

Ed-Tech Companies And The Consumer Protection Act

written by Yash Raj | October 22, 2020



Norms for E-Learning Platforms Under the new Consumer Protection Act 2019
In the present time when the whole country is getting back to normal after the wrath of the Coronavirus, educational institutions are still not operational and it seems that they might have to wait for another few months to fully start their operation. While the lockdown across nations proved to a curse to various companies, Ed-tech companies got a blessing in disguise. Their business boomed in the present time, as students gradually shifted to online classes and tuitions to continue with their preparation for various competitive exams in view of the shut down of educational institutions. The rapid growth of the Edu-tech companies paves way for many challenges and problems which need to be analysed prior to any untoward instance happening in the future. Prior to the Consumer Protection Act, 2019 (“Act”), E-commerce entities did not come under the purview of the Consumer Protection Laws, hence in the current technological era, it was decided by the Legislator to bring the E-commerce entities under the purview of the Act and provide the online customer with the same right as available to a traditional customer. The Ministry of Consumer Affairs, Food and Public Distribution notified slew of Consumer Protection (E-commerce) Rules, 2020 (“E-commerce Rules”)[1] under the Act for the growth of the e-commerce sector and protection of the right of the consumers.

But the biggest question here is that do these Ed-tech companies come under the E-commerce Rules, and can they be dragged to court for their deficient services?? The answer to this problem lies in the Act itself and the same needs to be understood briefly to get a clear picture as to what rights have been vested with the students who have taken subscriptions from the Ed-tech companies for various courses and competitions.

Are Ed-Tech Companies An E-Commerce Entity Under The 2019 Act?

The Consumer Protection Act, 2019 defines “e-commerce”[2] as buying or selling goods or services[3] including digital products over a digital or electronic network. With the definition as provided under the Act, it is amply clear that any entity which offers services over the internet may be considered an “e-commerce entity”.

As per the E-commerce Rules, an “e-commerce entity”[4] means any person who owns, operates, or manages a digital or electronic facility or platform for electronic commerce. The definition provided under the Rules specifically does not include a seller offering his goods or services for sale on a

marketplace e-commerce-entity.

If we consider the definition provided under the Consumer Protection Act, 2019 and the Rules framed therein with respect to e-commerce, it is amply clear that the Rules have been primarily formulated towards covering conventional e-tail business, but the wide definition of "e-commerce entities" can also capture intentionally or otherwise entities which create and disseminate products/services over digital/online media.

As the Edu-tech companies impart their services through online websites, mobile applications or similar digital platforms, a question arises, whether the Edutech companies have to comply with the E-commerce Rules or not? To answer the question, it becomes important that every Edu-tech company must analyse its specific business model to ascertain whether the Rules are applicable to them or not.

The E-commerce Rules basically provide for 2 kinds of e-commerce models which are inventory-based e-commerce and marketplace e-commerce. The main point of consideration that needs to be ascertained is whether the Edutech companies would come under the inventory-based e-commerce entity or marketplace e-commerce. Depending on the category under which an Edutech entity falls, the specific parts of the applicable Rules will differ accordingly.

Ed-Tech Companies Offering Fee Or Premium Services

From the Rules framed for an e-commerce entity, it can be easily deduced that any Edu-tech company which is offering its services for a fee would come under the Rules but it should be kept in mind that the Edu-tech companies which are providing their services for free are specifically excluded from the purview of the E-commerce Rules as the definition of services provided under the Act does not include services which are being offered free of cost to the consumers.

However, questions remain on the treatment of platforms that operate on a freemium model or provide a combination of free services with paid upgrades. Such platforms will need to examine if the Rules will be applicable to all services provided or only to those aspects which are provided for a fee.

Education- A Service?

Indian Courts have taken a conflicting view on whether educational institutions can be said to provide a "service" and if they are governed by the provisions of the Consumer Protection laws in India.^[5] After considering various judgments by Indian courts, it can be deduced that since educational institutions are not for profit in nature and as such does not provide any sort of commercial services, they do not fall under the purview of the Consumer Protection Laws in India. However, it is pertinent to mention here that educational institutions are totally different from coaching institutes, test preparation centres, etc. which basically come under the purview of service providers^[6] as defined by the Consumer Protection Act.

An educational institution which is providing courses online may or may not come under the purview of the Act and the Rules framed therein. Edutech companies who are imparting services including courses offered by educational institutions may still be required to comply with the Rules, to the extent the platform is providing services vis-à-vis the consumer. As the applicability of Rules depends upon the model being followed by Edutech companies, a case to case analysis is required to ascertain whether they need to comply with the Rules or not.

Obligation On Ed-Tech Companies Under The Rules

The Rules framed under the Consumer Protection Act provide for a general obligation for e-commerce entities with a few specific provision for inventory based and marketplace entities. Some of the relevant obligations to be followed by Edutech entities are:-

1. Compliance Officer:- Mandatory appointment of a compliance officer to ensure compliances with law.
2. Consumer Grievance- Setting up a time-bound grievance redressal mechanism, appointing a grievance officer and setting up a process to allow consumers to track their complaints.
3. Information Disclosure- Publish information such as country or origin of the services, arrangements with sellers, differentiation made between services or offerings of similar nature, details of a dispute resolution mechanism, etc.
4. The obligation of service providers/ sellers on platforms:-Obligations are imposed on sellers/ service providers against representing themselves as consumers, misrepresenting their quality, false advertising and back-to-back information disclosure as well as grievance redressal obligations. Edutech platforms which are aggregators of tutors, third party course materials, etc., will need to ensure that their service/ product providers adhere to these norms.
5. Marketing and Warranties:-All platforms will need to ensure the accuracy of marketing/ advertising materials as well. While, this may be a welcome move for consumers, an Edutech entity, which utilises products purchased on a wholesale basis would find itself under an obligation to ensure quality and accuracy despite it not having access to the underlying material.

Conclusion

In recent times, the Edutech companies have grown rapidly thereby increasing the number of customers on their platform. The increasing number of customers also means that platforms must be careful about the claims made on the platform regarding the services offered. After analysing the Rules, it is amply clear that the Edutech companies which are considered e-commerce entity have to comply with the Rules to prevent any untoward liability in the future and need to establish a dedicated mechanism in place to check for compliance with the law.

- [1]<https://consumeraffairs.nic.in/sites/default/files/E%20commerce%20rules.pdf>
- [2]Section 2 of the Act
- [3] service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service
- [4] As per Rule 3(1)(b) of the Rules, "e-commerce entity" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity
- [5]The Supreme Court in P.T. Koshy & Anr. Vs. Ellen Charitable Trust & Ors., 2012 (3) CPC 615 (SC), has held that students are not 'consumers', 'education' is not a commodity and educational institutions are not rendering

'service'. Another later judgment of the Supreme Court in Civil Appeal Nos. 7003-7004 of 2015, P. Sreenivasulu & Anr. Vs. P.J. Alexander & Anr., dated 09.09.2015, held that educational institutions would come within the purview of the Consumer Protection Act, 1986 and that education is a service

- [6] Manu Solanki and Ors v. Vinayaka Mission University and Ors., I(2020)C PJ210(NC)

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