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Towards a Regulatory Framework for Higher Education Institutions

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Abstract

Today, research on higher education regulation is dominated by higher education scholars and not those working on the regulations itself. This leads to a limited regulatory understanding of higher education sector. As private universities mushroom across developing countries, an adequate understanding of how regulatory frameworks should be developed is important. By drawing ideas from pertinent taxonomy in regulatory studies (Gilad 2010) we evolve an approach through which higher education regulation can be benchmarked, examined and evaluated. To illustrate the design principles of the proposed framework, we use India's higher education sector as the case study.

Keywords: higher education regulation, privatization of higher education, Global South

1. Introduction

Scholarship on regulation of higher education (HE) is dominated by HE experts rather than the regulatory experts. This may not be a problem per se, but indeed unusual. King (2007) examines this strange nature of HE scholarship where despite an increasingly rich account of state-university relationship (Clark 1983; Neave 1998), literature has hardly engaged with regulatory theories or emerging regulation tools with sufficient depth. One could have, for argument's sake, gone beyond traditional models and applied the theories of 'responsive' (Ayres and Braithwaite 1992) or 'smart' regulations (Gunningham et al 1998) to sculpt better HE regulatory models. But it is not the case. Often new designs, techniques and even motivation of HE regulation remains untheorized. Even the inflating research on regulation has not been able to subsume HE in its scope.

Developing countries in absence of good quality higher education institutions (HEIs) suffer even more from this lack of scholarship. A robust menu of regulatory designs for HE, that caters to the context of the developing countries can be invaluable. With rapid rise in privatization of HE globally and in Global South, that can potentially have significant implications in universities in Global South, the need for innovative regulatory designs in the sector is increasing (Jamshidi et al 2012; Varghese 2004; Priest and John 2006; Slantcheva and Levy 2007, Robertson and Komljenic, Altbach et al 2019). Thankfully, the rise in available data and countries' growing sensitivity to local contexts have made regulatory science an agile discipline, which can be deployed more creatively (Capano and Pritoni 2019; 2020).

This article is such an attempt. We do this weaving through two important threads. We use prevailing taxonomy of regulatory approach (Gilad, 2010) that suits the context of higher education, and use it to benchmark the Indian HE landscape. Next, we also pick select HE regulations from India and evaluate them through the proposed framework. Adopting Indian-HE as a reference point is useful since it carries significant lessons for the Global South in general.

The rest of the paper is divided as follows. In Section 2, we slice open the concept of 'regulation' and develop its clearer conceptualization in context to HEIs. In Section 3, we discuss the 'purpose' of regulation borrowing ideas from standard theories, and screen Indian HE ecosystem through this framework. In Section 4, we use the categories of prescriptive,

outcome-oriented and process-oriented regulation (Gilad 2010) to demonstrate a potential framework and an approach to regulatory design of HEIs. Here again, we run the scope of the Indian HE sector through the evolving approach. Section 5 integrates the purpose and approach and section 6 concludes.

2. The conceptual apparatus of regulation for HE

Regulation, despite its ubiquity in sectoral applications has somehow not been able to sufficiently capture elements and experiences of HE. Much of the scholarship in HE-regulation actually takes place in journals on HE, rather than those on regulation. Of the little excitement there is in the field of HE-regulation, handful number of comparative studies on policy reforms have dominated the intellectual landscape (Broucker 2017; Capano 2011; Capano and Jarvis 2020; De Boer and Van Vught 2015; Gornitzka et al 2005; Huisman 2009). Regulation in HE is predominantly understood in terms of government intervention. There is the Anglo-Saxon world on one-side, where despite a historical tradition of autonomy, governments intervene significantly in HE sector (Schuetze et al 2012, Capano 2015), including in US (El-Khawas 2005, McLendon & Hearn 2009), Canada (Jones 2012), Australia (Pick 2006); and several other jurisdictions. On the other hand, there are countries, where governments prefer a distant monitoring (Lazzaretti & Tavoletti 2006; Huisman 2009), like in western Europe (Paradeise et al. 2009; Capano 2011; Capano & Regini 2014). Since HEIs in developing countries are poor carbon copies of their western counterparts, this is also what we observe in the erstwhile colonies. This distinction observed through extent of government intervention is not only overly simplistic and general but also too binary to create ideas for innovative reforms.

