Conceptualizing a Constitutional Framework for Academic Freedom in India: A case for Constitutional Transplant through Latin American and Eurocentric Conceptualizations of Academic Freedom

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ABSTRACT

This thesis is an invitation to constitutionalize academic freedom in India by conceptualizing its framework through Constitutional Transplant of Latin American and Eurocentric conceptualizations of academic freedom. The Latin American and Eurocentric models offer distinguishable frameworks, as the former assumes the prominence of institutional autonomy to enable academic freedom, while the latter provides for the individual aspect of academic freedom and recognizes institutional autonomy as a functional requirement for academic freedom. To determine the viability of each of these models for India, the thesis examines not only the nature of threats towards academic freedom in India but also reveals how it has escaped the jurisprudence of Indian Constitutional Courts wherein such jurisprudence is marked by an omission on the deliberation of academic freedom. In furtherance of the same, this thesis argues that both, Latin American and Eurocentric conceptualizations, with their focus on institutional and individual aspects of academic freedom, respectively, need to be incorporated as distinct but intertwined rights within India's Constitutional framework. It further encourages such incorporation through means of judicial dialogue and strategic litigation.

AUTHOR'S DECLARATION

I, the undersigned, Riya Pahuja, candidate for the LLM degree in Comparative Constitutional Law declare herewith that the present thesis titled "Conceptualizing a Constitutional Framework for Academic Freedom in *India: A case for Constitutional Transplant through Latin American and Eurocentric Conceptualizations of Academic Freedom"* is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.
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I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 16 June 2025

Riya Pahuja

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Like all my achievements, this thesis is a result of the love, support and patience of my parents. My father, who has shown through example, the value of hard work and empowered me to pursue a master's degree. My mother, whose values, kindness, charisma and strength carry me every day. It is only because of them that I have come so far.

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All errors remain mine.

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I. INTRODUCTION

Democracies around the world today are witnessing a decline of academic freedom.[1] Despite this threat to academic freedom, which can be linked to the threat to democracy on a global scale[2], there continues to be a lack of universal consensus on academic freedom.[3] As a result, different Constitutions and Constitutional Courts approach this challenge in a variety of ways.[4] However, in democracies which do not embrace a Constitutional recognition of academic freedom, the challenge of restraining against an assault to this freedom is further heightened. India is a country which has allowed for only a tenuous recognition of academic freedom through its Constitutional framework. This entails that jurisprudential engagement with this right is substantively absent, thus empowering a weak protection of violations against academic freedom. As in legal philosophy, a right that does not exist cannot be defended, for a person only has the rights that can be defended.[5] In pursuance of this, this thesis makes a case for incorporating a Constitutional framework for academic freedom in India and argues that: *In order to conceptualize a constitutional framework for academic freedom in India, it ought to recognize both; its institutional aspect and individual aspect as two distinct, albeit interrelated rights. This is so because on one hand, the framework surrounding HEIs provides considerable control to governments for appointing University leadership which leads to a suppression of*

[1]34 countries and territories experienced a "statistically significant and substantially meaningful decline in academic freedom compared to ten years ago, while only eight countries saw an increase in academic freedom." 'Academic Freedom Index Update 2025' V-Dem Institute, 2025' (V-Dem Institute, Friedrich-Alexander-Universitat: Institute of Political Science)<https://academic-freedom-index.net/research/Academic_Freedom_Index_Update_2025.pdf>

[2] Ibid; Tom Ginsburg, 'Academic Freedom and Democratic Backsliding' (2022) Vol. 71, No.2 , Journal of Legal Education < https://jle.aals.org/home/vol71/iss2/2/> ; Renata Uitz, 'Academic Freedom as a Human Right? Facing up to the illiberal challenge?' University of Oxford, 2020 < https://www.law.ox.ac.uk/sites/default/files/migrated/draft_3_academic_freedom_as_a_human_right_uitz_febr_2020.pdf>

[3]Janika Spannagel, "Academic Freedom in Constitutions (AFC) Dataset (2022)" <https://dataverse.harvard.edu/citation?persistentId=doi:10.7910/DVN/E8MIMF>; 'Academic Freedom: Conceptualizations, Contestations and Constitutional Challenges'(2025) 14 (1) *Global Constitutionalism*, Special Issue, March 2025.

[4] Ibid.

[5] H.L.A. Hart, *The Concept of Law*, 2nd edn, Oxford University Press, Clarendon Law Series (first published 1961); Hans Kelsen, *Pure Theory of Law*, University of California Press, 1967.

the individual aspects of academic freedom. On the other hand, the attack on academics and students by the State has a trickle-down effect on the University leadership which empowers such attacks. In so doing, it employs the Comparative Constitutional tool of 'Constitutional Transplant' and attempts to borrow the conceptualizations of academic freedom in Latin America and Europe in a way that suits its challenges in India.

To conduct this study, this thesis is divided into five chapters. Chapter I is the present introductory chapter which clarifies the definitions, scope and the methods that the thesis relies on, presents the research question and provides the justification for using the comparators of Latin America and Europe (Council of Europe) and for centering it to India. Chapter II addresses the theoretical framework and delves into the global, Latin American and Eurocentric understandings and conceptualizations of academic freedom. Chapter III discusses the jurisprudence on academic freedom in India through the decisions of the Constitutional Courts in cases concerning institutional and individual aspects of academic freedom, respectively. Chapter IV analyses the suitable conceptualization for India and suggests avenues for its inclusion in the Constitutional framework of India, partially, through engagement with Constitutional adjudication on academic freedom in Latin America and Europe. Section V concludes the thesis by delving into its implications.

I.I. Definitions, Scope and Research Methods

I.I.I. Definitions

Owing to the variety of definitions concerning academic freedom, it is pertinent to clarify that for the purpose of this thesis, academic freedom refers to the freedom of members of the academic community, including professors, researchers and students; to teach, research, transmit, learn, develop, receive, disseminate, exchange and discuss ideas and knowledge and

an institutional space that empowers them to do so within and outside it. As a result, the University is not considered merely as a space for instruction and professional advancement, but also a platform for search for truth, critical inquiry, development of ideas and discussion that is free from any external fear or pressure, especially from the State.

Furthermore, Constitutional Transplant, with regard to this paper, refers to its positive connotation of borrowing, wherein the author argues for cross-constitutional borrowing or migration[6] of the normative conceptualization of academic freedom and the manner in which it has permeated in the language of the Constitutional Courts of Latin America and Europe to India. However, like any other application of Transplant in a Constitutional setting, its adaptation in contexts of academic freedom is also surrounded by warnings of mutation[7], misunderstanding empowered by lack of contextual understanding—historical, political and social—within which they emerged and, the onerous nature of transplants due to self-determination and the expressive nature of constitutional norms.[8]

It is also relevant to note that although 'Latin America' refers to the geographical connotations associated with the region as referred to for Constitutional studies that can be distinguished from other regions, owing the literature on Latin American academic freedom, its scope is defined by the countries that can be associated with a Iberian heritage due to colonization by Spain and Portugal and therefore do not cover the non-Spanish and non-Portuguese speaking countries.[9] The term 'Eurocentric' or 'Europe' as used throughout this thesis does not refer to

[6] Constitutional Transplant can be differentiated through various metaphors such as borrowing, migration etc. However, although they can be differentiated, for the purposes of this paper, they have been employed to connotate a common meaning whereby thereby there is a positive adoption after the conceptualization has been received from another jurisdiction(s).

[7] Horacio Spector, 'Constitutional Transplants and the Mutation Effect', Chicago-Kent Law Review, Vol. 83, Issue 1, *Symposium: Law and Economic Development in Latin America: A Comparative Approach to Legal Reform,* December 2007.

[8] Vlad Perju, 'Constitutional Transplants, Borrowing, and Migrations', Boston College Law School, Legal Studies Research Paper Series, 10 January 2012.

[9] See Section II.III; Andrés Bernasconi, 'Latin America: Weak Academic Freedom within Strong University Autonomy' (2025) 14(1), Special Issue, *Global Constitutionalism,* 97, doi:10.1017/S204538172400011X.

its broader geographical connotation or the European Union, but pertains to the frameworks and jurisprudence of the institutions and instruments associated with the Council of Europe("CoE").[10]

Furthermore, this study examines the challenge to academic freedom in India through the analysis of its attacks in Higher Education Institutes ("HEIs") which, for the purpose of the thesis, refers to both public and private universities.

I.I.II. Research Methods and Methodology

In order to delve into the methodology used for this thesis, it is important to first clarify the discipline within which it emerges i.e. the field of Comparative Constitutional Law. In pursuance of the same, this thesis is a contribution to Comparative Constitutional scholarship on Universalist Search for Good Principles.[11] In so doing, the thesis takes India as the focus to conceptualize a comprehensive framework for academic freedom that may further contribute to addressing similar challenges concerning academic freedom in other jurisdictions that do not subscribe to a Constitutional recognition of academic freedom. Furthermore, it may provoke a more all-encompassing understanding of academic freedom even in jurisdictions from which the two understandings are being received. It also takes a partly decolonial approach to the extent that although it considers the Eurocentric and global frameworks on academic freedom as meritorious ones, it questions the comprehensiveness of its applicability and does not make a case for Constitutional borrowing merely from the hegemonic conceptualizations on academic freedom but also takes into account the indigenously developed understanding of academic freedom in Latin America and argues that both need to

[10] See Section II.II.

[11] Vicki C. Jackson, 'Comparative Constitutional Law: Methodologies', in in Rosenfeld, Michel, and Andras Sajo (eds), *The Oxford Handbook of Comparative Constitutional Law* (2012, online edn, Oxford Academic, 21 Nov. 2012), 54-74. https://doi.org/10.1093/oxfordhb/9780199578610.013.0004

be brought within India's constitutional framework to empower an individual and institutional protection of academic freedom.

