

Unveiling The Veil: Reimagining Transparency In Higher Education Sector In India

Prof Sairam Bhat &

Ms. Gayathri KK,

CEERA, NLSIU Bangalore

Abstract

Education has been heralded as an instrument for social transformation. It took several centuries of struggle to make education a public good and some more years for it to be declared a constitutional right. While democratizing education remains one of the most significant achievements of independent India, challenges persist. This article explores the issues plaguing the higher education sector, specifically the lack of transparency in deemed to be universities. The lack of transparency in these groups of institutions has led to the unchecked commodification of education. The inapplicability of the RTI Act to deemed universities has led to the creation of informational asymmetry, which renders the students incapable of making informed decisions. Scant information is available to the public on aspects such as admission procedure, faculty recruitment, and research standards, among others, leaving students disenfranchised. The article also looks into alternative ways of ensuring accountability for these institutions through accreditation, rankings, and social audits. The failure of UGC as the regulator in curbing the commodification of education has also been looked into. This piece advocates for the urgent reform of the higher education sector in India while acknowledging that these deep-seated problems also require a change in the culture of transparency in higher education institutions. An argument is made for universities to be deemed equally accountable to the public as other universities to restore education to the public good.

Keywords: *higher education sector, deemed university, transparency, informational asymmetry, social audit*

1. INTRODUCTION

Gaining an education is a transformative experience for humans. The ability to decipher the world around us with the help of the wisdom of great thinkers, writers and scientists has been a driver of social reforms. However, during various periods of history, the privileges of such eras have claimed education as an exclusive right. In the eighteenth and nineteenth centuries, anti-literacy laws were passed in several states in the US, prohibiting primarily enslaved Black people from access to education.¹¹⁷ Similarly, Dalits in India were also excluded from benefitting from the transfer of scholarly work for centuries.¹¹⁸ With the relentless efforts of several social reformers, education has slowly taken the shape of a public good in India. The education sector has flourished ever since, and the right to education for children between six and fourteen has been accorded the status of a fundamental right through the insertion of Article 21A in 2002.¹¹⁹

While primary and secondary education is indispensable for an individual to have a rounded development in the early years of his life, higher education becomes crucial in developing critical thinking, acquiring professional skills, and honing research aptitude. Having a robust higher education system is also essential to propel the country to new heights. As per projected population

¹¹⁷ Heather Andres Williams, *Self-Taught: African American Education in Slavery and Freedom* 7 (University of North Carolina Press, 2005).

¹¹⁸ Geetha B Nambissan, "Equity in Education? Schooling of Dalit Children in India", 31 Economic and Political Weekly 1011 (1996).

¹¹⁹ The Constitution of India, art. 21A.

estimations, 50% of India's population was under the age of 25 in 2021¹²⁰, and 4.33 crore people from this group have enrolled for various higher education courses, out of which 2.07 crore are female students.¹²¹ Although this appears to be a positive development, India's higher education system, one of the largest in the world in terms of size, is ridden with complexities and untangling, which is a must exercise to maintain transparency.

2. GOVERNANCE OF PRIVATE HIGHER EDUCATION INSTITUTIONS

Higher Education Institutions (HEIs) in India can be divided into five categories. Central universities are established under an Act of Parliament, state universities and state private universities are established through an Act of State legislatures, and institutions of national importance which are institutions established under various Central Acts given special recognition as such and deemed to be universities. Private universities have proliferated exponentially in the last decade partly due to the lack of resources, mainly capital, at the disposal of the central and the state governments to establish more government HEIs. A total of 209 universities were privately managed as per the All-India Survey on Higher Education of 2012-2013.¹²² A decade later, in 2022, this number has jumped to 483.¹²³

¹²⁰ Population Foundation of India, "India's Population Growth and Policy Implications" 2 (2023).

¹²¹ Ministry of Education, "All India Survey on Higher Education 2021-2022" (2022).

¹²² Ministry of Human Resource Development, "All India Survey on Higher Education (2012-2013)" (2013).

¹²³ "140 private universities set up in India in last 5 years; maximum in Gujarat: MoE", *Economic Times* (December 24, 2023), available at, <https://economictimes.indiatimes.com/industry/services/education/140-private-universities-set-up-in-india-in-last-5-years-maximum-in-gujarat-moe/articleshow/106248396.cms?from=mdr> (last visited on May 6, 2024).

