

UNCOVERING THE GLOOMY SIDE OF EDUCATIONAL TECHNOLOGY: CONSUMER PROTECTION FOR THE DIGITAL AGE

DESVENDAR O LADO SOMBRIO DA TECNOLOGIA EDUCATIVA: A PROTEÇÃO DOS CONSUMIDORES NA ERA DIGITAL

MR. SHASHIKANT SAURAV

Assistant Professor of Law, Symbiosis Law School Hyderabad Symbiosis International Deemed University Pune , India
shashikant.saurav@slsh.edu.in

MS. TASNIM JAHAN

Assistant Professor of Law School of Law, Ramaiah University of Applied Sciences, Bangalore, India
tasnimamu95@gmail.com

MS. ASHIKA PRADHAN

Assistant Professor of Law, Symbiosis Law School Hyderabad Symbiosis International Deemed University Pune , India
ashika.pradhan@slsh.edu.in

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Corresponding author:

kdv.prasad@sibmhyd.edu.in



service' will be analyzed; secondly, it will discuss the change of ingredients in the accepted traditional view of Education and Educational Institution and last but not the least, it will be justifying the central theme by encapsulating suggestions and recommendations.

Keywords: Educational Institution. Virtual platforms. Consumer Protection. Deficient Service. E-Commerce.

Resumo: A educação é um processo de aquisição de competências para a vida e não pode ser indispensável. Os autores da Constituição esforçaram-se por tornar a educação acessível a todos. Foram acrescentadas algumas disposições com o objetivo de as pôr em prática. Desde a promulgação da

Abstract: Education is a life-skill process and the same can't be indispensable with. The makers of constitution strived hard to make education accessible to all. Certain provisions were added with the view of implementing the same. Since enactment of the constitution of India, we have come a long way in establishing compulsory education for certain age-groups and easy accessibility of education as well as the mode of such education. At the onset of Covid-19 pandemic, Education was one of the most affected institutions all over the world. The mode of imparting education was wholly shifted to virtual platform which was in existence before but was accessible to much less number of people given the high cost, lack of technology-driven products and other infrastructural reasons. But shifting education mandatorily on virtual platforms did not make the necessary infrastructure easily available to all the students out there and instead paved the way for a new market- Education Technology. The paper would be dealing with the major concerns that the education sector faces in day-to-day life from the student's point of view and will further explore the shift in the mode of education from traditional to the modern virtual platform in order to understand the scope and remedy under the Consumer Protection Act, 2019. The paper will be divided into two parts, firstly with the help of the decided case laws on the status of 'Education as a

Constituição da Índia, percorremos um longo caminho para estabelecer o ensino obrigatório para determinados grupos etários e facilitar o acesso ao ensino, bem como o modo de ensino. No início da pandemia de Covid-19, a educação foi uma das instituições mais afectadas em todo o mundo. O modo de ministrar o ensino foi totalmente transferido para a plataforma virtual, que existia anteriormente, mas era acessível a um número muito menor de pessoas devido ao elevado custo, à falta de produtos tecnológicos e a outras razões infra-estruturais. No entanto, a transferência obrigatória do ensino para plataformas virtuais não disponibilizou facilmente as infra-estruturas necessárias a todos os estudantes e, em vez disso, abriu caminho a um novo mercado - a tecnologia da educação. O documento abordará as principais preocupações que o sector da educação enfrenta no dia a dia do ponto de vista do estudante e explorará ainda mais a mudança no modo de ensino da plataforma tradicional para a plataforma virtual moderna, a fim de compreender o âmbito e a solução ao abrigo da Lei de Proteção do Consumidor de 2019. O documento será dividido em duas partes: em primeiro lugar, será analisada a jurisprudência sobre o estatuto da "educação como serviço"; em segundo lugar, será discutida a mudança de ingredientes na visão tradicional aceite da educação e da instituição educativa e, por último, mas não menos importante, será justificado o tema central através de sugestões e recomendações.

