



Monograph: July 2011

The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010

1. The background - need for such a bill
2. Bill objectives
3. Bill summary and analysis
 - i. Transparency in Fee Structure
 - ii. Fair Admission Process
 - iii. Mandatory publishing of prospectus
 - iv. Prohibition on capitation fee or donations
 - v. Prohibition on withholding documents or fees
 - vi. Prohibition of misleading or false advertising
 - vii. Penalty for non-compliance
4. Conclusion

About Eduvisors:

Eduvisors is a business research and consulting firm focused on Education sector in India.

For more information, please contact:

Vijay Shukla

T: +91 (124) 4119162, 4229162 Extn. 108

M: +91 98103 30659

E: vijay@eduvisors.org

To unsubscribe, please write to unsubscribe@eduvisors.org

Disclaimer:

This Monograph has been prepared for clients and Firm personnel only. It provides general information and guidance as on date of preparation and does not express views or expert opinions of Eduvisors. The Monograph is meant for general guidance and no responsibility for loss arising to any person acting or refraining from acting as a result of any material contained in this Monograph will be accepted by Eduvisors. It is recommended that professional advice be sought based on the specific facts and circumstances. This monograph does not substitute the need to refer to the original pronouncements and is based on publicly available information.

The Background

What is the need for such a bill?

With the surge in the number of higher education institutions and fierce competition to enroll and retain students, certain unfair practices have come into existence. Traditionally, the focus of the government has been on recognition and affiliation of higher education institutions but since the number of cases of unfair practices has been increasing at an alarming rate, the government of India has documented a bill called **The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and Universities Bill, 2010**. Once the Bill is passed by the Parliament, it is expected to address some of the key challenges faced by students and other stakeholders due to unfair practices.

Major unfair practices identified by the Bill:

1. Providing admissions by taking money, over and above the scheduled fee (e.g. capitation fee) or taking any favour in kind
2. Making false claims through misleading or false advertising
3. Not being transparent in communicating the facts about the institute and the fee structure
4. Indulging in half-truths with respect to information that affect the decision making of applicants or students, and
5. Using undue pressure tactics like withholding documents such as degree or diploma

Key factors contributing to these unfair practices:

- Desperation of parents for medical or technical education
- Poor awareness of student rights
- Absence of well defined quality standards
- Lack of a legal framework to check the veracity of claims made via advertising

Bill Focus Area (1/7) - Transparency in Fee Structure

Problem addressed:

It is a common practice with educational institutions to not share the complete and comprehensive fee structure.

There are three key problems:

- 1. The fee structure tends to become too complex and ambiguous with various parameters like charges per semester; per quarter; one time refundable and non-refundable fee.*
- 2. The educational institution in certain cases does not provide receipt for certain types of fee and therefore it goes unaccounted.*
- 3. Many institutions take unreasonable amount of money for admission related activities including selling of prospectus and charging unusually high fee for admission.*

Solution offered:

1. It will be mandatory for educational institutions to explicitly declare all fee components and charges in the prospectus. It will be prohibited to take any fee or charges not mentioned in the prospectus.
2. It will be mandatory for educational institutions to provide receipts against any money taken from the students.
3. Only a reasonable admission fee can be charged for the test.

Eduvisors Analysis:

1. Explicitly declaring all fee and charges upfront in the prospectus will check a large number of erring educational institutions. However, it should also be ensured that it covers 'optional' fee components as well.
2. Providing receipts too will help improve transparency in the fee structure. However, the student community must learn and practice to differentiate between a *kachha** receipt and a proper receipt.
3. Though the intent of the clause on 'reasonable fee' seems right – to not allow educational institutions charge unreasonable fee for admission test, but we at Eduvisors believe that this is weak in its implement-ability. 'Reasonable admission fee' is subjective and difficult to implement. E.g. the cost of conducting admissions can vary from Rs 200 to Rs 2,000, depending upon the number of students that apply for the admission test. It is unreasonable to expect from the educational institutions, specially those that have recently started and cannot predict the number of applicants accurately, to not have any buffer in financial planning for the admission test. We anticipate a lot of debate against this clause and believe that the government will find it difficult to enforce.

