

# A Comparative Analysis of Academic Freedom within Higher Education Institutions (HEIs) in India and the USA

Ruchi Saini<sup>1\*</sup>

<sup>1</sup>*University of Maryland, College Park, USA*

\*Correspondence: Rsaini3@terpmail.umd.edu

## Abstract

Despite having one of the largest and fastest-growing post-secondary sectors in the world, there has been increasing protest against the lack of academic freedom within HEIs in India in the past decade. This research study carries out a comparative analysis of academic freedom within HEIs in India and the U.S., with a specific focus on how the notion is formulated within key policy documents and the provisions to safeguard it. Preliminary data from the systematic review revealed that while policy documents within both the countries frame the notion along similar lines, various sections within the Indian Penal Code are used to criminalize useful dissent and freedom of expression within HEIs. The study recommends that in order to safeguard academic freedom in India, certain specific sections within the Indian Penal Code (Section 124A, Section-153A, Section-292, Section-295A) should be either repealed or reformulated so that they are not amenable to misuse by the government.

*Keywords:* India, USA, academic freedom, higher education institutions (HEIs), legislation

## Introduction

Academic freedom, which primarily refers to the freedom to teach and conduct research, learning freedom, the right of academic self-governance, institutional autonomy, and campus integrity (Karran, 2009, p. 267; Spannagel et al., 2020, p. 5), is a “pre-condition for academic excellence” (Manan quoted in Karran, 2009, p. 276). And while the tradition of academic debate and dissent in India dates

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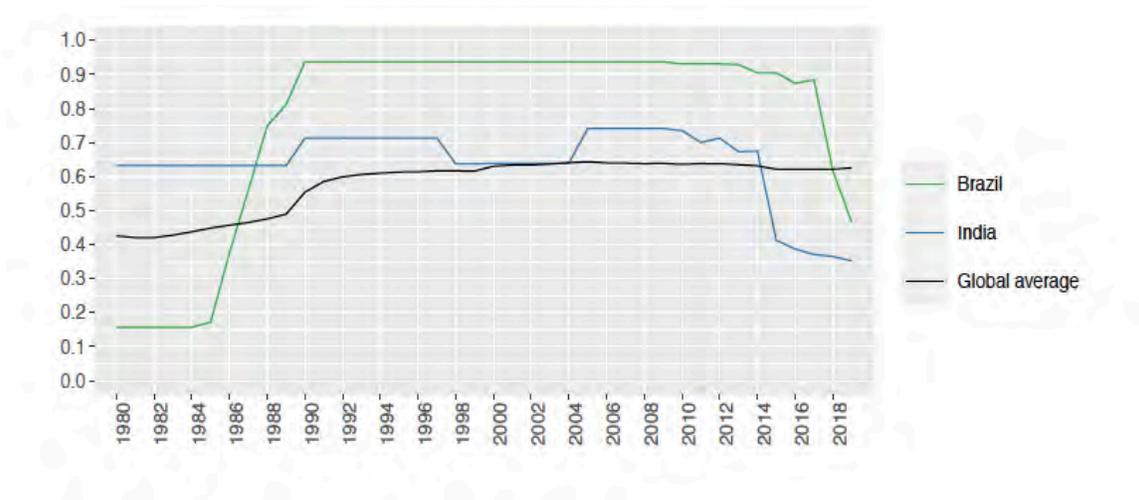
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back to the Nalanda University in the 5<sup>th</sup> century B.C. (Sundar, 2017, p.48), there has been growing protest against the lack of academic freedom (as shown in figure-1) within the country in the past decade (Tierney & Sabharwal, 2016a, p.15).

**Figure 1**

*Trends in Academic Freedom in select countries based on an “Academic Freedom Index” (Spannagel et al., 2020, p. 16)*



With one of the world’s largest and fastest-growing post-secondary sector (MHRD, 2016; Tierney & Sabharwal, 2016b; Ravi et al, 2019, p.8), the significant decline within academic freedom within HEIs in India is disturbing because of the umbilical relationship between academic freedom and academic excellence (Karran, 2009; Prakash, 2011; Sundar, 2017). The research study thus seeks to carry out a comparative analysis of academic freedom between HEIs in India and the U.S., with a specific focus on how the notion is defined and formulated within both the countries along with the provisions (constitutional or otherwise) that exist to safeguard it. This is a qualitative study that makes use of a systematic review of relevant literature in both countries.

### **Why India and the U.S?**

The U.S has been chosen because it is home to some of the best universities in the world, with seven out of the top ten global universities and sixty out of the top two hundred global universities in

the U.S. (Times Higher Education Rankings-2020). Academic freedom, patience, and a general climate of permissiveness within HEIs in the U.S. have long been seen as some of the reasons behind the success of its universities (Bardi, 2017). And while it is true that international rankings tend to operate within an Anglo/Eurocentric framework, there is growing consensus among academics that the increased frequency of instances of academic censorship in India over the past decade has harmed educational quality within HEIs (Ganguly, 2007; Tierney & Sabharwal, 2016a). In such a context, a comparison with how the notion is defined and safeguarded in the U.S. can help scholars and policy-makers in India identify useful interventions to better safeguard it.