Palavras-chave: Instituição de ensino. Plataformas virtuais. Proteção do consumidor. Serviço deficiente. Comercio eletrônico.

1. Introduction

The Constitution of India recognizes education as a fundamental right and makes it an obligation of the State to provide free and compulsory education to all children between the ages of 6 and 14. (The Constitution of India, 1950) Education is considered to be an important tool for the overall development of a person. It enables people to gain knowledge, skills, and values that can be used in their lives and for the betterment of society. (WOBBEKIND, 2012, p. 90) It helps in the all-round development of an individual, making them physically, mentally, and emotionally stronger. It also helps to develop social values and encourages people to be tolerant and respectful of others.

Education is essential for the economic development of a nation as it enhances the productivity of its citizens as it helps in reducing poverty and promoting gender equality as it equips people with the skills and knowledge they need to find better employment opportunities. (ZULKIFLI, 2013, p. 141) Education is also important for the political and social development of a nation as it helps to create an informed and enlightened citizenry and is essential in the present era as it equips individuals with the knowledge, skills and competencies necessary to succeed in their chosen profession. (SINGH, 2015, p. 119) It also facilitates the development of critical thinking skills and analytical abilities, enabling individuals to make informed decisions and

develop innovative solutions to complex problems and also helps to bridge the gap between different social classes and to promote social mobility.(Atlantic Council Africa Centre Report)

Ultimately, education is a vital investment in the future of society and should be pursued by everyone. The COVID-19 pandemic has had a drastic impact on the education sector in India. Schools, colleges, and universities have been shut down and online classes have been adopted as an alternative. The pandemic has put a strain on India's already fragile education system. With limited access to technology and resources, many students are struggling to access online classes. (AHMAD, 2021, p. 468) Additionally, the lack of physical interaction between students and teachers has made it difficult for students to learn and understand new concepts. (GUPTA, et al, 2021, p. 2997)

The pandemic has also had a significant impact on the mental health of students. With the disruption in the school year and uncertain future, many students are facing depression, anxiety, and stress. (TIWARY, 2020, p. 1121) Finally, the economic impact of the pandemic is also taking its toll on the education sector in India. With the lockdown, many parents are losing their jobs, making it difficult for them to pay the fees of their children. This has resulted in a drop in enrolment rates in schools. All in all, the COVID-19 pandemic has had a major impact on the education sector in India. It will take some time for the sector to recover fully, and it is important that the government takes necessary actions to protect the interests of students. (DAVE, et al., 2020, p.7)

2. Results and Discussion

The traditional mode of education to virtual platforms and applications

The world has changed dramatically in the past decade, and education is no exception. As technology and the internet become more commonplace, the traditional school and college system is beginning to be replaced by virtual learning platforms. Virtual learning is a form of education that takes place entirely online, allowing students to access their course materials and assignments from any device with an internet connection.(RONALD, 2020, p. 437)

There are numerous benefits to this shift, including greater access to education, flexible scheduling, and lower costs. One of the primary benefits of virtual learning is its ability to provide greater access to education. With virtual classes, students no longer have to worry about being geographically limited. They can access their course materials from anywhere, allowing them to learn from the comfort of their own home or on the go. This ease of access opens up

educational opportunities for those who may not have had them before. (BRESCIA, et al., 2004, p. 171) Moreover, virtual classes are more inclusive, as they can accommodate students with different learning styles and abilities. Another benefit of virtual learning is its flexible scheduling. Traditional schools and colleges usually have a set schedule, with classes starting at specific times and lasting for a set number of hours.

With virtual classes, however, students can arrange their own schedules, allowing them to take classes when it's convenient for them. This can be especially beneficial for working students or those with other commitments. (RONALD, 2020, p. 437) It won't be wrong to put that virtual learning is typically more cost effective than traditional education. With virtual classes, there are no physical materials to purchase, no transportation costs, and usually no tuition fees. This can help make education more affordable for those who may not have the means to access traditional schooling.

