

# GATS and Higher Education

## Some Reflections

*This paper discusses the present system of higher education and attempts to find the possible implications for India in being a signatory to GATS. It analyses the broad structure of GATS and concentrates on some of its articles. Since the agreement is diverse, there are intrinsic pressures for pushing negotiations of 'interest groups'. In the absence of a coherent education policy, the effects of opening up could lead to a distorted function of education in our society.*

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The General Agreement on Trade in Services (GATS) was first conceived during the Uruguay Round of GATT negotiations. The articles of GATS formulated then were essentially a methodology, which would form the basis for future negotiations. GATS is supposed to cover over 160 services, including education. Presently only higher education is under negotiation though primary and secondary education would also feature subsequently. Progress of negotiations in the area of education are, in fact, the slowest among services.

The categorisation of education as a service need not be debated. Education, however, is not just another tradable service with profit as its primary motive. Education shapes the very process of economic and social development. Its fundamental role in the building of human resources with the implied imparting of knowledge, and social and human values cannot be undermined. By virtue of these attributes, education cannot be delineated from any sector, be it services, or be it manufacturing. Liberalisation of any sector is bound to have its influence on the relevant educational stream, so that it is aligned to industrial requirements. This is why liberalisation of any sector other than education would in its turn hasten the same process in education.

The depth of liberalisation and its effects on the structure and growth of a country's education sector depends upon many factors. Most importantly it depends upon how the country's policy-makers view higher education. Is it viewed as an essential service for developing human resources as an intrinsic part of the process of development? Or is it viewed only as any other trade generating service responding to market demands? The answers to these fundamental questions would determine how education is viewed in society, and how policy-makers frame the country's education policy. This, in turn would determine how the educational sector is shaped as a consequence of liberalisation.

The effects of liberalisation in education are diverse in nature. The sequence of educational policies that the country has adopted over the past, has resulted in a gamut of comparative advantages and disadvantages. As education is progressively liberalised, the opportunities and threats arising out of these are bound to manifest themselves. For example, the comparative advantage reaped by our IIMs and IITs in the international markets is a result of a vision of institutes of excellence in the earlier decades. The same vision, however, was not imparted to many other institutions of higher education. Consequently, the Indian higher education

system is characterised by a dissimilar quality of education across the sector.

Apart from the effects of education policy, every developing country's education sector reflects the social and economic inequalities inherent in that society. These inequalities, in terms of cost, quality and availability of education, are evident in higher education in India, as also in the primary and secondary education sectors. The wide range of quality and availability of our education sector would influence any new changes. While opening the sector to outer influences, as also to privatisation, such pre-existing market imperfections within the education sector will be important determinants shaping future growth.

In India, over the last two decades, the demand for higher education has been on the rise at a phenomenal scale [UGC 1996, 1998]. The structure and ownership pattern of the Indian market for higher education has changed considerably. But there is a qualitative difference when the process of liberalisation is a result of the general trend of privatisation and globalisation and when it is specifically *driven* by a trade agreement. The process involves 'legal and binding' rules suggested in the GATS agreement, which once negotiated and accepted cannot be revoked. Thus, the need to understand the implications of such a trade pact calls for careful scrutiny of the text of the pact, as well as the responses it has generated among the member countries so far.

The GATS agreement combines dissimilar interests of the developed and development countries of the world. And every country, whether developed or developing, is bound to have its internal class differentiation, with their dissimilar interests. This duality of interests get voiced during negotiations, as seen recently at the Cancun round, 2003, where newly formed pressure groups such as the G-22 changed the course of negotiations and, more importantly, the sequencing of liberalisation. And so, it is not just the given text that matters, but also its interpretation during negotiations that changes the course of liberalisation.

The paper discusses the present Indian system of higher education and attempts to find the possible implications for India in being a signatory to GATS. It analyses the broad structure of GATS and concentrates on some of its articles.<sup>1</sup> Since the agreement is diverse in nature, there are intrinsic pressures for pushing negotiations of 'interest groups'. We begin with a brief presentation of the main problems of India's higher education and it

is in this background that the GATS articles are discussed. The implications of GATS are then discussed in the next section. The paper argues that in the absence of a coherent education policy, the effects of opening up could lead to a distorted function of education in our society.

