**To,**

**Human Rights Council**

**Office of the United Nations High Commissioner for Human Rights, United Nations Office at Geneva, CH 1211 Geneva 10, Switzerland**

**Sub: Submission of inputs for the upcoming report to the Human Rights Council to be presented in June 2024 by Ms. Farida Shaheed.**

Sub: Input on Academic Freedom.

I would like to submit my input on Academic Freedom and Freedom of Expression in Educational Institutions for the upcoming report to the Human Rights Council to be presented in June 2024, the United Nations Special Rapporteur on the Right to Education, by Ms. Farida Shaheed.

As an academic and member of the civil society, I am submitting my inputs highlighting *‘Unveiling Academic Freedoms: A Brief Inquiry Into Expression Within Educational Institutions’.*

I also consent to my contribution being published on the OHCHR’s website.

Submission prepared by,

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# "UNVEILING ACADEMIC FREEDOMS: A BRIEF INQUIRY INTO EXPRESSION WITHIN EDUCATIONAL INSTITUTIONS"

In the ***early twentieth century,*** The American Association of University Professors (AAUP)[[1]](#footnote-1) was formed to retort the swelling history of threats to academic freedom and set onward an outline to understand and support academic freedom as a code that guides analysis in colleges and universities. In India, Academic Freedom is not explicitly mentioned in the Indian Constitution but protected under the broader umbrella of ***Article 19(1)(a), The Right to Freedom of Speech and Expression*** considered a constitutional guarantee encompassing academic freedom. The protection of academic freedom is also implied through the fundamental ***Right to Education***. ***Article 19(1)(a) states, "All citizens shall have the right to freedom of speech and expression."[[2]](#footnote-2)*** However, this right is subject to reasonable restrictions outlined in ***Article 19(2)[[3]](#footnote-3)*** for reasons such as public order, decency, and morality.

The landmark Supreme Court case, ***T.M.A. Pai Foundation v. State of Karnataka (2002)***,[[4]](#footnote-4) recognized the autonomy of educational institutions in matters of administration and academics, contributing to the protection of academic freedom.

However, the right to academic freedom is not absolute, and reasonable restrictions can be imposed often under the guise of maintaining public order or preventing defamation under Article 19(2). In the case of ***Keshavananda Bharati v. State of Kerala (1973)***,[[5]](#footnote-5) the Supreme Court established that restrictions must be within reasonable limits and should not destroy the very essence of the right.

Despite these protections, instances of limitations on academic freedom have arisen. For example, in the case of ***P. A. Inamdar v. State of Maharashtra (2005)***,[[6]](#footnote-6) the Supreme Court acknowledged that regulatory measures could be imposed on private educational institutions, affecting their autonomy.

In India, academic freedom is generally extended to academic staff, teachers, and students across various levels of education. The right to academic freedom is crucial in fostering an environment conducive to learning, research, and exchanging ideas.

* ***University Level:*** Academic staff, including professors and researchers, are typically recognized as having the right to academic freedom. This is reflected in court decisions such as the ***TMA Pai Foundation v. State of Karnataka (2002)***,[[7]](#footnote-7) which emphasized the autonomy of educational institutions and the role of academic freedom in shaping curriculum and research agendas.
* ***School Level:*** Teachers are expected to have academic freedom to facilitate effective teaching and intellectual engagement. However, the extent of this freedom may be subject to certain reasonable restrictions, particularly in the context of school education where curriculum standards are often set by educational boards. Students, too, are generally entitled to academic freedom, allowing them to express their thoughts, engage in discussions, and pursue independent research. However, this freedom may be subject to the institution's code of conduct and regulations.

**CORE OBSTACLES TO ACADEMIC FREEDOM:**

1. ***Government Interference:*** Academic freedom can be seriously threatened by political pressures and government intervention. Authorities can try and sway curriculum, curricula, or the voicing of opposing opinions.
2. ***Censorship and Self-Censorship:*** Academics and students may self-censor out of fear of institutional and societal retaliation. This fear might prevent people from exploring ideas that are contentious or unpopular.
3. ***Institutional Autonomy:*** Academic freedom may be impacted by institutional governance and decision-making procedures. When educational institutions lack autonomy, outside factors may have an impact on academic practices and policy.
4. ***Dangers to Intellectual Diversity:*** Diverse viewpoints are what make academic settings so vibrant. Ideological prejudices, bigotry, and intolerance, however, can obstruct the free interchange of ideas.
5. ***Financial Restraints:*** Educational institutions may have limited funds for research and other academic activities, which may hinder their ability to advance knowledge and innovation.

