

Academic Freedom as a Right in Kashmir

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ABSTRACT

Freedom of speech and expression in state of Jammu and Kashmir has always been difficult because of the continues human rights violation. In such circumstance academic freedom becomes a key factor for free flow of the information. In recent decade it has been found that Kashmir students and teachers is being prosecuted and detained for their freedom of speech and expression on different international and national aspects. It has made difficult for the university for the self-realisation and autonomy.

Since the academic professionals are considered expert in the subject it is very necessary that they get protection of law whenever they are discussing politically sensitive topics in academic discourse.

The students who are protesting against the government and college administration on some issues should also be protected by academic freedom because these rights are universally applicable to all citizen.

This paper will define the concept of academic freedom and analyse how academic freedom is systematically infringe and curb in state of Jammu and Kashmir.

Keywords- Freedom, Speech, Expression, Academic & Kashmir

Chapter I- Introduction

In the year 1967 a report from the education commission of India recommended that academic freedom should be recognise in India and teachers should get protection from all kind of violations so that they can research about different international and national matters¹. After nearly 54 years India is still struggling for independent research and university autonomy. India marked score of 0.352² out of 1 by the International Academic Freedom Index (AFI) the condition of academic freedom continues to be degraded. Academic freedom as the term suggest it is common right of institution and research centres to get immunity from the actions or the proceeding against any act which is done academic discourse. This right even though appears to be absolute it still has some restriction attached to it, only act which are done with good faith can be allowed within parlance of academic freedom. Academic freedom is necessary so that institution and research centres can perform the work without any fear of detention and arrest. The government is probably the biggest violator when it comes to freedom of speech and expression³. Academic freedom makes sure that a university is not a prison. It plays a very important role in free flow of ideas and support the students and teaching professionals to engage in crystal analysis of government policy which leads to the development of society in general. From arresting teaching professionals⁴ with dissenting opinion to attacking an educational institution with political agenda forms a part of violation of

¹ 'Comments And Reactions A Study' (Sab Ha S E C R E T A R I A T New Delhi 1966).

² 'Free Universities' (Global Public Policy Institute 2021).

³ 'Academic Freedom And Kashmir' (Economic And Political Weekly, 2017) <<https://www.epw.in/journal/2001/52/Civil-Liberties-Columns/Academic-Freedom-And-Kashmir.Html>> Accessed 17 October 2021.

⁴ Kashmir Walla, 'Kashmiri Assistant Professor Booked Under Uapa, Arrested' (2021).

academic freedom. When the state of J & K lost its special status many schools and colleges were shut down without informing the citizens when will be the internet shut down will be restored. In case of Anuradha basin⁵ it was held by supreme court that the test of proportionality should be maintained while curbing or putting reasonable restrictions on the fundamental right. It is submitted that the vulnerability of Kashmiri students the arbitrary arrest of the college students outside the Kashmir valley. Kashmiri Students are often been assaulted by nationalist group and hate crimes⁶. It is further submitted that the during the pandemic all schools and college are closed for security purpose a major impact was on the students. As pandemic began to spread most of the educational institution was choosing online platform for learning and teaching however the same choice was not available for Kashmiri students. After the special status of Kashmir was revoked blanket internet shut down was executed by government. This caused major loss for students. Beginning around 1989-90 grounds in Kashmir have been much of the time transformed into posts to have military and paramilitary powers got to the valley to battle uprising. Large numbers of them were utilized to arrest and torture youngsters. It took over 10 years to somewhat recuperate these foundations from such powers. The synchronous posting of military and educating on the grounds left a chilling impact from which these spots won't ever recuperate. The Constitution of India in the Preamble talks about India as a vote-based system which means individuals in India reserve the privilege to offer their viewpoint in different issues which thusly guarantees academic freedom in India. Article 19 of the Indian Constitution ensures freedom of speech and expression hence guaranteeing academic freedom in India.

The Fundamental Duties in part IV-An of the Indian Constitution sets out that it is one of the fundamental duties of the state and residents to "foster the logical attitude, humanism and the soul of request and reform"(51-A, h) and to "strive towards greatness in all circles of individual and collective activity so the country continually ascends to more elevated levels of try and accomplishment." (51-A, j). Both of these arrangements of the Constitution advance academic freedom in India.