### Some Problems of Indian Higher Education

*Availability:* The system of higher education in India has evolved over several decades. With 290 university-level institutions, nearly 13,150 colleges, 88 lakh students and 4,27,000 teachers, India has one of the world's largest higher education systems [UGC 2002]. Yet, the enormity of this structure pales if we consider that only 8 per cent of the related age group avail themselves of higher education.

*Changing ownership patterns:* Higher education is increasingly being supplemented by public-private, or private institutions (aided or unaided), as the private sector has set up new and demand-oriented educational delivery systems, especially after 1997. Consequently, pockets of higher education have emerged as 'high profit areas driven by shortages'. The demand pressures, particularly employment-oriented ones, have contributed hugely to the growth of the sector and have altered the ownership structure of higher education. In India, the private sector comprised 57 per cent of the total institutions of higher education in the 1980s. Its share has gone up in recent times [Tilak 2003].

*Regional disparity:* The four southern states and Maharashtra account for 32 per cent of India's population, but in terms of institutions of higher learning, 46 per cent of total general education colleges and almost 60 per cent of professional institutions are situated here. The states of UP, MP and Bihar (including Jharkhand) account for 34 per cent of the population, but 23 per cent of general colleges and only 14 per cent of professional colleges. Within individual states, the trend has been for colleges to open in certain urban areas. In Maharashtra, a state where the proportion of higher education institutions is relatively high, the concentration of availability of certain courses in certain cities is evident. In Orissa more than 50 government colleges are in urban centres and not a single one is in rural areas [Samal 2003]. The regional disparity is not only at a macro level, but also within regions/cities in terms of quality and concentration of institutions.

*Selective nature of specialisation:* One of the main reasons for the uneven concentration of institutions within regions/cities has been the opening up of private institutes of higher education, which began in the late 1980s. In India, the growth of new private institutions is characterised by a skewed pattern with a spurt of only engineering colleges and management institutes. There were more than 1,200 private engineering colleges in India and 720 private management institutes in the year 2000 ['Dr U R Rao', Interview, *Rediff*, February 11, 2004]. Again, these are concentrated in certain cities and states.

*The differential nature of educational costs:* Skewed specialisation is accompanied by rising costs in some areas of higher education. More employment-oriented or 'professional courses' are viewed as an investment for future income generation. Courses that do not guarantee employment remain relatively cheap and this is where the country's economic inequality is reflected, particularly in higher education. Increasingly, education which would generate future income is becoming available to those who can afford it.

### GATS Classification of Modes of Supply in Services

Article 1 of GATS defines four modes of supply in any service sector trade. The four modes are defined according to the location of the provider and the recipient. The liberalisation process of each mode opens up different sets of opportunities and challenges, though the modes are not mutually exclusive. The diversity of opportunities and challenges stems from a certain inherent asymmetry in the comparative advantage intrinsic in the education sectors of developed and developing countries. This section discusses each mode and tries to analyse the dissimilar positions of comparative advantage for the developed and the developing countries (particularly India) and the consequent stance taken by them.

*Mode I – Cross border supply:* The first mode includes supply of education 'without' the movement of consumers or providers. Mainly e-learning and courses offered on the internet are covered in this mode. Also, correspondence courses through postal delivery systems could be included. (This also means an accompanied liberalisation of IT and postal services, which are part of separate negotiations). Distance learning on the internet is a more recent phenomenon. However, this mode is perceived to have a very high potential of growth across the globe.

The market for such courses is expected to be large in India. There are over 10 million internet users in India today. The domestic use of computers has experienced growth over 9 per cent per annum in the last decade and the number of PC users in the educational sector has gone up to 89,852 in 2002 from 63,054 in 2001. The growth rate of PC use in education and other sectors is much higher in non-metro areas than in the metro areas in India. The international market for e-learning is expected to be US\$ 233 million by 2005 and the Indian market is expected to grow up to US\$ 22 million [NASSCOM 2003].

The comparative advantage in this mode of supply lies primarily with the developed nations. It is more probable that when e-courses become available on the net, the ones demanded most could be the ones that originate from leading universities in the US or UK due to their global recognition.<sup>2</sup> Such distance learning courses would increase the participation rate of working professionals, homemakers and students from non-metro areas. Students in metro areas may also opt for such courses as an 'add on' to their degrees.

