

# **Economic Liberalization and Foreign Investment in Indian Education Sector: The Need of the Hour**

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## **ABSTRACT**

With an ever burgeoning economy and reforms entering into all most all the arenas of our economy, this research paper discusses the economic policy implications on Higher Education Sector in the nation. To develop higher education system is the need of the hour and it is here that economic policies play a major role. With Public Expenditure being meagre in this sector in comparison to its ever growing need of funds, the government is looking out to other means of investment- the private and the foreign investment.<sup>2</sup> Although many Private Educational Institutions have been engaged in delivery of knowledge & expertise yet they are insufficient to meet the rising need calling for an additional pool of investment. This article revolves around manifold questions like, whether inclusion by way of foreign investment is a solution to the shortage of funds in the higher education sector. The article ventures to find the affect such increased financial outlay in this sector. These are some of the questions whose answers are sought in this article by firstly, perceiving the nature of education. The article tries to trace the controversies pertinent to education in context with the Economic Policies & the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010 and find answers of the same.

Keywords: Education, Government Expenditure, Foreign Direct Investment.

## **Introduction**

The Indian Development story which got a strong foothold from the last decade onwards has paved its way to become the second fastest growing economies of the world. Compared to the early 1980's when the Indian Economy was plagued with low

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<sup>2</sup> FICCI- Ernest & Young, *Report on Higher Education 2010*,  
[http://www.ficci.com/sector/11/Project\\_docs/FICCI-sector-profile-Education.pdf](http://www.ficci.com/sector/11/Project_docs/FICCI-sector-profile-Education.pdf)

growth rates and the early 1990's when India remained a debt burdened country, the Indian Economic scene has changed drastically.

With rapid Industrialisation spreading out across the entire country, the growth numbers have been quite good. The foreign exchange reserves rose to \$300 billion in the latter 1990's from a mere \$ Five billion.<sup>3</sup> India achieved a growth of 6.2% from 1980's to 2010 where the world growth rate was 3.3%.<sup>4</sup> Also India's share in global G.D.P (measured in terms of constant 2005 Purchasing Power Parity International Dollars) has increased from 2.5% in 1980 to 5.5% in 2010.<sup>5</sup> Ms. Pratibha Devi Singh Patil, the former President has acknowledged the fact that India has become the favourite destination globally in terms of Investment and Industrial Activism.<sup>6</sup> According to the Report of Ernest & Young, *Doing Business in India*, India is the second most preferred country for foreign investors.<sup>7</sup> The Indian Banking Space is all set to become the world's third largest in terms of Asset Holding in next fourteen years with assets projected to be around \$ 28,500 billion by 2025 as estimated in "Being Five star in Productivity-Roadmap for Excellence in Indian Banking", prepared by Indian Bank's Association and Boston Consultancy Group.<sup>8</sup> According to the study conducted by Price Waterhouse Coopers, India's G.D.P on PPP basis can rise to seven folds i.e. \$ 34.7 trillion from 2011 level by 2050, closely following the U.S growth numbers.<sup>9</sup> Be it the IT sector, the agro based space, the auto segment, the apparel section, pharmaceutical, infrastructure or footwear India has made its mark in all sectors of the economy. All these achievement by the Indian economy was not a one day phenomenon of automatic transformation. This achievement has undisputedly been credited to the Economic Reforms of 1991-92 which transformed the Indian Economic Scene completely.

The New Economic Policy of 1991-92 or the Structural Adjustment Programme was a result of a major economic breakdown ever experienced by India. The pre

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<sup>3</sup> Economic Survey 2011-12, *India and the Global Economy*, <http://indiabudget.nic.in/es2011-12/echap-14.pdf>

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *India's Economy*, [http://www.ietfindia.in/indias\\_economy.aspx](http://www.ietfindia.in/indias_economy.aspx)

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *India's G.D.P on PPP basis can rise to seven folds by 2050*, The Financial Express, Thu, January 17, 2013, <http://www.financialexpress.com/news/india-s-gdp-on-ppp-basis-can-rise-sevenfold-by-2050-pwc/1060259>