**LEGAL FRAMEWORK GAPS THAT PRESERVE ACADEMIC FREEDOM:**

1. ***Absence of Explicit Protections:*** Academic freedom may not be specifically safeguarded by law in some countries, such as India. Stronger protection can be offered by explicit legal measures that preserve academic freedom.
2. ***Vagueness in Restrictions:*** The legislative framework may permit limitations on academic freedom under general headings like "public order" or "decency," which may be abused and open to interpretation.
3. ***Limited Enforcement measures:*** The efficacy of legal safeguards can be weakened by the lack of strong enforcement measures, making it more difficult for people to seek redress if they are violated.
4. ***Restricted Court Precedents:*** In many nations, there may not be enough case law to establish strong court precedents that explicitly address and protect academic freedom, which leaves it open to erosion.
5. ***Insufficient Protection for Students:*** While academic freedom talks frequently focus on faculty members, students also want sufficient protection for their right to free expression and intellectual inquiry. Academic freedom for students may not be adequately addressed by legal frameworks.
6. ***Globalisation Concerns:*** Cross-border problems originating from multinational cooperation, the impact of global organizations on academic institutions, and regulatory frameworks that may not be sufficient to handle these concerns.

***"A degree of self-governance, necessary for institutes of higher education to make effective decisions regarding their academic work standards, management, and related activities" is how*** UNESCO ***defines institutional autonomy***.[[8]](#footnote-8) Academic autonomy is a broad term that refers to a university's ability to govern itself and is not just used to describe how the curriculum is created. ***Academic Freedom and Institutional Autonomy are closely related.*** Autonomy should be a core aspect of academic units and faculty, promoting self-governance at all levels. It encompasses student selection, academic reorganization, assessment methods, and departmental autonomy. This autonomy allows students to plan high-quality instruction, evaluate research, and engage in entrepreneurship, ensuring complete autonomy over operational and strategic decisions***.***

***Academic autonomy includes:***

1. Creating academic programs and curricula.
2. Having the freedom to choose one's process for choosing research fellows.
3. Adopting choice-based credit courses.
4. Having autonomy over departments.
5. Establishing internal quality assurance cells.
6. Moving to internal evaluation.
7. Evaluating teachers' performance and allocating sufficient weight to research work based on quantifiable parameters.
8. Having the freedom to create connections for academic and research collaboration in India and overseas.
9. Impartiality and transparency in the selection of faculty across India; and
10. The calibre of research with an emphasis on international benchmarks like citation indices and patents.*Top of Form*

***Self-Governance entails the following:***

1. The university's management system promotes best governance practices.
2. The head of the institution has the authority to decide on the number and rank of professors, as well as associate and assistant professors.
3. The outsourcing of non-academic activities for effectiveness and efficiency.
4. The establishment of a central/state higher education tribunal for mechanisms for resolving grievances.
5. The evolution of open, participatory, and data-based norms of accountability; and
6. A charter of responsibility and the devolution and delegation of authority defined for various levels within the higher education system.

