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The HECI Bill: Liquidating the State's Stake in Higher Education



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A protest march by college teachers organisations in Thiruvananthapuram, Kerala, on July 5, 2018, against the proposed move by the Union government to dissolve the University Grants Commission. Photo: S. Mahinsha.

There is no denying that the University Grants Commission (UGC) has failed to discharge its obligations towards higher education. However, the Higher Education Commission of India (HECI) Bill, which proposes to replace the UGC with a new Commission is far from being the answer. The Bill, if implemented, will vest more powers in the Union Government, rob institutions of their autonomy and skew higher education in favour of the market place. Ayesha Kidwai, who teaches at the Jawaharlal Nehru University, New Delhi, (JNU), points out that when the UGC was set up 63 years ago, it was with the understanding that “Universities are and can be the greatest bulwark of democracy.” She argues that the way to stem the rot is not by creating a new behemoth but by reiterating the objectives of the UGC Act and correcting the deviations.

In the study of language, the concept of antagonism is when a word comes simultaneously to mean its ordinary meaning as well as its opposite. One of the ways that such contradictory meaning lives in the same word is when the contradictory meaning is aggressively pushed by those in power. One such obvious word is 'reform', which now means, on the one hand, a change that improves processes and institutions for public and social good, and, on the other, its polar opposite of deregulation and state divestment for the good of the market. The Ministry of Human Resource Development (MHRD)'s Draft Higher Education Commission of India (HECI) Bill, 2018, takes antagonism to the greatest heights.

The HECI Bill 2018: Fears of direct Government control

The HECI Bill is Prime Minister Narendra Modi government's proposal for the simultaneous repeal of the University Grants Commission Act (UGC), 1956, and the enactment of fresh legislation to set up the HECI. While the UGC has the dual objectives of co-ordination and determination of standards in universities and colleges awarding non-professional degrees, and the disbursement of grants to them for their maintenance and development, the proposed HECI will concern itself with only regulation of academic standards and mentoring universities, colleges, and institutions (giving instruction in law and architecture) and measuring their performance through an annual performance audit. The HECI shall not disburse funds and merely recommend to the MHRD which institutions should be supported.

Though the UGC has a range of powers to act against universities and colleges, it has no power to punish bogus institutions. The HECI has been empowered to impose severe penalties against defaulters, ranging from the imposition of financial and other penalties (failure to abide by which can lead to a jail term) to ordering the closure of the institution. Finally, unlike the UGC, the HECI shall also have the power to set (select) institutions free from the control of the standards it sets through a grant of 'autonomy'.

Various concerns have been expressed by academics, teachers unions, and other groups concerning the HECI Bill. The foremost is about the divestment of grant allocation and disbursement powers from the higher education regulator, on the grounds that this will legitimise direct government control of, and interference in, the conduct of higher education in the country. This concern is buttressed by the overwhelming

role that the Union government has been given to play in controlling every aspect of HECI's functioning.

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compliance with its regulations.

Apprehensions at the utter silence of the Bill about the agenda of social justice and the fate of reservations for Scheduled Castes/Scheduled Tribes/Other Backward Classes/Transgender persons/ and Persons

With Disabilities are growing. As detailed objections to the draft Bill have been, and are in the process of being, submitted to the MHRD ahead of the July 20, 2018 deadline, in this article, I propose to highlight the full implications of two of the major problematic areas—the HECI's regulatory and standard-setting functions.

The Structure of the Commission and its Regulatory functions

The initial announcement of the HECI Bill was accompanied by the publicity that the Bill was a major reform that would serve the mantra of “less government, more governance”. A consideration of the composition of the Commission itself suggests otherwise. Far from “less government”, the proposed HECI is to be packed with more government than ever, as all its members and Chairperson are to be handpicked by the government, via a Search-Cum-Selection-Committee headed by the Cabinet Secretary and flanked by the Secretary of Higher Education along with three “eminent academicians”.

