

A Case Against Public Private Partnerships in Higher Education in India



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Abstract

Owing to the popularity of the public-private partnerships in provision of public goods, the author in this paper have tried to analyze whether public-private partnerships could work in higher education and if yes, than what should be the proper model which should be followed. Secondly, the author has made an attempt to analyze whether the problems which public-private partnerships deem to solve could be solved in a better manner by de-licensing the establishment of educational institution and by allowing education to be a for-profit activity. The author concluded that public-private partnerships are not that much effective in the higher education sector and that the benefits they seek to bring in the higher education system could easily be achieved by de-licensing and having amore market friendly approach towards higher education in India. Since independence India's education sector has grown enormously and has expanded intothe third largest higher education system in the world, after the United States of American and China¹;it has grown from 30 universities and 695 colleges in 1950-51 to 634 universities and 33023 colleges in 2010-11.²Even with such rapid expansion the Gross Enrolment Ratio in higher education remains very low at about 12 percent; almost half of that of China's 21%, and lower than many developing countries.³The number of student enrolling in higher educational institutions in India demonstrates an upward trend; from 3.6 million in 1985-86⁴ to 16.9 million in 2010-11.⁵Unfortunately, the said expansion of the higher education system has failed to fulfill the need for quality higher education among the Indian youth, and also it did not keep pace with the growing demand.

Last two decades have witnessed a large increase in the enrollment ratio in the primary and secondary education, as the beneficiaries of this expansion finish school, they would demand quality higher education so as to improve their employment prospects. In the Indian higher education the availability of suitable number of quality institutions is very less, to give an example, only 1 student out of 150 aspirants gets a chance to enter the Indian Institutes of Management. The similar number subsists for other prestigious institutions as well.

The estimated size of the Indian education and training market is about 40 billion US \$, with a potential 16% five-year compounded annual growth rate. The market size for higher education is

¹ World Bank, *Country Summary of Higher Education- India*, 2006, Page 1

² The University Grants Commission report, *Higher Education in India at a glance*, 2012, Page 3

³ Ernst and Young- FICCI Report, *Making the Indian Higher Education System Future Ready*, FICCI Higher Education Summit, 2009; Page 4

⁴ Ibid. 3, Page 8

⁵ Ibid. 2, Page 6

projected to expand in next 10 years up-to \$115 bn.⁶ Needless to accentuate; the expansion of such size would require intense capital investment.

Till the early 90's, most of the investment in the higher education sector came from the central and the state governments as there were too many restrictions on opening up of educational institutions and largely the provision of education remained in the hands of the state. Last decade has witnessed increasing participation of the private sector in higher and technical institution especially in the professional degree colleges, so much so that almost 64% of all professional educational institutions were private unaided institutions in 2006.⁷

The Government of India, in the 12th Five Year Plan has increased the proposed investment in education up-to 1,84,740 crore rupees, which is four times higher than that of the 11th Five Year Plan. The Planning Commission, recognizing that even that much amount of funds for education sector would not suffice the growing need for higher education; has identified the resource gap of about 2.2 trillion rupees in higher education sector.⁸ By the said resource gap the author is referring to the difference between the capital required for improving the access to quality higher education as per the goals of the 12th Five Year Plan and the actual capital which the Planning Commission predicts to be invested in the higher education sector. This gap cannot be fulfilled by the government as the finances of the government are already restrained and by some indicators are in worse conditions than they were in 1990-91⁹, just before the balance of payment crisis.

The popular view of the prominent thinkers on education policy¹⁰, the chambers of commerce and industries¹¹, the Government of India¹² and of States¹³; have formed a general opinion that this resource gap should be met using public-private partnerships because the socio-political structure of India would not allow for commercialization of education. One of the reasons for the favorable view of public-private partnerships is also due to their enormous success in the basic infrastructure sector especially in road-building and railways.