While it cannot be denied that the first four categories have their fair share of problems, it is the last category that has a veil over its operations and remains elusive from public disclosure of its affairs. There are 127 deemed-to-be universities in India (more popularly known as ‘deemed universities’), a status granted by the Central Government upon the recommendations of the University Grants Commission (UGC) under Section 3 of the University Grants Commission Act of 1956 (UGC Act) if such institutions meet the standards set out in the University Grants Commission (Institution deemed to be Universities) Regulation, 2023 (2023 Regulations). Such institutions will be considered at par with statutory universities for the uniform application of the Act.¹²⁴ Thus, UGC will have overarching powers to prescribe the standards that will be maintained by deemed universities.¹²⁵ However, unlike statutory universities, these institutions are brought into existence through a registered society or a trust. Their unique way of establishment signals that they can potentially withhold significant information that other categories of institutions are bound to provide under the Right to Information Act of 2005 (RTI Act).¹²⁶ Section 2(h) of the RTI Act, which defines ‘public authority’, also contains a body that is established through a notification issued by the appropriate government.¹²⁷ Since universities are deemed to acquire that status through a notification in the Official Gazette, it can be argued that regardless of the unique genesis of such institutions, they will be covered by Section 2(h), which defines ‘public authority’. Deemed universities have time and again claimed that they do not fall under this definition and have claimed exemption

¹²⁴ The Right to Information Act, 2005 § 3.

¹²⁵ The University Grants Commission Act, 1956 § 26(f), § 26(g).

¹²⁶ The Right to Information Act, 2005 § 4.

¹²⁷ *Id* at § 2(h)(d).

from the application of the RTI Act.¹²⁸ Some private statutory universities have also claimed this immunity in the past but were unsuccessful in their attempt.¹²⁹

One of the earliest decisions given by the Central Information Commission had, in fact, given the decision in favour of the students and had categorically held that deemed universities are public authorities under the purview of the RTI since it was established through a Gazette notification.¹³⁰ The decisions that came after, however, turned the tide and ruled that a registered Public Trust need not furnish the information sought in an RTI application regarding an education institution run by it unless such institution is receiving substantial funding from the government.¹³¹ Thus, merely based on the notification under issued Section 3 of the RTI Act, a deemed university cannot be made answerable under the Act unless it is substantially funded by the government. For government funding to be ‘substantial’ in nature, it should be the lifeline of such a university, without which it may not be able to function.¹³² Contrastingly, in an earlier case, the Supreme Court had held that there is no hard and fast rule to quantify the term ‘substantial’.¹³³

In this context, the perplexing question is why universities should be deemed to be compelled to divulge any information regarding them. After all, greater

¹²⁸ *Manipal University v. S K Dogra*, WP No. 25114 of 2009; *Santanu Demuhuri v. University Grants Commission*, Second Appeal Nos. CIC/UGCOM/2017/158895-BJ and CIC/UGCOM/A/2018/104763-BJ.

¹²⁹ “Gujarat HC notice to GIC, 3 pvt institutes claiming immunity from RTI Act”, *Indian Express* (July 2, 2021), available at, <https://indianexpress.com/article/cities/ahmedabad/gujarat-hc-notice-to-gic-3-pvt-institutes-claiming-immunity-from-rti-act-7385205/> (last visited May 6, 2024).

¹³⁰ *Mahavir Chopda v. NMIMS University*, CIC/OK/A/2008/01098SG/2550.

¹³¹ *People Welfare Society v. The State Information Commissioner*, Letters Patent Appeal No. 466/2011 in Writ Petition No. 5168/2010 (D).

¹³² *Ibid.*

¹³³ *D.A.V College Trust and Management Society v. Director of Public Instructions*, AIR 2019 SC 4411.

