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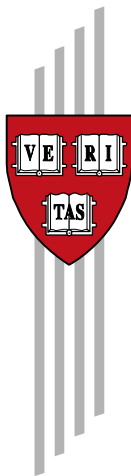
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# **Indian Higher Education Reform: From Half-Baked Socialism to Half-Baked Capitalism**

Devesh Kapur and Pratap Bhanu Mehta

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

Devesh Kapur

Frederick Danziger Associate Professor of Government  
Harvard University  
1033 Massachusetts Ave.  
Cambridge, MA 02138-5319  
email: dkapur@latte.harvard.edu

And

Pratap Bhanu Mehta

President, Centre for Policy Research,  
Dharma Marg, Chanakyapuri,  
New Delhi - 110 021  
email: pratapbmehta@yahoo.co.in

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## **ABSTRACT**

This paper examines the political economy of Indian higher (tertiary) education. We first provide an empirical mapping of Indian higher education and demonstrate that higher education in India is being de facto privatized on a massive scale. But this privatization is not a result of changing ideological commitments of the key actors—the state, the judiciary or India’s propertied classes. Rather, this privatization has resulted from a breakdown of the state system and an exit of Indian elites from public institutions, to both private sector institutions within the country as well as abroad. Private philanthropy in higher education, which was supportive of public institutions in the past, is also increasingly withdrawing its support. Consequently the ideological and institutional underpinnings of this form of privatization remain exceedingly weak. The paper questions the extent to which the political economy of Indian higher education can be explained by the hypothesis of “middle class capture” and suggests that education policy, far from serving the interests of the middle class, is actually driven by a combination of ideology and vested interests. We also examine the role of the judiciary in shaping the regulatory landscape of Indian higher education and argue that it an important actor shaping the regulatory landscape of higher education, but in a manner that has done as much to confuse as clarify. Instead of being part of a comprehensive program of education reform, private initiatives remain hostage to the discretionary actions of the state. As a result, the education system remains suspended between over-regulation by the state on the one hand, and a discretionary privatization that is unable to mobilize private capital in productive ways. The result is a sub-optimal structuring of higher education. The most potent consequence of this is a secession of the middle class—ironically the very class whose interests these institutions were supposed to serve—from a stake in public institutions.

## I. INTRODUCTION

This paper examines the political economy of Indian higher (tertiary) education. The key argument of this paper is that higher education in India is being de facto privatized on a massive scale.<sup>1</sup> But this privatization is not a result of changing ideological commitments of the key actors—the state, the judiciary or India’s propertied classes. Rather, this privatization has resulted from a breakdown of the state system. As a result, it is a form of privatization whose ideological and institutional underpinnings remain very weak. Instead of being part of a comprehensive program of education reform, much of the private initiative remains hostage to the discretionary actions of the state. As a result, the education system remains suspended between over-regulation by the state on the one hand, and a discretionary privatization that is unable to mobilize private capital in productive ways. The result is a sub-optimal structuring of higher education. The most potent consequence of this is a secession of the middle class—ironically the very class whose interests these institutions were supposed to serve—from a stake in public institutions.

Our argument proceeds in the following steps. We first provide an empirical mapping of Indian higher education. We then demonstrate that a de facto privatization of Indian higher education is occurring as a result of the exit of Indian elites from public institutions, to both private sector institutions within the country as well as those abroad. In the next section, we analyze the extent to which the political economy of Indian higher education can be explained by the hypothesis of “middle class capture.” We question this hypothesis and suggest that education policy, far from serving the interests of the middle class, is actually driven by a combination of ideology and vested interests. Subsequently, we examine the role of courts in shaping the regulatory landscape of Indian higher education and argue that while they are important actors, they have done as much to confuse as clarify the regulatory framework of education. We then examine the changing patterns of private philanthropy in education and argue that even in the philanthropic or non-profit sector there is an increasing withdrawal from public institutions.

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<sup>1</sup> The authors would like to thank Atul Kohli for his insightful comments, and Jandhalya Tilak, Urjit Patel and Pushpa Sundar for access to their work and some important bibliographical tips. For assistance with the research, we are very grateful to Mihir Sheth and in the preparation of this manuscript, Anjali Salooja. This paper was presented at a conference organized by the Center for the Advanced Study at the University of Pennsylvania on “Economic Reforms, Human Development and Governance in India: Changes in Institutional Structures and Incentives since 1991”.

## II. STRUCTURE AND SCALE OF INDIAN HIGHER EDUCATION<sup>2</sup>

At present, India has more than 15,000 colleges and just fewer than 10 million students. More than two-thirds of these colleges are classified by the University Grants Commission (UGC – the apex government regulatory body for higher education) as “Arts, Science, Commerce and Oriental Learning Colleges” (Table 1 - the fact that for more than five decades the UGC continues with the classification “Oriental Learning College” is an early signal about the capabilities of the UGC itself). Recent growth is much greater in professional colleges (especially engineering, management and medicine), as well as in private vocational courses catering especially to the IT sector. The fact that India has 1253 medical colleges but just two in public health (Table 1) indicates the priorities and interests that shape Indian higher education. India produces more lawyers than doctors and nearly 0.7 million students were enrolled in engineering/technology.

There has been a rapid expansion in higher education, with student enrollment growing at about 5 percent annually over the past two decades. This growth is about two-and-half times the population growth rate (Table 2), and results from both a population bulge in lower age cohorts as well as increased demand for higher education. However, even today’s gross enrollment ratio of Indians in institutions of higher education is approximately 7 percent of the age cohort, which is considerably higher than developing country averages, but lower than the average for Asia as a whole (11 percent) and much lower than OECD countries. Enrollment ratios vary across Indian states, with the Southern and Western states faring better than their Eastern counterparts (Table 3). Women now constitute about 40 percent of all student enrollments, varying from a low of 24 percent in Bihar to a high of 60 percent in Kerala (Table 3). The bulk of students (nearly two-thirds) are enrolled in arts and science, with another 18 percent in commerce/management (Table 4). This is of some importance because most “private investment” in higher education is concentrated in engineering, medicine and management and consequently does little for the majority of students. Notwithstanding the great hopes reposed by a spate of committee reports on alternative sources of funding for higher education (World Bank, 2000), the state will continue to have to occupy the commanding heights of at least this sector of the economy.

Although total expenditure on higher education has risen since independence from 483 crores to 2418.3 crores between 1980 and 1995, spending per pupil in real terms declined for

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<sup>2</sup> In this paper we focus on that part of the higher (tertiary) education that encompasses colleges and universities. We do not address issues related to technical education in India’s Industrial Training Institutes

nearly two decades (Tilak, 1997), before recovering modestly (Table 6). Higher education occupies a low priority in public expenditures. Its share of GNP was nearly 1 percent during the 1970s, just 0.35% in the mid-1990s before increasing modestly to 0.6 by the end of the decade.

