE. The nomenclature of the degree offered in India has to be the same as that which exists in the parent (home) country. (It is not clear as to what would be the interpretation if the nomenclature were not in accordance with the nomenclature approved by the University Grants Commission). Strangely, a clause prevents the university/institution from educational innovations including those related to mode of delivery. It will be the responsibility of the concerned foreign university/institution to provide for, and ensure that, all facilities are available. The fees charged, and the intake of students, will be prescribed by the AICTE. There are other conditions that aim at protecting the interest of Indian students and provide for overall control of operations by AICTE.

Reflection

The AIU guidelines delineate some basic conditions that need to be met in order to protect the interest of the Indian higher education system, and more specifically of the Indian students. The AICTE Regulations are omnibus in nature and are applicable to foreign universities intending both to enter into collaborative arrangement with Indian academic institutions, and to establish their own campus. It is doubtful if these could be applied, with equal effectiveness, to the different modes of operation like agreements leading to joint or dual degrees, articulation programmes, franchise arrangements or direct operation through (offshore) centres/campuses. It would, perhaps, be better to have separate regulations for different situations.

Summing Up

The fact of the matter is that regulations are in place. Implementation of policies needs to be ensured. The accountability of regulatory authorities – be it general, professional or technical-is a matter of concern. Law of the land remains the same whether it is Indian or foreign educational providers. If Indian penal code remains the same for Indian or foreign offender why can’t there be the same case with education providers – Indian or foreign.

So far as Indian education providers abroad are concerned, there is no need to worry about it. Law of the respective countries would take account of those institutions.

13 The point was made earlier that AICTE regulation alone will not suffice. This has to be supplemented with amendment in the UGC Act with respect to include the foreign education provider within the definition of university.

14 Dayanand Dongoankar endorsing the view point of P. R. Mehta in the conference expressed the following opinion.
If, however, Indian students acquire sub-standard foreign degree abroad, the problem needs to be resolved. For the students of Russian Medical Degree, it was resolved that ‘National Board of Examination’ shall conduct the examination. 30% of students did not qualify the examination. Indeed, no professional degree is recognized in any foreign land—be it India or any other country. So far as professional qualification is concerned, deficiency should be allowed to be completed rather than rejecting it.

For all the lapses of the regulatory bodies, the students should not suffer. Regulatory bodies should be made fully accountable. Had there been accountability, commercialization of education in management, technical and medical professions should have been checked.

There is another example. State governments allow the institutions to be opened but there is no mechanism by the state government to regulate them. As a result these institutions are operating outside the state. The accountability of regulatory authorities does not exist. The result is that others suffer.

So far as quality and transparency issues are concerned, there cannot be two laws. If it is stringent for domestic suppliers of education services, then it can also be stringent for foreigners. In that case, there will be no problem from GATS perspective as well. Transparency is required for admission and with respect to fee structure. If fees charged is cost based in terms of the rulings of the court, then there is no problem. Problem arises precisely when negotiation with private institution results in management quota, which is managed in totally non-transparent manner.
Regulatory Disciplines on Commercialisation through Supreme Court Judgements

In India it is worth recalling various Supreme Court Judgements with regard to commercialization. The judgement of the Supreme Court in Miss Mohini Jain versus State of Karnataka and Others is historic. It declared that educational institution couldn’t charge capitation fee as a consideration for admission to the said institution. It also noted that the concept of ‘teaching shops’ is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage. Thus commercialisation was banned in the judgement which also meant that it was a serious blow to the process of privatisation.

In J P Unni Krishnan and Others versus State of Andhra Pradesh and Others the Supreme Court ruled that commercialisation of education was not permissible. However, it allowed the differential fee structure for the “free seats” and the “payment seats”. Scope for the higher fee structure to be prescribed by the government or other government bodies for a professional college was created. It also clarified that a professional college could be established and or administered only by a society registered under the Societies Registration Act, 1860, or the corresponding act of the state or by a public trust and no individual, firm, company or other body of individuals would be permitted to establish and administer a professional college.