There has been occasional interest in the HE-literature through the lens of New Public Management too (Beliklie 2018, Ferlie et al 2008) although it has not been developed as extensively. Anxieties with respect to rising neoliberal tendencies of HE-governance has also been recognized (Olssen and Peters 2005; Marginson 2009), but even these remain for want of more technical treatment. The recent data-based analysis of European universities' policy trajectories by Capano and Pritoni (2019; 2020) is an admirable effort. But by and large, the field suffers from disappointing scholarly silence.

This may be because of two reasons. *Firstly*, regulation as a concept is traditionally applied on private, for-profit organizations, but universities in many countries are public in nature and non-profit. *Secondly*, the philosophy of any HE organization is predicated on the idea of

academic freedom and functional autonomy, while regulation does exactly the opposite (Enders et al 2013, Christensen 2011).

The first reason no longer holds. The overwhelming mushrooming of private universities across the world, particularly in developing countries makes the issue rather urgent (Varghese 2004, Altbach et al 2019, Evans et al 2020). Further, regulation can very well be applied for non-profit organizations (Prakash and Gugerty 2010) so even that skepticism is unfounded. In fact, precisely because universities want autonomies and regulation restrict them, there is all the more merit in examining the tradeoffs. In fact, this very dichotomy between autonomy versus control (freedom versus regulation or state versus civil society) is the very reason the HE-regulatory discourse in inadequate to explain the changing HE-landscape today (Moja et al 1996). A more nuanced approach here can help enrich not only the discourse around regulating an organization with social objectives but also around regulation itself.

2.1. Defining 'Regulation'

To begin thinking about HE regulation, one needs a crystallized understanding of what is regulation to begin with. The effort has been going on for a while. Despite the fact that a precise definition is missing, scholars have made sincere efforts in this direction (Baldwin et. al. 1998; Baldwin et al 2012; Jordana and Levi-Faur 2004; Parker and Braithwaite 2005; Morgan and Yeung 2007; Levi-Faur 2011; Lodge and Wegrich 2012). Mitnick (1980, p. 2) had drawn our attention to the idea of regulation as an '*interference of some sort of activity.*' Since this could mean any activity, so Selznick (1985, p. 363) brought in the idea of control administered by government (public agency) over '*activities that are valued by the community*' (that is why criminal justice system is not regulation because crime is not valued by the community). Later, Black (2002) made the idea more specific, calling it an effort to '*alter the behaviour of others…which may involve mechanisms of standard-setting, information-gathering and behaviour modification.* 'Moran (2003, p. 13) brought back the necessary generality by calling is an '*act of steering.*'

Recently, Koop and Lodge (2017) conducted a meta-analysis to synthesize the meaning of 'regulation'. Using concept analysis, they excavate commonalities in the description of regulation as mentioned in the most cited articles in various social science journals. They identify a pattern which can inform an abstract understanding of the concept. The pattern reveals that a 'prototype regulation' is an intervention which (a) is intentional and direct, (b)

involves binding standard-setting, monitoring and sanctioning, and (c) exercised by public sector on economic activities of private sector actors.

We find this frame to be particularly useful for our conversation. Relying on this formulation, in order to understand regulation for HE, we will focus on standard-setting, monitoring and sanctioning efforts undertaken directly by government on private universities. Since any activity of university has economic implication, that distinction in the pattern can be ignored. This exercise also implies that the regulation of HE as a concept must focus on private universities alone. Problems of government universities must be tackled through a separate conceptual framework, perhaps by invoking New Public Management. Further, by circumscribing our understanding of HE-regulation in this manner, we arrest the potential confusion often arising between management and regulation of HE.

2.2. Taxonomic framework of regulatory approaches

How can one go about carving out a framework that allows some understanding on 'how' to regulate HE? One way is to draw upon categories and taxonomies that go beyond simple framework of high-low government intervention and see if they can illuminate traditional understanding of HE's regulation. As a preliminary starting point, a taxonomy of regulatory framework types can be worthwhile. Gilad's (2010) formulation in this regard has been fairly comprehensive and also succinct. According to that framework, regulation can be broadly categorized as (a) prescriptive, (b) outcome-oriented, and (c) process-oriented. We discuss each of them in turn.

