

**PRELIMINARY DRAFT - EDUCATION SECTOR
RESEARCH STUDY**

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**PREPARED FOR
CUTS INSTITUTE FOR REGULATION AND
COMPETITION**

FOR INTENDED RECIPIENT USE ONLY



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EXECUTIVE SUMMARY

Under this section we have provided a summary of some of the key issues found in the Report on the Education Sector (“Report”) which we considered most relevant for the facilitation of competition in the education sector. For the sake of convenience, we have also discussed most of these key issues in detail under Report.

Please note that there are other issues which we found in the course of our research which have not been provided in this chapter. These issues have been discussed under the respective sections that they pertain to in the Report.

A. Issues pertaining to Impediments to Competition in the Education Sector

1. Multiple Regulatory System

The Indian higher education system is overregulated i.e. is marked by with multiple statutory regulatory bodies including the UGC and AICTE as well as Central and State Government, university administration and local management. Such multiplicity of authorities results in duplication of inspection and control of the institutions leading to inefficiency, corruption and malpractices in the management and control of the institution. Further, it is observed that there is little co-ordination amongst the various statutory bodies which has led to a chaotic growth in the educational institutions.

***Suggestion/Recommendation:** It is suggested that (a) regulatory restriction should be minimized in the education sector and a balances regulatory mechanism which ensures transparency and accountability be designed to ensure competition; (b) higher education institution should be granted autonomy to determine their own policies, curriculum, programs and other aspects of their operations which will create differentiation among institutions in the long run resulting in the survival of the best quality.*

2. Government Control over Private Education

Although the Constitution of India provides to the citizens the fundamental right to establishment of educational institutions of their choice, there has been a continuous attempt by the Government to interfere in the admission policy, fixation of fees and working conditions of private educational institutions. While private investors have ample funding to invest into educational institutions, the regular interference by Government will prevent private investors from such investment.

***Suggestion/Recommendation:** It is suggested that a special environment be created for private educational institutions where unnecessary regulations and bureaucratic constraints do not apply. This will help corporate entities proposing to invest in education sector function smoothly attracting faculty and students around the world, with fees based on market forces and increased flexibility in scholarships and subsidised loans for disadvantaged students.*

3. Blocking Entry of Foreign Educational Institutions into India

Unlike countries like Singapore, Dubai and China which encourage which encourage foreign universities to set up operations in their countries so that they can have easy access to degrees of reputed foreign universities, there is a tendency to block such entry of foreign universities in India. This is evident from the regulatory framework in India which requires a foreign university intending to enter the Indian education market to partner with Indian institutions which curbs their autonomy and standing in the market.

Suggestion/Recommendation: *The foreign universities should be allowed to enter freely with minimal restrictions to set up their campuses with or without their own investment in India. This would also help Indian universities and institutions learn about global practices and become more competitive to meet the demands of the market.*

4. Working Conditions for Faculty

It may be noted that the quality in education is also linked to the faculty of the institution and the failure of certain educational institutions can be attributed to the decline in its faculty. Lack of autonomy, liberal promotion policy, political pressures in the recruitment process has contribution to such decline. Further, the ambience and control imposed by educational institutions mainly aided educational institutions do not attract the best talent and permit the youth to able to contribute to research or teaching.

Suggestion/Recommendation: *It is suggested that educational institutions should implement policies which attracts people who enjoy teaching and research. Resources like laboratories, libraries, research assistants as well as competitive remuneration be implemented to attract as well as retain the faculty in the educational institutions. Further, it is recommended that retired academic be re-hired and adequate remuneration be paid to them. Inbreeding should be prevented and teachers should be hired from diverse backgrounds. A transparent assessment criteria for teachers should be developed which may include student feedback on the teachers on a routine basis.*

5. Public Funding

Educational institutions require quality education to maintain their facilities, resources and technology and for the same they require constant infusion of funds. It is observed that public funding has been erratic over the year which forces educational institutions to raise their own funds and resources. This has resulted in poor infrastructure and degradation in the quality of teaching in educational institutions.

Suggestion/Recommendation: *It is suggested that new methods of public funding be enforced such as assignment of funding by the state can be done on the basis of the quality of the*

research proposed or on the basis of teaching quality This would directly have an impact on the educational institutions who would focus on generating top quality basic research and producing high quality teaching. Competition for funds between public sector educational institutions will lead to improved institutional performance.

EDUCATION SECTOR: RESEARCH STUDY

1. Introduction

The continuing growth of the Indian economy, among other factors, is contingent on a strong, vibrant and continuously developing education regime. Education can be, and often is, considered the driving force behind a rapidly changing globalised economy and as such the quantity and quality of highly specialized human resources can determine India's competence in the global market. Therefore, like any national resource or commodity, competition can only act as a catalyst for continued and improved human resource development.

The needs of the Indian educational system have been growing rapidly with comparatively faster growth in enrollment in higher educational institutions than the growth in number of higher educational institutions¹. The higher education sector in India had 9.84 million enrolments in 2006. With a burgeoning middle class of approximately 200 million people, there is a strong demand for higher education places which the education system cannot ignore. The projected growth clearly indicates a need for new institutions, which impart quality education in subject areas of contemporary relevance and job opportunities. Quality, in turn, can only be insured if there exists sufficient competition among institutes to attract students and provide choices of innovative subject combinations.

It is common knowledge that educational institutions throughout India must be not for profit. However, the mere fact that schools, colleges, institutes and universities are not for profit, does not negate the necessity for competition. The phrase "competition" in its purest sense and for the purpose of this Report refers to a situation in a market place in which firms / entities or sellers independently strive for the patronage of buyers in order to achieve a particular business objective such as profits, sales, market share, etc. This process leads to achievement of resource / allocative efficiencies, sustainable economic growth, development and poverty alleviation. However, competition is not automatic, and requires to be promoted, protected and nurtured through an appropriate regulatory framework, by minimising market restrictions distortions and in provisions of related productive inputs such as infrastructure services, human capital etc. The ensuing commoditisation of knowledge will require educational institutions to adopt market principles. The product of educational institutions needs to be marketable – both knowledge produced as well as students embodying knowledge. The resulting competition reflected in the demand and supply of students, teachers and educational

¹ Economic Reforms and financing Higher Education in India', P.Geetha Rani ,available at <http://www.ibbc.lt/economicreformshighereducation.pdf>

institutions will produce a state of equilibrium where wastage or inefficiency will be minimal.

In view of the above, this Report will endeavour to identify and analyze within the Indian education sector, through an analysis of central laws, along with policy initiatives and bills tabled before parliament, impediments that hamper competition and provide, with a view to identify actionable items, recommendations that may facilitate competition in the education sector and fulfill any deficit. In doing so it is envisioned that the Indian regulatory regime will undertake measures that increase the quality of research, select best students and researchers to perpetuate the system and promote and train students and faculty for excellence.

2. Laws, Policies and Bills with Anti-Competitive Provisions

2.1 Secondary Education

(a) Central Board of Secondary Education

The Central Board of Secondary Education (“**CBSE**”) is a self – financing regulatory body that functions under the overall supervision of the Ministry of Human Resource Development, Government of India. The CBSE was set up to achieve certain interlinked objectives. A brief description of these objects is provided below:

- To prescribe conditions of examinations and conduct public examinations at the end of Class X and XII and to grant qualifying certificates to successful candidates of the affiliated schools.
- To prescribe and update the course of instructions of examinations.
- To affiliate institutions for the purpose of examination and raise the academic standards of the country.

In order to achieve the aforesaid objectives, the CBSE issues from time to time bye-laws, which seek to regulate various aspects of secondary education such as, affiliation, examination and admission. For the purpose of this Report specific provisions of the CBSE Affiliation Bye-Laws and the CBSE Examination Bye-Laws will be examined to determine whether the said bye-laws present any impediments to competition.

