

Regulating ed-tech firms: will the much-needed guard rails choke innovation?



Students access e-learning contents on mobile phones during a class at a library in Mumbai on October 17, 2020.

Synopsis

With multiple directives emerging over the last few weeks, ed-tech firms are jittery about their implications. Safeguarding students' interest is the top priority, but there are questions over the best approach in regulating the sector. While a strong legal framework is necessary for the benefit of all stakeholders, maintaining a conducive atmosphere for innovation is equally important.

"The roots of education are bitter, but the fruit is sweet." — Aristotle

In the age of ultra-fast home deliveries, education as a sector doesn't provide instant gratification since it takes more than a decade for students to reap the rewards of their efforts. But promises with shades of instant gratification started creeping into education after the pandemic helped **ed-tech** firms take the centre stage.

However, amid all the funding frenzy in the ed-tech universe several complaints were raised on social media about misleading advertisements to attract students,

mis-selling, and issues around financing and refund of fees for some of the courses that were cancelled.

While education in the country is governed by the Ministry of Human Resources Development, there are multiple bodies involved. For example, higher education is overseen by the University Grants Commission (**UGC**) and professional councils such as the All India Council for Technical Education (**AICTE**). Over the last few years, blistering growth was witnessed not in formal institutional education but in areas adjacent to it such as test preparation, after-school learning, and continued learning which are not covered under regulations.

Taking note of the situation, the government said earlier this month that ed-tech platforms will also be governed by regulations. “We are in talks with the Ministry of Law and MeitY (Ministry of Electronics and Information Technology) about how we can have a common policy on ed-tech platforms,” education minister Dharmendra Pradhan said on January 3 at an event organised by the AICTE.

Ed-tech regulations: a timeline of events



December 23, 2021

Advisory to citizens regarding dos and don'ts while choosing ed-techs



January 2022

Ed-tech self-regulation body formed



January 16, 2022

Notice on barring franchise arrangements in online programs in higher education

Source: ET Prime research

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The impact on ed-tech firms

Earlier this month, the UGC and AICTE barred higher education institutions (HEI)

from offering online programmes under franchise arrangements.

“Such arrangements are not permissible, and action will be taken on defaulting ed-tech companies as well as HEIs under applicable laws/rules/regulations,” the statutory body set up by the Department of Higher Education and the national-level council for technical education said in a joint notice on January 16, adding that HEIs should be responsible for the running of such programmes.

Earlier, the UGC had allowed recognised HEIs and those entitled by it to offer online programmes. According to an article co-authored by Aarushi Jain, leader - education practices, Nishith Desai Associates, “What is not permitted is an arrangement where the HEI has its hands-off — wherein the HEI merely licenses its brand and/or curriculum to a private entity and the private entity then enrolls students, tutors them, and becomes primarily responsible for offering the programme. It is only the name of the HEI which is being used, while the essential functions of the HEI are being performed by the private entity.”

It adds that this would in effect amount to the private entity offering the programmes in place of the HEI when the private entity is not authorised under the law to confer degrees. Hence, such an arrangement would indeed amount to franchising and is prohibited.

The article adds UGC regulations make it clear that an HEI may use a learning platform for offering its online programmes. “This also makes logical sense as the HEI’s core function is academics and not development or operation of an online learning platform.”

According to them, all arrangements involving a learning platform should not be categorised as franchising arrangements in a blanket fashion as it would contradict what is expressly permitted under the UGC regulations.

Ed-techs and self-regulation

Meanwhile, 15 ed-tech firms, including some of the most-funded ones, joined hands under the aegis of Internet and Mobile Association of India (IAMAI) to form the India Ed-tech Consortium (IEC). They wrote to the government stating that the consortium will agree on a common code of conduct as part of self-regulation.

"The idea that a self-regulatory organisation will solve what is primarily a governance and consumer-protection issue is patently ridiculous. The OTT industry went down this path and was shot down. We need

Given how critical digital education is in the post-pandemic world, the issues raised by the government and the responses of the 15 ed-tech players highlight the steps that are needed. But the question is that whether it will be enough?

Mavank Kumar co-founder

regulations, and maybe a regulator like the one in China, perhaps under the Consumer Protection Act and clear directions from the Advertising Standards Council of India."

— Mathew Chacko, partner, Spice Route Legal

Mayank Kumar, co-founder and managing director of upGrad, says the two-tier grievance-redressal mechanism proposed by the IEC will uphold the interests and rights of the consumers. "We believe this code of conduct is sufficient to improve the growing ed-tech ecosystem

for learners as they pursue online learning opportunities and quality education services," he tells ET Prime.