### III. DE FACTO PRIVATIZATION

For Indians, higher education has been, in Stanley Wolpert's evocative words, "the swiftest elevators to the pinnacles of modern Indian power and opportunity." This realization, coupled with the severe limitations of publicly funded higher education institutions and the greater purchasing power of the middle class, means that Indians are prepared to pay rather than be denied. According to NSS data, the government's share in overall education expenditure has been declining steadily, from 80 percent in 1983 to 67 percent in 1999. For states like Kerala, the decline is steep, from 75 to 48 percent, while for Madhya Pradesh it is from 84 percent to 68 percent. Indeed, while private expenditure on education has risen 10.8 times in the last 16 years, that for the poor rose even faster, by 12.4 times. Many students who formally enroll in publicly funded colleges and universities, barely attend classes there. Instead, they pay considerable sums to the burgeoning private sector vocational IT training firms such as NIIT and the Aptech.<sup>3</sup>

However, the most noticeable trend has been the transformation in the provision of professional education, especially engineering, medicine and business schools. We analyzed data on all medical and engineering colleges in India to understand how the management structure had changed over the last four decades. Data for medical colleges was obtained from the Medical Council of India's website, which gives the year of establishment, and classifies institutions as "Government" or "Private" (institutions set up under the Societies Act or as Trusts), and the number of seats at each institution.<sup>4</sup> We examined data for 19 major states of India—Assam, Andhra Pradesh, Bihar, Chattisgarh, Delhi, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Tamil Nadu, Uttar Pradesh, Uttaranchal and West Bengal. Similar data for engineering colleges was obtained from the All India Council for Technical Education.<sup>5</sup>

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(ITIs) which are an important component of higher education imparting technical training in a wide range of trades and crafts.

<sup>3</sup> According to Finance Ministry data cited in *The Hindu*, since its launch in 2001 the Education Loan Scheme has grown from roughly 50,000 accounts and Rs. 670 crore loans as on March 31, to approximately 1,53,000 accounts and Rs. 2,600 crores loan amounts on March 31, 2004. "Education loan scheme simplified," *The Hindu* August 11, 2004.

<sup>4</sup> <http://www.mciindia.org/apps/search/>

<sup>5</sup> <http://www.aicte.ernet.in/>

The data are presented in Table 5 and Figures 1 and 2. In the case of engineering colleges, the private sector, which accounted for just 15 percent of the seats in 1960, now accounts for 86.4 percent of seats (and 84 percent of all engineering colleges). In the case of medical colleges, the private sector dominance is less stark, but the trend is unambiguous: the proportion of private seats has risen from 6.8 percent in 1960 to 40.9 percent in 2003. While we don't have precise data, the situation in the 1000 odd business schools suggests that 90 percent are private sector. Even as political parties rail against *de jure* privatization, *de facto* privatization continues unabated.

For long, it was taken for granted that private universities (as distinct from private colleges) needed approval from the UGC. After the break-up of Madhya Pradesh, the Ajit Jogi-led Congress government in Chhattisgarh paid put to that assumption. It saw a regulatory loophole and enacted the Private University Act in 2002. One hundred and eight such universities came up in the state, with 94 in the state capital, Raipur, alone. After a new BJP government came to power, it passed the Private University Amendment Bill, 2004 under which proprietors of all private universities would have to deposit Rs 2 crore with the government and prove that they have 25 acres of land for their institutions. Belatedly, the UGC came up with the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations 2003. Each private university would now require a separate State Act conforming to the relevant provisions of the UGC Act. Interestingly, the private universities set up were using the state's regulatory largesse, and, even to the limited extent they were delivering educational services, they were doing so outside the state, under the nomenclature of these being off-campus centers. The new UGC regulations try to curb this loophole as well. A university set up under a State Act shall operate "ordinarily within the boundary of the State concerned," and can only open off-campus centers (outside the home State), off-shore (abroad) centers and study centers only "after the development of main campus ... and after five years of coming into existence." Even then, it would require the prior permission of the UGC and the Government of the host State, and such approval would be forthcoming "in exceptional circumstances" that are unspecified. On the other hand, the admission, fee structure and programs of study of the private university will be have to conform to the norms and regulations prescribed by the UGC and other statutory bodies.<sup>6</sup>

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<sup>6</sup> "A private university shall fulfil the minimum criteria in terms of programmes, faculty, infrastructural facilities, financial viability, etc. as laid down from time-to-time by the UGC and other statutory bodies such as the All-India Council for Technical Education, the Bar Council of India, the Distance Education Council, the Dental Council of India, the Indian Nursing Council, the Medical Council of India, the National Council for Teacher Education, the Pharmacy Council of India etc."



The degree to which states have allowed private higher education institutions varies considerably (Table 5). The number is greatest in the Southern states and Maharashtra, and least in states like Bihar and West Bengal. However, most other state governments are now following suit. Caught between the ballooning expenditure on higher education and Delhi's refusal to provide the states with a financial cushion in this sector, even West Bengal has begun to reduce funds to meet the salary requirements of teachers and non-teaching employees for private undergraduate colleges in Calcutta.<sup>7</sup> Gradually, the state plans to eliminate its annual commitment of Rs 350 crore on a total of 240 general-degree colleges run by private bodies. It has also moved to approve proposals by private promoters for setting up fully independent, self-financed undergraduate general degree colleges. However, the proposed colleges will be affiliated to Calcutta University. The government has asked the university to amend rules to bring the two self-financed colleges under its jurisdiction. As the government will not finance the two colleges, the institutions are likely to have their own fee structure, independent of policing by the university.<sup>8</sup>

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

The exit to private suppliers of higher education is a phenomenon not limited to India's borders. While the numbers are lower, the overseas purchase of higher education has much greater financial implications. Currently, our estimates are that there are about 110,000 Indian students studying abroad – nearly 75,000 in the U.S., about 14,000 each in the U.K. and Australia, and at least another 5,000 in Canada and New Zealand. Pre-liberalization, the figures were barely a quarter of this number. The main growth has been in undergraduate education and professional degrees (especially MBAs), both of which require students to put up their own

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<sup>7</sup> Mita Mukherjee, "Slash prelude to funds full stop," *The Telegraph*, March 17, 2004.

<sup>8</sup> The one condition on the self-financed colleges is that they have to offer courses in emerging areas like bio-technology, molecular biology and business administration. Mita Mukherjee, "Privatisation kickoff with two colleges," *The Telegraph*, April 4, 2004.

money. This means that Indians are spending between Rs 3-5000 crores (roughly \$700 million to \$ 1 billion) on higher education abroad, a staggering amount for a poor country whose own educational institutions are starved of resources. Even more important than the financial costs are the implications for public education when elites leave. Indeed, the problem is a more basic one—the consumption of public services by elites has adverse distributional effects. But when elites exit, so does their voice. The big difference between the higher education systems of Pakistan and India was that elites in the former usually sent their children abroad even for undergraduate education, and consequently had little stake in the system. The results were disastrous for higher education in Pakistan. Soon, India may face a similar problem.

