A Comparative China/India Study on Legal System of Foreign Co-operation in School Management

Ye-Zhu ZHAO¹,a,*

¹Institute of Education, Xiamen University, China

Collaborative Innovation Center for Higher Education Quality Construction. China

*yzzhao@xmu.edu.cn

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Abstract. In entering the 21st century, both China and India experienced great changes in education internationalization in the context of globalization of economy. Thus, a rapid rising in the foreign co-operation in running school has been taken place in both countries. Both countries have put up the regulations or laws to steering the foreign co-operation in running schools. Using text analysis method, this paper has compared the legal system concerning the foreign co-operation in running school in both countries in order to identify the difference and the similarity. The results show by comparison that, India is more focused on the control of threshold of foreign education provider, especially in the quality of the foreign education provider, running of fund, quality of foreign teacher. Meanwhile, China is more focused on the process of the running school and there are no stipulated provisions toward the quality of foreign education provider, running of fund, and the demand toward the level of foreign teacher is obvious lower.

Introduction

In entering the new century, great development in higher education has been taken place in both countries: in 2012, the enrollments in higher education reached at 21 million and the gross ratio of enrollments came to 18% in India. While the enrollments in China reached at 33 million and the GRE arrived at 30% in the same year. Meanwhile, both countries have been facing the same situation in internationalization of education in the process of economic reform. They have the same will to promote the development of national higher education through the introduction of high-quality of foreign educational resources. Thus, this article will analyze the similarities and differences of the laws steering the foreigners running schools, through comparison regulations and items regarding the steering foreigners in both countries. The aim of this article is to draw lessons from the comparison in order to improve and modify the Chinese-foreign cooperation in running schools for China.

There are some differences in education system between China and India, these cause some differences in steering the foreign running schools. But the development of foreign running school in both countries has experienced the similarly course, such as both are started from scratch, and from less to more. In particular, the steering regulations also experienced a course from embedding or applying to other laws to the specialized laws and regulations.
The Laws and Regulations of Foreign Running School System in India

The Embedded or Applicable Laws and Regulations

The foreign part running institutions especially those who have authority to award degree diplomas shall abide by ACT (1956, by UGC)[1]. In principle, all the universities established on the land of India should conform to the basic principles provisioned by the ACT.

From the perspective of source of funds, the foreign institutions belongs to the special type of private university, thus these institutions shall be applied the UGC (The Establishment of and Maintenance of Standards in Private Universities) Regulations, 2003[2]. In order to regulate private universities, maintain the quality level of teaching, research, examination and social services, in order to protect the interest of the students, focus on the quality of education, to prevent the commercial behavior of higher education, India promulgated the Regulation in 2003 which includes: Application and Commencement of Private University, Definitions, Establishment and Recognition of Private Universities, etc.

The Special Laws and Regulations

The Regulations relating to the entry and operation of foreign universities/institution imparting technical education in India (hereinafter as the regulations). In April 2003, the AICTE issued the regulations and revised in May 2005. The regulation composed of five parts, including fitness, definition, registration procedures, conditions, punishment and cancellation condition. This is the earliest and specific regulation in India prescribed the requirements and conditions for foreign university to enter in India and run universities (institution). Since it is only for technical education, it has certain limitations on the scope.

The Foreign Education Institutions (Regulation of Entry and Operations) Bill, 2010[3](hereinafter as “The Bill”). In view of widespread penetration of foreign educational institution and the commercial issue is getting more and more outstanding. India cabinet passed the Act in May 2010, if it approved by the Parliament, namely the level of the Act will rise and become the law. The Regulation composed of four chapters and 17 articles including preface, foreign education institutions, punishment and other. It prescribed rigorously the requirements of entry and operation of foreign educational institutions seeking to impart higher education in India. Higher education includes technical and medical education and the award of degrees and diplomas. It was an improvement and supplement to the laws and regulations previous passed by the UGC and the AICTE. Every foreign educational institution intending to operate in India has to be notified as a foreign educational provider by the central government according to stipulated procedures. Once the Bill be passed by the Parliament, all the foreign educational institutions and providers who aim to the conferring the degree diploma in India should obey the Bill.

Foreign-related Laws and Regulations in Running School System in China

The Embedded or Applicable Laws and Regulations

State encourages foreign exchange and cooperation in education. In conducting foreign exchange and co-operation in education, the principles of independence, equality, mutual benefit and mutual respect shall be adhered to, the law of the PRC shall not be violated, and the State sovereignty and security and public interests shall not be harmed.”[4]. But it also states that “Measures governing the establishment of schools within the territory of China by organizations or individuals outside China or through their cooperation with organizations or individuals inside China shall be formulated by the State Council”[5]. Law of the PRC on Promotion of Privately-run Schools states that “Measures for schools established and run cooperatively by overseas organizations or individuals within the territory of the PRC shall be formulated by the State Council”[6]. That is to say, all the foreign-related running schools shall be formulated by the State Council.

