



**FREEDOM OF EXPERSSION THE CASE OF ACADEMIC FREEDOM IN
SOCIAL SCIENCE FIELD OF STUDY**

By:

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Freedom of Expression: in the Case Of Academic Freedom In Social Science
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DECLARATION

DESALEGN, AGEGNEHU hereby declare that this research paper is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

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ACRONYMEYS

ACHPR.....	African Charter on Human and Peoples
Right ACHR.....	American Convention on Human Right
CRC	Convention on the Right of
child CSU.....	California
state university CUNY.....	city
university of network WKU-.....	wolkite University
EA.....	European association
EU.....	European union
ECHR.....	European Convention on Human
Right FDRE.....	Federal Democratic Republic of
Ethiopia FOE.....	Freedom of expression
HRC.....	Human Right Committee
ICCPR.....	International Covenant on Civil and
Political Right NGOS.....	Non-governmental
Organization OAS.....	Organization of
American State SDSU.....	san diago state
university UDHR.....	Universal Declaration of
Human Right UN.....	United Nation
UNESCO.....	United Nations Educational, Scientific and
Cultural Organization	

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ABSTRACT

Academic freedom, which is mainly rooted in intellectual freedom, is introduced in order to properly defined and realize the essential role which are played by higher education institutions and the necessity of liberal quest for the truth and knowledge. Academic freedom also eases the way for perusing the truth and discovering knowledge and such discovery requires. Accordingly, this thesis is concerned on the academic freedom of expression in higher education institution, in particular the practical aspects in the case of wolkite University. International and national human right legal standards and principles on freedom of expression and the experience of other countries higher education institutions academic freedom are discussed under the study to analyze the practical aspects in wolkite university in line with those national and international standards and principles as well as the in line with the best experience of other countries higher education institutions on academic freedom so as to identify the practical gaps in the target area of the study.

Accordingly, the qualitative data collected from the key informant of the study and data analysis under the finding of the study revealed that, arbitrary limitation of students right to freedom of expression that is contrary to national and international legal standards and principles, lack of cooperation and supervision to implement the existing higher education proclamation and internal legislation, and rules of the university on freedom of expression, absence of any authority to enforce the existing legislations on freedom of expression, absence of policy, coupled with minimal efforts of wolkite University to improve the academic freedom of expression in the target area of the study are identified as the major practical gap Based on the aforementioned practical gaps, the researcher provides recommendations for th concerned bodies of the university, in particular, the concerned bodies to be committed to free and open inquiry in all matters, and create an opportunity fostering the ability of members of the University

community to engage in such debate and deliberation in an effective and responsible manner should be an essential part of the University's educational mission.

Key Term: freedom of expression in the case of academic freedom, in social science field of study.

1. CHAPTER ONE

1.1 BACK GROUND OF THE STUDY

The concepts of expression have begun from the ancient time when ever human being needs to express their ideas and expressions. Evolutionary scientist have identified that the most distinguishing feature of human being (homosapiens) is the capacity for complex languages and expression of their ideas and opinions freely.¹ Freedom of speech was born in Athens during the archaic period (800 B.C) when the aristocratic rulers allowed a certain class of citizens to express their opinions without fear².

in the 9th century the Greek epic poet also supported free expression. Opposing factors arose, the need to express ideas and opinions, and the desire to control free expression. Thus, Solon great law maker of Athens banned speaking against the evil and dead. Accordingly, Athenian assembly ordered Socrates to drink poison as a punishment for lecturing and corrupting youth by encouraging them to question authority. Republican Roman like Athenian permitted high degree of free speech. However, laws and traditions against personal slander was well documented, including, playwrights and actors from slandering their fellow citizen by a name in dramatic production³.

Then, many rulers that find out about hinder the development of freedom of expression⁴.in early 13th century **Magna Carta or Great charter** put a foundation for constitutional liberty including the right to freedom of expression.⁵The concept of freedom of expression has also been found in the early human right document of England bill of rights in 1689 which legally establish constitutional right of freedom of expression. Through various ups and downs during the reformation period as to the development of freedom of

¹D.Smith, History of Freedom of Expression,(2006),p,45

² H. Franklin ,Freedom of Speech in the United State, California university, 2001, p.4

³ Id ,p.5

⁴ Alexander and P. Horton, the Impossibility of free speech, Geneva 1948, p.48

⁵ Supra note2, p.6

expression during the period of enlightenment freedom of expression become its primary objective. Following this some European countries like Sweden, Denmark, and Norway in 1776 abolish censorship.

Accordingly, during the French revolution, the French national assembly declaration of the right of man in 1789 affirmed that the right to freedom of expression as inalienable right of all human beings under article 11. U.S.A's constitution first amendment in 1791 recognize freedom of expression

After the end of Second World War, the international community has agreed to create institutions and instruments for the better protection of human right. United Nations first act was to create human right council chaired by Eleanor Roosevelt and freedom of expression become the primary goal of the new human right regime. Today freedom of expression is recognized in international, regional and national human right instruments as fundamental and inalienable human rights. It is enshrined under article 19 of Universal Declaration of Human Right,⁶ article 19 of International Covenant on Civil and Political Right,⁷ article 10 of European Convention on Human Right⁸, article 13 of American Convention on Human Right,⁹ article 9 of African Charter on Human and People Right¹⁰ and Ethiopia is a party to thus international human right instruments (UDHR, ICCPR, ACHPR) and give due recognition for the right to freedom of expression under article 29 of FDRE constitution.¹¹

⁶ Universal Declaration of Human Right, adopted and proclaimed by General Assembly resolution 217A(HI) of December, 1948, Article 19

⁷ International Covenant on Civil and Political Right (ICCPR) art 19, Adopted on 16 December 1966, N.Y, USA, GA res. 2200A (XXI).

⁸ European Convention on Human right ,adopted and proclaimed by council of Europe in 1948, Art 10

⁹ American Convention on Human right, adopted and proclaimed by Organization of American state, in 1969, Art. 13

¹⁰ African Charter on Human and Peoples Right, (ACHPR), Art 9, Adopted on 27 June 1981,

¹¹ Federal Democratic Republic of Ethiopia constitution, 1995, Art. 29, proc. no. 1, Neg. Gaz., yaer 1, no. 1

According to those human right instruments, the right to freedom of expression becomes constitutionally and naturally guaranteed right for every society with a certain restrictions or limitations

1.2 Statement of the Problem

The right to freedom of expression is fundamental right of every human being, indispensable for individual dignity and fulfillment. It also constitute essential foundation for democracy, rule of law ,peace ,stability ,sustainable and all inclusive development ,promote participation public affairs .the right of freedom of expression is essential for the fulfillment and enjoyment of wide range of other human right ,promotion of individual self-fulfillment and autonomy.

Particularly, academic freedom visa a visa the right to freedom of expression in higher education institution are closely related. Since education involves not only receiving or acquisition knowledge from differs sources but also the development of ideas of different kind, they have necessary condition for the discovery of truth personal development. Accordingly academic freedom shall be granted for every institution in pursuit of its mission and constituent with international good practice however, even if the law guaranties this right but practically there are various problems that limit the freedom expression in the case of academic freedom in social science field of study. The first and the major problem is miss understanding between teacher and student, even if the student know there right to freedom of expression they restrict themselves to express their idea by fearing there teacher, I think this are misunderstanding of the student and teacher, in one hand, most of the time students restrict their right to freedom of expression for the fear of teacher, why because, there are some teacher who wants to deprive the inherent right of student through reductions of their grades in different manner. On those student who went to express their idea, this misunderstanding between teacher and student. In class lead for in effective implementation of student the right to

freedom of expression. This fact calls the attention of the researcher to will recommend this problem.

1.3. Objectives of the Study

1.3.1 General objectives of the Research

The general objective of this research is to explore the major problems that are experienced with freedom of expression in the case of academic freedom in the social science field of study.

1.3.2. Specific Objectives of the Research

This research will be the following specific objectives;

- ✓ The paper will serve as a guide for freedom of expression in the case of academic freedom in social science field of study.
- ✓ To evaluate the current practical effort of freedom of expression in the case of academic freedom in social science field of study.
- ✓ To analyze the legal limitation on the freedom of expression in the case of academic freedom in social science field of study.
- ✓ To promote the right of student regards on freedom of expression in the case of academic freedom in social science field of study.

1.4 Research Question

The right to freedom of expression is one of the most fundamental human rights that is enshrined under in most international, regional and national human right instruments. However, there is a certain practical challenges regards freedom of expression in the case of academic freedom in social science field of study. That needs to be consistent with those international. Regional and national human right instrument those to addresses mentioned objectives these search formulated the following research question.

1 the researcher will be asks the student, how do you understand the term freedom of expression in the case of academic freedom in social science field of study?

2. What do you think on the confidence of the students to raise and answer question freely in class room in the case of social science field of study?
3. The researcher will ask student, what is the negative impact to limit the right of freedom of expression in case of academic freedom in social science field of study?
4. The researcher will ask the student, what did you observe the practical effort of freedom of expression in academic freedom in social science field of study?

1.5 Significance of the Study

Currently most scholars agreed that effort to realization and protection of the right to freedom of expression is the basic mile stone for the foundation of democracy, rule of law, equality, peace, stability, sustainable development and the discovery of truth. Therefore, there are urgent needs to make all inclusive efforts to protect and respect the right to freedom of expression in this regard freedom of expression are essential for student such as the right to speak. Write. Listen except so far as limitation by the law. However this research will be deals about freedom of expression in the case of academic freedom in social science field of study. And make the right to freedom of expression compatible with the standards provided by human right instruments so as to bring the above importance of freedom of expression.

Accordingly, the findings of this research paper will be the following significances:

- ✓ To promote freedom of expression and to protect the right of freedom of expression of student in case of academic freedom in social science field of study.
- ✓ This research will be also serving as a guide for social science field of study to know and challenge their problems with regards to the freedom of expression, in the case of academic freedom in social science field of study.

- ✓ To suggest possible recommendation on the finding of the study regards freedom of expression in the case of academic freedom in social science field of study.

1.6. Research Methodology

this research will be none doctrinal legal research, carried out by utilizing qualitative research method, the qualitative research method will be considered appropriate due to the nature of the issue under study and also student of social science field of study fully and in their own terms as it will possible to develop in depth expression with observation. This study will utilized both primary and secondary data source so this obtain the desired information that will be answer the stated research questions, primary data collection will be achieved through in depth interviews and will focus group discussion within the student. With regard to secondary data source, review literature will about freedom of expression from perspective international, regional, and national human right standards for the protection of the right to freedom of expression, higher education proclamation, and Wolkite university legislation with relate academic freedom of expression, books, articles, and journals will be to complete this research.

1.6.1. Sampling Method

The sampling method which the researcher will selected for the study of this research is random sampling for the purpose of convince and avoiding bias among the population

1.7. Scope of the Study

Human right documents provided that the right to freedom of expression as fundamental and inalienable human right that is given for every part of society in the world without any distinction based on race, color, sex, religion, political opinion and educational background. However these researches will focus on freedom expression in the case of academic freedom in social science field of study.

1.8. Limitation of the Study

The researcher will face time and financial constraints to dig much deeper on the search of gaining much more details and accordingly it were also more difficult for the researcher to conduct interview with the concerned body and all student in the social science field of study. Because, some of them may be not voluntary in order to give details information.

Since the right of freedom of expression is not living stuck in a place we faced shortage of updated literature concerning the study area, respondent may not have accurate and relevant information on the issue. However, despite this limitation the researcher will strived to achieve the above mentioned objective of the study and to complete this study.