In T M A Pai Foundation & others vs. State of Karnataka & others case, while opposing the profit motive of the private non-aided institutions the court allowed the autonomy to the private educational institutions. However, the concept of “reasonable revenue surplus” to be generated by the educational institutions was not defined and as such in practice it was difficult to check the commercialization of the private unaided professional institutions.
GATS Discipline on Domestic Regulation

Article VI Of GATS

GATS article VI pertains to domestic regulation. There are following provisions under article VI that are applicable to sectors where commitments are undertaken. Article VI.1 states reasonable, objective and impartial administration in case of any foreign providers of education services. Article VI.3 notes that decisions on applications should be taken in a reasonable period. Article VI.6 talks of well laid down procedures to verify competence. Then there are provisions which are applicable to all sectors, irrespective of commitments. VI.6 states that there must be procedure for review of administrative decisions that affect trade in service.

Article VI.4 calls for regulatory disciplines to be developed. The Council for Trade in Services shall develop any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade. Disciplines shall aim to ensure that above-mentioned requirements are:

a) based on objective and transparent criteria,

b) not more burdensome than necessary,

c) not in themselves a restriction on supply in the case of licensing procedures,

Article VI.5 further states that:

a) In all sectors in which a member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to part 4, the member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments.

b) In determining whether a member is in conformity with the obligation under para 5(a), account shall be taken of international standards of relevant international organizations applied by that member.

The point to note is that article VI on domestic regulation opens up a whole Pandora’s box where many of the concepts are not precisely defined and fully understood. These relate to

- What constitutes unnecessary barriers to trade?
- Vagueness of the concept like ‘Not more burdensome than necessary’.
- How to define competence?
- Defining international standards

Other Articles of GATS

There are various other articles under GATS that have also bearing on domestic regulation. Article VII on ‘Recognition’ has an implication that there should not be any

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15 The section is based on the presentation by Rupa Chanda in the National Conference organized by NIEPA on the 26th and 27th of August, 2004
discrimination in the recognition of degrees provided by the foreign institutions. There should be autonomous/mutual recognition of degrees through harmonization or otherwise. The important point is that the recognition procedures should not in themselves constitute barrier to trade in services. Recognition of foreign degree, in turn, depends on whether foreign institutions are lawfully established or not. Secondly, it also depends on whether they are imparting quality education. To allow only standard quality institutions in India there should be clear laid down procedures to certify quality of foreign institutions by NAAC or NBA.

Similarly the scope of ‘Transparency’ in Article III relates to providing all necessary information concerning domestic rules, regulations and administrative guidelines through establishing contact points. It would not be an easy task to develop a contact point for providing all the necessary information for all the sectors or sub sectors.

Article XV on subsidy notes that, in certain circumstances, subsidies may have distortive effects on trade in services. Necessary multilateral disciplines may be developed to avoid such trade-distortive effects. The subsidies may be granted as long as it is justified for the national development. It implies that any countries right to subsidy will come under international surveillance. Limitations on National Treatment clause in the schedule of commitments restricting the right of subsidy to Indian national should serve the purpose. It would be very difficult to prove whether subsidy is leading to too much protection and hence inefficiency in the education system. The right to subsidy should be clearly reserved for Indian institutions and it should be ensured in any negotiation under GATS.

Key Issues for National Regulatory Authorities

There are various elements of concerns in GATS disciplines on Domestic Regulation and other GATS provisions with regard to the opening up of higher education services in India. The primary concerns relate to its implications for realizing objectives of equity, quality, and access when allowing entry to foreign education providers. Other concerns include the following aspects:

- Necessity test obligation
- Transparency and other administrative requirements
- Procedures to determine competence, equivalence
- Scope for public provision and subsidization of education services

Necessity Test Obligation:

This is an obligation upon member countries to prove that certain measures under domestic regulation are in conformity with GATS guidelines. However, there are many unclear and undefined terms under GATS provisions. Hence it may be difficult to prove or disprove whether measures under domestic regulations are necessary. There are many ambiguities such as:

- What constitutes not more burdensome than necessary?
- What constitutes least trade restrictive/ not more trade restrictive than necessary?
- What are unnecessary trade barriers?
- What all constitute legitimate objectives, can they be uniform?
What constitutes objective and transparent criteria for application of disciplines? How would one evaluate alternative measures that achieve the same objective? Furthermore is it possible to determine -

How legitimate is the domestic regulatory objective?
How necessary is the regulatory measure being applied?
Whether the measure is in proportion to its objective.
Might necessity test obligation reduce autonomy of national regulatory bodies in adopting and applying measures concerning qualification and licensing and technical standards to foreign education providers?
Might this obligation reduce ability of national regulatory bodies to choose objectives in line with national priorities?
Given different regulatory structures and requirements across sectors, is a necessity test feasible?