India is a signatory to and has sanctioned the International Convention on Economic, Social, and Cultural Rights. Articles 13 and 15 of this Convention are pertinent to academic freedom in advanced education.

CHAPTER II- METHODOLOGY

STATEMENT OF PROBLEM-

Academic freedom plays a major role when it comes to important educational debates and learning. With help autonomy university creates a safe place where by students and teachers learns together. Academic freedom has many components which include academic freedom in research and training, Freedom to disseminate information Freedom to conduct research and distribute knowledge and truth without any restriction Institutional autonomy of universities. On December 2016 Rajendran Narayanan has to resign after signing petition for Kashmir. On December 2018 Md. Tajuddin from Kahmir University was arrested for alleging calling Bhagat Singh a terrorist Hindu nationals demanded the arrest of Md. Tajuddin⁷. Recently on 7 march 2021 an assistant professor at government degree college Udhampur has been

⁵ Anuradha Bhasin Vs Union Of India [2019] Sc, Writ Petition (Civil) No (Sc).

⁶ The Indian Forum, 'Academic Freedom In India A Status Report, 2020' (2020).

⁷ 'Jammu University Professor Suspended For Allegedly Calling Bhagat Singh A Terrorist' (The Outlook, 2017)

<<https://www.outlookindia.com/Website/Story/Jammu-University-Professor-Suspended-For-Allegedly-Calling-Bhagat-Singh-A-Terrorist/321049>> Accessed 17 October 2021.

arrested under the Unlawful Activities Prevention Act (UAPA)⁸. His arrest was done because of his activism. He was an advocate for bridging the gap between Kashmir youth and Indian Army. These are some cases where the teaching professionals have been prosecuted for something they have been doing in academic discourse or for the betterment of university and students. There is arbitrary arrest of Kashmiri students⁹ inside and outside of valley. Which makes right to education more difficult for the students.

A country for overall development should invest in researcher and pave the wave for academic freedom it is the only way through which socio-economic conditions of country can be improved. Academic freedom in state of Jammu and Kashmir is a very complex and multifield issues. Through this research, the researcher will highlight different dimensions of the problem and try to suggest ways in which the problem can be solved.

SIGNIFICANCE OF THE STUDY-

The current study is an attempt to understand academic freedom in Kashmir and article 19 of the constitution¹⁰. This paper will try to elaborate how the academic institution enjoys autonomy when it comes to freedom of speech and expression. It is further submitted that study will also highlight how the arbitrary arrest of student and the professors leads to violation of academic freedom.

REVIEW OF LITERATURE

For purpose of convenience researcher has divided literature review into two parts Indian and western. Further it has been classified thematically.

- A. Academic Freedom and the Research University by Richard C. Atkinson, Proceedings of the American Philosophical Society (Jun., 2004)- The researcher in this article highlighted that faculty were often expected to be neutral. Faculty as often as possible hold solid perspectives, large numbers of which challenge winning orthodoxies. They regularly add to public dis-seminar on a wide scope of politically dubious subjects going from environmental hazards, government assistance financial aspects, and abortion strategies, to human cloning, strict regulation, and governmental policy regarding minorities in society. Academic standards necessitate that faculty stand prepared to overhaul their decisions in the light of new proof. What's more, experience has shown that faculty individuals can and do consolidate solid responsibilities to a specific perspective with the most elevated professional principles of teaching and research. Academic freedom is worried about ensuring the conditions that lead to the production of sound grant and great teaching, not with keeping up with political impartiality. Without a doubt, the Sproul strategy's work to spell out a solitary rule that would apply in all disagreements about academic freedom was one of its weaknesses.
- B. Is Academic Freedom Necessary? by Robert F. Laden son Philosophy (Apr., 1986)- In this article researcher try to analyse what kind of right academic freedom is, initially it is argued that rights under academic can be divided be into general and specific. The faculty are bound to best of the knowledge to students. This also means that faculty should encourage the students in all direction to engage in critical thinking of government and its policy. On this point the author put forth some factors which ensures that academic freedom is not interpersonal moral rights. These factors are (1) Knowledge is

⁸ <https://Indianexpress.Com/Article/Cities/Mumbai/Uk-Prof-Authorities-Disrupted-My-Kashmir-Speech-At-Tiss-Seminar/>, 'Uk Prof: Authorities 'Disrupted' My Kashmir Speech At Tiss Seminar' (2020).

