Independent Regulatory bodies in Higher Education – An Option

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Abstract

In recent times, privatisation has resulted in exponential growth of the Higher education sector, resulting in a host of issues including the overall decline in quality of education, increased corruption and higher costs of education. The existing regulatory response is not in tandem with these rapid changes. Therefore, newer models of regulation need to be explored and experimented with. In this paper, I explore the Independent Regulatory Authorities (IRA) models as possible alternative to the existing regulatory mechanism. The IRA model is already being experimented by two states in India - the Higher Education Regulatory Commissions of Himachal Pradesh and Madhya Pradesh. In the first section, I outline the functioning of these regulatory institutions, their impact and analyse the regulatory instruments adopted by them. In the next section, the paper examines the legal or constitutional challenges currently faced by these institutions, as their legality is under scrutiny by the courts. In the concluding section, I explore the regulatory models across the world, with a specific focus on IRAs, to understand what models best suit the specific challenges of the education sector in India.

Keywords: Privatization of higher education, Independent regulatory authority, Self regulation

Introduction

Higher Education equips individuals with the specialised skill set and substantive knowledge that allows them to define and to pursue their own goals, and also allows them to participate in the functioning of the nation as informed citizens. Hence, it is important for us to invest in improving both the quality and quantity of education in India. "India has the third largest higher education system in the world with 700 universities and more than 35,000 affiliated colleges enrolling more than 20 million students" (Sharma, 2014). The sector has grown rapidly in the past two decades as a result rise in private investments. Unfortunately the commercialisation came with its own problem. The growth of these private colleges fulfilled the demand for educational services but was unable to provide with standard quality of education. This led to a division within the skilled labour in India. Inspite of having a degree, a section of these people were unable make the best use of their skill. Additionally, private colleges charged higher fees than the state government.

The regulatory framework for Higher Education sector is a mosaic of various regulatory models. It consists of the Department of Higher education, the Universities Grants Commission and self regulatory bodies for professional courses such as Medical Council of India and Bar Council of India. In addition to this, there is also a Meta regulator - National Assessment and Accreditation Council which just monitors the work of the regulatee. The current regulatory structure is not able to ensure regulatory compliance. As a result it is not able to maintain standard of education for all educational institutions under it. There is gap between the regulator at central level and regulatee. A more comprehensive framework for regulation is required which ensures that every educational institution set up within the nation is follows the regulations for Education.

Independent regulatory bodies are also being established for regulating the Higher Education sector as a single body ensures that similar set of standard are maintained and is more effective than multiple bodies. There are independent regulatory bodies in the State of Himachal Pradesh and Madhya Pradesh to regulate the Higher Education Sector. They are statutory bodies established by their State's legislative assembly respectively.

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These bodies are not setup as a substitute of the existing regulatory framework by in addition to it.

Independent Regulatory Commissions

Case Study of Madhya Pradesh Niji Vishwa Vidyalaya Aayog and Himachal Pradesh Private Educational Regulatory Commission

The Government of Madhya Pradesh as part of its development plan has decided to empower the youth of the state. For the purpose of skill building it was decided that higher education should be made more accessible and affordable. To promote growth of colleges and at the same time to ensure that this growth is sustainable, the State Government on 8th October 2009 established the regulatory commission – Madhya Pradesh Niji Vishwa Vidyalaya Aayog. The Commission stands between the state government and private parties to facilitate sustainable growth in higher education sector. On the other hand the Himachal Pradesh Private Educational Regulatory Commission (HPPERC) was established as a result of privatization of the state's higher education sector. The state government had initiated privatisation by giving permission to the Jaypee group to open the first private university in the state - Jaypee University of Information Technology in 2002. Many such private universities were established over the following years. Unlike Madhya Pradesh, Universities in H.P have been established by a separate act passed by the state legislature. Amidst the rise of private educational institutions the Government passed the Private Education Institutions (Regulatory Commission) Bill. The Act was intended "to keep a close check on the working of private institutions, ensuring appropriate standards of admission, teaching, and examination and also look into complaints related to fee structure and adhering to general guidelines"[1].