⁶ Federation of Indian Chambers of Commerce and Industries, Sector Profile- Education, 2011

⁷ Ibid. 3 Page 9

⁸ FICCI, Inputs on Key Strategy Challenges for the 12th Five Year Plan, Page 122

⁹ By some yardsticks, govt. finances in worse shape now than in 1990-91, LiveMint, 12 June 2012

¹⁰ Rawat, M. S., *Dynamics of Public-Private Partnership in Higher Education- Indian Perspective*, paper presented at the 16th National Collegiate Forum, 5th-7th Feb. 2010; Involve private sector for education infrastructure in India : Pitroda. Gujarat Global News Network, Ahmedabad, 15th April 2008

¹¹ Ibid. 8 Page 123

¹² Consolidated working group report of the Department of Higher Education for XII Five Year Plan, *Higher Education, Technical Education and Private Sector Participation Including PPP in Higher Education* - Dept. of Higher Education, Ministry of Human Resource Development, 2011

¹³ Report of the Task Force on Higher Education, Dept. of Higher Education, Government of Odisha, 2009

In general, the term public-private partnership refers to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of a public infrastructure or the provision of a public service.¹⁴ A more comprehensive definition has been provided by the Ministry of Finance;

Public Private Partnership means an arrangement between a government / statutory entity / government owned entity on one side and a private sector entity on the other, for the provision of public assets and/or public services, through investments being made and/or management being undertaken by the private sector entity, for a specified period of time, where there is well defined allocation of risk between the private sector and the public entity and the private entity receives performance linked payments that conform (or are benchmarked) to specified and pre-determined performance standards, measurable by the public entity or its representative.¹⁵

A public-private partnership is essentially a long-term partnership between the government and the private sector, and is usually a complex relationship between both the sectors; the monitoring and setting up of the norms related to quality are generally set up by the public sector and the operation and management often rests with the private sector; the risk is divided between both.

The Supreme Court of India has also made implications for the prospects of public-private partnerships in higher education in the Unni Krishnan's Case.¹⁶ The Hon'ble Court articulated;

Both in the light of our tradition and from the stand-point of interest of general public, commercialization (of education) is positively harmful; it is opposed to public policy. As we shall presently point out, this is one of the reasons for holding that imparting education cannot be trade, business or profession. The question is how to encourage private educational institutions without allowing them to commercialize the education?

In this case the Supreme Court also emphasized the need bring about a partnership between the public sector and the private sector to work together for the development of higher education as the Government of India argued that it cannot allocate additional resources for expansion of the higher education system.

¹⁴ European Commission's Green Paper, *On Public-Private Partnerships and Community Law on Public Contracts and Concessions*, Brussels 30 April, 2004, COM(2004) 327

¹⁵ National PPP Policy 2011 - Draft for Consultation, Ministry of Finance, Government of India

¹⁶, AIR 1993 SC 2178, Page 674 Para 63

As the popular view propelled the government to make provisions for public-private partnerships in higher and technical education, the regulatory body for higher education; the University Grants Commission, set up an expert committee to look for the possibilities of public-private partnerships and come up with models which could be utilized to improve access and quality of the higher educational institutions in India, both existing and the future ones. The said Committee submitted its report¹⁷ to the Planning Commission in March 2011 for consideration.

The report highlights that public-private partnerships in higher and technical education would bring benefits of saving resources and time; improve efficiency of the system; improve performance and promote autonomy which will ensure high quality in higher education. The report also identified four possible models of public-private partnerships to be made applicable in the higher education sector. They are;

1. Basic Infrastructure Model
2. Outsourcing Model
3. Hybrid Model
4. Reverse Outsourcing Model

Under the Basic Infrastructure Model, the physical infrastructure and ancillary services would be provided by the private sector, who would also be allowed to earn third party revenues from some of the pre-determined infrastructure beyond curriculum hours from permissible activities.¹⁸ What activities are permissible would be decided by the government and it would also decide the location of the institution, provide the land and specify the standards up-to which the physical infrastructure needs to be built and maintained.

The author fails to understand why would the private sector want to make such an intensive capital investment; if it were to invest all that money, why not invest it somewhere else in a more profitable manner without constant government scrutiny and red tape? And even if the private sector was driven by philanthropic interests and possessed that much capital, it could open its own institution without participating with the government and be bottlenecked by bureaucratic mechanisms.