⁹ 'Saffron Assault On Kashmiri Students In Jnu' [2010] Two Circle.Net.

¹⁰ The Indian Constitution 1950.

one of the greatest goods. (2) Genuine institutions of higher learning serve the purpose of furthering the pursuit of knowledge.

- C. Academic Freedom. An Emerging Constitutional Right by William P. Murphy, Law and Contemporary Problems, (Summer, 1963)- In this article researcher try to highlight why people are not aware academic freedom and why it is important in a democracy. Firstly, the academicians are not aware about the importance of academic freedom infect there is a very small part of community in which the faculty speaks about subjects which are not affected to them. Secondly, that is that they are almost invariably invoked by or in behalf of some persona or causa non grata. Thirdly academic community do not press charges against the violator ether collectively or as individual.

SCOPE AND LIMITATION

The scope of the study is to analyse academic freedom which available to Kashmiri Universities and well they are able to enjoy their autonomy. The biggest challenge which researcher faced while the course of study was availability of data on the human rights violation happened to academician and students. The second limitation which author faced is in relation pandemic and internet shutdown effects on Kashmiri students. Third limitation which researcher faced is time limitation during which the project needs to be completed.

Aim of the study- to critically analyse right to academic freedom in Kashmir through the lens of Article 19 and 21.

OBJECTIVES OF THE STUDY

following are the research objectives of the study-

- To discuss right of academic freedom in India
- To understand the academic freedom in Kashmir through lens of article 19
- To argue that freedom of academics has been greatly affected in Kashmir
- To understand how the dissenting opinion of academicians are construed by Indian authorities

HYPOTHESIS

‘Academic freedom in Kashmir has been compromised and has been put under unreasonable restrictions’

RESEARCH QUESTIONS

Following are the questions which researcher wishes to answer through the paper.

- Whether Kashmir has academic freedom?
- Whether college and university going students have right to education?
- Can academic freedom be a right?
- What are the major characteristics of academic freedom?
- Are the major characteristics have been violated for Kashmiris?

RESEARCH METHODOLOGY

The author will adopt doctrinal research and will use explanatory research design. This research will have primary data, including court judgments act and constitution.

CHAPTERISATION

Following are the tentative chapters-

1. Jurisprudence of Academic freedom
2. Academic freedom and its components
3. Academic freedom for Kashmir and international perspective
4. Conclusion and suggestion

CHAPTER III– ACADEMIC FREEDOM EMERGING JURISPRUDENCE

Academic freedom and institutional autonomy are important component for quality research and education. Covid-19 pandemic has proved the important of intrusion free research and disseminating information in transparent manner is necessary. without the proper definition of Academic freedom it is very easy for parties to turn blind eye academic freedom. It is really nessacry that academic rights should codify. Student and faculties whenever they want raise issue about kashmir problems it results into drastic consequences. For an example More noteworthy Kashmir of June 12 had a report by Naseer A Ganai on the discussion between students of the Kashmir University (KU) and the Jammu University (JU) over elephant fossils purportedly taken covertly from KU to JU. It brought up issues. He composed: To begin with, regardless of whether Kashmir University (KU) students appreciate such freedoms like going for cordon of a division and holding news gatherings as their JU partners are at present occupied with? Second, why an issue of absolutely logical nature has been transformed into Jammu versus Kashmir issue? 'Last time when a few students called for neutralization of KU grounds during Chief Minister's visit, they were requested to clarify their position', said a understudy of Law Department. He saidthe way the JU students have raised the fossil issue - they appreciate wide help of Hindu fanatic party - says a lot about the freedom of articulation in the JU grounds. This raised an important questions regarding right to hold meetings on the campus; the right to exclude and, if need be, throw out unauthorised persons who intrude and the right to hold elections to student bodies or union of teachers. Like the fundamental rights in our Constitution all the rights will be subject to "reasonable restrictions" having due regard to the special circumstances of academia, discipline and decorum. In the case of *Tinker vs Des Moines*¹¹ in this case US supreme court held that freedom of speech and expression of students cizes to exist as soon as they enter achool primices. In *Bethel School Dist No 403 vs Fraser*¹² court held that right of freedom of speech and expression of the students in public school is not coextensive as compred to adult in different environment. The court held lewd speech was not allowed in the campus which would have been allowed outside the campus.