The proposal submitted by the US [WTO 2000b], identifies e-learning as one of the important modes of supply where the US has a comparative advantage. The proposal states, "Higher education, and training services are expanding rapidly, particularly through the use of the internet. Increasingly, educational institutions and publishers are teaming up with information technology companies and other experts to design courses on a variety of subjects. Large companies also are developing education and training courses to improve the skills of their employees and keep them up to date on their latest products". The US proposal spells out that many multinational companies, publishers and educational institutions would be expanding training services either in an 'intra-company' manner or otherwise. Online corporate training is a \$1.1 billion market today and between 2 and 5 per cent of all corporate training has a potential to grow as companies realise the cost benefits. The growth of trade in this mode will give rise to much larger trade in books, CDs and other material supplementing the courses. Thus, the interests of

multinational companies particularly in IT and in publication have a large stake in the liberalisation of Mode I.

*Mode II – Consumption abroad:* This mode includes the movement of consumers or students going abroad. Presently, this is the mode, which has the largest numbers since, conventionally, the only way to acquire higher education offered by the best universities/institutions of the world was to enrol in them at the site. Barriers to this mode include visa requirements and costs, recognition of prior qualification, quotas on the number of students and restrictions on employment while studying.

Movements in this mode in the international scenario in higher education have undergone a change in recent times, reflecting increasing competition among developed nations to attract students overseas. Presently, the US is the leading exporter of educational services, followed by UK, Australia, Italy and Canada. Export of education here indicates primarily the revenue generated by the number of students enrolled in a foreign university [OECD-CERI 2002b]. In 2000, US exports of educational services were estimated at \$10 billion, which made higher education the country's fifth largest service sector export. Main export markets are in Asia (Japan, China, Korea, Taiwan, India, Malaysia and Indonesia), accounting for 58 per cent of all US educational exports. The US is facing increasing competition from other countries, such as the UK and Australia, mainly in attracting Asian students. The UK earned \$3.7 billion from educational service exports in 2000. Australia, the third largest service exporter of higher education provided educational services worth \$2 billion in 2000 [IDP 2002].

With 74,603 students of the total 5,86,323 in the US being Indian, they comprise 13 per cent of total international students. China was second with 64,757 students [IIE 2003]. The fees at universities abroad are rather high and the visa requirements necessitate a financial guarantee. Thus the students going abroad from Asia are usually only those who can afford expensive education. Liberalisation of the Mode III (commercial presence) may reduce the number of students going abroad. Though the best universities are considered to be the ones in OECD countries, India and other countries in south-east Asia have been attracting overseas students over the last decade. Indian institutions of higher education, for instance, have been attracting students from neighbouring developing countries. Most of the Indian institutions of higher education conduct courses in English and that is an added advantage [Altbach 2003]. Presently, there are 10,000 students studying in India from abroad.

*Mode III – Commercial presence:* This may prove to be the most difficult of the modes to negotiate since it involves market access and market presence. It includes local branches of foreign institutions as well as joint ventures set up by one country in another member country. The issues of foreign direct investments as well as intellectual property rights will also feature in this mode.

In the last decade international higher educational institutions have been aggressively promoting courses offered by them to overseas students, including Indian students not just in the metropolis, but also in non-metros. The resultant awareness of availability and diversity of higher education abroad has grown tremendously. But the expensive costs of higher education and living in the west limit the numbers only to those who can afford it though now many travel on educational loans. Many universities abroad have been facing a shortage of demand for their services in their respective domestic markets. Thus, opening branches, franchises or even joint ventures in overseas markets

would greatly expand their scope. The opening up of our domestic market for such branches, however, would intensify the level of competition in India as an internal 'brain drain' of academicians may also occur within the field.

More importantly, the Indian market for higher education has witnessed a high growth rate in exclusive profit oriented areas in recent years due to their orientation towards immediate employment. It is possible that the expansion of foreign branches here in India may also follow the same pattern of growth. The proposal by the US mentions the possibility of 'intra corporate movement', which would be a result of commercial presence. It also reflects the interest shown by multinationals in providing training services. The US proposal is extremely keen on removal of barriers to Mode III. Just as in Mode I, multinationals have a keen interest in the education sector in terms of commercial presence.