Prescriptive regulation is the traditional form of regulation itself. That is how regulation in its most basic essence is visualized. The regulator prescribes the input action of the regulatee and the latter is expected to comply with the prescribed actions. By definition, such prescriptions need to be spelt out in specific details, and adherence is strict. For instance, in case of information disclosure in a bank, the regulator may not just expect banks to inform their clients of some deal, but also give them (or approve) a detailed set of documents that the banks should use when engaging with a client. In HE, one could argue that laying out the duty of the Senate in detail could be one example.

Under prescriptive regulation, since the regulator is focused on actions, all the regulatee needs to do is to comply with the action and not the regulatory result. But this also means regulators are confident that the said prescriptions will lead to the desired outcomes. This will work only when the organizations are homogeneous, work in a systematic fashion with few

instances of governance surprises and are involved in offering standardized products or services. That is why, despite the overwhelming presence of prescriptive regulations in many countries, this approach has severe limitations in securing desired results for specific, individual situations. Given the real world's complexity, it is unable to manage heterogenous and dynamic systems at work, often resulting in excessive or insufficient levels of regulation (Sunstein 1995, Black 1997). Prescriptive regulation works if there is low likelihood of noncompliant organizations to emerge in the sector (Gilad 2010). Indeed, it will also need the regulator to possess almost complete information about the organization's compliance and also its functional features. The one factor regulator is not concerned, is that of performance. Since one does not need to estimate the performance, one can do so with weak regulatory capacity as long as the rule-book is in place. Further, prescriptions create rigidities, which dilute regulatory learning. Consequently, this approach does not allow regulator or regulatee to innovate. In fact, the same rigidity allows considerable avenues for rent seeking.

Outcome-oriented regulation – as the name suggests – focuses on specifying regulatory outcomes and goals that the regulatee must strive for. These goals can be as specific as pollution emission standards or be as vague in objectives like the full information disclosure guideline. In that sense, one may subdivide outcome-oriented regulation into vague-outcome-oriented regulation and specific-outcome oriented regulation. While this distinction is not found in the literature, we believe it is particularly pertinent in cases of HE regulation because of the nature of industry itself. HE sector serves multiple objectives and regulatory designs can easily be seen to jostle against multiple such parameters. Many of the performance attributes of HE institutions are intangible in nature, and therefore even for an informed regulatory agency, it is difficult to set a specific regulatory goal against it.

Outcome-oriented regulations make sense if the regulator is dealing with heterogeneous organizations in dynamic settings, when it can observe and has access to organization's performance, and more importantly, when the output is a good measure of regulatory performance (Coglianese and Lazer 2003). This is similar to what some scholars call 'performance-based' regulation (Gunningham 1999, May 2003, Coglianese and Lazer 2003) or 'standards-based' regulation (Kaplow 1992, Braithwaite and Braithwaite 1995, Black 1997). When the latter, it is the standard for outcomes rather than prescriptive standards for input actions that is of interest. This approach to regulation also requires that both regulator and regulatee have reasonable understanding of which outcomes can be linked to regulatory performance. But depending upon if the outcomes are vague or specific, requirements and

consequences change. For instance, if the outcomes are vaguely specified, the need for regulatory capacity is high, although regulatory rent seeking will also increase (opposite for specific outcomes). At the same time, regulatee and regulators can innovate better in the case when outcomes are vaguely constructed.

Finally, we have the process-oriented regulation. Such type has been invoked through a number of other nomenclatures. For instance, it is similar to what Ayres and Braithwaite (1992) discussed under 'enforced self-regulation', in which the organizations devised their own rules guided by regulatory goals, and regulators examine their compliance with their own internal rules. A similarity is drawn by Gilad (2010) with what is known as 'management-based regulation' (Coglianese and Lazer 2003, Bennear 2006) and meta-regulation (Gilad 2010, Parker 2002). In management-based approach, regulators develop criteria which the regulatees can use to evolve their own set of understanding about their potential failure in achieving regulatory objectives. Regulators also keep an eye on the regulatees' self-installed provision to arrest such derailments. In meta-regulation, organizations are expected to not only devise internal systems of control and monitoring, but also continuously evaluate the efficacy of these internal systems to improve them – some form of double loop learning (Gilad 2010). In that sense, meta-regulation poses considerable requirement for learning and responding to the organizations themselves.