1. 9. Structure of the Study

This research paper will consist four chapters.

Chapter one will be deals with background of the study ,statement of the problem ,objective of the study ,research question ,significance of the study, research methodology ,scope of the study , limitation of the study and structure of the study.

Chapter two will deals about literature review about definition and historical background of freedom of expression, theoretical of the right to freedom of expression or the importance of the right to freedom of expression and the relation of the right to freedom of expression with other human rights.

Chapter three will dedicated to examine freedom of expression and practical enforcement with regard freedom of expression in class room in the case of social science field of study. from the perspective of different international, regional and national human right instrument, its scope, limitation or restriction of the right to freedom of expression in those international, regional and national human right documents or instruments.

Chapter four will be about recommendation and conclusion based of the finding of the research or recommending what things to be done in regard freedom of expression in the case of academic freedom in social science field of study.

2. CHAPTER TWO

LITRATURE REVIEW

2.1. DEFINITION OF THE RIGHT TO FREEDOM OF EXPRESSION

Freedom of expression has been defined in various ways and such definitions connote the same idea about freedom of expression. But, in most human right documents freedom of expression is a fundamental Human right is guarantor of human dignity. Freedom of expression is universally acknowledged as both a fundamental and foundational human right; it is not only the cornerstone of democracy, but indispensable to a thriving civil society. Indeed, the freedom of expression is considered as the “foundational human right of the greatest importance.” The right to freedom of expression in those human right documents includes freedom to hold opinions without interference and to seek, receive, and impart information’s and ideas though any form regardless of frontier.

This right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others. It includes political discourse, commentary on one’s own and on public affairs, canvassing, and discussion of human rights, journalism, cultural and artistic expression,

teaching, and religious discourse. It may also include commercial advertising. It may also include all forms of expression and the means of their dissemination. Such forms include spoken, written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression.¹²

Freedom of expression relates to the liberty to be able to hold opinions and to impart and/or receive these as well as ideas and information to others in any form.

Freedom of expression is the right to express ones ideas, opinions freely through speech, writing, and other form of communications. But without deliberately causing harm to other character or reputation by false or misleading statement.¹³

Freedom of expression is the right to say what one wants through any form of communication and media without any limitation being to Cause other harm in character or reputation by laying or misleading words.¹⁴

Freedom of expression is a freedom to communicate ideas without restraint, whether orally or in print or by other means of communication.¹⁵

2.1.1. Freedom of Speech vs. Freedom of Expression

Freedom of speech is the right to articulate one's opinions and ideas without fear of government retaliation or censorship, or societal sanction. Free speech is one of the most fundamental and our most uncontested right. It is an

¹² General Comment no. 34(2011)International Covenant on Civil and Political Right Human Right Committee

¹³ Business Dictionary available at www.businessdictionary.com/definition/freedom-of-expression.html last visited nov,25 .2019;9:10am)

¹⁴ Available online on <http://www.dictionay.findlaw.com/defination/freedom-of-expression.html>:(accessed on 25oct, 25;10:31 am)

¹⁵ Duhaime's law dictionary available at www.duhaime.org/legalDictionary/F/FeedomofExpression.aspx

essential freedom because it is how we protect all of our other rights and liberties. If we could not speak openly about the policies and actions of government, then we would have no effective way to participate in the democratic process or protest when we believed governmental behavior threatened our security or our freedom.

*“To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker”.*¹⁶ Frederick Douglass

The term freedom of speech is interchangeably used with freedom of expression but it includes any acts of seeking, receiving and imparting information or ideas, regardless of the medium used. Freedom of speech is fundamental human right recognized in international law which is to day understood more generally as freedom of expression in any medium, be it orally, or in writing, print, through internet or through art form.¹⁷

Today, various international, regional, and national human right law recognizes freedom of speech in the same way as the freedom of expression includes any medium, be it be orally , in Witten, in print ,or any form . This means the protection of freedom of speech as aright includes not only the content, but also the means of expression.¹⁸

According to John Milton’s argument freedom of speech is understood as a multi- faced right that include not only the right to express, or disseminate, information’s and ideas but, three further distinct aspects

- ✓ the right to seek information and ideas
- ✓ the right to receive information and ideas, and
- ✓ The right to impart information and ideas therefore the right to speech

¹⁶ W.Linda, Freedom of Speech ;Finding the limite(<http://www.annenbergclassroom.org/page/a-conversation-on- the-constitution-freedom-of-speech>) last vested 26 nov, 2019;4:20 pm

¹⁷ Available on https://en.m.wikipedia.org/wiki/freedom_of_information

¹⁸ P.Andrew, Freedom of Expression, the Essentialist of Human Right(2005),p.128

is wider than the right to freedom of expression.¹⁹

But , international instrument of human right have adopted the word “Expression” for the right to freedom of expression and they have choose in preference to “Speech “Scholars have adopted the meaning of expression in the border sense which also includes verbal, physical and artistic expressions .e.g., painting photograph, sculpture and music. Our opinion for this is even if freedom of speech and freedom of expression are related in the contemporary human right jurisprudence the right to freedom of speech is more broad in scope than the right to freedom of expression international human right instruments should have opted to use the term freedom of speech than freedom of expression so as to widen the right to freedom of expression as the freedom of speech is widened. This is the researcher’s point of view but, we cannot deviate from the accepted standards of contemporary human right therefore, throughout this paper we prefer use the term Freedom of Expression.

2.2. Justifications of Free speech or Freedom of Expression

2.2.1. Instrumentalist justification

Instrumentalist justification try to prove the importance of free expression guarantee by pinpointing the value itself and goods it does to individual and society at large. The instrumentalist justifications are essentially three: discovery of truth, democracy and keeping the right balance between demands of stability and change. This theory more over takes care of the right of both speakers and listeners. The speakers needs freedom of expression because without articulating his ideas and thought before others and without listening to what others say about the weak or strong side of his argument, cannot be sure about the correctness of his thesis. Again expression helps the listener because it’s the only after knowing the few points of maximum

¹⁹ Dr. Ramush Kumar, right to information vis-à-vis freedom of speech, American international journal of research in humanities, arts and social sciences, p 239. [available online athttp://www.iasir.net](http://www.iasir.net)

number of people possible that one can arrive at decision with confidence of a person who has pondered over the matter from all angles.²⁰

The instrumentalist justification argues that free expression enables people to articulate their grievance, dislikes and dissatisfactions with existing state of affairs and it lets the people at the helm of affairs take note of the same and start remedial measures before it becomes too late.²¹ The instrumentalist theory justifies free expression or speech in terms of some social good it produces, it's always possible to make out a case for the suppressions of speech by proofing that it's likely to produce much more evil than good.

2.2.2. Non-instrumentalist Justification

Non instrumentalist justification of free speech or expression is related to self-realization and individual fulfillment. According to this theory, emotive and unsophisticated expressions are as much entitled to protections as articulations of thought and ideas of social and political importance. Non instrumentalist asserts that free speech or expression is itself a value and an individual has a right to express himself unmindful of the reaction of others and its likely social consequences. This theory largely grounded in the belief that the right to free expression is a part of inherent liberty of individual for the protection of which state exists. But, such belief cannot deny the state the power to limit the right to speech in the interest of the protection of the same or similar rights of others.²²

2.2.3. The importance of freedom of expression

The importance attached to freedom of expression is not a new idea. In early modern Europe, thinkers such as John Milton and John Locke emphasized their opposition to censorship as a part of the development of democratic government. Most famously of all, the First Amendment to the United States

²⁰ R.Udai Raj, Fundamental Rights and Their Enforcement(2011),p.32

²¹ Ibid, p.34

²² Supra note at 22,p.35

Constitution 1791 states that:

*The Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*²³

However, it was only with the formation of the United Nations and the construction of a human rights regime founded in international law that the right to freedom of expression became universally acknowledged.

Freedom of expression has been regarded as fundamental human right in the history of mankind several up and downs, incidents has been takes place like, renaissance, enlightenment, reformation, French revolution and so on so as to protect the right to freedom of expression. , and since, it is the base for the foundation of democracy around the world UN general assembly declared that:

*“Freedom of expression is a fundamental human right and touch stone of all the freedom is to which the UN is concerted “*²⁴

The importance of freedom of expression is reflected by its wide spread protection and recognition in the international law at global level, regional and national level. Free uncensored and unhindered freedom of expression is essential in any society to insure individual autonomy and enjoyment of other human right subject to legal restriction is provided by law and it constitute one of corner stone for democracy.²⁵

²³ Dr.C.Richard. Freedom of Expression, Media Law and Defamation, ([www.mediadefence.org+44\(0\)2037255550info@mediadefence.org](mailto:www.mediadefence.org+44(0)2037255550info@mediadefence.org)) last vested 06,on nov,2019, 10:25am

²⁴ Soli J sarabjee , Article 19 freedom of expression hand book, International and Comparative Freedom of Expression law, its role in national court ,August(1993),p.51

²⁵ General Comment no. 34(2011)International Covenant on Civil and Political Right Human Right Committee

2.3. Relation of the Right to Freedom of Expression with other Human Rights

The term human right is used to denote abroad spectrum all human right are elementary pre condition for a dignified human existence and development. These right can be ordered and specified in different ways at the international level distinction has made sometimes between civil and political rights, on one hand, economic, social and cultural rights, on the other hand.

Even if human right have been classified in number of different manners it is important to note that the international human right law stresses that all human right are universal ,indivisible, interdependent and interrelated.²⁶1993 Vienna Declaration and program of Action (VDPA) also affirm that human rights are universal, indivisible, interdependent and interrelated. Consequently, all states are required to protect human rights regardless of their historical, cultural and religious differences.²⁷

The indivisibility nature of human right implies that no right is more important than other, every human right is equally important for human being to lead dignified life. Violation to ascertain human right would to violation some other human right. Since, they are interrelated and interdependent .therefore, the right to freedom of expression is interdependent with other human right. It is a means to an end for the realization and achievement of other human rights in the absence of the right to freedom of expression it is not possible to realize other human right.

2.3.1. Freedom of Expression vs. Freedom of Religion or Belief

Likewise the right to freedom of expression, freedom of religion is fundamental human right recognized in all major international, regional and national human right treaties. It encompasses not just to hold personal

²⁶Demelash Shiferaw and Yonas Tessfa Human Rights law Teaching Material under the sponsorship of justice and legal system research institution, (2009),p.6

²⁷ Girmachew Alemu Ethiopian Human Right Hand Book(2013),p.5

thoughts or belief but, being able to manifest them individually or with group.²⁸ It also includes freedom to change ones religion or belief and freedom, either alone or in community with others and in public or in private to manifest ones religion or belief, in worship, teaching, practice and observance.

Many national and international documents which declare human rights acknowledge the fact that freedom of thought and freedom of expression are intertwined. The Universal Declaration of Human Rights which was issued by the General Assembly of the United Nations in December 1948 has dealt with both in two successive articles (18, 19).

In respect of freedom of religion or belief, the right to freedom of expression can be engaged in to ways; when someone is expressing their religion or belief or when someone is expressing their views and opinions about their religion.²⁹ Therefore despite other things, the right to freedom of expression is essential for the existence and realization of the right to freedom of religion. This includes the right to challenge activities, teachings and beliefs. But it should be within the limit provided by law.