It is important to state here that the study does not in any way suggest that the U.S. model of “academic freedom” be treated as the “de-facto” model to be emulated wholesale by India. However, it does rest on the belief that the colonial history of India and the differing socio-cultural-political landscape need not preclude the possibility of learning from successful practices abroad, more so in the current era of the transnational flow of students and faculty, where constant attacks on academic freedom in countries like India and Pakistan place its students at a disadvantage when compared to their peers globally.

### **Research Questions and Methodology**

The main research questions guiding the study are as follows:

1. How is the notion of “academic freedom” defined and formulated in India and the U.S.?
2. What provisions exist within each country at present to safeguard academic freedom within HEI’s?

I made use of large databases, including JSTOR, USM library, and Google scholar, to carry out a systematic review of relevant literature on the formulation and safeguarding of the notion of academic freedom within the U.S. and India. Search criteria included various combinations of the words academic freedom, academic autonomy, policy, provisions, safeguard, academic rights, academic infringement, censorship, India, US, and HEIs. In the end, twenty-three academic articles, fourteen newspaper articles,

one U.S. policy document (*Declaration of Academic Freedom and Tenure-1915*), and three Indian policy documents (*The University Education Commission Report-1949*, *The National Education Commission Report-1966*, and *The Yashpal Committee Report on Higher Education-2009*) were part of the final systematic review.

### **Findings from the Systematic Review**

The first U.S. *Declaration of Academic Freedom and Tenure* in 1915 recognized the importance of the “German” concepts of *Lehrfreiheit* (freedom to teach) and *Lernfreiheit* (freedom to learn) and extended their scope within the context of HEIs in the U.S. by placing an equal emphasis on “extramural utterance and action” by professors outside the university (“AAUP’s 1915 Declaration”, p.292). It stated that the freedom of speech outside the university should not be questioned and considered it completely inadmissible that decisions about the violation of academic freedom be taken by bodies composed of people outside the academia.

While India does not have an overarching statement on academic freedom, all the three key HEI policy documents identified in the literature review recognized the importance of academic freedom and dissent for academic excellence. *The University Education Commission report-1949* clearly states the need to “resist the trend towards government domination of education process” and urges for state-aid to not be confused with “state control over academic policies and practices” (Radhakrishnan, 1962, p.42). All the three reports emphasize the need for teachers to have the freedom to teach the subject matter of their choice, speak and write about significant national and international issues (no matter how controversial), and view any attack on free speech and dissent within universities as distorting the idea of what a university stands for (Kothari, 1970; Radhakrishnan, 1962; Yashpal Committee Report, 2009).

While key policy documents in both countries tend to formulate academic freedom in similar terms, the U.S. and India differ remarkably in terms of the constitutional and legislative provisions for

safeguarding academic freedom. The freedom of speech in the U.S. has been “a jealously guarded constitutional right ever since the ratification of the first amendment” in 1791 (Frary, 2015, p.21) and the *Declaration of Academic Freedom-1915* aimed at securing an even greater degree of legal protection to academics by tying their rights to academic freedom to the constitution instead of the institution (Gibbs, 2016, p.177). In the case of India, the constitutional right to freedom of speech and expression granted via Article nineteen is not an absolute law. The government is allowed to limit freedom of expression when it is seen as clashing with the sovereignty and integrity of the country (Kamdar, 2018). Also, the Indian penal code criminalizes obscenity (Section 292), acts intended to outrage religious feelings (Section 295A), and speech that promotes enmity between religions (Section 153A). These sections tend to form the “backbone of India’s current apparatus of censorship” (Acharya, 2016, p.158).

How India defines “sedition” also differs from other democratic countries such as the U.S. In the U.S., for the government to successfully convict a person for sedition, it needs to prove that the accused “conspired” to use force. On the other hand, Section 124A of the Indian penal code considers words (spoken, written, signs) that bring or attempt to bring “hatred or contempt” towards the government (“Section 124A: The Most Anti-National Thing”, 2019) as sedition. Section 124A was invoked by the ruling BJP party to arrest student leader Kanhaiya Kumar in 2016, as well as to file a complaint against Amnesty International in 2019 (“JNU Sedition Case,” 2019; “Sedition Case Against Amnesty,” 2019).

### **Recommendations and Future Directions**

A plethora of activities that are critical to foster an atmosphere of critical discussion and debate within HEIs can outrage religious feelings and/or attempt to bring hatred towards the government, thus running the risk of criminalization under the Indian penal code. The vagueness of the law makes possible criminalization of useful dissent, critical thinking, and/or calls for accountability from the ruling party within Indian HEIs. In the absence of robust legislative measures to safeguard academic freedom in India, any attempt to emphasize its importance within policy documents serves little purpose. In the

next stage, I plan to extend the scope of the comparative study by analyzing how the conception of academic freedom and the provisions to safeguard it evolved in both the U.S. and India by focusing on a more extensive range of policy documents and academic articles.

### Author Note

Ruchi Saini is a second-year PhD student in International Education Policy at the University of Maryland, College Park. She has a Master's degree in English literature from the University of Delhi and a Master's degree in Education from the University of Glasgow, UK. She comes from India and has worked as an educator and an administrator across schools in New Delhi (India) from 2012-2019. Ruchi's research interests include higher education quality with a specific focus on how academic freedom links to educational quality, as well as, analyzing the intersection between gender, higher education, and development within south-Asia.

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