**Transparency requirements**

There are several concerns relating to the transparency. Apart from establishing inquiry points and furnishing information on relevant rules and regulations and changes to these, what additional transparency requirements would be entailed? What is meant by reasonable, objective, impartial administration of procedures? Might enhanced transparency requirements and review requirements create undue administrative burden for national regulatory authorities, given multiple layers of regulation? Where central, state, other apex regulatory body controls are present, how would enquiry points be established in simple, transparent way? How might it affect existing structure of regulatory authority?

**Competence and equivalence issues**

The assessment of the competence of an individual or institution is a complex issue. There is a need to identify the factors that are relevant for assessing competence and for granting equivalence? Some of the objective factors could be academic content, faculty, partner institute quality and contribution, infrastructure, degree given and its acceptability abroad.

Legitimate procedures to verify competence and equivalence, too, need to be established. In establishing procedures the registration requirements, undertakings from the foreign institutions and periodic reviews should be provided for. Role of international standards/benchmarks should be taken into account in assessing competence. Role of licensing and qualification requirements and procedures should be laid down wherever it is necessary. Other problems include how objectively verifiable deficiencies be addressed?

How to judge non-formal qualifications and competence/equivalence in non-certified professions?

How to regulate on a continuous basis quality, competence, and equivalence of degrees/diplomas awarded by foreign providers via the Internet?
Discussion

Q.1: How can same standards of accountancy be applied to all countries under GATS regime?
Ans: GATS disciplines on domestic regulations in Accountancy sector do not deal with the standards of accountancy. Of course, same criteria of standard cannot be applied. The ‘discipline’ deals with how you apply the standards in transparent and objective manner.

Q.2: How to resolve the problem of equivalence in the case of 1 year MBA degree provided by UK Universities? Even in India, IIIT, Allahabad provides an integrated 5-year BE-MBA degree, which in effect means 1-year management. In terms of the law of the land, MBA is postgraduate qualification of 2 years. In UK, 1 year MBA is accredited qualification but it requires 3 years work experience. The question is how to grant equivalence for 3 years work experience? How can we say that 3-year work experience is equivalent to 1 year MBA study?
Ans: This is a vexed issue of equivalence. Indeed the professional and technical regulatory bodies should try to sort this issue through some rational judgement. (See also above)

Q.3: What is the regulation on FDI in Higher education?
Ans: At present there is 100% FDI in higher education. It means that any foreign university, provided that it becomes legal entity in India, can invest up to 100% in India. 100% FDI is, however, subject to the domestic regulation in higher education. Under present domestic regulation, no foreign university in India can setup branch campus without an enabling legislation. Given this law, 100% FDI amounts to no FDI so far as branch campus of a university is concerned.

Another route could be foreign institutions affiliated to Indian universities and approved by UGC and state government. In this case, 100% FDI is possible.

The third route could be the establishment of educational institutions through the trust. FDI can be brought 100% if it is an educational institution under trust. But the point is foreign university cannot register under trust in India. Foreign university will have to find an Indian partner under new nomenclature to get registered under trust.

Q.4: As foreign institutions cannot register under a trust in India, nor can they buy land, is it not a barrier so far as foreign institutions are concerned?
Ans: It may be barrier. From national perspective, it may be necessary safe guards. This question is to be settled at the policy level whether this criterion of educational institution under trust be continued or replaced by another forward looking criterion such as corporatisation. But under existing law, yes, foreign institutions cannot register under trust.