2.3.2. The Right to Freedom of Expression vs. Freedom of Press

The right to freedom of press is also like other human rights have got recognition and protection under various human right treaties. Freedom of press or freedom of the media is the freedom of communication and expression through the mediums including various electronics media and published material. While, such freedom mostly implies the absence of interference from an over reaching state, its preservation may sought through

²⁸ ST.Jhons, Freedom of religion or Blife(http://www.publications.uk/pa/id201516/idhansrd/text/150716_003.htm) last visited 30 nov , 2019

²⁹Dr.D.Alice and Dr.H.Crica, The Right to Freedom of Religion or Belief and its Intersection with other Rights(2015),p.7

constitutional or other legal protection.³⁰

Freedom of press protects the right to obtain and publish information or opinions without government censorship or fear of punishment. It applies to all types of printed and broadcast materials including books, newspaper, magazine, pamphlet, film, and radio and television programs. Accordingly, freedom of speech or expression is the liberty to speak openly without fear of government restraint. It is closely linked to freedom of press. Although they might be considered as a single right, they are actually two related rights: the freedom of personal expression, and the freedom of public expression (using the medium of the press, and in modern circumstances all the other media now available. This freedom includes both the right to speak and the right to be heard. In USA, the first amendment to USA constitution called both freedom of press and freedom of speech commonly as freedom of expression.³¹

“A free press is the cornerstone upon which all other freedoms rest. It is the key underpinning of democracy... without a free press, who is to check on government? And without a press free to inform, how is a citizen to make intelligent political judgment?”³² Louis D. Boccar

The right to freedom of expression and people’s right to seek and receive information cannot have a meaning full application unless media plays its key role in democratic society. The declaration of principles of freedom of expression in Africa on its preamble, recognizes the key role of media and other means of communications in insuring full respect for freedom of expression, in promoting the free flow of information and ideas in assisting people to make informed decisions, in facilitating and strengthening

³⁰ Available at www.lincoln.edu/criminaljustice/hr/speech.htm last visited 25.nov. 2019.4:30am

³¹ <http://www.boundless-com/political-science/textbooks/boundless-political-science-textbook/civil-liberties-4/the-first-amendment-the-right-to-freedom-of-religion-expression-press-and-assembly-34/freedom-of-the-press-199-1896>, last visited 29 nov. 2019.2:10pm

³² UNESCO Division of Freedom of Expression and Media Development Sector, Freedom of Expression Toolkit: Guideline for Student ([sshttp://www.UNESCO.org/new/en/communication-&-information](http://www.UNESCO.org/new/en/communication-&-information)) last visited 26, 2019.

democracy.³³

2.3.3. Freedom of Expression vs. Freedom of Opinion

Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. Freedom of opinion is related, with freedom of expression providing the vehicle for the exchange and development of opinions

Freedom of opinion requires protection of the right to hold opinions without interference. This is a right to which the human right instrument permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under such human right instrument on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected; including opinions of a political, scientific, historic, moral or religious nature. Most of the time freedom of opinion is more of personal.³⁴

2.3.4. Freedom of Expression vs. Right to Access to Information

The right to access to information is also one of the specific manifestation of the right to freedom of expression that is particularly important for the consolidation, functioning and preservation of democratic system of government .as result it has received significant attention of international human right treaties.

In general, in major human right instruments, the right to freedom of expression includes the right and the freedom to seek, receive, and impart information and ideas of all kind. So, the right to freedom of expression also encompasses the right to access to information and within the general framework of freedom of expression.

³³ Danile Bekele The legal Frame Work of Freedom of Expression in Ethiopia (2010), P.8

³⁴ General Comment no.34, supra note at,15

By facilitating the free flow of information and ideas on matters of general interest, and by ensuring transparency and accountability, independent media constitute one of the cornerstones of a democratic society. Without freedom of expression and freedom of the media, an informed, active and engaged citizenry is impossible.³⁵

In November 1999, the three special mandates on freedom of expression the UN special rapporteur on freedom of opinion and expression, the OSCE, representative on media and OAS special rapporteur on freedom of expression came together for the first time under the auspices of human right NGO Article 19 global campaign for free expression. They adopted a joint declaration which includes the following statement.

*Implicit in freedom of expression is the public's right to open access to information and to know what government are doing on their behalf without which truth would languish and people's participation in the government would remain fragmented.*³⁶

One conclusion from this we would be to say that freedom of expression has a higher status than other rights, since their enjoyment depends upon it. This is the approach taken, most famously, in the United States, where the First Amendment to the Constitution and the jurisprudence of the Supreme Court have repeatedly stressed the primacy of free expression³⁷

2.3.5. Freedom of Expression and Political Rights

The Committee, in general comment No. 25 on participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and the effective exercise of the right to vote. The free communication of information and ideas about public and political

³⁵ Council of European Union Human Right Guideline on Freedom of expression online and Offline (press.office@consilium.europa.eu, <http://www.consilium.europa.eu/newsroom>) last visited 02 DECEMBER, 2019

³⁶ M.Toby, Freedom of information a Comparative Legal Survey(2008),Vol.2,p.18

³⁷ D.C.Richard. *supra* note at 27

issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint. The attention of States parties is drawn to the guidance that general comment No. 25 provides with regard to the promotion and the protection of freedom of expression for the protection of political rights.

Not only the right to vote, Freedom of expression is essential for the fulfillment, realization and enjoyment of a wide range of other political right, including:

- ✓ Freedom of Assembly
- ✓ Freedom of Association
- ✓ Right to Privacy
- ✓ Right to Education and other political rights related to participation in public affairs.

Generally, the right to freedom of expression is not only related and linked to the rights maintained in the above, but also freedom of expression is interdependent and interrelated right with all other human rights. Accordingly, the right to freedom of expression paves away for the realization, expression and respecting of other human right or it is the means for the realization, fulfillment and enjoyment of other human rights.

2.4. INTERNATIONAL, REGIONAL AND NATIONAL STANDARDES ON THE PROTECION AND PROMOTION OF THE RIGHT TO FREEDOM OF EXPRESSION

2.4.1. INTERNATIONAL STANDARDES

Freedom of expression is one of the fundamental rights of every human being, indispensable for individual dignity and fulfillment, it also constitute essential

foundations for democracy, rule of law, peace, stability, sustainable inclusive development and participation in public affairs. States have an obligation to respect, protect and promote rights to freedom of expression. Freedom of expression is important for the promotion of individuals' self-fulfillment and the development and manifestation of individuals' identities in society.

Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.

Freedom of expression supports an informed citizenry and is vital to ensuring public and private sector accountability. Broad public access to information and the freedom to create and communicate ideas are critical to the advancement of knowledge, economic opportunity and human potential.

Freedom of Expression is the best way of attaining the truth, it advances the ability to criticize or converse one another without fear and allows us to get to the truth. It is a vital part of the democratic process as free debate about public issues facilitates the strengthening of a democracy.

Due to wide spread importance of the right to freedom of expression, it is one and fundamental human right that can make human beings to lead a dignified life and it is the basic foundation for existence of democracy various treaties and other international human right instruments provide the most significant international protections of the rights to freedom of expression. Such as;

2.4.2. Universal Declaration of Human Rights (UDHR)

Adopted unanimously by the General Assembly on 10 December 1948, The Universal Declaration is the most important elaboration of the human rights obligations set forth in the United Nations Charter. While at the time of adoption it was widely viewed as a statement of principles, it has acquired increasing legal significance over the decades. The Proclamation of Teheran, marking the Universal Declaration's 20th anniversary and endorsed by the

UN General Assembly, declared that the Universal Declaration "states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.

The Preamble to the Universal Declaration sets human rights in the context of 'the inherent dignity' as well as 'the equal and inalienable rights of all members of the human family'. This concept of the human dignity applying equally to all is thus intended to pervade the whole of the Universal Declaration including the right to freedom of expression.³⁸

The UDHR, as a UN General Assembly Resolution, is not directly binding on states as such. However, many of its provisions constitute a general principle of law and are widely held as having acquired legal force as customary international law. So, it is binding on every nation. Since, its adoption in 1948. In addition, the UDHR is very important as an authoritative guideline to human rights by General Assembly and it is regarded as by the General Assembly and some jurists as a part of "law of the United Nation"³⁹

The Universal Declaration was the first step in the formulation of the International Bill of Human Rights, which was completed in 1976 with the entry into force of the two main international human rights treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.⁴⁰

The Universal Declaration has had tremendous impact on the development of both international and national human rights law. Virtually all human rights treaties adopted by UN bodies since 1948 elaborate principles set forth in the Declaration. For example, Both the American and the European

³⁸ Universal Declaration of Human Right adopted and proclaimed by General Assembly resolution 217A(HI) of December, 1948

³⁹ Danile Bekele Article 19, the Legal Framework of Freedom of Expression in Ethiopia, p.6 (<http://www.addistribune.com/Archives/2002/08/23-08-02/EFJA.htm>, www.ifex.org.) last visited 28 nov, 2019

⁴⁰ Ibid

Conventions on Human Rights declare in their preambles that the principles to which they give effect are those set forth in the declaration. The result is that the Universal Declaration is now widely acclaimed as a **Magna Carta** of humankind, to be complied with by all actors in the world arena. What began as mere common aspiration is now hailed both as an authoritative interpretation of the human rights provisions of the UN Charter and as established customary law constituting the heart of a global bill of rights.⁴¹

The UDHR widely accepted the formulation of the right to freedom of expression under Article 19 which reads as:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Accordingly United Nations Declaration on the Right and Responsibility of Individual, Groups and Organ of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by general assembly resolution 53/144 of 9 December 1998, is specially designed human right defenders and guarantees every person the right to; among other things

- ❖ To communicate with nongovernmental or intergovernmental organization to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms
- ❖ As provided for in human and other applicable international instruments the right to freely publish, impart or disseminate other views, information's and knowledge on all human rights and fundamental freedoms according to Art 5 and 6.

⁴¹ Soli J sarabjee supra note at 28,p.10

2.5. International Covenant on Civil and Political rights (ICCPR)

International Covenant on Civil and Political Right (ICCPR),, is formally binding legal treaty ratified by 165 nations that echoes in the key prospect to the UDHR, it like other multitude of human right treaty ICCPR also protect the right to freedom of expression under Art 19 which reads as;

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a) For respect of the rights or reputations of others;
 - b) For the protection of national security or of public order (order public), or of public health or morals⁴²

The freedom of expression is characterized by six key features:⁴³

- ❖ It applies to “everyone” equally without distinction of any kind whatsoever; distinctions based on “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” are entirely irrelevant to its application.
- ❖ Its geographical scope is unlimited; it applies “regardless of frontiers.”
- ❖ Its substantive scope, while not unlimited, is broad; it encompasses “information and ideas of all kinds.”

⁴² UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations Treaty Series available at <http://www.refworld.org/docid/3ae663aco.html> last visited 01 on DECEMBER 4:20 pm

⁴³ Global Trends in NGOS Law; the Right to Freedom of Expression, Restriction on such Fundamental Right. Volume 6 issue 1 page 2. (<http://www.ICNL.ORG>) last visited 18 N0v, 2019

- ❖ It includes the rights to both “receive and impart information and ideas”; the rights of both listeners and speakers, and observers and demonstrators are equally protected.
- ❖ It imposes a positive obligation on signatories to the ICCPR; states are obligated to “take the necessary steps” to ensure its protection, including adopting “laws or other measures as may be necessary” and providing “an effective remedy” to those whose freedom of expression has been violated.
- ❖ The manner in which expressions are disseminated is unlimited; it protects the right to impart one’s ideas using “any” form of “media of his choice.