#### IV. EDUCATION AND THE MYTH OF MIDDLE CLASS DOMINANCE

What should be the extent of public investment in higher education? The answer to this question in part depends on what a society takes to be the point of higher education. But this question does not turn out to be an easy one to answer. It is easier to account for individual motives for pursuing higher education, including a desire to increase one's social mobility. But what are the goals of higher education for society at large? Is the goal of higher education to increase economic returns and expanding opportunities? Is it about creating a merit-based competitive social space? Or does it reflect a commitment to equality? Is it fuelled by a commitment to the cause of education itself, independently of any serious consideration of returns? Arguably, higher education is propelled by all these considerations, but the regulatory structure will in part depend on which considerations are paramount. This section tries to map some of the ideological considerations at play in the structuring of Indian higher education. We argue that a misguided form of egalitarianism in higher education has marked India's policies in this sector, and that this form of egalitarianism has been self-defeating for the education sector.

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

In 1994, the World Bank produced a report entitled, *Higher Education: The Lessons of Experience*, and followed-up with another report *Priorities and Strategies for Education: A*

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*World Bank Review* in 1995. The 1994 report emanates confusion, obfuscation, and a general uncertainty about its subject matter, and ultimately stresses that higher education should not have much priority in development strategies. To quote:

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

Ironically, the executive summary of the same document reads:

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

There is a substantial technical literature debate on the social rates of return on investment in higher education, which is not our concern here. The manner in which this debate was carried out in India provides a window into the political economy of higher education. The allegedly low social rates of return on higher education were frequently deployed during 1990s to reallocate public expenditure away from higher education. It has become commonplace to argue that India was anomalous in the emphasis it placed in higher education at the expense of elementary and secondary education. While the unconscionable neglect of primary education has distorted India's social policy, it is difficult to make a case that this is because of an overemphasis on higher education. India's gross enrollment ratios in higher education are still relatively low (around 7 percent) and, as the Table 6 shows, for much of the 90s, the expenditure on higher education as a percentage of expenditure on education remains roughly 10 percent, or in the 0.40 percent of GDP range. These ratios hardly signal an overemphasis on higher education.

In fact, the proportion of expenditure on higher education as a percentage of total expenditure ironically declined from an average of 15 percent during the 1980ss to an average of 10 percent during the nineties. This fact calls for some explanation, for this time period coincides with a rapid expansion in enrollment in higher education. One hypothesis might claim that the fiscal discipline necessitated in the 1990s led to this decline. But this would not explain the proportional reallocation from higher education to other forms of education. Another hypothesis might claim that the government was driven by a commitment to removing subsidies and recovering user costs. But there is no evidence that this actually happened. The recovery of user

costs (or costs recovered from students) remained at roughly 5 percent during the entire decade. And the Punayya Committee's recommendation that the government aim at recovering 25 percent of costs from students still has not been implemented.<sup>9</sup> A third hypothesis might argue that the government was genuinely moving toward giving a relative priority to primary education. What this suggests, however, is that while there was great pressure on the state to expand higher education, this pressure has been largely expressed as a demand for more seats rather than as a demand for higher quality or greater expenditure. Indeed, it could be argued that the 1990s allowed the government to both expand higher education and spend proportionately less on it, because of a conjuncture of factors. First, the demand for higher quality education is muted by the secession of the best of the middle class from public institutions. If the best graduates can seek education abroad, or are reconciled to private education, there is less pressure to reform quality. Second, insofar as there is pressure to have good quality institutions of higher education, this pressure is expressed in the form of a desire to attend prestige institutions (IIT's and IIM's) rather than in a pressure for enhancing the median quality of education. Third, this proportionate decline also paralleled the biggest expansion of affirmative action ("reservations") in higher education. Is this merely a coincidence?

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

One of the assumptions of this paper was that "most subsidies to higher education accrue predominantly to the better of sections of society." This argument has been frequently deployed and has become a staple criticism of government subsidies to higher education. And it has been used to explain the contours of India's Higher Education Policy. But this argument has to be taken with a grain of salt. For one thing, there is absolutely no doubt that marginalized groups have been given much greater access to education as a result of government subsidies. The ratio of male to female students in higher education dropped from 8.29:1 in the 1950s to almost 1.5:1 by the late eighties and is continuing to drop. All the evidence from studies of primary and

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<sup>9</sup> The target of recovering twenty five percent through fees was probably arrived at by looking at the East Asian Example: South Korea has gross enrollment ratios in Higher education of 47 percent and recovers 23 percent of its expenditure as fees; Indonesia has an enrolment ratio of 11 percent and a recovery of 25 percent; Malaysia has an enrollment comparable to India's of around 8 percent and like India recovers only 6 percent in fees.

secondary education suggest that the place where parents discriminate most against a female child is in the preference for public versus private expenditure. Parents are more likely to incur private expenditure for sons than daughters. If this is the case, it is difficult to imagine these ratios dropping in the absence of public subsidies.

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

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

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

It used to be argued that higher education policy was driven by the needs of the middle class and reflected their dominance in the state. There is some truth to this explanation, but in its simple form it verges almost on a tautology. Because higher education almost by definition creates a middle class, any investment in this area is automatically seen as evidence of capture by the middle class. On what will higher education concentrate if not on either benefiting or creating a middle class? Our sense is that the story of the middle class relationship to higher education

policy is somewhat more complex and paradoxical. On the one hand, the middle classes clearly have been a powerful lobby in maintaining lower fees and lower recouping of costs by the state. The middle classes have as much of a stake in preventing a regime where higher fees are collected as newly aspiring entrants do. On the other hand, the middle class *de facto* is paying higher costs for education. The only difference is that much of what the middle class pays will not accrue to public institutions of higher education. If there were ever a case of a class undermining its long-term interests, the relationship of the Indian middle classes to Indian higher education would be such an instance. The reasons center on three vicious circles in which Indian higher education is trapped, all of which exemplify the complicated nature of middle class's relationship to higher education.

The first such vicious circle is what we might call *the diminishing signaling effect*. As evident from Table 4, more than four-fifths of Indian students in higher education are not in professional schools like engineering or medicine. Investment in these institutions, on a per capita student basis, has been declining. In addition many of the 250 odd universities to which the bulk of the student population is affiliated have stopped performing the essential functions of a university. The primary purpose of a university is to provide a minimal signaling effect to the job market. Most observers agree that Indian universities, with a few exceptions, do not perform this signaling effect. A degree from any of these universities could mean anything in terms of quality. Anyone familiar with the Indian education scenario knows that competitive exams have virtually replaced performance at the university level as a passport to further education or jobs. University degrees serve as formal minimal requirements but little else. A tacit acknowledgement of the breakdown of signaling effects of degrees comes from the principal regulatory authority of higher education, the University Grants Commission (UGC). For instance, in order to be eligible to teach at a public university, candidates with even a PhD have to take another qualifying test; this test was introduced to remedy the fact that the candidate's PhD in and of itself did not indicate anything about her/his abilities.

Once the signaling effect of a university system breaks down, three consequences follow. First, the curriculum and pedagogy of university itself becomes less compelling. There is little incentive to take education at the college degree level seriously, because these degrees are no more than purely formal requirements. They do not signal quality. Hence, there is no compelling demand for quality improvement in the bulk of higher education.