Although there are many benefits to the shift from traditional schools and colleges to virtual learning platforms, there are also some potential drawbacks. For example, virtual classes can be more difficult to monitor, as there is no physical presence to enforce rules or ensure that students are staying on track. (SHRIVASTAV, et al., 2021, p. 1) Virtual classes can be isolating, as students are not able to interact with their peers or teachers in person and classes may not be as engaging as traditional classes, as students may be more likely to become distracted or lose focus. (GARON, 2013, p.1165) Hence, the shift from traditional schools and colleges to virtual learning platforms has many benefits, including greater access to education, flexible scheduling, and lower costs. However, there are also some prominent drawbacks, such as the upcoming education technology markets where only motive is to earn more and more profits in the pretext of filling gaps of traditional educational institutions. (DEVI, et al, 2021, p. 1997)

Drawbacks of Ed-Tech Companies

Education technology applications such as Byjus, Unacademy, Udemy etc are creating a financial burden for some families due to their subscription-based pricing model. Many families may not have the means to pay for a subscription or may not be able to afford to pay for multiple subscriptions for multiple children. This can lead to a situation where some students are not able to access the same educational resources as their peers, creating a situation of inequality in terms of access to education. In some cases, this financial burden can be so great that some families are unable to afford the necessary educational resources for their children, resulting in an

educational disadvantage that could have long-term repercussions. There have been many instances where the employees or the sales person of these Education Technology applications approaches parents and students to buy their courses and influence them with misleading achievements. Above all they also pressurize them to buy the course and sometimes open their bank loan account if they refuse to buy such course because of lack of money. In one of such Instance reported by Economic times, a parent while narrating his ordeal explained how forcefully the Byjus sales person came into his house in the pretext of providing better education to his child and pitched Rs 36000/- tuition fee which was clearly not affordable by him and he refused for the same. He also explained how the sales person first asked few question to his child only to declare her academically weak and that how she needs this tuition course on an urgent basis. Finally he gave in for the trail period and but little did he knew that he had been signed up for the loan account as well and since then every month an amount of 4000 was deducted from his account pushing him into a financial mess.

This leads us to the point of question that *can education imparted through these Education Technology Companies can be considered Service* for the purpose of Consumer Protection Act 2019? *Can these Students or Parents be considered Consumers* as they are purchasing a service from the abovementioned companies?

To understand this, the authors have first explored the status of “Education as a Service” in India as per the various judgments.

Status of Education as Service in India

If education can be considered as a service is quite debatable of a topic since few years now and it rose to importance during the covid-19 pandemic when these educational technology companies came into the scenario. There are few judgments answering the question if education can be considered as service under the Consumer Protection Act or not. One of the first cases is Buddhist Mission Dental College & Hospital where it was observed that ‘educational institutions can be held to be providing a service.’ (Buddhist Mission Dental College v. Bhupesh Khurana, 2015) Post this case most of the judgments are against the same. In Buddhist *Mission Dental College & Hospital v. Bhupesh Khurana* (2015) case, the college during the promotions and call for admissions had specifically highlighted that it was established and managed by the Vishwa Buddha Parishad under Article 30 of the Constitution of India. Such promotion will definitely lead the applicant’s wrong way and one might believe that the college is affiliated with a

university and was recognised by the Government of India, whereas the college was not affiliated or recognised hence the court observed the decisions in favour of the applicant and held that educational institution is providing service of education. Next case where the judgment was in favour of considering the education as service was in the case of *Bangalore Water Supply and Sewerage Board v. A. Rajappa* (2009), where the National Commission held that imparting of education by educational institutions in return for fees amounts to service. The particular case was appealed to Supreme Court where the Supreme Court approved the observations by the commission. Another important case is *P.Sreenivasulu v. P.J. Alexander* (2015) , where the court observed the similar view as provided in abovementioned cases and held that such deficiency of service can be dealt by the Consumer Commissions.