autonomy, in theory, would ensure that the university functions smoothly without unnecessary interference. In practice, however, the mushrooming of private universities has led to the over-commodification of education in India. Deemed universities, with little to no transparency, have become almost exclusively business ventures, blurring the line between education being a public good and being treated as a private good solely for making profits. This seems to be the pattern for most private statutory universities as well. The growth of private universities has paved the way for a trend of unhealthy competition that is slowly creeping into the education sector. This is entirely against the spirit of the judgments such as *T.M.A Pai Foundation v. State of Karnataka*,¹³⁴ in which the Supreme Court has observed that education shouldn't be a for-profit enterprise; it should be a charitable activity. In another case,¹³⁵ the Supreme Court observed that education is akin to liberation, a tool to shape our civil institutions and protect civil liberties. Skirting around the need to be transparent is used to allow these institutions to charge a 'capitation fee', also known as a donation, in addition to the hefty academic fees.¹³⁶ The 2023 Regulations expressly prohibit such fees in any form¹³⁷ and also require deemed universities to design their fee structure transparently, not for profit, in adherence to rules and regulations in place for these purposes.¹³⁸ This being the case, universities still charge large sums of tuition fees and a lot of other charges that are extracted from the students during the course of their study. Information on admission procedures, faculty recruitment, fee structure, and examination procedures is scarce. There is no uniform rule for university

¹³⁴ (2002) 8 SCC 481.

¹³⁵ *Avinash Mehrotra v Union of India*, (2009) 6 SCC 398.

¹³⁶ Krishnapratap B Powar, "India's Private Universities: Solutions or Problems" 81 *International Higher Education* 12 (2015).

¹³⁷ The University Grants Commission (Institutions deemed to be Universities) Regulations, 2023, Regulation 24B(1).

¹³⁸ *Ibid* at 24B(2), 24B(3).

refunds, especially when admission is cancelled. Most importantly, there is a dearth of information about the research activities, including the standards of PhD courses in such universities. While the quality of PhD courses remains questionable throughout all Indian universities, prompting UGC to propose a survey examining the quality of submitted PhD theses,¹³⁹ deemed universities posit an additional problem by not providing details that they deserve to know about their PhD course.

2.1 Balancing the information asymmetry

The information asymmetry caused by the lack of vital information places the students in a disadvantageous position with very limited say in the matters of the university. They are also bereft of a platform where they can exercise their right to information and get their issues resolved fairly and expeditiously. Undoubtedly, there is a need to bring a balance between the information deemed universities withhold from the public and the information that other stakeholders, primarily students, deserve to make informed choices. Two main approaches to ensuring transparency in educational institutions exist in India. The first could be called as the Direct Test of Accountability, which exists in the form of RTI. As seen before, one can seek information from a private statutory university, unlike a deemed university. The second approach is the indirect test of accountability, or accountability that is mandated by regulators such as UGC or by making the institution amenable to writ jurisdiction. The 2023 Regulations confer UGC with the power to monitor underperforming deemed universities every five years, based on the report submitted by the

¹³⁹ Priscilla Jebaraj, “UGC to review quality of PhD these over 10 years”, *The Hindu* (May 28, 2019), available at <https://www.thehindu.com/news/national/ugc-to-review-quality-of-phd-theses-over-10-years/article27277915.ece> (last visited on May 6, 2024)

university.¹⁴⁰ It also mandates that deemed universities should upload annual reports, financial statements, and audit reports to the university website and to the UGC portal.¹⁴¹

However, UGC, as a regulator, has not maintained proper and effective oversight of private universities. This is evidenced by the sheer number of private universities recognized by UGC and the phenomenal growth of these institutions. These institutions have grown at a faster pace than the regulator has been able to keep up with. In 2014, the Ministry of Human Resource Development constituted a panel headed by the former Chairman of UGC, Prof. Hari Gautam, realizing the failure of UGC in discharging its duties in the face of the commodification of higher education.¹⁴² The panel, in its report, suggested an overhaul of UGC. The National Education Policy of 2020 (NEP 2020) also stressed the need to have a check on the rapid commercialization of the higher education sector and usher in transparency. It emphasized the need for transparency and disclosure regarding financial matters, grievance redressal mechanisms¹⁴³ and faculty recruitment.¹⁴⁴ In 2023, UGC launched the e-Samadhan, an online grievance redressal portal for students, faculties, non-teaching staff and institutions to address different kinds of issues.¹⁴⁵ In July 2023, UGC issued a letter to all vice-chancellors and principals to display the portal's link on the websites of their respective institutions; however, this has not been primarily complied with by institutions. The portal also does not have

¹⁴⁰ The University Grants Commission (Institutions deemed to be Universities) Regulations, 2023, Regulation 10.

¹⁴¹ *Id* at Regulation 31(5).

