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INDIA: Implications of the foreign education bill Nick Booker*

By
Nick Booker*
(IndoGenius)

India's foreign education legislation was briefly in the limelight once again this summer. There was even talk about it at last coming before parliament by the end of the Monsoon Session. That time has passed and still there is no legislation.

The extraordinary events involving Anna Hazare and the protests against corruption have dominated the last few weeks. When it comes to parliamentary time it seems the foreign education bill is forever the bridesmaid, never the bride. The twist in the tale is that, for the vast majority of universities, the legislation could be more relevant than they have bargained for.

Despite reading volumes of editorial about the foreign education bill over the last year, one point seems to keep slipping everyone's attention: it isn't just about setting up a campus but regulating all foreign university activity in India that leads to the award of foreign university qualifications.

For those universities with no plans to establish a branch campus, the all-encompassing legislation may come as a surprise. Hundreds of institutions have already decided that partnership-focussed India strategies are the way forward. Therefore while some institutions eagerly await India's foreign education legislation many more need to urgently review their existing strategies.

The proposed Foreign Educational Institutions Act explicitly relates to both international universities operating independently and those working in collaboration with Indian institutions or other local partners.

In fact, effective regulation of these collaborations is the primary motivation for the legislation, which acknowledges that "due to lack of policy or regulatory regime it has been very difficult to make meaningful assessment of the operations of the foreign educational institutions and absence of such meaningful assessment has given rise to chances of adoption of various unfair practices besides commercialisation".

As importantly, accredited foreign institutions offering degree programmes in India help the government achieve its three objectives for higher education - "excellence, expansion and inclusion".

They help widen opportunity and accessibility to higher education and will also potentially retain some of the £8 billion (US\$13 billion) currently leaving India's shores with foreign education-seeking Indian students.

Hosting international university campuses will also help India become a destination for students from other countries. Research investment will be attracted to foreign universities that have a presence in India and this will also help India retain and develop its own intellectual talent for the benefit of all.

Who will be affected and how?

So who exactly will the act apply to and what sort of arrangements does it cover?

According to the proposed legislation a university is a foreign education institution if it is already offering, or proposes to offer, awards or degrees or diplomas or certificates either: independently, for example via its own campus which could be operated with or without an infrastructure partner or investor; or with any educational institution situated in India via a partnership, collaboration or twinning arrangement.

A twinning programme is defined as "a programme whereby students enrolled with a foreign education provider complete their study partly in India and partly in any other educational institution situated outside India".

The proposed legislation requires a foreign education institution to become an approved 'foreign education provider' if it wishes to work in India. To get this status an international university must be "notified by the central government, as a foreign education provider, on the recommendation of the commission".

The commission is either the University Grants Commission or associated bodies such as the advisory body, the AICTE, or the proposed all-encompassing National Commission for Higher Education and Research.

The UK-India Education and Research Initiative has identified more than 161 international universities that have been involved in delivering 641 collaborative programmes in India. Most of these are US and UK institutions offering twinning programmes, where a foreign and an Indian institution jointly recognise a programme and often award dual or joint degrees.

The proposed legislation clearly says that those foreign universities that are "providing educational services in India before the commencement of this act, [must] apply within a period of six months from the date commencement of this act and shall cease to provide educational services in accordance with the provisions of this act if its application for recognition and notifying as foreign education provider has been rejected".

What will universities with existing or proposed partnerships have to do to get approved status?

To receive soon to be highly-prized foreign education provider status a university must "submit an application [and] every application...shall be accompanied by" documentary proof that the university:

1. *Has been established for minimum 20 years and has adequate financial and other resources to conduct the course or courses of study in India.*
2. *An undertaking to maintain a corpus fund of not less than fifty crore rupees (US\$11 million) or of such sum as may be notified, from time to time, by the government in consultation with the statutory authority.*

In other words, according to the proposed legislation, the requirement for a corpus fund applies to twinning programmes as well as branch campuses.

Consequences

So what are the consequences?

The proposed legislation states: "Any person who, being associated with an educational institution or a foreign educational institution not being a foreign education provider...offers or gives admission to any student on any course provided by a foreign education institution will have to pay a penalty of £15k to £75k." (US\$22,300 to US\$121,300)

This will obviously act as a strong deterrent for local partners to work with unapproved international universities. Currently AICTE will only "inform the public" of an infringement - as it already has done on its website for more than 100 international partnerships. As far as we know the AICTE has never taken steps to "initiate action under the Indian Penal Code" although the 'show cause' notices recently issued could be a first step.

Any university found to be in contravention of the rules risks the "forfeiture of the corpus fund in whole or part thereof". If no corpus has been provided then one would think the only recourse the authorities have would be to 'advise' agencies such as the Ministry of External Affairs to stop granting visas to foreign university staff and-or stop allowing funds to be repatriated to the university.

Kapil Sibal, Minister of Human Resource Development, signs off the act with a '**Statement of Objects and Reasons**', which reiterates the true scope and ambition of the legislation.

"[Those] who, being associated with an educational institution or a foreign educational institution not being a foreign education provider [publishes an] advertisement which is misleading or gives wrongful information or fails to publish disclosures as required under the proposed legislation shall be liable to a penalty of not less than 10 lakh rupees [US\$219,000] which may extend to 50 lakh rupees in addition to refund of the fee and confiscation of any gains made out of it."

There is no doubt that hundreds of universities will immediately be affected the moment this legislation comes into law. Universities that wish to continue offering their awards in India will need to become foreign education providers. This process may be lengthy and uncertain, but it cannot be ignored. The legislation must be taken seriously as it adds considerable, and to be frank much-needed, bite to AICTE's current bark.

Once the foreign education bill passes (and it will one day!) foreign universities will have to go through either the commission approval process or seek the consent of the Advisory Board for exemption.

India represents the greatest opportunity in the world for higher education institutions. The government knows this and therefore rightly wants to protect the interests of Indian students from a gold rush of commercially aggressive institutions.

Those universities that are aware of the impact of the legislation on their own India strategies will be better equipped to deal with it when the time comes.

* Nick Booker of IndoGenius works with more than 20 UK and US universities in India. IndoGenius was established to encourage and enable international institutions who want to offer work more effectively in India; to initiate research collaborations with Indian institutions and industry; to help build teaching and research capacity through international partnership; and to encourage international study abroad students to visit India. For a free copy of the full "Foreign Education Legislation in India Report" email nick@indogenius.com<<mailto:nick@indogenius.com>> <<mailto:nick@indogenius.com%3cmmailto:nick@indogenius.com>> >