** Kachha receipts are tentative receipts – they are typically given arising out of a token gesture of giving a written document as a proof of payment received and they have no legal or financial credibility*

Bill Focus Area (2/7) – Fair Admission Process

Problem addressed:

The admissions process at the educational institutions has been fraught with complaints of being opaque, biased and arbitrary. There have been cases in the top educational institutes of being partial to certain candidates and also being corrupt towards allowing admissions to unqualified candidates. For the government to restore public faith in educational institutions, this is a critical area that the Bill tries to address.

Solution offered:

1. Admissions will be prohibited without admission tests and will be as per the details published in the prospectus.
2. In case, any educational institution does not have admission test(s), it will be required to explicitly mention the admission criteria on its website. Further, the admission criteria must be fair, impartial and unbiased.
3. The process of selection of candidates must be available on the website of the educational institution.

Eduvisors Analysis:

1. Explicitly declaring all fees and charges upfront is a welcome step in bringing transparency in the admissions process.
2. This is also a step towards bringing free and fair play. However, the implementation will be a challenge. A large percentage of higher educational institutions either do not have a website or have an outdated static website. This clause will force them to get them establish their web presence.
3. As mentioned above, this will be tough for many higher educational institutions to implement. Many institutions that have a website do write about the admissions process which is typically followed but do not clearly mention the details of all the seats across all programs.

Bill Focus Area (3/7) - *Mandatory Publishing of Prospectus*

Problem addressed:

The problems addressed are largely related to non-availability of critical and relevant information. If such information is not available or is available in a limited manner or is available at a high cost, those seeking admissions are unable to take well-informed decisions.

Solution offered:

1. Publication of prospectus including the pricing is to be made mandatory. Even the details of the amount of the fee to be returned if a student leaves the course midway must be mentioned in the prospectus.
2. The prospectus must be published at least 60 days before the admissions process begins.
3. The price of the prospectus must be no more than reasonable price and no profit to be made in the sale of prospectus.

Eduvisors Analysis:

1. Explicitly declaring all fees and charges upfront in the prospectus will address the issue. However, the key challenge is to make the prospectus 'accessible'. Mandatory publishing of prospectus in hard copies increases program level cost for the educational institutions, specially for courses or programs which have small student intake. A better way could be to offer all information online.
2. Publishing the prospectus 60 days prior to the start of admissions seems reasonable even after knowing the fact that the flexibility of last minute updates will be compromised.
3. This is an impractical clause from the point of implement-ability. The cost of prospectus is a function of the number of copies sold. Therefore, the price of prospectus is hard to conceive if historical data is unavailable. The only hope is that this clause will check the errant institutions that charge prohibitively high amounts with a clear motive of making unreasonable profits.

Bill Focus Area (4/7) - Prohibition of Capitation Fee or Donations

Problem addressed:

This addresses a big problem in Indian education sector – that of capitation fee or donation or in other words, 'buying' of seats in various educational institutions. Specifically, the Bill seeks to address a big malpractice of donations and capitation fee to get or give admissions in educational institutions.

Solution offered:

1. Prohibition on educational institutions to demand, charge or accept capitation fee or donation for admission in a course or program.
2. Prohibition on individuals to offer or pay capitation fee or donation for admission in a course or program.

Eduvisors Analysis:

1. Complete prohibition on educational institutions on both donation and capitation fee for admissions is the only workable solution. Implementation challenges shall be discussed later in this document in the last section of Monetary Penalty.
2. Considering the person's offering or paying donation or capitation fee as liable for the punishment is a progressive step.

Bill Focus Area (5/7) - Prohibition on Withholding Documents/Fees

Problem addressed:

There are two significant and common problems posed by certain educational institutions to the student community that wishes to withdraw their admissions mid-way through the course or program

1. Not returning all the documents that belong to the student and therefore indirectly and unfairly influencing the decision of the student to leave the educational institution.
2. Retaining the complete tuition fee paid in advance, even if the student leaves mid-way.

Solution Offered:

1. Prohibition on withholding student's original certificate or diploma or degree or other important documents to put unfair and undue pressure on the student to reconsider her decision of leaving the educational institution mid-way
2. Prohibition on not returning the fee that is fair to the student if the student leaves the course or the program mid-way. .