(i) CBSE Affiliation Bye-Laws

The CBSE Affiliation Bye-laws, as amended from time to time, provide for grant of affiliation and regulate the functioning of CBSE schools by, *inter alia*, laying down the criteria for grant of qualifying certificates to successful students, laying down standards for the teaching staff and specifications for the infrastructure &

facilities of affiliated schools. Given below are certain provisions of the CBSE Affiliation Bye-laws that limit or have the potential to limit competition:

S. No.	Provision	Interpretation
1.	<p>Paragraph 3.1</p> <p>“The Board may affiliate several categories of schools all over India and abroad, as for example:</p> <p>(i) Government or Government aided schools;</p> <p>(ii) Schools run by autonomous Organizations under the Government like Kendriya Vidyalaya Sangathan (KVS), Navodaya Vidyalaya Samiti (NVS), Central Tibetan Schools. Organisation (CTSO), Sainik Schools Society etc;</p> <p>(iii) Schools run by Government Deptt. directly like Defence, Railways etc.</p> <p>(iv) Schools managed directly by Public Sector Undertakings or by reputed societies for Public Sector Undertakings under the financial control of such Public Sector Undertakings or by Societies formed by such undertakings.</p> <p>(v) Private, unaided schools established by Societies registered under the Societies Registration Act 1860 of the Government of India or under Acts of the State Governments as educational, charitable or religious societies having non-proprietary character or by Trusts.”</p> <p>Read with Paragraph 3.3 (i)(a)</p>	<p>In terms of Paragraph 3.1, the CBSE may affiliate any one of the categories of schools listed in 3.1 (i) to (v), which includes private unaided schools established either by Societies or Trusts. Paragraph 3.3 (i) goes on to state that any school seeking provisional affiliation with the CBSE must have the prior recognition of the relevant State Government or be in possession of a No Objection Certificate (“NOC”) from the relevant State Government. However, the requirement of such prior recognition or possession of an NOC from the relevant State Government does not apply to the schools mentioned in School 3.3 (i) to (iv). It should be note that all of the schools mentioned in 3.3 (i) to (iv) are either Government owned or owned by Public Sector Undertakings, which by their very constitution have Government holding. Therefore, it would appear that private, unaided schools have to satisfy additional requirements as compared to schools owned by the Government, autonomous organizations under the Government and Public Sector Undertakings.</p> <p>Paragraph 3.3(i) (a) further states that the Society/ Trust controlling the school must posses about 2 acres of land and building thereupon to be granted provisional affiliation. It is pertinent to note that no such minimum land requirement is posed on the schools listed in Paragraph 3.1 (i) to (iv). Therefore, in addition to the NOC / prior approval from a State Government</p>

	<p>“Any educational institution in India or outside India which fulfils the following essential conditions (without which the case cannot be processed) can apply to the Board for affiliation:</p> <p>(i) The School seeking Provisional Affiliation with the Board must have formal prior recognition of the State/U. T. Govt. Its application either should be forwarded by the States Govt. or there should be a No Objection Certificate to the effect that State Government has no objection to the affiliation of the school with the C.B.S.E. 'No Objection Certificate' once issued to any school will be considered at par even if it prescribes a specific period unless it is withdrawn. Condition of submitting a No Objection Certificate will not be applicable to categories 3.1 (i) to (iv).</p> <p>(a) The School/Society Trust, or the Congregation or other Religious Body controlling the Society/Trust managing the school must have about two acres (or as otherwise permitted measurement) of land and a building constructed on a part of land and proper playgrounds on the remaining land.</p> <p>Provided that the school may be graded as Category A+, Category A & Category B School as per the following criteria:</p> <p>Category A + School -Permanently affiliated school</p> <p>Category A + School - Provisionally</p>	<p>requirements listed above, a private, unaided school will also have to satisfy the minimum land requirements set forth by the CBSE.</p> <p>As a result, a private unaided institution needs to satisfy a higher threshold of criteria as compares to schools set-up directly / Indirectly by the Government.</p>
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	<p>affiliated school with land of at least 2 acres or of such measurements as has been permitted under Rule 3(ii), (b), (c), (d), (e)</p> <p>Category A + School - Provisionally affiliated school with following Criterion:</p> <p>(a) Recognized by the Education Department whose application has been forwarded by it.</p> <p>(b) does not possess land as per Category ‘A’ but has not less than 1.5 acre of land and also satisfies the following:</p> <p>* 250 sq. mtr. of area + 1 sq. mtr for every student on the rolls (for a middle school)</p> <p>*500 sq. mtr. of area + 1 sq. mtr for every student on the rolls (for a Secondary school)</p> <p>*750 sq. mtr. of area + 1 sq. mtr for every student on the rolls (for a Senior Secondary School)</p> <p>(c) pays salaries as per State Govt. /U.T. scales of pay</p> <p>(d) satisfies all the other conditions of Affiliation Bye-Laws.”</p>	
<p>2.</p>	<p>Paragraph 3.14</p> <p>“The Board would not allow any property transfer/Sale of school by one Society/ Management / Trust to another Society / Management / Trust through agreement / sale deed. In case such transaction is effected explicitly or implicitly, the Board shall withdraw its affiliation with immediate effect.”</p>	<p>Paragraph 3.14 of the CBSE Affiliation Bye-laws does not permit the transfer of property / sale of school by one society/ management / trust to another society/ management / trust. Such limitations may be considered impediments to efficient allocation of resources and also limiting competition by not permitting smaller unaided, private institution to collaborate so that they may combine their resources and compete with</p>

		larger / established schools.
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(ii) CBSE Examination Bye-laws

The CBSE Examination Bye- laws, as amended from time to time, *inter alia*, prescribe conditions for conduct of examinations and admissions to CBSE affiliated schools. Given below are certain provisions of the CBSE Examination Bye-laws that limit or have the potential to limit competition:

S. No.	Provision	Interpretation
1.	<p>Paragraph 6.1</p> <p>“A student seeking admission to any class in a 'School' will be eligible for admission to that Class only if he:</p> <p>(i) has been studying in a School recognised by or affiliated to this Board or any other recognized Board of Secondary Education in India;</p> <p>(ii) has passed qualifying or equivalent qualifying examination making him eligible for admission to that Class;</p> <p>(iii) satisfies the requirements of age limits (minimum and maximum) as determined by the State/U. T. Government and applicable to the place where the School is located;</p> <p>(iv) produces:</p> <p>(a) the School Leaving Certificate/Transfer Certificate signed by the Head of the Institution last attended and countersigned, if required as provided elsewhere, in these Byelaws;</p>	<p>Paragraph 6.1 does not permit a student to transfer to a CBSE affiliated school from a school that is not affiliated to the CBSE or any other recognized Board of Secondary Education in India. A provision of this nature effectively handicaps a school which, although imparts exemplary education, has been unable to attain CBSE affiliation / recognition or affiliation from any other recognized board of secondary education as the criteria for approval of the transfer is not based on merit. Knowledge of such a provision will also affect the selection process of a prospective student or his/her parents to the detriment of such unrecognized / unaffiliated school.</p>

	<p>(b) document(s) in support of his having passed the qualifying or equivalent qualifying examination; and</p> <p>(c) Date of Birth Certificate issued by the Registrar of Birth and Deaths, where-ever existing, as proof of date of birth.</p> <p>Explanation:</p> <p>(a) A person who has been studying in an institution, which is not recognised by this Board or by any other recognised Board of Secondary Education or by the State / U.T. Government of the concerned place, shall not be admitted to any class of a "School" on the basis of Certificate(s) of such unrecognised institution attended by him earlier.</p> <p>(b) 'Qualifying Examination' for the purposes of this Byelaws means an examination the passing of which makes a student eligible for admission to a particular class; and 'equivalent examination' means an examination conducted by any recognised Board of Secondary Education/Indian University or an institution recognised by or affiliated to such Board/University and is recognised by this Board equivalent to the corresponding examination conducted by this Board or conducted by a "school" affiliated to/recognized by this Board.”</p>	
2.	<p>“No student migrating from a School in a foreign country, other than the School affiliated to this Board, shall be eligible for admission unless an eligibility certificate in respect of such a student has been obtained</p>	<p>The CBSE Examination Bye-laws do not permits a student to migrate from a school in a foreign jurisdiction unless the student has obtained an eligibility certificate from the Board on the basis of representation made</p>

	<p>from this Board. For obtaining eligibility certificate from the Board, the Principal of the School to which admission is being sought will submit to the Board full details of the case and relevant documents with his own remarks/recommendations. The eligibility certificate will be issued by the Board only after the Board is satisfied that the course of study undergone and examination passed is equivalent to the corresponding class of this Board.”</p>	<p>by the Principal of the school in which admission is sought.</p> <p>Not only does such a provision hold dissuasive value for a potential student or such student’s parents when deciding on a school, but it also places a CBSE affiliated school at a disadvantage, as some other boards of secondary education do not provide for such restrictions.</p>
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2.2 Higher Education

(a) University Grants Commission

The University Grants Commission Act, 1956 (“UGC Act”) was enacted, *inter alia*, to establish the UGC for coordination and determination of standards of teaching, examination and research in universities. The term “university” has been defined as a university established or incorporated by or under a Central Act, a Provincial Act or a State Act and includes any such institution which in consultation with the university concerned is recognised by the UGC in accordance with the prescribed regulations. Institutions for higher education other than universities may, on the recommendation of the UGC, be declared as deemed to be a university by the Central Government, whereupon all the provisions of the UGC Act would be applicable to such institution as if it were a university under the UGC Act.

The right of conferring or granting degree can be exercised only by Central, State and deemed to be universities or an institution specifically empowered by an Act of the Parliament to confer or grant degrees.

The UGC:-

- (i) allocates and disburses grants on a discretionary basis to Central, State and deemed to be universities for their development and maintenance;
- (ii) recommends measures necessary for the improvement of university education;
- (iii) advises upon the action to be taken for implementing such recommendation; and
- (iv) requires universities to furnish it with such information as may be needed relating to the financial position of the universities or the studies in the various branches of learning undertaken in the universities, together with all the rules and regulations.