Composition of the Commission

Both the legislations state that "the Regulatory Commission acts as an interface between state government and central level regulatory bodies to ensure standards of teaching, examination, research, extension programme, protection of interest of the students and reasonable service conditions of the employees"[2]. Composition of the both the IRAs is similar. The commission is headed by a chairperson along with two members. One of the members is to belong from the academic sphere and the other should be an eminent person from public life or administration[3]. The Commission can also hire two part time members. To coordinate the activities of the commission there is a full time secretary.

The selection procedure of the commissions differs. In case of Himachal Pradesh; the search committee selects the members for these posts[4]. The chairman, members and secretary of the Commission are appointed by the visitor[5] based on the recommendation of a panel set up by the state government in Madhya Pradesh.

Funding for the Regulatory Commission

The Madhya Pradesh Niji Vishwavidyalaya Viniyamak Aayog (MPNVVA) and the Himachal Pradesh Private Educational Institutions Regulatory Commission (HPPERC) collects one or less than one percent of the total fee collected by private university for the commission's expenses. This makes the IRA truly independent of the government because the state government cannot influence the decisions of the regulator by withholding funds. Having said this, it is difficult to claim that the MPNVVA is completely independent because as per Section 11 of the Act the State Government has the power to issue directions to the Regulatory Commission which are binding upon them.

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[1] Sharma, A. (2010, December 10). "HP's private universities to have a regulator". Indian Express. Retrieved from http://archive.indianexpress.com/news/hp-s-private-universities-to-have-a-regulator/722849/

[2] Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007. Section 36(1) and Himachal Pradesh Private Education Institutions (Regularity Commission) Act 2011. Section 3(1)

[3] Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007. Section 36(5)&(6) and Himachal Pradesh Private Education Institutions (Regularity Commission) Act 2011. Section 4

[4] Himachal Pradesh Private Education Institutions (Regularity Commission) Act 2011. Section 4(3)

[5] The governor of Madhya Pradesh is the visitor as per Section 15, Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007.

Madhya Pradesh Niji Vishwavidyalaya Viniyamak Aadhiniyam - Analysis

The MPNVVA along with regulating the functioning of the university also plays a crucial role in establishment of new universities[6]. Chapter II of the Act lays down the rules for establishing a private university in the state. The Act goes on to specify the objectives[7] of the universities which include providing instructions, teaching and training in higher education and to make provision for research advancement and dissemination of knowledge. Private players in the market aspire to make profit; in their pursuit for profit they might not treat Educational service as a 'social good' which should be accessible to all. The quality of education can also be impacted due to cost minimisation practices adopted by the institution, the objectives specified in the Act help to avoid such situations because all universities are mandated to make their project plan based in the given objectives.

The application for setting up a university along with a project report is submitted to the regulatory commission who then evaluates the plan. All documents and details that the report must contain are clearly specified in section 4(2) of the Act. If the regulatory commission is convinced with the project after its evaluation, it will then recommend to the state government to issue a letter of intent to the sponsoring body. The sponsoring body has to submit compliance report to the regulatory commission. This report is verified by the commission and a copy of the same is given to the state government. If it is found that a university is not functioning appropriately the state government as per section 8(5) of the Act will ask the University grants commission to conduct an inspection of the proposed university within three months. If the UGC does not respond within three months then the state government will take any decision that it finds appropriate. University is established only after this evaluation is completed. The role of the commission here is advisory in nature; finally it is the state government who decides whether or not an institution is to be established. At the same time such a mechanism ensures that approval for setting up educational institutions are given after rigorous verification rather than arbitrarily. The HPPERC on the other hand plays no role in establishment of universities; it is entirely handled by the state government.

Operation and Management of Private University:

The state government in their discretion can provide financial assistance to private institutes. These grants are recorded in writing. Sponsor of a private university is mandated to deposit an amount of five crore as security deposit once they are given approval by the State government to set a university[8]. This is to make sure that the private entity executes the plan and also complies with all the regulations. The Government has given the regulator the power to forfeit a part or whole of the endowment fund in case of non compliance of rules and regulation. The amount in the fund can be used for capital expenditure but not allowed for O&M expenditure. Other than the endowment fund private universities are also mandated to set up a general fund in which fees, other charges by the university will be credited. Any contribution made by the sponsor will also be credited in this account. Clear rules such as these help facilitate greater transparency in maintaining finances. The purposes for which the general fund should be utilized are clearly mentioned under Section 13 of the Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007.