According to Vivek Sunder, CEO, Cuemath, the government is thinking about these regulations due to two reasons. First, the pandemic has made the ed-tech industry grow deep and wide. Second, while consumers overall have strongly adopted this new way of getting their kids educated, they have expressed valid concerns over some consumer-unfriendly practices that have been observed. "We believe that some of these concerns are global in nature, and it is a good thing for the standards in India to be raised to the level that global consumers want," he says.

Sundar adds that it will be vital for ed-tech companies seeking longevity to stay focused on the quality of education and empower individual learners.

Online education, according to Vedantu CEO and co-founder Vamsi Krishna, will help in extending the scope of Right to Education to the remotest parts of the country. "The government advisory on the ed-tech policy is intended to provide more transparency for students and parents so that they can take informed decisions. Right information and transparency during decision-making are critical. In a country like India, only through technology one can enable access to quality education," he says.

Indeed, ed-tech firms cannot achieve long-term success if they blindly chase revenue without caring about what's right for the students. "In ed-tech, Saraswati should precede Lakshmi. Any regulation should incentivise innovation in the industry while protecting parents and students against malpractices," says Sumeet Mehta, co-founder and CEO, LEAD School.

When companies set out for disruption and scale up rapidly, not everything hits the target, observes Akshay Chaturvedi, founder and CEO of study abroad platform Leverage Edu. According to him, the government's policy can accelerate learning and evolution with clearer structures. Noting that the Indian education system needs reach, Chaturvedi points out that the ed-tech firms have brought in a New Age curriculum. "We need the ed-techs for disruption. And we need the right people in the government to ensure every kid has a right to win," he adds.

Even as the regulations take more shape, for many ed-techs a large part of their business is driven by markets outside India. This trend is likely to continue.

According to Cuemath's Sunder, the online math tutoring business is a USD30 billion market globally. "For generations, students have struggled to overcome their fear of math while educators have struggled to implement proper methods to define and measure the success of math education. The demand to truly learn and master mathematical fundamentals is at an all-time high. Future jobs are dependent on the sound understanding of mathematics," he says.

Cuemath's key markets are across four regions — North America and Canada, the Middle East (especially Dubai and Qatar), Asia Pacific, Europe, and the UK. The ed-tech startup is entering new countries in Africa and South America as well.

But not everyone is of the view that self-regulation will be the solution for mis-selling, misleading advertisements, and other issues.

Mathew Chacko, partner, Spice Route Legal, says, "The idea that a self-regulatory organisation will solve what is primarily a governance and consumer-protection issue is patently ridiculous. The OTT industry went down this path and was shot down. We need regulations, and maybe a regulator like the one in China, perhaps under the Consumer Protection Act and clear directions from the Advertising Standards Council of India."

Lessons from high-growth industries

Jain of Nishith Desai Associates, who co-authored the article titled Decoding the UGC and AICTE's Notices on Franchising and Mis-advertising for Online Degree Programmes, explains that amid the exponential growth in ed-tech, every platform cannot be expected to have the same level or quality and compliance. Hence, she says, the advisory by the government has been issued in public interest, for public awareness, and greater good.

Every emerging industry does not need a new law to regulate it. Therefore, it is important to explore if the existing laws are sufficient for new industries. For instance, OTT or new media is not governed by the same rules as broadcasting or cinema. However, the provisions relating to unlawful content under the Indian Penal Code and the Information Technology Act are applicable to all content irrespective of the medium of transmission.

When the move to regulate OTT started, the industry was focused on self-regulation. In fact, the recently notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, also lay emphasis on self-regulation mechanisms by content publishers. The rules also link back to existing laws instead of introducing new provisions to deal with content-related issues.

Online gaming, Jain explains, is another industry which is guided heavily by self-regulation and high compliance standards. There are a few industry bodies and

gaming companies are members of such bodies. The Skill Games Charter introduced by such self-regulatory bodies (such as All India Gaming Federation, The Online Rummy Federation, and the Federation of Indian Fantasy Sports) introduces measures for transparency and disclosures, financial integrity, consumer protection, and responsible gaming among other standards. Recently, the Rajasthan High Court took note of the charter of Federation of Indian Fantasy Sports.

The bottom line

Self-regulation, according to Jain, does not mean there will never be laws or that grievances cannot be taken to court. Self-regulatory bodies can help in boosting consumer confidence and may be better than new laws or regulation.

Meanwhile, since multiple directives have emerged over the last few weeks from the government and UGC, ed-tech firms and investors are jittery about their real implications. Indeed, there's a need to call out defaulters, take strict action, and safeguard students' interest. And self-regulation is an important step in that direction.

At the same time, there should also be a right balance between the guard rails for the sector and the atmosphere for innovation.

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