## INSTITUTIONAL GUIDELINES / CODE OF CONDUCT

* UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel***[[9]](#footnote-9)*** asserts the need to safeguard academic freedom for higher-education teaching personnel, promoting autonomy and intellectual independence. It emphasizes that educators should be able to freely express their views and engage in scholarly research without undue interference, ensuring a conducive environment for learning and knowledge dissemination.
* University of California Academic Personnel Manual, Section 010,[[10]](#footnote-10) underscores the fundamental importance of academic freedom, fostering an environment where faculty can pursue scholarly activities without constraint. It affirms the right to free expression and encourages open discourse to promote intellectual diversity within educational institutions.
* The Canadian Association of University Teachers (CAUT)[[11]](#footnote-11) advocates for educators' rights to pursue research and express opinions without interference, fostering an environment that encourages free inquiry. They emphasize the critical role of freedom of expression in ensuring a vibrant and diverse academic community within Canadian educational institutions.
* Association of Canadian College and University Ombudspersons[[12]](#footnote-12) ensuring the right of individuals within Canadian colleges and universities to pursue knowledge and express opinions freely. They advocate for an inclusive environment that encourages open dialogue and diverse perspectives within educational institutions.
* The Australian Code for the Responsible Conduct of Research[[13]](#footnote-13) underscores the significance of academic freedom, supporting researchers' rights to explore and disseminate knowledge without undue constraints. It emphasizes a commitment to fostering an environment that encourages open dialogue, intellectual diversity, and the free exchange of ideas within educational institutions.
* Australian National University (ANU) Code of Conduct[[14]](#footnote-14) Academic Freedom and Freedom of Expression in Educational Institutions upholds academic freedom, emphasizing the right of faculty and staff to express diverse perspectives and engage in open inquiry within the university community. It promotes an inclusive environment that values intellectual freedom and the exchange of ideas within educational institutions.Top of Form
* Australian Universities Quality Agency (AUQA) Guidelines[[15]](#footnote-15) stress the significance of academic freedom, ensuring educators and researchers the autonomy to pursue knowledge and express ideas within Australian universities. They highlight the importance of fostering an environment that encourages freedom of expression and open discourse, promoting intellectual diversity and scholarly independence.
* The Association of American Colleges and Universities (AAC&U)[[16]](#footnote-16)champions academic freedom, asserting the importance of a robust educational environment that nurtures diverse perspectives and free expression for faculty and students alike. They emphasize the role of higher education in cultivating critical thinking, open inquiry, and the free exchange of ideas within educational institutions.
* The Association of American Colleges and Universities (AAC&U)[[17]](#footnote-17) advocates for academic freedom, asserting the crucial role of a dynamic educational environment that nurtures diverse perspectives and free expression for both faculty and students. They emphasize higher education's responsibility in cultivating critical thinking, open inquiry, and the unrestricted exchange of ideas within academic institutions.
* European University Association (EUA)[[18]](#footnote-18) recommendations affirm the essential role of these principles in fostering intellectual autonomy and a vibrant academic community within European educational institutions. They emphasize the protection of individuals' rights to express diverse viewpoints and engage in open discourse, contributing to the advancement of knowledge and democratic values.
* The University of Oxford Statute XI[[19]](#footnote-19) underscores the paramount importance of academic freedom, safeguarding the rights of scholars to pursue research and express ideas independently. It emphasizes the commitment to fostering an environment that upholds freedom of expression and encourages open debate within the academic community.
* German Universities’ Rectors’ Conference (HRK)[[20]](#footnote-20) recommendations for Safeguarding Good Scientific Practice stress the protection of academic freedom and freedom of expression, emphasizing the importance of a conducive environment for good scientific practice within German universities. They highlight the need to uphold these principles to foster innovation, critical thinking, and open discourse within educational institutions.
* The Council of Europe's[[21]](#footnote-21) recommendation on Whistleblower Protection underscores the importance of academic freedom by safeguarding individuals who disclose misconduct, ensuring a culture of transparency and integrity within educational institutions. It emphasizes the need to protect whistleblowers to preserve academic values, freedom of expression, and ethical standards.
* University Grants Commission (UGC) Regulations on Academic Freedom (2018)[[22]](#footnote-22) reinforce the importance of academic freedom, protecting the rights of educators to pursue research and express ideas without interference. They underscore the need for an environment that supports freedom of expression, fostering open dialogue and diverse perspectives within educational institutions.
* National Education Policy (NEP) 2020[[23]](#footnote-23) supports academic freedom, emphasizing the autonomy of educational institutions and the freedom for students and faculty to engage in critical inquiry. It promotes an inclusive environment that values freedom of expression, encouraging open dialogue and diverse perspectives within the education system.
* TheProtection of Human Rights Act, 1993,[[24]](#footnote-24) establishes the National Human Rights Commission (NHRC) and the State Human Rights Commission also upholds academic freedom, ensuring individuals within educational institutions have the right to pursue knowledge and express opinions without infringement on their fundamental rights. It emphasizes the protection of human rights, including freedom of expression, as integral to fostering a conducive environment for learning and intellectual development.Top of Form
* The Right to Education Act (RTE Act), 2009,[[25]](#footnote-25) focuses on ensuring access to education for all, with an emphasis on academic freedom and the promotion of an inclusive environment that encourages freedom of expression within educational institutions. It underscores the importance of creating a space where students can explore diverse perspectives and engage in open dialogue, fostering holistic development.

At the ***Institutional Level, Financial management and controls*** are also essential components of the autonomy idea. Allotting public money to institutions in the form of block grants has been the most prevalent historical tendency. There may or may not be performance or result goals or criteria attached to this. Fees from at least some of the student body may be collected by the institution. However, based on the kind of institution, this charge might range from a very small sum to a cost-based amount. In Europe and most Asian countries, including India, the trend is comparable. Due to their limited ability to engage in the financial sector in most nations, universities have difficulty acquiring capital. Many of the structures and land are significant from a cultural, traditional, and historic standpoint. This restriction also extends to their use. This indicates that universities may not always have unrestricted access to the land, structure, and assets despite nominal ownership. The fact that funding and investment opportunities are mostly available to sponsoring organizations or "satellite" legal entities of the universities rather than the institutions themselves is another recurring subject pertinent to financial autonomy. From the financial angle, the granting of autonomy should not be viewed as escaping from the responsibility of providing public funding.[[26]](#footnote-26) Rather, the institutions should be given financial support in addition to autonomy, but they should still be allowed to raise more money on their own. Essentially, this will support institutional initiatives to create capability.