Overall, process-based regulation specifies processes and mechanisms that must be undertaken which identify and control risks/harms within an organization. So, it is like telling organizations to tell themselves about risks and their control, and auditing if they are really installing mechanisms to identify and arrest risks. These approaches become useful when organizations are heterogeneous or dynamic in nature, and when outcome definition is not possible. But indeed, regulators need to have huge capacity to evaluate link between organizations' internal controls and systems and their impact on the desired regulatory outcomes. There will be some indications of rent seeking here but regulatory innovation will be high.

As Gilad (2010) shows, process-oriented efforts have been documented in cases of food safety in US where regulatees are required to analyze the risk of their food processing processes and set their thresholds to minimize it (Coglianese and Lazer 2003). Australian law firms where the regulators expected them to adopt appropriate management systems to self-assess themselves and reduce complaints is another example (Parker 2010). Even in mining industry in Australia industry safety was also enforced to be self-regulated upon the mining

industry (Gunningham and Sinclair 2009). Airport security regulations, financial reporting regulations and any industry where vast uncertainty, dynamism and specific-information models exists, will be natural attractors for this type of regulation.

We engage with the three approaches here and attempt to show how can this orientation be applied to HE-regulation. This paper does not make a claim that Gilad's categorization is the most appropriate. Instead, it opens the discourse on how forms of regulatory categorization can help think about the issue. We use the case of HE sector in India to suggest the possible direction this approach can take.

3. Indian HE, and role of Regulation

By sheer numbers, India presents a massive laboratory for regulatory reforms in HE. In 2020, there were 38+ million students enrolled in 42,000+ colleges across 1000+ colleges in India, with an enrolment ratio of 27.1 (AISHE, 2020). From 2000-01, the 8% enrolment ratio, 254 universities and 10,000+ colleges (MHRD 2011) the rise has been rapid (Varghese 2015).

This meteoric rise has been a result of massive privatization of HE in India. More than 2/3 of Indian students go to private institutions (39% of universities and 78% of colleges being private) (AISHE 2020). Yet, despite its dominance, the emergence of private universities in India since the 1990s is not accompanied by rise in quality and excellence in higher education; in fact quite the contrary (Mehta and Kapur 2004,Varghese 2013, 2015, Agarwal 2009). The rise in HEIs has not been accompanied by any careful thinking or foresight on part of the government (Tilak 2018, 2004). In fact, in the initial days, it wasn't clear if the private HE institutions should be allowed to make profits. Even in the judiciary, considerable confusion prevailed between the terms profits, surplus, exorbitant profits bringing judicial 'ambivalence' in the centre of such debates (Kumar 2003). Finally, the sector was cleared to have a non-profit character (Tilak 2005) even though vast majority of these institutions siphon off huge money through unaccounted means (Nagarajan 2019). Some clarity has been afforded by the Supreme Court in a series of cases, but a robust administrative design and policy is missing.

The regulatory design and priorities for private HE today has been a maze of bewildering apparatuses, entirely unsatisfactory in fulfilling its role (Tilak 2014, Varghese 2015, Shah 2015, Varghese and Malik 2016). The apex regulatory body for HE in India is University Grants Commission (UGC) which was set up in 1956, primarily for standard-setting and

giving financial grants to universities. In addition to UGC, there are more than 15 governmental councils on disciplines which regulate the courses and manage the programmes run by the universities (for instance, Medical Council of India regulates HE in medicine category, Bar Council of India regulates law schools, and so on). There are two accrediting bodies namely National Assessment and Accreditation Council (NAAC) and National Board of Accreditation (NBA). Each of these bodies have detailed sets of prescriptions, often operating in their own realms. The multiplicity of regulatory bodies, their overlapping functions and changing rules and creates deep regulatory confusion (Shah 2015).

Further, in India, both the centre and the state can legislate on education sector. Many states have their respective state private university acts, through which private universities can be established in these states. These acts are often inconsistent with each other. Then there is this issue of congruence between university acts and UGC regulations. For instance, in 2005, the Supreme Court rescinded the Chhattisgarh state's private university act because it did not follow the regulations stipulated by UGC in 2003. More than hundred universities established in the state between 2002 and 2005 were ordered to be closed. The regulatory response has been more regulation, often with competing priorities and interests leading to even more confusion and policy paralysis (Sudarshan and Subramanian 2012, Kapur and Mehta 2004, Shah 2015, Qamar 2020).