Second, greater attention and resources will be devoted to those arenas, which now *de facto* perform signaling functions: entrance exams, competitive tests, etc. This has led to the creation of an almost unparalleled system of education. Since the formal institutions are

disconnected from these signaling mechanisms, informal institutions such as coaching classes dominate the intellectual space. Third, there will be an attempt to secede from the system. The breakdown of the signaling system is such that Oxford Brookes University, or Deakin University, are thought to be more credible signal providers than most Indian institutions. But of equal importance is the fact that almost all of these institutions incur huge private expenditures (systematic data not available), which are largely borne by the middle class. Indeed, if the middle class were influential, one would expect that there would be great pressure and momentum to restore the credibility and signaling effects of higher education.

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

First, there was a severe prohibition on public institutions mobilizing private resources in any form—higher fees, licensing arrangements, or philanthropy. While some of these regulations have been relaxed somewhat—we discuss them in the part of the paper concerned with philanthropy in the political economy of higher education—the net result was that a vast pool of private resources available could not be mobilized for the public institutions. Although it seems only fair that no one ought to be able to "buy" his or her place into an institution of education, from another angle this prohibition seems almost perverse. For it has the consequence of saying, "If you have money, you can spend it on education abroad, you can come to a private arrangement, or even waste it on any form of consumption, but the one thing you will not be allowed to do is to spend it at public institutions or on getting an education in India." In effect, ideological commitment to some principle of equality has effectively precluded the state from mobilizing the vast reservoirs of private money available for higher education. In a context where the sum total of private expenditures considerably exceeds expenditures by the state, this policy

needs to be rethought. One would have thought that it would be in the interest of both the middle classes and newly rising social groups to find ways to access these resources. But the ideological commitments have precluded such a mobilization. But because these funds have not been mobilized the system of education deteriorates which, in turn, necessitates even higher private spending by the very classes that the egalitarian system was meant to protect.

Second, there has been a proliferation of private institutions, but largely in the area of professional education. But again, the pattern of this expansion suggests that the middle class had very little influence on this policy. The rapid expansion of capitation fees colleges came about as a result not of great middle class pressure or demand, but rather the entrepreneurial activities of politicians.<sup>10</sup> While there is no systematic data on this trend, there is little doubt that a majority of these institutions have been supported or made possible by the direct involvement of politicians. In fact, we would argue that the growth of private colleges, while it helps relieve the pressure on public institutions, is not simply a rational response to expanding demand but an opportunity to collect rents. This explains a couple of features of the rapid expansion of private colleges. First, all of these, in principle at least, come under the same panoply of regulations as state colleges. For instance, unless an institution is declared a deemed university (there are only sixty such institutions), the formal degree that is granted through these colleges is actually given by one of the existing state universities. The result is that there is virtually no pedagogical innovation or excellence associated with private institutions, because they are all determined by roughly the same curricular guidelines and rubrics as public institutions. Rarely—except perhaps in the case of management institutions—are these institutions driven by a sense of creating a market niche. Indeed, contrary to expectations given the great middle class demand for education, it has not been a pressure group behind the deregulation of the education sector as a whole. The result is that Indian higher education is in a regulatory environment where the private sector will not be deregulated, FDI will not be permitted (even “closed” China permits more FDI in education), the state sector is strapped for resources because of the government’s fiscal constraints, and public education cannot mobilize higher funds because of ideological commitments. It is something of a mystery (other than problems of collective action) why the middle class has not been more active in breaking this deadlock in line with its interests.

There is an inherent tension in the ideology of the Indian state towards higher education. This tension can be described as follows. On the one hand education was going to be a means

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<sup>10</sup> An example is Praful Patel, son of tobacco tycoon Manoharbai Patel in Maharashtra. Currently civil aviation minister, he was the Nationalist Congress Party’s spokesman and Sharad Pawar’s closest confidant. He also runs his family’s educational trust, the Gondia Educational Society, which is like a mini university with 70 schools and 12 colleges offering courses in arts, commerce, science and law.



towards creating social mobility and equality of opportunity. But to create the conditions under which the education system can effectively serve these purposes requires a vast mobilization and commitment of resources. Since the state could effectively not do that, it interpreted equality of opportunity in almost a formalistic, even formulaic manner, where any difference or distinction was thought to be inimical to these goals. The state used to the education system to *express* these commitments by insisting that there be no differentiation of fees, or even substantial differentiation of curriculum across two hundred and fifty odd universities. Indeed, the crisis of standards that afflicts Indian universities is in part sustained by an ideological commitment to the myth that education should not be made into an arena of difference. This aspiration is, in principle flawed, because higher education is, amongst other things, about creating distinction and excellence. It is true that the mandate of the state ought to be to enhance the median level of skills amongst citizens; but it is hard to imagine a robust system of higher education that does not perform the function of distinguishing the skills and qualities of its students. The suspicion of excellence in Indian higher education was a result of this commitment, and was in part instrumental for destroying its signaling functions. Normally, the middle class is supposed to have a great commitment in a system where degrees provide signaling functions. The emphasis on leveling rather than distinction is perhaps another indication of the weakness of middle class hold on education.

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

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

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

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

trend in the last two decades towards excessive egalitarianism and politicisation in education. To begin with, the process of hiring of teachers is hopelessly politicised. After that, unconditional job security, use of criteria unrelated to merit such as political connections and seniority in promotions and transfers imply that teachers have no accountability. The government owns or funds most institutions of higher education and so it can get away with whatever it wants – just look at the sorry states that Presidency College and Calcutta University find themselves in today, in contrast to their past glory.<sup>12</sup>

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<sup>11</sup> Manoj Mitta, "AIIMS is now free to appoint its profs," *Indian Express*, April 4, 2004

<sup>12</sup> Abhijit Banerjee, Pranab Bardhan, Kaushik Basu, Mrinal Datta Chaudhuri, Maitreesh Ghatak, Ashok Sanjay Guha, Mukul Majumdar, Dilip Mookherjee and Debraj Ray, "Strategy for Economic Reform in West Bengal," *Economic and Political Weekly*, October 12, 2002.

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

One of the striking features of university expenditure is that most of it goes to salaries; in some instances this is almost as high as 95 percent of total expenditure. The result is, to put it mildly, very poor infrastructure and intense competition for scarce resources resulting in higher politicization. The second feature leading to a dramatic politicization of university life was the introduction of the so called “promotion schemes” during the late seventies. Under this scheme university promotions were considered analogous to civil-service promotions, in that one ought to be entitled to promotion if one had demonstrated minimal competence. In principle, this scheme had all kinds of review mechanisms built into it, but it essentially resulted in two things. It enabled lots of academically less serious professionals to rise to the top to positions of responsibility; and decreased the mobility of individuals who were seeking promotions across universities. In some ways, this scheme did most damage, not by removing incentives for performance (it could, in principle have attracted more talent to universities), but by ensuring that non-academically oriented administrators got the upper hand in university administration. There is some argument over whether this scheme was a response to real pressure from the teaching community or a preemptive attempt by the state to buy them off as it were. But the net result is that the clout of the teaching community is considerable. It does not take the form of formulating policy (teachers unions do not have that sense of corporate identity), but as a powerful lobby that has resisted attempts at change and reform in the education system. One striking feature is that of the ten universities we surveyed, it was almost always teachers who went on strike rather than students during the past decade. The point is that a nexus of state power and the entrenched educational establishment more or less governs policy in the area of education, contrary to the widely held notion of the middle class subsuming these responsibilities.