Bihar School Examination Board v. Suresh Prasad Sinha (2009) is a leading case on this point where for the first time it was held that Education cannot be called as service. In this case the Bihar board announced same roll numbers for few of the students and in this confusion failed to declare the results of one of the student who then raised a complaint regarding the same seeking remedy under consumer protection act. The petitioner such failure on the part of the board who has the responsibility of student careers is deficiency in service. The Supreme Court in the present suit rejected the student plea and held unanimously that Consumer protection act (1986) is nowhere applicable to the statutory bodies while performing statutory functions. Hence concluded that the Board in the question was clearly a statutory body and the same cannot be questioned under Consumer protect legislations. It further observed that all the functions of the board which includes conducting and managing exams, evaluating and announcing results will be considered as performance of statutory duties. The Court also clarified on the point that the fees paid by the student will not be under the purview of consideration.

Next important case is *Maharshi Dayanand University v. Surjeet Kaur* (2010) where the above view was reiterated. In this case a student had enrolled herself in two university courses simultaneously where one course was full time and the other was in distance mode and the student was asked to withdraw from one of the course as two simultaneous courses was against the university rules. The student agreed on withdrawing from the distance-mode course but ended up writing the examination for the withdrawn course. This act of by student was strictly taken by the university authority. According to them this was sheer violence of the rules and the degree was not provided, to which the student filed the petition in the Supreme Court of India where the court followed the decision given in the Bihar board case. Another important case on this line is *P.T. Koshy v. Ellen Charitable Trust* (2012) case the court relied on the previous judgment

of not considering education as a service and held that to call education as a service, it will have to pass the test of being a commodity and education was not a commodity. Hence, concluded on the point that educational activities are not service. In a recent case *Principal, L.D.R.P. Institute of Technology and Research v. Apoorv Sharma (NCDRC)* (2019), it was observed “National Consumer Disputes Redressal Commission observed that Educational matters do not come within the purview of the Consumer Protection Act, 1986 and therefore Educational Institute would also not fall within the purview of it.”

The above discussion on the judgments for and against the point Education as a service shows that though the status is bit unclear but the decision made against the same is something that has been carried forward lately and mostly followed by the Consumer Commissions as well as the Supreme Court of India.

Educational Institutions v. Ed-Tech Companies

The next question that arises is that *can the Educational Institutions be treated at par with the Ed-tech companies?* This can be answered with the help of the leading case on Education in India i.e. *P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors* (2005) where it was held that traditional educational institutions cannot be treated at par with the coaching institutions where the motive of these coaching institutions is money making and the students pay huge amounts to take admissions in these coaching institutions. Hence, it can be said that the coaching institutions are providing service. Similarly, the ed-tech tech companies are taking huge amount of money and also adopting unfair means to increase their sales which clearly can be brought under the purview of Consumer protection act, 2019 and the student and parents can be considered consumers for the purpose of the Act.

Consumer Protection Act, 2019

The Consumer Protection Act, 2019 came into existence in 2019 and replaced the previous act of 1986. It is a comprehensive law that provides for the protection of consumers in India and seeks to protect the interests of consumers by creating a mechanism for the settlement of consumer disputes and establishing authorities for the timely and effective administration and settlement of such disputes. The Act provides for a three-tiered consumer dispute resolution mechanism comprising the District Commission at the lower level, State Commission at the

intermediate level, and National Commission at the top level. It also provides for the establishment of the Central Consumer Protection Authority (CCPA) with the purpose of promoting, protecting and enforcing the rights of consumers. The Act provides for the setting up of consumer mediation cells to facilitate out-of-court settlement of disputes between consumers and traders or manufacturers. (SAHA, et al., 2021, p. 115) The Act also provides for enhanced penalties and fines, including imprisonment, for violations of consumer rights and provides for compensation to consumers who suffer due to unfair trade practices. It also introduces provisions to protect e-commerce consumers, regulates direct selling and multi-level marketing, and provides for product liability. The Act also provides for the establishment of a Consumer Protection Fund to protect the interests of consumers. (SARKAR, 2020, p. 949)

