

# **An Evaluation of the Foreign Education Institutions Bill (2010)**



Submitted by:

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## Abstract

This paper evaluates whether the Foreign Education Institutions (Regulation of Entry and Operations) Bill, 2010 is actually facilitating the entry and operation of foreign university branch campuses in India. After studying the various provisions of the bill and considering the opinions of various stakeholders it was found that the bill as a whole aims to put excessive regulation although individual provisions restricting the entry might seem acceptable.

Indians seem to be fascinated by foreign degrees. According to a 2006 report<sup>1</sup>, 123,559 students from India migrated to study abroad. Out of these, 79,736 opted to study in the United States of America, 15,742 in Australia, 14,625 in the United Kingdom and rest in other countries.

Also, foreign universities seem to have been lured by the potential in the Indian education sector. Foreign universities like UK's Warwick Business School and Schulich School of Business of Canada's York University are considering opening their campuses in India.<sup>2</sup> Also, taking examples of MOU signed between Yale University and the Government of India and a similar proposal by Cambridge University, the Parliamentary Standing Committee on Human Resource Development concluded that many foreign universities stand awaiting a suitable regulatory framework to be put in operation so as to ensure their legitimate entry, without having to be clubbed with other fly-by-night operators.<sup>3</sup>

Foreign institutions can be operational in India in various forms – research collaborations, twinning programmes, providing dual degrees, opening branch campuses etc. This paper is focused only on foreign universities opening a branch campus in India.

Considering previous statements, to enable foreign universities open a campus in India, a regulatory framework is needed. Consequently, the Foreign Educational Institutions (Regulation of Entry and Operations) Bill was introduced in the Lok Sabha by the Ministry of Human Resource Development.

Provisions of this bill are still being debated upon. This legislation is at an initial stage and is yet to be enacted as a law. The Rajya Sabha referred the bill to the Standing Committee on Human Resource Development. After deliberations, the committee submitted its report to Rajya Sabha.

During the course of deliberations, the Indian Council of Universities challenged the very basis of the bill. It contended that Parliament could not enact a law to incorporate, regulate and wind up universities because Constitution of India explicitly debars the Centre from legislating on matters relating to universities.<sup>4</sup> The committee however, agreeing with the Department of Higher Education, is of the view<sup>5</sup> that Parliament is fully competent to legislate on matters relating to higher education, including universities, under an amendment.<sup>6</sup> This seems to be a grey area in law. One might wonder about the state of affairs if after enactment of this bill Cambridge opens a campus in India and the Honorable Supreme Court of India in some judgment holds the law to be *void* from its inception.

Mention of the court system in India usually reminds one of the long procedural delays. If one looks at the procedure required to be followed by a foreign university to establish a campus in India as provided by the bill, it seems quite fertile for procedural delays.

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<sup>1</sup> Global Education Digest, 2006 – Comparing Education Statistics Across the world, published by UNESCO Institute for Statistics, 2006, Page 135.

<sup>2</sup> Times of India, March 18, 2012 <<http://timesofindia.indiatimes.com/home/education/news/UKs-Warwick-Business-School-eyes-Delhi-campus/articleshow/12310144.cms>>

<sup>3</sup> Department Related Parliamentary Standing Committee on Human Resource Development, 237<sup>th</sup> Report on the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, 1.8.

<sup>4</sup> Constitution of India, Seventh Schedule, Entry 44 of List I read with Entry 32 of List II.

<sup>5</sup> Department Related Parliamentary Standing Committee on Human Resource Development, 237<sup>th</sup> Report on the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, 5.3.

<sup>6</sup> Constitution of India, Seventh Schedule, List III, Entry 25 (inserted by 42<sup>nd</sup> amendment).

Among the procedural clauses involving applications, recommendations, enquiries etc., emerges a worrisome clause.

*“The Registrar shall, as early as possible, and preferably within a period of six months from the date of receipt of the application.....submit his report on the fitness.....recommendations made by the statutory authority.....to the Commission”<sup>7</sup>*

Vague phrases like ‘as early as possible’ and ‘preferably within a period of six months’ leaves it to the discretion of the registrar what he ‘prefers’.