The Special Laws and Regulations

In December of 2001, China joined WTO. In the Protocol of WTO, China has promised to allow foreign education services to enter into China in the form of commercial presence. But this kind of commercial presence will give priority to the organizations with contractual cooperative partner in China. The foreign partner can gain the majority ownership of the cooperative running institutions, but it may not be alone in running schools in China. In March 2003, the State Council promulgated The Regulations on the Chinese-foreign Cooperation in Running Schools[7] (hereinafter referred to as The Regulations). In June 2004, the Ministry of Education announced The Measures for the Implementation of the Regulation on Chinese-foreign Cooperation in Running Schools (hereinafter referred to as “The Measures”). It was implemented since July of 2004. In the same year from August to October, the Ministry of Education has been issued “Notice on Reviewing the Chinese-foreign Cooperatively-run Schools and Project” and a series of in detailed provisions on the implement of The Regulations. All those efforts marked the Chinese-foreign cooperatively-run schools related regulations have entered into a healthy development period, and will promote the activities of the Chinese-foreign cooperation in running schools in a robust way of its development. The Regulations are composed of General Provisions, Establishment, Organization and Administration, Education and Teaching, Assets and Financial Matters, Alteration and Termination, Legal Liability, Supplementary Provisions, all together 8 chapters and 64 articles. Meanwhile, The Measures are composed of General Provisions, Establishment, Organization and Activities, Chinese-foreign cooperatively-run schools Program Examination and Approval, Management and Supervision, Supplementary Provisions, all together 6 chapters and 63 articles. Those provisions regulates all the affairs in details concerning the Chinese-foreign cooperation in running schools, including the purpose and position, establishment, every steps of the whole process of the procedures of Chinese-foreign cooperative in running schools. It should be mentioned that The Regulations and The Measures both have played an important role in provoking the development of Sino-foreign cooperation in running schools in China, they have some active effectiveness in enriching Chinese education provision, meeting the diversity needs to people, innovating the educational mechanism, promoting the teaching reform, and also in widening the way to cultivate talents, promoting the construction of subjects, training talents for economical construction and social development.
The Differences of the Regulations in Two Countries

The Differences in the Form of Foreign-related Running Schools

The differences system in the states and political government in both countries lead to the differences in the form of foreign-related in running school. In India, foreign-related running school is entirely opened. The way of foreign education provision is independent, or cooperatively with any institutions in India in the form of cooperation, partnership and bilateral agreement. In other words, foreign fund can invest post-secondary school education in India directly. Or any foreign higher education institution may establish tertiary education institution directly or cooperatively with Indian’s institution partner in India. But in China, foreign-related running schools can only be half-opened, say, foreign educational institution or individual may only establish institution cooperatively with Chinese educational institution in China. The Regulations states, “No foreign educational institutional institution, other organization or individual may establish unilaterally schools or other educational institutions providing education mainly to Chinese citizens within the territory of China”[8].

The Differences in the Emphasis in Foreign-related Running School in Both Countries

Due to the difference in the form of foreign-related running schools, the foreign-related running school is entirely opened type in India and half-opened type in China. In India, the focus of governance of related legal system is the quality or entering requirement of foreign institution who want to open institute in India, while in China the focus of governance is the process of the operation of the cooperation between the foreign and Chinese institutions. Thus, the name of the regulation concerning the foreign-related running school is called The Foreign Education Institutions (Regulation of Entry and Operations) Bill in India. While in China the name of that is called The Regulations on the Chinese-foreign Cooperation in Running Schools. Apparently, the focus is different in the emphasis in foreign-related running school in both countries.

The Difference of the Scope and the Degree of Regulations Concerning the Foreign Related Cooperation in Running School in Both Countries

These can be shown in the definition of the foreign education institutions, the operation on fund, the provisions on the curriculum and the faculties, the cancellation and punishment, etc. In India, the Bill regulated very strict while in China the Regulations and the Measures regulated in comparatively loose way. Specifically see as follows:

The Definition of Foreign Education Institutions. In India, requirements of the foreign educational institutions were clearly stated in the Bill, especially the limitation of year of the institution running the school. In the Bill, it states, “foreign educational institution” means (i) an institution established or incorporated outside India which has been offering educational services for at least twenty years in the country in which it had been established or incorporated; (i)has been established or incorporated and has been offering educational services for at least twenty years under a law of the country in which such institution is established or incorporated and registered along with the status of its accreditation, wherever applicable, from the accrediting agency of that country”[9]. In China, on the other hand, the definition of foreign institutes is comparatively looser in both the Regulation and the Method. In article 3 in Method, “The State encourages Chinese-foreign cooperation in running schools to which high-quality
foreign educational resources are introduced”. Though “high-quality” has qualitative description but no quantitative specific requirement.