## V. THE LEGAL CONUNDRUM

As with other aspects of India’s reforms, the courts have played an important role in shaping the political economy of higher educational reforms. The courts cannot be blamed since the government and the statutory authorities have been reluctant to clean up the Augean stables.

They have ducked a political hot-button issue, pushing matters of policy and administrative detail to the courts. Politicians and bureaucrats find it more convenient to pass the buck to the judiciary, and they can now conveniently point fingers at the judiciary, accordingly blaming it for misplaced activism. In the process, there has been a distinct shift in the Supreme Court's stance in the past decade, from an undisguised suspicion of the private sector, to a grudging acceptance of the emerging reality. But in some ways, the Court's intervention in this matter is a classic example of what we might call non-consequential analysis. Both in the phase when it was hostile to private enterprise in education, and in its grudging acceptance, its primary response does not center on what will enable the education system to respond to demands. Rather, it has uneasily and often confusingly attempted to reconcile disparate principles.

In 1992, the Supreme Court, in its judgment in *St. Stephens v. University of Delhi* ruled that "educational institutions are not business houses; they do not generate wealth." In 1993, in the landmark *Unni Krishnan v. Andhra Pradesh*, the court reviewed the state's right to interfere in the admission policy and the fee structure of private professional institutions. It held that education, being a fundamental right, could not be the object of profit-seeking activity. On this ground, the Court sought to regulate the activities of what came to be known as capitation fees colleges that charged students high fees to recover costs. In the view of the Courts, the government would continue to have jurisdiction over these colleges in two respects. Entrants would have to qualify under an exam common to these and all other colleges. At least 50 percent of seats in these colleges would be reserved for students who so qualified on the basis of merit, and the college would be entitled to charge only the level of fees prescribed for government institutions. Twenty-five percent of seats would be reserved for admission with merit, but the college would have discretion over the fees, while over the remaining twenty-five percent, the college would have jurisdiction with respect to both admission criteria and fees. The Supreme Court argued that all private colleges would be subject to the constraint that education cannot be the object of "profiteering" and the fee structure should be compatible with the principles of "merit and social justice alike." The judgment argued that all colleges offering professional courses would have to reserve 50 percent of the seats for candidates selected through an entrance examination conducted by the government. In its ruling, the judgment opined, "Education has never been commerce in this country. Making it one is opposed to the ethos, tradition and sense of this nation. The argument on the contrary has an unholy ring to it." If anything, this ruling only confirmed the unholy lack of clarity in the court itself. Its redressal for admissions and fees was deeply flawed and mirrored the ingrained habits of India's intellectual elites. The best of

intentions thus resulted in lofty sentiments that had little to do with reality or the behavioral consequences of a law.

However, given the extent to which the private sector is involved in education, is it a “service” which would allow disgruntled consumers to seek legal redress? On the one hand, students are spending large sums for education services. But since the courts think this is “unholy” (not illegal), poor service was effectively not justifiable in consumer courts and the Monopolies and Restrictive Trade Practices (MRTP) Commission refused to entertain any cases on this subject. It was not until 2003 that the MRTP Commission issued a notice of enquiry against an education institution in Delhi issuing an injunction restraining the institute from conducting such courses.<sup>13</sup>

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

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

The court revisited its own judgment in the Unni Krishnan case soon after it was delivered, and in revising, if not reversing it, the series of judgments make apparent both the ambivalence and confusion on the issue. In 2002, a majority of an eleven-judge Constitution bench of the Supreme Court headed by Justice B. N. Kirpal in *TMA Pai Foundation vs State of*

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<sup>13</sup> The case was against the “Indian Institute of Para Medical Training” which was offering diploma courses in paramedical technology without mandatory recognition from the All India Council for Technical Education.

*Karnataka* (popularly known as the Minorities case) ruled on whether the special educational rights given by the Constitution to religious and linguistic minorities was also applicable to members of the majority. The verdict of the review (given by Justice Kirpal) found the Unnikrishnan judgment to license interference in private professional institutions in an unreasonable manner. The Court held the scheme to be unconstitutional on two grounds: first, it violated the right of private, unaided institutions to set their own criteria of admission, etc.; second, while formally upholding “the principle that there should not be capitation fee or profiteering is correct,” the Court went on to argue that “reasonable surplus to meet the cost of expansion and augmentation of facilities, does not however, amount to profiteering.” The restrictions on fees and admission imposed in the Unnikrishnan case prevented the accumulation of “reasonable” surplus. In its ruling, the Court extended the freedom accorded to minority rights to all religious denominations under the broad banner of freedom of occupation. The court ruled that the freedom to pursue an occupation granted under Article 19(g) gives all citizens the right to establish educational institutions of their choice. Part of the conceptual difficulty lay in defining whether education is a profession (teaching) or an ‘occupation,’ namely the enterprise of the setting up of an institution where teachers are hired. The decision appeared to read Article 19.1(g) of the Constitution (granting the right to carry on any occupation), with Article 26 (which grants to citizens belonging to any religious denomination or its sections the freedom to establish and maintain institutions for ‘religious or charitable purposes’). The verdict highlights the essentially charitable nature of educational activity in order to assign to all religious communities the right to establish educational institutions.

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

The state says that it has no funds to establish institutions of the same level of excellence as private schools. But by curtailing the income of such private schools, it disables these

schools from affording the best facilities because of a lack of funds. If this lowering of standards from excellence to a level of mediocrity is to be avoided, the state has to provide the difference, which, therefore, brings us back to a vicious circle to the original problem, viz, the lack of state funds. The only solution would appear to lie in the states not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidising the fees payable by the students there. It is in the interest of the general public that more good schools are established, autonomy and non-regulation of the school administration in the right of appointment, admission of the students and the fee to be charged will ensure that more such schools are established.

This judgment had several anomalies necessitating a clarification issued by a Constitutional bench headed by Justice V. N. Khare (*Islamic Academy of Education vs State of Karnataka*, 2003). It deliberated on two distinct questions: first the educational rights of religious minorities in comparison to the majority; and, second, the freedom available to private, unaided institutions. On the first of these issues the five-member bench led by Justice Khare clarified that the right given by Justice Kirpal's verdict to the majority community was not on par with the right given specifically by the Constitution to religious minorities under Article 30. Justice Khare's verdict concluded:

It is unfortunate that a Constitution Bench had to be constituted for interpreting an 11 Judge Bench judgment. In judicial history of India this has been done for the first time. It is equally unfortunate that all of us cannot agree on all the points, despite the fact that the matter involves construction of a judgment. In the name of interpretation we have to some extent, however little it may be, rewritten the judgment....<sup>14</sup>

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

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

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<sup>14</sup> A eleven judge constitution bench was required because after the 42nd Amendment, the subject of education was transferred to the Concurrent List from the State List under the Seventh Schedule of the Constitution.

The court recognized the rampant reality of the “many unfair practices in admissions and devious ways of fee collection exploiting the anxiety of the students and uncertainty of procedures.” The problems have been magnified by severe inconsistencies in policies both across different state and central governments and over time.