It is noteworthy that the HECI Bill removes the proscription in the UGC Act against officers of the Union/State governments garnering the major share of appointments in the Commission. As a result, nine of the 12 members of the proposed Commission are either directly officers of the Union government or ex-officio members who serve at the government's pleasure. Only two of the 12 members are teachers, and there is space for a “doyen of industry” as well. The Secretary of the Commission is also to be a Union government officer, and even the much-vaunted proposed Advisory Council has a quorum stacked with nominees of the ruling dispensation. The Advisory Council will be chaired by the Union HRD Minister and comprise

Chairpersons/Vice-Chairpersons of State Councils for Higher Education as members. To quote: “There will be an Advisory Council to render advice to the Commission on matters concerning coordination and determination of standards in the country. This will be represented by the Chairpersons/ Vice-Chairpersons of State Councils for Higher Education and chaired by the Union Minister for HRD.”

Compare this with the composition of the UGC (s.5, UGC Act), which even as it makes provision for two officers of the Union government to “represent that government” in the Commission, also

mandates the inclusion of “not less than four”, serving teachers of Universities. Under the Act, the remaining four members of the 10-member commission

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are to be drawn from persons who are knowledgeable in agriculture, commerce, forestry or industry”, or are members of the learned professions like engineering, law or medicine, or are Vice-Chancellors or educationists or persons who “have obtained high academic distinctions”. The Secretary to the Commission is to be appointed by the Commission itself. While the composition of the UGC was intended to bring to the regulation of higher education in the country the full breadth of expertise, knowledge, and experience that were necessary for guiding its development, the composition of the HECI is oriented only to enforcing the writ and policies of the government of the day.

Contrary to the propaganda being carried out by the government and its (largely private sector) loyalists, the UGC has sizeable regulatory functions. The UGC has the full power to make regulations and take “all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities” (s.12, UGC Act, 1956). This includes giving recognition to Higher Education Institutions (HEIs)(under s. 2(f) and s. 3, UGC Act), requiring HEIs to furnish it various kinds of information, regulating fees (s. 12A) and affiliations to colleges to universities, and withholding grants for non-compliance with its regulations (s.14). Yet, even as the HECI simply inherits these powers, the Bill is touted as ‘downsizing the scope of the regulator’ by the MHRD Press Release.

In fact, the HECI Bill envisages a radical expansion of demands made on HEIs. One such measure is an annual evaluation of the performance of all HEIs by HECI. However, this function is unlikely to have much of a regulatory effect as, according to the All India Survey of Higher Education (AISHE), 2016-17, there are 864 Universities and 40,026 colleges in India today, and the sheer numbers will make it virtually impossible for this task to be undertaken with any seriousness (even if this was all the commission were to do). The only way evaluation will be carried out in the main is through ritualistic self-declaration (consuming a huge amount of time of both faculty and administrators), accompanied by virtually no validation by the HECI. At the same time, the provision expands the scope for an atmosphere of partiality, delay, partisan-targeting, and one in which greasing the palm will become *de rigueur*.

Two other provisions of the HECI Act have been seen as an attempt to clean up what is perhaps the most profitable but lawless sector of all, official accreditation. The HECI Act expands the scope of accreditation and vests in the Commission new power to grant and revoke authorisation to an HEI.

Accreditation and Authorisation

Accreditation, as a concept is already in place, via the existence of the autonomous National Assessment and Accreditation Council (NAAC), set up under the UGC. NAAC's vision, as its website states, is "to make quality the defining element of higher education in India through a combination of self and external quality evaluation, promotion and sustenance initiatives".

Accreditation by NAAC is voluntary. NAAC scores evaluate a HEI's level of access, relevance and excellence of academic programmes offered by it and have no connection with determining disbursement of grants to a HEI or the level of its compliance with UGC regulations. The HECI Bill seems set to transform this situation by giving membership of the Commission to "two Chairpersons of the Executive Council/Governing Body of accreditation bodies" (s. 3(8)c, HECI Bill), and endowing the HECI with the function of putting "in place a robust accreditation system for evaluation of academic outcomes by various HEIs" (s. 15(3)e, HECI Bill).

The Bill makes no further mention of the role that these chairpersons will play in HECI, but the two clauses read together contribute to the apprehension that the

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NAAC scores will be tied in with authorisation and recommendations for fund allocation. If the metric used is that the lower the accreditation rating, the lower the fund allocation, the consequence will be to starve resource-poor HEIs in already higher education-starved areas of the country, pushing them into a tailspin of decline.