(i) **UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003**

The UGC (Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003 (“**UGC Private University Regulations**”) were introduced by the UGC to address the relatively recent phenomena of private universities. The UGC Private University Regulations lay down the conditions for the establishment and operation of private universities in an attempt to safeguard the interests of the student community and to avoid the commercialization of higher education. Given below are certain provisions of the UGC Private University Regulations that limit or have the potential to limit competition.

S. No.	Provision	Interpretation
1.	<p>Sub-regulation 3.3</p> <p>“A private university established under a State Act shall operate ordinarily within the boundary of the State concerned. However, after the development of main campus, in exceptional circumstances, the university may be permitted to open off-campus centres, off-shore campuses and study centres after five years of its coming into existence, subject to the following conditions:</p> <p>3.3.1. The off-campus centre(s) and / or the study centre(s) shall be set up with the prior approval of the UGC and that of the State Government(s) where the centre(s) is/are proposed to be opened.</p> <p>3.3.2. The over-all performance of the off-campus centre(s) and/ or the study centre(s) shall be monitored annually by the UGC or its designated agency. The directions of the UGC for management, academic development and improvement shall be binding.</p>	<p>The UGC may permit a private university to open off-campus centres, off-shore campuses and study centres. However permission is contingent on satisfaction of a series of conditions. Further, such permission may only be granted in exceptional conditions, thereby making it almost impossible to ascertain the exact criteria for opening off-campus centres, off-shore campuses and study centres. It may be argued that such levels of ambiguity carry significant dissuasive value and in fact as a deterrent.</p> <p>Furthermore, if in the UGC’s opinion the performance of the off-campus centre, off-shore centre or study centre is not to the satisfaction of the UGC, then it reserves the right to instruct the university to shut down the said off-campus centre, off-shore centre of study centre. Whilst such measures may be considered draconian, the issue is further compounded by the fact that no criteria has been established by the UGC for determining the performance of an off-campus centre, off-shore centre of study</p>

	<p>3.3.3 If the functioning of the said centre(s) remains unsatisfactory, the private university shall be instructed by the UGC to close down the said centre(s), which shall be binding on the university. In such a situation, the interests of the students already enrolled therein shall be protected.</p> <p>3.3.4 Any off-shore campus(es) in foreign countries shall be opened only after obtaining due permission from the Government of India and also that of the Government of the host country.</p> <p>3.3.5 In case of off-shore campus(es), the remittance of funds shall be governed by the rules and regulations of the Reserve Bank of India.”</p>	centre
2.	<p>Sub-regulation 3.4</p> <p>“A Private university shall fulfill 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 concerned statutory bodies such as the All India Council for Technical Education (AICTE), the Bar Council of India (BCI), the Distance Education Council (DEC), the Dental Council of India (DCI),the Indian Nursing Council (INC), the Medical Council of India (MCI), the National Council for Teacher Education (NCTE), the Pharmacy Council of India (PCI),etc.”</p>	Sub-regulation 3.4 establishes a multi-tier regulatory regime which must be adhered to by every private university. Whilst it is necessary to ensure that the activities of private university are not exploitative in nature; adhering to the regulations set by the various authorities can prove to be cumbersome task and in essence severely curtail the autonomy of a private university, thereby negating the entire autonomous nature of a private university.
3.	<p>Sub-regulation 3.9</p> <p>“The admission procedure and fixation of fees shall be in accordance with the norms / guidelines prescribed by the UGC and</p>	Regulation 3.9 states that the admission procedure of a private university and the fixation of its fees shall be in accordance with the norms / guidelines prescribed by the UGC and other statutory bodies. However,

	other statutory bodies”	private universities are established by societies / trusts / section 25 companies and are funded by such sponsoring bodies unlike state and government universities which receive grant in aid from the Central Government or the State Government. Therefore, whilst it is justifiable for the UGC and other statutory bodies to prescribe admission procedure and fix the fees for such government aided university, so as to ensure that public funds are not misappropriated, a private universities should be left free to establish such admission standards and prescribe such fees as it deems fit, provided that such actions do not in any way lead to the commercialization of education.
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(ii) UGC [Institutions Deemed to be Universities] Regulations, 2010

UGC [Institutions Deemed to be Universities] Regulations, 2010 provides for the regulation of the process of declaration of institutions as deemed to be universities and the maintenance of quality of higher education imparted by institutions deemed to be universities consistent with the ideals of a university. It also seeks to prevent institutions of dubious quality from being declared as deemed to be universities. Give below are certain provisions of the UGC [Institutions Deemed to be Universities] Regulations, 2010 that limit or have the potential to limit competition

S. No.	Provision	Interpretation
1.	<p>Regulation 4 (a)</p> <p>An institution applying to be declared as an institution deemed to be university shall <i>inter alia</i>, have to meet the following stipulations:-</p>	<p>The period of 15 years is too long a timeframe for an institution to wait to be declared a deemed university, wherein a private university can be set up under a State legislation, subject to fulfilling the requirements of a private university, can be set up in a fraction of the time. An</p>

	<p>(i) Has been in existence for at least fifteen years [except] in case of institutions seeking declaration as an institution deemed to be university under the 'de novo' category).</p> <p>(ii) Shall not be an institution imparting education leading to conventional degrees only. For example, it shall not be limited to imparting programs in engineering or management or medicine or pharmacy or dental sciences, etc., which can continue to be offered with the existing status of a college.</p>	<p>Institution already in existence and desirous of applying for a deemed university status either has to wait for 15 years or in the alternate acquire new land and fulfil all other conditions for setting up a private university. This results in inefficient allocation of resources which is a barrier to entry.</p>
2.	<p>Regulation 4 (b)</p> <p>Once an institution is declared as an institution deemed to be university, no other existing institution can be annexed to it as its constituent institution unless the institution proposed to be annexed <i>fulfils</i> independently, all the criteria stipulated in these Regulations.</p>	<p>For reasons highlighted above, this is also a barrier to entry. To be associated with an institution deemed to be university, institutions will have to independently comply with all conditions for all conditions applicable to the deemed university. Such onerous conditions constitute significant barriers for new entrants. Therefore, liberalization of such regulations should be considered.</p>
3.	<p>Sub-regulation 7.5.6</p> <p>The provisions related to corpus fund shall be applicable only to those deemed universities which come into existence after notification of these Regulations. However, in the case of public funded institutions, the commitment of the State / UT or the Central Government to fund them continuously shall be considered as sufficient.</p>	<p>The requirement of a corpus fund as applicable to non-public funded institutions ranges from Rs. 8 Crores to Rs. 25 Crores. However, public funded institutions get preferential treatment to the extent that such requirement is not applicable to public funded institutions.</p>
4.	<p>Regulation 7</p> <p>An institution deemed to be university shall maintain standards, higher than the minimum, of instruction, academic and physical infrastructure, qualifications of</p>	<p>Over regulation by multiple bodies and agencies results in confusion and uncertainty in management, inspection and control. Harmonisation and co-ordination of the functions of such bodies is essential for the functioning of the deemed universities.</p>

	<p>teachers, etc. as prescribed for college level institutions by the Commission or by the Statutory/Regulatory body concerned, such as All India Council for Technical Education (AICTE), Medical Council of India (MCI), Dental Council of India (DCI), National Council for Teachers Education (NCTE), Bar Council of India (BCI), Indian Nursing Council (MC), etc. and shall obtain their approval for running various programmes of study, wherever applicable. This shall be periodically monitored by the duly constituted Committee(s) of the Commission.</p>	
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(c) All India Council for Technical Education

The All India Council for Technical Education Act, 1987 (“**AICTE Act**”) was enacted by Parliament, to provide for the establishment of the All India Council for Technical Education (“**AICTE**”) to, *inter alia*, grant approval to institutions imparting technical education, undertake necessary steps to prevent the commercialization of education and regulate the maintenance of norms and standards in the technical education system in India. No institution offering technical education in the field of engineering, technology, management, pharmacy, architecture, town planning, hotel management and catering technology and applied arts and crafts can be established or started without the prior approval of the AICTE.

Typically, AICTE approval is granted for a fixed term whereafter an AICTE approved institute needs to apply for extension of such approval. Institutions offering technical education cannot continue offering technical programmes beyond the specified period of AICTE approval.

In this regard, the AICTE has framed, *inter alia*, the All India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2011 (“**AICTE Regulations**”) and published the All India Council for Technical Education Approval Process Handbook 2011-12 (“**Approval Handbook**”).