Presence of appropriate administration will ensure smooth functioning of the institution. For this purpose the Act mandates every Private University must have the following officers

1. Chancellor
2. Vice Chancellor
3. Visitor
4. Registrar
5. Chief Finance and Accounts Officer

Madhya Pradesh Government with great foresight gave provision in Chapter V of the Act for the procedure to wind up a university. It is responsibility of the regulatory commission to ensure that the

[6] Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007. Preamble
[7] Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007. Section 3
[8] Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007. Section 11(1)

transition takes place smoothly and that the interests of the students enrolled in the concerned institution are not harmed. Strict rules for winding up as laid down in the Act guarantees that universities will take necessary steps to avoid such a situation and the of environment higher education sector will be remain sustainable. To maintain accountability to the Government and thereby the people, all the rules made under this act have to placed in the state legislative assembly.

Powers and Functions of the IRA

Acts of the respective regulatory agencies specify the powers and functions of the IRA. Primary responsibility of the regulatory commission is to ensure that the private universities are functioning properly. The provisions specified in the Act for MPNVVA are different from that of HPPERC but the essence of both is quite same. The provisions for the HPPERC cover broader range of issues from which the duties of MPNVVA can be drawn.

The Madhya Pradesh Niji Vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam clearly lays down the duties of the commission, they are:

1. It is the responsibility of the Commission to take all steps necessary for determination and maintenance of standards of teaching, examination and research in the private university.
2. To ensure the private colleges do not charge high fees. The fee and other charges out to together must generate enough revenue to cover the cost of education imparted by the institution and have a margin for further investments.
3. To ensure that the teachers of the private university have minimum education qualifications prescribed by the university grants commission of the other regulatory bodies.
4. To ensure the staff of private university is appointed in conformity with the statues, ordinance and norms or guideline prescribed by the university grants commission and other concerned statutory bodies.
5. To ensure that students enrolled in the private university are not exploited and no unethical means are adopted to collect undue or excessive fee from them.
6. To take necessary action in an event of liquidation of a private university including arrangement for completion of courses, conduct of examinations, award of degrees etc by assigning the job to some other state university in such a manner that interest of students are not adversely affected and the expenditure made for these arrangement for the students along with the process of liquidation of the private university shall be made good from the money deposited in the endowment fund or general fund.
7. Section 39 of the Act provides for UGC to regulate the private universities by undertaking inspections. It also states that if a university has not complied with the UGC regulation then the UGC should give reasonable opportunity to rectify the same. Even after this if the university fails to comply with the rules the Act under Section 39(b) states that UGC can pass any order prohibiting the private university from offering any course for the awards of graduate degree/ post graduate degree or diploma.

The powers and responsibilities of the commission are specified under the section 9 of the Himachal Pradesh Private Education Institutions (Regularity Commission) Bill. They are:

1. To ensure that private universities are complying with the guideline issued by central level regulatory bodies like UGC, MCI etc. In case of non compliance the commission is empowered to penalise the institution. Guideline for the are given in Rule 6 of the Himachal Pradesh Private Educational Institutions (Regulatory Commission) Rules, 2011, which lays down the minimum and maximum limit of the penalty to be imposed under Section 11 of the Act No. 15 of 2011, reads as under:-

   "6. Amount of penalty to be imposed: -

   (1) The Commission shall be empowered to impose penalty on the Private Educational Institutions and Universities as per provisions laid down in Section 11 of the Act and the minimum penalty shall be as follows:-

   (a) Admission: - If the admission of the student is done in violation of section 9 of the Act,

penalty shall be twice the amount of actual fee charged by the Private Educational Institutions from such student.

(b) Deviation of fee charged from the student: - In case any admitted student is charged fee in excess of the amount fixed and approved by the Government / Competent Authority, under the provisions of an Act, the penalty shall be three times the actual amount charged from the student over and above the specified fee.

(c) Qualification of teachers: - In case a teacher is a appointed who does not fulfil the qualification as specified by the Regulatory body then penalty of ₹20,000/- per month per such (unqualified) teacher, shall be imposed on the Institution.

(d) Shortage of the teachers: - If the number of teachers appointed to teach a course is not as per the requirement specified by the Regulatory body then penalty of ₹20,000/- per month per shortfall of teacher shall be imposed on the Institution. After three months the rate of the penalty shall be doubled.

(e) Examination: - Any degree/diploma/ certificate awarded to a student without the proper conduct of examination and evaluation shall invoke a penalty of ₹25 lakh per student.