Industrialisation phase was characterised by the Licence, Permit and Quota Raj. Policies such as Import Substitution, State Monopoly in all sectors, Regulated Industrialisation at all levels and Fixed Exchange Rate System led to the Balance of Payment crisis which further led to bankruptcy. The Central Bank was forced to give 47 tonnes of gold to Bank of England as collateral for loan.<sup>10</sup> Such was the extent of damage caused to Indian Economy and its Reputation that the International Organisations denied to give further loans. Thus on July 24 1991, Mr. Manmohan Singh ,the then Finance Minister presented a new budget in the Central Hall of Parliament introducing the policies of Liberalisation , Privatisation and Globalisation to bring Indian Economy on Sound lines.<sup>11</sup> Liberalisation refers to the lessening of government regulations and restrictions in economic activities. Privatisation refers to the increase in private participation in trade and other economic activities where as Globalisation refers to the Integration of a domestic economy with the world economy. These Landmark Policies did away with the Industrial Licensing where industries had to get licences in order to start production and produce under a fixed slab. This led to inefficiency and delay. Under the Economic Reforms foreign capital was welcomed by means of Foreign Direct Investment and Foreign Institutional Investment.FDI refers to investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations 2000.<sup>12</sup>FDI can take place in two ways. Firstly, FDI can take place through the Automatic Route i.e. 100% FDI can be made by the non-resident investor or the Indian company without prior Government Approval. Government route means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval of Government (FIPB, Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be).<sup>13</sup>

Reduction in Import Duties ,leaving the exchange rate to be determined by the market mechanisms, private participation were the major means through which the Indian

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<sup>10</sup> *One more Push*, The Economist, July 21, 2011, [www.economist.com/node/18988536](http://www.economist.com/node/18988536)

<sup>11</sup> *Ibid.*

<sup>12</sup> Department of Industrial Policy & Promotion (FC Section) ,*Consolidated FDI Policy*, Circular 1 of 2012, [http://www.dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2012.pdf](http://www.dipp.nic.in/English/Policies/FDI_Circular_01_2012.pdf)

<sup>13</sup> *Ibid.*

Economy was brought to the present level. This was the history of the Economic Reform in India.

This paper deals exclusively with Economic Liberalization Policies pertaining to one of the segment of our economy which forms the basis of growth and development for the whole economy-The Indian Higher Education Sector.

### **Higher education as an indispensable aspect of Growth**

*“Education is the true alchemy that can bring India its next golden age. Our motto is unambiguous: All for knowledge, and knowledge for all.”<sup>14</sup>*

The above connotation has been used for the higher education system for it is the quality of human resource which determines the efficiency of the economy and the skills and technical expertise imparted at this level of education add significantly to the growth of the economy. Higher Education is defined as the education obtained after completing twelve years of schooling or equivalent and is of the duration of at least nine months (full time) or after completing ten years of schooling and is of the duration of at least three years. The education may be of the nature of General, Vocational, Professional or Technical education.<sup>15</sup> It is a very well known fact that Economic Policies play an indispensable role in developing any sector of economy. And the same is true for education sector too which has been affected by policy implications on the economic front. Today planners, realising the significance of economic and regulatory mechanisms are spending a lot of time in scrutinising the funding methods and incentive layout.

### **Status Quo of Higher Education in India**

Before getting into the economic debate on liberalising education in context with privatisation and foreign investment, let's analyse the present status of education in India. Among a burgeoning population of 1.21 billion, 234 million people are within the age group of 15-24 years of age which will increase by 13% over 2005-2020.<sup>16</sup> This age group shows the huge demand for the higher education in India. The Indian

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<sup>14</sup> Stated at Central Hall of Parliament by Hon'ble President Mrs. Pratibha Devi Singh Patil, New Delhi on July 25 2012, <http://mhrd.gov.in/>

<sup>15</sup> As defined by Ministry of Human Resource Department, *All India Survey on Higher Education*, <http://rcub.ac.in/Affiliation/InstructionManual.pdf>

<sup>16</sup> FICCI- Ernest & Young, *Report on Higher Education 2010*, [http://www.ficci.com/sector/11/Project\\_docs/FICCI-sector-profile-Education.pdf](http://www.ficci.com/sector/11/Project_docs/FICCI-sector-profile-Education.pdf)

Education & Training Space is worth about US \$ Forty billion.<sup>17</sup> This market size is estimated to treble in another ten years to \$ 115 billion.<sup>18</sup> The Gross Enrolment Ratio in India is 15% compared to that of the global average of 25%<sup>19</sup>. There is a huge Urban and Rural Divide in context with higher education. The GER is 23% in urban areas and 7% in the rural areas.<sup>20</sup> 58% of all Higher Educational Institutes are located in South India.<sup>21</sup> There is severe dearth of quality faculty & the infrastructure is also not up to the set standard as 153 universities and 9,875 colleges are with Infrastructure deficiencies as recognised by UGC.<sup>22</sup> Many of the universities and colleges are not qualified to receive funding from UGC or Central Government.<sup>23</sup>