Some of the key features that are in favour of Consumer protection against the Ed-Tech Companies are as follows:

Deficient services under Consumer Protection Act 2019 refer to services that do not meet the standards of quality, performance, and safety that should be expected by a reasonable consumer. This includes services that are provided with inadequate care and skill, with faulty or inadequate materials, or with unsuitable timing or duration. (CONSUMER PROTECTION ACT, 2019) Deficient services can also refer to services that are rendered with a lack of professional courtesy or which are otherwise incomplete or unsatisfactory. (POORNA, 2020, p. 283) Referring to the P.A Inamdar case (P.A. INAMDAR & ORS. VS. STATE OF MAHARASHTRA & ORS, 2005), it can be said that Ed-Tech companies are making money out of the ed-related service provided to the students through tuition and other courses, hence bringing the same under the purview of deficient service under CPA, 2019.

Another important feature is **Product liability** under the Consumer Protection Act 2019 refers to the responsibility of a product manufacturer, distributor, or seller to ensure that their products are safe for consumers. This includes a duty of care to ensure that all products are of satisfactory quality and are fit for the purpose for which they are intended. If a product is deemed to be defective and causes injury or damage, the manufacturer, distributor, or seller is liable for any losses suffered. (PATIL, 2022, p. 99) Prior to CPA 2019 product liability theory was not in existence and the courts were guided by the Constitutional and common law principles. With the technological advancements and developments in all the sectors affecting the consumers, the product liability theory was introduced to hold the manufacturer or the service provider liable if such a case arises. Ed-tech companies not just sell courses and

education online but also provides for the change of medium for assessing education, hence making liable for such defect in services.

Important provisions of Product liability: Under Section 82, (CONSUMER PROTECTION ACT, 2019) any person who has been injured by a product that was made, serviced, or sold by a product manufacturer, service provider, or seller has the right to seek compensation. Section 83 of the law permits those who have been harmed due to a defective product to take legal action against the manufacturer, service provider, or seller. Section 84 makes the manufacturer accountable if the product has a manufacturing defect, is negligently designed, does not meet the express warranty, or does not include the necessary instructions or warnings to avoid harm. Section 85 states that a product service provider may be held liable if the services they provided were of poor quality. Section 86 states that a product seller who is not a product manufacturer can be liable in a product liability action if they have had a major influence on the design, testing, production, packaging, or labelling of a product that has caused harm. Lastly, section 87 provides that if any product was misused, changed or modified then product liability does not arise against the seller.

Consumer Protection (E-Commerce) Rules, 2020

Rule 2 (CONSUMER PROTECTION (E-COMMERCE) RULES, 2020) outlines the reach and application of the Regulations of 2020. This section states that the rules are pertinent to (a) all items and services bought or sold over digital or electronic networks, including digital products; (b) all forms of e-commerce, including the marketplace and inventory models; (c) all types of e-commerce retail, including multi-channel single-brand retailers and single brand retailers in single or multiple formats; and (d) any type of unfair trade practice across all e-commerce models. However, the proviso states that these rules shall not apply to any activity of an individual conducted in a non-professional or non-commercial capacity which is not part of any regular or systematic activity. (AHER, et al, 2021, p. 1547)

References from the Indian Market

- **Marketplace E-Commerce Entity: Example- EduKart:** EduKart serves as a connection between buyers and sellers by offering a digital network which provides online courses from universities all over India. Apart from this regular coaching and tuition courses are

also available for students and charge a fee for providing their platform and assisting in the transaction. EduKart is similar to other e-commerce giants such as Amazon and Flipkart, but does not sell any products or services on its own; instead, it only acts as a facilitator.

- ***Inventory Based E-Commerce Entity: Example- Byju's:*** BYJU'S, a subsidiary of Think and Learn Pvt. Ltd., is a popular education-based technology that offers a diverse range of skill set courses varying from the playschool to competitive exams. It also has physical coaching centers, as well as its own mobile application, where students can enroll. In addition, BYJU'S provides its own books for each course, thus meeting both criteria (a) and (b) in the definition of an inventory e-commerce entity.