The registrar concerned might just love the provision but as far as ‘good’ foreign universities are concerned, which the government intends to allow in India,<sup>8</sup> this discretionary clause might force them to reconsider their decision of setting up a campus in India. The US-India Business Council has already shown concern regarding lengthy Indian procedures and has suggested ‘single window clearance’ to attract Foreign Education Institutes from around the world.<sup>9</sup>

If the government intends to allow ‘good’ foreign universities, does it refer to the universities in existence at least for a couple of decades? Is existence of a university for a specific time period a criteria to judge the credibility of the university? Seems proposers of this bill do consider it as a criterion.

The bill considers an institution to be a foreign education institution if it has been offering educational services for at least twenty years in the country of establishment or incorporation.<sup>10</sup>

Thus, law leads us to assume that an institution in existence for less than 20 years does not fall under the definition of ‘foreign education institution’ and is barred from entering India.

University of Milan-Bicocca, Italy; University of Southern Denmark; Hong Kong Polytechnic University; Plymouth University, UK; University of Hertfordshire, UK; National University of Ireland, Maynooth; Liverpool John Moores University, UK; Royal Melbourne Institute of Technology (RMIT) University, Australia are some of the young Universities performing well in the field of higher education.<sup>11</sup> However, by virtue of the proposed bill, these universities cannot set up a campus in India.

So, if government intends to allow ‘good’ universities, is it talking about economically well-off universities? Or is it talking about academically well-off ones, although they might or might not be very rich? Can credibility of a foreign university be defined on the basis of funds it has?

The proposed bill mandates an undertaking to be signed by foreign university seeking to establish a campus in India. This undertaking ensures that such institute would maintain a ‘Corpus Fund’ of a minimum of fifty crore rupees. However, a different sum for the same can be notified by the Central

<sup>7</sup> Foreign Educational Institutions (Regulation of Entry and Operations) Bill 2010, Section 4, Clause 6.

<sup>8</sup> Y Sreekanth, Asst. Professor at National University of Education Planning and Administration, Personal Interview on 3<sup>rd</sup> July 2012.

<sup>9</sup> US-India Business Council Higher Education Mission, 2010<<http://education.usibc.com/wp-content/uploads/2010/09/Education-Briefing-Book-for-website.pdf>>.

<sup>10</sup> Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, Section 2(e)(i).

<sup>11</sup> Times Higher Education Rankings in ‘world’s top 100 universities under the age of 50’, 2012.

Government from time to time.<sup>12</sup> This leaves one wondering what a ‘corpus fund’ is. Even after extensive research, we were unable to find a definition of the term in Indian laws.

Fifty crore rupees is equivalent to \$9,044,863 USD today.<sup>13</sup> Looking at top 100 universities of the world,<sup>14</sup> we find most of them are from United States, United Kingdom, Canada and Australia. Arranging for the requisite fund should not be a problem for top and credible universities of these developed countries.<sup>15</sup> Seems like proposers of the bill are associating credibility with the fund a university can promise to possess.

Further, another provision directs the foreign institution to spend no more than 75% of this fund for development of institution in India while the rest has to be added into the corpus fund.<sup>16</sup> Also, it explicitly restricts the use of surplus to be invested for any other purpose.<sup>17</sup> US-India Business Council has expressed its inability to comply with this provision where foreign institutions are not free to choose how to spend what they earn.<sup>18</sup>

This model is similar to the model adopted by most of the private education providers in India. In India, ‘education’ is considered to be a ‘welfare activity’ and so ‘profit-making’ in this sector is not allowed.<sup>19</sup> Private institutions are run under a public trust or a society etc. So are we expecting the foreign institutions to adopt a model where the government has been closing its eyes to the fact ‘people are making profit out of education’. Well, whether this model is good or bad is another debate. On the face, we do not allow ‘profit-making’ out of providing education.

So, after cutting down the number of universities on the basis of the number of years for which it has existed and the amount of fund it can hold, appears another barrier. Indian system bars the Universities which intent to earn profit from establishing a campus in India. Another contention could be that ‘good’ universities like Harvard, Stanford etc. have achieved such a level of excellence that monetary incentive is not their only motive. Their incentive lies in enhancing the academic activities by opening a campus in India.