The author is of the view that, though this model is favored by the Planning Commission's Infrastructure Division, in practice, it would prove ineffectual as it requires huge capital investment

¹⁷ The University Grants Commission Expert Committee's *Report on Public Private Partnerships in Higher Education*, March 2011

¹⁸ *Ibid.* 17

from the private sector and education remains a 'not for-profit' activity, in such a scenario, the banks and financial institutions would not be willing to lend the required capital.

The author does not view this arrangement as partnership at all, here the government is simply looking to raise capital from the private sector for setting up educational institution; it can successfully do the same by using banking services or bond markets and contract out infrastructure.

Another problem with this model is that it would bring no gains in the efficiency of the higher education system¹⁹; the significant problem of deteriorating quality in educational institutions is often due to the incapacity of the government to handle smooth operation and management of the educational institutions, apart from a few exceptional institutions. If the government retains the control of operation and management, the similar story of hundreds of government run poor quality institutions would be repeated.

This model also provides very low incentive for the private sector to participate; the only incentive for the private sector is the annual return on the money it has invested in the basic infrastructure of the educational institution, which the private sector can earn by various other methods.

The report further provides that under this model the infrastructure may be used for third party revenues; the author, not being very curious businessmen, can think of only one business which would be successfully generating third party revenue using the basic infrastructure of an educational institution, that is, private coaching centers, which would not be preferred by the government (and thus probably not permissible) as it is against the mushrooming coaching centers and is already planning to make a law to curb their operation.²⁰

Under the outsourcing model the private sector would invest in infrastructure and also carry out the operation and management including the core teaching activities of the educational institution whereas the government would pay for specific services; such as hostel, canteen, library etc., on per student basis. The government would also set up standards for teaching and physical infrastructure and decide the location of the institution.

This model again does not reflect a true partnership; here the government is trying to reduce cost of providing education and asking the private sector to carry out the objective of providing higher education. Such cost cutting is largely desirable, if it could be carried out successfully.

¹⁹ Y Srekanth, Asso. Professor at the National University of Education Planning and Administration, personal interview, 03 July 2012

²⁰ Bill to curb private coaching institutes, The Economic Times, April 27, 2012

Under this model, the government is not providing the required capital upfront, thus the private sector would have to borrow money from the market and proceed with setting up and operating the educational institution and then the government would pay on a per student basis. The author sees this mechanism as an equivalent of student vouchers, where the government pays part or full fee of a student based on some specified criteria and the student joins the institution of her choice.

The author is of the view that the private educational institution could provide quality educational services if the University Grants Commission was more prudent in formulation of its quality assurance guidelines and was assuring successful implementation of the same, and that having a mechanism of an outsourcing partnership is redundant as the same could be maintained via fee vouchers.

Secondly, in this case if the whole operations and management part is not given to the same private entity, there will be the problem of co-ordination, for example, if teaching was carried on by one private entity and library services by another, if teachers wanted to refer to specific books they would have to access the other entity and mention the same. Other instances of the same kind may arise often if there are too many private players involved. If the same private entity was asked to do all kind of functions, than how would that be any different from any government aided private institution. The expert committee of the University Grants Commission is of the view that this type of institution might bring the gains in efficiency which is somewhat likely as the private sector tends to be more innovative and flexible in providing services.

Under the Hybrid Model, infrastructure for the educational institution would be developed using funds raised through government and private financial institutions as equity. The equity contribution would be pre-decided by the partnership contract and the operation and the management of the institution would be managed by a board which would be formed from amongst the equity holders. Operating cost shall be recovered through user charges (tuition fee, hostel fee etc.) and third party revenue.

The author supports this model if partnerships in higher education were to be tried, as it provides sufficient autonomy for the institution because the board of the equity holders would be largely independent; and possibly, this model may involve innovation in curriculum design and teaching methods. This is a true partnership as well, and since the board had a direct interest in earning the return on the revenue over long term, it would strive to maintain the best possible quality for the institution so as to reap benefits over the long term.