*Mode IV – Presence of natural persons:* The fourth mode exclusively deals with the movement of natural persons who are service providers (independent of commercial presence). Trade in educational services under this mode could be teachers or researchers going abroad on a temporary basis as providers of services. The perceived barriers in this mode are mainly related to the tight immigration policy traditionally followed by developed countries and the issue of the recognition of qualifications of the third world professionals. Since the third world is perceived to have a comparative advantage in this mode, the removal of barriers in labour movement from developing countries is the main thrust in proposals put forth by it [WTO 2003]. The problem of removing barriers in this mode is related to the fact that most of the liberalisation proposals on the 'horizontal' basis. This means that movement of personnel between countries is considered only among the top layer of employees. In the main categories scheduled in the horizontal commitments, Intra-Corporate Transferees and executives, managers and specialists occupy the highest numbers (239 out of the total 312).

India has been one of the most vocal members in trying to push liberalisation, under this mode for all service providers. Even though commitment in higher education under this mode is yet to be negotiated, liberalisation of other services under mode IV will definitely affect the movement of natural persons in higher education. The communication from India [WTO 2000a] states that mode IV is of primary interest to developing countries that have a comparative advantage in human resources. It expresses a concern regarding the sluggishness of response in liberalising this mode: "Horizontal commitments in mode IV are subject to limitations in the case of 100 countries as opposed to only four countries for mode II. The effectiveness of even these limited commitments is further reduced through a host of limitations and administrative hurdles".

India's proposal further states that existing commitments are largely linked to commercial presence, which is of very limited use to developing countries that are interested primarily in movement of independent professionals and other persons. India thus proposes to 'delink' the movement of natural persons from mode III. The Indian proposal also insists on: (a) Common definitions to include middle and lower level professionals; (b) Clear criteria for Economic Needs Test (ENT) or quantitative restrictions to be set out in a reference paper; (c) A 'GATS' visa for the broad range of personnel covered by horizontal and sectoral commitments under mode IV; ordinary immigration rules should also be disappplied (visas to be granted within two to four

weeks); (d) Recognition of qualified and licensing requirements through Mutual Recognition Agreements (MRAs) and development of minimalist accreditation standards to overcome national requirements; (e) Waiver in payment of social security taxes without corresponding benefits.

India's proposal is bold and demands liberalisation in Mode IV mainly because of the large possibilities of export of service providers from the information technology, medicine, engineering, finance, education, architecture and construction industries as also the entertainment and hospitality industries. India, however, is not alone in demanding liberalisation of Mode IV; there is also a proposal put forth on this by 14 developing countries jointly, including China, India and Mexico, which reiterates India's position [WTO 2003].

From among the developed countries the US [WTO 2000c], the European Union [WTO 2001a], Japan [WTO 2000d] and Canada [WTO 2001b] have put forward proposals concerning Mode IV. The proposal put forth by the US is focused on transparency on members under GATS Mode IV. Japan recognises the increasing significance of this Mode IV but the Canadian proposal is the clearest in its intention to see improvements.

A commentary prepared by the European Services Forum (ESF)<sup>3</sup> while 'strongly' supporting the Indian proposal, goes on to doubt the possibility of its acceptance. The commentary states that the Indian proposal goes further than is likely to be achieved in practice. The ESF is doubtful whether the WTO provides a manageable framework for addressing differences between members about social security measures. By including the issue of mutual recognition of qualifications in these proposals, the ESF considers there is a significant risk that India's proposals, as a whole, could be jeopardised if members are asked to tackle the difficult issue of mutual recognition of professional qualifications, on a multilateral basis and as a part of a package of improvements on mobility.

The above comments clearly show the reluctance in accepting the Indian proposal on the grounds that commitment on Mode IV should be treated separately from (a) cutting the costs of movement (quick visas and waiver of social security taxes); and (b) recognition of qualification. The comparative advantage that India could possess in the movement of labour would be realised only if the costs are low and qualifications are recognised. Else, the liberalisation of so called 'labour' would be limited only to 'intra corporate transferees' and could easily come under Mode III – commercial presence. India, as the rest of the third world, really needs to press her demands in a more systematic manner to make a positive impact for the liberalisation of Mode IV.

The second part of GATS includes Articles II to Articles XV and covers various aspects of trade liberalisation. However, all the articles have not really received equal attention from members nations during negotiations so far. The following section briefly discusses some of the articles that have received some attention till date.