(f) Infrastructure: - If the infrastructure of the institution is found short of the norms set for infrastructure by the Regulatory body or the Government, the penalty at the rate of ₹2 lakh per month shall be charged till such time the deficiency is made good and its compliance reported to the Commission.

(g) Distance Education Mode or Extension Centres: - If an educational institution starts any distance education programme or its extension centre without the prior approval of the Government and also of the regulatory body, a penalty of ₹10 lakh per month shall be imposed, till discontinuation of the same.

(h) All other remaining issues and matters: - On other issues, not covered under clauses (a) to (g) of this rule, projecting any kind of violations of the provisions of the Act and these rules, penalty shall be imposed at the rates as may be deemed fit by the Commission, but in no case the penalty shall be more than the maximum penalty provided under the Act.

(2) The Commission before imposing any penalty shall give an opportunity to the concerned Institution to present and defend its case, and then pass a reasoned order for imposing the penalty.

(3) The Commission shall be empowered to impose maximum penalty on any of the issues and matters covered under clauses (a) to (h) of sub-rule (1) of this rule in accordance with the provisions of section 11 of the Act."

1. The commission will also ensure the admission to private education institutions are done on the basis of merit only. Before the admission begin the commission releases a notice for cut-off of that particular academic year. By providing the information to public the commission is bringing some transparency to the admission process.
2. The commission is required to develop an appropriate grievance redressal mechanism. The commission's website now has a provision by which anybody can post their grievance even anonymously, thus making it more accessible.
3. The commission can conduct inspections of private education institutions. For the purpose of inspection the commission sets up an expert committee which has academicians specialising in the field in which the university gives out courses. For example in a university which primarily gives engineering degrees the members on the committee would be engineers. They aim to equip themselves with as much expertise as possible so as to identify the flaws in the system. The investigations are conducted with respect to academics, faculty, facilities etc.
6. The commission has the power to monitor and regulate fees for the educational institutions through which they ensure that universities are not making super normal profit and that the fee collected generates revenue that is sufficient to

recover costs. Education is afterall a social good; hence the regulator has to strike the balance between ensuring guarantee for investment of private players and ensuring affordable education for all.

7. In an event of inquiry against an education institution due to non compliance of rules or any such deviance the commission will have the powers of the civil court under the Code of Civil Procedure, 1908.

Power of the State Government vis a vis the IRA

The state governments have the power to make rules for the purpose of the respective Acts on matters specified in the Act. In case of MPNVVA the state government can issue direction on following issues

1. The manner of making proposal to establish a private university and the fee structure. It will also specify the manner in which universities should collect the fee and deposit it in a consolidated fund.
2. Various details of the project report.
3. The mode of establishment of the endowment fund, the manner of investment and instruction regarding how the money can be forfeited or how it can be returned to the sponsoring body.
4. Mode of authentication of orders and decision of the regulatory commission and the instruments issued by the regulatory commission, terms and conditions of the services of chairman and the members, procedure for meeting of the commission, provision of staff to the regulatory commission its budget annual report accounts and audit and such other matter as may be required for proper functioning of the regulatory commission.

The Himachal Pradesh government has the powers to issue direction which the commission has to implement. Some of the issues for which state government make rules are:

1. The term and conditions of the chairperson, members and the secretary of the commission
2. Mode of authentication of the orders and decision of the commission
3. The form and manner in which accounts shall be maintained by the commission
4. The minimum and the maximum limit of the penalty under section 11 and the manner in which such penalty is imposed.

Accountability

Every regulatory act has various provisions to ensure accountability between the regulatee, regulator and the Government. The Madhya Pradhesh Niji Vishwa Vidyalaya Adhiniyam provides for accountability of the regulatee to the regulator. The Board of Management of the private university in Madhya Pradesh are mandated to prepare the annual report which is to be approved by the governing body and a copy needs to be submitted to the sponsoring body. Annual accounts of a private university along with its audit report must be prepared under the directions of the board of management. The regulatory commission examine these reports and gives their recommendations which are binding upon the universities. Even in the case of HPPERC, it is essential for all universities to make an annual report in the end of an academic year and submit it to the commission. The commission is verifies whether such a report was made or not. The audited statements of accounts are verified and in case a financial flaw in identified the commission bring it to the notice of the university so that its addressed.