State governments continue to try to force deemed universities to implement their directives that deemed universities should allot 50 percent of the seats for admission through common entrance test conducted by the states. In 2004, the Supreme Court (citing its 1999 verdict in the Preeti Srivastava case) ruled that state governments have no control over deemed universities in the state, which are recognized by the University Grants Commission (UGC).<sup>15</sup> But the implications for private autonomous colleges were confusing, since no sooner had the Supreme Court, in principle, given them autonomy, controls were imposed on them once again. Even in the judgment most supportive of private initiative in education, the Minorities Case, the Court had left open the door on fees caps and regulation of admission, in the name of clamping down on excess profiteering, and the High Courts promptly used these to prevent the private higher educational institutions from setting their own policies.

What does this brief history of the intervention of courts tell us? A couple of points stand out. First, the Courts have historically been suspicious of private enterprise in education. There is a grudging acceptance of its existence, but the court is still trying to reconcile it with some formal equality in the admissions process. Second, the Courts interventions are more about procedural aspects of equality. They do very little to enable higher education to be more widely available or have little impact on quality. Third, there is an overemphasis of concern about professional education in medicine and engineering, even though the majority of students are enrolled in traditional Science and Arts courses (see Table 4). There is a PIL pending with the courts on the establishment of more general private universities, and it will be interesting to see what the Courts allow by way of private universities. Finally, there is a peculiar public-private split that the Courts have also reinforced, and this split can be understood in terms of levels of user charges. By and large, the Courts, like the government, are reluctant to sanction fees hikes in public

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<sup>15</sup> The case was brought by the Karnataka Government challenging the High Court's 1993 judgment on a petition from the Manipal Academy of Higher Education (MAHE). The Court had held that the Karnataka Capitation Fee Act under which the state was allocating students to MAHE was not applicable to deemed universities under the UGC Act. The State Government filed an appeal against the MAHE's deemed university status given by the UGC. This has been dismissed by the apex court. “States have no control over deemed varsities: court,” *Hindu* Feb 27, 2004.



institutions (even based on the proposal that university fees be pegged at least to the level of fees paid in high schools). The courts themselves have contributed to the very fiscal problems of public institutions – which they now want the private sector to redress!

One of the curiosities in all this is that while the secondary school sector has been left replete with freedoms (although strictly speaking that is also a non-profit sector). Higher education is regarded as the arena where a formal principle of equality of opportunity is most vigorously asserted. We call this principal “formal” because it upholds the defensible idea that ability to pay should not determine access to institutions. But the manner in which this principle is implemented ensures that adequate resources will not be mobilized for expanding the quality and quantity of education, and that *de facto* inequalities in education will increase, because private spending outside regular institutions greatly determines future prospects. It is difficult to see what logic of political economy determines the Courts interventions. With all due respect to their Lordships, it is fair to say that the Court’s contribution to higher education has been more confusion than clarity.

## VI. PHILANTHROPY OR PRIVATIZATION?

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

- 1) There is a good deal of confusion in Indian official assessments and public discourse at large between philanthropy and not for profit educational institutions.
- 2) Philanthropic commitment to public institutions of higher education has been steadily declining since the middle of the century. Philanthropy is being “privatized” in two senses. One, donors for higher education are more likely to retain effective control over the resources they donate. Second, philanthropy is being conflated with creating not-for profit, but financially sustainable institutions. In these institutions, financial sustainability does not refer to receiving income from endowments, investments etc., but to charging the beneficiaries for the services being provided to them

- 3) This form of philanthropy is having many adverse consequences for the credibility of public institutions and philanthropic activity related to higher education in general
- 4) Public institutions of higher education are unlikely to, in the near future, attract significant amounts of philanthropic investment because of a) their own weaknesses and b) lack of a philanthropic ideology amongst most potential donors of the kind that existed in pre-independence India.
- 5) Philanthropy can still play a significant role in higher education in India, but it will have to take different organizational forms than the ones we have seen in the recent past.

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

1. The public purpose test: The organization that claims tax exemption must operate *primarily* for some purpose other than private gain. The idea is not that such organizations avoid profit (understood as excess of revenues over expenses), but rather on the existence of a substantial benefit purpose.
2. Non-Distribution of Surplus: Such organizations are barred from distributing its net earnings, if any, to individuals who exercise control over it, such as members, officers, directors, or trustees. This is known as the “non-distribution constraint.”

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

Indeed, it was the recognition of this difficulty that led a GOI committee (the Parthasarathi Shome Committee) to propose an amendment to the legal definition of the term “charitable.” The Shome Committee recommended that only such organizations that receive 90 percent of their annual receipts through donations or grants be treated as organizations for a charitable purpose. The underlying rationale is that donors are best placed to judge whether the activities of an organization are charitable or not. To the extent that an organization receives the bulk of its income from donations, the activities of the organization could be perceived to be predominantly charitable in nature. However, the criterion presented by Shome Committee’s definition of “philanthropic” or “charitable” would disqualify most existing organizations. Donations are an uncertain source of income for most organizations; free-rider incentives often keep the flow of funds to organizations below the socially optimal level; trusts run on donations are only part of the spectrum of philanthropic activity; and many NGO’s are engaged in economic activities designed to generate incomes to make the poor self reliant. The Shome Committee wanted a criterion of charitable that was based on *source of income rather than end purpose*.

But whatever difficulties with the Shome Committee’s recommendations, it did highlight a central issue in the field of higher education and philanthropy. *Should institutions of higher education that derive almost hundred percent of their revenue from charging for goods and services to students be classed as “philanthropic”? Or should a classification of “philanthropic” take into account some criteria of the source of income?*<sup>16</sup> The extent of philanthropy in higher education in India depends upon whether or not one classifies a large number of private colleges as surrogate businesses or as genuinely philanthropic. This phenomenon is of some interest because it helps shed light on an apparent paradox. While the number of “trusts” set up for philanthropy in higher education has consistently been steadily rising, the total share of “endowments and other sources” in higher education (that is resources excluding government expenditure and fees) has been consistently falling and is now 2.74 percent of all education expenditure, down from a high of 11.62 percent in 1951 (Modi and Mukhopadhyaya, 2000). In other words, *while the number of educational trusts is increasing, most of them are generating revenue by charging for services rather than through donations or endowments*. Although one needs more comprehensive data on this, it appears that philanthropy in higher education has increased, if one uses as a measure the total number of trusts and volume of activity. However, the picture is the opposite if the measure is the source of income.

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<sup>16</sup> Interestingly, the formal legal definitions of “charitable” in India are all based on objectives of the organization concerned. Formally, even the Board of Cricket Control in India is a charitable organization, because “cricket” appears to on a government list of objectives it is desirable to promote.