(i) AICTE Regulations

The AICTE Regulations set out the parameters and requirements for approval of technical institutions in India by AICTE. The AICTE Regulations also mandate prior approval of AICTE in the event of any collaboration between Indian and

foreign institutes. Given below are certain provisions of the AICTE Regulations that limit or have the potential to limit competition:

S. No.	Provision	Interpretation
1.	<p>Sub-regulation 4.2</p> <p>“The Technical Institution / Polytechnic (Technical Institution offering Diploma) shall require prior approval of the Council for:</p> <p>(a) Extension of existing approval;</p> <p>(b) Introduction of new course/s, divisions/s, program/s, second shift;</p> <p>(c) Change in intake capacity;</p> <p>(d) Creation of supernumerary seats for admitting persons of Indian origin / children of Indian workers in the Gulf countries;</p> <p>(e) Admission quota for children of Non Resident Indians;</p> <p>(f) Creation of supernumerary seats under tuition fee waiver scheme; and</p> <p>(g) Closure of AICTE approved course / program / division.”</p>	<p>Sub-Regulation 4.2 of the AICTE Regulations mandate any approved technical institution to obtain prior approval from the AICTE for any change in intake capacity. Whilst it may be argued that limiting intake promotes competition by not permitting any one technical institution to establish a dominant position by enrolling more students than others, limiting the number of intake also poses significant barriers to the establishment of new technical institutions. The cap on intakes coupled with the AICTE’s minimum infrastructure requirements and other restrictive conditions of affiliation may cause a technical institute to face significant start up costs which may be hard to recover with limited enrolments in the initial years of operation. This would also in turn limit any re-investment into a technical institution, which may be necessary for expansion or the introduction of new programs.</p> <p>Furthermore, Sub-regulation 4.2 also mandates prior AICTE approval for the closure of an AICTE approved course / program / division. As a result a technical institution is obliged to continue offering and running a course / program / division which is devoid of any significant enrolment till such time that the AICTE approves the closure of the course / program / division. As a result a technical institution is obliged to allocate resources to such fledgling course / program / diploma.</p>

(ii) **Approval Handbook**

The Approval Handbook sets out, *inter alia*, the criteria and procedure for obtaining AICTE approval. Given below are certain provisions of the AICTE Handbook that limit or have the potential to limit competition:

S. No.	Provision	Interpretation
1.	<p>Chapter I, Sub-paragraph 1.6</p> <p>“Applicants are advised to apply only if the Building for the purpose of application is complete as per the infrastructure requirements without any deficiency at the time of filing the application.”</p>	<p>The Approval Handbook recommends that an applicant society / trust / Section 25 Company should only apply for AICTE approval if the building in which the technical course / program / is imparted is completed as per the AICTE’s infrastructural requirements.</p> <p>There are significant costs associated with AICTE’s infrastructural requirements and to meet those infrastructural requirements at the time of application, may pose a risk to an applicant society / trust / Section 25 Company in the event that its application for approval is rejected. Furthermore, given that such building would be for the purpose of technical education, the applicant society / trust / section 25 company would have to carry out alterations to the building, at their own cost, to ensure that some other stream of education may be offered from the said premises.</p>
2.	<p>Chapter III, Paragraph 4</p> <p>“No course other than those specifically approved by the Council shall run in the same premises sharing the same facilities.”</p>	<p>As a condition of approval, the AICTE does not permit an institute to offer a non-technical course on premises intended for imparting technical courses.</p> <p>Such restrictions may result in a gross misallocation of resources and multi-disciplinary institutes may be hesitant to offer technical courses as it requires</p>

		<p>allocation of resources for exclusive use by the said technical courses. Consequently it also acts as a disincentive for technical institutions to offer non-technical courses as it would require additional investment.</p>
<p>3.</p>	<p>Chapter V, Sub-paragraph 2.2</p> <p>“Indian University / Institution which is already in existence and is duly approved by the Council, interested in imparting technical education leading to award of Degree, Diploma, Post Graduate Diploma and Post Diploma including post graduate and doctoral Programs of Foreign University through collaborative / twinning arrangements.”</p>	<p>In terms of Chapter V, Sub-paragraph 2.2 only an existing and AICTE approved Indian university / institution can enter into collaborative / twinning arrangement with a foreign university. Also, a foreign university that wishes to engage in educational activity in India leading to the award of degree, diploma, post graduate diploma and post diploma level and doctorate level programs must obtain specific prior permission and registration with the AICTE.</p> <p>Therefore any society / trust / section 25 company that has not already set up an AICTE approved Indian university / institute and is intending on collaborating with a foreign university leading to the to the award of a degree, diploma, post graduate diploma and post diploma including post graduate and doctoral programs of a foreign university through collaborative / twinning arrangements must first set-up an AICTE approved university / institute. However, if the foreign university is not granted specific prior permission and registration by the AICTE, then the Indian university / institute will not be able to collaborate with the said foreign university.</p> <p>The uncertainties related with the collaboration provisions under Chapter V, Sub-paragraph 2.2 pose a significant impediment to Indian societies / trusts / section 25 companies that intend on establishing new institutions for the purpose</p>

		of collaborating with foreign universities.
4.	Chapter V, Sub-paragraph 3.11 “The Foreign University / Institution shall be bound by the advice of the AICTE with regards to admissions, entry qualification and conduct of courses / Program in technical education as may be communicated to them from time to time.”	Foreign universities / institutions will be bound by the directions of the AICTE with regards to admissions, entry qualifications and conduct of courses / programs as may be communicated to them from time to time. The AICTE, therefore in effect reserves the right to vary regulations with respect to admissions, entry qualification and conduct of courses / program offered by foreign universities in India. Such regulatory uncertainty may act as a deterrent to foreign universities / institutions entering India.

2.3 Discipline Specific Statutory Bodies

(a) Council of Architecture

The Council of Architecture (“**COA**”) was constituted by the Government of India under the provisions of the Architects Act, 1972, (“**Architects Act**”). The Architects Act provides for registration of architects, standards of education, recognized qualifications and standards of practice to be complied with by practicing architects.

(i) Architectural Education Regulations

The COA is charged with the responsibility to regulate the education and practice of the architectural profession throughout India. In this regard the COA has framed the Council of Architecture (Minimum Standards of Architectural Education) Regulations, 1983 (“**Architectural Education Regulations**”). Given below are certain provisions of the Architectural Education Regulations that limit or have the potential to limit competition:

S. No.	Provision	Interpretation
1.	Sub-regulation 5.2 “The institutions may permit, at their discretion, migration of students from one	Institutions offering courses in architecture may at their discretion permit a student to migrate from one institution to another.

	institute to another subject to the maximum number of students not exceeding the permanent maximum intake in a class.”	Whilst it is accepted practice for a transferee institution to reject the admission of a migrating institution based on reasonable grounds, Sub-regulation 5.2 also empowers a transferring institution to bar a student from migrating to another institution. This in effect has the potential to bind a student to a single architectural institution and limit his/her ability to move between architectural institutions.
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(b) National Council for Teacher Education

(i) The National Council for Teacher Education Act, 1993

The National Council for Teacher Education Act, 1993 (“**NCTE Act**”) provides for the establishment of a National Council for Teacher Education (“**Teacher Education Council**”) with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith.

To maintain the standards of teacher education, the Teacher Education Council is provided with necessary resources and credibility to accredit institutions of teacher education and provide guidance regarding curricula and method. The Teacher Education Council is also empowered to grant recognition to institutions for teacher education and permission to recognise the institution for new courses or training in teacher education. For the purpose of this Report, specific provisions of the NCTE Act and the rules and regulations made thereunder have been examined to determine whether the said provisions present any impediments to competition.

S. No.	Provision	Interpretation
1.	NCTE Act Section 14 Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act,	A combined reading of Sections 12, 14, 15 & 16 of the NCTE Act shows that the word "institution" does not include a university or a deemed university. In the absence of an overriding provision of the UGC Act, it cannot be reasonably construed that the provisions of the NCTE

	<p>make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations.</p> <p>Section 15 Where any recognised institution intends to start any new course or training in teacher education, it may make an application to seek permission to the Regional Committee concerned in such form and in such manner as may be determined by regulations.</p> <p>Section 16 Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day: (a) grant affiliation, whether provisional or otherwise, to any institution; or (b) hold examination, whether provisional or otherwise, for a course or training conducted by a recognized institution, unless the institution concerned has obtained recognition from the Regional Committee concerned, under Section 14 or permission for a course or training under Section 15.</p>	<p>Act would also apply to universities and that the universities are required to obtain prior approval from the NCTE for starting any teacher education programme. Such disparity between institutions and universities would constitute an impediment to competition as the universities will be free to offer teacher education programme without adhering to the conditions under NCTE Act.</p> <p>Further, there is a division of responsibility between the Teacher Education Council and examining bodies i.e. universities which are required to affiliate teacher training colleges. While the Teacher Education Council discharges the role of licensor and regulator, universities in the states are mandated to formulate syllabuses, curriculums and innovative training programmes for teacher training institutions while monitoring academic standards. Under the existing system, a new private teacher training college has to get approval from Teacher Education Council as well as a university for its teacher training programmes. However, the eligibility criteria prescribed by universities and Teacher Education Council often vary widely with the result that some colleges cleared by Teacher Education Council have to wait for years to get approval from the university or vice-versa.</p>
2.	<p>Section 20 Constitution of Regional Committees</p>	<p>Typically, the Regional Committees represent business and political interests and mostly refuse to listen to the</p>