To enhance the accountability and legitimacy of the commission towards the government and thereby the people, the HPPERC is required to prepare their accounts which are audited by the Comptroller and Auditor General of India and the commission has to send a copy of the same to the state government. The Madhya Pradesh Niji VIshwa Vidyalaya Adhiniyam doesn't have any such provision.

As per the Himachal Pradesh Private Educational Institutions Regulatory Commission Act, the commission has to take approval of the state government to make rules and regulations. The Act was amended in 2012, by which it got greater power as the clause which mandated the commission to take prior approval of government was removed. The commissions also have the power to remove any

difficulties for implementing the provisions of this act. Additionally to make the regulatory commission liable to the State government all rules prepare by them have to be submitted to the state assembly. This way the Government is informed of the steps taken by the regulator to fulfil the responsibilities.

IRA -Legal Challenges

The Madhya Pradesh Private University Regulatory Commission and the Himachal Pradesh Private Education Regulatory commission have been functioning for seven and three years respectively. The validity of both the IRA's has been challenged in court, both at the High Court and the Supreme Court. The case of The Madhya Pradesh Private University Regulatory Commission, questioned the place and power of the regulatory commission vis a vis the role and power of the State Government in terms of implementing the Act.

In 2011, People's University filed a petition against the MP State Government and the Regulatory Commission in which they requested the Honourable High Court to expedite the process for publication of the statute and ordinance. After the establishment and incorporation of the People's university, they framed their First Statute and First Ordinance as per the guideline of the Act. The regulatory commission approved the first ordinance of the university and sent to the state government for publication in the gazette. The first statute on the other hand was provisionally approved by the commission who then forwarded it to the state government for further examination by the law department. Both the commission and the university informed and reminded the State Government about the publication. As there was no response from the State government the university filed Writ Petition[9] and prayed for issue of a mandamus to state government to get the First Statutes and the First Ordinances published in the official gazette.

The State government and the regulatory commission in response to the petition pointed out that the people's university had undertaken the admission process without the publication of the First statute and First ordinance and that this was violation of the of the provision given in terms of Section 7 (iv) of the Act. Furthermore the university has undertaken the process in spite of the repeated warning sent to them by the commission. The regulator also pointed out that as they had given their approval they had fulfilled their obligation.

The case was heard by a single judge who after reviewing both claims observed that the Act gives no provision to the state government to make any amends to the statute or the ordinance. The judge then directed that 'the First Statute and First Ordnance so approved by the regulatory commission be published in the official Gazette within 10 days from the date of receipt of certified copy of this order passed today (People's University vs State of Madhya Pradesh, 2012)'.

In response to this judgement the state of Madhya Pradesh filed a petition to review this order on the grounds that the approval given for the first ordinance and stature was provisional so the high court committed an error is issuing order which mandated the government for publication of the statute and ordinance within 10 days . Additionally the High Court also committed an error by assuming the state government has no role in the process of giving approval to the first statute and ordinance. The state government argued that as per Section 36(1) of the Act the state Government can instruct the commission on any policy matter and such instruction is binding upon the commission, drawing from this clause the state government said that they had every right to comment and recommend changes to the statute and ordinance. In addition, when the state government examined the statute and the ordinance; the medical department found that admission procedure of medical, dental and other courses relating to health sciences were not same as that issued by the Medical Council of India (MCI), Dental Council of India (DCI) and other regulatory bodies. It was recommended that the appellant make necessary changes.

Given these new developments the High Court questioned the power of regulatory commission to ask for state government approval. Deciphering the meaning of interface[10] in this context the Hon'ble High

[9] Writ Petition No.22021/2011 at the Madhya Pradesh High Court.