2.5.2. REGIONAL STANDARDS

The main aim of regional human rights instruments is to complement the international system of human rights treaties; as such, they underscore the universality of human rights including the right to freedom of expression. They include stipulations on issues relating to specific historical or cultural contexts at regional level which go beyond the provisions of the international agreements⁴⁴. Among the regional human right instruments which are promulgated for the protection and promotion of human right in general and the right to freedom of expression in particular the following regional human right instruments are the prominent one .even if they does not have directly binding effect ,the American and European human right instruments are discussed here, because they are most comprehensive and developed instruments they could be used as interpreting guideline for other less developed regional human right instrument.

2.5.1. AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS (ACHPR)

The Assembly of Heads of State and Government of the Organization of

⁴⁴ GIZ, Promoting the Human Rights to freedom of Expression and Access to Information in Development Cooperation, (www.giz.de/good-governance) last visited nov,27, 2019

African Unity adopted the African Charter on Human and Peoples' Rights in 1981 and it entered into force in 1986. As of January 1993, 49 of the 51 OAU member states were parties to the Charter.

The African Charter on Human and Peoples Right also known as the **Banjul Charter** is regional human right instrument that is intended to promote and protect human right in general and the right to freedom of expression in particular in African continent. The right to freedom of expression is provided under Art 9 which reads us;

1. Every individual shall have the right receive information.
2. Every individual shall have the right to express and disseminate his opinion with the law.

The Charter's protection of freedom of expression, set forth in Article 9, differs from the protection afforded by other treaties in that it does not expressly include a right to receive ideas or to impart information. Article 9 is also unusual in that it does not include any express restrictions. Rather it is subject only to the general restrictions set forth in Articles 27-29, the most pertinent of which requires the individual to exercise protected freedoms "with due regard to the rights of others, collective security, morality and common interest. The African Commission on Human ad Peoples Right passes resolution on freedom of expression at its 29th ordinary session held in Tripoli, Libya. In that resolution the African commission developed and adopted the declaration on freedom of expression in 2002.

2.5.2. Declaration of Principles on Freedom of Expression in Africa

The declaration Reaffirm the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms, Recalling that freedom of expression is a fundamental human right guaranteed by the African Charter on Human and Peoples' Rights, the Universal Declaration of

Human Rights and the International Covenant on Civil and Political Rights, as well as other international documents and national constitutions, the declaration provides extensive guarantee for the right to freedom of expression .⁴⁵

Recognizing the need to ensure the right to freedom of expression in Africa, the African Commission on Human and Peoples' Right in the declaration on the principles of freedom of expression in Africa declares that;

Art 1.the Guarantee of Freedom of Expression

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.
2. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

Art 2. Interference with Freedom of Expression

1. No one shall be subject to arbitrary interference with his or her freedom of expression.
2. Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

This declaration by African Commission on Human and Peoples Right not only dedicated for the promotion and protection of the right to freedom of expression, but also includes other like the right to information, the right to free press and other similar rights under a single declaration for better

⁴⁵ Preambles of Declaration of Principles on Freedom of Expression in Africa,(2002), African Commission on Human & Peoples' Rights

protection and promotion of the right to freedom of expression in African continent than African Charter on Human and Peoples Right.

In 2004, the African Commission on Human and Peoples' Rights on its 36th ordinary session held in Dakar, Senegal also established the position of Special Rapporteur on Freedom of Expression and Access to Information. The mandate calls for the Special Rapporteur to analyses national media legislation, undertake country missions to strengthen the right to freedom of expression, and make public interventions where rights violations have occurred. The Special Rapporteur submits reports at each biannual session of the African Commission on the status of the right to freedom of expression in Africa.⁴⁶

In addition to following up matters through its special rapporteur, the African commission continues to entertain communications alleging the violating of Art 9 of the charter in AU member state. Like, communication 275/2003 Article 9/ Eritrea which involve the case of 18 Eritrean journalists, communication 297/2005 Scanlen and Holderness/Zimbabwe which involves the independent journalist and an access to information act in Zimbabwe.⁴⁷

2.5.3. National FDRE Constitutional standard

Freedom of expression is one of the fundamental rights guaranteed under the FDRE Constitution. It is almost a decade and half since freedom of expression has been proclaimed as one of the fundamental rights and freedoms recognized in the FDRE Constitution Article 29 of the FDRE Constitution provides for the 'Right of Thought, Opinion and Expression' in the following terms:

- 1. Everyone has the right to hold opinions without interference.**

⁴⁶ GIZ, cited above at note, 54, p.4

⁴⁷ Ibid

2. Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.
3. Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:
 - (a) Prohibition of any form of censorship;
 - (b) Access to information of public interest.
4. In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.
5. Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.
6. These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect the division.⁴⁸ The relevance of this question goes beyond freedom of expression and is also pertinent to all of the other rights embodied in the FDRE Constitution. The most relevant provision in this regard is Article 10 of the Constitution. This Article is found in Chapter 2 of the Constitution that lays down the 'Fundamental Principles of the Constitution'. Article 10(1) stipulates that 'Human rights and freedoms, emanating from the nature of mankind, are inviolable and

⁴⁸ Gideon Timotheos, " Freedom of Expression in Ethiopia; the Jurisprudential Dearth" mizzen law review, vol.4.no.2 (2010), p.208

inalienable'. It goes on to provide under Article 10(2) that 'Human and democratic rights of citizens and peoples shall be respected'⁴⁹

According to an academic on Ethiopian constitutional law, "...all categories of rights are co- equally to be respected without having any superior claim to the other in terms of being prioritized or subordinated". He goes on to note that "there isn't much of a method into the classification..." of rights in to democratic and human rights in the FDRE Constitution.⁵⁰

Regarding the status of international instruments in general (and human rights instruments in particular) in the Constitution, it is not definite and is subject to academic debate. Article 9(1) of the Ethiopian Constitution declares the supremacy of the Constitution. Hence, a literal reading of this provision clearly indicates that international instruments, which, under Article 9(4), are made an integral part of the laws of the land upon ratification, are subordinate to the Constitution. Since human rights treaties are also part of a special kind of international agreements, they should be understood to be subordinate to the Constitution. However, the inclusion of the interpretation clause (Article 13/2 in relation to the fundamental rights chapter) has led some scholars to conclude that international human rights instruments adopted (and not just ratified) have a status higher than, or at least equal to, Chapter 3 of Constitution itself.⁵¹

Due to the customary nature of international human right instrument most importantly UDHR and ICCPR also since, most of its provision are derived from UDHR whose provision are cross fertilized the constitutions bill of right and because of the constitutional charming best rule (it is principle that imply the constitution of particular country should also be interpreted in a manner that is consistent with country's international obligation **Murray vs. Schooner** USA supreme court) it is almost impossible to separate the

⁴⁹ Ibid, p.209

⁵⁰ Ibid

⁵¹ Adam, supra note at,59,p.47

constitutional bills of right from international treaties ratified by Ethiopia .⁵²

It is safe to conclude that treaties share at least the same status as the constitution. Any other interpretation gives rise to unwanted scenario where Ethiopia will contravene its international obligation through contrary domestic law. The supremacy clause should be taken at its word as explicitly stated under Art 9(1), the constitution supremacy is over law, customary practice or decision of organ of the state or public officials which contravene this constitution .treaties are embodiment of international norms are different to what is normally referred “law “customary practice or a decision of organ of the state or public officials and there normative statute.⁵³ Therefore human right in general and the right to freedom of expression in particular have the same status as the constitution and therefore the right to freedom of expression is protected and to be limited in Ethiopia not only according to the constitution but, also according to the standards set by international human right instruments to which Ethiopia has ratified and any treaty which acquired the status of customary international law.⁵⁴

2.5.4. FDRE Higher Education Proclamation

FDRE proclamation no. 650/2009, Higher Education Proclamation also recognizes the right to freedom of expression. However like, other instruments this proclamation provide the right to freedom of expression in detail. It also also provide how the right to freedom of expression in higher education institution in Ethiopia could be protected, exercised and its reasonable limit to the exercises of the right to freedom of expression⁵⁵ .it says on its preamble;

WHEREAS, it is necessary to provide by law that the system of governance of

⁵² Takele Soboka Bulto, The Monist-Dualist Divide and The Supremacy Clause: Revising the Status of Human Right Treaties in Ethiopia *Journal of Ethiopian Law*, vol 23no 1(2009),p.160

⁵³ Ibid

⁵⁴ Id ,p.160

⁵⁵ Higher Education Proclamation, 2009, Proc. .No.650, Neg.Gaz.Year 15, no 64

institutions shall promote, consistent with the Constitution, a life of a learning academic community governed by the principle of freedom of expression based on reason and rational discourse.

Accordingly its objective (higher education institution) under art 4 is to ensure that education and research promote freedom of expression based on reason and rational discourse and are free from biases and prejudices.

When we see the guiding value of the institution, the institution shall promote and uphold in pursuance of their mission pursuit of truth and freedom of expression of truth.⁵⁶ Depending on this guide line the institution has some responsibilities among this responsibility; uphold the objectives of higher education and the guiding values of the institution as well as the institution has a responsibility of legislate and implement internal rules and guidelines in accordance with this Proclamation.⁵⁷

Concerning to academic freedom on the same proclamation it described as; academic freedom shall be guaranteed for every institution in pursuit of its mission and consistent with international good practice. Every institution shall cultivate the culture of social responsibility in its academic community in the exercise of academic freedom. In addition to this every institution shall regulate the exercise of academic freedom in accordance with this Proclamation and international good practice.⁵⁸

Academic staff has a right to express their idea freely based on the institution mission. Those academic staffs has the right to acquire information their performance results and of any records kept in their personal file without their prior knowledge as well as enjoy confidential maintenance of information in their personal file except for the official business of the institution or the provisions of pertinent laws require. In addition to this the academic staff has a right to formulate rules and

⁵⁶ Ibid art, 7(1)

⁵⁷ Ibid art, 8(1) (5)

⁵⁸ Ibid art, 16

procedures on all matters of rights of its academic staff and adopt and implement the same after having them duly debated through participatory processes.⁵⁹

This proclamation also provides right for students concerning to freedom of expression. These rights are listed in art 37 of pro 650/2003

- ❖ free inquiry of truth and freedom of expression of ideas and thoughts in the process of learning and conducting
- ❖ Protection of their constitutional human rights, personal safety, and security of their personal property on campus.
- ❖ Be free to express orderly their views on issues of institutional policy.
- ❖ Receive protection from any form of discrimination or harassment.
- ❖ Use, under the leadership and guidance of the student union and with the attendant responsibilities, communications media on campus to provide a forum for the free exchange of ideas and to present news, opinion and editorial comments.

In addition to the above provision art 37(2) imposes a responsibility on institutions it says every institution shall have the responsibility to develop and implement rules and procedures that shall safeguard the rights of students stipulated under this Article. The rules and procedures shall be developed in accordance with this Proclamation and on the basis of consensus built through the participation of the academic community. As well as in art 38(2) every institution shall have the duty to adopt a code of conduct governing students' behavior and appropriate disciplinary procedures.