Students from J&K don't have autonomy to study together or build case code because the college authorities would suspend any students on suspicious grounds. In *Deborah Morse vs Joseph*¹³ in this case court decided that students suspending for unflowering the a pro-drug banner was upheld by US supreme court. Students reserve an option to be politically innvolved. Nobody has an option to demconformity. Politically charged people like to elevate their own causes to the quest for the truth, the great worry of students, educators and colleges. Asthe creator puts it "Truth has a method of be-ing badly designed to any reason". Hannah Arendt expressed, "It could be in the nature of the political domain to be at battle

¹¹ *Tinker Vs Des Moines* [1969] Us Sc, 393 Us (Us Sc).

¹² *Bethel School Dist No 403 Vs Fraser* [1986] Us Sc, 478 Us (Us Sc).

¹³ *Deborah Morse Vs Joseph Frederick* [2007] Us Sc, 551 Us (Us Sc).

with truth in the entirety of its structures... a responsibility even to authentic truth is felt to be an enemy of political disposition¹⁴.

CHAPTER IV- TRACING ACADEMIC FREEDOM THROUGH THE LENS OF ARTICLE 19 & 21

Article 19 of Indian constitution provides seven different kinds of liberties. Academic freedom expressly don't find its way in the constitution however it is submitted that court through giving a broader definition has covered different aspects of the academic freedom. Since there is no strict definition of academic freedom courts India has also provided different factors which would be responsible for efficient academic discourse.

In case of Ram Murty & other vs Government of Andhra Pradesh¹⁵- Held that the academic freedom provides environment where intellectual freedom is protected. The composition of syndicate eschewing academic freedom and atmosphere curtailed the free intellectual course, discussion, exchange of ideas and modalities of teaching and the spin-off of such composition of syndicate restricted the freedom of speech and expression. Article 19 freedom should not be narrowly construed and it should protect university autonomy.

S.P. Mandala's Prin. L.N. Welingkar Institute of Management, Development & Research v. The Secretary, Fees Regulating Authority and Others¹⁶- Court while interpreting Section 89 of the 1994 Universities Act observed that Autonomous university department or institution or college or recognised institution shall function with the objectives of promoting academic freedom and scholarship on the part of teachers and students which are essential to the fostering and development of and intellectual climate conducive to the pursuit of scholarship and excellence. Its father submitted that in this case court observed that academic freedom should fostering and development of the intellectual climate conducive to the pursuit of scholarship and excellence.

Anand Vardhan Chandel Versus University of Delhi & Another¹⁷ - In This case court decided on very important questions which is whether students of college have right to participate in union and protest. The court firstly decided whether right to education for college student is a fundamental right or not. In this reference court said that the fundamental rights can be divided into two category the first is civil right and second is political right. Education can be covered under socio political right as a result students of the college have fundamental right of education covered by article 19 and 21 of the constitution of India. It is both the development of the mind and personality of the individual and his development as a useful member of the society. If education had consisted only of the former, then there would have been no need for Schools, Colleges and Universities. Every person would educate himself by self-study or correspondence with educating bodies. But this would not fulfil the other equally important aspect of education, namely, the social one. The primary social function of education is to prepare the individual to participate in the democratic process which is the very life of the nation. The training of students in the democratic process is achieved partly through students' unions. The Kothari Commission has this to say: —Students Unions. — Student unions represent an important way of providing student participation in university life outside the classroom. Properly organized, they help in self-government and self-discipline,

¹⁴ 'Freedom In Kashmir And Elsewhere' (2007) 42 Economic And Political Weekly.