	<p>The Regional Committee shall consist of the following members namely:</p> <p>(a) a member to be nominated by the Teacher Education Council;</p> <p>(b) one representative from each of the States and the Union territories of the region, to be nominated by the respective States and the Union territories;</p> <p>(c) such number of persons, having special knowledge and experience in matters relating to teacher education, as may be determined by regulations.</p>	<p>directives of the ministry and concerned department. Further, innovative programmes designed by universities to produce quality teachers were kept under suspension by the NCTE and subjected to reviews and re-examinations. The Regional Committee would sit on such proposals for years together to provide recognition even after the headquarters decide to approve such innovative programmes. Such bureaucracy practised by Regional Committees is an impediment to development of teacher education system in the country. It is recommended that stringent mechanism be developed to expedite the recognition process and also to monitor the affairs of the Regional Committees.</p>
<p>3.</p>	<p>NCTE (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002</p> <p>Regulation 6</p> <p>Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a No Objection Certificate (NOC) from the State or Union Territory in which the institution is located. Application without NOC/endorsement of the State Government/UT shall not be processed by the concerned Regional Committee of NCTE.</p>	<p>Typically obtaining a NOC from the State/Union Government is a cumbersome process which private educational institutions have to comply with. This provision gives preferential treatment to Government educational institutions that are exempt from the requirement of NOC.</p> <p>It is recommended that suitable guidelines should be framed by the Teacher Education Council to determine the innovative nature of a programme. Presently, the provision provides absolute discretion to the Regional Committee to</p>

	<p>Requirement of NOC shall not apply to Government Institutions.</p> <p>Requirement of NOC shall not apply to University Departments for taking up innovative teacher education programmes for a maximum intake of 50. The question as to whether a programme is innovative will be decided by the concerned Regional Committee.</p>	<p>decide on innovative nature of a programme which may result in arbitrariness of the Regional Committee.</p>
<p>4.</p>	<p>The NCTE (Recognition Norms and Procedure) Regulations, 2009</p> <p>Regulation 7</p> <p>No institution shall be granted recognition unless the sponsoring body of such institution is in possession of required land on the date of application. The land should be either on ownership basis or on lease from Government or Government institutions for a period not less than 30 years subject to certain State Government or Union Territory Laws, if certain States or Union Territories permit leases less than 30 years. No building shall be taken on lease for running a teacher training course.</p> <p>The teacher education institution shall not be allowed to have any other institution within its demarcated area or building and shall not have any other courses in it building.</p> <p>Similarly, the physical education institution shall not house any other course including other teacher education courses.</p>	<p>It may be noted that land is a state subject and therefore compliance with such provision is dependent on government machineries which is a cumbersome process. Such restriction to obtain land on lease from Government or Government institutions acts as a barrier for many institutions from operating teacher training institutions. Further, the restriction on taking buildings on lease for running teacher training courses also limits access to many institutions who would want to save time and costs in the construction process. Suitable guidelines should be framed for taking buildings on lease for running teacher education courses.</p> <p>This provision restricts institutions to offer any other courses within the same area or building. Such restriction leads to inefficient utilization of resources and proves to be a barrier for utilizing the same premises/resources for multiple courses.</p>

5.	Other Issues <ul style="list-style-type: none"> • Government quota 	<p>Private sector teaching institutions have little over the quality of graduates they admit. All private sector teacher training colleges have to reserve 50 percent of annual intake for aspiring teachers who pass the state governments undemanding entrance tests.</p> <p>As the selection under government quota does not include personal interviews, many students without any communication skills are admitted.</p> <p>In light of the above, there should be uniform selection process for all categories of students.</p>
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2.4 Government Policy

(a) New Policy on Distance Learning in Higher Education

In view of the Hon'ble Supreme Court's decision in *Prof. Yashpal & Anr. Vs. State of Chhattisgarh & Ors.* and the recommendations of the subsequently constituted Professor Yash Pal Committee, the Ministry of Human Resources Development on August 28, 2009 issued the draft "New Policy on Distance Learning in Higher Education" ("**Draft Distance Learning Policy**").

The primary object of the Draft Distance Learning Policy is to determine and maintain the standards in higher education, by ensuring coordination among various statutory regulatory authorities and to ensure the promotion of open and distance education systems in the country to meet the aspirations of all cross-sections of people for higher education. Given below are certain provisions of the Draft Distance Learning Policy that limit or have the potential to limit competition:

S. No.	Provision	Interpretation
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<p>1.</p>	<p>Sub-paragraphs 7(a)(vii) and (viii)</p> <p>No university/institute, except the universities established by or under an Act of Parliament/ State Legislature before 1985, shall offer any programme through the distance mode, henceforth, without approval from DEC and accreditation by NBA. However, the universities /institutions already offering programmes in Humanities, Commerce / Business / Social Sciences / Computer Sciences and Information Technology and Management, may be allowed to continue, subject to the condition to obtain fresh approval from DEC and accreditation from NBA within one year, failing which they shall have to discontinue the programme and the entire onus with respect to the academic career and financial losses of the students enrolled with them, shall be on such institutions /universities.</p> <p>In light of observation of Apex Court, ex-post-facto approval granted by any authority for distance education shall not be honored and granted henceforth. However, the universities established by or under an Act of Parliament or State Legislature before the year 1985 and offering distance education programmes in the streams of Humanities / Commerce Social Sciences before the year 1991 shall be excluded from this policy.”</p>	<p>If sub-paragraph 7(a) (vii) is implemented in its current form, it will permit universities / institutes established by or under an Act of Parliament / State Legislature before 1985 to offer programmes through distance mode. However, no university / institute established after 1985, regardless of whether it has been established under an Act of Parliament / State legislature can offer any programme through distance mode without approval from the Distance Education Council and accreditation by the National Board of Accreditation.</p> <p>Given that the oldest private university in India, the Sikkim Manipal University of Health Medical & Technological Sciences, was only notified on October 11, 1995, sub-paragraph 7(a) (vii) in effect requires all private universities to obtain approval and accreditation prior to offering any programme through distance mode, thereby ignoring the possibility that there may be instances where government / state universities established prior to 1985 that are imparting sub-standard education whilst private universities established post 1985 are better equipped to impart distance education.</p>
<p>2.</p>	<p>Sub-paragraph 7 (j) and (p)</p> <p>“Reputed Foreign education providers well established, recognized and accredited by competent authority in their country and willing to offer their education programmes</p>	<p>Sub-paragraph 7(j) proposes to allow reputed foreign education providers that are well established, recognized and accredited by a competent authority to offer their courses in India. Whilst foreign participation in the education sector is</p>

	<p>in India shall be allowed, subject to the fulfilment of the legal requirement of the country.</p> <p>A mechanism shall be set up for evaluation of degrees of foreign universities for the purpose of academic pursuit as well as for employment under the Central Government. This may include the assessment of the credentials of the university concerned as also to test the competence of the degree holder, if needed.”</p>	<p>encouraged, the Ministry of Human Resources Development must set out a clear criteria, which is absent from any arbitrariness, so as to ensure the quality of education imparted by such foreign education providers.</p> <p>However, a further reading of Sub-paragraph 7(p) suggests that, for the purpose of government employment and further academic pursuit, additional mechanisms will be set up for evaluation for foreign degrees, which may include additional testing, if required. In the event a student is required to undergo additional testing as a result of having obtained a degree from a foreign university, such additional testing requirements would carry significant dissuasive value for a foreign degree program.</p>
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2.5 Vocational Education

(a) Apprentices Act, 1961

The Apprentices Act, 1961 (“**Apprentices Act**”) was enacted to regulate the programme of training of apprentices in the industry so as to conform to the syllabi, period of training etc. as laid down by the Central Apprenticeship Council and to utilise fully the facilities available in industry for imparting practical training with a view to meeting the requirements of skilled manpower for industry. Given below are certain provisions of the Apprentices Act that limit or have the potential to limit competition:

S. No.	Provision	Interpretation
1.	<p>Section 5</p> <p>Where an employer with whom a contract of apprenticeship has been entered into, is</p>	<p>In the event an employer is unable to fulfill his duties under a contract of apprenticeship, the Apprentices Act, provides for the novation of such a contract. However, any</p>