This model also entails the possibility of participation from various entities, the equity here could be provided by central government, state government, non-governmental organizations, companies etc. Such widespread participation from various stakeholders would be beneficial as the internal management and policies of such institutions would have contribution from various perspectives.

Lastly, The Reverse Outsourcing Model, as reckoned by the university grants commission, may be more useful in case of the existing institutions of higher education. Under this model, the government would invest in infrastructure while the private sector would run the operation and management. The cost of operation and management is to be recovered by the involved private player by user charges (student fees) and third party revenues (for example, commission from canteen revenues).

Though the Planning Commission has viewed this model negatively²¹, the author is of the view that this kind of partnership is desirable in many government institutions. This model will bring gains in efficiency in the existing institutions as the government run institutions are often bogged down by excessive red tape, teachers union and other bureaucratic procedures, which the private sector can successfully overcome. The private sector also has better adaptability to modern technologies which could reduce cost of providing education in the existing institutions.

This model would also provide flexibility for the educational institutions in matters related to teachers pay, curriculum design, administrative matters, and modernization of teaching facilities etc.

The author is of the opinion that the government and the private sector both have different incentives to participate in the higher education market; the same has been observed previously by researchers.²² The socialist structure of India's government propels it to achieve the Constitutional ideals including social inclusion, access and quality assurance in the higher educational institution; whereas the private sector wants to participate in the education market for profit or is driven by philanthropic interest.

The author having mentioned the four proposed models of public-private partnerships in higher education and having analyzed which one is better would now like to contend that the problems which these models propose to address can be solved easily by allowing education to be run 'for-profit' and by doing away with the licensing policy in the establishment of higher educational institution.

²¹ Plan Panel identifies four PPP models for higher education, Business Standard, 21 May 2009

²²Sreekanth, Yagnamurthy, *Dynamics of Public and Private Sector Participation in Education*, International Journal of Educational Studies, 3 (2) 2011

As previously stated the benefits which public-private partnerships deem to bring are;

- i. access
- ii. quality assurance
- iii. saving in resources
- iv. promote autonomy

Widespread access could be easily insured by allowing educational institutions to run without licenses and 'for-profit'. The private sector is constantly searching for opportunities to make profit; allowing higher education institutions to run for-profit would encourage them further to make investment in this sector and subsequently many private sector entities would open their own institutions. These institutions would provide additional capacity (more seats) in the higher education sector.

Apprehensions are often made that these institutions would involve in excessive profit making and would involve in malpractices. The author is of the opinion that such excessive profit making would not happen because if there are many institutions they would have to compete with each in providing education, and such competition would bring down the cost of education. Even if we consider the possibility that the cost of education would go up and only the super-rich people would be able to get admission in such for-profit educational institutions; in that case also if the rich are going towards those institutions, there would be more seats left in the existing government run institutions which could serve to the other sections of the society.

Also if everyone were free to open an institution of higher learning without the cumbersome licensing process, and in that environment some institutions were looking to involve in profiteering; other entrepreneurs will see this as an opportunity to provide education just a bit cheaper and still make profit, and they would open more institutions which would lead to further increment in capacity. The author here is making an assumption that many entrepreneurs do want to enter the higher education market, on the grounds that India has a great tradition for private initiative in higher education, as observed by the

University Grants Commission²³ and that companies and even foreign universities have shown a keen interest in establishing higher educational institutions in India.

If the licensing requirements were done away with and higher education was to be a for-profit activity, banks and financial institutions would start lending to educational entrepreneurs who would also bring new technology and innovation in higher education.

It must be mentioned that even under the public-private partnerships the private sector would be making profit by third party revenue or by other means provided as per the specifications of the model; that being said the author cannot think of any good reason owing to which profit making should be unlawful for the private sector if they were operating independently. One can sell books, provide uniforms, provide canteen services, provide library, provide laundry services for students and can still make profit, than why providing education should be any different?

Anecdotal evidence also suggests that, though legally not permissible, profit making in the higher education sector is already going on under the table; if it were to be legal, the government would firstly, curb the amount of black money generated in higher education and secondly, generate additional revenue as tax on the profits.

