

Legislation Making on Higher Education in India: Critical Concerns

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Abstract

The article aims to discuss the critical concerns such as inadequate consultation processes, injecting of massive neo-liberal agenda, lack of political sponsorship, party polarization and ideological separation, interest representation, and prioritization of other bills over those of higher education bills have become major causes in delays and lapses of legislation bills on higher education in India. The article also highlights the implications of the delays and lapses of legislation making process on higher education.

Keywords: Higher education, India, Governance, Legislation-making process, Delays and Lapses

Introduction:

“Sukhadeo Thorat said that the higher education in India is facing challenges which require urgent correction and revisions (India higher education report-2015, Pg-32)”. “P. Duraisamy said that there are opportunities as well as challenges in higher education in India which call for greater policy attention and regulation (India higher education report-2015, Pg-92).” The arena of governance and regulation in Indian higher education has gained significant attention in the policy circle, especially after globalization. However, nothing has resulted notably in restructuring regulatory regime governing higher education. There have been lamentations over challenges such as the rapid expansion, deterioration of quality, and concerns for equity and other concerns such as foreign higher education, private higher education, workforce development, data collection mechanism, research and innovations, accreditation process, and inclination to judicial remedies, etc. There are also opportunities such as demographic dividends, young population, low dependence ratio, English speaking skills, nation outward orientation, and interests of the middle class in studies that are useful for the country's development with the help of higher education.

In this scenario, it is essential for government to frame suitable regulating policies to convert problems and opportunities to boost the nation development. As it is required the government appointed various commissions and committees, as a first step in policy making process, to study higher education system to make recommendations based on whom the government could prepare legislations. “The united progressive alliance higher education reform package was based opposite provisions and views proposed by these two committees of national knowledge commission and Yash pal committee which have familiarity, despite having direct ideological differences (India Higher Education Report-2015, page-393).” “The legislative measures have been initiated in the background of three major reports on higher education prepared by high-level committees, Ambani-Birla committee, national knowledge commission which was directed by corporate businesspersons and Yash pal committee chaired by the educationist,

appointed by the central government (Tilak-2010)". Actually since the 1990s, there have been attempts to reform the governance of higher education through various legislative acts. However, the intention to formulate governance and regulation acts through the legislation process gained momentum in the 21st century based on the recommendations given by above mentioned commissions and committees.

The government had initiated various legislation bills such as foreign educational bill, educational tribunal bill, prohibition of unfair practices in technical educational institutions, medical, educational institutions and university bill, national accreditation regulatory authority for higher education institutions bill and national commission for higher education and research bill. But these legislation bills could not make their way into parliament. "The grand reform went awry, and all the bills except the Bill for setting up National Commission for Higher Education and Research lapsed with the dissolution before the general election of the Lok Sabha in May 2014. Controversies like the 2G scam, which stalled the functioning of the Parliament, and the policy paralysis which gripped the government, were no doubt important factors but no less fatal were strategic and tactical mistakes" (India Higher Education Report-2015)". In this scenario, it is essential to discuss the critical concerns such as inappropriate draft policy proposals, massive neo-liberal agenda, inadequate consultation processes, lack of political will, party and ideological polarization, interest representation, and prioritization of other bills over those of higher education bills have become major causes in delays and lapses of legislation bills on higher education in India. Thus, the passage of legislation to do regulatory acts in the higher education sector shows a lot of delays and lapses of legislations in the law-making process.

Critical Concerns in the Law making process:

Inadequate Pre-Legislative Consultation Process:

Any robust law-making process reveals that before bringing any bill into Parliament, the respective government should consult all stakeholders. Consultation plays fundamental importance, and a vast and continuing process of consultation on particular proposals and putting a draft out for public comments, and using those opinions or comments gives adequate strength to the draft proposals. The primary purpose of pre-legislative consultancy and public feedback is to address the stakeholders' critical concerns and build consensus, facilitating smoother passing of legislation. The absence of open inquiry and lack of pre legislative consultation before Bill's introduction led to much discontent against the proposed bills.