- ***Freemium model: Example- Unacademy:*** As per the CPA e-commerce rules 2020, the said rules will apply on those ed-tech companies where fee is charged for imparting their educational services. According to Section (42), services without charge are not included. Therefore, Ed-tech companies that offer their courses for free on their website will not be bound by the 2020 Rules. It is unclear, however, how the Rules will apply to those Ed-tech companies that operate on a freemium model. Will the Rules only apply to their paid services, or will they apply to all of their services? Unacademy is an example of an Ed-tech platform that uses this type of model, and it raises the question of how the 2020 Rules will affect them. (JOSHI, 2020)

It is evident that the E-commerce Rules apply to Ed-tech companies that charge a fee for their services; however, those which offer services free of cost are excluded. Nevertheless, there is still some uncertainty as to whether platforms that offer a combination of free services and paid upgrades come under the purview of the Rules and, if they do, to what extent. Ed-Tech companies are required to comply with the regulations set forth. The Consumer Protection Act creates a general obligation for e-commerce entities, as well as specific provisions for inventory-based and marketplace companies. (BHATIA, ET AL., 2020)

Ed-tech entities must appoint a compliance officer to ensure they obey the law and set up a time-bound grievance redressal system, with a grievance officer and a process for customers to track their complaints. They must also publish information such as the country of origin, arrangements with sellers, and details of a dispute resolution mechanism. Furthermore, service providers/sellers on platforms must not misrepresent their quality; engage in false advertising, or back-to-back information disclosure. Ed-tech platforms must also ensure that their product/service providers adhere to the same obligations. Additionally, marketing and warranty materials must be accurate. Ed-tech entities that use products purchased on a wholesale basis will

be held responsible for their quality and accuracy, even if they do not have direct access to the underlying material. (SINGH,2020)

3. Conclusion

This paper has shown that educational technology, while having many potential benefits, and also has a dark side. Despite the potential of increased access, cost savings and improved student performance, educational technology products and services can be used to exploit students and their families, resulting in financial and other harms. In order to protect students and families in the digital age, consumer protection must be increased. This includes improved consumer awareness, stronger consumer protections and enforcement of existing laws, as well as greater transparency and accountability from educational technology providers. By taking these steps, we can ensure that educational technology is used responsibly and that students and families are better protected in the digital age. Overall, this research has highlighted the importance of consumer protection in the digital age.

By understanding the potential risks associated with educational technology and taking steps to ensure that students and their families are protected, we can help ensure that the potential benefits of digital learning are realized. On a concluding note, educational technology has the potential to revolutionize the way we learn and teach. However, in order to realize this potential, we must also ensure that students and families are protected from exploitation. Through improved consumer awareness, stronger consumer protections and greater transparency and accountability from educational technology providers, we can help to ensure that educational technology is used responsibly and that students and families are better protected in the digital age.

Recommendations

a. ***Ed-Tech Policy:*** It is essential for India to create a policy that sets standards for educators and curriculum, as well as ensures the safety of children using ed-tech tools, as we currently lack a strong data privacy law. This policy should also include provisions to protect the privacy rights of children and their data, as well as provide a fair and accessible system to address grievances. It is important to ensure that the policy is inclusive and equitable towards the rights of children with disabilities. Additionally, this policy should prioritize research to evaluate the

effects of ed-tech interventions in various contexts, so that technology-based solutions can be safely and effectively used to enhance learning and create ed-tech "unicorns".

b. **Regulatory Body:** To have a regulatory body in place to assess, monitor, regulate and evaluate these ed-tech companies and platforms from time to time

c. **Consumer Protection:** To consider stakeholders of these ed-tech companies the services provided by the same as Consumers under the purview of Consumer Protection Act, 2019 and consider "Education and educational service imparted through these ed-tech based applications and websites as "Service" and provide protection under the said Act.

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