Should under-performing institutions not be penalised? A distinction has to be made between fraudulent, profiteering institutions, and those that rely on a pittance of government aid for performing an important service. The abysmal investment in higher education (declining since 2014) in close to three decades of neo-liberal reforms has ensured that much of the expansion in the Higher Education sector has been through the private sector. According to the AISHE 2016-17 data, 77.8 per cent of colleges are privately managed (with only 13.6 per cent receiving any government aid), as are 313 universities (36.2 per cent). Since the UGC had extensive regulations governing fee-fixation as well as donations, it is safe to assume that many of the fraudulent practices would likely occur in privately managed unaided institutions.

The UGC has proved entirely ineffectual in addressing this menace, and the fact that the government has put its mind to the problem, and is ready to put in place a more stringent regime should be welcomed.

Except that the HECI Bill does nothing to reassure us that any thought has gone into the matter at all. All the HECI Bill does is to provide a procedure for ‘authorisation’,

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which is defined as the power to “commence academic operations” degrees. Such authorisation is to be granted only by HECI, to which the HEI must apply, by providing basic information through (only) an online portal. Authorisation will be granted if the Commission finds that the HEI “complies with the norms of academic quality, specified under regulations” (s.18). No minimum considerations that must govern the grant of authorisation are actually specified, even at a conceptual level, so nothing constrains the HECI in the regulations it may come up with.

The interests and progress of students and employees, the goals of educational policy in general and of social justice and deepening and widening access in particular, do not form the rationale for authorisation/accreditation, and no definition of ‘academic quality’ is even attempted. The plea that these will eventually be spelt out in regulations made by HECI is simply inadequate because it is only a specification in the Act that would actually prevent authorisation from being used as a modern day avatar of the much-reviled ‘license raj’.

The procedures for authorisation, as envisaged in the Act, can be either implemented completely casually or with draconian ferocity. Revocation of authorisation can be contemplated for virtually anything at all, as long as the HECI can show that the HEI in question is in “wilful or continuous default in doing anything required of it by or under this Act or rules or regulations made there under” (s.20). As the HECI has the power to make regulations on virtually every aspect of university life — from laying down academic standards to minimum eligibility conditions of appointment of even Deans and Heads of departments, to deciding norms for affiliating colleges -- measuring ineffable qualities like “effectiveness of programmes” and “faculty-centric governance structure” — the possibility of clocking up quite a few ‘violations’ is very high indeed. As the HECI Act does not specify the core guiding principles by which the power to make regulations must be governed, the power to withdraw authorisation and/or order closure of down HEIs will inevitably be differentially applied. In some cases, the granting of authorisation could be a merely formality, in others it may be motivated for non-academic reasons.

For the government-funded colleges (22 per cent of total colleges) and universities (64 per cent of the total universities), the requirement of authorisation leads to a further apprehension. As the HECI has no financial powers, and can only recommend to the Central government whether an HEI should be funded, it is very likely that authorisation status could also be tied in with funding, in a way in which it will not be for private HEIs. The lead time for a full-blown crisis for state-funded institutions to develop is just three years, which is the amount of time given to all HEIs pre-existing the HECI Act to apply for authorisation. This is particularly significant given that virtually all expansion in HEIs between 2011-12 and 2016-17 has been pioneered by the States, through both public and private universities (AISHE 2016-17).

Concern about the implications the authorisation instrument has for the federal character of India are also real. Since the HECI has jurisdiction over both central and State government institutions, the potential for conflict is always live. Can the HECI actually refuse to authorise, withdraw authorisation from, or order closure of an institution set up or approved by the State legislature? What remedies do the States have in this regard? Furthermore, the expansion in education activities of the States will be severely stymied by the requirement of authorisation by HECI. The HECI Bill is silent on these matters, almost as if education were not on the concurrent list in the first place.

Setting standards

We have been told that a major function of the HECI will be to ensure academic quality and to set norms and standards for teaching and research, something that the UGC was also tasked with. The fact that the majority in this institution comprises government officials rather than academicians should therefore immediately cause great anxiety about the standards that will be set, but there is more to be concerned about.