Government departments responsible for initiating the legislative process would have a standard assurance to consult other government departments for implied inter-departmental consequences. It is understood that this form of inter-departmental coordination in many cases, especially education-related bills, is lacking in the legislation process. Further, the non consultation process with various stakeholders has been undemocratic and inadequate in the case of higher education legislation making. In this context, Tilak says that "except in the matter of NCHER, the process of making a current set of bills does not recognize the need for the union government to consult states on issues relating to education affecting the meaningful relationship between the center and states that national educational policy-1986 promised." (Tilak-2010: 63)". The four bills related to higher as mentioned above were introduced in the Parliament during the period had no prior consultation, it was haste. The respective government maintained excessive secrecy that could have been avoided, especially in higher education policymaking.

The legislation bills the government have been preparing are ground breaking and would have huge ramification on the whole higher education system of India. They can alter the governing structure of the higher education system due to drastic policy changes they represent. So it is very important to consult various stakeholders associated with higher education. But the Parliamentary Standing Committees reports on various legislation bills on higher education clearly highlighted the inadequate consultation process. Various vital stakeholders such as regional governments, regulating bodies, different higher education institutions involving in preparing the draft policy proposals have been ignored completely on the base of unreasonable justifications by the department of higher education. The inadequate consultation process in preparing various higher education bills brings to notice a lack of political will at the center and state governments to build consensus in preparing an amicable legislation bill.

Neo-Liberal Agenda:

“All proposals of draft bill initiated by UPA-2 government were based on recommendations from Ambani-Birla Committee 2000, National Knowledge Commission 2007, and Yashpal Committee 2009 (Tilak-2010)”. These commissions on higher education, except yashpal committee, were headed by corporate people with solid corporate ideology. Even the yash pal committee also advocated for privatisation in higher education. These committees and commissions have influenced the government with their pro-neo-liberal recommendations. The primary agenda of neo-liberalism is to bring legislative reforms to regulate higher education, which is the primary reason for drafting these bills. The educational tribunal's bill, national accreditation regulatory authority for higher educational institutions bill, and national commission for higher education and research bill etc., all are part of the neo-liberal agenda. All these bills, which were supposed to be enacted, have a strong inclination towards facilitating private and foreign stakeholders in the Indian higher education system.

"All the bills assume and encourage the commodification of higher education and, subsequently, privatization and commercialization (Tilak, 2010)". "As many as six bills for regulation and development of higher education were proposed to be enacted. These bills have underlying organic unity. The laws to regulate entry and operation of foreign educational providers and for establishing universities for research and innovations were designed to make India an attractive destination for reputed foreign institutions (*Higher Education Report-2015*: 390)". "The six interlinked bills about higher education designed to advance the WTO-GATS agenda are pending in Parliament to commoditize higher education (Anil Sadgopal-2013)". "The central government ministers' compulsion to push these reforms can be understood if we understand the circumstances of the higher education sector in foreign countries after the recent economic meltdown, particularly in the USA and UK., we should also know the initiatives and pressures built by these countries on the Indian government to bail out the higher education sector of their own countries" (Vijender Sharma-2010). Further, to be part of the global market, existing higher education institutions and governing structures are unsuitable. The only way is to replace them with new structures that serve the neo-liberal goal. Thus the proposed bills are mainly targeted at making India a global higher education hub that serves the global markets rather than national socio-economic needs.

Lack of Political Will:

Shashi Tharoor once said that “there is need for a lot of persuasion to convince parliamentarians to push for enactment of legislation”. The inability of the Ministry of Human Resources Development (MHRD) under the United Progressive Alliance to convince opposition leaders and other parties is an important reason why the government failed to pass higher education related bills. Political will is the centrality of

policy outcome in the parliamentary democracy and should not be framed as hollow political rhetoric. The political will of the regimes regrettably stands at a crossroads in policymaking, agenda setting, and persuasion in the case of legislation making on higher education in India. The lack of political commitment and solid political sponsorship on the part of the ruling parties essentially impedes the passage of the legislation bills.