The board of a public institution shall be the supreme governing body of the institution and it shall have the responsibilities to: supervise and ensure that the institution implements the provisions of this Proclamation and that good

⁵⁹ Ibid art, 31 (a) (g) and sub (2)

governance prevails in the institution, issue its own rules of procedure and internal regulations, as well as rules of discipline applicable to its members and carry out such other responsibilities as provided for by other provisions of this Proclamation and by the establishing law of the public institution and respect and cause the resection of this Proclamation by the institution.⁶⁰ When we come to the responsibility of the president of the institution; ensure that the provisions of this Proclamation and of other laws applicable to the institution are respected. As well as the president ensure that policies, directives and procedures of the institution are designed in conformity with the provisions of this Proclamation, pertinent laws and government policies.⁶¹ Similar to the board of the institution and the president of the institution the senate has the responsibility to legislate and ensure proper implementation of the institution's statutes related to all academic and research matters in accordance with this Proclamation.⁶²

2.6. Grounds for limiting the Right to Freedom of Expression and principle of restriction

2.6.1. Principe of restriction

2.6.1.1. The Harm Principle

J.S Mill in his famous essay on 'Liberty' argued that without freedom of expression we might be deprived of the opportunity to learn the truth if we have not discovered it yet, and we cannot perfect our partial knowledge of the truth we have learnt, or will not have the opportunity to have a clearer understanding of received truths. These philosophical views seem to have been judicially endorsed in the famous dissenting opinion of Justice Holmes of the *U.S Supreme Court in Abrams v. United States* wherein he forwarded the "market place of ideas" rationale for free speech. However he developed

⁶⁰ Ibid art, 44(1) (a) (r) (v)

⁶¹ Ibid art, 53(1) (c)(m)

⁶² Ibid art, 49(3)

the harm principle as to the restriction of freedom of expression.

The harm principle is set out by John Stuart Mill (1859). He suggested that the use of freedom of expression could reasonably be limited if it caused harm to others. In “On Liberty”, the first category of liberty that Mill identifies the Harm Principle protecting is freedom of thought and freedom of expression. These freedoms are distinct, because while thought is without exception self-regarding, expression of one’s thoughts clearly has consequences for other people.⁶³ It is possible, therefore, that expression could cause harm to others, and in such cases, could legitimately be regulated by society. There may be restrictions of freedom of expression, because expressions of opinion and feeling are actions that affect others, and therefore, may also harm them. There can be cases where the expression of an opinion causes harm directly, e.g. by attacking someone’s reputation. In such cases, the expression is directed regulated by the Harm Principle. The idea is usually illustrated by saying that it would be a harmful use of freedom of expression to shout ‘Fire!’ in a crowded theatre. The attraction of the use of harm as a guiding principle is that harm can quite often be measured: it might involve financial loss or personal injury. However, in this context it is generally taken to mean harm to the rights of others and as such it requires more or less the kind of calculation of proportionality.

2.6.1.2. The Offence Principle

The other response to the harm principle is that it does not reach far enough and the harm principle cannot shoulder all the work necessary for the principle of free speech. We also need offence principle that can guide public censure and the harm principle sets the bar too high and that we can legitimately prohibit some forms of expression because, they are very offensive. Offending is less serious than harming.

⁶³ See *Mukong v. Cameroon*, Communication No. 458/1991, views adopted 21 July 1994 (UN Human Rights Committee) and *Goodwin v. United Kingdom*, 27 March 1996, 22 EHRR 123, paras. 28-37 (European Court of Human Rights)

Joel Feinberg (1988)'s offence principle recognizing that offence can be very deeply felt and that its consequences are potentially extremely damaging. The principle suggests that assessment of offence should take into account issues such as the motives of the speaker, the number of people offended, community interests, and the extent to which the material could be avoided. This is, however, after the event. Much the same approach is open to those contemplating making some form of communication that might be considered offensive. Thus individuals with sincerely felt views that they knew would offend some people might still decide that it was necessary to exercise their freedom of expression because their point was too important to keep to themselves.⁶⁴

They would need to work out whether they were directing their statements to a minority (which might be vulnerable and sensitive to criticism) or the majority (which might be seen as requiring a shock to its view). They would be encouraged to examine whether what they communicated was likely to damage community interests, perhaps by provoking communal strife or risking destructive public protest. They could also decide what forums or media would most appropriate (for instance, an academic journal read by a few specialists or a popular newspaper read by many). Used in this way, Feinberg's offence principle offers a way to balance the danger of self-censorship against the risk of giving offence.

2.6.2. Limitation to the Right of Freedom of Expression under International Human Right Document

International and regional human rights conventions, courts and mechanisms recognize that freedom of expression can be limited by law in certain, strictly defined ways and under specific circumstances. Restrictions on the exercise of freedom of expression may not put in jeopardy the right itself. The UN Human Rights Committee has repeatedly highlighted that the relation between the right and the restriction and between the norm and the

⁶⁴ F Joel, Offence to others. (1988), vol.2, London: Oxford University Press. 88

exception must not be reversed.

Any such restrictions must pass the following three-part, cumulative test:

- ❖ They must be provided for by law, which is clear and accessible to everyone (principle of legal certainty, predictability and transparency)
- ❖ They must pursue one of the purposes set out in article 19.3 ICCPR, i.e. to protect the rights or reputations of others; to protect national security, public order or public health or morals (principle of legitimacy) and freedom of expression may, however, also be limited on the bases of Art 20 of ICCPR according to which propaganda of war and any advocacy of national, racial or religious hatred that constitute incitement to discrimination, hostility or violence
- ❖ They must be proven necessary and as the least restrictive means required and commensurate with the purported aim (principles of necessity and proportionality).⁶⁵

Paragraph 3 of ICCPR expressly states that the exercise of the right to freedom of expression carries with it special duties and responsibilities. For this reason two limitative areas of restrictions on the right are permitted, which may relate either to respect of the rights or reputations of others or to the protection of national security or of public order (order public) or of public health or morals. However, when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Art 9(2) of African Charter on Human and Peoples Right also foresees the possibility of restriction providing” *everyone shall have the right to express and disseminate his opinion with the law”* , accordingly Art 10(2) of ECHR also recognizes that *the right to freedom of expression may in certain prescribed circumstances be limited*.

The African commission in interpreting Art 9(2) state that;

⁶⁵ Council of European Union, supra note at 39,p.6

According to Article 9 (2) of the Charter, dissemination of opinions may be restricted by law. This does not however mean that national law can set aside the right to express and disseminate one's opinions guaranteed at the international level; this would make the protection of the right to express one's opinion ineffective. To permit national law to take precedence over international law would defeat the purpose of codifying certain rights in international law and indeed, the whole essence of treaty making.

Limitation to the right to freedom of expression must:

2.6.2.1. Provided by law

Article 19(3) of the ICCPR requires that restrictions on the right to freedom of expression must be provided by law. In particular, the law must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. Ambiguous or overly broad restrictions on freedom of expression are therefore not permitted under Article 19(3).

Since any restriction on freedom of expression constitutes a serious curtailment of human rights, it is not compatible with the Covenant for a restriction to be enshrined in traditional, religious or other such customary law. For the purposes of paragraph 3, of ICCPR a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may

not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.⁶⁶

2.6.2.2. There must be legitimate ground

Interferences with the right to freedom of expression must pursue a

⁶⁶ General comment no.34 ,supra note at 29,p.8

legitimate aim as exhaustively enumerated in Article 19(3) (a) and (b) of the ICCPR. As such, it would be impermissible to prohibit information dissemination systems from publishing material solely on the basis that they cast a critical view of the government or the political social system espoused by the government.⁶⁷

Similarly, a restriction on freedom of expression cannot be a pretext for protecting the government from embarrassment or exposure of wrongdoing, to conceal information about the functioning of its public institutions or to entrench a particular ideology.⁶⁸

The first of the legitimate grounds for restriction listed in paragraph 3 is that of respect for the rights or reputations of others. The term “rights” includes human rights as recognized in the Covenant and more generally in international human rights law. For example, it may be legitimate to restrict freedom of expression in order to protect the right to vote ,protection of national security or of public order (order public), or of public health or morals.⁶⁹

2.6.2.3. Proportionality

State parties to the ICCPR are obliged to ensure that any legitimate restrictions on the right to freedom of expression are proportionate. Proportionality means that the least restrictive measure must be applied if it is capable of achieving the same purpose as a more restrictive one.

Restrictions must not be overbroad. The Committee observed in general comment No. 27 human right committee of ICCPR provides that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function, they must be the least intrusive instrument amongst those which might achieve their protective function, they must be proportionate to the interest to be protected...The

⁶⁷ HR Committee, Concluding observations on the Syrian Arab Republic, CCPR/CO/84/SYR.

⁶⁸ *ibid*

⁶⁹ Council of European union, *Supra* note at 39

principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law". The principle of proportionality must also take account of the form of expression at issue as well as the means of its dissemination.⁷⁰ Proportionality is the assessment of whether or not an action by authority imposes greater restrictions than those necessary to achieve its proper purposes - offers such a tool.⁷¹

2.6.2.1. Necessity

State parties to the ICCPR are obliged to ensure that any legitimate restrictions on the right to freedom of expression are necessary. Necessity means that there must be a pressing social need for the restriction. The party invoking the restriction must show a direct and immediate connection between the expression and the protected interest.

Any limitation of the right to freedom of expression must truly be necessary .even if the limitation is in accordance with the clear law and serves a legitimate aim, it will only pass the test if it is truly necessary for the protection of that legitimate aim and its application must not be discriminatory.⁷² Those requirements and grounds are not only found under ICCPR, they also found and conformed in almost all human right documents like UDHR, ACHPR ACHR and ECHR.⁷³ Beside the above criteria any restriction to the right of freedom of expression must also take into account the universality of human rights and the principle of non-discrimination.

2.6.3. Grounds for limiting the Right to Freedom of Expression under FDRE Constitution

Most human rights are not absolute. There may be certain limits to the

⁷⁰ General Comment no 27,(2003),International Covenant on Civil and Political Right Human Right Committee

⁷¹Sturges Paul, Limits to Freedom of Expression,(2006),p.6

⁷² <https://www.article19.org/pages/en/limitations.html> last visited 27, Nov, 2019,3:20 pm

⁷³ See supra note at 75

exercise of rights. Just like other human right instruments, there is limitation to human right under FDRE constitution. Limitations refer to infringements or encroachments on guaranteed rights under narrowly contoured permissible circumstances. There are different approaches to limitation of rights in constitutions: some constitutions and international instruments include internal individualized limitation clauses within each particular right in different details. The Ethiopian Constitution only contains claw-back clauses within most of the protected rights. Some of the internal limitations simply refer to those limitations determined or established by law. while others are more detailed and require compelling circumstances and specific laws necessary to safeguard public security, peace, the prevention of crimes, public morality, and the protection of the rights and freedoms of others.⁷⁴ The first five sub-articles of Article 29 provide the rights associated with freedom of opinion and expression that are protected by the Constitution. Hence, these sub-articles tell us what is protected. Political speech, operating a press and expressing one's views and opinions through state media are among the various rights protected under Article 29. Sub-Articles 6 and 7 deal with the limitation of the rights enumerated in the preceding sub articles. While sub Article 6 lays down the grounds and conditions for limiting freedom of expression, sub-Article 7 stipulates that *"Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law"*

Sub-Article 6 has three clauses. The first clause provides what kinds of limitations of freedom of expression are impermissible in addition to stating that limitations of freedom of expression can only be made through law or principle of legality. Limitation has to be provided by law and it provides that limitations on account of the content or effect of the view point expressed are not allowed.⁷⁵

⁷⁴ Adem kassie, supra note at 59, p.58

⁷⁵ Gedion Timotheos, "Freedom of Expression in Ethiopia; the Jurisprudential Dearth" mizan law review, vol.4.no.2 (2010), p.214

The second prohibition is a proscription of limitations on freedom of expression based on the “effect of the view point” of the expressed opinion. Naturally, questions might arise in relation to these impermissible grounds of limitation as stipulated under sub-Article 6. As far as content based limitation is concerned, one could ask if it is an absolute prohibition that would proscribe even limitations that are aimed at limiting the dissemination of materials with obscene content. Fortunately the answer for this query is quite obvious. Given that protecting the well-being of the youth is provided as an acceptable ground for limiting freedom of expression in the next clause of the same sub-article and also taking into account the experience of other jurisdictions on the matter, one can safely assert that in relation to expression which contains obscenity, an exception can be made to limit freedom of expression on account of the obscene content.⁷⁶

In addition to speech with obscene content, a question might arise as to the permissibility of limiting freedom of expression on account of its defamatory, profane or blasphemous content.