As a result, the goals of quality, excellence and access remains abysmal (Varghese and Malik 2016, Kapur 2012, Nayak 2014, Agarwal 2009, Varghese et al 2017, Kumar 2018, Kumar 2018). Barring a select handful, no Indian university features in the global ranking of universities' lists, in even the top 500.

4. Applying the regulatory taxonomy to Indian HE

One way to evaluate the regulatory framework of Indian HE is to locate it against Gilad's taxonomical framework and understand the various types of regulatory designs it is made up of. Since prescriptive, outcome-oriented and process-oriented categories are not too general to ignore the various layers and nuances prevalent in the HE landscape in a country, nor are they too specific to lose out on the generality of its application, this can be a worthwhile approach. We will make judgments about how Indian HE is perceived regulatorily and slot it in one of the categories. While it looks simplistic, it is the depth of understanding of the sector that will make the insights rich. Note that the task here will not be whether our assessment of Indian HE is accurate or objective (HE scholars can enrich various layers

therein in future work). The task is to evolve an approach to find regulatory rubric for HE in a country (like India). Once we have done so, it is easy to identify the gaps against a normative framework that can be separately evolved. In other words, HE scholars need to distil how *should* the regulation of HE look like normatively. Then, our approach can spell out the gaps, and where is a policy intervention required.

We will do our analysis in two steps. In the first step, we will pick specific HE statute(s) in India and have them passed through Gilad's (2010) taxonomic sieve. In the second step, we look at the overall architecture of HE regulation of India, and draw our judgments about the state of HE regulation from the literature. In other words, here, we go to a large scale insights of Indian HE sector, and have them pass through the same sieve. Both results can be independently understood, and also read simultaneously. We will attempt to do both.

4.1. Indian HE regulation: Specific

For the purposes of experimenting with the approach, we will pick up two private university statutes in India. As discussed, private universities comprise of more than ¾ of all Indian universities today, and it is hard to look at the future of Indian HE without considering the dominant role of private universities playing in it (Varghese and Malik 2020, Tilak 2018). It is important to understand how are private universities in India regulated specifically.

All universities in India are statutory bodies, namely, their establishment originates in an Act passed either in the Parliament or in the State Legislature (India has a quasi-federal structure, where provinces (states) have their own Parliaments called Vidhan Sabha, or State Legislatures). There is one more way to establish a university, namely through the deemed university route, in which the government, through the UGC accords a university status to that HEI which is found to be working with very high standards of quality and work. This route however has been criticized frequently and government has been very reluctant to grant 'deemed to be university' status to HEIs of late. For practical purposes therefore, universities are statutorily constructed. So for instance University of Delhi (a prominent central government university) was established through Delhi University Act 1922. The Guru Gobind Singh Indraprastha University (a prominent Delhi state government university) was established through Guru Gobind Singh Indraprastha University Act 2008.

For private university, the states can either have an overarching State Private University Act, under which, through successive amendments, new universities are added up, or each university can be established as standalone legislations that are passed in the State

Legislature. Even in the latter case, the private university's statute does not differ significantly from the state's private university general Act. The private university's Act is then followed by First Statute, and/or Ordinance to get into finer details on university's regulations. For instance, the First Statute will define exact role of the Vice Chancellor, or details on student admissions. The Acts are supposed to offer broad, structural rubrics of the most important building blocks of the University.

A typical private university Act comprises of definitions, establishment clauses, objectives, powers and functions of the university, requirements for setting up a university and the process thereof, officers of the university (chancellors, vice chancellors, registrars etc.), authorities of the university (governing body, board of management, academic council etc.), procedure for promulgating statutes and ordinances, general regulations, funds of the university and accounts/audit considerations, dissolution of the university, and miscellaneous provisions. Going through these statutes can therefore allow a deeper understanding of regulatory attitude that Indian universities are subjected to.