In order to conduct the analysis of Indian jurisprudence on academic freedom, this paper submits to the timeline of the past decade from which it is being written i.e. 2015-2025, while the analysis of Latin American and Eurocentric cases encourages a broader timeline. The primary methodology engaged is desk research, which is guided by the author's rather brief litigation experience in the Constitutional Courts in New Delhi which has been instrumental in developing this thesis as there is not an explicit recognition of academic freedom in the Constitutional framework of India and therefore a lawyer is required to deduce the presence of academic freedom in the jurisprudence of the Constitutional Courts as opposed to merely identifying it in jurisdictions with Constitutional recognition. Moreover, the analysis of Indian jurisprudence will largely take a Court and adjudication centered approach wherein India's jurisprudence on academic freedom will be analyzed through decisions of the Constitutional Courts. In India, the term Constitutional Court implies the Supreme Court and the High Courts of States. The case research on India has primarily been done through the legal research platform *SCCOnline* along with the websites of the High Couts and the Supreme Court.

As for Latin America, the theoretical framework is informed by academic literature on the indigenous idea of academic freedom alongside the websites of Constitutional Courts for case research. For the Eurocentric theoretical framework, it depends on legal instruments surrounding the Council of Europe including European Convention of Human Rights ("ECHR") and the jurisprudence of the European Court of Human Rights ("ECtHR").

I.I.III. Scope

Despite the fact that there is ample academic literature on the decline of academic freedom in India and the threat surrounding it[12], its discussion from a Constitutional lens is rare. Furthermore, the attacks on academic freedom in India are often studied as political realities and not as a constitutional phenomenon further empowered by paucity of jurisprudence on it by the Constitutional Courts. This paper attempts to not only fill this gap by revealing the presence of hidden Constitutional challenges to academic freedom in India owing to the lack of explicit recognition in Constitutional jurisprudence, but also offers avenues for its inclusion in the Constitutional framework by making use of Comparative Constitutional Law tool of Constitutional Transplant alongside legal imagination to navigate accountability.

Therefore, this thesis is significant because given the lack of a concrete framework on academic freedom in India, institutional autonomy of HEIs and the individual aspects of academic freedom i.e. that of professoriate and students, is often deliberated on the grounds of principles of natural justice, freedom of speech, federalism, to name a few. This lack of recognition of the subversion of academic freedom empowers an inherently weak protection of academic freedom in India where the jurisprudence on academic freedom continues to be limited and only finds it place in the fundamental right of free expression. However, given the role of university in a democracy[13], there is an urgent need to conceptualize a regime of academic freedom to ensure accountability when academic freedom and institutional autonomy experience an assault.

However, this thesis confronts three intertwined limitations. First, the lack of uniformity in its approach to the comparators. In other words, while the Eurocentric conceptualization on

[12] Zoya Hassan, 'Political Intolerance and Declining Academic Freedom in India', (*The Hindu Centre for Politics and Public Policy, 19 March 2025)*, < https://www.thehinducentre.com/the-arena/political-intolerance-and-declining-academic-freedom-in-india/article69333518.ece> ; Nandini Sundar, Academic Freedom in Indian Universities, 52(24), Special Issue, *Economic and Political Weekly,* 16 June 2018; alongside other sources cited throughout this paper and beyond.

[13] Kirsten Roberts Lyer, Ilyas Saliba, and Janika Spannagel, 'University Autonomy and Academic Freedom', in *University Autonomy and Decline: Causes, Responses, and Implications for Academic Freedom*, (Routledge, 27 May 2024), 14-18.

academic freedom is received through institutions of the Council of Europe and not individual states within the Council, the Latin American conceptualization is informed by its indigenous understanding as developed historically and partly found through constitutional entrenchment in national Constitutions. As a result, the Latin American understanding does not take into account the regional instruments such as the Declaration of the Organization of American States (OAS) and the jurisprudence of the Inter-American Court of Human Rights. Second, given the contestations concerning the applicability of academic freedom within the regions, this paper is limited to the extent to which it is able to capture all such contestations, despite an attempt to do so. Third, the analysis through the regional comparators is limited by the selective choice of cases, which although have been chosen to engage with the key parameters dealing with India, may not be completely representative of the breadth of the relevant jurisprudence.

I.II. Research Question

Through this thesis, the author poses the question:

Whether a Constitutional Transplant of Latin American and Eurocentric Constitutional conceptualizations on academic freedom can provide a viable Constitutional framework for conceptualizing academic freedom in India?

I.III. Justification for Comparators

According to the Academic Freedom Index("AFI")[14] of 2025, India's score has been reduced to 0.16 (with 0 being the most restrictive and 1 as the least restrictive score).[15] This is a significant decrease from 2013 when India's AFI stood at 0.62, whereas the declining trend

[14] The index examines de facto levels of academic freedom across the world by analyzing it through 5 indicators: freedom to research and teach, freedom of academic exchange and dissemination, institutional autonomy, campus integrity and freedom of academic and cultural expression; V-Dem and Friedrich-Alexander-Universitat-Nurnberg(FAU) <https://academic-freedom-index.net/ >

[15] Ibid, V-Dem (n1)

began in 2014 and can be linked to the deterioration of the country's democracy since then.[16] As a result, in 2025, India finds its place within the Bottom 10-20% across 179 countries.[17] Despite such an alarming reality of academic freedom in India, there is limited discourse to advocate for its inclusion in the Constitutional framework. In the light of this, the India centric approach for academic freedom within a Comparative Constitutional setting has been outstanding.

To do so, recourse has been consciously found in Latin America and Europe as both not only provide suitable frameworks for India through their individual and institutional focus,[18]but are also the two regions with noteworthy, yet distinguishable conceptualizations of academic freedom. While Constitutional diffusion of academic freedom is yet to significantly materialize in Asia,[19]its conceptualization in Africa does not provide for specific rights other than those of education and expression.[20]

Hence, the choice of comparators.

[16] Ibid.
[17] Ibid.
[18] See Section IV
[19] Janika Spannagel, 'The Constitutional Codification of Academic Freedom over Time and Space'(2025) 14(1), Special Issue, *Global Constitutionalism*, 46-72, doi:10.1017/S2045381724000108.
[20] Ginsburg (n 2).

II. CONCEPTUALIZATION OF ACADEMIC FREEDOM: EUROPE AND LATIN AMERICA

Before delving into a discussion that focuses on the Latin American and European variations on academic freedom, it may be pertinent to first examine the global framework surrounding the conceptualization of academic freedom as this will offer insight into the lack of uniform approach towards academic freedom globally.

II.I. Global Framework

Academic Freedom has manifested itself in Constitutions around the world through various means: with references to freedom of science, higher education teaching, autonomy or self-governance of universities or through the use the of the term 'academic freedom' itself.[21]On the other hand, there are Constitutions that do not embrace any provisions on academic freedom. Out of these, several countries have ratified the International Covenant on Economic, Social and Cultural Rights("ICESCR") which makes it pertinent to begin the section on global frameworks surrounding academic freedom by delving into the manner in which the Covenant has defined it.

The Covenant interprets the rights of academic freedom as emerging through two kinds of rights: as right related to freedom of education and as right concerned with freedom of science, as stipulated in Article 13 and Article 15, respectively. The Committee overseeing the implementation of the Covenant, i.e. UN Committee on Economic, Social and Cultural Rights (CESCR) can be considered to have the most authoritative stipulation on the scope of academic freedom within the realm of international human rights law.[22] The Committee's focus on the

[21] Spannagel (n 19), Spannagel (n 3)
[22] Lyer, Saliba and Spannagel (n 13), 10.

academic community, individually or collectively[23] with respect to the interpretation of Article 13 puts the individual aspect of academic freedom towards the center while institutional autonomy is seen as a distinct but supporting feature of academic freedom.[24] On the other hand, the emergence of academic freedom through 'the right to science' as stipulated in Article 15 of the Covenant considers academic freedom as right of everyone to enjoy the benefits of scientific progress and its application. As a result, academic freedom, as emerging through the right to science has not developed as a right restricted to the academic community but is applicable to the society at large.[25] This can be traced through the fact that, right to science, is a right that emerges from the umbrella term of 'freedom of science', alongside the right of academic freedom, the autonomy of higher education institutions and the freedom of scientific research.[26] This entails that academic freedom as a norm is a professional freedom of those who engage in scientific research or higher education teaching or are affiliated with a HEI or research institution or opposed to the right to science which deviates from such norm. Although such standards lead towards the application of autonomy as a subset of this right of science, there are contradictions with regard to the same. In other words, a balance between the rights of academic freedom and institutional autonomy has to be achieved, which is in turn a complex task given its inherent contestations in respect of the right through which it emerges along with the fact that the lack of clear definition of the purposes of academic freedom and university autonomy can result in diverse interpretations of the rights of academic freedom and university autonomy.

[23] UN ECOSOC, 1999'Implementation of the international covenant on economic, social and cultural rights: CESR General Comment No. 13", E/C.12/1999/10, para 39.
[24] Ibid para 40, as cited in Lyer, Saliba and Spannagel (n 13), 10.
[25] Lyer, Saliba and Spannagel (n 13), 13.
[26] Kriszta Kovács and Janika Spannagel, 'Academic Freedom: Global Variations in norm conceptualization, diffusion and contestation-an introduction', (2025) 14(1), Special Issue, *Global Constitutionalism,* 13-25, doi:10.1017/S2045381724000133.

Moreover, it is also pertinent to note that academic freedom exists as a liberal norm.[27] This entails that that academia holds the prerogative to define which societal goals are to be pursued and how they are supposed to be pursued. However, when the right of academic freedom is defined through the broader right of society, as grounded in the terminology of 'right to science', it may result in an illiberal manifestation of academic freedom wherein science becomes subordinate to political and economic demands. Therefore, although the placing of academic freedom within the freedom of science is seen by some as the right academic freedom being elevated to a societal right to be enjoyed by all[28], in the opinion of the author, linking academic freedom to the broader right of science and taking away its limited scope, risks allowing for an illiberal turn of the right, making it vulnerable to political and economic demands.