Court concluded that the regulatory commission has to be treated as a bridge in between the State government and the other central regulatory bodies for the purpose of ensuring appropriate procedure of teaching etc. Therefore for such an interface the commission to fulfil its duties has the power to refer to higher authorities of the state. The learned single judge declared that the earlier judgement was invalid as the case included the issue of admission which has to be heard by a division bench only not a single judge. As there was lack of clarity at the High Court level the case was taken to the Supreme Court level. The Supreme Court after hearing the case was of the opinion that the single judge was not justified in recalling his order and that the state government should have been given time to seek instructions. The Judges agreed that the case should have heard by a division bench instead of a single judge. The First Statutes and the First Ordinances, of which publication was sought, also dealt with the policy of admission including the regulation of reservation of seats for different categories and admission of students and their enrolment. This was as per the requirement of Section 26(1)(i) and Section 28(1)(a) of the Act. Therefore, in terms of Rule 2(7)(e) of the Rules the writ petition should have been listed before the Division Bench of the High Court.. Therefore, it was justified that the order was recalled so that the matter could be heard by the Division Bench. In conclusion the Supreme Court dismissed the appeal and directed the Madhya Pradesh High Court to Court to make an endeavour to dispose of both the writ petitions as early as possible but latest within a period of three months from the date of receipt of copy of this order.

In the other the case of Himachal Pradesh Private Educational Institutional Regulatory commission, the very legality of the Act setting up the commission was challenged. In 2012 a group of universities went to the court challenging the Himachal Pradesh Private Educational Institutions Regulatory Commission Act. One of the contentions of the petitioners was that the Act is applicable only to the private educational institutions and was not applicable for public universities and institutions were kept out of its ambit. This violated the provision of Article 14 under the Constitution of India. The Act was also not in accordance with the opinion of the apex court which was conveyed through earlier cases violated that the regulation of private-unaided institutions is permitted to a limited extent, whereas in case of state-aided or state-managed institutions, extensive regulation is permissible. On the 18th of October 2013; the High Court squashed the Act declaring it to be ultra vires of the Constitution.

As per the constitution Higher Education features in the union list as it is clearly mentioned in Entry 66 of the Union List gives powers to the Central government for the coordination and determination of standards in institutions of higher education and research. As per Entry 32 in the State List gives powers to the states to incorporate, regulate and wind up corporations, including universities. On the other hand, Entry 44 of the Union List states that the Central government has powers to incorporate, regulate and wind up corporations but not including universities. In this context it important to define what one means by regulation in the above provisions.

The court clarified that as interpreted in numerous judgments delivered earlier, the term 'regulation' implies organisational aspects and infrastructure of the university, hierarchy of authorities, composition, powers and functions of statutory bodies of the university, officers of the university, including their appointment, powers and functions, other organisational aspects like financial administration, admissions, fee structure. These aspects are already covered in the Acts vide which various universities were set up in the state. Further, due to the autonomous nature of universities, there could be minimal regulation with regard to aspects related to admissions and fee structure. The term 'Regulation' does not include 'determination, coordination and maintenance of standards' in institutions of higher education and therefore is not covered within Entry 32 of the State List. That aspect is covered under Entry 66 of the Union List, and Parliament alone is empowered to legislate in those matters. Accordingly, the UGC has framed regulations for the maintenance of standards

[10] Interface as defined in Section 36 of the Madhya Pradesh Niji vishwavidyalaya (Sthapana Avam Sanchalan) Adhiniyam, 2007 – " the regulatory commission is supposed to work as an interface between the State Government and the central regulatory bodies for the purpose of ensuring appropriate standards of teaching, examination, research, extension programme, protection of interest of the students and reasonable service conditions of the employees"

in private universities vide UGC (Establishment and Maintenance of Standards in Private Universities) Regulations, 2003. Thus, the field pertaining to determination and maintenance of standards is already occupied and the state Legislature has no right to encroach upon this. Moreover, the apex court has held that it is unnecessary to have multiple regulatory authorities dealing with the same issue.

Further, Entry 25 of the List 3 (Concurrent List) bestows powers on both the Centre and the states to legislate on matters pertaining to education, including technical education, medical education and universities, subject to the provisions of Entry 66 of the Union List (List I). That implies that if the Centre has already legislated in a particular field, which in this case the Centre has done by setting up the UGC, AICTE and many other Regulatory bodies, then the states cannot legislate in those matters. Further, it has been held in numerous judgments that in case both the Centre and the states have enacted legislations in the same field, the Central legislation would prevail. The Power to penalise is also an infringement of the centre's powers. According to the Entry 93 of the union list; the union has the power to identify Offences against laws with respect to any of the matters in this List. The penalties in given situation is prescribed by the UGC. The court therefore said that it is under the jurisdiction of the UGC, AICET to regulate these universities. It cannot be done by the commission.