We selected the private university acts of two large and populous Indian states, namely Gujarat and Rajasthan, which have the largest number of private universities in any Indian state (50 and 52 respectively). We examine each section of their statutes, one by one, namely the Gujarat Private University Act 2009 and Rajasthan Private University Act 2005, and identify the regulatory design underlying against them. We divide these sections under some broad clause-categories. These clauses are then seen through Gilad's (2010) framework to get a sense of whether the clauses are prescriptive, outcome oriented of process oriented. This yields a bigger picture about India's HE regulatory frameworks. Typically, each private university act in Indian states can be divided into these very clause-categories, with each containing several sections. Discussing these clauses for the two states will offer a fairly general impression of private university regulation across India as a whole. The idea here is, in addition to deep diving in Indian regulatory framework, to evolve an approach of undertaking a regulatory analysis in higher education.

Table 1 is illustrative; the overall architecture of the university statutes in India is overwhelmingly prescriptive in nature. It is interesting to note, that even something like 'Objectives' of a University, the regulatory attitude is prescriptive, with no expectations on outcomes or self-installed processes by the University.

Table 1: Regulatory taxonomy (Gilad, 2010) applied in Indian context, for two states' private university regulations.

Clauses	Gujarat	Rajasthan
Establishment	Prescriptive	Prescriptive
University to be self-financed	Outcome oriented	Outcome oriented
Objectives[a]	Prescriptive	Prescriptive
Powers & Functions	Prescriptive largely[b]	Prescriptive (captured under the Objectives)
Requirement for setting up the University	Prescriptive	Prescriptive
Affiliating/Setting up colleges	Process oriented	Prescriptive
Officers of the University	Prescriptive/Process Oriented	Prescriptive/Process Oriented
Authorities of the University	Prescriptive/Process Oriented	Prescriptive/Process Oriented
Statutes and Ordinances[g]	Prescriptive	Prescriptive
Committees	Process oriented	Process oriented
Accreditation	Outcome oriented	Outcome oriented
Funds of the University[j]	Prescriptive	Prescriptive
Dissolution of the University	Prescriptive	Prescriptive
General Provisions	Prescriptive	Prescriptive
Admissions	Prescriptive	Prescriptive
Fee	Prescriptive/Process Oriented	Prescriptive/Process Oriented

[a] *Barring 5% of the clauses in this section, all the others are prescriptive in nature.*

4.2. Indian Higher Education: General

One wonders if this approach can be generalized to a greater degree. Surely, if the clauses of private university acts can be called as isomorphic in some sense, the general regulatory attitude in Indian higher education would also be carrying similar patterns. In other words, can we not extend this analysis from specific statutes to a more generic and prevailing discourse that explains the large-scale insights of Indian higher education? If we can generalize that the private university acts of the states of Gujarat and Rajasthan are predominantly prescriptive, can we not say the same thing about the overall architecture of Indian higher education? We think this is indeed possible. Gilad's (2010) formulation can surely work for specific legislative text, but should also be applicable across a discourse. Put differently, just like a statute can be categorized as prescriptive, one should be able to make such a claim about the regulatory framework of the entire industry too.

This is a question tackling multiple layers, and will require a much larger research project to be undertaken. At this stage, we rely on studying the relevant literature extensively and drawing out the prevalent discourse. We start by identifying the factors that explain Gilad's (2010) formulation, and then from the literature, attempt to map the factor for Indian higher education regulatory landscape, and then offer the preferred mode based on the formulation. For instance, the organization-type is an important factor in the framework. If the organizations are fairly homogenous, one would prefer prescriptive regulation. Literature indicates that Indian universities (organizations in question) are fairly diverse, thus calling for an outcome or process-oriented regulation. Further, if the HE sector in India operates under uncertainty (perhaps as anywhere else given the pressures of technology and cultural diversities) comprised of heterogeneity, dynamic, then outcome-oriented regulation or process-oriented regulation is more appropriate.

We see the results in Table 2. In general, it appears that higher education regulatory attitude in India should be outcome oriented or process based. This may vary from university to

university, but a large-scale insight here is instructive. Note that there are various design features of HE regulation in India which can be classified under process-oriented regulation, even though more closely aligned with management-based-regulation rather than meta-regulation. These would include regulators' emphasis on criteria for selecting students, examination and assessment, ensuring an appreciable faculty-student ratio, sometimes perhaps faculty recruitment, for example. One also needs to see whether and to what extent is the outcome-oriented regulation vague, and/or specific. Similarly, the high stress on the regulator to gathering information of performance of the HE institutions in India (given the large size) indicate the suitability of process-oriented regulation, since this type of regulation does not impose heavy regulatory burden on the regulator. Similarly, if the need for regulators' innovation and learning curve is high (which we believe is, given the changing dynamics of HE landscape in India), then process-based and outcome-oriented regulations will suit best.