The reform package of higher education in the form of new governance has facilitated privatization, internationalization, and market needs. However, opposition parties, including regional parties, disagreed on the provisions of new governance, which were self-contradictory to federal governance structures. The opposition also has come from civil society organizations arguing that these new reform packages would kill institutions' autonomy and promote the market's needs. Despite much opposition from different sides, the government of the day undermined it. It did not bother to change the provisions in Bill's drafts. It blamed the opposition, saying that the opposition parties are paralyzing the process of legislation making and are not interested in commenting and forthcoming to debate on the pending, proposed bills.

Further, the UPA government excused itself by saying that its short of a majority in the Rajya Sabha. Kapil Sibal, said that "they are all pending in Parliament, and for two years. Nobody wishes to debate them; nobody wishes to put them on the agenda. We (UPA) don't have the majority in the Rajya Sabha. So if somebody says we will not allow the bill to come on the agenda what can we do? So if the policy framework becomes paralyzed, because the political processes don't allow education to be looked at elaborately, then how do we move forward?"(<https://economictimes.indiatimes.com/>) However, it has been the convention of the respective ruling governments that whenever they face unbendable opposition to the passage of bills, the government usually uses the ordinances as a weapon to pass the intended bills. The question raised here is why the respective governments vacillate when it comes to higher education. The governments did not consider using ordinances despite an urgent need for higher education regulations. This shows the government's indifference and lack of political will towards the higher education policy matters dealt with in the Parliament.

Party Polarizations and ideological divisions:

Formulation of national higher education policy and, more importantly, the implementation of such a policy are highly difficult, controversial and contested in many countries and India is no different from this. The powerful combination of forces makes systemic reform in higher education virtually impossible. There are many players such as government, academia and public and private entities proactively engaging in policy making process in higher education. The political polarization of political parties and their ideological divisions are also concerns. Policy areas such as education are prone to partisan decision-making environments. Where the parties are more different from one another ideologically, gridlock would be more likely. "Policy areas such as education are more likely subject to partisan decision-making environments. Divided government may indeed encourage gridlock as the two parties wrestle with the difficult policy challenges or ideological symbolism surrounding these high conflict areas (Cynthia J. Bowling and Margaret R. Ferguson-2001)". "The divided party control of policy-making dramatically increases the times it takes to enact important legislation. These legislative delays are even greater when the two parties are ideologically contested (Taylor Hughes and Deven Carlson-2015). "It is also said that if parties are ideologically more polarized, gridlock would be more likely (Cynthia J. Bowling and Margaret R. Ferguson-2001: 191)." "Partisanship, ideology, and legislative characteristics influence the higher education governance policies. It is evident that conflict

and gridlock in the legislative decision-making process are defined by both the political environment in terms of parties and interest representation and the policy area in terms of costs, benefits, and policy type" (Jill Nicholson-Crotty and Kenneth J. Meier, 2003: 197)". In India, polarization between the ruling party and the opposition was always at loggerheads during legislation making. Due to this, as many as 14 education-related bills were pending in Parliament. Thus, due to the lack of evocative understanding, especially in the case of legislation making on higher education, many of the bills could not get an adequate discussion. The standing committees must review all the proposed legislative bills, which generally take more prolonged time, and get an endorsement. When they return to the Parliament, voting and discussing the bills are initiated. However, after such prolonged consumption of time, bills are stalled for petty reasons. Sometimes, the ruling parties also faced intra-party squabbles, leading to stalling the bills. Evidently, in the case of the Tribunal Bill, in which the ruling UPA faced trouble with intra-party problems and, in the case of the Accreditation Bill, tough opposition came from the Trinamool Congress, an ally of UPA.