¹⁵ Ram Murty & Other Vs Government Of Andhra Pradesh [1986] Ap Hc, 67 Scconline Ap (Ap Hc).

¹⁶ Sp Mandala's Prin Ln Welingkar Institute Of Management, Development & Research V The Secretary, Fees Regulating Authority And Others [2018] Bom Hc, 11 Scc Online Bom (Bom Hc).

¹⁷ Anand Vardhan Chandel Versus University Of Delhi & Another [1978] Del Hc, 74 Scc Online Del (Del Hc).

provide a healthy outlet for students' energies and give the students useful training in the use of democratic methods." (Report of the Education Commission, 1964 — 66 on Education & National Development para 11.73 page 295).

P.M Bhargava vs University Grant Commission¹⁸-In this case the main issue was Jyoti Vigyan course to be offered by university whether or not Supreme court has power to Judicially review the Jyoti Vigyan course to offered in university, in absence of any statute and rules the expert committee by UGC decision becomes final and whether or not a subject should be included is out of the preview of judicial review as long as it is not against secular structure of Indian constitution. In this case it was observed by the court that academic freedom cannot be claimed in cases where it breaches secularism of the country.

CHAPTER V- INTERNATIONAL LAW FREEDOM OF SPEECH AND ACADEMIC FREEDOM

Article 1 of UDHR highlights that every person has right to equality and protection against the discrimination. It provides that all human beings are born with dignity and that should be protected by the member states. The heart of UDHR non-discrimination. Article 2 of UDHR provides for equal enjoyment of the rights and freedoms therein proclaimed "without distinction of any kind, such as race, colour, sex, etc. While the UDHR doesn't explicitly accommodate denials on disdain discourse or induction to scorn, its Article 19 ensures everybody the option to "seek, receive and impart" both "information and ideas", through "any media and paying little heed to boondocks." This right to freedom of expression is fundamental accordingly to basic liberties security. The significance of freedom of expression was featured as right on time as 1946, when at its absolute first meeting, the UN General member states took on Resolution 59(I) which states: "Freedom of information is a fundamental common freedom and the standard of the multitude of freedoms to which is at the core of United State¹⁹s."

The International Covenant on Civil and Political Rights (ICCPR), embraced by the UN General member states in 1976, ensures uniformity and non-discrimination in the happiness regarding rights in terms like the UDHR. Article 19 of the ICCPR ensures the right to freedom of expression in wording like the UDHR. It gives outright insurance to one side to hold assessments, and secures the option to seek, receive and impart information and ideas. It permits limitations on these rights just where these are a) given by law; b) for the insurance of one of the points recorded; and c) important to secure that point²⁰. Concerning point b, Courts differently allude to 'public request' or the 'rights of others' as conceivable real points when considering difficulties to detest discourse laws, with 'uniformity' or 'non-discrimination' introduced as instances of the rights of others²¹.

CHAPTER VI CONCLUSION AND SUGGESTION

The present study focus on the academic freedom in special reference to J & k. Academic freedom plays a very important role in disseminating the information. It helps in encouraging the teaching professionals to carry research and teaching without fear. In state of J & K disseminating information is necessary. But the teaching professionals are detained and arrested for exercising their right of autonomy. The students of the state are often targeted in false accusation.

¹⁸ Pm Bhargava Vs University Grant Commission [2004] Sc, 6 Scc (Sc).

¹⁹ United Nation Declaration Of Human Rights 1946.

²⁰ Towards An Interpretation Of Article 20 Of The Iccpr: Thresholds For The Prohibition Of Incitement To Hatred Work In Progress (Global Camping For Free Speech 2020).

²¹ International Covenant On Civil And Political Rights (Iccpr), 1976.

It is suggested that the teaching professionals and students should get protection for the things said and done in the university. This will lead to disseminating information with free flow. There is a need for specific jurisprudence for academic freedom. The students and teaching professionals should have autonomy to express whatever they feel without any threat

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