A major distinction between the HECI and the UGC is the manner in which setting standards are presented. The preamble of the UGC Act is “to make provision for

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the co-ordination and determination of standards in Universities”. On the other hand, the preamble of the HECI proposes to create “a Body that lays down uniform standards and ensures maintenance of the same through systematic monitoring and promotion”. A huge chasm of utter ignorance lies between these two perspectives of what academic standards are and how they are to be achieved. While the UGC Act conceives standards as being a process, created by dialogue and guidance towards a goal, the HECI Bill perceives standards as targets that define benchmarks of eligibility. As a consequence, the UGC Act speaks a language of ‘recommendation’ and ‘advice’, and ‘reasonable time’, only culminating with the requirements of mandatory implementation. The guiding understanding of “coordination” was — until UGC itself started being transformed by neoliberal regimes — to respect the autonomy of

HEIs and the various objectives they were constituted for in order to raise the country's HEIs to higher levels of "development".

It was for this reason that the UGC regulations set 'minimum' standards and qualifications and proposed model syllabi, etc. The HECI, however, is conceived as prescribing absolute standards (s. 15.3(b)) and of "specifying learning outcomes" (s. 15.3(a)). Neither, as anyone who is a teacher in the Indian context will know, will ensure (quality) education for the student, who has to be at the very centre of the education system. For one, pre-specified learning outcomes and absolute standards encourage rote learning and teaching methodologies that actually stifle creativity; for another, they are completely insensitive to the absolute necessity of adapting what is taught and how it is taught to disparate conditions and infrastructures of learning in widely divergent local contexts. While very general directions as to what the curricular design of, say, an undergraduate programme should guarantee, may be desirable, any further measure that stamps out diversity as well as innovation is unwelcome.

To say that all students can progress only if they have learnt the form and content as specified in a particular regulation is to void the classroom situation of material references to or historical indices of privilege and discrimination. It is also to suggest a particularly retrogressive view of knowledge production in which there

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exist some tenets that cannot be questioned or redefined. The truth of the matter is that higher education seeks to train minds in the necessity, ethics, form, and function of asking questions. Indeed, all fields of inquiry are enriched only by an effort that deepens the questions that are asked. It is also true that the political, social, and economic location of the learner, particularly in terms of caste and gender, can radically alter the questions being asked. Maximum standards and learning outcome regulations that will outlaw all questioning will uphold only homogeneity and hegemony as the norm. Given the government-led aggression on freedom of speech and expression, rational inquiry, and critical dissent since 2014, the widespread apprehension that the HECI regulations will be used to transform universities into obedience schools cannot be dismissed merely as a criticism flowing from political opposition.

However, the standard-setting functions of the HECI extend far beyond academic quality, and seek to engineer a uniformity in the governance structure of institutions, their rules to conduct the affairs of the organisation, and even the conduct expected of their members (so much for non-interference in the internal affairs of institutions). According to the powers invested in HECI in s. 15, regulations may be made in areas as diverse as “standards of teaching / assessment / research”, “norms and mechanisms to measure the effectiveness of programmes and employability of the graduates”; “minimum eligibility conditions for appointment of Vice Chancellor, Pro-Vice Chancellor, Directors/Principals, Deans, Heads of Department”; and “norms and standards for performance based incentivization”. Since all these regulations shall be binding and mandatory, and need to have the “prior approval of the Central Government (s.29)”, where they relate to “promoting quality and setting standards”, the structure of our HEIs will be alarmingly uniform. This will not only create extreme inflexibility in institutions to adapt to the diverse conditions they are located in, it will also prevent them from being responsive institutionally to the demands of students and teachers and the communities in which the institutions are embedded. Even the promise of participative, democratic self-governance will therefore be traded in for control from the outside, rendering as gibberish any talk of the promotion of institutional autonomy in the publicity around the Bill.

Levelling State-funded Higher Education

While most HEIs will effectively lose institutional autonomy, a few high-performing institutions will get grades of autonomy: s. 15.4(c) allows the HECI to “specify

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standards for grant of autonomy and Graded Autonomy”. But this is only antagonistically speaking, as the experience and the critique of the UGC’s exercise in the same domain has already shown us. The price for retaining institutional autonomy could be the complete divestment of the state’s resources in the institution. This will entail a marketisation of HEIs, fuelling fee hikes and greater job insecurity, and will invariably lead to a complete constriction of access of the poor and disadvantaged (who constitute the bulk of the student population entering higher education) to the better performing institutions. Not surprisingly therefore, the HECI will only “advise Central

Government or State Governments as the case may be, on steps to be taken for making education affordable for all”, whereas it can make regulations for norms and processes for fixing fee chargeable by HEIs. This in stark contrast to the UGC Act which has a very detailed section on controlling fees and prohibiting donations.