On 9th May on 2013, The Supreme Court has allowed the Himachal Pradesh government to revive its commission to monitor 16 private universities and an equal number of private institutes, mainly engineering colleges. A division bench of Justice T.S. Thakur and Justice C. Nagappan Thursday suspended the Himachal Pradesh High Court judgment quashing the Himachal Pradesh Private Educational Institutions (Regulatory) Act of 2010[11].

Regulatory Framework in Other Countries – UK and Australia

United Kingdom is known across the world for its world class Higher Education institutions. Institutions such as Oxford and Cambridge have been functioning for the past 800 years. The Government of United Kingdom through regulations is not only is maintaining the quality of education but the reputation of the nation. The current regulatory mechanism following the same principle focuses on regulating through financial incentives like the teaching grant, student scholarships given by the Higher Education Funding Council for England (HEFCE). HEFCE and the Office of fair access are the independent public sector regulators of the Higher Education Sector in England along with Department of Business, Innovation and Skills who also undertakes some regulatory functions such as recent responsibility for course designation for alternative providers. Most of the regulation exerted by these bodies is "light touch regulation". We can infer this from here that self regulation is being practiced in the sector which is why no strict regulatory instrument was used by the regulatory agencies in the past.

All education institutions are mandated to annually assure the HEFCE of their accountability arrangements, financial health and quality of division. In addition to this HEFCE conduct a one day institutional visit every five years to test the reliability of the assurance they receive. In 1997, the quality assessment division of HEFCE was separated and an independent agency The Quality Assurance Agency (QAA) was set up. The agency develops guideline for quality and reviews the higher education providers to improve the quality of education in UK. The guidelines are prepared in collaboration with the education Institution, a form of co-regulation wherein both the regulator and the regulatee are deciding upon the regulations. The agency conducts evidence-based external reviews of higher education providers and reporting our findings publicly. 'QAA is the body entrusted with advising the Privy Council of the United Kingdom, via government ministers, on which institutions should be granted degree awarding powers and the right to be called a university' (Quality Assurance Agency). The HEFCE has collaborated with the Student Loans Company by which the company provides information about the student loans and recovery rate. This way the regulator

[11] (2014,May 9) "Supreme Court allows Himachal Pradesh to revive panel to regulate university". DNA Retrieved from http://www.dnaindia.com/india/report-supreme-court-allows-himachal-pradesh-to-revive-panel-to-regulate-universities-1986561

is aware of the broader financial environment of the sector, it is important to note that the regulator has not restricted themselves to the finances of the colleges but the students also as they directly impact the financial environment of the sector.

In addition to these independent regulatory bodies there some self regulatory influences in the sector. There organization like the Universities and Colleges Admissions Service[12] and Higher Education Statistics Agency[13] that help in application process for British universities and collect data about the higher education sector and analyse it. As a result more information is being dispersed in the public thus helping them make an informed choice.

According to the Higher Education Act 2004 an independent body had to be setup to run a student complaints scheme in England and Wales. The Office of Independent Adjudicator[14] was chosen to operate this scheme, to which all universities in England and Wales had to subscribe to. Its role is to review individual complaints by students against universities. They have no regulatory powers over universities and cannot punish or fine them.

The regulatory framework of United Kingdome is very similar to that of India in term of the division of responsibility and number of regulatory agencies. In 2014 the Higher education Commission released its Report titled "Regulating Higher Education "in which the commission has stressed about the need for proper regulation. In the light of growing private educational institutions in the nation the commission has recommended the Government to establish a new overarching regulator formed as a non departmental public body[15] (Commission, 2012). This is to ensure that the quality of education is maintained and get the value of the money they have invested for their education.

Australia has traditionally been considered an exporter of Higher Education (McBurnie & Ziguras, 2001) and knows for its rigorous regulatory framework. The Higher education sector of Australia consists of both Public and Private Universities. There has been a shift in Higher Education policy in past few years with a significant new focus on nation building, job-readiness and the utility of the educational investment. Earlier the higher education sector followed the system of self-regulation and self-accreditation. This approach has been challenged by community views about curriculum standards and the transparent oversight of outcomes. It in this context, in 2008 the Australian Government initiated the Bradley review of Higher Education which recommended that the enrolment target should be increased. As a result the government undertook a massive expansion plan for the nation higher education sector to make it more accessible to people. It was important for the government to ensure that the quality of education was not impact as a result of its growth, so a change in the regulatory structure was needed. The Bradley review report felt that a new regulatory framework has to be introduced therefore they recommended that an independent body should be established to enhance the quality of education and support accreditation. As a result in 2011 the Tertiary Education Quality Standards Agency[16] (TEQSA) was established, it regulates and assures the quality of Australia's large, diverse and complex higher education sector.