Interest Representation:

"A large part of higher education policy making remains the swiftest elevator to the pinnacles of power and opportunity (Maya Jone-2013)." "The higher education lobby is central to the politics of higher education which involves a study of the contest for access and influence over official decisions. The activities of the higher education associations can be called lobbying, as they have got designed to influence legislation and government decisions purposely" (Michael A. Murray, 1976). "It seems likely that high-conflict issues have groups organized around them as they have perceived substantial costs surrounding these policy decisions (Cynthia J. Bowling and Margaret R. Ferguson-2001: 190)." The Indian higher education system is a hugely contested area. Since it is a site of investment of enormous capital, power, and the vested interests of those in the government, it is highly prone to be influenced by lobbyists. So lobbying is happening in the regulation reformation process in education, from writing policy documents and selecting provisions to include in policy proposals of the acts and to the passage of the regulation bills. The higher education stakeholders such as legislators, bureaucrats, other stakeholders, politicians, the private sector, and other interest groups are involved in this process. National and international corporate interest groups have substantial clout in making regulatory policies on higher education. This is because the government has invested political power in facilitating corporate interests. It has appointed members of corporations as chairs of specific committees. However, university stakeholders are well-organized political groups in higher education, particularly teaching and non-teaching staff, and student unions, etc.

"The Governments usually appoint their people as heads and members of commissions and committees in higher education (Jill Nicholson-Crotty and Kenneth J. Meier, -2003: 12)". "It has become a dominant trend within the bourgeois state administration to constitute policy making committees and commissions which consist of capitalists and corporate lobbyists whose recommendations have a tremendous say in various state departments including health and education which directly concern the masses (Maya Jone-2013)." The government appointed committees on higher education with capitalists such as Ambani-Birla, national knowledge commission, Narayana Murthy, and the Federation of Indian Chambers of Commerce and Industry. Their work seems like lobbying instead of reporting on higher education. The discourse and recommendations in these dossiers of these commissions and committees are directed towards privatization and Neo-liberalization and effectively freeing the state from its public and social responsibility of educating its population. "There is a relationship between the second round neoliberal

reforms and commercialization of higher education policies, private and public partnership and six bills pending in the Parliament to facilitate the WTO-GATS agenda" (Anil Sadgopal-2013)". Anil sadgopal further said that the policy makers of India are working outside the Parliament to oblige global capitalists under the WTO-GATS agenda, even at cost of educational objectives and constitutional obligations, in the form of memorandum of understandings and twining programs.

"The academic unions are a powerful force in higher education that impacts reforms and other aspects of academic decision making (Philip Albatch-1993)". The interest of the teachers as professionals also plays an important role and is unionized to a significant degree. The unions have almost always opposed major reforms, distrusting policymakers and fearing that changes in working conditions would create problems for their members. People are not much aware of higher education policies in India. However, the middle classes dominate almost every aspect of Indian higher education. "The middle classes have been a powerful lobby in maintaining lower fees and lower recouping costs by the state" (Devesh Kapoor and Pratap Bhanu Mehta-2004), meaning that with the onset of the 21st century, there has been a rise in enrolment in higher education from students of downtrodden societies.

Advantaging Other Bills:

The prioritization of legislation making on higher education, among all other legislations' has always been India's principal policy making problem. In many instances, whenever the higher education bills are ready to get the nod to legislation, the possibility of priority shifts to other policy-related legislative bills, thereby keeping the higher education bills aside. For instance, under the UPA government, despite immense efforts to pass higher education bills, the bills of other sectors, such as the Food Security Act-2013, Street Vendors Act-2012, the Lok Pal and Lok Yuktha Acts, and the Indian Companies Act-2013 had been given priority and passed. "The greater legislative conflict could keep the legislature focused on internal battles and leave little time for overseeing the higher education system (Jill Nicholson-Crotty and Kenneth J. Meier-2003: 12)". Although many draft bills were waiting to be passed in Parliament, the governments failed to see them through. Due to issues like 2G scam, Commonwealth games, and coal block allocations, the house was stalled by the opposition. The massive allocation of time to the above mentioned issues led to a monumental paralysis in the decision-making process.

