

A blueprint for Higher Education Commission of India

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The National Education Policy 2020 envisages the Higher Education Commission of India (HECI) as the regulator for higher education, with four verticals for regulation, accreditation, funding, and academic standard setting. A Bill to provide for HCEI is under draft.

India has created many statutory regulatory agencies over the last three decades. Based on the current structures, drafting the Bill does not seem difficult. However, every regulator is unique. Given the importance of higher education, reliance on existing designs may not be appropriate. This piece suggests a few high-level design features befitting the role of HCEI.

Objectives: It is a misnomer that a regulator only regulates. What would it regulate if there is no market (for education and related services)? The market may need to be developed to be regulated. Development and regulation feed on each other in a virtuous circle for an orderly growth of the market. However, there is a possibility of conflict if the same agency has responsibilities of both development and regulation.

To address the concern, the regulator may have responsibility to promote the development and not develop as such. Further, protection of interests of users is the core for a regulator, something like SEBI is '*Har Investor ki Taaqat*'. Therefore, the long title of the legislation should provide for establishment of HCEI with the objectives to protect the interests of users, promote the development of and to regulate higher education in India.

Scope: The legislation should demarcate the jurisdiction of HCEI to avoid any regulatory overlaps and gaps. It should specifically list out the elements — persons and entities, products and services, and markets — in its ambit. It should enable HCEI to regulate elements, whether they exist today or emerge tomorrow, without requiring an amendment.

It is like the SEBI Act, 1992, which enables SEBI to regulate a, b, c, and any other intermediary associated with the market as it may specify, without at the same time being very open-ended.

Responsibility centres: The legislation should view HCEI, as a body corporate, independent of its Governing Commission (GC), with clear roles and responsibilities attached to each of them. So also, specific responsibilities of all responsibility centres such as four verticals, Chairperson, Whole-time Member (WTM), Part-time Members (PTM), Advisory Committee, and Disciplinary Committee.

In the interest of accountability, the legislation should enable the government to prescribe the manner of discharging their responsibilities, such as making regulations.

Governance: In the interest of democratic legitimacy, the legislation should enable interface of the HCEI with the larger society. Its GC should have representation of the society as PTMs, representing stakeholders and public. To enable the GC to hold the management accountable, the number of PTMs in the GC should exceed that of WTMs. It should have a diversity of talent and experience tailored to its responsibilities to facilitate robust decision-making.

A regulator exercises three sets of powers — quasi-legislative, executive, and quasi-judicial. To address the concerns emanating from integration of these powers, the legislation should provide for three separate wings within HCEI to exercise a set of powers and they should operate at an arm's length from one another to serve as internal checks and balances.

Independence: HCEI should be independent for it to be accountable. It should have independent sources of resources commensurate with its responsibilities. The legislation should enable it to levy fees and charges from the regulated entities for its sustenance. It should enable HCEI to have capable human resources to withstand the pressures of the market as well as fear and favour.

In the interim, dependence on the budgetary grants should not import governmental HR processes. HCEI should be the final authority in exercise of its powers for making a regulation, conducting an inspection, awarding a civil penalty, or filing a criminal prosecution. The legislation should avoid having ex-officio members in the GC, while obliging HCEI to be bound by directions of the government on matters of policy.

Accountability: The legislation should provide mechanisms to hold HCEI accountable for its performance *vis-à-vis* its mandate and resources. After it has exercised the power, the outcome (subordinate legislation or quasi-judicial order) may be undone by the legislature or judiciary, by following the due procedure.

HCEI should disclose its action plan ex ante and the performance ex post and matters such as minutes and agenda of meetings of the GC, its orders, relevant data, and information, etc., in the interest of transparency. The legislation should require HCEI to make an internal assessment and cause an external assessment of its performance every year and disclose the same in the annual report.

Regulations: The legislation should require HCEI to use only one instrument, namely, regulations, to prescribe norms for the market. The GC should make regulations in consultation with the public, after presenting a summary of the problem being addressed and the cost-benefit analysis of the proposed regulation. The regulations should carry legislative notes to explain the rationale for the same. HCEI should review every regulation once in three years to ensure that it is still relevant and to weed out redundant regulations.

Executive functions: The legislation should provide for the process of monitoring compliance, including inspections and investigations and empower HCEI suitably for the purpose.

Adjudication: The legislation should spell out the contraventions and associated penalties. It should provide the process of dispensing penalties and an appellate mechanism. HCEI should have a dedicated administrative law department under the oversight of an Administrative Law Member. An adjudication proceeding should commence with the issue of a show-cause notice, based on findings of a fact-finding process, that enables the noticee to defend itself adequately.

In disposal of the notice, the Adjudicating Authority may have option to impose a variety of sanctions — directions, cancellation, suspension, monetary penalty, disgorgement, and settlement. The penalties and settlement amount should be credited to Consolidated Fund of India.

Like the DNA of humans, a regulator has a DNA in the form of its design, structure and processes that are typically embedded in the creating legislation. It is important for the government and Parliament to get this legislative DNA of HCEI right.

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