Today 63% of the total Higher Educational Institutes are private unaided which are managing the majority of the Educational systems.<sup>24</sup> But such liberalised extent of private partition was not there always. Although we have the highest number of Educational Institutes in the world, only IIT-Bombay (492) made it to the top 500 Universities around the globe.<sup>25</sup>

#### **Problems pertaining to Higher Education sector in India**

The total expenditure on R & D in context with education is only of .81% of the GDP compared to 1.3% in China & 2.60% in US.<sup>26</sup> There is a dearth of a proper Industry Academia tie-ups will hinder the professional skills and quality of human resource. According to FICCI- E & Y 2010 Report, expenditure incurred on Higher Education is going to increase to INR 155015 Crore where as the total requirement would be INR 360640 Cr (\$76) by 2020 to fulfil the demand –supply gap. This would be 1.9% of the current GDP on PPP basis.<sup>27</sup> In the Union budget for 2011-12, Indian Government has allocated Rs. 52,057 Crore for the education sector, which is 24 per cent higher than the

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<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> Mr. Kapil Sibal, Minister of HRD and C&IT at the US India Higher Education Summit October 13, 2011, *Address by Mr. Kapil Sibal*, <http://www.indianembassy.org/prdetail1807/address-of-mr.-kapil-sibal,-minister-of-hrd-and-candit-at-the-us-india-higher-education-summit>

<sup>20</sup> FICCI- Ernest & Young, *Report on Higher Education 2009*, <http://www.ficci-hes2009.com/htm/eny2.htm>

<sup>21</sup> *supra* note 15, at pg 6

<sup>22</sup> *supra* note 19, at pg 6

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Webmetrics 2012 Ranking of Global Universities*, [www.webmetrics.info/en/Asia/India](http://www.webmetrics.info/en/Asia/India)

<sup>26</sup> *supra* note 19, at pg 6

<sup>27</sup> *supra* note 15, at pg 6

2010-11 education expenditure.<sup>28</sup> The 2012-13 Budget had proposed that Rs 61, 427 Crore would be spent on education, up from Rs 52,057 Crore in 2011–12.<sup>29</sup> But this is not sufficient to fulfil the ever increasing need for higher education. However, expenditure on education as per cent of GDP is relatively low in India when compared with some of the developed nations as also with some developing countries. The public Expenditure is only 3.09147% as a percent of the total GDP in 2006 where as it is 5.40442% for US in 2009.<sup>30</sup> In 2008-2009 the public expenditure as a percent of the GDP stood at 3.39% in contrast with the 6% target which was set forty years ago by our policy makers.<sup>31</sup> Education expenditure as a percentage of Gross Domestic Product (GDP) rose to over 4 per cent in 2011–12.<sup>32</sup> Thus as far as funding is concerned, additional capital is the need of the time. These figures reflect the state of Indian Education system and that there is an urgent need to harness this service sector to ensure proper development.

In order to raise the standard of higher education in the country, the Indian Government is aiming to raise the GER at Higher Educational levels from presently 12% to 30% by 2025.<sup>33</sup> To attain this figure it will have to expand the student population to 30 million in higher education sector.<sup>34</sup> To attain this figure a lot of capital would be needed. Although the government has allotted nine times the amount of the previous five years in education sector for the current five year plan but it is still not enough.<sup>35</sup> According to National Knowledge Commission (NKC), the number of Universities required to meet the prevailing demand is 1,500 compared to 370 now.<sup>36</sup> In a major statement released by the World Bank, it said that, India can't attain the status of a developed country until

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<sup>28</sup> Address by Dr K C Chakrabarty, Deputy Governor, RBI on *Challenges and Opportunities in a Trillion Dollar Economy*, at ASSOCHAM's National Banking Conclave on June 17, 2011 at New Delhi, [http://www.rbi.org.in/scripts/BS\\_SpeechesView.aspx?id=577](http://www.rbi.org.in/scripts/BS_SpeechesView.aspx?id=577)

<sup>29</sup> M Saraswathy, *Govt spend on education grew faster than GDP: Crisil*, The Business Standard, Oct 08, 2012, <http://www.business-standard.com/india/news/govt-spendeducation-grew-faster-than-gdp-crisil/190164/on>