Other than the ICESCR, International Covenant on Civil and Political Rights ("ICCPR") is an international instrument through which academic freedom is implied. As opposed to ICESCR, ICCPR vests this right in the freedom of expression including the right to seek, receive, impart information and ideas of all kinds.[29] However, other than a few select interventions as exception, the Human Rights Commission—as the Committee responsible for articulating ICCPR rights has not significantly developed the right to academic freedom.[30] Owing to this, the deliberation on the limitations of placing academic freedom within freedom of expression will be reserved for another section.[31]

[27] Ibid.
[28] Lyer, Saliba and Spannagel (n 13), 13.
[29] Article 19, ICCPR
[30] Ginsburg (n2), 248.
[31] See Section III.II.I, Part A)

Furthermore, the individual focused nature of academic freedom, as defined through the abovementioned frameworks, provides a narrow scope as it does not sufficiently address the institutional side of academic freedom.[32]

II.II Eurocentric Framework

In Europe, the origin of academic freedom can be traced back to the emergence of the modern University in Germany in the nineteenth century, which was furthered empowered by Prussian reformer Wilhelm von Humboldt who advanced the complimentary rights of *Lernfreiheit* and *Lehrfreiheit*, which translates to the right of students to learn and of professors to teach and research, respectively—without state interference.[33] These can be read together as *Akademische Freiheit* or academic freedom. This conception was limited to intramural utterances and distinguished from the English liberal conception which was centered around individual rights to opinion and expression.[34]

Although variations in the European understandings of academic freedom continue to exist at national levels, delving into a deeper discussion of the same is beyond the scope of this thesis. This is so because this thesis focuses on the broader Eurocentric conceptualization of academic freedom as manifested through supranational institutions and their instruments—specifically those associated with the Council of Europe (CoE).

The European Court of Human Rights (ECtHR) embraces an understanding of academic freedom that is vested in the individual rights of academics. This conceptualization finds its authority in the European Convention on Human Rights (ECHR)'s Article 10 which deals with the right of freedom of expression. Although Article 10 of the Convention is 'substantially

[32] Lyer, Saliba and Spannagel (n 13),18; Uitz (n2), 3.
[33] Walter P. Metzger, 'The German Contribution to the American Theory of Academic Freedom' (1995), as cited in Ginsburg (n 2), 241.
[34] Lord Chorley, 'Academic Freedom in the United Kingdom' (1963), as cited in Ginsburg (n2) 241.

identical' to Article 19 of the ICCPR[35], it can be distinguished from the latter because the case law surrounding the ECHR's provision has developed in a manner that not only explicitly recognizes this right in an academic context, but also establishes a high standard for finding academics liable owing to public expression of their views—both inside and outside of academia.[36]This does not denote an unlimited right of academic freedom.[37] On the contrary, it entails that extramural speech is only protected as long as the person making such speech is an academic, that such extramural utterance falls within such academic's research and that the extramural statement amounts to opinions depending on the academic's professional expertise.[38] As for intramural speech, it includes the freedom of the academic to criticize the institution or the system in which the academic works.[39]

As a result, the conceptualization of academic freedom as understood through the frameworks of the CoE, vests in an individual claim to academic freedom. The origin of this right through ECHR's framework is specifically profound as it also takes into account the academic's right to receive information alongside the right to impart it.[40] Moreover, the protection given to the conduct of research as well as its simultaneous right to publish and disseminate academic findings is a strong one. This implies that the protection given to academic freedom is higher than the standard upheld for free speech as manifested through the ECtHR's jurisprudence, according to which, an academic has a right to impart information or publish it, even if such information results in offending others, including members of a vulnerable section of society.[41]

[35] Ginsburg (n 2), 251.
[36] Kriszta Kovács, 'Academic Freedom in Europe: Limitations and Judicial Remedies', (2025) 14(1), Special Issue, *Global Constitutionalism*, 138-158, doi:10.1017/S2045381724000091.
[37] Ibid.
[38] *Mustafa Erdoğan and Others v Turkey,* Joint Concurring Opinion of Judges Sajó, Vučinić and Kūris, para 8 ; Ibid 148.
[39] Ibid 144; *Sorguç v Turkey,* Appl no 17089/03, (23 June 2009).
[40] *Kenedi v Hungary,* App no 31475/05, (26 May 2009); Kovács (n36) 143.
[41] Kovács (n36), 143-144.

Therefore, even though there is no explicit recognition of academic freedom in the ECHR, its treatment as a special concern through ECtHR's jurisprudence has empowered its development as a right different from freedom of expression or a 'right of free speech in the academic context'.[42]

As opposed to the Council and its frameworks, which view academic freedom as an individual right, the European Union, through the European Court of Justice ("ECJ") has developed academic freedom as an institutional right, in extension of its individual aspect as developed through the CoE and therefore embraces this right more comprehensively.[43] In pursuance of the same, it relies on Article 13 of the EU Charter of Fundamental Rights which stipulates academic freedom as a right vested in the 'arts and scientific research.'

However, the justification for the reliance of this thesis on the jurisprudence surrounding the CoE and not the EU for the Constitutional Transplant of a Eurocentric understanding of academic freedom is three-fold. First, it is only the European Commission or the domestic Courts who can bring a case before the ECJ for cases involving individuals or groups of individuals.[44] This implies that a case before the ECJ has the effect of an institutional claim which in turn influences the nature of protection that it provides i.e. an institutional one. Owing to this manner of bringing a case before the ECJ, parallels cannot be drawn with Indian contexts for comparison or Constitutional Transplant. Second, the jurisprudence of the ECJ with respect to academic freedom is rather limited, with the first case law on Article 13 only declared in 2020[45]. Third, such limited jurisprudence pertains mainly to the 'Lex CEU'[46] case or the gender equality requirements for EU research funding.[47] Given the parameters provided for the

[42] Ibid 143.
[43] Ibid 150.
[44] Ibid 141.
[45] *European Commission v Hungary,* Case C-66/18 (6 October 2020); Ibid 139.
[46] Ibid.
[47] Kovács (n36), 154-157.

discussion of the Indian jurisprudence on academic freedom by the author, such cases would not provide equivalence for comparison with Indian case law and in turn would not be viable for employing tools of Constitutional Transplant.

II.III. Latin America

Unlike the global and the Eurocentric frameworks of academic freedom that are determined by the individual right of the academic or through freedom of science, in Latin America, such freedoms emerge from university autonomy. However, before beginning a discussion about the Latin American idea of academic freedom, it is pertinent to reiterate the scope of this Latin American definition. The understanding of Latin American academic freedom heavily relies on the work of Andres Bernasconi[48], and therefore, the scope of this Latin American definition does not cover the non-Spanish or non-Portuguese-speaking South America and the Caribbean but is informed through the countries that can be characterized by Iberian heritage as a result of colonialism by Spain and Portugal.[49]Simultaneously, the Latin American conceptualization as discussed here pertains to the indigenous definition of academic freedom and university autonomy as it developed over time and does not take into account supranational frameworks such as that of the Organization of American States (OAS), and its 2021 Declaration on Inter-American Principles on Academic Freedom and University Autonomy as there has not been significant diffusion of the Latin American definition into global frameworks (and vice-versa), and the OAS conceptualization is derived by the latter—except to a limited extent where a part

[48] Bernasconi (n 9), 97.
[49] This is derived through analysis of national Constitutions of Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela; Ibid.

of the declaration states that 'autonomy is an essential prerequisite for academic freedom'[50], thus determining academic freedom through university autonomy.

A common starting point of most literature on Latin American academic freedom is led by the 1918 reforms that unfolded at the University of Cordoba, Argentina, as a result of a student revolt.[51] This is despite the fact that the student revolt did not begin as a means to find autonomy but to challenge the authoritarian governance, as it erupted from a reluctance from change on part of university authorities such as refusal to update libraries or curriculum.[52]The attempt of students was essentially an effort to further the idea of a University as an institution in search for truth by modernizing the conservative institution of University as it existed in Latin America before such reforms and in being able to have a right of choice over attendance, professors and curriculum.[53]Therefore, the beginning of University autonomy as the determinator of academic freedom in Latin America was marked by its place in the liberal script of science wherein there was a determination to broaden the horizons of learning and of replacing scholastic repetition with true science, in accordance with the ideals of emancipation and progress.[54]Thus, despite the fact that the demand for autonomy was not a part of the student revolt, university autonomy became the defining feature of Latin American academic freedom owing to the invocation of the representation of students, alumni and professors on university governing councils.

This genealogy also demonstrates that unlike the abovementioned frameworks which accord academic freedom as a human right, the origin of academic freedom in the present section is

[50] Inter American Principles on Academic Freedom and University Autonomy, Principle II: Autonomy of Academic Institutions, IACHR, RFOE, REDESCA, <https://www.oas.org/en/iachr/reports/questionnaires/2021_principiosinteramericanos_libertadacademica_autonomiauniversitaria_eng.pdf>

[51] Luigi Einaudi, 'University Autonomy and Academic Freedom in Latin America,' 28(3) *Law and Contemporary Problems* 636-646, < https://scholarship.law.duke.edu/lcp/vol28/iss3/12/> ; Bernasconi (n 9).

[52] Ibid.

[53] MJ van Aken, 'University Reform Before Córdoba'(1971), 51(3), *The Hispanic American Historical Review*, 460, as cited in, Bernasconi (n 9).

[54] Bernasconi (n9), 99

akin to that of a labour struggle. In furtherance of this, university autonomy in Latin America erupted as a means of shielding HEIs from interferences by governments, often authoritarian or dictatorial, so that academic institutions could define their own prerogatives. It is pertinent to note, however, that 1990s onwards, scholars have broadened the concept of threats to this autonomy by as also entailing business interests, supranational education policy agendas alongside marketization and academic capitalism in general[55]—thus making the Latin American conception uniquely relevant on a discussion of academic freedom of private universities.