Eduvisors Analysis:

1. This is a positive step and will discourage many educational institutions from a practice that is prevalent and has become commonly acceptable.
2. This will bring fairness in the fee structure, specially as the educational institutions will have to write in the prospectus about the principle or method of returning unused fee in case any student leaves the course or program mid-way.

Bill Focus Area (6/7) - Prohibition on Misleading or False Advertising

Problem addressed:

In the recent years, advertisement spend in the education sector has surpassed advertisement spend in certain traditional sectors such as pharmaceutical, automobile and even new age sectors such as IT and Telecom. With growing advertisement spends and the desperation to get students, many educational institutions have gone overboard in making claims that are false, misleading and untrue.

Solution Offered:

The Bill seeks a prohibition of advertisements with false claim of educational institutions being recognized by the appropriate statutory body, specially on critical aspects like infrastructure, academic facilities, faculty, academic and research performance.

Eduvisors Analysis:

The crack-down on misleading and false advertisements in the education sector was long awaited. Other sectors such as Pharmaceutical and Telecommunications have enacted laws via Cable TV Network Act and Drugs & Cosmetics Act respectively. However, even though the Bill is a good starting point, it will not be enough on its own. The government will need to get independent bodies like Advertising Standards Council of India involved to improve the ethical standards of advertisements in education sector. Additionally, the awareness amongst various stakeholders is essential for the practice of false or misleading advertisements to be abolished.

Bill Focus Area (7/7) – Penalty for Non-compliance

Problem addressed:

Educational institutions have been flouting rules for many years as benefits often outweigh penalties imposed by the law. Minuscule penalties, when considered together with a very low probability of getting caught increase the propensity to break laws and education as a sector is no exception. In summary, there are three problems:

1. Insignificant penalties when compared to benefits
2. Low probability of getting caught
3. Corrupt law enforcing officials

Solution Offered:

1. The monetary penalty of up to Rs 50 lakhs is proposed for not following the law, specially on the capitation fee and advertisements related clauses.
2. Imprisonment of up to 3 years for anyone who is responsible for not following the law.
3. In certain cases, both of the abovementioned penalties imposed.

Eduvisors Analysis:

1. The law and policy makers understand well that the key adherence is a function of severity of the punishment and the probability of getting caught and getting prosecuted.
2. The severity of punishment for non-compliance has certainly gone up. When compared with penalties mentioned in a few other recent Acts, penalty of up to Rs 50 lakhs drives the point home that the government is very serious about non-compliance.
3. Low probability for the non-compliant getting caught is something that is an area of concern. However, we at Eduvisors would like to assume that the students and public in general will be more aware of their rights than what they have been in the past and will report non-compliance to the statutory authorities proactively.

Conclusion

- The intent of the proposed Bill is noble and it is much needed for the society in general. The Bill tries to address and reign in, inter alia, the main evil practices of capitation fee or donation; false or misleading advertisements; lack of transparency in admissions; and unclear fee structures.
- The Bill proposes to not cover the educational institutions established and administered by minorities. It would have been better to just exempt them from admissions process rather than exempting them from the Bill altogether.
- Lastly, for the Bill to achieve its goals and in line with education reforms, various education departments will need to overhaul their own functioning improve transparency and efficiency.
- It has been over 1 year that the Bill has been pending in the Parliament. We believe that it will be passed in 2011. It is said that *'well begun is half done'* and also as the old saying goes, *'the key to success lies in execution'*.



Monograph: July 2011

Thank You

For more information, please contact:

Vijay Shukla

T: +91 (124) 4119162, 4229162 Extn. 108

M: +91 98103 30659

E: vijay@eduvisors.org

Gurgaon

A-25/12
DLF Phase 1
Gurgaon – 122 002
India

Delhi

1400A
14th Floor, Devika Tower
6 - Nehru Place
New Delhi – 110 019
India

Bangalore

1084, Sobha Daffodil,
Somasundarpalya, Sec -2,
HSR Layout, Bangalore 560 102
India

Hyderabad

Lotus 107, Serene County
Gachibowli
Hyderabad – 500 032
India