<sup>30</sup> *Public Expenditure as a percent of GDP*, [http://data.un.org/Data.aspx?d=UNESCO&f=series%3AXGDP\\_FSGOV](http://data.un.org/Data.aspx?d=UNESCO&f=series%3AXGDP_FSGOV)

<sup>31</sup> *Reclaiming Public Provisioning Priorities for the 12th Five Year Plan*, [http://www.cbgaindia.org/files/research\\_reports/Reclaiming%20Public%20Provisioning-Priorities%20for%20th%2012th%20Five%20Year%20Plan.pdf](http://www.cbgaindia.org/files/research_reports/Reclaiming%20Public%20Provisioning-Priorities%20for%20th%2012th%20Five%20Year%20Plan.pdf)

<sup>32</sup> *Draft on 12<sup>th</sup> Five year Plan, Social Sectors, Volume 3*, [http://planningcommission.gov.in/plans/planrel/12thplan/pdf/vol\\_3.pdf](http://planningcommission.gov.in/plans/planrel/12thplan/pdf/vol_3.pdf)

<sup>33</sup> Yojana Sharma, *India: The Next University Superpower?*, BBC News Business, <http://www.bbc.co.uk/news/business-12597815>

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> National Knowledge Commission, *Letter to The Prime Minister regarding recommendation on the Bill* dated November 29, 2006, <http://www.knowledgecommission.gov.in/recommendations/higher.asp>

it goes for a major investment in the field of Higher Education for the public expenditure is not able to fulfil the gap between the demand and supply.<sup>37</sup>The public expenditure is not sufficient despite of 10 times increase in the 11<sup>th</sup> year Plan with Rs.2.2 trillion deficit for planned expansion of Higher Education by Planning Commission.<sup>38</sup>The Government has raised the public expenditure in education by 30%-40% in the 12<sup>th</sup> five year plan but a majority of this being spent on maintenance and alteration rather on expansion i.e. Creating Additional education capacities.<sup>39</sup>Therefore understanding this situation of crisis, the government is looking forward to more privatisation and foreign participation in this sector to give a boost to the financing.

This brings us to the blazing debate of allowing private and foreign investment in the education sector which forms the crux of this research paper.

### **Privatization of Higher Education in India**

Privatisation in Higher education sector has always been a matter of heated controversy but it is also an accepted fact that the private sector has been credited for the “expansion” of higher education in India for today 63% of the colleges and Universities are Private Unaided engaged in delivery of quality Higher Education to the burgeoning population.<sup>40</sup> Privatisation can take place either by introduction of self-financed courses in government Institutes or expanding the existing capacity of self-financed private educational bodies. Although it is generally said that it is the government’s regulatory mechanisms which led to the entrance of private players in the “education market” but it was only the incapacity of the state funded institution which brought private players to the forefront.<sup>41</sup>

Privatisation in Indian Higher Education Sector can be traced to the Ambani -Birla Report, “A Policy Framework for Reforms in Education” submitted by Mukesh Ambani (Convenor) and Kumar Mangalam Birla (Member) on April 24 2000 to Prime Minister’s Council of Trade & Industry.<sup>42</sup>They highlighted the challenges faced by the Indian higher education sector in terms of the huge disparity between the demand and

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<sup>37</sup> *supra* note 29 ,at pg 8

<sup>38</sup> *Sector Profile on Education*, [http://www.ficci.com/sector/11/Project\\_docs/FICCI-sector-profile-Education.pdf](http://www.ficci.com/sector/11/Project_docs/FICCI-sector-profile-Education.pdf)

<sup>39</sup> *Ibid.*

<sup>40</sup> *supra* note 37 at Pg. 6

<sup>41</sup> Yashpal Committee ,*The Committee to Advise on Renovation and Rejuvenation of Higher Education*, [http://planningcommission.nic.in/reports/genrep/skilldev/sub\\_accrd.pdf](http://planningcommission.nic.in/reports/genrep/skilldev/sub_accrd.pdf)