### Other GATS Articles

GATS Article II – Most Favoured Nation Treatment (MFN) clause has been the fundamental principle first of GATT and then of WTO. The principle, however, has a number of exemptions provided in the Annex of Article II. To begin with, there are exemptions granted under 'economic integration' of a regional grouping. The regional groupings in the world, which have

been freeing trade and capital movements, have been maintaining trade barriers against the rest of the world. In fact, the higher the integration within the customs union, the more difficult it is to achieve the MFN clause with the rest of the world.

From India's point of view, since it is not a member of any trading customs union, it does not realise the benefits of an MFN treatment. To consider possibilities, if India is given an MFN status by the US/EU, there could be a bilateral liberalisation of education. The liberalisation of mode I by India, could be reciprocated by the liberalisation of mode IV by the US/EU. This would enhance the existing comparative advantages of both parties involved.

Under Article III – Transparency each member has to promptly and annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which would significantly affect trade in services. The Indian representative to WTO has said in a special session that transparency should not imply an additional burden on developing countries [WTO 2000a]. He stated that different legal systems exist and that the clause should not require a comprehensive change in them.

The issue of transparency is an uneasy one especially for third world countries because it involves actually making the regulatory mechanism public, and in doing so, exposing the weaknesses of the regulatory mechanism. India for example, faces many challenges in the regulatory mechanisms in higher education. There are issues related to fee structures, financing of an institution and 'acquisition of land' for setting up educational institutions, where the rules are often not very transparent. A 'clean' regulatory mechanism will definitely benefit the overall structure of higher education in India and eliminate monopolistic profits in certain lucrative areas. However, the exposure of regulations to members could lead to unintended commercial presence.

Article IV – Increasing Participation of Developing Countries is a special article exclusively devoted for the benefit of developing countries. The GATS text proposes to improve: (a) the third world's domestic capacity, efficiency and competitiveness through access to technology on a commercial basis; (b) their access to distribution channels and information networks; and (c) the liberalisation of market access in sectors and modes of supply of 'export interest' to them.

But which sectors of services would the third world be able to get market access to in the developed markets? What if the sectors liberalised by the third world countries are not met with reciprocity from the OECD countries? And which modes of supply would get liberalised first? The third world countries are pushing Article IV very strongly in a communication jointly put forth by eight countries, which includes some African countries [WTO 2001e]. Among other things, the proposal demands provision of special and differential treatment to developing countries, with special priority for less developed countries (LDCs).

This article, however, could face a certain difficulty in terms of granting concessions to third world countries because the third world is no longer a homogeneous group of nations. There are countries like China, India, Mexico, Argentina and many in south-east Asia that are vibrant economies with future growth potential and a larger share in world trade. Many LDCs, on the other hand, would take much longer to lift any protective measures at all. The more 'developed' economic status of some third world countries shows that there is dissimilarity in the economic capacity to cope with liberalisation among them.

But what is more interesting is that the capacity to cope with liberalisation is dissimilar even within a country, which may be recognised internationally as a country 'ready' to globalise. Countries like India have large education sectors which are combinations of institutions that can or cannot take liberalisation. The point here is that the 'comparative advantage' in human resources in the educational sector in countries like India is not homogeneous across the sector. Though it is true that it is not homogeneous across the sector even in a country like the US, the relative range in the quality of higher education is much wider in India than in the US. On the other hand, there are LDCs that would probably benefit from commercial presence in higher education. It is highly possible, as seen at Cancun, that this difference in economic status may divide the issues at stake and may lead only to partial commitments from the developed countries.

Article VII – Recognition is one of the most important issues related to freeing of the educational sector and involves the recognition of qualification as well as work experience. The article states that recognition will be based on a harmonised system involving agreement or arrangement with a country concerned or may be accorded autonomously. The process of recognition is possibly going to be a long drawn and complicated procedure. It would involve international standardisation of quality and content of a particular degree, and the recognition of a certain university based on predetermined criteria.

From the third world perspective, such international accreditation may prove to be one of the most difficult impediments in the process of opening up developed markets for their services. The standards of gradation or 'rating' if set high by educational institutions in the US or Europe, would block entry of professionals from the third world not only under Mode IV, but also under Mode I and III. The gradation may also relegate some third world institutions of higher education to the periphery. On the other hand, recognition for the developed countries' universities would be much easier, resulting in liberalisation in all four modes for them. In fact, there could result a divide even among the third world educational institutions. Some of them may be universally recognised while others may be thrown out of the process of internationalisation. The question here is not just the fate of such institutions, but also of their students and staff, who may be affected.