	<p>for any reason unable to fulfil his obligations under the contract and with the approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as apprentice under the other employer for the un-expired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser, shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer, and on and from the date of such registration, the contract of apprenticeship with the first employer shall terminate and no obligation under the contract shall be enforceable at the instance of any party to the contract against the other party thereto.</p>	<p>novation of a contract of apprenticeship must also be approved by the Apprenticeship Advisor.</p> <p>With the Apprenticeship Advisor given such discretionary powers, in cases where the novation of the contract of apprenticeship is denied by the Apprenticeship Advisor, the apprentice will be forced to continue with an employer who may, for legitimate reasons, may not be able to train the apprentice to a satisfactory level.</p>
<p>2.</p>	<p>Section 7(4)</p> <p>Notwithstanding anything contained in any other provision of this Act, where a contract of apprenticeship has been terminated by the Apprenticeship Adviser before the expiry of the period of apprenticeship training and a new contract of apprenticeship is being entered into with a employer, the Apprenticeship Adviser may, if he satisfied that the contract of apprenticeship with the previous employer could not be completed because of any lapse on the part of the previous employer, permit the period of apprenticeship training already undergone by the apprentice with his previous employer to be included in the period of apprenticeship training to be undertaken with the new employer.]</p> <p>Provided that where a contract is</p>	<p>The Apprenticeship Advisor, after considering the submissions of the employer and the apprentice, may terminate a contract of apprenticeship. However, if the Apprenticeship Advisor is satisfied that that the contract of apprenticeship with the previous employer could not be completed because of any lapse on the part of the previous employer, he may, at his discretion, permit the period of apprenticeship training already undergone by the apprentice with his previous employer to be included in the period of apprenticeship training to be undertaken with the new employer.</p> <p>Therefore, an apprentice may hesitate in approaching the Apprenticeship Advisor for termination of their apprenticeship with their current employer, as the period of apprenticeship already undertaken may or may not be included in the period of</p>

	<p>terminated-</p> <p>(a) for failure on the part of the employer to carry out the terms and conditions of the contract, the employer shall pay to the apprentice such compensation as may prescribed;</p> <p>(b) for such failure on the part of the apprentice, the apprentice or his guardian shall refund to the employer as cost of training such amount as may be determined by the Apprenticeship Adviser.</p>	<p>apprenticeship to be undertaken with a new employer. Furthermore, there may also arise a situation where, the apprentice or his/her guardian would have to compensate the employer for the cost of training if the Apprenticeship Advisor determines that the contract of apprenticeship should be terminated due to a failure on the part of the apprentice, thereby requiring the apprentice to see out the rest of his existing contract of apprenticeship.</p>
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2.6 Bills

(a) **The Foreign Educational Institutions (Regulation of Entry and Operations) Bill, 2010**

The Foreign Educational Institutions (Regulation of Entry and Operation) Bill, 2010 (“**Foreign Education Bill**”) seeks to provide for the regulation of entry and operation of foreign educational institutions imparting or intending to impart higher education (including technical education and medical education) and award of degree, diploma, and equivalent qualifications by such institutions) and for matters connected therewith or incidental thereto.

The Foreign Education Bill identifies the need for regulation of the entry and operation of foreign educational institutions as, until now, there was neither any centralized policy nor any regulatory regime for such institutions in India. The Bill seeks to regulate such institutions in public interest to maintain the standards of higher education within India and to protect the interests of the student community. For the purpose of this Report, specific provisions of the Foreign Education Bill has been examined in the matrix below to determine whether the said provisions present any impediments to competition.

S. No.	Provision	Interpretation
1.	<p>Section 2 (c)</p> <p>The term “Commission” has been defined</p>	<p>The task of regulation of the entry and operation of foreign educational institution into India is a task with immense</p>

	<p>as the University Grants Commission established under the University Grants Commission Act, 1956 (“UGC Act”) or any other body, council or Commission established under any Central Act for the time being in force to regulate the entry and operation of FEIs .</p>	<p>responsibilities. Therefore an independent commission equipped with adequate resources both physical and intellectual should be constituted under this Act for explicitly regulating the entry and operation of such institutions.</p>
2.	<p>Section 2 (e) (i) The term “foreign education institution” (“FEI”) has been defined as an institution established or incorporated outside the territory of India which has been offering educational services for atleast 20 years in the country in which it has been established.</p>	<p>The Foreign Education Bill assumes that any foreign educational institution which has been offering educational services for at least 20 years will be an institution of repute which may necessarily not be true in every case. There may exist many reputed institutions which may be in existence for less than 20 years. Such provision will restrict the ability of certain reputed institutions from operating in India.</p>
3.	<p>Section 4 (3) (b) Any foreign institution which intends to impart education in India has to submit an application for being recognised and notified as a foreign education service provider. Along with the application, the foreign educational institution, inter alia, has to submit an undertaking to maintain a corpus fund of not less than 50 crores or such sum as may be notified from time to time by the Central Government in consultation with statutory authority.</p>	<p>Such provision increases constraints for many foreign universities.</p>
4.	<p>Section 4 Application procedure: (i) FEI should make application to the Registrar; (ii). The Registrar is required to forward the application to the statutory authority and such authority will submit its report</p>	<p>It is imperative to fast-track the application process for obtaining recognition as a FEP as the current process in the Foreign Education Bill is lengthy and time consuming. This may hinder many reputed institutions from starting their operations in India. Therefore a provision should be made</p>

	<p>to the Registrar within 3 months;</p> <p>(iii) The Registrar then prepares its own report and forwards it (within 6 months of date of original application) to the Commission;</p> <p>(iv) The Commission subsequently prepares a report and sends it to the Central Government who finally notifies the FEI to be a foreign education provider (“FEP”).</p>	<p>for expediting the process for such institutions that are willing to deposit the corpus amount in advance before the application is approved and notified.</p> <p>Further, it is recommended that the application process and notification should be made public to encourage transparency.</p>
5.	<p>Section 5 (1) A FEP shall ensure that the course or programme of study offered and imparted by it in India is, in conformity with the standards laid down by the statutory authority, and is of quality comparable, as to the curriculum, methods of imparting education and the faculty employed or engaged to impart education, to those offered by it to students enrolled in its main campus in the country in which such institution is established or incorporated.</p> <p>Section 8 (2) A FEP who contravenes any provision of the UGC Act shall be liable to 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.</p>	<p>Typically, foreign educational institutions are not accustomed to operate under restrictive regimes. Indian legal regime pertaining to educational institutions in India including the UGC Act and notifications thereunder may not offer flexibility for foreign educational institutions to thrive in India.</p> <p>The provisions in the Foreign Education Bill effectively mean that the FEIs have to conform to standards set by statutory authorities on curriculum, methodology, faculty etc.</p> <p>Therefore, foreign educational institutions will not be keen to come to India if subjected to Indian bureaucracy with increasing notifications on how the universities should operate.</p>
6.	<p>Section 5(3) No part of the surplus in revenue generated in India by such FEP, after meeting all expenditure in regard to its operations in India, shall be invested for any purpose other than for the growth and development of the educational institutions established by it in India.</p>	<p>The Foreign Education Bill should seek to provide incentives to attract good and reputed FEIs and not restrict their entry into India. Restriction on repatriation of funds to the home country will be a disincentive for many FEIs to operate in India. Therefore, some portion of the revenues generated should be allowed for repatriation to the</p>

and State Government, university administration and local management. Such multiplicity of authorities results in duplication of inspection and control of the institutions leading to inefficiency, corruption and malpractices in the management and control of the institution. The Yashpal Committee Report (“**YPC Report**”) has correctly identified that the functions of these statutory bodies are two-fold; first, the benchmarking of standards for professional practice and second, the pedagogy and academic inputs required for professional studies. The YPC Report further notes that there is very little co-ordination among the statutory bodies in respect of degree durations, approval mechanisms, accreditation processes, etc which creates uncertainty. The YPC Report further states that “*It sometimes leads to very embarrassing situations in which we find two regulatory agencies at loggerheads and fighting legal cases against each other*”. For example, the UGC seeks to regulate almost every aspect of an institution from fees to curriculum. Similarly, it may be argued that obtaining approval for a technical institution is based on satisfying irrational conditions. There have also been certain decisions reached by the judiciary in India which could be considered regressive. The Hon’ble Supreme Court has held that the consent of the State Government is necessary before starting a technical institution and the AICTE cannot give such consent. Such precedents have given quasi-monopoly power to State Authorities who can alone decide about educational facilities and needs of the locality.

The items stated in Section 2 above only represent a portion of the laws that need to be reduced and well structured to take into consideration relevance, requirements, practical constraints and market realities. To achieve harmonization of education for removing disparities of standards, it is important to design a ‘single-window’ system wherein various functions of existing regulatory agencies would be subsumed.