Section 2: Implications Delays and Lapses of Legislation on the higher education system:

The longstanding delays and lapses in the process of policy making on higher education in India have paved way for private entities to enter the policy making, outside the Parliament. Anil Sadgopal-2013 observed India higher education secretary statement that "it is unlucky the foreign education provider's bill still pending in the parliament. As consequence the parliament is denying to help us. But in sideways we have been working outside the parliament and last year we had come out with a twining arrangement (Anil Sadgopal-2013)." "Through the bureaucratic and executive channels where corporate bosses extensively consulted the state is deliberately and slowly in fixing the reforms at the individual universities level to easily circumvent the proper legislative procedure (Maya Jone-2013, Pg-58)." "The presence of foreign education providers in India has been a contentious issue, and the foreign education provider's Bill is still pending. Subsequently, the Indian government and Indian educational institutions are increasingly entering arrangements with other governments and overseas institutions to promote trade, investments, and cooperation in higher education services (Indian Higher Education Report-2015)". "Because of lack of consensus, the foreign education providers bill is still standing in Parliament and not been converted into legislation Act. In the meantime, the foreign higher education institutions willing to legally offer programs in India have chosen to enter through other means bypassing the

regulatory hurdles. The twining programs and tie-ups are the most common ways foreign institutions partner with Indian institutions (Rupa Chanda-2015:442-444)". It can be observed that the policy matters related to higher education were discussed and decided, outside Parliament, in the conferences, ministerial summits, tie-ups and twining programs and MoUs, where private lobbies play an essential role. "When Foreign Universities Bill could not be passed, government had to issue an executive order that made parliamentary approvals unnecessary for the entry of foreign education providers (India Higher Education Report-2015)". So here it can be observed that the delays and subsequent lapses are leading to administrative irregularities in the regulation and governance of higher education.

The ever-growing legal disputes in courts allude to the lack of a regulation system to deal with conflicts arising in higher education institutions. "The jurisdiction and scope of administrative tribunals act was limited and inadequate which has led to the overcrowding and delays in disposal of cases. The other existing laws like those dealing with consumer protection, powers of the regulatory bodies in education, the industrial disputes, and the arbitrations under Universities Act have their own limitations (PSC report on educational tribunal bill-2010)". "Due to the weakness and failures of the executive and legislative branches of the government and the problems plaguing higher education institutions in India, the judiciary has been playing a significant role in the regulation of higher education, even before 1990s (Devesh Kapoor and Madhav Khosla-2011)". "The private educational institutions have significantly risen as litigants in higher education in concomitant with their explosive growth in the past two decades. The private educational institutions as litigants rose to 18.8 percent in 2000-2009 from 6.5 percent in 1990-1999 (Devesh Kapoor and Madhav Khosla-2017: 212)". "The rapid growth in higher education sector and the entry of a large number of private institutions therein over the years had resulted in proliferation in litigation involving various stakeholders in higher education like students, teachers, employees, managements of institutions, universities etc. (PSC report educational tribunal bill-2010)." If the educational tribunals at centre and states were established in 1986 as advocated by the national educational policy of 1986, all of these judicial indiscipline's and irregularities and discomforts which are emanating from the judiciary jurisdictions on higher education would have been avoided. The supreme courts, high courts and other courts would have not over crowded by thousands of cases related to the higher education and also there would not have the delays in disposal of cases related to the higher education.

Conclusion:

Various experts' research reveals that the market-driven governance reforms in higher education in India failed to make appropriate provisions. The policymakers who proposed various bills for legislative acts could not prepare relevant provisions to solve persisting issues in higher education. Instead, they have been engaging with particular agendas and ideologies. The politicians' and bureaucrats' statements also reveal that there is awareness at the top level of the Indian government regarding the reformatting of regulating systems as per the needs of its stakeholders are misguided. However, different critical concerns such as inappropriate draft policy proposals, the neo-liberal agenda proposals, lack of political will and party polarization and ideological conflicts, lack of consultation process, interest representation, and prioritizing other bills over the those of higher education bills have been impeding this process. As a result of this grand failure, the fast-growing Indian higher education left with a lack of a proper regulating system. This failure, in turn, encouraged the abduction of policymaking sites and proliferation of higher education litigations in courts.

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