Table 2: Indicative Typologies of regulation of higher education in India

	Factors	Regulatory Mode			Indian HE State	Description if the state of Indian HE	Preferred mode of Regulation, as contributed by the Factor[a]
		Prescriptive	Outcome-oriented	Process-oriented			
Characteristics	Emphasis	Action	Results	Self-governed processes	Action	Rigid regulations, with focus on action (Kumar 2018, Varghese and Malik 2016, 2020 Agarwal 2006, 2009)	Outcome and Process

	Nature of rules	Specific	Output	Design	Specific	Laws remain very specific and detailed (Shah 2015, Kumar 2018, Varghese and Malik 2016)	Output and Design
	Regulatory intervention	Ex ante	Ex post	Ex ante and ex post	Ex ante and ex post	Depending upon the type of university, it varies (Shah 2015, Goyal 2019, Varghese and Malik 2016)	All three
Conditions	Market/environmental uncertainty	Low	Low	High	High	Markets and priorities changing at rapid pace (Kapur 2012, Kumar 2018, Kumar 2017, Varghese and Malik 2016, Tilak 2018)	Outcome /Process
	Organizations' type	Homogeneous	Heterogeneous	Heterogeneous	Heterogenous	Universities and colleges are hugely diverse (Kapur 2012, Kumar 2018, Varghese and Malik 2016, 2020)	Outcome /Process
	Organizational State	Static	Dynamic	Dynamic	Dynamic	HE is dynamic in nature (Kumar 2018, Varghese and Malik 2016, Tilak 2018)	Outcome /Process
	Organizational information	High	High	Low	Low	Regulator has low information (Shah	Outcome /Process

	with regulator					2015, Varghese and Malik 2020)	
	Regulatory capacity	Low	Low	High	Low	Indian regulatory capacity is weak (Shah 2015, Varghese and Malik 2016, 2020, Agarwal 2006, Goyal 2019)	Outcome /Process
	Frequency of rule adaptation	Low	High	Low/High	Low	Changing HE rules is not so easy nor desirable (Shah 2015, Varghese and Malik 2016)	Outcome /Process
Conseq uences	Burden of gathering compliance information	High	Low	Low/High	High	The HE sector in India is large, and hence burden is high (Shah 2015, Agarwal 2009, Varghese and Malik 2020)	Process
	Burden of gathering performance information	Low	High	Low/High	Low	It is easier to fill in outcome variables through AISHE (Shah 2015, Agarwal 2006, 2009)	Process
	Regulator's Learning	Low	Low	High	Low	There is little learning across HE regulatory bodies which is staffed with	Process

				bureaucrats and not academics generally (Shah 2015, Goyal 2019, Agarwal 2006, 2009)	
Regulator's rent seeking	High	Low/High	Low	High	HE in India has high rent seeking (Kapur 2012, Shah 2015, Goyal 2019, Varghese and Malik 2016, 2020)	Outcome
Regulatee's capacity to innovate	Low	Low/High	High	Low	Regulatees must be allowed to constantly innovate (Kumar 2018, Agarwal 2006, Kumaer 2017, Tilak 2018)	Outcome, Process
Regulatee's commitment to regulation	Low	Low	High	High	HE requires regulatees to be committed to regulation; also have some self-regulation (Kapur 2012, Agarwal 2009, Kumar 2017, Kumar 2018, Tilak 2018)	Process
Regulatee's autonomy	Low	High	High	Low	HE demands high levels of autonomy (Agarwal 2009, Kapur 2012, Kumar	Outcome /Process

		2017, Kumar 2018, Tilak 2018)	

Notes: Select chapters from the books referred here: Varghese and Malik (2016, 2020), Kumar (2018), Tilak (2018).

[a] Preferred Mode is merely only indicative and does not purport to make a defensible claim.