Antagonistic autonomy in the HECI Bill is simply deregulation, a liquidation of the Indian state’s stakes in an institution in which its investment has paid off. But this effective repeal of the Acts of Parliament and State Legislatures that set up these HEIs with the objective of expansion of higher education makes little sense even in a neoliberal universe, as the state receives no revenue in return for the divestment that it undertakes.

Rather, the cost of divestment is to be borne by the youth of the country, in terms of higher fees, more thought control, less innovation, more regimentation, shrinking employment in the education sector, and poor quality. This move away of a state subsidy model is intended to pave the way for a general user-pay principle in the funding of higher education, thereby *levelling the field* for private players (who have full access to the field anyway, as pointed out earlier).

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That this should be the changing priority of higher education in a country in which 50 per cent of the population is under 25 years of age is highly regrettable. According to AISHE 2016-17, only 25.2 per cent young people in the 18-23 group currently enrol in a university/college, of which only 14.2 per cent for SCs, 5.1 per cent STs, 34.4 per cent OBCs and 7.1 per cent for all minorities. The all-India average of colleges is just 28 per lakh of population, with about 80 per cent of colleges admitting not more than a thousand students. While there has been an almost 26 per cent increase in HEIs from 2011-12 to 2016-17, the fact of the matter is that this growth has neither improved college density nor college enrolment.

A number of factors lie at the root of this such as different State-level priorities for investments in HEIs and the profit-making concerns of private players that lead to less investment in poorer and backward regions. However, one thing is clear: the HECI Act will do nothing to ameliorate this disastrous situation, and instead, through deregulation, will effectively level the field between overpriced private higher

education and publicly funded, accessible and affordable higher education. The recent grant of an Institution of Eminence status to the yet-to-be born Jio Institute promoted by Mukesh Ambani may seem at the moment to be an extreme illustration of the government's intent to stack the odds in favour of private capital. However, it is clear that when implemented, the effect of the HECI Bill will be far more lethal and on a much larger scale.

Do these criticisms of the HECI Bill mean that all is well with the UGC? Far from it. The UGC has failed to implement many provisions of its Act—in roughly 70 years of its existence, the UGC has not given recognition to any more than 5.1 per cent colleges, and done virtually nothing to educate successive governments on the responsibilities they bear towards public education. In the past six years or so, the UGC has surrendered its autonomy and refused to carry out its obligations with respect to consultation and coordination, support and promotion of innovation, specially when the suggestions have come from teachers and students. Nor has the UGC implemented its mandate on matters relating to appropriate definition of standards, fellowships for students, and the ways in which the agenda of social justice must be at the heart of its policy decisions.

Yet, these failures do not mean that the UGC Act should be repealed, rather that its objectives should be reiterated and the deviations from serving these corrected. If powers to act (fairly) against unscrupulous HEIs are needed, it is the UGC Act that must be amended (after much more consideration than has gone into the HECI Bill). What must be reiterated however is the assurance that the then Deputy Education Minister, Dr. K.L. Shrimali, gave Parliament some 63 years ago when the UGC Bill as being enacted: “We are anxious that the autonomy of the Universities should be preserved. Government have accepted a democratic Constitution and if we are to achieve those democratic Purposes, it can only be by practising democracy in our educational institutions. Universities are and can be the greatest bulwark of democracy.”

**Related Link: Resources: Draft Bill: Government Plans to Dissolve
UGC, Create Higher Education Commission of India**

Source: Press Information Bureau, Ministry of Human Resource
Development, Government of India

(Ayesha Kidwai teaches linguistics at Jawaharlal Nehru University. She is part of nationwide campaign to resist the enactment of the HECI Bill 2018, details of which can be found at <https://betteruniversities.in/2018/07/02/heci-act-draft-feedback-act-now/>.)

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