Also, one must keep in mind the past experience of India in this regard. Although no university has established its own campus in the country, few are running twinning programmes in collaboration with local entities. These programmes are run by universities which are not so popular even in their own countries. But, as this paper began, “Indians seem to be fascinated by foreign degrees”. According to an online survey, almost 100% of Indians preferred a foreign degree over an Indian degree for themselves.<sup>20</sup> The survey also revealed that people tend to depend on a statutory body, like University Grants Commission, to test the credibility of the institute. However, there were very

<sup>12</sup> Foreign Educational Institutions (Regulation of Entry and Operations) Bill 2010, Section 4, Clause (3)(b).

<sup>13</sup> As on 16<sup>th</sup> July 2012 at 15:23 IST.

<sup>14</sup> Times Higher Education Rankings in ‘the world university rankings’, 2011-12.

<sup>15</sup> Y Sreekanth, Asst. Professor at National University of Education Planning and Administration, Personal Interview on 3<sup>rd</sup> July 2012.

<sup>16</sup> Foreign Educational Institutions (Regulation of Entry and Operations) Bill 2010, Section 5, Clause (2).

<sup>17</sup> Foreign Educational Institutions (Regulation of Entry and Operations) Bill 2010, Section 5. Clause (3).

<sup>18</sup> USIBC Higher Education Mission, 2010, <<http://education.usibc.com/wp-content/uploads/2010/09/Education-Briefing-Book-for-website.pdf>>.

<sup>19</sup> T.M.A. Pai Foundation and Others vs. State of Karnataka and Others, AIR 2003 SC 355.

<sup>20</sup> The survey was conducted by the researcher by preparing a questionnaire and circulating it online.

few who preferred checking institute's website to obtain the complete information. Seems like people of India are used to being fed the information rather than reaching for it ourselves.

In such a scenario, people are prone to incorrect or incomplete information.

Quoting a personal experience, when a friend came to know my area of research he informed that a certain 'Leeds University' is already operational in India. As a curious researcher I tried to find out what the actual state of affairs was. Search began with a mindset that it must be Fraud University. It was discovered that the 'University of Leeds' had nothing to do with this programme offering one semester of study abroad. The programme was however operated by 'Leeds Metropolitan University' in collaboration with 'Dainik Jagarn Media Group'.<sup>21</sup> One should know that this university is a legally recognized university in the United Kingdom but I did confuse it with the 'University of Leeds', UK due to incomplete information.

Also, recently this University had to face student protests because degrees given by it are completely illegal in India as University Grants Commission has not authorized it to do so.<sup>22</sup>

Here crops another question, rather a series of questions. Who would regulate the foreign universities' Indian campus? Can the University Grants Commission regulate the functioning of foreign institutes with the present set of rules and regulations? Should separate rules be made for foreign universities? In case of separate rules, won't it discriminate against our own institutions?

Chairman, UGC pointed out that a foreign institution, on being notified and becoming an Indian entity, ought to be treated at par with private unaided institutions.<sup>23</sup> Further, the Standing Committee is of the view that applicability of other laws of the country, as mentioned in clause 12<sup>24</sup> of the Bill, would be too inadequate.<sup>25</sup>

As per the bill, the 'Commission' has the authority to regulate the entry and operation of foreign institutions in India.<sup>26</sup> For the time being, 'Commission' here refers to the University Grants Commission. UGC regulates fees, prohibits donations in certain cases,<sup>27</sup> gives right to offer only certain prescribed degrees<sup>28</sup> etc. UGC even stipulates a list of degrees that can be granted by a university.<sup>29</sup> No degrees other than those mentioned are recognized in India. It restricts the foreign universities to award only degrees already recognized by University Grants Commission. So that automatically restricts the universities providing any course other than what has been prescribed by University Grants Commission.

<sup>21</sup> [http://www.leedsmetindia.in/home/leedsmetindia\\_bhopal.php](http://www.leedsmetindia.in/home/leedsmetindia_bhopal.php)

<sup>22</sup> The Hindu, 15<sup>th</sup> February 2012, Students protest against Leeds-Metrolopolitan University by Mahim Pratap Singh <<http://www.thehindu.com/news/states/other-states/article2897177.ece>>.