The pre-independence period, or that between 1892 and 1947, has been termed as the “Golden Age of Indian Philanthropy” (Sundar 2000). Indian philanthropy not only made the transition from merchant charity to organized, professional philanthropy, but did so on an impressive scale. This period saw the establishment of some of India’s most enduring trusts and foundations and public institutions of enduring significance—Aligarh Muslim University, Banaras Hindu University, Jamia Millia, Annamalai, Indian Institute of Science, among others—were created largely through voluntary donations. Higher education, especially institutes of research were widely considered to be “pioneering. Of the sixteen largest, “non-religious” trusts set up during this period, fourteen were major patrons of higher education.<sup>17</sup> What is even more striking, *a major proportion of their grants went to “public institutions” such as universities that were either directly under state control or some form of public authority.* It is not only the *object* of their spending that is of interest, but also the *manner* in which money was spent. Arguably, *philanthropy had much closer links with public institutions in the most literal sense of that term.* Grants, although emanating from family trusts were, once made, not under the control of family trusts and were deployed for specific purposes by the terms set buy the receiving institutions and not the trust itself. The net result was that at the time of independence the net share of private philanthropy in shouldering the burden of public institutions was as high as seventeen percent in 1950 and is now down to less than two percent. That this share would decline does not come as much of a surprise as government expanded its role in higher education. Even so, the extent of the decline is striking.

Alumni contributions are beginning to creep up but have been most noticeable only in the case of IIT’s (since about the mid-1990s), which have been able to tap into a large base of professionalized alumni amongst the Indian diaspora. However, even as this effort was gathering pace, the Indian government’s Human Resource Development ministry formed the *Bharat Shiksha Kosh* (India Education Fund) in 2003. By centralizing all overseas donations for education to the fund, it effectively denied would-be donors any say on the purposes for which the money could be used. Since the fund was set up, individual contributions to IITs dropped dramatically. Kanwal Rekhi, a founder member of TIE (The Indus Entrepreneur) who had funded an IT school in his alma mater, IIT-Mumbai, called the Fund “the most asinine thing I ever heard in my life.” “Donors are making voluntary gifts because of emotional attachment or commitment to the institutes. They will not hand off money to a nameless bureaucrat or a feckless politician.”

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<sup>17</sup> These trusts are Tatas (Sir Ratan Tata, Sir Dorabji Tata and JRD Tata), Bajaj, Birla (G.D. Birla, B.M.Birla), Lalbhai, Sarabhai, Godrej, ShriRam, Singhanian, Modi, Annamalai Chettiar, Murugappa group (AAM Foundation), Naidu, Ramco, Mafatlal, Mahindra,

It sums up the reaction of most potential diaspora donors.<sup>18</sup> The new UPA government has reversed this decision, allowing alumni to contribute directly to their alma maters. But the episode illustrates the uncertainties of regulatory structure. The lack of autonomy of educational institutions has been one of the biggest impediments in attracting diasporic philanthropy for higher education. Alumni who are prepared to give substantial resources also want to have a say in its use and an institutionalized mechanism to have their voice heard. However, the governance structures of most higher education institutions are so poor that such mechanisms are non-existent. Even in the case of the All India Institute of Medical Sciences, alumni have balked at contributing if they have little say in the governance of that organization (Kapur et. al 2004).

## VII. CONCLUSION

India is facing a deep crisis in higher education, which is being masked by the success of narrow professional schools. The veneer of the few institutions of excellence masks the reality that the median higher education institutions in India have become incapable of producing students who have skills and knowledge. The process neither serves a screening or signaling function nor prepares students to be productive and responsible citizens. Consequently, students are forced to spend more years (and, increasingly, large resources) in acquiring some sort of post-graduate professional qualification as they desperately seek ways to signal their qualities to potential employers. It would not be an exaggeration to say that India's current system of higher education is centralized, politicized and militates against producing general intellectual virtues. The fact that the system nonetheless produces a noticeable number of high quality students has to do with the sheer number of students and the Darwinian struggle at the high school to get admission into the few good institutions.

The most acute weakness plaguing India's higher education is a crisis of governance. Its most visible manifestation is a crisis of faculty. The generation that was inspired by a broad commitment to the public good has retired or will do so soon. There is little likelihood of sufficient replenishment, given entrenched mediocrity in institutions with life-time appointments, few competitive pressures and abysmal governance. The result has been the academic equivalent

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<sup>18</sup> <http://www.indiareacts.com/archivedebates/nat2.asp?recno=770&ctg=community>

of Gresham's law—the bad drives out the good. The prevailing political ideological climate in which elite institutions are seen as being anti-democratic, finds its natural response in political control to influence admissions policies, internal organization, the structure of courses and funding. As quality deteriorates, students are less and less willing to pay the very resources without which quality cannot be improved. In India's case, the growth of private sector higher education institutions has been the answer and, increasingly, the consumption of education abroad. However, as our analysis suggests, private sector investment has been confined to professional streams, bypassing the majority of students. Furthermore, it is plagued by severe governance weaknesses, raising doubts as to its ability to address the huge latent demand for quality higher education in the country.

**Table 1. Type-Wise Number of Colleges in the Country: 2001-2002**

<b><u>Type</u></b>		<b><u>Number</u></b>
- Arts, Science, Commerce & Oriental Learning Colleges	:	11128
- Teachers Training	:	784
- Engineering/Technology/Architecture	:	1077
- Medical	:	1253
<i>of which</i>		
Allopathy	:	262
Ayurveda	:	189
Homeopathy	:	141
Unani/Tibbia	:	29
Dental	:	142
Nursing	:	122
Pharmacy	:	241
Psysiotherapy	:	120
Naturotherapy	:	5
Public Health	:	2
- Agriculture	:	106
- Veterinary/Animal Science	:	50
- Law	:	368-
- Others*	:	671
<b>Total</b>		<b>15437</b>

\*Others includes Colleges exclusive for Library Science, Physical Education/Yoga, Music/Fine Arts, Social Work, Journalism/Mass Communication etc. & Colleges for which type is not available

Source: University Grants Commission

Note: The data was valid as of January 1, 2002

**Table 2. All India Growth Of Student Enrolment**  
(1983-84 to 2002-2003)

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

\* Provisional

Source: University Grants Commission



**Table 3: State-Wise Student Enrolment  
(2002-2003)**

<b>S. No.</b>	<i>State/UT</i>	<i>Total Enrolment</i>	<i>Women Enrolment</i>	<i>Women %</i>
1.	Andhra Pradesh	7,51,476	2,95,330	39.30
2.	Arunachal Pradesh	5,439	1,577	28.99
3.	Assam	2,01,132	81,458	40.50
4.	Bihar	4,94,035	1,17,628	23.81
5.	Chhattisgarh	1,52,813	56,082	36.70
6.	Delhi	1,72,218	79,220	46.00
7.	Goa	19,437	11,371	58.50
8.	Gujarat	5,19,021	2,29,483	44.21
9.	Haryana	2,49,118	1,02,138	41.00
10.	Himachal Pradesh	89,914	38,383	42.69
11.	Jammu & Kashmir	59,599	28,071	47.10
12.	Jharkhand	1,97,349	59,994	30.40
13.	Karnataka	5,57,645	2,27,846	40.86
14.	Kerala	2,51,157	1,50,682	60.00
15.	Madhya Pradesh	4,74,813	1,76,630	37.20
16.	Maharashtra	12,58,195	5,15,868	41.00
17.	Manipur	36,379	16,115	44.30
18.	Meghalaya	29,165	13,970	47.90
19.	Mizoram	11,240	5,249	46.70
20.	Nagaland	12,339	4,788	38.80
21.	Orissa	3,45,113	1,23,171	35.69
22.	Punjab	2,43,743	1,28,411	52.68
23.	Rajasthan	3,63,172	1,17,416	32.33
24.	Sikkim	4,103	1,654	40.31
25.	Tamil Nadu	7,13,045	3,21,583	45.10
26.	Tripura	20,145	8,219	40.80
27.	Uttar Pradesh	11,77,810	4,52,279	38.40
28.	Uttaranchal	1,15,318	46,127	40.00
29.	West Bengal	6,48,178	2,55,382	39.40
30.	A & N Islands	2,015	1,164	57.77
31.	Chandigarh	33,942	18,838	55.50
32.	Daman & Diu	587	275	46.85
33.	Pondicherry	18,178	9,562	52.60
	<b>Total</b>	<b>92,27,833</b>	<b>36,95,964</b>	<b>40.05</b>