<sup>42</sup> Mukesh Ambani & Kumar Mangalam Birla ,*Report on A Policy Framework for Reforms in Education*, April 24, 2000, <http://indiaimage.nic.in/pmCouncils/reports/education/>

supply patterns and upgrading the educational levels in context with the delivery and performance.<sup>43</sup>They not only highlighted the funding scarcity faced by the sector but called out for a revolution in education sector to enter the free and competitive market.<sup>44</sup>They perceived education as a very profitable market and asked for a mental revolution to change the attitude of the people towards education and stop treating it as a social service commodity.<sup>45</sup>They emphasised on full cost recovery from the students and immediate privatisation of the education sector to ensure efficient and quality education to all.<sup>46</sup>They aimed “to create a competitive yet co-operativ ,knowledge based society”<sup>47</sup>.Under the ambit of the Private Universities Act of each state ,the report recommended new private universities in professional courses to be opened with commercial application. But their recommendations were criticised vehemently on the ground that it would not redress the problem of equity in the Indian Education sector. But the report did agree with the fact that we are lacking the financial and managerial capabilities in the education sector.

In today’s time we have 145 private universities established by the act of the legislature of the various states which are competent to award degrees recognised by the UGC under section 22 of the UGC Act.<sup>48</sup>These Private Universities are responsive to the labour market demands and have multi-disciplinary and inter disciplinary courses which are both knowledge and market oriented in nature. Recently the Maharashtra Cabinet cleared the Private Universities Bill which would come up for discussion in the on-going winter session.<sup>49</sup>State higher and technical education minister Rajesh Tope acknowledged that they have received proposals to open private universities which will have their own academic structure and curriculum and autonomy but will have to adhere to the guidelines of apex bodies like AICTCE, MCI etc.<sup>50</sup>

### **Does Privatization suffice in the present time?**

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<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> *Public Notice on Private Universities*, <http://www.ugc.ac.in/privatuniversity.aspx>

<sup>49</sup> Vaibhav Ganjapure, *Cabinet clears private university bill*, TNN Dec 14, 2012, 03.12AM IST, [http://articles.timesofindia.indiatimes.com/2012-12-14/nagpur/35819697\\_1\\_mumbai-university-private-universities-rajesh-tope](http://articles.timesofindia.indiatimes.com/2012-12-14/nagpur/35819697_1_mumbai-university-private-universities-rajesh-tope)

<sup>50</sup> *Ibid.*



But it is to be accepted that the initiatives of the private universities does not suffice the ever expanding needs of higher education. We need around 1000 universities and 50000 colleges to attain the GER of 30% by 2020.<sup>51</sup>We are can never be close to this target without a major pool of investment.<sup>52</sup>The World Bank also insisted India to raise investment in this sector in order to develop.<sup>53</sup>Further another significant area which has not improved despite of private participation is the Research and Innovation segment which is lagging far behind the international standards.

The above limitations of the existing universities in regard with the financing and innovation capabilities, according to me can be solved by foreign investment in the education sector- a controversial choice for many it would seem.

### **Foreign Investment in Higher Education Sector**

FDI refers to investment by non-resident entity/person resident outside India in the capital of an Indian company under Schedule 1 of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations 2000.<sup>54</sup> FDI can take place in two ways. Firstly, FDI can take place through the Automatic Route i.e. 100% FDI can be made by the non-resident investor or the Indian company without prior Government Approval. Or it may take through the government route. Government route means that investment in the capital of resident entities by non-resident entities can be made only with the prior approval of Government (FIPB, Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be).<sup>55</sup> In general FDI is very advantageous both to the host economy and to the guest nation.FDI firstly brings in much needed capital and bonus of foreign currency to the host economy. There is a transfer of innovation-technology and expertise and know- how between the nations.FDI also helps in development of economic and social infrastructure. It is the allowance of FDI in the Indian Education Sector with the Statutory backup which has created uproar across the nation. To understand whether this uproar is justified or not, we have to first analyse the present status of FDI in education.

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<sup>51</sup> *supra* note 18,at pg 6

<sup>52</sup> *supra* note 30,at pg 8

<sup>53</sup> *supra* note 32,at pg 8

<sup>54</sup> Department of Industrial Policy & Promotion (FC Section) ,*Consolidated FDI Policy*, Clause 2.1.11 of Circular 1 of 2012, [http://www.dipp.nic.in/English/Policies/FDI\\_Circular\\_01\\_2012.pdf](http://www.dipp.nic.in/English/Policies/FDI_Circular_01_2012.pdf)