GATS Part III – Market Access and National Treatment is identified through the four modes of supply in various sectors including the educational sector. Market access is defined as a commitment in a sector, if undertaken, it does not allow a member to adopt limitations on the access.

There are six limitations identified on market access. The are as follows: limitations on (1) the number of service suppliers; (2) total value of service transactions; (3) total number of service operations; (4) total number of natural persons; (5) specific types of legal entity; and (6) participation of foreign capital. The limitations are identified through ENT.<sup>4</sup>

It is well known that quota restrictions are often used by developed countries, while limiting market access through restrictions on ownership of joint ventures, or on any other form of foreign capital used by third world countries. Negotiations to open up a sector through removal of barriers – quantitative, legal or capital – would really affect that sector in a country. The negotiations so far on market access have been extremely slow, as expected, since the repercussions are significant. It seems that the opening up of market access in education will be partial at least to begin with.

Article XVII – National Treatment basically specifies that each member shall accord to services and service suppliers of any other member, the same treatment that it provides its own services or service providers. For example, the rules and regulations applied to Pune University would not be different than the ones applied to a university opened in India by any other country. The aim of this article is to avoid differential treatment by members, so that the conditions of competition do not favour the home country services.

GATS also deals with the process of negotiations of specific commitments and includes the principle of 'progressive liberalisation'. This principle basically implies that more sectors will be covered and more barriers will be removed with each subsequent round of negotiations. Here, the pressure to open up sectors during negotiations could 'hurry' a country towards liberalisation before its economy may be able to cope with the competition. The negotiation rounds are supposed to use the technique of negotiating 'across sectors' in a 'request-offer' manner. The implications of such a measure call for some apprehension. For instance, when a country A requests of country B greater access to transportation services, country B can respond by requesting access to educational services. Such a negotiating technique may put pressure on opening up sectors before schedule.

### The Indian Scenario

As discussed earlier, the system of higher education within the country is plagued with appalling disparities. This indicates the lack of a comprehensive national policy on where education as a sector is heading. While determining the span of the policy, recognising the need of quality improvement across the sector is crucial. In the recent decade, pressures of employment-oriented higher education have contributed to regional/specialisation disparities. These existing disparities of availability, quality and costs could skew the pattern of future growth. Private participation in education has already created a polarity, which would only worsen as international participants enter the scene.<sup>5</sup>

The regional disparity and the concentration, within regions or cities, of institutes of higher education, is a result of the disparity in economic growth within those regions as well as policies pursued by the state governments. The high concentration of institutions is already leading to a large-scale education migration within the country.<sup>6</sup> This educational exodus will exacerbate as more and more institutions open in the same areas. Industrialisation, urbanisation and economic growth demand a certain cadre, which seems to be recognised at a regional level rather than at a national level. The opening up of the sector to international institutions caused by trade agreements could deepen the regional disparity, mainly because the areas where the infrastructure for higher education is already available would be benefited.

The choices of specialisation offered by private sector institutions reflect their profit motives. But the fact that the public sector did not respond to changing demands for higher education, as a result of the change in new employment opportunities in diverse fields, should not be ignored. Liberalisation in the economic sphere has generated diverse job opportunities, which demand training in fields hitherto unknown in mainstream graduation courses. Hotel management is one such area. Of the 180 institutions granting certificate, diploma or degree courses in hotel management, only 36 are in the government sector. In a recent move the University Grants Commission (UGC) has come up with a regulatory mechanism to check the mushrooming of

private universities in the country (UGC puts the brake on private universities', *The Hindu*, December 14, 2003). But in the absence of acknowledging the dire need to create well-designed, cost effective new professional courses, the UGC move will only be limited to 'controlling' the profit motive of the private sector, which is in fact providing the necessary training facilities, otherwise unavailable.

Having said that, it is also necessary to recognise that the choice of courses offered by the private sector indicates the demand pressures even within certain specialisation fields. The growth of the private sector shows skewed pattern within a field such as engineering. Private engineering institutes that began after 1997 have concentrated on four disciplines only: computer science, information technology, electrical and electronics, and communication. Other disciplines of engineering (civil, chemical, mechanical, metallurgy, etc) have not had any takers. The growth of private educational institutes in engineering picked up momentum in the latter part of the last decade. While in some states like Maharashtra, private education began earlier (77 of the 133 institutes started before 1997), others like Andhra Pradesh caught up late (only 19 of the 213 institutes began before 1997). It is highly possible, given the lethargy of public sector educational institutions, that the opening up of the sector would lead to a further skewed growth in terms of specialisation within fields.