Article 29(6) stipulates that preserving the honor and reputation of others is an acceptable ground for limiting freedom of expression. Hence as far as defamatory content of speech is concerned, the question could be answered by relying on the stipulations of Article 29(6).

The third clause of sub-Article 6 imposes an obligation on the legislature to enact laws that prohibit propaganda of war and also speech that is intended to injure human dignity. These could be taken as exceptions to the effect and content based limitation prohibition of the first clause. On the other hand, the second clause gives the legislature permission to enact laws that would protect the wellbeing of the youth and the honor and reputation of individuals. This difference between giving permission in relation to the

⁷⁶ Ibid, p.215

wellbeing of the youth and imposing a duty in relation to propaganda of war and human dignity could have been intended to reflect the importance attached to human dignity and peace.⁷⁷

Such restriction are not new for Ethiopia, Art 3(2) of ICCPR also provides restriction, after highlighting the special duties and responsibilities that come with the exercise of the right to freedom of expression, ICCPR anticipates the possibility of subjecting the right to restrictions provided by law as necessary for the “respect of the right or reputation of others ” and the protection of national security, public orders, or public health or morals. The provision of the constitution and ICCPR seems to share a lot in common.⁷⁸

2.6.3.1. Derogation in Cases of state Emergencies vs. freedom of expression

The Ethiopian Constitution recognizes possibilities that may require the suspension of protected rights. Derogation clauses relate to provisions that permit the temporary suspension of the application and enjoyment of rights in response to incidences of emergency that threaten the life of a nation. Derogations do not, however, confer absolute discretion on the executive to act on its whims; there are substantive as well as procedural requirements that govern such emergency situations. There are, moreover, certain rights, which may not be suspended even in threatening situations.⁷⁹ These preconditions are designed as a protection against possible abuses of human rights on the pretext of emergencies while at the same time authorizing states to secure, maintain and ensure the sustenance of fundamental national and international interests.

⁷⁷ Ibid

⁷⁸ Ethiopian human right handbook, supra note at 58,p.10

⁷⁹Adam Kassie,supra note at,p.62

The Constitution authorizes the possible suspension of most of the fundamental human rights and freedoms to “the extent necessary” with handful exceptions. The only non-derogable rights are nomenclature of the state (Article 1),⁸⁰ the prohibition against cruel, inhuman, and degrading treatment or punishment, and slavery or servitude, and trafficking (Article 18),⁸¹ the right to equality and equal protection of the law (Article 25),⁸² and the right to self-determination up to secession (Article 39)⁸³ The right to freedom of expression is not non derogable right in Ethiopia. When state of emergency happen in any one of the ground under Art 93⁸⁴, the right to freedom of expression could be limited. Ethiopia is now in state of emergency practically the right to freedom of expression is limited currently so as to protect public interest.

2.7. Mechanisms of promoting freedom of expression in universities

The role of universities in promoting academic freedom and freedom of speech Indeed by being places of debate universities are one of our most important pillars of civil society, and represent a safeguard against forces that divide and undermine society. If universities are to be the innovative and dynamic organizations that push back the boundaries of knowledge in areas of science, social sciences and the humanities, they must also be places where differing and difficult views can be brought forward, listened to and challenged.⁸⁵

2.7.1. Direct legislative protection

In the UK, direct protection of academic freedom by law is limited. the university community has relied mainly on tradition and university autonomy

⁸⁰ Federal Democratic Republic of Ethiopia constitution,1995,Art.1,proc.no.1, Neg.Gaz,yaer1, no.1

⁸¹ Ibid, Art .18

⁸² Ibid, Art.25

⁸³ Ibid,Art.39

⁸⁴ Ibid, Art.93

⁸⁵Freedom of speech on campus; rights and responsibility in UK university

to safeguard academic freedom.⁸⁶ Section 202(2) of *ERA* provides that the University Commissioners, in exercising their functions, shall have regard to the need;

To ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions.

Academic freedom is explicitly provided for in the Education Act 1989 (EA). The relevant provisions reflect the intention of the New Zealand Parliament that academic freedom and the autonomy of institutions are to be preserved and enhanced.⁸⁷ Under section 161(2) of *EA*, academic freedom means:

The freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions.

2.7.1.1. Academic freedom and institutional autonomy

Academic freedom and institutional autonomy represent the unique social treaty between the state and the institution(s) of higher education. It represents a relationship of mutual benefit. The omnipresent use of institutional autonomy alongside academic freedom has created an impression that the two notions are conceptually and practically similar. Institutional autonomy is not synonymous with academic freedom.⁸⁸ Conceptually, institutional autonomy and academic freedom are distinct, although used alternatively to defend the same phenomena and practices. The relationship between the two, sometimes inseparable, notions is complicated. There is a thin line between them. The existence of one,

⁸⁶ Chau pak-kuwan, academic freedom and institutional autonomy of higher education in the united kingdom, new Zealand and Hong Kong, 9 November 2007, p.5

⁸⁷ Ibid, p.23

⁸⁸ Edmori kori, challenges to academic freedom and institutional autonomy in south Africa university, international journal of teaching and education, vol, iv, no.1/2016, p.46

though, does not guarantee the presence of the other.⁸⁹

Academic freedom can be defined as the absence of outside interference, censure or obstacles in the pursuit and practice of academic work. This freedom is embedded in the right to education⁹⁰ Academic freedom is imbedded in an autonomous academe (community of teachers and students) dedicated to the search for, or service of, truth. Institutional autonomy speaks to self-regulation or the right of self-government; self-determination; autonomy with respect to local or internal matters. An autonomous institution is, fundamentally, one able to act according to own discretion, able to regulate its own affairs.⁹¹

2.7.1.2. Boundaries of freedom of expression on campus

Vanderbilt University is dedicated to advancing knowledge and ideas, both of which may contain inherently value-laden components. In pursuit of this goal, Vanderbilt is committed to providing an environment for open inquiry and the vigorous exploration and free expression of ideas. Academic freedom for faculty extends from the university campus e.g., classrooms, lecture halls, clubs, campus premises etc. to outside its boundaries.⁹² As informed citizens and experts in their academic specialties who can speak with accuracy and authority, faculty is often encouraged to express ideas and opinions in the public domain. This activity, which is recognized as an important component of academic endeavor, occurs through a variety of venues not limited to formal publications. Vanderbilt encourages intellectual inquiry, discovery, and exchange of information, and, therefore, fully recognizes and protects freedom of exploration, thought, and expression for its faculty in all these activities.⁹³

2.7.1.3. Lawful vs. unlawful speech in campus

Lawful speech means any speech that is prescribed by the law. Students and

⁸⁹ Ibid, p.46

⁹⁰ Ibid, p.45

⁹¹ ibid

⁹² Academic freedom of expression, effective date (august 17/2016)

⁹³ ibid

staffs are concerning to the academic activity they express their opinion as far as it's prescribed in law. Different code of conduct, policies and other legislation incorporated the lawful speech.

When we say unlawful speech any conduct that violates the Rules and Regulations for the Maintenance of Public Order pursuant to Article 129-A of the Education Law, also known as the Henderson Rules, also violates this policy. Prohibited conduct generally includes any behavior that adversely affects or directly threatens to negatively affect the health or safety of persons or their opportunity to enjoy the benefits of the University or materially disrupts or seriously threatens to materially disrupt University functions or operations, whether or not such conduct occurs on property owned, leased or licensed by the University.⁹⁴

Those are absolutely forbidden speech in the campus as well as outside of campus in response to verbal assaults and use of hateful language, some campuses have felt it necessary to forbid the expression of racist, sexist, homophobic, or ethnically demeaning speech, along with conduct or behavior that harasses. Several reasons are offered in support of banning such expression. Individuals and groups that have been victims of such expression feel an understandable outrage.⁹⁵ Speech that violates the law, such as libel, slander, harassment, or threats; that infringes on legally-protected privacy or confidentiality interests; that directly impedes university activities in a severe and/or pervasive manner; or that intentionally promotes hate of individuals or groups is not protected at Vanderbilt. Because the university is fully committed to the promotion and protection of the free expression and exchange of ideas, these rare exceptions should be understood and applied so as to support rather than undermine full and free expression.⁹⁶

⁹⁴ The city university of new York policy on freedom of expression and expressive conduct, approved by board of trustees the city university of network, p.1

⁹⁵ On freedom of expression campus speech code ,approved by the associations comets November 1994,p.37

⁹⁶ Academic freedom of expression, effective date (august 17/2016)

2.7.2. Campus policy statement and code of practice on freedom of expression

2.7.2.1. Restricting freedom of expression

Most human rights in general and the right to freedom of expression in particular are not absolute. There may therefore be certain limits to the exercise of rights. International and regional human rights conventions, courts and mechanisms recognize that freedom of expression can be limited by law in certain, strictly defined ways and under specific circumstances. Particularly higher education institutions puts in their policies, code of conducts as well as in different legislations a restriction on freedom of expression.

2.7.2.2. Time of restriction

The University shall attempt to ensure that, at any meeting, event, or demonstration, constitutionally protected free expression is not infringed, and shall take necessary steps to attempt to ensure the continuing openness and effectiveness of channels of communication among members of the University community.⁹⁷

Subject to the procedures and terms set forth in campus guidelines, and consistent with the General Principles set forth in Section 1 of this Policy and the freedom of speech and assembly guaranteed by the First Amendment, students and/or employees of CUNY, including but not limited to officially-recognized student and/or employee organizations, as well as persons invited and sponsored by such student and/or employee organizations, shall have access to public areas of the campus owned, leased or licensed and controlled by the college for demonstrations. Persons and groups wishing to demonstrate in public areas not owned, leased, licensed or controlled by the University, such as sidewalk adjacent to a campus, should address their

⁹⁷ University of California Davis policy and procedure manual, chapter 400,campus climate , section 01 freedom of expression, art 3 (a)(4), p.2

requests to the New York Police Department.⁹⁸

2.7.2.3. Manner of restriction

The freedom to express ideas does not mean that individuals may exercise that freedom in ways that are incompatible with the functioning of the University and the rights of other members of the community to freedom of expression and to a full and equal opportunity to pursue their education and to participate in the benefits of the University.