<sup>23</sup> Department Related Parliamentary Standing Committee on Human Resource Development, 237<sup>th</sup> Report on the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, 2.10.

<sup>24</sup> 'The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force'.

<sup>25</sup> Department Related Parliamentary Standing Committee on Human Resource Development, 237<sup>th</sup> Report on the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010, 2.12.

<sup>26</sup> Foreign Educational Institutions (Regulation of Entry and Operations) Bill 2010, Section 2. Clause (c).

<sup>27</sup> University Grants Commission Act, 1956, Section 12A.

<sup>28</sup> University Grants Commission Act, 1956, Section 22.

<sup>29</sup> Notification no. F.87-9/58 (CUP) dated 1<sup>st</sup> December, 1958.

So, what kind of universities does the government intend to allow in India? Seems its old, rich universities from developed countries which are ready to operate under a regulatory authority with intent to provide education without earning profit out of the activity. It seems the government intends to facilitate entry of only those universities which have an academic incentive. Most of these universities are based in countries such as United States, United Kingdom and Australia and as mentioned in the beginning, these are the countries where most of the students migrate for the purpose of education.

When we look at each barrier individually it seems to reasonably filter out the unwanted universities. However, if we look at all the barriers at one go, it seems to have filtered out too many universities from establishing their campus in our country thus, reducing the competition among the foreign universities.

Competition between foreign universities and Indian universities is sure to happen but if there is no competition between the foreign universities themselves, it might allow a few to capture a large market share.

The procedure laid down by the bill, already imposes a lot of quality and fitness checks on the foreign universities.<sup>30</sup> Further restricting the entry and over regulating does not seem to be a good option.

The bill seems to have a very restrictive approach towards entry and regulation of foreign education institutions in India. Why it is so? Is it to restrict competition between the domestic and foreign institutions? Is it to assure the credibility of foreign institutions? Is it just another measure to avoid foreign institutions from being highlighted so that process of backdoor profiteering from private Indian institutes can continue? The questions remain unanswered.

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<sup>30</sup> Foreign Educational Institutions (Regulation of Entry and Operations) Bill 2010, Section 4.

## BIBLIOGRAPHY

### Legislations:

Foreign Educational Institutions (Regulation of Entry and Operations) Bill 2010

Constitution of India, 1949

Notification no. F.87-9/58 (CUP) dated 1<sup>st</sup> December, 1958

University Grants Commission Act, 1956

### Reports and Policy Papers:

Department Related Parliamentary Standing Committee on Human Resource Development, 237<sup>th</sup> Report on the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010

Global Education Digest, 2006 – Comparing Education Statistics Across the world, published by UNESCO Institute for Statistics, 2006

Times Higher Education Rankings in ‘the world university rankings’, 2011-12

Times Higher Education Rankings in ‘world’s top 100 universities under the age of 50’, 2012

US-India Business Council Higher Education Mission, 2010 <<http://education.usibc.com/wp-content/uploads/2010/09/Education-Briefing-Book-for-website.pdf>>

### Websites:

[http://www.leedsmetindia.in/home/leedsmetindia\\_bhopal.php](http://www.leedsmetindia.in/home/leedsmetindia_bhopal.php)

### Case laws:

T.M.A. Pai Foundation and Others vs. State of Karnataka and Others, AIR 2003 SC 355

### News Reports:

The Hindu, 15<sup>th</sup> February 2012, Students protest against Leeds-Metrolopitan University by Mahim Pratap Singh <<http://www.thehindu.com/news/states/other-states/article2897177.ece>>

Times of India, March 18, 2012, ‘UK’s Warwick Business School eyes Delhi Campus’ by Hemali Chhopia <<http://timesofindia.indiatimes.com/home/education/news/UKs-Warwick-Business-School-eyes-Delhi-campus/articleshow/12310144.cms>>

### **Surveys and Interviews:**

The survey was conducted by the researches themselves by preparing a questionnaire and circulating it online

Y Sreekanth, Asst. Professor at National University of Education Planning and Administration, Personal Interview on 3<sup>rd</sup> July 2012.