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CASE ANALYSIS

By Zuha Beigh

Faheema Shirin v. State of Kerala AIR 2020 Ker 35

Introduction: In this landmark judgement of the Kerala High Court, the Court examined and delved into the question of the extent of the educational institution's right to enforce rules and regulation and its impact on a student's fundamental rights. The fundamental right in question is of the Right to Access of Internet which forms an important tenet of the Right to Life under Article 21. It was held that "the right to Access of Internet forms a very important part of the right to education as well as right to privacy under Article 21 of the Indian constitution"ⁱ. In this digital era, the most popular medium to reap the benefits of open education is through Internet. Furthermore, the court also related it with one's right to privacy that no rule can invade a student's who is a major, an adult in the exercise of his right to privacy. It is her decision to decide what purpose he/she uses the internet for. More importantly, if a student wants to issue the internet, he or she can do it any time and not just a specific time frame as has been set by the hostel authorities.

Facts: The case revolves around an eighteen year old college student named Faheema Shirin who was expelled from her hostel on the grounds of non compliance with the hostel byelaws. The policy of the hostel in which she was residing was that they were restricted from using their mobile phones between the night hours i.e. 10:00 p.m. to 6:00 a.m. and subsequent to which they were required to surrender their mobile devices to the respective hostel warden. The rule was being complied with smoothly until a modification was brought in the hours of the operation of such rule. The new rule restricted the students from using their mobile phones from 6:00 p.m. to 10:00 p.m. This embargo on using mobile phones and using internet from such medium was justified to enable the students to focus their evening hours on studying than getting distracted from the unlimited access to a window of new worlds on their mobile devices. This rule was challenged by the petitioner who refused to comply with the rule and even complained to the principal of her college. However, on failure of meeting with the rules of her hostel, she was asked to vacate the hostel and hence she challenged that action through a writ petition before the court.

Contentions of the petitioner: She challenged the restriction imposed by the hostel authorities on the following grounds-

- Firstly, she invoked Article 21A stating that disabling her from using her mobile phone infringed her right to education as in light of the evolving technology driven world as we live in, students resorted to online modes of education to further strengthen their traditional means of education.
- Secondly, she challenged the action on being arbitrary and discriminatory by making reference to CEDAW and The Beijing declaration where in the state parties are to take appropriate measures to prevent discrimination against women and to promote gender equality. The byelaw of the hostel authorities in question was discriminatory as it was not exactly implemented in the boy's hostel as to the time duration.
- Thirdly, she also made reference to article 21 in context of her Right of privacy stating that hostel authorities could not intrude her privacy considering the fact that she was an adult and the decision to use her mobile phone and access to internet to her advantage or not remained purely hers.
- Also, she argued that deprivation of the access to the internet infringed her right to free speech and expression.(Article 19)

Her stance on the subject was supported by her parents who rebuked the hostel authorities for depriving the students the use of their phones and access of the Internet in the present modern era and especially at a time when the state ministry of education was emphasising on the importance and practicality of digital based education.

Contentions of the respondents: They argued that the hostel authorities were well within their authority and rights to enforce discipline among the students and to that extent were justified in implementing the byelaw in question which restricted the use of mobile phones for only a few hours and not absolutely. Referring to TMA Pai foundation's case, it was quoted that teachers are like parents and must be given a free hand to guide the students to the right direction. Furthermore, they clarified their stance by stating that the rule only applied to mobile phones and not to the use of laptops and that students were free to use laptops for studying purposes totally ignoring the fact that there was no Wi-Fi facility in the hostel to make effective use of the laptops and that laptops were not a very affordable option for everyone as were mobile phones.

The court in this case delivering a judgement in favour of the petitioner clearly remarked that the benefits that the internet can offer definitely outweigh its drawbacks. The court opined that while it is true that teachers are like foster parents who are required to look after, cultivate and guide the students in their pursuit of education, the rules should be modified in tune with the modernization of technology so as to enable the students to acquire knowledge from all sources.ⁱⁱ Furthermore, students must be equipped with the means of modern technologies to compete in the digital world.ⁱⁱⁱ And state authorities should be responsive to societal changes and the prevailing climate and any restrictions of fundamental rights could only be justified on the anvil of necessity.^{iv}

Personal Opinion/ Analysis: In this case, the court had to oscillate between the hostel authority's right to enforce discipline and a student's right to receive education, privacy and gender equality. Internet is a boon as well as a blessing. Its use ultimately depends upon the psyche and individual will of the student. It is well accepted that the action of the authorities was well intentioned but the fact of the matter is that they weren't trying to remove the cue i.e. mobile phones altogether but were depriving the students their use only for a certain time during the evening which is perhaps the only time a student gets off from the academic coursework wherein he can make notes, watch informative educational videos or take up online certificate courses or anything that adds to his personal development. Also, the time hours of the embargo were not equally applicable on the boy's hostel which meant that the suspicion of misuse could only be expected from girls which is totally arbitrary. Sure the cons of internet are huge and it can be a breeding ground for vices but it shouldn't be a hurdle in accessing and realising the wondrous and unlimited opportunities it has to offer. In a world where countries are getting more liberal and giving more rights to adults, India shouldn't lag behind and must promote the culture of Digital education as it can in the long run add to the county's growth and such laws which halt internet use are only regressive and conservative which no longer hold practical. ^v

ⁱ *Faheema Shirin V. State of Kerala AIR 2020 KERELA35*

ⁱⁱ Aishwarya Lakhe. Case summary: Faheema Shirin v, State of Kerala & Ors. Lex Bulletin. (March 23. 11:00AM). <http://lawlex.org/lex-bulletin/case-summary-faheema-shirin-R-K-v-state-of-kerala-ors/>

ⁱⁱⁱ Anuj Garg V. Hostel Association of India 2008 3 SCC 1

^{iv} S Rengarajan & Ora V P Jagjivan Ram 1989 2 SCC 674

^v <http://indiankanoon.org/doc/188439981/>