Q.5: What is the meaning of ‘commercial presence’ under Mode-III of GATS?
Ans: Commercial presence has to be a legal entity i.e. has to be in accordance with the law of the land.

Chair person’s Remarks:\textsuperscript{16}

In the internationalisation of higher education, the most important aspect is the capacity building of our own institutions. We must provide a proper ambience for academic freedom, right kind of infrastructure and intellectual support. Out of 16,000 colleges catering to the 90% undergraduate enrolment, UGC provides development assistance to only 5,000 colleges. Hence the role of government is to facilitate higher education in India. One of the greatest challenges of the higher education institutions is to produce high quality teachers for the elementary and the secondary levels of education. NCTE should also come out with a perspective plan to develop the teachers through the teacher training institutions.

\textsuperscript{16} Prof. Rajshekharan Pillai, Vice-Chairman, UGC, presiding the session made the following comment.
Domestic Regulation: Some Examples

So far as the domestic regulation in different countries are concerned, there are asymmetries in approaches. There are some countries that intend to use it with a view to promote competitiveness. Others that are sceptical, especially among developing economies, use domestic regulation more as a tool to protect the national educational system against the onslaught of foreign educational institutions. In the latter set of countries consistency with the goals of the GATS may not necessarily be achieved.

The scope of domestic regulations in the context of transnational higher education should be to address the myriad concerns of the government, including consumer protection, advancing national goals and protecting the local system. Among other concerns of the government are: National values and priorities of the host country may be undermined by the presence of foreign providers not sharing such values; local academic may be exploited by foreign providers, local students may be misled by foreign providers offering sub standard courses.

In the context of GATS China introduced the legislation on transnational provision of education services in March 2003 and September 2003. Major features include the stipulation that foreign institutions must partner with Chinese institutions; partnership must not seek profit as their objective; no less than half the members of the governing body must be Chinese citizens and the post of President or equivalent must be a Chinese citizen; the basic language of instruction should be Chinese; and tuition fees may not be raised without approval. (See Garrett Richard, 2004)

The increasing scale of activity of foreign education providers in China poses some problems. An important problem is that non-approved institutions far exceed the officially approved number of institutions, which also means that the scope of domestic regulation should be to prevent any unauthorized institutions to operate within any domestic territory.

In Philippines Professional Regulation Commission (PRC) and the Commission on Higher Education (CHED) are the regulatory bodies. A policy note by Tullao T S (2002) admits that existing provisions do restrict trade in educational services and hence are in non-conformity with GATS provisions in article VI: 4. The author cites example of a labour market test as putting barriers to trade in services. Tullao suggests an important perspective of domestic regulation in terms of measures to improve the quality of Filipino professionals and to improve higher education in terms of improving faculty qualifications and expanding research. This is a significant direction in which the domestic regulations must proceed rather than lifting all controls as the markets, too, are liable to be failures.

Hong Kong witnessed proliferation of foreign courses till December 1997 when the Non-local Higher and Professional Education (Regulation) Ordinance was implemented. (See Mcburnie G and Ziguras C, 2001) The ordinance requires that foreign providers

17 According to 2003 Chinese decree there are currently 712 ‘approved jointly run education institutions in China.
partnering with one of the 11 government-recognized Hong Kong higher and post secondary institutions should apply for ‘exemption from registration’, however, other providers must apply for registration. In the latter case application is closely vetted under the direction of the Registrar who satisfies himself through seeking detailed information that the foreign provider is a bonafide operator in its home country, and that the course will be of a similar standard to the provider’s equivalent domestic course. The Registrar has centralized database of foreign courses and institutions. In the case of ‘exemption’ from registration, it relies on the domestic bonafides of the foreign providers. In the case of registration, he verifies it himself the bonafides of foreign providers and informs the students to go through the comprehensive database from the office before choosing for courses. In the domestic regulation, therefore, the state’s role is confined to ensuring that all participants in the market have provided information that would enable informed choices to be made by consumers.