The Constitutional entrenchment of university autonomy in Latin America began through its permeation in the by-laws of public universities and ultimately elevated to constitutional status. As a result, while University autonomy is present in almost all of the region's Constitutions, with the exception of Chile and Cuba, the notion of academic freedom with a focus on its individual aspect can be found in about 63 percent of the Constitutions analyzed by Bernasconi and its connotation as a human right only in 40 percent of the Constitutions.[56] Spannagel's work on the codification of academic freedom in Constitutions also suggests that university autonomy is a uniform feature of Constitutions in Latin America which have codified academic freedom and its variations, as opposed to the individual understanding of academic freedom which is not as prevalent in the region.[57] Moreover, while the legal framework for public and private universities witnesses variations, the place of academic freedom in the structure remains the same. Accordingly, as per Bernasconi's review, university autonomy is understood as a compliance of the rights of self-governance and academic freedom is not a justification or

[55] Ibid, 103.
[56] Ibid, 101.
[57] Spannagel (n 19), Fig 2, 55.

purpose of autonomy, rather exists on the same level as other freedoms i.e. administrative and financial.

It can thus be concluded that despite regional variations such as Chile and Cuba, academic freedom in Latin America is vested in the universities and therefore does not take the individual academic as the nucleus of academic freedom and the idea of it being vested in the general population—such as with right to science, is even more distant. Moreover, Universities are seen as a space to 'speak truth to power', as it evident through the CRES 2018 Final Declaration,[58]which stipulates that the nature of autonomy that is being exerted is one which empowers universities to exercise its critical and proactive role as free from restrictions imposed by governments of the day, religious beliefs, the market or particular interests. This implies that there is a negative freedom from universal interests and subordinations and a positive freedom to challenge the hegemonic orders and influence changes as needed in society. A limitation of this understanding is elucidated by Bernasconi himself, who is of the opinion that such conceptualization takes away the members of the university i.e. the members of the academic community, as the focus of what constitutes a university may result in a weak level of individual academic freedom.

[58] III Regional Conference on Higher Education for Latin America and the Caribbean, 32, <http://www.cres2018.unc.edu.ar/uploads/Declaration2018Eng.pdf>

III. THE STATE OF ACADEMIC FREEDOM IN INDIA: EMPIRICAL AND DOCTRINAL ANALYSIS

Although India has been a signatory to ICESCR since 1979[59] and is therefore formally committed to Article 13 and Article 15 of the Covenant which deal with provisions associated with academic freedom, there has been scarce effort for entrenchment of the same into the Indian Constitutional framework. While there is no explicit recognition of academic freedom in the Indian Constitution or the laws and regulations that form a part of the Constitutional framework, academic freedom in India is considered to emerge from the freedom of speech provisions of the Indian Constitution as enumerated in Article 19 and the Preamble of the Constitution. Despite the fact that freedom of speech entails a broad understanding in Indian jurisprudence including but not limited to freedom of thought, conscience, of assembly, of association etc., it does not effectively capture the essence of academic freedom as a right of the members of the professional community alongside institutional autonomy that empowers such right. As a result, its application is also limited as it does not cover a large range of violations that come under the umbrella of academic freedom, for instance, those associated with the tenure of faculty.

Furthermore, the public Higher Education Sector in India is governed by the University Grants Commission (UGC) which is a statutory body established through the University Grants Commission Act, 1956(UGC Act).[60] As a result, the framework dealing with HEIs is a result of several delegated legislations.[61]Most litigations are a result of invocation of such delegated legislations through Writ Petitions. Other that Writs, cases dealing with academic freedom can

[59] 10 April 1979, India: Ratification Status for CESCR-ICESCR,UN Treaty Body Database, <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=en>.
[60] Alongside UGC, there are also other professional bodies, such as the All India Council for Technical Education is the counterpart body for engineering colleges. However, given the nature of the HEIs being examined in this thesis, and the broader scope of the UGC, these bodies have not been discussed here.
[61] Section 4, UGC Act, < https://www.indiacode.nic.in/bitstream/123456789/1627/1/195603.pdf>

be found in Contempt Applications, Bail Applications or other types of criminal proceedings owing to the politicized nature of Universities in India. This is strengthened by the fact that alongside lack of extensive jurisprudence on academic freedom, HEIs in India are characterized by weak standards of institutional autonomy due to a high degree of state control over public higher education[62] which, in recent years, has been permeating in the private higher education institutions as well.[63] As a result, it is not unprecedented that the assault on academic freedom has taken forms of politicization of appointments of both academic and administrative staff[64], violence directed at teachers and students and attacking students and professors through invocation of colonial sedition laws or anti-terror laws.[65]

Furthermore, the inclusion of private universities within the scope of this thesis is a conscious choice, given the 'illusion of private universities' in India.[66] This is because private universities in India are either adopted through a State Act or by being recognized as a "deemed university." For instance, Ashoka University, one of the most prominent private universities in India, was adopted in the former manner through the Haryana Private Universities Act, 2006.[67] However, Section 15 of this Act provides the Governor as the Visitor of the University and therefore provides expansive power with regard to this University. Section 16 further provides that the

[62] Niraja Gopal Jayal, 'Academic Freedom in India' in Kirsten Roberts Lyer, Ilyas Saliba, and Janika Spannagel, *University Autonomy and Decline: Causes, Responses, and Implications for Academic Freedom*, (Routledge, 27 May 2024), 82.

[63] The resignation of Pratap Bhanu Mehta constitutes an important example; Ritika Chopra, 'Founders made clear I was political liability for Ashoka University: Pratap Mehta', (*The Indian Express*, 19 March 2021), < https://indianexpress.com/article/india/pratap-bhanu-mehta-resignation-letter-ashoka-university-7234669/>; Billy Perrigo, " 'Is it Dangerous to Speak up in India Today' What Resignations of 2 Academics Show About Freedom of Expression under Modi" (*Time*, 19 March 2021) < https://time.com/5948112/academic-freedom-india-mehta/> ; Amit Dhillon, 'Modi critic's resignation from Indian University post prompts outcry', (*The Guardian*, 19 March 2021) < https://www.theguardian.com/world/2021/mar/19/modi-critics-resignation-from-indian-university-post-sparks-outcry>

[64] Niraja (n 62) 64,73; 'Kushwaha cites Sangh grip on vice-chancellor posts' *(The Telegraph*, 10 December 2018), < https://www.telegraphindia.com/india/rlsp-chief-upendra-kushwaha-the-exiting-junior-hrd-minister-cites-sangh-grip-on-vice-chancellor-posts-as-he-quits-nda/cid/1678390>

[65] Such as through invocation of Unlawful Activities (Prevention) Act.

[66] 'Art and science of raising a raising a university: Ashoka founders in conversation with Shekhar Gupta' (*The Print*, 7 January 2025), < https://www.youtube.com/watch?v=A3CPOjd4lmI>.

[67] Vide Notification No. Leg. 24/2014, May 2, 2014. Furthermore, Ashoka University was authorized to grant degrees under Section 22, UGC Act (November, 2014).

Chancellor is to be appointed with the approval of the Visitor. While the Vice-Chancellor is to be appointed by the Chancellor from the names given by the Governing Body, the Governing Body itself consists of the Chancellor, two experts nominated by the Chancellor and the Secretary to Government of Haryana's education department. As a result, in a situation where the state government and central government (governor) are common, the lack of autonomy is evident. Section 44 further gives the government the power to inspect universities. As for the latter, even though deemed universities enjoy a higher status of autonomy, it is an accreditation provided by the Ministry of Education upon the advice of the UGC. Hence, through the above example, it is apparent that the inclusion of private universities was pertinent for a comprehensive analysis of academic freedom in India.

This does not imply that the recognition of the term academic freedom has been non-existent in the legal and juridical framework, rather it is rare and has been 'substantively absent'. One of the early instances of the recognition of academic freedom was by the High Court of Andhra Pradesh in 1986 where the Court observed that "free speech in the Indian Constitution includes academic freedom"[68] However, in the past few years i.e. 2020-2025, a search for the term of "academic freedom" on SCCOnline reveals only 10 mentions of the term for cases concerning HEIs. Even such mention has not been made in a substantive way by lawyers and has been so limited that it has gone predominantly unnoticed by the Judges. This reaffirms the author's position that unlike other countries, a jurisprudence on academic freedom in India cannot merely be identified, rather, must be deduced through several cases pertaining to appointment of university leadership, suspension of faculty, disciplinary actions against students, among other variables.

[68] *Dr. R. Rama Murthy & Anr. v. Government of Andhra Pradesh*, 1986 SCC OnLine AP 67.

In pursuance of this, this chapter has been divided into three sections which denote the parameters through which academic freedom jurisprudence in the Indian context will be analyzed. The first section pertains to the institutional aspect of academic freedom and is assessed through the appointment of university leadership. The latter two parameters pertain to the individual aspect of academic freedom and are examined through academic freedom of faculty and students, respectively. These parameters have been identified as higher education teaching and research, higher education learning, and autonomy of institutions of higher education is widely treated as denominators encompassing academic freedom. To reiterate Ginsburg, the concept of academic freedom is constituted by three intertwined principles. First, the individual rights of professors and students to hold and express their opinion; second, the institutional autonomy of university from direct state interference; and finally, the state's obligation to protect these two rights.[69] Therefore, this chapter will focus on the first two rights and, through their analysis, examine the latter principle.