The objectives of the TEQSA Act determine the approach taken by the regulator. TESQA evaluated and registers the performance of the educational institutions base on the framework developed by the Higher Education Standard Panel. This panel is independent of TESQA and functions for the purpose of setting standards and giving advice to the ministry

[12] Universities and Colleges Admissions Service registered as a nongovernmental organization
[13] Higher Education Statistics Agency is registered as a company limited by guarantee
[14] The OIA is a registered charity, registered in England and Wales
[15] A Non-Departmental Public Body (NDPB) is a classification applied by Government to certain types of public bodies. The NDPBs are not an integral part of a government department and carry out their work at arm's length from Ministers, although Ministers are ultimately responsible to Parliament for the activities of the bodies sponsored by their department. (Government of United Kingdom)
[16] The Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act) established the agency and the new national regulatory and quality assurance environment for Australian higher education.

of Education based on it. This ensures that there is separation of standards setting and the monitoring and enforcement functions carried out by TEQSA in its regulatory role. Other than this TESQA also undertakes a risk assessment for every educational institution. TEQSA uses external experts to source advice on specific, identified elements of the Agency's regulatory assessments and reviews. TEQSA recognises that, in performing its regulatory functions, it benefits from having access to a register of external experts.

We notice the regulatory model in Australia is not expanded as that in United Kingdom or India. The regulation of entire industry is predominantly handled by TESQA[17] itself. The regulatory approach is more

Universities Australia in their submission to the Review of Higher Education Regulation have pointed out that there has been 'over-regulation of the higher education sector and ever-increasing volumes of regulatory compliance burden, red tape and reporting requirements (Universities Australia, 2013)'. The regulatees are of the opinion that the cost of regulatory compliance surpassing the benefits of regulation particularly with respect to the regulation for funding. In response to this the education minister in 2013 said that the command and control approach towards the universities had to be abandoned and also suggested that TEQSA should also be stripped of its quality assurance functions, along with some of its commissioners[18]. The process of deregulation has not yet been implemented in Australia but is still being considered.

Drawing from the experience of United Kingdom and Australia in regulating the Higher education system, we realise that a single regulatory body is more effective then multiple bodies. Also, it helps maintain a common standard for all. At the same time excessive regulation could be harmful as it can lead to rise in regulatory cost and the entire purpose of regulation will then get defeated. Extremely structured regulation leads to collapse of innovation within the sector which could be highly dangerous. The growth of sector cannot be mere expansion in number of colleges but growth of knowledge too. Therefore learning from the United Kingdom model, adequate space should be given to the universities to grow. The regulator should provide the broad regulatory framework within which education institution can evolve further.

Conclusion

The exponential growth of educational institutions in the past two decades has resulted in a situation where in central level regulatory bodies are not able to maintain regulatory compliance of all institutions. The regulations should ensure that this growth is sustainable in nature as all measure are being taken to ensure that educational institution function properly and the students are not impacted in any way. The ratio of regulator to regulatee in countries like the United Kingdom is far less than India. Also, India being such a large nation, the educational institutions are dispersed all over the country. It is very difficult for a central level regulator to ensure regulatory compliance for every college. Therefore a regulator at the State level is required to the bridge the distance between the central regulators and Educational Institutions. Independent regulatory bodies such as the commission in Madhya Pradesh and Himachal Pradesh are filling this gap effectively. These state level regulators are more aware of the local level problems and gives due consideration for such issues. They ensure that universities comply with regulation of central level regulator by conducting yearly inspection which is very difficult for the UGC to do. Presence of regulator increases regulatory compliance and the accountability of education institution to the people and students in particular. Therefore, IRA's should be established at state level to enhance the quality of the higher education sector and improve the efficacy of the broader regulatory framework of the nation.

[17] TESQA replaced state-based and specific agencies with a general agency which has wide responsibilities and powers. (Dixon)

[18] Ross, John. (2013, August 9) "Backing Off on Higher Ed Regulation". The Australian

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