The objective of domestic regulation in Malaysia was to reduce its level of importing of education through transnational education and to increase export through the expansion of private higher education. There has also been a change in the ‘mind set’ from one of the opposer of private education before mid 90’s to one of ‘guided’ supporter of private education. The regulatory mechanism ensures that application for approval to establish higher education institution, its registration and certification of courses be certified by agency-LAN to meet minimum standards. The public universities provide for quota system supporting the ethnic composition of Bumiputra (Malay and indigenous), Chinese, Indian and other students. In private educational institutions English is the primary language of instruction.

The experience of New Zealand is worth mentioning in facing difficulties by the government in shaping higher education system, once GATS commitment to open market access in mode III was made in 1995. In 2000, New Zealand government passed legislation limiting the number of public university to 8 (primarily to prevent an Auckland polytechnic from becoming university), but the government placed no limit on the number of private university. Under New Zealand’s GATS obligation, the government cannot restrict the number of private universities or colleges, or the number of students enrolled. The NZQA has the power to grant approval to local or foreign institutions to use the ‘title’ university, and once they are accredited by NZQA, they are eligible for the same level of tuition subsidy as public university. This situation in which the government is attempting to shape the growth of higher education but has no power to restrict the number or size of private sector institutions has drawn criticism from within the country.

Similarly in order for institutions to receive public subsidies for programmes they operate in New Zealand, they must register their institutions with NZQA and have their programme quality assured by the NZQA. However, transnational providers not seeking subsidies are not required to being recognized by NQF. Foreign providers in New Zealand can operate with fewer restrictions than local private institutions as transnational providers can operate in New Zealand with no restriction other than those relating to all foreign investment. The present situation is that Australian providers of education operate in New Zealand, as they are not required to be approved by NZQA. (See Ziguras Christopher, 2001)
The provision of Article VI under GATS is a step in the direction to ensure free trade in services through more transparent domestic regulatory decision-making, implementation and administration. From the point of view of developing economy the national regulation in higher education has been oriented towards protecting the system of public higher education to serve greater access and equity. Hence there seems to be a tension between the objectives as set forth in the 1986 policy guidelines relating to access, equity and quality and the importance that it attaches to public provision of education and the recent trends of commodification and internationalization of education that may set up forces acting against those objectives. Given various compulsions to open up and the dangers inherent in opening up in the domestic regulation in higher education, the burden of domestic regulation falls more and more to regulate the foreign education providers. Regulations in Philippines provide an example to promote quality as a challenge to free trade in education and is a step in right direction.
Enabling Policy Guidelines for the Operation of Foreign Universities in India

It must be clarified that policy guidelines under the domestic regulation in India should clearly distinguish between the offshore campus of foreign universities in India and other forms of foreign provision of education such as twinning, franchisee, programmatic collaboration, study centers and linked programmes leading to the award of foreign degree in India.

Offshore Campus

Offshore campus may be of two types: (1) Sole subsidiary of foreign university having a branch campus in India (2) Subsidiary of foreign university having an Indian partner – public or private- opening a branch campus of foreign university in India. An Indian partner will be the one covered under section 2f or 3 of the UGC act or the one authorized by the central government.

If the condition of registration under a trust or Society’s Registration Act or Company’s Act is invoked then a foreign institution cannot be registered in India and sole subsidiary of foreign university having a branch campus in India is ruled out. The only possibility exists for subsidiary of foreign university having an Indian partner – public or private- opening a branch campus of foreign university in India under a new nomenclature as it can get itself registered under trust. Example: Oxford University can set up a branch campus with, say, Indian partner under a nomenclature ‘Oxford India’ after duly registered under trust or Society’s Registration Act. Secondly, this entity Oxford India as a trust will have to obtain the approval of RBI for the purposes of FDI or for the purposes of remitting the foreign exchange. Thirdly, for the purposes of degree granting authority the scope of university under UGC Act will have to be extended to include the present category of branch campus of foreign university under a new nomenclature registered under trust. Fourthly, among other provisions the important ones are

i. **FDI Condition:** instead of automatic route there should be a cap on foreign investment with majority investment by the Indian partner as education is a public good and it should not be considered primarily as a source of foreign exchange

ii. **Majority Indian Partner:** The Governing Board of above said institution should have majority Indian partner.

iii. **Upper limit to the remittance of foreign exchange:** There should be an upper limit to the remittance of foreign exchange as return of foreign services. All other conditions relating to registration, approval, admission, fees, nomenclature of degree, authority to inspect are given at the end of section.