III.I. Institutional Autonomy

> According to Lyer, "Academics are those searching for truth, and universities are the institutions that provide the space for this search."[70] As a result, "Universities provide the enabling environment through which academic freedom can be exercised."[71] From the Latin American perspective, which centers on this aspect of academic freedom, University autonomy cannot be understood without academic freedom, administrative freedom and financial freedom.[72] A key component of such administrative freedom is the power of universities to designate its own authorities without external intervention. This section concerns this administrative aspect of

[69] Ginsburg (n 2), 241.
[70] Lyer, Saliba and Spannagel (n 13), 23.
[71] Ibid.
[72] Bernasconi (n 9), 105.

institutional autonomy. This is so because in order to ensure an enabling environment where academic freedom can be exercised, the first step would be to have a university leadership which works in line with such freedom. If the leadership is influenced by external actors, the fate of academic freedom becomes more vulnerable. This is especially relevant in the Indian contexts where the high degree of state control of public universities has materialized through the government's central role in the appointment of Vice-Chancellors(VCs). It is pertinent to note that in the Indian context, the position of Vice-Chancellor is the functional equivalent to the position of Rectors in other systems. As for the position of Chancellor, it is ordinarily vested in the President or the Governor, depending on whether it is a state university or a central university.

Therefore, given the significance of the role of VCs in India, this section will focus on the disputes concerning appointments and removal of VCs through the UGC (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 and its subsequent Amendment of 2025.[73] In so doing, it reveals that Courts are more inclined to take into account issues such as federalism as opposed to university autonomy when deliberating on issues concerning the appointment of university leadership.

In January 2025, the UGC released the Draft UGC Regulations, 2025[74], which amends the process for the appointment of Vice-Chancellors. As per the draft, the Chancellor i.e. the Governor will constitute the search-cum-selection Committee,

[73] Draft UGC (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2025.
[74] Ibid.

alongside the UGC Chairperson and a nominee from the University's apex body such as the Senate or the Syndicate to select the VCs. This implies that the role of the states is removed from the selection of VCs even for State Universities. This is a deviation from the present 2018 Regulations which gave room to the States to add their nominees to the Panel.[75] Furthermore, according to the 2025 amendment, an individual with at least ten years of senior-level experience in industry, public administration, public policy, or even PSUs can be appointed as a Chancellor without any academic experience.[76] The act further mandates that any university that does not adhere to such procedures would be debarred from participating in UGC schemes, from offering degree programs and online programs, would be removed from the list of HEIs maintained under UGC Act, 1956, would not enjoy financial assistance from UGC and can also attract punitive measures. It is true that a question of federalism erupts from such a proposal, and therefore governments of various States have made contentions on the basis of the same.[77] However, it is striking that in this process, the question of autonomy and whether any government should have such a significant amount of control and an analysis of whether this can affect academic freedom is lost.

Although this aspect of the Draft Regulations has not been challenged in the Supreme Court at the time of writing this thesis, it may be pertinent to analyze it

[75] Rajya Sabha, Unstarred Question 1469, UGC Draft Regulations on Vice-Chancellor appointments, Answered on 12/03/2025, Department of Higher Education, Ministry of Education, Government of India; < https://sansad.in/getFile/annex/267/AU1469_xMc42Q.pdf?source=pqars> ; Kavita Bajeli-Datt and Preetha Nair, 'All about the controversial Draft UGC Regulations', (*The New Indian Express,* 23 February 2025) <https://www.newindianexpress.com/explainers/2025/Feb/22/all-about-the-controversial-draft-ugc-regulations>

[76] Draft UGC (n 73); T.K. Rajalakshmi, 'UGC's new university leadership rules could imperil academic independence' (*Frontline, The Hindu,* 24 January 2025) < https://frontline.thehindu.com/the-nation/education/ugc-regulation-higher-education-vice-chancellor-academics-central-university-bjp-nep-india/article69131310.ece>

[77] Abhinaya Harigovind, 'What are UGC's new draft rules on Vice-Chancellor appointments and why are States upset?' (*Indian Express,* 14 January 2025) < https://indianexpress.com/article/explained/what-draft-rules-on-vc-appointments-say-why-states-are-upset-9775435/> .

through other cases dealing with the issue of appointments of Chancellors, such as, the cases of *Gambhidharan K. Gadhvi v. State of Gujrat*[78] and *Prof. Sreejith P.S. v. Dr. Rajasree M.S.*[79]., which upheld the authority of the UGC to enforce uniform norms, even though UGC Regulations is a subordinate legislation as opposed to State Acts. Despite this, *Gambhidharan* is significant as the Court made the observation that, "Universities are autonomous, and the Vice-Chancellor is the leader of the Higher Education Institution."[80] Although, it is only made as a subsidiary remark, it yet differs from cases such as *Kalyani Mathavanan v. K.V. Jeyaraj*[81], in which it was observed that UGC norms are binding only if adopted by the States. However, such observation was not made on grounds of autonomy and academic freedom of universities. Similarly, in the recent case of *K. Venkatachalapathy*[82], the Madras High Court stayed ten amendments of an Indian State i.e. the Tamil Nadu government, wherein seven of these amendments pertained to the power of the state government to appoint Vice-Chancellors in state-run Universities. This is despite the fact that a month before such Stay, the Supreme Court, in effect, allowed for these amendments by delving into the powers of the Governor, which will not be discussed here as it is outside the scope of this paper.

The reader might wonder about the relevance of this section in the context of academic freedom. However, this is exactly what the author intends to highlight—that there is a repeated omission of deliberation of academic freedom and university autonomy in cases that would not only benefit from the same, but in a context where a Constitutional framework on academic freedom and institutional autonomy is

[78] (2022) 5 SCC 179.
[79] 2022 SCC OnLine SC 1473.
[80] *Gambhidharan* (n 76), para 56.
[81] (2015) 6 SCC 363: 2015 SCC Online SC 205.
[82] *K. Venkatachalapathy @Kutty v. The State of Tamil Nadu* 2025 LiveLaw (Mad) 173.

prevalent, would be guided through a discussion on the same. This is so because intrusion in the selection of the Vice-Chancellor not only affects the autonomy of universities, but also leads to commercialization of higher education, which ultimately empowers a dilution of academic freedom and university as a space for critical inquiry.[83] The manner in which autonomy driven jurisprudence can be brought in these cases will be discussed in the next section.

Another case that highlights the sabotaging of academic freedom through university appointments is that of *Dr.R.S. Kureel v. Dr. B.R. Ambedkar University of Social Sciences*,[84]wherein a *Dalit* VC was removed from his post for allegedly inviting Dr. B.R. Ambedkar's grandson for a seminar on reservation in context with democracy, constitutionalism and constitutional challenges.[85] As a result of this, the Petitioner received a notification as per which he was removed from the post of Vice-Chancellor. Following this, he submitted his resignation but later filed a case in Court. The Madhya Pradesh High Court held that once the resignation has been given by the Petitioner without any protest, he is estopped from questioning the said notification by way of Writ Petition. As a result, the Court did not take into account principles of academic freedom despite the vulnerable position of the VC given his identity and the issue being raised as one that is associated with *caste*. It is the contention of the author that such a deliberation amounts to an active omission on academic freedom and institutional autonomy and that an analysis on the jurisprudence concerning academic freedom has to take into account omissions

[83] Bajeli-Datt and Nair (n 75).
[84] 2018 SCC OnLine MP 985: (2018) 3 MP LJ 323
[85] Vishwadeepak, "Dalit VC removed for 'inviting' Ambedkar's grandson, Cong leader to seminar", *National Herald* (5 October 2017) < https://www.nationalheraldindia.com/national/dalit-vc-removed-for-inviting-ambedkars-grandson-congress-leader-to-seminar>.

concerning the same, especially in contexts where the frameworks for such right do not exist.

III.II Individual Aspect of Academic Freedom

III.II.I Academic Freedom of Faculty

The variable of higher education teaching alongside the right to discuss, disseminate, exchange, and develop knowledge and ideas concerns the professoriate of a university. In order to delve into the same, this section will be divided into three sections: punitive measures against faculty by the University, intimidation by the state to suppress academic freedom of faculty and scrutiny of extra-mural utterances by the State.

A) *Punitive actions against the faculty by the University:* For purposes of this section, punitive actions refers to arbitrary termination of faculty; withholding the perks of their employment such as leave encashment, gratuity, pension upon superannuation; arbitrary denial of promotion in violation of law or providing promotion from a prospective date, as opposed to the date from which it is due, leading to loss of seniority; disruption of elections of teachers' associations and dissolution of such associations.

In pursuance of this, the case of *Surajit Mazumdar & Ors. v. Jawaharlal Nehru University and Ors.*[86], alongside its connected cases[87], as well as the decision in *Prof. Sachidanand Sinha v. Jawaharlal Nehru University*[88], offers a relevant starting point for this discussion. These cases concern several faculty members from Jawaharlal Nehru University (JNU) who were involved in a protest march in association with the Jawaharlal Nehru Teachers' Association (JNUTA) to show their condemnation regarding university governance issues such as violation of the JNU Act, Statutes and Ordinances; autonomy; teachers' biometric attendance, alongside other policies. The protest march was, however, unlawfully recognized as a strike and a show-cause noticed was issued by the University, alongside a charge sheet that was filed against the faculty were involved in the protest march. As a result of this, when the faculty attained their age of superannuation, they were denied pensionary benefits such as leave encashment, alongside its interest, gratuity and commutation of pension. Other professors have been denied the posts of Dean and Chairperson on the grounds that there is a pending inquiry against them. Such action is adversely affecting the professional interests of the targeted faculty. At the time of writing this thesis, six years have already passed since the filing of the petition, and although a judgment has been issued in *Prof. Sachidanand, Surajit*

[86] W.P. (C) 8686/2019, CM APPL. 35942/2019
[87] *Geetha B. Nambissan v. JNU, through its Registrar,* W.P. (C) 3756/2020, CM APPL. 13445/2020 & CM APPL. 8790/2022; *Professor Balbir Singh Butola v. JNU, through its Registrar,* W.P. (C) 8532/2020, CM APPLS. 27507/2020, 28744/2020 & 28784/2020; *Janakyi Nair v. JNU, through its Registrar*, W.P. (C) 3924/2021, CM APPL. 9003/2022; *Rajat Datta v. JNU, through its Registrar*, W.P. (C) 4348/2021; *Professor Birender Nath Mallick v. JNU*, W.P. (C) 3396 2022, CM APPL. 13163/2022; *Avjit Pathaky v. JNU*, W.P. (C) 5190/2022.
[88] 2024 SCC OnLine Del 8633.

continues to be pending and certain faculty members who were a part of this petition have already passed away. Other than one High Court Order from 2022 directing the release of leave encashment with interest[89], and an Order from 2019 staying the inquiry proceedings against the Petitioners[90], an analysis of the latter orders issued by the High Court demonstrates that the hearing of the case is often delayed owing to reasons such as paucity of time. This goes on to indicate that such cases are not treated as a priority.