<sup>55</sup> *Ibid.*

### **Status Quo of FDI in Education Sector**

At present 100% FDI is allowed in the Higher Education through automatic route through the consolidated policies of the government .FDI in training and coaching institutes are allowed. Present regulations permit the Indian Universities to collaborate with the foreign universities via various mechanisms.<sup>56</sup> Education is a not for profit arena, and is being imparted through the trusts, societies or Section 25 Companies (Now Section 8 of the new Companies Act, 2013). Colleges and universities under trusts and society can't receive FDI. Not For Profit Companies i.e. Section 25 Companies governed under The Companies Act 1956 can receive FDI but can't pay dividends.<sup>57</sup> Also the Indian Higher Education is over regulated which is another problematic aspect raising the adversity level all the more high for the investors and the potential investors. In such a situation the government's move to allow FDI in an encouraging environment is worth appreciating. The above move refers to the act of introducing The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010 (Bill 57 of 2010). This bill was introduced in the Lower House of the Parliament on May 3, 2010 by the Ministry of Human Resource and Development after four years of resistance from members of the rest of the Lower House. The bill was then sent to the Standing Committee of the Human Resource Department chaired by Mr. Oscar Fernandez on May 14, 2010.<sup>58</sup>

### **Standing Committee on the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010**

The Standing Committee on Human Resource Development submitted its 237<sup>th</sup> Report on 'The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010' on August 1, 2011.<sup>59</sup> Among other recommendations put forward by the Committee, the notable ones included following the same reservation policy for

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<sup>56</sup> *Legislative Brief on The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010-Highlights*, <http://www.prsindia.org/uploads/media/Foreign%20Educational%20Institutions%20Regulation/Legislative%20Brief%20-%20Foreign%20Education%20Bill.pdf>

<sup>57</sup> § 25 of The Companies Act 1956

<sup>58</sup> *supra note 55* at pg. 10

<sup>59</sup> Standing Committee, *Report Summary on The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010*. <http://www.prsindia.org/administrator/uploads/media/Foreign%20Educational%20Institutions%20Regulation/Foreign%20Educational%20Institutions%20Bill%20Standing%20Committee%20Report%20Summary.pdf>

SC/ST/OBC pupils as in the case of the private universities; inclusion of twinning programmes between the universities in the prospectus; requirement of an independent regulator to monitor these universities in context with faculty, fee structure, faculty salary ;norms for amount of fees to be charged and refunded ;disallowing any such course provided by the foreign education providers which may affect the sovereignty of India; devise any such incentive through which they can invest their surplus in India against the provisions of the bill which does not allow them to repatriate the surplus fund.<sup>60</sup> Till the present date the bill has lapsed in the parliament and the ministry of Human Resource Department has delinked this bill.<sup>61</sup> During the introduction of the Bill in The House of People, many reputed foreign universities like for instance Massachusetts Institute of Technology, Yale University, Virginia Tech, Columbia University, University of Southern California and University of Alabama had shown a keen interest but the slow response of the parliament has affected the willingness of these foreign universities.<sup>62</sup>

### **Provisions of the Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010**

Section 2(f) of this bill defines foreign education provider as a foreign educational institution notified by the Central Government, as a foreign education provider, on the recommendation of the Commission as an institution competent to impart education in India and to award degree, diploma or any other equivalent qualification (other than in the distance mode) at undergraduate, post-graduate, doctoral or post-doctoral level.<sup>63</sup> This bill will allow the foreign universities to invest a minimum of 51% of the total capital expenditure to open their campuses in India.<sup>64</sup> The foreign universities will have to declare themselves as a deemed university and will have to be registered and accredited within six months. The minimum corpus fund to be maintained would be worth not less than Rs. 50 Crore.<sup>65</sup> The bill clearly mentions that 75% of the income of

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<sup>60</sup> *Ibid.*

<sup>61</sup> *A Status Report on the Foreign Educational Institutions Bill, 2010*,  
[http://www.albrightstonebridge.com/fdi\\_education/](http://www.albrightstonebridge.com/fdi_education/)

<sup>62</sup> *supra note 60 at pg. 10.*

<sup>63</sup> *The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010*, (Bill 57 of 2010)  
<http://www.prsindia.org/uploads/media/Foreign%20Educational%20Institutions%20Regulation/Foreign%20Educational%20Institutions%20Regulation%20of%20Entry%20and%20Operations%20Bill%20%202010.pdf>