3.3 Loss of autonomy

There has been a continuous attempt by the Government to interfere in the working, admissions policy and control of fees of unaided private educational institutions in India. There have been a number of landmark judgments by the Supreme Court in this regard. The Hon’ble Supreme Court in the matter of *P. A. Inamdar & Ors. vs. State of Maharashtra & Ors*² culled out the *ratio decidendi* of the ruling of the Eleven-Judge Bench of the Supreme Court in the matter of *T. M. A. Pai Foundation & Ors. vs. State of Karnataka & Ors.*³ and overruled anything said or held by the Five-Judge Bench of the Hon’ble Supreme Court in the matter of *Islamic Academy of Education & Anr. vs. State of Karnataka & Ors.*⁴ which was contrary to the T. M. A. Pai Foundation case (supra).

² Decided on 12.08.2005; Reported in (2005) 6 SCC 537

³ Decided on 30.10.2002; Reported in (2002) 8 SCC 481

⁴ Decided on 14.08.2003; Reported in (2003) 6 SCC 697

The relevant extracts of the P.A. Inamdar case (supra) are reproduced hereunder as follows:-

“... every institution is free to devise its own fee structure but the same can be regulated in the interest of preventing profiteering. No capitation fee can be charged.

The two committees for monitoring admission procedure and determining fee structure in the judgment of Islamic Academy, are in our view, permissive as regulatory measures aimed at protecting the interest of the student community as a whole as also the minorities themselves, in maintaining required standards of professional education on non- exploitative terms in their institutions...Legal provisions made by the State Legislature or the scheme evolved by the Court for monitoring admission procedure and fee fixation do not violate the right of minorities under Article 30(1) or the right of minorities and non-minorities under Article 19(1)(g). They are reasonable restrictions in the interest of minority institutions permissible under Article 30(1) and in the interest of the general public under Article 19(6) of the Constitution.

We expect the Committees, so long as they remain functional, to be more sensitive and to act rationally and reasonably with due regard for realities. They should refrain from generalizing fee structures and, where needed, should go into accounts, schemes, plans and budgets of an individual institution for the purpose of finding out what would be an ideal and reasonable fee structure for that institution.

We make it clear that in case of any individual institution, if any of the Committees is found to have exceeded its powers by unduly interfering in the administrative and financial matters of the unaided private professional institutions, the decision of the Committee being quasi-judicial in nature, would always be subject to judicial review.”

It is for the Central Government, or for the State Governments, in the absence of a Central legislation, to come out with a detailed well thought out legislation on the subject. Such legislation is long awaited. States must act towards this direction. Judicial wing of the State is called upon to act when the other two wings, the Legislature and the Executive, do not act. Earlier the Union of India and the State Governments act, the better it would be. The Committees regulating admission procedure and fee structure shall continue to exist, but only as a temporary measure and an inevitable passing phase until the Central Government or the State Governments are able to devise a suitable mechanism and appoint competent authority in consonance with the observations made hereinabove. Needless to say, any decision taken by such Committees and by the Central or the State Governments, shall be open to judicial review in accordance with the settled parameters for the exercise of such jurisdiction.

(Emphasis Supplied)

In view of the above, there exists an inclination of the regulatory, executive and judicial bodies to monitor fee fixation, admission procedure, etc. by self-financed institutes and it cannot be ruled out that fee fixation, admission procedure, etc by self-financed institutes may be regulated and subject to approval by an independent body outside the higher educational institution.

3.4 Privatization and Commercialisation of Education

The growing trend of privatization of education has continued unabated. The last decade has witnessed an unprecedented growth in the mushrooming of private institutes. This in strengthens the argument of the government that participation of the private sector in delivery of education is guided more by commercial interests than for providing quality education. The advocates of privatisation argue that it increases efficiency, fosters competition and improves quality of delivery of education. However, such an argument must be weighed on its merits. Chattopadhyay rightly argues that the market is not only hierarchical for the higher educational institution sector, but is inherently unequal⁵. This means that the hierarchy of the higher educational institution remains firm even in presence of competition. The concern for a country like India is that the issue of equity remains unaddressed by the market. All members of the society are not equally placed in terms of income. Therefore, access to higher educational institutions in the context of growing privatization depends more on income and as a result the under-privileged students are left out.

Commercialization by private for-profit educational institutions is not an impediment to competition provided that the commercialization is not at the cost of quality of the educational institution. The private for-profit education sector can mobilize resources with relatively fast to fill the gaps in educational opportunities and facilities in India. What has exacerbated the inequalities of privatization of education and consequently catalyzed its growth is the malfunctioning of public sector educational institutions. The majority of the public sector institutions are sponsored by the state government and a lack of financial resources at the state level has adversely affected the functioning of these educational institutions. The governance structure has deteriorated and its credibility has become highly questionable. Political interference in recruitment and prevalence of corrupt practices has resulted in the delivery of poor quality education with poor infrastructure. Further, inadequate budgetary allocations made by the states have led to a near total degradation of the state government sponsored institutions.

⁵ Chattopadyay, Saumen (2009) “*An Examination Of The Proposal To Set Up The NCHER by the YPCR*” published In *Debating Education Against Neo-Liberal Thrust*.

Given the above and the inevitable growth in private sector participation in the field of education, a possible solution to the aforementioned issues of privatization is overhauling the public sector education system. The State and Central Government and government institutions alike need to address the competition from the private sector. One possible way is for the government to instill competition among the public sector institutions by changing the funding pattern so that there is a considerable improvement in the quality of education. Secondly, the government can also infuse competition within higher education institutions through incentivizing the pay structure of the faculty and staff and improve its governance while vested interests and political interference are kept in abeyance.

4. Recommendations: Implementation of Reforms for Fostering Competition and Market Incentives in the Education System.

The success of India's economic reform was based on four fundamental principles; (i) decentralize; (ii) depoliticize; (iii) delicense; and (iv) deregulate. The same now appear to be applicable to the Indian education system as well. It is apparent from our analysis that Indian schools and colleges need to be accountable not to education bureaucrats (licensors) but to parents and students (customers). There is a growing need to increase choice and competition in the education sector. High prices in terms of tuition fees and donations and long queues for admissions are signs of shortages. The same paucity of supply existed for consumer goods before the liberalisation of the Indian economy in 1991. The following are some of the fundamental reforms that form the basis of this report:

- (a) Removal of the license-permit regime to expand the supply of education;
- (b) Decentralization of decisions regarding syllabi, textbooks and examinations;
- (c) Financial autonomy to government run schools and colleges;
- (d) Government grants to be linked with performance of all educational institutions;
- (e) Independent rating, certification and accreditation agencies;
- (f) Funding students not institutions;
- (g) Permitting for-profit educational institutions; and
- (h) Declaration of the education as 'industry' where entrepreneurs have access to credit and venture capital.

This Report has highlighted above the possible anti-competitive effects exerted by various provisions under various laws, policies and bills impending enactment. With a view to mitigate the aforementioned issues, liberalisation of the education sector and reforms in regulations are required. There are important incentives that can be triggered by the market forces to foster competition in the education sector. The evaluation of different incentives that can be triggered by the market forces are based on the following objectives that educational institutions should aspire to for to create an optimum environment for competition:

- (a) quality research;
- (b) high quality teaching especially at secondary and post secondary levels; and
- (c) selection of best students and researchers to perpetuate the system.

These reforms that rely on competitive mechanisms and market forces to incentivize or otherwise affect behavior of educational institutions have been discussed below including examples drawn from different OECD jurisdictions.

4.1 Public Funding

The assignment of public funding through a process of competition between different institutions is one of the simplest forms of competition between educational institutions, especially higher educational institutions. The principle by which this type of competition operates is relatively straightforward. Keeping the aforementioned objectives in mind, assignment of funding by the state can be done on the basis of the quality of the research proposed or previously conducted in the concerned institution. This can be a direct impact on the determinants of objective (a) above. Further, funds could be assigned also on the basis of teaching quality. This would directly impact objective (b) producing high quality teaching. Such initiative will also ensure that there is sufficient competition among institutes to attract talented students and well qualified teaching staff. For instance, instead of allocating resources to public sector educational institutions on an ad-hoc basis, public resources could be allocated on the basis of output criteria. Output targets can be defined in absolute terms (e.g. number of course completions and pass rates in examinations). The key is to define transparent criteria that are easily measured but not easily manipulated. Competition for funds between public sector educational institutions will lead to improved institutional performance.

Such reforms have been undertaken by countries like Germany, U.K and China. The German higher education system was amended in 2004 to foster competition for excellence by assigning federal funds following a competition based on research proposals⁶. The UK system has also undergone a recent process of reform which increased the differentiation in funding for higher educational institutions. It gave discretion to higher educational institutions in setting the fees they charge students, but it also increased public funding for research while using a competitive assignment of these funds. Notably in China the National Fund of Natural Sciences also assigns public funds via a peer review system. Such examples indicate that this form of competition between educational institutions is widespread and it openly seeks to achieve the objectives mentioned above. If such a system of competition for public funding is adopted widely across India and remains in place for a sufficiently long period of time, it is conceivable

⁶ The Framework Act for Higher Education, passed in 1999 and amended in 2004 intends to foster competition for excellence by assigning federal funds following a competition based on research proposals. Mazzaratto, Nicola, “*Competition and Market Incentives in Higher Education*” (2007), Head of Policy Analysis, Competition Commission, London, UK.

that it could also affect educational institution's incentive to select and produce talented students and faculty.