San Diego state university (SDSU) should in no way be regarded as placing prohibitions beyond those prescribed by law or section 2.1 hereof on the right to express political, religious, philosophical, ideological, or academic viewpoints by any individual on the SDSU campuses. In addition, it is not the intent of this policy to conflict with provisions of collective bargaining agreements that may be in force at SDSU, and those agreements shall control in the event of any conflict.⁹⁹

2.7.2.4. Place of restriction

Freedom of expression is an individual right, and therefore is not restricted to place. While freedom of expression is encouraged everywhere on campus, the Agora Stage area is the most common place where individuals and groups assemble to exercise the right of free expression unless the space has already been scheduled in advance.¹⁰⁰

Students' right of free expression is not without limits in the classroom. The classroom is not an open forum and is therefore subject to reasonable speech regulation. Students do not have a right to insist that a class be viewpoint neutral.¹⁰¹

⁹⁸ The city university of new York policy on freedom of expression and expressive conduct, approved by board of trustees the city university of network, section 3 sub sec3.1, p.3

⁹⁹ Freedom of expression policy, an Diego state university, section 2.3

¹⁰⁰ California state university, policy on time , place and manner of free expression, march 25/2016, p.3

¹⁰¹ The city university of new york policy on freedom of expression and expressive conduct approved by abroad of trustees the city university of nework p.1

There are three kinds of “forums” on campus: the public or “traditional” forum, which receives the greatest protection; the limited or “designated” forum, which receives less protection; and the non-public forum, which receives very limited protection. A public forum is defined as public property that has traditionally been available to assembly or debate -- *e.g.*, streets, parks and lawn areas. CSU may not prohibit all speech activity in such locations, and a very high standard is required to enforce any content-based prohibitions -- *i.e.*, prohibitions that reference the particular message to be delivered. Any regulation must be necessary to serve a compelling interest and narrowly drawn to achieve that end. Non-public forums which are not open for public speech by tradition or design receive very little protection.¹⁰²

¹⁰² Ibid p.3

3. CHAPTER THREE

3.1. THE PRACTICAL ANALYSIS ON THE RIGHT TO FREEDOM OF EXPRESSION IN THE CASE OF ACADEMIC FREEDOM IN SOCIAL SCIENCE FIELD OF STUDY.

3.1.1. Academic Freedom vis-à-vis the Right to Freedom of Expression.

Academic freedom, which is mainly rooted in intellectual freedom, is introduced in order to properly defined and realize the essential role which are played by higher education institutions and the necessity of liberal quest for the truth and knowledge. Academic freedom eases the way for perusing the truth and discovering knowledge and such discovery requires freedom. Academic freedom cannot be separately viewed from teaching and research (focusing mainly on the universities academics), learning (focusing mainly on the student) and speech. According to the Declaration on Academic Freedom and Academic Tenure, academic freedom comprises three elements such as, freedom of inquiry and research, freedom of teaching within the universities including academic freedom on the student and freedom of extramural utterance and action.¹⁰³

According to the UNESCO declaration on the Status of Higher Education Teaching Personnel (1997), higher education teaching personnel entitled to the maintain of the academic freedom , that is to say the right to freedom of teaching and discussion, freedom of carrying out and Disseminating and publishing the result thereof ,freedom to express freely opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate professional or representative academic bodies. All higher education personnel including student should have the right to fulfill their function without discrimination of any kind and without fear of repression by the state and any other source.¹⁰⁴

¹⁰³ Sisay Tamirat,academic freedom and the idea of university: a philosophical inequality(with a reflection of Addis abeba university),oct 2015, Addis Ababa university, p.56

¹⁰⁴ Ibid

Academic freedom designed to protect both students and academics from both an internal and external interference that hinder the proper exercise and realization of the idea of university education and academic freedom is very important in teaching and learning process, research and Community services in which most contemporary universities are mandated for and maintain institutional autonomy.¹⁰⁵

Academic freedom vis-à-vis the right to freedom of expression in higher education institutions is closely related. Since, education involves not only receiving or acquisition of knowledge from different source but also the development of ideas of different kind; they are necessary condition for the discovery of truth, personal development, and self-governance which are themselves the fruit of broad liberal learning.¹⁰⁶ University community (teachers and students, administration office) should be free in expressing their views, thought and opinions for the progress of intellectual and social aspect of individual. Realization of the right to freedom of expression in higher education institution is necessary condition for the realization of the establishing objective of universities in general and academic freedom in particular which, is also a determinant factor for realizing the objective of establishing universities.¹⁰⁷

Since universities are a place where the creation of new idea, new hope, new knowledge creativity and truth are pursued indefinitely the right to freedom of expression takes the lion share for realizing objective of higher education institution. As a result let alone other things, according to higher education institution proclamation no 1152/2019 takes the pursuit of truth and freedom of expression of truth, institutional autonomy with accountability(which is one of the foundation of academic freedom) as the guiding values that higher

¹⁰⁵ *ibid*,p.59

¹⁰⁶ *Id*,p.75

¹⁰⁷ *Id*,p.89

education institutions shall promote and uphold in pursuance of their missions or functions.¹⁰⁸

Accordingly higher education proclamation number 1152/2019 under art 31(1(a) exercise academic freedom based on the national laws. Institutions mission, values rules and regulation; WKU University as one of the higher education institution in particular expressly recognizes the principle of academic freedom under its senate legislation, teacher's code of conduct as well as student code of conduct.

3.2. The existing practical challenge's in WKU for effective implementation of freedom of expression in the case of academic freedom in social science field of study.

3.2.1. Challenges on students of WKU regarding the right of freedom of expression in the case of academic freedom in social science field of study.

Freedom of expression emanates from the expression of opinion. According to higher proclamation number under art 38{1}[a] student have the right to free inquiry of truth and freedom of expression of ideas and thoughts in the process of learning and conducting research; This right is clearly provided in different international, national, as well as particularly in WKU legal frameworks. Even if the law guaranties this right but, practically in WKU there are various problems that limit the freedom of expression of students without any justification. The first and the major problem is the misunderstanding between teacher and students in the case of academic performance. Even if the students know their right to freedom of expression they restrict themselves to express their idea by fearing there teachers and other superior authorities. Regarding this issue one of the key informants of the researcher reported that:¹⁰⁹

¹⁰⁸ Higher Education Proclamation,2019,Art31,Proc.No.1152, Neg.Gaz.Year 78,no25

¹⁰⁹ Interview with student focus group discussion with different college of social science field of study. January 13/20020.

“I think this are misunderstanding of the students and teachers. In one hand, most of the time students restrict their right to freedom of expression for the fear of the supreme authority’s measure if they express their views freely. On the other hand, there are some teachers who want to deprive the inherent rights of students through the reductions of their grades in different manner on those students who went to express their idea. This misunderstanding between teachers and students in particular and between students and other supreme authority of the university leads for ineffective implementation of the right to freedom of expression of student’s granted under different laws, regulations of the university.”

“There is practical problem in WKU with regards to the right to freedom of expression particularly the right to freedom of expression of student.¹¹⁰ Not only this but also they have also practical challenge of WKU are not limited on the above issue there are various problems on the right of freedom of expression. In this regard,

“Freedom of expression is arbitrarily violated in same schools and collages of the university student may not seat in the exam and deduction of marks of the student .because, they don’t have even opportunity to express their ideas and opinions, there is chain among teachers .this creates on students fear on teachers.”¹¹¹

Some of the authority impede the right of students due to lack of legal awareness since the scope and limitation is does not clear and precise, others may limit the right of students intentionally. Even if the students access the opportunity to express their opinions they are not getting the proper response.

¹¹⁰ Ibid

¹¹¹ Ibid

3.3. Scope and limitation of freedom of expression WKU in general

WKU university senate legislation, which was enacted on JULY 2015 in accordance with higher education institution standards and principle. According to the preamble of the senate legislation the university has a duty to effectively implement and discharge the responsibility laid down by higher education proclamation number 1152/2019 and among one of its responsibilities the university has a duty to maintain the objective and guiding value of the institution provided by the proclamation which is to promote the truth and effective community service which particularly include freedom of expression as academic freedom one of its objectives.¹¹²

The general scope of legislation is in the right of freedom of expression clearly provided under art 5 of the legislation applicable to both academic and administrative affairs of the university unless otherwise provided by senate legislation and administrative affairs of the university.¹¹³ Similarly with regard to freedom of expression all provision is applicable on all university communities as long as it not provided under the legislation and other law of the country otherwise.

According to art 5 of WKU senate legislation a part from ensuring that the organ of the university and its community uphold the objective of higher education and the value of the institution, the chief executive officer of the institution (the president of the university) has the obligation to ensure that the provision of the proclamation and other applicable law of the institutions are respected and accordingly art 6, section 1, sub sec,2 of the same legislation provided that member of the senate has the right to express their idea and criticisms freely at every senate meeting.¹¹⁴

¹¹² See supra not at 6. Art 51

¹¹³ See wku senate legislation 2015 Wolkite University. Art 5

¹¹⁴ Id art 6.

In the same manner pursuant to art 51(1) of the legislation the academic staff has in their contact with student for teaching purpose on academic staff member has the right to promote and permit on atmosphere of free and rational and dispassionate inquire with respect to issue relevant to the subject matter of the course including the teaching learning process and relevant to conducting researches.

The legislation also clearly grants the right of the students on freedom of expression under art, 151(1) sub, sec, 1.1, in which students has the right to free inquiry of truth and freedom of expression of idea and thoughts in the process of learning conducting research according to principle of higher proclamation number 1152/2019 under art 38 and 39.

3.3.1. The scope and limitation on RIGHT OF FREEDOM OF EXPRESSION IN THE CASE OF ACADEMIC FREEDOM IN SOCIAL SCIENCE FIELD OF STUDY.

As it is mission before the right to FOE is granted to an academic freedom with regard to their right to access information and all other academic freedom consistent with the university mission.¹¹⁵ Moreover through contact with the student for teaching purpose on academic staff member has the right promote and permit on atmosphere of free, rational and dispassionate inquiry with respect to the subject matter of the course including teaching and conducting research.¹¹⁶

However the right to academic staff is not an absolute right accordingly WKU senate legislation put a limitation of right to FOE of academic staff on the ground that academic staff shall not use of the free, rational and dispassionate inquiry with respect to the issue relevant teaching learning process and for conducting research as a purposeful propagation of a view of any political organization religious group or as an excuse for defamation.

¹¹⁵ id art 32(h) and(d)

¹¹⁶ Id art 53

The limitations provided under the senate legislation are basically three fold that encompass a wide ranges of coverage to limit right to FOE and the limitations are based on and in line with art 32(g) of higher education proclamation which clearly states the responsibility of academic staffs in black and whites as follows.....refer from imposing his political views and religious beliefs on his students during teaching and learning process. As we can understand from the cumulative reading of art 53.1.7 (1) and (2) of the senate legislation and art 32 (h) of higher education proclamation and 32{D} that the limitation on the right to FOE academic staff is as long as it not reflected

The political stand of the academic staff

The religious view of the academic staff

Student assessment, grading, and management of student complaints

Academic expression that is inconstant with the mission of the university. With regard to the limitation on FOE one of the key informants reported that;

“The limitation Imposed on right to FOE of academic staffs is adequately incorporated in the legislation. Accordingly any academic staff as long as he/she violate the right of third parties while exercising his/her FOE it shall be limited. Since, this limitation is not only based on the higher education principles but also constitutes only prescribed limitation. Moreover, the higher education WKU is the counter of knowledge and wisdom but not a place where the political and religious view of an academic staffs imposed on other person particularly on students and between themselves.