Discussion

Regulation in HE needs to recognize that universities are diverse in every sense of the word (more so in India where a boundless cultural diversity alloys with respective university goals). HE institutions respond to their local conditions and demands, operate on varying levels of budget and carry a plurality of responsibilities. Modern, aspirational and younger universities sit alongside the traditional, older ones and despite similar purpose, their specific goals and targets are very different. Moreover, the regulatory body for HEIs recently introduced the "University Grants Commission (UGC) Regulations, 2023," aimed at overseeing the establishment and functioning of Foreign Higher Educational Institutions (FHEIs) in India. This further calls for a nuanced and layered understanding of HE sectoral regulation for India. Prescriptive, handholding regulations meant for some also need to give way to recognition of agile, adaptable and innovative rules that govern many other universities. This implies that regulatory frameworks for a university must be capable of absorbing a range of diverse priorities universities have in India. In some sense, this calls for process oriented and the outcome-oriented regulation to step in.

The three categories are not watertight at all, and same organizational features can function under all three types of regulations depending on which level of the organization are we looking at. The overall evaluative framework for regulation of HEs allows us to do a categorization of any HE regulatory approach, synthesized in Table 1 and 2 using Indian HE as an illustrative case. A combination of these factors can be organized alongside the existing ones to make the analysis richer. Once the characteristic factors are decided, the subsequent regulatory approach appears on its own.

It is frankly, not important whether we have identified the characteristics of Indian HE appropriately. This is indeed where the HE scholars can come in, as this offers a meaningful space for collaboration between HE scholars and regulation experts. But what is important is

that once the characteristics of a society's HE institutions and landscape is adequately captured, one can begin deducing the approach of regulation one is implementing or one ought to implement. For instance, based on our own assessment of Indian HE, the general impression is that characteristics of Indian HE demands outcome and/or process-based regulations as the most effective regulatory approaches. As the constructs of Indian HE institutions change, the consequent policy approach desired will also need to change. The model is dynamic.

The idea to use Gilad's (2010) formulation is a useful entry point to bring in HE and regulation scholars on the same table. Surely, this may translate into another set of categorizations, for instance, procedural and substantive regulation (McLendon 2003, Ogus 2004). The idea was to introduce a useful approach in this interdisciplinary field of inquiry and any other category of regulatory framework should suffice. Gilad's (2010) work is perceptive and somehow exhaustive enough to be able to capture the nuances in HE. If in the spirit of taking a more dynamic view of regulation as emphasized by Jordana and Levi-Faur (2004), we take Dassler's (2006) call for intertwining regulatory intervention with regulatory governance seriously, then this may well be a valuable effort.

5. Conclusion

HE sectors in most part of Global South are characterized by institutionalized mediocrity. In attempting to unravel the causes for the malaise, one is confronted with a vastly overwhelming paths of regulatory prescriptions in the country, often credited to be sourced in colonial governance. In an attempt to understand this regulatory maze, we realized that HE regulations are often characterized by a lack of sincere effort in understanding regulatory characteristics and design philosophies, because the discourse is dominated heavily by HE-scholars rather than regulation-scholars. This article is an attempt to fill this gap, and hopefully to trigger an interest of regulation scholars towards HE.

We picked up a neat definition of regulation to begin with. We drew upon a prominent taxonomic approach to categorize different types of regulatory framework. By sweeping through the experience and structure of Indian HE regulation experience, we were able to identify the desired strategy of approach. For India, our preliminary findings suggest that outcome based and process based regulatory approaches will work most appropriately, even though the regulatory architecture in HE is dominated by prescriptive regulations.

Several limitations remain. While the formulation of the approach in the categories of prescriptive, outcome-oriented and process-oriented seemed meaningful to us, other scholars may find alternative approaches more useful. That is indeed welcome. For us, the contribution of the article does not lie as much in our understanding of a country's HE regulation (India in this case), but in proposing an approach for helping in that understanding. Further, we have used a very specific definition of 'regulation' and avoided the whole gamut of regulatory issues that the government universities go through. The dynamically changing meaning and characteristics of regulation (Jordana and Levi-Faur 2004) necessitate that the scope of this work must expand. Finally, our inferences on what India HE regulatory architecture looks like needs to be complemented by more surveys, meta-analysis of literature and more HE experts writing about it.

With an ever increasing numbers of private HE institutions, and the increasing noise from these institutions demanding higher levels of autonomy, the scope is considerable. Rise of online education owing to the Covid-19 pandemic has also push for institutional reforms and rejigging regulatory frameworks in many countries, including in India. The traditional models of understanding regulation will need new approaches. It is here that the intersection of regulatory and HE experts will be most productive.

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