The abovementioned case elucidates that although there has been some action taken by the Court through the two Orders, the progress of the same is extremely slow and tiresome. Moreover, the implications of such cases on the academic freedom of faculty are yet to find their place through the words of the Justices of Constitutional Courts.

Another set of instances concerning punitive measures pertain to two professors of a State University, Dr. B.R. Ambedkar University, Delhi who were arbitrarily terminated from service. The termination was justified under the pretext of 'irregularities' in relation to a one-time regularization policy for non-teaching staff—a move initiated by the professors in 2020 when they were employed in the capacity of Acting Registrar and Pro Vice-Chancellor, respectively.[91] Although the termination hasn't been contested before a Constitutional Court at the

[89] Connected cases in (n 87), Order dated 30.03.2022.
[90] Connected cases in (n 87), Order dated 14.08.2019.
[91] Express News Service, 'Dismissal of 2 Ambedkar University Delhi Professors: Students and teachers' groups seek reinstatement' *(The Indian Express,* 18 November 2024) < https://indianexpress.com/article/cities/delhi/ambedkar-university-delhi-professors-reinstate-demand-students-9674940/>

time of writing of this thesis, such termination sparked outrage among the members of the University and raised questions about the arbitrary and unlawful actions of the University alongside the prerogative given to faculty members for decision making in the processes of the University. [92]

Another case concerning the autonomy of faculty is *Jamia Teachers Association v. Jamia Millia Islamia*[93], wherein the Petitioner Association approached the Delhi High Court against the Respondent University due to the actions of the University declaring that the office bearers do not have the right to hold office, interfering with the conduct of elections of the Association, restraining the members from attending any meetings and using any finances of the association and for dissolving the Jamia Teachers Association(JTA). The counsel representing the Petitioner Association contended the action of the University by invoking the autonomous nature of the Association that can only be dissolved as per its own Constitution, the illegality of such actions of Respondent University as a result of overriding its jurisdiction and powers and the right to freedom of association.[94] At the time at which this thesis is being written, it has been over two years since the Petition was filed, yet no substantive Orders have been passed in the case. With similar charisma as the aforementioned JNUTA cases, this case reflects the hesitance of the Judiciary to deliberate on issues

[92] Ibid, 'What's Wrong (not Right) With Ambedkar University?' (*Unfiltered by Samdish,* 30 November 2024) < https://www.youtube.com/watch?v=uHuf613vYk4&t=319s>
[93] W.P. (C) 1490/2023 & CM APPLs. 7288/2023, 67352/2023.
[94] Writ Petition on behalf of the Petitioner Association in W.P. (C) 1490/2023.

pertaining to academic freedom, even without engaging the term. This case particularly reflects the risks of associating academic freedom with freedom of expression and association as the urgency of the threat is lost by not weighing such as a case on principles of academic freedom. This is not to argue that cases concerning attack on freedom speech and expression do not deserve immediate scrutiny from the judiciary, but when the right of professoriate is merged with that of the larger society, the structural attacks against academia escape being recognized.

Several other cases that are welcomed in Indian Courts pertain to promotion of faculty under the Career Advancement Scheme (CAS) as provided in the UGC Regulations, 2018.[95] For instance, several faculty members filed cases against JMI for arbitrary denial of promotion from the date from which it was lawfully due, resulting in loss of seniority of such faculty alongside other promotion-related benefits, affecting their professional advancement and ultimately resulting in harassment of such faculty.[96] These petitions were disposed of by the Delhi High Court after an Order directing the Respondent University i.e. JMI to take a decision on the delayed promotion of the faculty. Evidently, the Court had sufficient room to take stronger measures and deliberate on the structural denial of pensions from a backdate as was owed to all the Petitioners in the present case.

[95] UGC (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018.
[96] *Prof. Saited Wajid Ali v. JMI & Ors.,* W.P. (C) 15393/2023; *Prof. Sonu Chand Thakur v. JMI & Ors.,* W.P. (C) 15770/2023; *Dr. Farah Jamal Ansari v JMI & Ors.,* 15797/2023; *Prof. Saif Siddiqui v. JMI,* W.P. (C) 16523/2023; *Dr. Rajveer Singh v. JMI,* W.P. (C) 16600/2023.

B) *Intimidation by the State:* This section will be limited to a discussion of two instances that did not make it to Court. The first intimidation concerns a faculty member at Ashoka University. As mentioned above, the University has been established under the Haryan Private Universities Act, 2006. In 2023, the University premises were found with guests from the Intelligence Bureau who were visiting the premises in furtherance of a social media post pertaining to a working paper of by an economics professor, Sabyasachi Das, titled "*Democratic Backsliding in the World's Largest Democracy".* The Bureau sought to interview not only Das but also other faculty members from the economics department.[97]Alongside academic freedom of faculty, such an instance also raises questions about Campus Integrity[98] as interestingly, the University's Foreign Contribution (Regulation) Act license was shortly due after this inquiry[99] and was evidently used as a tool by the State to suppress the voices that go against it, ultimately empowering academic freedom in India to fall within the illiberal script.[100]

Such instances are not uncommon. In 2023, a faculty member at another private university, Symbiosis Institute Pune was suspended and jailed

[97] Siddharth Varadarajan, "Intelligence Bureau at Ashoka University, Wants to Probe 'Democratic Backsliding' Paper", *(The Wire,* 22 August 2023) < https://thewire.in/education/intelligence-bureau-at-ashoka-university-wants-to-probe-democratic-backsliding-paper>

[98] According to Academic Freedom Index, Campus Integrity refers to what extent are campuses free from politically motivated surveillance or security infringements.

[99] Varadarajan, (n 97).

[100] Kovács and Spannagel, (n 26).

for his lecture in class during which he spoke about equality of all religions.[101]

C) *Extramural Utterance:* According to the framework of the CoE as stipulated in the previous section, extramural utterances constitute an aspect of academic freedom, provided that such utterances have been made within the academic's professional expertise.

In the context of the same, it may be relevant to discuss an instance of attack on extramural utterance that unfolded a few days before the conclusion of this thesis. This instance, again centers around a faculty member from Ashoka University. Political Scientist, Ali Khan Muhamudabad was arrested over his social media posts[102] engaging in critical inquiry about a recent military operation by India.[103] Although Khan was granted interim bail by the Supreme Court, the Highest Court's Justices observed that the faculty member's choice of words amounts to 'dog whistling' and castigated him for cheap publicity.[104] Furthermore, the Supreme Court warned academics, including students and professors, for protesting against Khan's arrest.[105] Such observation

[101] Apoorvanand, 'What Happens to Teachers When We are Asked to Treat the Government as Our Only Teacher?' (*The Wire*, 5 September 2023) https://thewire.in/education/teachers-day-india-government-rss-freedom

[102] Pulapre Balakrishnan, 'Ashoka University Professor Ali Khan Mahumadabad has moral ambition and courage. Ashoka University must show some too' (*The Indian Express*, 25 May 2025) <https://indianexpress.com/article/opinion/columns/ali-khan-mahmudabad-ashoka-university-opeation-sindoor-sofiya-qureshi-supreme-court-10019695/>

[103] Operation Sindoor: Forging One Face, Ministry of Information & Broadcasting, Press Release <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2129453#:~:text=Operation%20SINDOOR%2C%20initiated%20on%20May,precision%2C%20professionalism%2C%20and%20purpose>.

[104] TOI News Desk, "'Dog whistling': Supreme Court slams Ashoka University professor Ali Khan Mahamudabad's choice of words, grants him interim bail", *(*Times of India, 21 May 2025*)*

[105] Anmol Kaur Bawa, "If They Dare To Do Anything, We'll Pass Orders' : Supreme Court Warns Academicians For Protesting Against Ali Khan Mahmudabad's Arrest", (*Live Law*, 21 May 2025) < https://www.livelaw.in/top-stories/if-they-dare-to-do-anything-well-pass-orders-supreme-court-warns-academicians-for-protesting-against-ali-khan-mahmudabads-arrest-292917>

presents a 'judicial choking of academic freedom'.[106] There is sufficient circumstantial evidence to support that this was a deliberate attempt of State to not only suppress critical voices of academics, but also another route to interfere with the autonomy of Ashoka University and turn it into an institution that echoes the prominent political and economic views. Yet, instead of taking this valuable opportunity to delve into the significance of academic freedom, or even invoke it through freedom of speech, expression, thought or conscience, in lines with the India Constitution, the Highest Court of the country allowed it to be an opportunity for further suppression of academic freedom, through oversight of the same.

III.II.II. Academic Freedom of Students

A key aspect of academic freedom includes freedom of higher education learning. This essentially concerns the academic freedom of students. Given that the purpose of a university is not merely classroom learning and professional advancement, but also search for truth, the understanding of higher education learning goes beyond classroom teaching and learning. In other words, it includes the right of the students to discuss, disseminate, receive, impart, demonstrate, exchange and develop their ideas and knowledge. This means that along with other factors, student protests and demonstrations constitute an integral part of academic freedom of students.

[106] Saurav Das, 'In Mahmudabad's case, we see judicial choking of free thought' (*Frontline, The Hindu*, 22 May 2025).