Education has to fulfil multiple roles while satisfying the pressures of future employment all along. The 'internal' gain accruing to an individual when his earning capacity is enhanced through education comprises one of these roles. But education is imperative for the functioning of the economic and social system at large. These latter gains accrue 'externally' not only to those in whom the educational input is invested, but also to other members of the community. However, with education being so alarmingly skewed, these roles are difficult to fulfil. While the benefits of 'internal' gains of education are being restricted to a selective few, the second, equally important, objective seems to be overlooked by policy-makers: national vision for the development of education as a sector.

Another important policy aspect is the regulation of quality and recognition of degrees/diplomas. It is mandatory for institutes to be approved by the All-India Council of Technical Education (AICTE) for a diploma in any technical subject and all such institutes have to seek its approval and abide by its guidelines, including those for curriculum. Private institutions have often circumvented this by affiliating themselves with a foreign college or university for awarding degrees or diplomas [FHRAI 2001]. The opening up of the sector could lead to more cases such as these, which would limit the regulatory control of AICTE. The trend of circumventing the regulatory authority has implications for the Article of Transparency as well as for Recognition.

From the point of view of the article on Transparency in GATS, another problem in Indian higher education are vested interests. In Maharashtra, for example, of the 130 private unaided colleges, about 100 are owned by politicians, and the situation is similar in other states. The transparency clause stipulates that the regulatory mechanism involving fee structures and subsidies<sup>7</sup> have to be made public to all member nations. Subsidies such as scholarships, books for poorer students, land at concessional rates, rent land at non-commercial rates and concessions in water and property tax extended to domestic providers will have to be transparent. Moreover, under the clause of National Treatment, such subsidies will have to be provided to member nations as well.

India has made a mark in the IT sector in the global scenario. And for education policy changes, we can take some clues from how IT has been supported at a policy level. The IT sector is one of the most liberalised services in India with growing exports and a booming domestic market. The infrastructure created for software development by our policy-makers reflects a sensible response on the part of the government. Timely support in terms of IT parks, credit provision and export promotion facilities have generated unprecedented growth in this service sector. In fact, the growth of education providers in this sector is also a result of state support. The Indian IT sector, with its competent human resources, has now emerged as a global force with a strong position for future negotiations as a part of the GATS agreement.<sup>8</sup>

At present, India does have some areas of potential opportunities in higher education, which could be supplemented with appropriate policies. However, in an unequal and dissimilar higher education scenario, the potential opportunity areas may further polarise the sector. In fact, when marketisation takes place in an area as important as education, even the earlier and existent policy may get sidelined. The effects of such skewed development can last long and will be difficult to retrace once it sets in.

### Concluding Reflections

The text of GATS was prepared during the Uruguay Round of GATT talks (1986-94). The basic philosophy underlying any text of a WTO agreement adheres to the principles underlying neoclassical macroeconomics. It believes, "whenever something can be provided by the private sector, conditions should exist to ensure that this can occur. Clearly whenever governments operate in what is or potentially would be a 'market', their actions are barriers to the creation of private markets and therefore need to be controlled" [OECD-CERI 2002a]. The text thus concentrates on removing barriers that would 'distort' trade in services.

While it follows the 'removal of barriers distorting trade' logic, the text of GATS is often described as 'vague' which could easily lead to misrepresentation and/or overrepresentation [OECD-CERI 2002a]. The ambiguity is probably the result of the fact that the text is formulated to 'fit all' services. The text does not adequately take into account the special role of education in developing countries and we hope that during negotiations the unique role of education will be recognised.

A trade agreement such as the GATS must be based on an accurate and complete database. A comprehensive database of OECD countries to analyse and form trade policy is being prepared [OECD 2000]. An equally comprehensive database of third world trade in services however, in the four modes defined in GATS, is still extremely inadequate. During the Uruguay Round when the text of GATS was being formulated, the third world countries had hardly formed any pressure lobbies and had to reconcile to the basic methodology of 'progressive liberalisation' inherent in the then GATT agenda. In November 2001, the representative from Pakistan<sup>9</sup> made a very poignant observation in one of the special sessions of GATS. He said, "Many developing countries, at the time of the Uruguay Round, were hesitant to negotiate the GATS given the non-existence of trade data in services from the third world. However, they were reassured that the problem would be addressed with urgency and ways would be found to gather meaningful data, to match the directions of trade data in goods. On the basis of these reassurances, GATS negotiations went ahead and developing countries made concessions.