¹⁴² Ministry of Human Resource Development, *Review of the University Grants Commission for its restructuring and strengthening to address imperatives and challenges in the higher education sector*, No. 4-9/2014-U1A (2014).

¹⁴³ Ministry of Human Resource Development, National Education Policy 2020, 18.12.

¹⁴⁴ *Id* at 13.6.

¹⁴⁵ UGC e-Samadhan, available at <https://samadhaan.ugc.ac.in/Home/Index> (last visited on May 6, 2024)

any information on how many issues have been successfully resolved so far, once again hinting at the lack of zeal from the end of UGC to ensure that its initiatives are properly monitored and implemented. Sheer's lack of a proper forum and established practices for redressing grievances on matters such as refund, expulsion, plagiarism, and many others further strengthen the case for openness in the system.

Institutional ranking and accreditation could also, to an extent, indirectly ensure public accountability. Even though rankings and accreditation grades are about assessing whether a particular institution maintains various standards, they can, in a way, make these institutions take the students' as well as the faculty's demands into consideration. The National Assessment and Accreditation Council (NAAC), an autonomous body under UGC, assesses the HEIs based on various criteria and grades them accordingly. In the same vein, the National Institutional Ranking Framework (NIRF) ranks HEIs in the country. Institutional ranking and accreditation are also used as transparency tools in other jurisdictions.¹⁴⁶ These tools can also suffer from inherent institutional and personal biases; nevertheless, they are useful in the larger scheme of balancing the informational asymmetry.

While the direct test of accountability, due to its ease of access and the minimal application cost, could have helped bring equal access for students in deemed universities as well, the judicial decisions have shielded them from public scrutiny. Even if the direct test of RTI cannot be made applicable to deemed universities, a social audit of these institutions, including every HEIs should be

¹⁴⁶ Ben Jonbloed et. al, "Transparency in Higher Education: The Emergence of a New Perspective on Higher Governance", in Adrian Curaj, Ligia Deca et. al, (eds.) *European Higher Education Area: The Impact of Past and Future Policies* 441-454 (Springer, 2018); Noël Vercruysse and Violel Proteasa, *Transparency Tools Across the European Higher Education Area* (Flemish Ministry for Education and Training, 2012).

done. Social audit is the process of measuring a programme or policy or an organization's working against various non-monetary parameters.¹⁴⁷ It involves a deep dive into various information collected from stakeholders through participatory methods and evaluating their impact on society. Such audits will look at various aspects of convergence of transparency such as refund policy, student union (representation and administration), exit policy and the like between and among private universities. Social audit is a significant tool that is sparsely used in India for the educational sector; however, it could prove to be a beneficial tool that could transcend mere institutional governance as aimed by other modes of audit to uphold education as a public good and mitigate elitism in HEIs.

3. CONCLUSION

Reforms in HEIs are undoubtedly the need of the hour, especially reforms that would unveil the operations of deemed-to-be universities to armour stakeholders with key information regarding such institutions. Bringing in a sense of a public accountability system will have a significant effect on the standards of education. Universities impact public policy in a significant manner in multiple ways through the kind of programmes or courses they offer and independent and collaborative research they undertake, which may also impact security strategies and other interests of the state. Not having to adhere to the public disclosure requirements under the RTI Act opens up several possibilities for deemed universities to abuse and misuse their power and resources. Regulatory institutions have limited data about these institutions. Currently, deemed universities are comfortably placed in their own bubbles with little oversight from UGC, unbothered by the larger public duty they

¹⁴⁷ Vrinda Pareek, "Social Audit Framework for the Education Sector" 4-6 *Centre for Civil Society*, 2014.

should be discharging. Brooding elitism in these institutions might pull us back to the times when only a few enjoyed the fruits of education if left unchecked.

Education is a complex system; the boundaries of its regulation should be clearly laid down by the regulator without unnecessarily restricting the liberty of the institutions. A delicate balance has to be achieved by the regulating institutions, which would also require a steady flow of information in and out of such institutions. Bringing in better data and improving engagement among stakeholders will help UGC and other regulators in this sector to make better policies and decisions to develop a student-centric administration. While deemed universities cannot be directly brought under the ambit of the RTI Act, other indirect methods discussed above could foster a culture of transparency unheard of hitherto in these institutions. Unveiling the veil of secrecy still looming in the higher education sector can help fulfil its transformative potential and once again revitalize education as a public good.