Franchisee

Under this arrangement foreign institutions grant the permission to another institution in another country to execute their programme with their name, curriculum, evaluation methods. In this arrangement foreign institutions franchise a programme to Indian
organization that offers these programmes under the direct supervision of the foreign institutions. Presently two foreign institutions Wigan & Leigh, UK and Western International University are providing degree under Franchisee arrangement.

In this case also foreign university will have to register under trust or Society’s Registration Act with Indian partner under new nomenclature as in the case of offshore campus. All other conditions, as discussed above, will apply. For the purposes of degree granting authority the scope of university under UGC Act will have to be extended to include the present category of franchisee as well. It may, however, be debated whether the franchisee mode of foreign provider of education be allowed to operate in India. Franchisee is normally taken for the brand name and how well it operates depends on partner institutions ability to run the programme or the willingness of the foreign university to keep a proper watch on its franchisee unit.

**Twinning and Link Programme**

Twinning programmes are those wherein students can complete part of their study in India and part in foreign university. The twinning arrangement may be optional to the students. It is one of the most preferred modes because foreign institutions have least stakes and maximum income. On the other hand, students, too, prefer this mode because it provides them least cost opportunity to earn foreign degree with outside exposure. Of course in many cases, students feel the difficulty of obtaining visa even when their admission under twinning arrangement is granted by foreign university. Link programme differs from twinning in the sense that for a part study that is completed in India a student is awarded a diploma or degree in India. A foreign university recognizes in part or full the credit earned for the Indian qualification and allows the student to earn a foreign degree in foreign university. Since foreign degree earned through link programme is entirely the responsibility of foreign institution and is also earned in foreign land, there is no need for enabling provision in domestic regulation. At best equivalence will take care of the foreign degree for the purpose of higher studies and employment.

So far as twinning arrangement is considered, if the twinning leads to the award of foreign degree alone then equivalence of foreign degree may have to be found out. If there is a joint degree both by Indian partner and foreign university then recognition of foreign degree demands that among other conditions discussed above, for the purposes of degree granting authority the scope of university under UGC Act will have to be extended to include the present category of twinning as well.

**Programmatic Collaboration**

The programmatic collaboration enables a student to complete study in India and get joint degree i.e., (foreign as well as public/private education institutions). It has its own attraction, as it is one of the cheapest ways to earn foreign degree. Various types of inter institutional collaboration exists under programmatic collaboration. For example, foreign institutions may support in developing curriculum, joint course preparation, joint evaluation of the programme, teacher’s visit, student summer trip etc. The programmatic collaboration is a way through which new innovative course is offered at
less cost and public/private Indian institutions offer a foreign degree which is a way of attracting the students.

The enabling provisions under programmatic collaboration are the same as discussed under offshore campus. In addition for the purposes of degree granting authority the scope of university under UGC Act will have to be extended to include the present category of programmatic collaboration as well.

It should be clear that any study centre of a foreign university should be prohibited under the present policy guideline.

**Registration and Approval Body**

There shall be a Council consisting of the heads of UGC, AICTE, DEC. It may co-opt members from other standard setting apex bodies discussed in section ‘Apex Institutions of Higher Education for Maintenance of Standards’ or the experts and evolve a mechanism for invitation of the applications furnishing all the information and registering the institution after satisfying that all the necessary conditions laid down for running a programme are fulfilled. Council shall frame a guideline for this purpose and will reserve full right to reject any application on the ground that curriculum is not as per the need of the country and that it might have deleterious effect on the Indian culture. Council may also have the right to cancel its own approval of the programme if it finds that in the course of running a programme it has been violating the broad framework of national policy on education or indulging in pure profit making. The council should give broad guidelines for admission, fees, teaching-learning process, and infrastructure facilities. Within broad framework for guideline, there should be sufficient autonomy to innovate and develop the educational institution.
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## National Conference on
Internationalisation of Higher Education
*Issues and Concerns*
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