## ACADEMIC FREEDOM GUARD: RULES AGAINST EXTERNAL INTERFERENCE IN EDUCATION

1. The ***United States Constitution's Fourth Amendment Protections*** forbids arbitrary searches and seizures. Except in specific emergencies, law enforcement normally needs a search warrant or probable cause to access educational facilities.
2. In the ***UK, the Education Act 1996, Section 547***, restricts police entrance inside schools without the headteacher's permission. The clause tries to safeguard schools' independence. According to ***Article 8 of the Human Rights Act of 1998***, which incorporated the European Convention on Human Rights into UK legislation The right to respect for one's private and family life restricts the police or military personnel enter educational facilities.
3. ***Section 8 of the Canadian Charter of Rights and Freedoms*** states that Protection against arbitrary search and seizure is a component of the ***Constitution Act, 1982***. This provision may have an impact on law enforcement personnel's ability to enter educational institutions.
4. The ***Right to Privacy (Section 14)*** and the ***Right to Basic Education (Section 29)*** are guaranteed under the South African Constitution. Certain fundamental rights may influence the limitations on police or military access to educational institutions.
5. In Australia, ***the Education and Care Services National Law (Victoria) Act, 2010*** includes provisions related to the entry of police into education and care services premises. The law sets out conditions under which entry is permissible.
6. Based on the ***Indian Constitution, Article 19(1)(c)*** guarantees the right to form associations or unions, ***Article 21 guarantees the Right to Privacy while Article 30 provides the Right to Minority Educational Institutions to establish and administer educational institutions of their choice***. These constitutional provisions contribute to the autonomy of educational institutions.

## INTERNATIONAL CONVENTIONS

* The Universal Declaration of Human Rights (UDHR)[[27]](#footnote-27) ***Article 12 affirms the Right to Privacy***, whereas ***Article 19 emphasizes the Right to Freedom of Speech***. These guidelines aid in defending learning environments from unauthorized access also ***Article 26 addresses Academic Freedom and Freedom of Expression in Educational Institutions affirming the Right to Education and the Freedom to pursue knowledge without any form of discrimination***. It emphasizes the role of education in fostering understanding, tolerance, and the development of individual potential.
* According to the International Covenant on Civil and Political Rights (ICCPR)[[28]](#footnote-28) ***a person's communication, house, or privacy cannot be arbitrarily or illegally interfered with, according to Article 17 of the ICCPR***. It recognizes how crucial it is to have legal protections against unauthorized access to private areas and recognizes the Right to Freedom of Speech as a fundamental human right and a prerequisite for the operation of democratic societies. ***Article 19 of the ICCPR covers Academic Freedom and Freedom of Expression at educational institutions***. It emphasizes how crucial it is to protect academic freedom for teachers, researchers, and students.
* According to the Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997),[[29]](#footnote-29) UNESCO addresses Academic Freedom and Freedom of Expression in Educational Institutions, recognizing the significance of preserving these principles for the advancement of knowledge and the growth of an open and democratic society. It highlights how important it is to safeguard the institutional and intellectual independence of higher education faculty members.
* The UNESCO Convention Against Discrimination in Education (CADE)[[30]](#footnote-30) addresses ***Academic Freedom and Freedom of Expression in Educational Institutions in Article 5***, emphasizing the right to education without discrimination and the importance of ensuring academic freedom for all individuals. It underscores the principles of equality and non-discrimination in educational settings, promoting an inclusive environment for the free exchange of ideas.

## SURVEILLANCETop of Form

Academic personnel and students at all levels of education frequently face increased surveillance by the government, which uses tools like cameras on-site and internet monitoring. Although the primary purpose of these methods seems to be security, their widespread use raises questions about privacy invasion and possible restrictions on free speech and academic freedom. Commonly used for security purposes, on-site cameras may unintentionally restrict open communication. Internet and email surveillance raises the possibility of self-censorship and stifles free speech. Excessive limitations on these liberties might hinder investigations, suppress criticism, and discourage examining contentious subjects. To create a supportive atmosphere for unrestricted intellectual research, balancing security imperatives and preserving academic rights calls for strong legal safeguards, ethical monitoring, and open regulations. Reaching this balance is essential to maintaining the credibility of learning establishments.

## EXPRESSION LIMITS AND MATERIAL SELECTION IN EDUCATION

The limitations on teachers' expression vary. Some institutions advocate for neutrality to maintain objectivity, while others emphasize diverse perspectives. Policies differ, with considerations for professionalism, avoiding bias, and promoting a balanced educational environment, especially regarding sensitive topics like religion and politics. The extent of these limitations depends on institutional policies, educational standards, and the broader societal context.

Teachers and professors at various education levels often have discretion in selecting teaching materials, including manuals and books. However, curriculum guidelines, educational policies, and local regulations can restrict choices. Some books may be banned due to controversial content. Mandatory materials ensure uniformity and adherence to established educational standards.

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