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

the corpus fund would be used for development processes and rest 25% is to be deposited.<sup>66</sup> Non adherence to the prevailing laws by the foreign education providers like operating without recognition, not maintaining standards to be prescribed, not complying with any provisions of the University Grants Act, 1956, not maintaining a corpus fund and not publishing a prospectus in the specified form shall be attract a penalty which shall not be less than ten lakh rupees but which may extend to Fifty lakh rupees and the forfeiture of the corpus fund.<sup>67</sup>

### **Disappointing provisions for Investors**

Although this bills seeks to reform the existing education system by participation of globally renowned universities, skill development, increasing access to innovative areas of studies, and increase in Gross Enrolment Ratio as advocated by Mr. Kapil Sibal, Minister of Human Resource Department but the existing legal flaws make Foreign players hesitant in investing in India. The provisions like the foreign education providers will have to plough back their generated surplus and cannot distribute dividends, maintaining a minimum corpus fund of Rs. 50 Crore, provision of the heavy fines and having an existing track record of 20 years in their home country for the universities make it difficult for the investors to consider India as their destination for FDI in the education sector. This was the view point forwarded by the Investors.

### **Would FDI in Education sector benefit the Nation?**

As far as citizens are concerned, the question which is bothering them is that –Will FDI in Education be able to sort out the problem of scarcity in education or will it dismantle the existing education system? One thing to which all will agree is the that our education system is facing a crisis in terms of the huge demand –supply gap due the expansion incapacity of the public and private institutions which is basically due fund scarcity (Ambani-Birla Report also agrees to this fact) and lack of proper managerial skills. Spending a 4% of the GDP on Education would not suffice.<sup>68</sup> It is for the opponents of allowing FDI in education to note that Indians spends nearly \$ 4 billion every year to send their children abroad to attain higher and technical education and

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<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> *supra* note 31, at pg 8

training.<sup>69</sup> So why not allow these universities to come to our soil and impart education thereby relieving us of the fund constraints and the problem of brain drain?

As far as the problem of equity is concerned, today many prestigious institutions are offering self-financed education where the fee structure is quite high but the special provisions like scholarships and easy loan programs for students enable them to have access to A-Grade education offered by these institutions. We can have similar provisions in the foreign institutions also. We have seen that the not for profit principle in education has made it highly inefficient and overregulated so it is high time to work upon the for profit principle within norms ensuring equal and efficient access of education to all. The advantages accruing against the disadvantages are much more. For those who say that FDI in education will reduce government participation, it is for them to note that, it is merely because of the low government expenditure we are calling foreign participation in the education arena. But it is further to note that the role of government will be improved as a monitor to keen-eye the education sector involving foreign education institutes.

### **Different perspectives of Education in India**

It is significant to note that in order answer whether FDI is to be allowed or not it is to be answered with this question “How Do You Perceive Education As?” Is education a mere means of social service and charity or is it an infrastructure?

At present, different organizations view education differently. Reserve Bank of India recognizes education as an infrastructure but it is not allowed to receive (ECB) External Commercial Borrowings.<sup>70</sup> The Insurance Regulatory and Development Authority treats education as an infrastructure.<sup>71</sup> The World Bank recognizes education as a means of Infrastructural Development.<sup>72</sup> The Planning Commission is on the way to finalize its approach on education.<sup>73</sup> The Department of Economic Affairs under Ministry of Finance does not treat education as an infrastructure but lately it has included it in the Scheme for Viability Gap Funding Support to PPP in Infrastructure.<sup>74</sup> The Working

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<sup>69</sup> *Promoting Education In India* ,<http://www.theconcern.in/pdf/invitation-indian-new.pdf>

<sup>70</sup> *Consolidated Working Group Report of The Department of Higher Education for 12<sup>th</sup> Five Year Plan on Higher Education , Technical Education & Private Sector Participation including PPP in Higher Education,*  
[http://planningcommission.nic.in/aboutus/committee/wrkgrp12/hrd/wg\\_pphigh.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/hrd/wg_pphigh.pdf)

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

Group Report of The Department of Higher Education For XII Five-year Plan suggests that there is an urgent need to declare education as an infrastructure for the benefits of it are huge both to the education providers and the people.<sup>75</sup> We can say that majority of the organizations either recognize education as an infrastructure or are in the line of doing so why there is such hesitancy in considering education as a fully fledged infrastructure and use it to harness our growth and development by allowing Foreign Investment into this sector.