**The Regulation to the Operation of the Fund.** The regulations of the foreign fund operation in Indian Bill stated that, first, “has adequate financial and other resources to conduct the course or courses of study in India”. Second, “an undertaking to maintain a corpus fund of not less than fifty crore repees or of such sum as may be notified”[10]. Third, “a foreign education provider shall, out of the income received from the corps fund, utilise not more than seventy-five per cent. Of such income for the purpose of development of its institution in India and the remaining of such unutilized income shall be deposited into the corpus fund[11]. Fourth, “No part of the surplus in revenue generated in India by such Foreign Education Provider, after meeting all expenditure in regard to its operations in India, shall be invested for any purpose other than for the growth and development of the educational institutions established by it in India”[12]. In China, the description of the fund operation in the Regulation is as follows: “a certificate verifying that not less than 15 percent of initial funds provided by the Chinese and foreign cooperators is already invested”[13]. And in Article 39, it states, “All fees collected by Chinese-foreign cooperatively-run schools shall be mainly used for educational and teaching activities and for improving the conditions of school operation.”[14] Apparently, those descriptions are looser than in India.

**The Regulations to Curriculum and Teaching.** Bill states, “A foreign education provider shall ensure that the course or programme of study offered and imparted by it in India is, in conformity with the standards laid down by the statutory authority, and is of quality comparable, as to the curriculum, methods of imparting education and the faculty employed or engaged to impart education, to those offered by it to students enrolled in its main campus in the country in which such institution is established or incorporated”[15]. In addition, Bill regulated that[16], foreign education provider should publish before expiry of sixty days prior to the date of the commencement of admission, all the details on the study curriculum and program, including, first, each component of the fee, deposits and other charges payable by students admitted to such institution and the other terms and conditions of such payment. Second, details of the teaching faculty shall be published, including therein the educational qualifications and teaching experience of every member of its teaching faculty and also indicating therein whether such members are on regular basis or as visiting member. Third, information in regard to physical and academic infrastructure and other facilities including hostel, library and hospital or industry wherein the practical training to be imparted to the students and in particular the facilities accessible by students on being admitted to the institution. Fourth, the minimum pay and other emoluments payable for each category of teachers and other employees should be published. Fifth, all relevant instructions in regard to maintaining the discipline by students within or outside the campus of the institution should be fit to the relative regulation of the UGC and also should be published. Obviously, the purpose is to mobilize social forces to supervise the situation of foreign running schools via open and transparent the requirements to the public. In the “bylaw” of Chinese Regulation, it states, “Foreign teachers and administrators employed by a Chinese-foreign cooperatively-run school shall possess a bachelor’s degree or above and related occupational certificates, and have at least two years of work experience in the field of education and teaching” and “The foreign cooperator shall send a certain number of teachers
from its own education institution to teach in the Chinese-foreign cooperatively-run school”[17].

**Dropped and Penalties.** In Bill, it states that “Any foreign education provider...its contents and its pricing or any provision of the UGC Act, 1956, shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and the forfeiture of the corpus fund”.[18]

In Chinese Regulations, Article 51 says that, “anyone, in violation of the provisions of these Regulations...in running the school by illegitimate means, the education administrative department or the labor administrative department shall ban it...or, jointly with the public security organ, order it to return the fees collected from the students, and concurrently impose a fine of not more than 100,000 yuan; in case the criminal law is violated, criminal liability shall be investigated in accordance with the provisions of the criminal law on the crime of swindle or other crimes.”[19] In article 52, it states, “where anyone, in violation of the provisions of these Regulations, the education administrative department or the labor administrative department shall, according to their respective functions and duties, order it to stop the enrollment of students and to return the fees collected from the students, and concurrently impose a fine of not more than 100,000 yuan; if the circumstances are serious and it refuse to stop the enrollment, the examination and approval authorities shall revoke the letter of approval for preparation for establishment.”[20]

In conclusion, in the context of the globalization, both countries are all very much focused on the establishing of the league system in steering the foreign-related school running. But since the forms of foreign-related school running in both countries are different, this lead to the significantly difference in the league steering system, whatever in the emphasis on scope or in degree of benchmark. In general, the law in India is much more restrict in steering to the foreign-related school running activities, especially the awaiting approved new Bill which is very restrict in the limitation of the indicator for institutes to enter into India, such as in quality control standard, capital operation, foreign teachers and so on. But in China, since the running school system is cooperatively, that means foreign educational provider should have a Chinese partner institute, the league steering system is more focused on the process of the foreign-related running school, thus there is no specified limitation whatever in entering requirement or in quality of the foreign institute, at the same time, there is no limitation on the foreign investment and operation, and the requirement to the foreign teacher is also quite lower.

As a result, in my opinion, it is imperative for Chinese government to revise the Regulation, set up the standard for the foreign provider to access the Chinese-foreign cooperation in running schools, ensure that the high quality educational resources are introduced, to make the laws and regulations concerning foreign system perfect.

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References


http://www.ugc.ac.in/oldpdf/regulations/establishment_maintenance.pdf