To date, however, substantive assessment continued to be stalemated.”

Inadequacy of data in service trade, including education, would affect India's negotiating ability. Third world nations are asking for assistance in the data collection process [WTO 2001c]. As and when the data is collected, the third world nations will have a better analytical tool to form their trade policies.

The need to form sound policies for education in the third world is extremely crucial. While negotiating GATS, third world countries have to remain themselves of the special role of education. Evidently, the strength of the third world countries, in the negotiations of GATS and other agreements of WTO, is far better today than during the Uruguay Rounds. There is a definite united effort to negotiate on their terms. Ever since the Doha Ministerial, third world countries have been putting up 'joint proposals' that spell out their comparative advantage. Such joint proposals in education will be difficult to disregard during future negotiations.

Though discussed separately in this paper, the Articles in GATS exhibit interconnectivity. For example, the fourth mode deals with movement of natural persons, but the issue of international recognition of their qualification for employment poses an important barrier to market access. Therefore, if mode IV is accepted, without the accompanying accreditation, it will not lead to any temporary migration from India. The 'sequencing' of acceptance during negotiations of different Articles, therefore, is the most important issue. For instance, if mode III is liberalised prior to mode IV, the movement of foreign capital will precede the international skilled migration. It is possible then that the markets of the third world will open before the markets of developed nations. Such sequencing will have an adverse impact on India's service sectors, including education.

Another possibility could be that service sectors other than education would open up earlier and education may take much longer to come to the negotiation table. The domestic sector of higher education would react to such changes in the market demand structure and further pockets of employment-oriented educational institutions would mushroom, leading to a skewed growth of the sector. Similarly, at the negotiation table, the practice followed by developed nations of 'arm twisting' third world countries is well known [Jawara and Kwa 2001]. There are many facilities, such as aid or loans that the third world countries depend upon. Thus, issues other than GATS may dictate the agenda at the negotiating tables. There are political factors to be added to that. In these circumstances, the actual gains from GATS, even if it contains Articles favourable to countries like India, remain to be seen. **ENT**

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## Notes

[An earlier version of this paper was presented at the Indo-Canadian workshop on Higher Education at Pune University (January 30-31, 2004).]

- 1 The articles chosen here for analysis are the ones that have featured prominently in the process of negotiation so far.
- 2 Philip Altbach writes, "The powerful universities have always dominated the production and distribution of knowledge, while weaker institutions and systems with fewer resources and lower academic standards have tended to follow in their wake" [Altbach 2003].
- 3 ESF has also put forth two proposals earlier to this one [WTO 2001a].
- 4 ENT is referred to in sub-paragraphs (a) to (d) of Article XVII and is defined as "quantitative restrictions that limit numbers of service suppliers, value of transactions or assets, numbers of services operations or quantity of output or total number of natural persons" [WTO 2001d].

- 5 For instance, in telecom services, private operators have a universal service obligation to provide service in rural areas to the extent of 10 per cent of their total installed capacity. However, they prefer to pay the huge penalties rather than set up such operations, [DeZoysa 2001].
- 6 Pune has over 2 lakh outstation students, of which 60 per cent are from other states, 'Code of conduct for outstation studies', *The Times of India*, January 14, 2004. In fact the West Bengal government has taken steps to stem the mass exodus of engineering students from Kolkata to Bangalore and Pune, 'Bengal sticks to JEE domicile bar revoke', *Telegraph*, January 3, 2004.
- 7 For a comprehensive analysis of subsidies in higher education [Tilak 2004].
- 8 In a recent international rating India ranks sixth in overall skilled labour force and Indian IT skills are second only to the US across all major economies, 'Soft 'n' Sound: India's IT skills top world charts', *The Economic Times*, December 22, 2003).
- 9 The representative was speaking on behalf of the joint submission by Cuba, Haiti, India, Kenya Pakistan, Uganda, Venezuela and Zimbabwe [WTO 2000a].

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