In 2023, a host of Indian universities restrained their students from screening and discussing the BBC Documentary on India's Prime Minister.[107] This includes prominent public institutions, including JMI, JNU, Delhi University (DU), Hyderabad University, among others. Although the screening of the documentary was banned in India, literature on academic freedom suggests that academia ought to be in charge determining the scope and the objectives of science.[108] If such prerogative is left to or is subordinate to political demands then it drifts academic freedom towards the illiberal science script. In pursuance of this, in *Lokesh Chugh v. University of Delhi and Others,*[109] a student from one such university, i.e. DU approached the Delhi High Court through means of a Writ Petition to contest a show-cause notice issued to him by the University administration. The show-cause notice was issued in light of the student's alleged involvement in the screening of the BBC documentary on university campus. Subsequently, the student was debarred from taking any university examinations for a period of one year. However, the petition was filed not on the grounds of academic freedom, but through invocation of principles of natural justice alongside a claim that the student was not present at the site during such screening. Accordingly, the admission of the petitioner in the university was directed to be restored by the Court[110] owing to the fact that the Respondent University did not afford a proper opportunity of hearing the petitioner thereby violating the principles of natural justice.[111]

[107] "India: The Modi Question", *BBC.*
[108] Kovács and Spannagel, (n 26).
[109] (2023) 2 High Court Cases Del 500: 2023 SCC OnLine Del 2457.
[110] Ibid, para 20.
[111] Ibid, para 22.

Moreover, the Respondent University was granted liberty to take action against the petitioner after adhering to principles of natural justice.[112]

Similarly, the petition filed against O.P. Jindal Global University, (a private university established under the Haryana Private Universities (Second Amendment) Act, 2009, which is now holds the status of a deemed university) challenging the suspensions of two students for one semester each, for organizing a discussion of the 'Ram Mandir' issue, was disposed of after the Punjab and Haryana High Court directed the University to decide on the students' appeals pending before the University.[113]

Another set of relevant cases in this regard pertain to South Asian University (SAU), namely *Apoorva Y.K. v. South Asian University*[114] and *Bhim Raj and Anr. v. South Asian University*[115]. The petitioners in these cases had received disciplinary action against them for allegedly questioning the actions of the Respondent University for the lack of administrative response in regard to a student who had received seizures and got unconscious on university campus and was subsequently rusticated while he was hospitalized. The disciplinary actions against the Petitioners for discussing concerns regarding the hospitalized student with the administration were initiated without taking into account the representation of the Petitioners. Furthermore, these cases are particularly interesting as SAU is an intergovernmental university in New Delhi established consequent to an agreement by members of South Asian Association of Regional Cooperation (SAARC). Moreover, unlike

[112] Ibid.
[113] *Ramnit Kaur and another v. O.P. Jindal Global (Institution of Eminence Deemed to be University) Sonipat and another*, CWP/6764/2024.
[114] 2024 SCC OnLine Del 335
[115] (2024) 1 HCC (Del) 264 : 2024 SCC OnLine Del 620

other acts governing universities, the South Asian University, Act 2008 explicitly recognizes academic freedom.[116]Despite this, counsels for the Petitioners did not invoke this right in their submissions and instead relied on principles of natural justice alongside defending the maintainability of the petition owing to the intergovernmental nature of the university. Subsequently, the High Court upheld the maintainability of the petition and set aside the show-cause notices expelling the Petitioners owing to the fact that principles of natural justice which were required to be employed to direct an expulsion against the Petitioners were not adhered to by the Respondent University.

Throughout these proceedings, there is appropriate room for the right of academic freedom to be invoked. Yet, it remains missing, on part of both, the advocates as well as the Judges.

However, it must be noted that such an examination has not been made in furtherance of an argument that disciplinary action is unjustified in all cases or that academic freedom should protect illegal and arbitrary behaviour. Rather, it has been done to reassert that such cases should invite consideration through the lens of liberal script of academic freedom, which is limited by notions such as ethics and rights and freedoms of others, and not merely through deliberations that do not take into account academic freedom.

[116] Article 1, 1: *There is hereby established an institution to be known as the South Asian University (hereinafter referred to as the "University"), which shall be a non-state, non-profit self governing international educational institution with a regional focus for the purposes set forth in this agreement and shall have full academic freedom for the attainment of its objective*

IV. ANALYSIS AND AVENUES FOR INCORPORATION OF ACADEMIC FREEDOM WITHIN INDIA'S CONSTITUTIONAL FRAMEWORK

According to the Academic Freedom in Constitutions Dataset,[117]which examines the codification of academic freedom across 203 independent countries, 116 countries across the world have a provision concerning academic freedom in their Constitution, albeit marked by variations through terminologies of 'academic freedom', 'university autonomy', 'freedom of science'. This implies that almost half of the Constitutions across the world do not recognize academic freedom in any of these forms. India falls within the latter category. As a result, the previous section demonstrates that a jurisprudence on academic freedom in India is marked by an omission of deliberation on academic freedom on issues that pertain to the same when assessed carefully. This means that instead of addressing or even recognizing the contestations that confront academic freedom in India, the jurisprudence is hidden under a façade of principles concerning federalism, principles of nature justice and free speech.

Evidently, this invites the need for the incorporation of academic freedom into India's Constitutional framework. However, such a framework cannot be transplanted as it exists either in Europe or in Latin America as both conceptualizations are riddled with their own inefficiencies. This is so because, although they each address both, the individual and institutional aspect of academic freedom, the Eurocentric model assumes prominence of the former while recognizing the latter as an extension of the same whereas the Latin American model provides prominence to the latter and embraces the former as a component of it. As demonstrated through the previous section, the threat to academic freedom in India can be

[117] Spannagel (n 3).

characterized by historically weak levels of institutional autonomy due to governmental control of public higher education as well as an increasing number of attacks on Indian academics which can be linked to the deterioration of democracy in India—both these vulnerabilities are heightened by the lack of a legal and juridical framework. As a result, to effectively counter the contestations surrounding academic freedom in India, equal weight needs to be devoted to both—the institutional and the individual aspects of academic freedom. This means that although they need to be recognized as distinct rights so that neither of the aspects lose their essence, as has been the case in Latin America and Europe, both need to be considered as interconnected rights, equally valuable for empowerment of the other.

Moreover, such rights ought to be formulated in a way that is in accordance with the liberal script. This means that university autonomy must not be materialized in a way that precludes any action by the government in the area of higher education policy. Similarly, academic freedom *stricto sensu*, must put the prerogative to define the standards of scientific goals of the society in the hands of the academic community and not with the broader society as is the case with freedom of science,. Moreover, the twin rights also ought to be limited by rights and freedoms of others, ethics and narrowly defined public interests[118], as well as by each other.

Furthermore, while the significance of Eurocentric model for the conceptualization of academic freedom in the Indian Constitutional framework is apparent through the repeated attacks on academics complimented by the lack of cognizance of the same by Indian Constitutional Courts, the Latin American conceptualization, especially owing to its genealogy is also uniquely suited to India. Such claim is being made in the background of Indian universities as marked by a history of student politics and protests dating back to the colonial period when university campuses were a space for nationalist mobilization.[119] The account of

[118]Kovács and Spannagel, (n 26).
[119] Niraja, (n 62), 67.

universities characterized by the common denominator of student mobilization in Latin America and India provides credibility to such a transplant, especially considering that such mobilization has been vested in the demand for the manifestation of their involvement through student and faculty unions in universities.[120] Moreover, the evolving definition of threats in Latin America as encompassed by business interests, marketization and academic capital will provide for a comprehensive conceptualization of academic freedom for India, given the increasing prominence of private universities in the Indian education sector. As a third point, it is also noteworthy that university autonomy emerged in Latin America as a response to authoritarian and dictatorial governments[121], which makes its application especially relevant to India given the deterioration of its democracy during the past decade.[122]

Alongside a normative conceptualization derived by the abovementioned attributes, the author further argues that even a mere recognition of the terms 'academic freedom' and 'university autonomy' by the Constitutional Courts would offer greater protection as compared to the present framework (omissions) as it would provide a starting point for a legal and juridical framework for academic freedom and university autonomy in India.

However, the question arises, as to methods through which the above-mentioned conceptualization can be incorporated into the Constitutional framework of India. This is especially pertinent to address given the current implausibility of incorporating academic freedom into the Constitutional or legal texts themselves. Therefore, this thesis offers two mechanisms to do so:

IV.I. Judicial Dialogue: Judicial Dialogue refers to a specific form of Constitutional borrowing that can even transpire during the interpretative stage in the life cycle of a

[120] Ibid, Bernasconi, (n 9)
[121] See Section II.III
[122] V-Dem Institute, 'Democracy Report 2025- 25 Years of Autocratization- Democracy Trumped?' <*https://www.v-dem.net/documents/60/V-dem-dr__2025_lowres.pdf*

constitution.[123] This makes it specifically relevant for the incorporation of academic freedom within India's Constitutional framework. According to Jackson, this method of Constitutional borrowing can be characterized by the engagement of Judges with the decisions of their foreign peers.[124] Moreover, Judicial Dialogue as a form of Constitutional Transplant is a method that Indian Courts have already invoked in public law concerns such as environmental law. As a result, it is a strategy for committing to new rights and principles that the Constitutional Courts are already familiar with which increases the possibility of its invocation in this manner. Therefore, this section will engage with plausible cases of the ECtHR and Latin America through which Judges of the Indian Constitutional Courts can employ Judicial Dialogue to address the nature of cases analyzed in Chapter III.

i) ECtHR: The decision of the ECtHR in *Mustafa Erdogan and Others v Turkey*[125], is a case on extramural speech. An engagement of the Indian Courts with the reasoning that the ECtHR provided in this case would benefit judicial interpretation with regard to academic freedom in Indian, such as with the Ashoka University cases of Ali Khan Mohammad and Sabyasachi Das.[126] This is especially relevant because the ECtHR manifests academic freedom through Article 10 of the ECHR which deals with freedom of expression, a right found in the Indian Constitution as well. In *Mustafa,* a constitutional law professor vehemently criticized a decision of the Turkish Constitutional Court. In response to this, the members of the Constitutional Court initiated civil actions against the professors wherein it was held that such criticism constituted defamation of the Constitutional Court members.[127] When this case was pursued in the ECtHR, it was observed that

[123] Perju, (n 8).
[124] Vicki Jackson, Constitutional Engagement in a Transnational Era (2010); Vicki Jackson, 'Federalism and the Uses and Limits of Law: Printz and Principle' (1998) *111 Harvard Law Review* 2180.
[125] Appl no 346/04, 39779/04, Judgment of 27 May 2014.
[126] See Section III.II.I.
[127] Kovács (n36).

"academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction"[128]. It further noted that the freedom of an academic is not solely limited to academic or scientific research but also encompasses the liberty of academics to openly share their views and opinions, even if such views are contentious or unpopular, as long as it is within the scope of such academic's research, professional knowledge and expertise. This may involve analyzing how public institutions operate within a particular political system and offering critical perspectives on them. In so doing, such reasoning squarely covers the cases of both Das and Khan. This is due to three reasons; first, the invocation of freedom of expression to invoke academic freedom; second, the assertion that criticism of public institutions is an integral part of this right and can be done through freedom to conduct research and distribution of such knowledge and truth without restriction. These two points are already sufficient to engage with Das's case, whereas the third point extends protection to Khan's case concerning extramural speech as the ECtHR held that academics can openly share their views, provided that they fall within the their academic experience and expertise. The criticism of a military operation triggered by political considerations is well within the expertise of a political science faculty member and thus the Supreme Court would be able to deliberate more profoundly by engagement with the present case, instead of attempting to escape the conceptualization of a jurisprudence on academic freedom by making superficial observations as it did in the Bail Application concerning Khan.

[128] *Mustafa (*n 125), para 40.

Other ECtHR cases that can be employed for judicial dialogue include *Sorguc v Turkey*[129] and *Lombardi Vallauri v Italy*[130]. Although the direct invocation of academic freedom in *Lombardi* is limited, it concerns a duty to give reasons for refusing to employ the applicant who was a lecturer. This can be indirectly applied to the above-mentioned cases such as those concerning arbitrary termination of tenure and denial of promotion from the date from which it was due.[131] Furthermore, the Indian petitions including those concerning *Surajit, JTA, Apoorva and Bhimraj* would result in more nuanced decisions if the observation of the ECtHR in *Sorguc* that academic freedom includes the right of scholars to openly express their views about the institutions or systems they are a part of[132], is taken into account.

ii) Latin America: This section will discuss Latin American jurisprudence on academic freedom by focusing on the example of Brazil. As a result, the case of Sabyasachi Das can be potentially addressed through the Supreme Federal Court (Supremo Tribunal Federal or STF), of *ADPF n. 548*, wherein the Court found that actions like investigating teachers, students, or other individuals at public and private universities is unconstitutional.[133] This can be tied to the interviewing of Das and his colleagues by the Indian Intelligence Bureau, as alongside university autonomy and freedom to teach and research provisions, the Court reasoned it through freedom of expression and in turn upheld campus integrity and institutional autonomy.[134]

[129] *Sorguç v Turkey*, Appl no 17089/03, Judgment of 23 June 2009.
[130] Appl no 39128/05, Judgement of 20 October 2009.
[131] See Section III.II.I.
[132] Ibid.
[133] Brazilian Supreme Court, *ADPF nº 548*, as cited in, 'Academic freedom in Brazil', GGPI and Centre for the Analysis of Liberty and Authoritarianism, September 2020.
[134] Varadarajan, (n 97).

For the cases concerning appointment of University leadership in India, it may be pertinent to delve into the discussion as provided in the STF decision of *ADPF 759 MC-Ref*[135], wherein, the STF was approached to challenge President Jair Bolsonaro's recurrent refusal to appoint the most-voted candidates for university rector, alongside the imposition of temporary external administrators in at least five federal universities under the contention that it violated the constitutional principle of university autonomy under Article 207 of the 1988 Constitution.[136] Although the majority held that the legal framework permits the President to select any candidate from a three-person shortlist, and that such discretion does not, in itself, breach institutional autonomy, the Court acknowledged that universities enjoy autonomy in scientific, administrative, and financial matters, and that this includes participatory internal processes for nominating leadership.[137] As a result, despite the outcome, such reasoning can be invoked by Indian Courts to deliberate on the abovementioned cases concerning appointment of Vice-Chancellors and the overwhelming control exerted on their appointments by the State.

IV.II. Strategic Litigation: Strategic Litigation is a human rights litigation tool which entails careful selection of cases and subsequently pursuing them before the Constitutional Courts, and in the present context would entail an aim to not merely seek relief for an instant case, but to pursue it in a manner that would result in broader changes with respect to the law, policy and practice concerning academic freedom and its inclusion within Indian Constitutional jurisprudence. This thesis offers a four-step plan to achieve this.

[135] *ADPF 759 MC-Ref/DF* (STF, 9 February 2021) Reporting Justice Rosa Weber
[136] Constitution of the Federative Republic of Brazil 1988, art 207.
[137] *ADPF 759* (n 135).

The first step would entail selecting a case concerning a threat to academic freedom wherein the applicant does not belong to a persecuted minority in India, but is a part of the hegemonic identity of the society thereby increasing the chances of success.[138]

The second step requires interpretation of rights that exist in the Indian Constitution, including freedom of speech, as enshrined in Article 19 of the Constitution and partly through right to education which has been interpreted as a part of Article 21 of the Constitution[139]. The scope of these rights can be interpreted to include academic freedom by invoking international instruments ratified by India, such as ICESR and ICCPR as both instruments recognize academic freedom through freedom of education[140] (and freedom of science) and freedom of expression[141], respectively.

Third, the mere recognition of the terms 'academic freedom' and 'university autonomy' is crucial. As shown above, while there have been litigations that address issues of academic freedom through education and service laws such as UGC Regulations, such litigations have not been pursued in a manner that contributes to recognition of academic freedom. Therefore, the use of subordinate laws must be complemented with explicit recognition of academic freedom.

Fourth, in the recent years there has been increasing discussion and certain circumstantial evidence to demonstrate the decline of judicial independence in India.[142] This invites certain Judges to rule in favour of the State. Therefore, for strategic

[138] Ashutosh Varshney and Connor Staggs, 'Hindu Nationalism and the New Jim Crow',35(1) *Journal of Democracy*, 5-18, January 2024; 'Attacks against Muslims, Dalits grew sharply in India under Modi: US report' (*India Today*, 10 February 2017).

[139] Although the scope of right to education in India is currently limited to right to compulsory and free education for children aged between 6-14, as enshrined in Article 21A, the scope can be broadened to include academic freedom through invocation of Article 21.

[140] Article 13, ICESCR.

[141] Article 19, ICCPR.

[142] Rana Ayyub, 'The destruction of India's judicial independence is almost complete'*(The Washington Post*,24 March 2020), < https://www.washingtonpost.com/opinions/2020/03/24/destruction-indias-judicial-independence-is-almost-complete/> ; G. Sampath, 'The independence of the judiciary has collapsed: Prashant Bhushan' (*The Hindu*, 29 November 2020).

litigation to be successful, the lawyers involved in the process would benefit from observing the rulings of the Judges, for instance, in a particular High Court, and file the case when the roster for service and education laws is before a Bench that does not demonstrate signs of ruling with a certain bias.

While these four steps offer a brief introduction of the manner in which academic freedom can be brought within India's Constitutional framework, an expansive strategizing of the same is outside the scope of this thesis.

Furthermore, once such avenues have been set in pace, a third step would be to initiate legislative advocacy to bring in statutory reforms, among other means, for incorporation of academic freedom within India's Constitutional framework.

V. FINDINGS AND IMPLICATIONS

Through this thesis, the author sought to provide a viable framework for conceptualization of academic freedom in India. In so doing, this thesis revealed that an academic freedom jurisprudence in India can be characterized by omissions of the same. As a result, such jurisprudence is concealed behind subordinate laws such as that of the University Grants Commission, alongside constitutional structures like federalism and principles of natural justice. Given the lacunae in law and the increasing attack on academics alongside a historical Higher Education framework that submits to the authority of the state, as well as the increasing influence of private universities in India, it argues that a Constitutional Transplant of Latin American and Eurocentric conceptualizations on academic freedom would cater to India's challenges in this sphere. In so doing, the thesis not only answered the question that it posed, but also provided means to do so through Judicial Dialogue and Strategic Litigation.

Furthermore, while the India-centric analysis as provided through a focus on certain universities can be seen as a limitation of this paper, it can also be seen as a strength, for it clarifies the structural nature of assault that India's institutions as well as its academics are facing. Moreover, while the theoretical engagement with Latin American conceptualization on academic freedom is comprehensive, its doctrinal engagement for the purposes of judicial dialogue only through the limited jurisprudence of Brazil is another limitation, which can be seen as an opportunity for more academic deliberations on the same.

The implications of this thesis contain two dimensions: implications for India and global implications. The implications for India are three-fold; first, as already provided above, there is a gap in literature for analysis on academic freedom in India from a Constitutional perspective. As a result, this thesis offers a starting point to enable more work in this field through a Constitutional lens. Second, it offers viable means for manifestation of the same

through judicial dialogue and strategic litigation and encourages academic work on the same. Third, it offers new perspectives to test the independence of judiciary through the parameter of academic freedom, which can further lead to work that explores academic freedom not only as a functional safeguard for knowledge production, but also as a Constitutional benchmark for evaluating the openness and resilience of democratic governance.

As for global implications, it encourages research on conceptualization of academic freedom in other countries, especially such as those in Asia, which like India, do not provide for a Constitutional recognition of academic freedom. Moreover, it encourages a rethinking of the frameworks of academic freedom as they exist globally, and in Latin America, Europe and beyond so as to conceptualize a definition that is more comprehensive and holistic.

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