4.2 Autonomy

We have examined above the issue of a highly bureaucratized higher education system with multiple control exercised by the Central and State Governments, statutory bodies (UGC, AICTE etc.), university administration and local government which are considerable impediments to competition in the education sector. For instance, an institution that wishes to award pharmacy degrees would have to in some cases, obtain approval from the state government, gain affiliation from a state university within whose jurisdiction it falls and also obtain prior approval from the AICTE and the Pharmacy Council of India. Not only will this result in arduous approval process, but the quantum of regulations to which such an institution would have to adhere to would act as a severe impediment to competition. A possible solution to this problem can be achieved by giving increasing attention to the benefits that may be derived from allowing higher education institutions more freedom to determine their own policies, curriculum, programs and other aspects of their operations. This may involve the ability to autonomously set up research centres, direct the teaching to specific areas; but also to seek funding for specific projects and programmes from the private sector through some form of joint venture or technical collaboration.

The incentives that such flexibility may provide are varied. The ability to conduct research either autonomously or in partnership with commercial enterprises and to derive funding from its commercialization could increase the amount and quality of such research. The increased funding may positively impact on the general level of teaching and training beyond specific research and the ability to target courses to market demands could also increase the productivity of the students passing out of higher education institutions. For example, in terms of governance and financing, U.S. institutions enjoy a significant degree of flexibility and independence compared to other systems. The funding in U.S. institutions is differentiated and incorporates different sources of private funding (both from individuals and firms) as well as public funding and grants for research assigned by the National Science Foundation. These grants also incorporate a measure of competition as they are assigned towards research projects. Institutions in the U.S. can also set the level of fees they charge and grants they offer to students. In addition they can collaborate with firms in applied research and sell the intellectual property deriving from their applied research. Further, in terms of governance, universities have a significant degree of independence and, in particular are able to hire the faculty autonomously and individually and set appropriate salaries. Such high degree of institutional autonomy in terms of budgets and hiring procedures determines a "market" for faculty where institutions and academics can be matched in a transparent way that enables education institutions with more resources to attract better academics.

4.3 R&D Activities

Licensing of innovations resulting from research by educational institutions is an important economic incentive which can foster competition. Such licensing activities by universities are common in the U.S. However, licensing of research and development (“R&D”) by Indian institutions is a practice yet to gain popularity. Studies conducted in the U.S. and Italy has revealed that universities that give higher royalty shares to their researchers/scientists generate, subject to several other factors, greater license income⁷. There is some evidence that licensing activity may also enhance the basic research conducted by the researchers/scientists. Further, licensing of innovations increases academic productivity of inventors⁸. Therefore, it is necessary to complement any reform introducing the ability to license academic R&D with a degree of autonomy in budget spending in order to fully exploit both the direct economic benefits and the incentives for higher research and teaching quality that could result from these activities. One way in which this could be achieved is by allowing higher education institutions to grant higher salaries to faculty that contribute to such research and to set appropriate grants for promising students and researchers/scientists .

Such licensing activities by educational institutions may affect the economy at a macro level. One cannot be ignorant about the important role of educational institutions in producing and licensing most of the breakthrough technology in this field or the market as a whole. R&D activities are marked by high investment expenses and therefore may pertain to a market structure where few firms can be active. However if the ability to develop and market research requires lower levels of R&D investment compared to the one required to generate original innovations, educational institutions may help increase diversity in the marketplace. Their applied research may supplement the relatively lower R&D spending of smaller players in the market who, while less capable of producing incremental innovations, may be able to identify a key innovation ahead of their competitors.

Despite the potential benefits of licensing R&D and autonomy in the education sector, keeping the “not-for-profit” nature of education institutions in India, one may argue that a high degree of entrepreneurialism may result in a form of “commercialization” of curricula of the education institutions as educational institutions would determine the selection of their courses and research activity on the basis of the likely returns from the private sector. However, it is pertinent to note that such “commercialization” may actually have direct economic benefits. Such commercialization may result not only in educational institutions becoming more involved in applied research but also as targeting

⁷ Lach, S. and M. Schankerman.(2005). “*Incentives and Inventions in Universities*”, NBER Working Paper, no. 9267.

⁸ **Breschi, S., F. Lissoni and F. Montobbio.** (2005). “*The Scientific Productivity Of Academic Inventors*”, Paper presented at the workshop on *University-Industry Knowledge Transfer Instruments: Scientific Publications and Patents*, 29/9-1/10/2005, EPFL, Lausanne, Switzerland.

curricula towards the needs of the market and increase productivity. To achieve such benefits what is essential is the overall balance of the role educational institution with respect to the aforementioned activities. Therefore, the state should play a significant role insuring the continued conduct of basic research and training across the range of faculties, for example through the targeting of public funds towards such activities.

4.4 Subsidies and Grants for Students

Student enrollment rates are sensitive to the level of fees imposed by educational institutions and students from under privileged backgrounds are affected strongly, thereby creating inequity of access. Therefore, certain remedial measures should be adopted by both Central and State Government and individual institutions to avoid such threats to equity of access. The need for financing of education for students, especially those coming from low income households needs special attention. These may involve various forms of subsidies and grants to poorer students as well as paid jobs in institutions of higher education. The precise size and specifications of such policies, however, need to be considered and elaborated carefully if they are to be effective. Loans are often seen as an efficient way to distribute relatively scarce public resources. The principle is that a same amount of funds could finance a higher number of students if these will pay back the loans once they enter the job market. The principal objective would have to be to affect students' incentives to work towards attainment of higher education. The government may also consider evolving a guarantee system by offering a student loan programme for deserving students coming from low income households without a parental security or guarantee so that there is no discrimination on the financial background. This will give a major boost to higher education aspirants in lower income groups⁹. Furthermore, loans may also be used as a tool to move away from a system from funding public educational institutions directly. For instance if a student from an under-privileged section of society was granted a loan, the quantum of which is adequate to meet the costs of a private educational institution, then the public educational institutions may also be incentivized to allocate their resources in a more efficient manner, thereby generally increasing the quality of education.

4.5 Improved Emoluments and Working Conditions

One of the key determinants of the quality of an educational institution is the quality of faculty that it offers. As discussed, poor working conditions and salaries offered to teachers can lead to demoralization and faculty members have little interest or pride in the institution to which they belong to and scarcely make the investment of effort needed for excellence. Higher quality of faculty could be induced in a variety of ways. One way of doing this would be to simply relate salaries to performance. Academic salaries can be

⁹ Kaul, Sanat, "Higher Education in India: Seizing the Opportunity" (2008) Indian Council For Research On International Economic Relations

generally increased with minimum interference with the principle of uniformity of pay-scales, so that outstanding talent is drawn into the academic profession. The best of the faculty should be recruited on competitive basis.

It may appear that in a system where the government determines faculty salary levels centrally, implementation of performance based salaries may be difficult. In such situations other incentives should be provided to limit the correlation between salary and performance. In a system like India where salaries are uniform and centrally determined, it is sensible to study a process of reform that does more than changing the centrally set salaries by introducing incentive based rewards. In this context internal promotions and an academic market could conceivably provide the needed additional incentives for faculty to perform highly in the task of teaching. However, such incentive role for the academic market in driving research and teaching quality and a corresponding balance between performances in different academic functions will depend on independent monitoring of teaching quality. Hence, suitable mechanisms should be established and implemented by institutions to undertake quality checks on faculty and teaching quality¹⁰

5. Conclusion

This general discussion suggests that there are very important incentives that could be provided by market forces and competition in the field of tertiary education. The discussion above and the examples of reforms that we considered suggest that some forms of competition and of market incentives may be highly beneficial to the funding and the delivery of education services. However the discussion also highlights that given the important social benefits arising from some functions provided by educational institutions (for example from high quality basic research) and because of the inherent difficulty in appropriating such benefits, there is undoubtedly a very important role for the state to play in the provision of education services. The state can itself generate competition through its funding policy by instigate competition for funds, but it can also insure that highest social returns from education (both economic and non-economic) are achieved through the appropriate support to basic research and less marketable disciplines.

In sum, it seems that introducing elements of competition in a education system could bring about significant benefits to the economy as a whole. Funding, whether from state or private sources, can be allocated through market or market-like mechanisms in ways that provide strong incentives for educational institutions to improve performance. Any project of reform should consider carefully the effects that such reform may bring about in terms of the delivery of the broad social benefits of tertiary education.

¹⁰ Patnaik, Prabhat, “Challenges Before Higher Education In Developing Societies” published in *Debating Education Against Neo-Liberal Thrust*.