The author understands that the University Grants Commission may need to collect various types of information about higher educational institutions so as to better enforce its guidelines and quality assurance norms, for that the author suggests a registration system, where every educational institution could be asked to furnish periodical information about fee structure, curriculum, number of students, teaching staff etc. and punitive measure should be taken against those who fail to do so or provide wrongful information.

For assurance of quality, the author would like to point out that the University Grants Commission is already empowered under the University Grants Commission Act, 1956 to formulate and enforce quality assurance norms for both the government run and privately run institutions. And the power is given to the Commission to stop the functioning of any educational institution for not following the prescribed norms. The bigger problem is the enforcement of the quality assurance norms of the Commission and the author is of the

²³Ibid. 17, Part 1

view that the Commission must reform its enforcement system rather than looking for partnerships opportunities with the private sector.

Another measure which could be taken for assuring quality is having a periodical qualifying examination for specific professions. For example, the University Grants Commission could conduct an annual examination which every engineer has to pass and which is based on industry standards and is prepared by eminent personalities in the engineering field. The Bar Council of India has provided a very good example by conducting annual All India Bar Exam for lawyers; failing which a person would not be allowed to practice law in India.

The other benefits of public-private partnerships as mentioned by the expert committee of the University Grants Commission are saving in resources and promoting autonomy. The saving in resources can be done best by allowing the private sector to set up educational institutions without licenses. This way the government would need to invest only in areas where the private sector is not willing to set up institutions, *i.e.* rural areas. The author also agrees that at some rural place, it may be better to set up educational institutions using public-private partnerships, but it must be kept in mind that the institutions of higher learning have to be connected to accessible roads and must have constant electricity supply, otherwise they would be unable to have much impact on the society. Autonomy could be promoted by the government anytime it wishes; the author fails to see any hurdle which is stopping the government from promoting autonomy in the higher educational institutions, in fact, the author would greatly appreciate measures to promote autonomy in higher educational institutions.

Further, the author would like to point out that there are too many regulating bodies for education²⁴ and each body has its own regulations for a particular kind of education with the University Grants Commission having a separate set of regulations for all higher educational institutes. This leaves the educational providers hay-wired and unnecessarily forces them to put all their energy in following hundreds of regulations rather than improving quality or access. A possible solution could be to have just one regulatory body at the central level, which could have participation from each field and let it regulate the

²⁴ The Bar Council of India, Indian Medical Association, All India Council for Technical Education, The University Grants Commission, Indian Dental Association to name a few

higher education scenario in the country, the ministry of Human Resource Development holds the same view²⁵.

Another main problem with public private partnerships is the fact the Comptroller and Auditor General of India is not allowed to inspect the accounts. Thus it is not possible to have sufficient accountability in such partnerships. News reports often cite anecdotal evidence suggesting hundreds of instances where concessionaires (private sector partners in the partnership) have shortchanged users of service and the government of revenue.²⁶ The Government has often tried to make an oversight system for the public-private partnerships arrangements but till now has been unable to take any serious measure. Recently a new bill was suggested to the ministry of finance by the Comptroller and Auditor General of India, which would have granted him the power to scrutinize public-private partnership accounts; the bill currently seems to have lost somewhere in paperwork.

Inevitably the Indian higher education market is moving towards de facto privatization²⁷ and commercialization, now the choice remains with the government whether to allow a healthy and competitive environment for the higher educational institutions and reap the benefits of demographic dividend it would bring or have many more unsuccessful models of public-private partnerships, where private players would earn profit anyhow but would also be bottlenecked by red-tape and bureaucratic mechanism of the government.

²⁵ Plan for National Commission for Higher Education endorsed, The Hindu, 20 June 2010

²⁶ Cabinet to soon clear oversight system for monitoring PPPs, Business Standard, 10 July 2012

²⁷ Kapur, Devesh and Mehta, Pratap, *Indian Higher Education Reform- From Half-Baked Socialism to Half-Baked Capitalism*, July 2007

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