### **Nods to Foreign Direct Investment in Education**

The Final Draft of the 12<sup>th</sup> Five Year Plan reported to favor the for profit structure in the Higher Education Sector for the nonprofit nature has depreciated the quality of delivery of education and led to the inadequacy in the demand supply gap.<sup>76</sup> Also The Confederation of Indian Industry (CII) has sought easier FDI regulation in the Indian Higher Education Sector.<sup>77</sup> It has also advocated that FDI in Section 25 Companies against equity subscription should not come under the purview of The Foreign Currency Regulation Act, 2010 to enable easy FDI.<sup>78</sup> Prabhu Chawla, Editorial Director, TNIE also supports FDI in education arena to trigger investment.<sup>79</sup> He blames it on the government laid problems which do not let this sector prosper despite of the people willing to pay for it.<sup>80</sup> A Report by Deloitte Touché Tohmatsu India entitled 'Indian Higher Education Sector: Opportunities aplenty, growth unlimited!' said that to develop education India sound infrastructure would be required and the government can't attain the set target of 30% GER by 2020 based on its past experience quantum of

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<sup>75</sup>*Ibid.*

<sup>76</sup>*Profit-making in higher education crucial to realising India's demographic dividend*, The Times of India, Sep 26, 2012, 12.00AM IST, [http://articles.timesofindia.indiatimes.com/2012-09-26/edit-page/34083774\\_1\\_higher-education-quality-institutes-demographic-dividend](http://articles.timesofindia.indiatimes.com/2012-09-26/edit-page/34083774_1_higher-education-quality-institutes-demographic-dividend)

<sup>77</sup>Education Insight, *CII demands easier FDI in Indian Higher Education*, <http://www.educationinsight.in/2011/education-news/policywatch/cii-demands-easier-fdi-in-indian-higher-education/>

<sup>78</sup>*Ibid.*

<sup>79</sup>*Government must allow FDI in Education*, The Chennai Express, July 12, 2011, <http://ibnlive.in.com/news/government-must-allow-fdi-in-education/166793-60-120.html>

<sup>80</sup>*Ibid.*

expenditure in the education sector.<sup>81</sup>This calls for an additional pool of capital via the FDI route.<sup>82</sup>

### **Suggestions**

As already stated the non profit structure has lead to negligible improvement in the higher education so it's high time we reform our education system. Off course I do not advocate FDI in the higher education segment in arbitrary and absolute terms where any random foreign education provider can come and set up their campuses in India. The Standing Committee which submitted its report on the said bill also recommended mandatory accreditations.<sup>83</sup> According to the Yashpal Committee Report only top foreign universities should be allowed to come and deliver higher education in India like top 200 global universities so that the quality of the education delivered remains intact.<sup>84</sup>As far as regulation of these foreign education providers is concerned, sincere steps should be taken that these universities remain in line with the norms formulated by the regulating bodies. They should neither be overregulated nor under governed so that they remain capable in benefiting us in the best plausible manner.To resolve the problem of access special provisions should be made for meritorious students who get through the entrance test but are not economically well off although I oppose the idea of reservation in these foreign varsities solely on the basis of caste.

### **Conclusion**

The Debate of allowing FDI in education resembles to that those of the enactment of the Structural Adjustment Program of the 1990's and that of the policies of liberalising education sector via privatisation at time of Ambani Birla Report when many people were against Private Universities. Today many Private Universities are successfully imparting education. We can say that it is only the education sector which has not been benefitted from the New Economic Policies framed in order to sustain the Development Story of India.Thus in light of the above, the Parliament should steadily re-introduce and pass the said bill i.e. "The Foreign Educational Institutions (Regulation of Entry

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<sup>81</sup> *FDI must to boost higher education*, Nov 2, 2012, 03.18AM IST  
<http://timesofindia.indiatimes.com/business/india-business/FDI-must-to-boost-higher-education/articleshow/17055332.cms>

<sup>82</sup> *Ibid.*

<sup>83</sup> *supra* note 58,at pg 13

<sup>84</sup> Yashpal Committee , *The Committee to Advise on Renovation and Rejuvenation of Higher Education*,  
[http://planningcommission.nic.in/reports/genrep/skilldev/sub\\_accrd.pdf](http://planningcommission.nic.in/reports/genrep/skilldev/sub_accrd.pdf)

and Operations) Bill, 2010” in order to ensure that every Indian has access to the best of education in the best possible manner. By having the best of the global Universities in our homeland, we will have best of the minds together, not only aiding the teaching learning experience and enhancing the education standards in the country but collaborating together to find solutions to the numerous problems persisting today in a conducive environment.

