

*Myth 3: ODL Should Be Subsidized Like Traditional Formal Learning*

The learner profile clearly indicates that ODL predominantly serves employed and well-established adults who want to update their skills and qualifications for career development. Such a clientele can certainly afford to pay for their further learning. It is estimated that adult learners in many countries outnumber the regular student age cohort. Subsidizing the adult learners would imply a major shift in the funding priorities of the government. Additional public subsidies would be difficult to come by in a country like India that has shrinking resources and that barely provides access to 6 percent of the relevant age group. Supporting distance education cannot occur at the expense of educating the relevant age group.

*Myth 4: Campus-based Formal Education Will Be Replaced by ODL*

This can never happen. There is no evidence of any fresh secondary school graduates enrolling in ODL anywhere in the world. The educational benefits of human intellectual interaction are undisputed, especially for fresh high school graduates. Good teaching is aural, visual, animated, and interactive. Online courses today are by and large textual, no matter how much ICT is integrated into them. Competent literacy and the related cognitive skills are essential for learning through online lessons. The profile of the normal age groups in India that attend school and undergraduate education does not indicate any such potential for independent on-line learning.

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*Myth 5: ODL Is Highly Flexible in Contrast to Rigid Campus Education*

Campus-based formal education intended for full-time young students should be well structured, selective in terms of curriculum and intensive enough to complete the necessary learning within a stipulated time frame. Public funding of education cannot support slow-paced learning without any time limit. Flexibility in the choice of courses is essential, and the choice-based credit system (“cafeteria model”) is gaining ground in the formal system.

*Realities: Upholding the Relevance of Distance Education*

As long as the educated population base continues to increase due to globalization of the economy and other trends, the education market of adult learners will continue to expand in India as well. But, the 20th-century form of ODL that catered to people who were excluded from or dropped out of the mainstream will need to undergo radical change to remain relevant in the 21st century. Very little research is under way to help bring

about such radical changes. Currently, many of the initiatives in ODL are chosen based on their novelty rather than their relevance.

The convergence between distance and campus-based education is already occurring. When technology is integrated into formal education and used as the “distributed education” for both on- and off-campus students, the distinction between the two types of learning gets blurred. This appears to be the general intention of the Indian University Grants Commission in committing enormous funds for ICT to promote distributed education in the traditional universities. That makes one wonder how the ODL providers like the national and state open universities are going to uphold their relevance and the distinct purposes they wish to pursue.

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## Judicialization of Education: The Fee Cut Controversy in India

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Of late we find the Supreme Court of India playing a proactive role in matters pertaining to higher education. It seems to be a fallout of the judicialization of politics in general. Every sundry issue comes before the apex court for a hearing—ranging from the liberation of 241 caged monkeys to the playing of the national anthem as part of a Hindi movie.

Judicialization is very much in vogue these days. It implies a process whereby the judiciary engages in administrative supervision. It also implies the proactive role played by the judiciary in social engineering through laying the foundations for desirable behavior on the part of the public institutions and the masses alike.

The judiciary is supposed to be in a better position to resolve the contentious issues in pluralistic and modern complex societies as the judges appear to be apolitical, neutral, and fair to the vast majorities. Moreover, they can give equal attention to all the aggrieved parties and take a nonpartisan and long-term perspective, a feat that cannot be performed by the other two organs.

The judges not only adjudicate between the two litigants in whom the “better boxer” wins the game but also take sides with the “just party.” They can do so because they are capable

of independent decisions and autonomous actions, whereas the executive and the legislative branches are found to be too fragmented to do so.

The shift toward judicialization reflects not only the hostility with regard to partisan politics and interest group lobbying but also to some extent hopes for logical and rational solutions. The judicial intervention in the wake of recent controversy over the fee cut in the Indian Institutes of Management points to the same trend.

#### *The Controversy Defined*

A public interest litigation was filed by the three alumni of the IIMs against the Human Resource Development (education) Ministry's order on February 5, 2004, slashing the fee for a post-graduate diploma in management at the six IIMs by almost 80 percent. The government cannot afford this as it is already short of funds even toward its constitutional obligation of providing free and compulsory education to all up to the age of 14.

The petitioners have not only castigated the order passed by the HRD Ministry as arbitrary, retrograde, and ill-conceived but have also alleged that the drastic fee cut amounts to government's encroachment into academic matters. They have also challenged the basic premise upon which this order was based. Actually this order was based on the recommendation made by the U.R. Rao Committee (set up in November 2002) that the fee charged by the technical institutions in India should not be more than 30 percent of the GNP as per U.S. precedent.

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Whereas the government has justified its step in the name of equity and accessibility, the IIMs have been fighting against the fee cut with the weapons of autonomy and quality education. Whereas the government has taken the stand that the fee cut would enhance the chances of future aspirants to get management education at the top business schools in India, the IIMs have claimed that the fee has never been a deterrent.

No student has ever been denied admission at any of the six IIMs for lack of funds. In fact, the banks start wooing a student as soon as he or she is selected for admission. Since fresh IIM graduates are expected to earn an average wage of U.S.\$18,000 per annum at the entry level, they can easily repay the loans within a year or two in India. Currently, the IIMs are charging about U.S.\$3,500, whereas the government is insisting on U.S.\$700 per student per annum.

Moreover, students can also reap the tax benefits in case they chose to work in India. According to one study, the rate of interest on student loans works out to be mere 0.34 percent if the tax incentives are also taken into account.

#### *The Issues at Stake*

However, it is not a simple open-and-shut case as perceived by the HRD Ministry. There are deeper issues involved, such as equity versus accessibility, autonomy versus accountability, the elitist nature of the institutions versus the demand for massification, conflict between the socialistic principles enshrined in the constitution versus the liberalization of the economy, etc.

There are more serious issues at stake—such as, whether the judicial intervention into the realm of higher education is desirable. Can judicial intervention result in rational and better solutions than compromises made or half-hearted measures adopted by the legislatures and the executive due to political constraints? Can judicial activism be a substitute for executive efficiency or legislative farsightedness? Can it be seen as an anathema to the representative form of government?

A number of further questions arise: if the policymaking authority is vested with the executive and the legislature, why should the judiciary be allowed to interfere at all? How can the judges succeed in resolving some of the crucial problems when the majoritarian institutions have failed? Why should the judiciary be allowed to decide the fate of a nation in a democratic framework when it is neither elected nor publicly accountable?

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#### *Legalization Versus Judicialization*

There is a lot of difference between legalization and judicialization. The issue pending before the Supreme Court is not just to determine the legality of the fee cut order but also to assess the appropriateness of the government action. Even in earlier cases, the Indian Supreme Court played a proactive role virtually amounting to “judicialization of higher education.” For instance, in *Unni Krishnan vs. State of Andhra Pradesh*, it not only banned a capitation fee at private colleges but also laid the groundwork for self-financing colleges by allowing a certain number of paid seats.

Similarly, in *T.M.A. Pai vs. State of Karnataka* (October 2002), the Supreme Court not only gave a green light to financially independent private and minority institutions to establish higher education colleges of their choice but also stipulated against “profiteering” by private higher education institutions. While deciding this case, the Supreme Court referred to 33 earlier cases in which it had intervened.

Even in the United States the judicialization of education occurred in *Brown vs. Board of Education*, where the “minority right” prevailed over the “majority will.” Whereas in the United States, the judicial intervention in higher education remains an exception, unfortunately, it is becoming a rule in India. It would be wise on the part of the Supreme Court to exercise self-restraint and maintain the status quo—as has been hinted at by the new HRD minister under the Congress-led coalition.