Source: University Grants Commission

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

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

Source: University Grants Commission

**Table 5. Management structure of Engineering and Medical Colleges across States  
(2003)**

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

Source: Medical Council of India and AICTE

**Table 6. Public Expenditures on Higher Education**  
(Share of GDP and Total Education Expenditures)

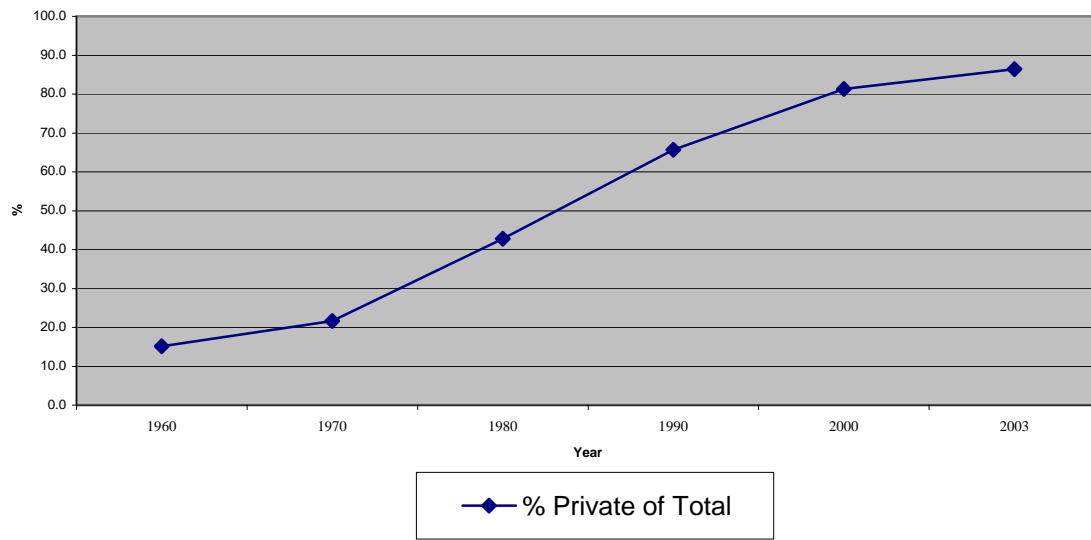
Country	Year	(1) Tuition and fees	(2) Govt. Subsidy	(3) Private Donations & Others	(4) Endowment Income	(5) Sales & Services	(6) Total
U.S.A	1990	39.6	19.2	13.3	5.3	22.6	100*
Japan	1987	70.4	13.0	6.5	10.0	0.0	100
Canada	1993	14.2	65.2	6.8	4.8	8.0	100
Korea	1988	82.0	3.0	10.0	5.0	0.0	100
Philippines	1990	51.0	40.0	6.0	0.1	2.1	100
India	1987	12.4	80.5	6.5	0.43	0.0	100
Kenya	1991	80.0	7.0	2.5	0.0	9.0	100
Year	Expenditure on Education as per cent of GDP		Expenditure on Higher Education as per cent of Expenditure on Education		Expenditure on Higher Education as per cent of GDP		
1981-90	3.59		15.6		0.34		
1991-92	3.44		9.78		0.41		
1992-93	3.78		10.79		0.40		
1993-94	3.68		10.97		0.39		
1994-95	3.61		10.81		0.37		
1995-96	3.60		10.14		0.35		
1996-97	3.57		9.77		0.35		
1997-98	3.53		10.01		0.38		
1998-99	3.85		9.93		0.46		
1999-00 ( R )	4.35		10.63		0.48		
2000-01 ( B )	3.91		12.14		0.60		

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

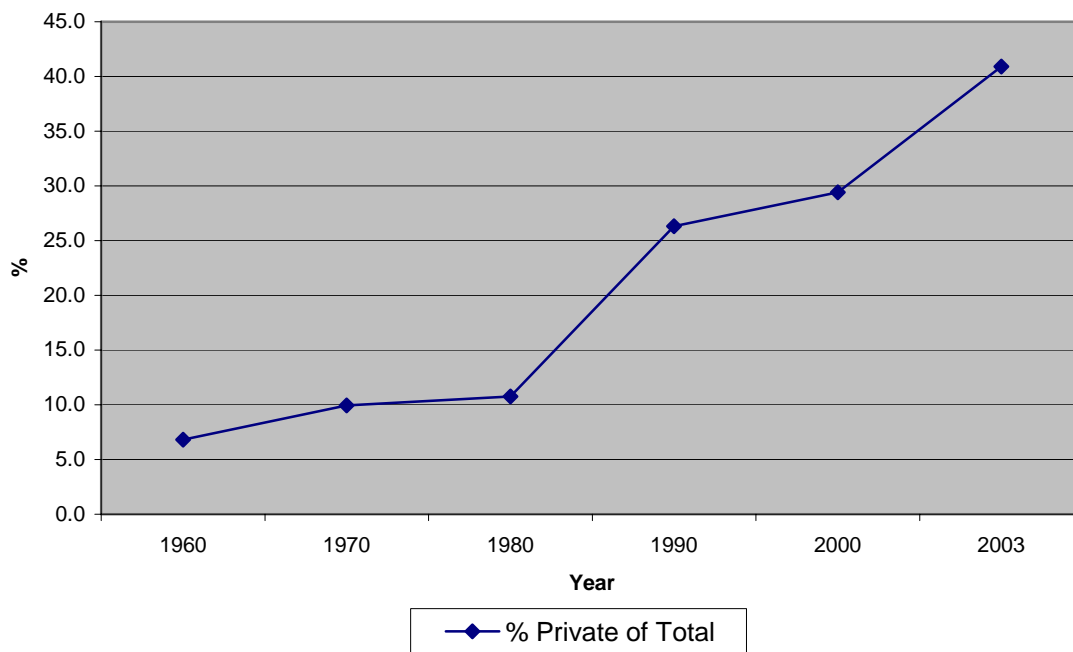
Source: Analysis of Budgeted Expenditure on Education, Ministry of Human Resource Development.

**Table 7. Distribution of Sources of Finance in Private Higher Education**  
(Percentage)

**Fig 1: Private Engineering Seats (% of total)**



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



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