3.3.2. The scope and limitation of right to FOE for students

Under chapter 12 of WKU senate legislation the right FOE of students and their scope/ limitations are provided. In general WKU has both the responsibility and implementation of the policies of the premises that help students to promote the free and open exchange of ideas in the atmosphere of

mutual respect.¹¹⁷ Accordingly the senate legislation provided for the students the right to free inquiry of truth(access to information) and freedom of expression ideas thoughts in the process of learning and conducting research in particular and art151(1) (2}provides the general protection of students to their rights to FOE it reads “protection of their constitutional human rights on the campus” that clear include the right to freedom of expression of students as it is granted under art 29 of FDRE constitution to every citizen of Ethiopia.

The scope of right to FOE of students is inferred from the cumulative reading of art 151. (2) Of the senate legislation in which students are expected up to hold and know;

The objective of higher education and the guiding value of the institution:

Respect inside the WKU the right of other persons protected by the law and

Intact with academic and other staff and any other students of the institution with due respect to their constitutional rights.

From the above provision of the legislation the limitation and on the scope right to FOE is based on the constitutional granted right of all academic and other staffs as well as between the students themselves. Under art 29 of FDRE constitution the limitation the scope of freedom of expression are clearly provided that “the right can be limited only through law which is guided by the principle of FOE and information. The legal limitation can be laid down in order to protect the

Wellbeing of the youth and other honor and reputation of individuals any propaganda for away as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.”

However From the scope and limitation of WKU i can understand that, it is not clear and precise. The provision that describes on the right of students and

¹¹⁷ See supra note at 11art 151.

staffs scattered here and there of WKU legal frame works. But most of the student of social science field of study of the university has doesn't to have any legal knowledge. Therefore due to lack of awareness on the scope of their right they are near to do fault.

3.4. The current practical effort of WKU in the protection and preservation of the right of freedom of expression

Freedom of expression does not maintain by effort of one body rather it needs the effort of all the community of the university. So in order to make freedom of expression one of the decisive cultures of the university it requires the contribution of students.

“In WKU there is not as much as an effort to be done on freedom of expression. But it doesn't mean that absolutely an effort not doing in WKU on freedom of expression. In our university students of social science express their idea in different manner such as; in mini media of the university as well as they express their view in public board of the university without interfering on other rights.

In higher education institutions it expected to establish different way of expressing the idea of students. Among this mini media is the most important way of expressing idea specially when the violation of freedom of expression in the case of academic performance. In WKU there is a mini media for students express their idea, feeling as well as acquiring different knowledge on it. Concerning to this idea the data collected from students by interview indicates that;

“Most of the students says that in WKU there is no an effort to be done regarding to freedom of expression. In order to make freedom of expression one of the decisive issue in our university it expected to much effort on university workers as well as the higher authorities. In our university there is no a forum discussion in order to give awareness for students as well as for staff workers. Not only this one there a bundle of challenges for example there

is unavailability of suggestion box in different area of the university it hinders expressing right of students because a suggestion box is one way of expressing idea in writing.

In addition to the above challenges in WKU there is no sufficient policies, journals and other review literatures concerning to freedom of expression. This creates a negative impact on readers. Depending on this idea most of the informants reported that;

“We have not seen until this time the written document concerning to freedom of expression in WKU. The other reporter also says that there may be policies, and other documents concerning to freedom of expression but the fact is until this time we can’t acquire it.”¹¹⁸

Concerning this issue most of the informants not say anything whether there is a document about freedom of expression or not. But the fact is even if the university has a written document, the community of the university does not accessed to it.

Generally let alone other instruments mentioned above on the right to freedom of expression under FDRE constitution Art 29(2) includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice. But as we have seen the above report from the student of social science field of study of WKU has doesn’t have access to express their idea in the form of writing, orally and in any form of art. Therefore it’s difficult to say there is an effort to be done by university what are expected from as institution

¹¹⁸ See supra note at7.

3.5. Compatibility of the Right to Freedom of Expression in WKU with International, Regional and National legal Standards

International , regional and national legal instruments; ICCPR, UDHR, ACHPR and FDRE constitution takes the right to freedom of expression as one of fundamental human right that is essential for the fulfillment of other human right and those instrument also provide the limitation to the right to freedom of expression should be provided by law (principle of legality),it must be necessary ,proportional and based on legitimate ground .unless it would be considered as the violation of the right to freedom of expression.

Accordingly higher education institutions are place where more importantly the right to freedom of expression could be exercised .since, it place where different community are found with different interest the right to freedom of expression in such institution has to be regulated through regulation .

In WKU the right to freedom of expression is properly recognized in the senate legislation and different regulation of the university. But the practical experience of WKU on the right to freedom of expression is exercised according to the personal perception of the authority of the university. Any limitation to this right is not justified by the requirements of proportionality, necessity, legitimate ground and non-discrimination

Generally from the data collected by the researcher we can understand that even if the law of WKU grants freedom of expression for students the practice is far from the reality. Rather it's the mere declaration of the right on the paper. Most of the informants as we have seen in the above data the right to freedom of expression of students violated without any mistake.

4. Chapter four

4.1. Conclusion and recommendation

4.1.1. Conclusions

Freedom of expression is essential to any institution of higher learning. Universities and colleges exist not only to transmit knowledge. Equally, they interpret, explore, and expand that knowledge by testing the old and proposing the new. We best serve our students when we foster a safe environment where critical thought and the exchange of ideas flourishes. This requires a careful balancing of the rights of those who wish to express themselves with the rights of everyone else in our university.

The researcher consulted a broad range of the right of freedom of expression in the case of academic freedom in social science field of study. But with regards to students right to freedom of expression is severely restricted and limited contrary to the limitation and requirement prescribed under international, regional, national, as well as sent legislation of WKU

The main area that the right to freedom of expression is restricted in the university contrary to the legal standards and requirements are I think this are mis understanding of the student and teacher.in one hand most of the time students restrict their right to freedom of expressions for the fear of the teacher and super authorities measure if they express their views freely, on the other hand there some teacher who wants to deprive the inherent right of students through the reductions of their grades in different manner on those students who want to express their idea in freely but restrict there right of freedom of expression the case of academic performance.

And also It is not the proper role of the University's authority to attempt to shield student from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive since the scope of the legislation and regulation

does not clear and precise in the university and it is inconsistent with the international, regional, national legal protection of the right to freedom of expression.

The problem with regards to the right to freedom of expression WKU University on finding of the researcher;

- ✓ There is no enforced organ when violation of the right of freedom of expression in the case of academic performance Some officials of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable. Particularly, they are using their status and they are violation the right to freedom of expression mostly student's relatively compared to other community of the university
- ✓ Failure of the university to punish those officials for violating the right and not punishing some officials of the University for their Non-responsiveness and use their status as means to violate the right to freedom of expression enables them to violate the right to freedom of expression.

4.1.2. Recommendations

Having good laws is not standing alone to protect the right of student if it is practical does not implemented. Though Ethiopia has ratified various international, regional legal instruments on the rights of freedom of expression, but lack of strong enforced body and institutional commitment leads to violation of this rights. The researcher recommended the following as possible solutions for the problem if it is strictly applied.

- ❖ *WKU* should commit to free and open inquiry in all matters; it should guarantee all members of the University of Student in social science field of study. the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University and such limitations should be regulated in clear and precise manners as prescribed in different legislation of the university. *WKU* should fully respect and supports the freedom of all student of social science “to discuss any problems that exist in the campus”.
- ❖ It shall create an opportunity fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner should an essential part of the University’s educational mission.

- ❖ The freedom to debate and discuss the merits of competing ideas does not, of course, mean that student may say whatever they wish, The University may restrict freedom of expression and may punish individuals that falsely defames a specific individual that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. But this restriction to the right to freedom of expression should not be arbitrarily. It has to be pass through due process of law as well as with a full of justification.
- ❖ Publicizing various forms of policies and rules concerning to freedom of expression for effective implementation in the university.

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press.office@consilium.europa.eu, <http://www.consilium.europa.eu/newsroom>)
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APPENDIX 1:- Interview and focus group discussion (FGD)

- ✓ Interview with ato admasu zewde WKU staff worker.
- ✓ Interview with woyzero aster legese, WKU staff worker.
- ✓ Interview with ato bayu negusse, coordinator of the library staff.
- ✓ Interview with fiker gashaw, student union president.
- ✓ Interview with, assistant professor gizachew girma, collage of law dean.
- ✓ Interview with lencho kebede, member of student union.
- ✓ Interview with Dr Yitbarek Getachew, academic affairs Vis president.
- ✓ Interview with students of WKU in different collage of the university.
- ✓ Focus group discussion with student of WKU
- ✓ Focus group discussion with staffs of

APPENDIX 2:-INTERVIEW GUIDE LINE

I would like to express my deepest respect for your collaboration in providing the relevant information for the purpose of the research that I am going to conduct on the “freedom of expression in the higher education institution and its practical enforcement in WKU”.

Interview Guideline for key informants of the study

1. What do you understand the term freedom of expression and its importance in higher educational institution?
2. What are the existing problems in WKU on freedom of expression particularly on academic discourage?
3. What are the grounds and justifications given by WKU while limiting freedom of expression?
4. How limiting the freedom of expression affects the overall academic performance of students?
5. What do you think on the adequacy of opportunities to express freely the grievances to the higher concerned bodies?
6. What is the most effective mode of freedom of expression at WKU? (Hint: oral, written, social media, sign...)
7. Is there any legislation at WKU that clearly grants the right to freedom of expression for the students? Explain if any? And if not why?
8. Do you think that students have adequate legal know-how on their right to freedom of expression? If not, who is the responsible organ to create legal awareness for such students?
9. What are the current practical effort of WKU in the protection and preservation of the right of freedom of expression?
10. Is the restriction on the right to freedom of expression in WKU are compatible with the standard set by international, regional, and national human right documents?

11. Is there anything to add?

APPENDIX 3:-

Interview with students and staffs;

1. How do you understand the term freedom of expression?
2. What do you think on importance of freedom of expression in higher academic institutions?
3. Is there adequate opportunity to receive, seek any information from the university?
4. What is the most common form or mode of freedom of expression at WKU?
5. What do you think on the adequacy of opportunities to express freely the grievances to the higher concerned bodies?
6. What do you think on the confidence of students to raise and answer questions freely in class room, school discussion and seminar of university?
7. What do you think on the negative impact of failure to express idea on an academic performance?
8. What do you think on the knowledge of students and staffs about their right to freedom of expression?
9. Is there any legislation at WKU that clearly grants the right to freedom of expression for the students? Explain if any?
10. What are the major grounds that limit the scope of freedom of expression that you observed at WKU? Explain?

11. If so, what are the justifications of WKU while limiting the freedom of expression?
12. What did you observe the practical effort of WKU to the protection and preservation of the right to freedom of expression?
- ❖ *The university management should give answers for any questions that the students addressed.* While the truth are like these, the managements seems forgets why they were created from the first place, they don't want to answer any questions from the students and they don't even want to sit with students to discuss the existing problems and other facts that they may bear a perfect result, this have a huge negative impact on the learning and teaching process of the university.
 - ❖ *Punish and make responsible that teacher who violate the right of students on freedom of expression.* Since the main purpose of punishment is rehabilitating the offender and creating awareness to the communities.
 - ❖ *Clarify the protection provided under the law for students in preserving academic freedoms*
 - ❖ *Clarify permissible limitation on speech;* it shall to specify the type of reasonable time, place, and manner restrictions that can be placed on speech and accurately states the current constitutional rule on those limitations.
 - ❖ Empower authorities who bring action on behalf of those whose speech rights have been violated. Given the difficulty that students and stuff may have in prosecuting such action on their own, I believe that this would be useful.