CHAPTER-V

IMPACT OF COURTS ON UNIVERSITY AUTONOMY, ACADEMIC FREEDOM AND HIGHER EDUCATION

Introduction:

The extensive search for a solution to campus unrest has produced a major congressional leaving, several commission reports, many books and articles, numerous seminars, extensive revision of University codes of conduct and disciplinary procedures, increased court litigation, and a wave of state and central litigation. Notwithstanding these efforts, a basic question remains unsolved as to what extent should the powers of the outside community be brought to bear on campus problems.

A university faced with building seizure, classroom disruption, threat of violence, disorderly picketing, or other major problems must decide whether the institution can handle the problem internally through negotiations, concessions, suspensions, and expulsions, or whether outside community's, police and court system must be summoned. By calling outside help, a vice-chancellor risks escalating the problem and further the institutions dependence on outside authority to preserve its own internal academic functions. By failing to adequately solve the problem internally, the vice-chancellor chances the
alienation of legislators, benefactors, trustees, and parents which could result in decreased revenue and unfavourable laws, increasing community intervention into affairs of the institution. In short, "If colleges and universities will not govern themselves they will be governed by others. This chapter examines the various approaches adopted by the Universities to protect its Academic freedom, and University autonomy while dealing with campus turmoil, and the impact these external threats and internal responses have on University autonomy and Higher Education.

In this chapter author propose to examine whether Courts can frame a suitable policy to help the maintenance of University autonomy and the proper development of higher education? Whether such suitable policy emerges from the already decided cases?

It is also proposed to examine in this chapter the extent of judicial control in the area of University autonomy in the context of 'Four freedoms' articulated by Amrik Singh. (1)

(1) In his article intitled 'Universities and Government' Amrik Singh has mentioned these four questions:
(1) Who should teach (2) Whom should the University shall teach (3) What shall be taught and (4) How will it be taught.
2. The Concept of University Autonomy:

To begin with, a distinction needs to be made between university autonomy and academic freedom of University and college teachers. This freedom implies that a teacher cannot be ordered or required to teach something which goes against his conscience or conflicts with his conception of truth. In this context, I would also like to emphasize the freedom of teachers to hold and express their views, however radical, within the classroom (and outside) provided they are careful to present the different aspects of a problem without confusing teaching with 'propaganda' in favour of their own particular views. A teacher should be free to pursue and publish his studies and research; and speak and write about and participate in debates on significant national and international issues. He should receive all facilities and encouragement in his work, teaching and research, even when his views and approach be in opposition to those of his seniors and the head of his department or faculty. In brief University autonomy is a special privilege enjoyed by the University as a special institution in regard to its role and functions. Academic freedom is the individual and personal privilege of a teacher as a member of the teaching profession. Thus University autonomy is institutional privilege, while academic freedom is individual privilege.
The dictionary meaning of the word 'Autonomy' is "the right of self-government" and alternatively, idea of University autonomy may be described in the following words:

"When we speak of university autonomy we mean a university's right of self-government, or its right to govern its own affairs and, particularly, its right to carry on its legitimate activities of teaching and research without interference from any outside authority. The outside authority may be the state within whose political jurisdiction the university functions; it may be a body which exercises control over the practitioners or a professional for which the university trains its students such as law, medicine or accountancy, by prescribing the qualifications or conditions necessary for the practice of the profession, or a body like the University Grants Commission, capable of influencing the university's decisions by giving or withholding financial aid for carrying on or expanding its activities. It is also usual to speak of autonomy within a university, meaning thereby the autonomy of its departments, its teachers and students in relation to the university as a corporate body. The important implications of autonomy within the university are that the academic element of teachers in the university should have the final authority in all academic matters, and that the non-academic element and the administrators should serve the academic interests of the
university, and not seek to dominate the academic element.¹

Fuchs defined academic freedom as "that freedom of members of the academic community, assembled in colleges and universityes, which underlies the effective performance of their functions of teaching, learning practice of the arts and research."² Such academic freedom cannot extend beyond the sphere of freedom permitted by the Law.

Amrik Singh described university autonomy as:

"University autonomy is usually taken to mean the right of a university to decide these four questions: Who, Whom, What and How to teach: Who should teach, Whom shall the university teach, What shall be taught and How will it be taught? These four freedoms are supposed to be the cornerstone of university autonomy."³

In the words of the Education Commission (1964-66):

"The proper sphere of university autonomy lies in the selection of students, the appointment and promotion of teachers and the determination of courses of study, methods of teaching and the selection of areas and problems of research".1

University autonomy, like the independence of the judiciary and the freedom of the press, is essential in a democratic society as a part of a healthy public life; and so, like the judiciary and the press, the university also should be guarded against the onslaught of outward forces. This necessitates a clear and unequivocal formation and articulation of the scope of powers, duties, rights, privileges and functions of a university. This, in India, is ensured by establishing a university by a legislative enactment. The university statute provides for the teaching, research and service functions of the university with necessary structural and functional framework. It looks after many matters of policy and details such as students admission, recruitment and service conditions of staff, standards of teaching and examination, framing of curricula, management of finances and scores of other incidental and consequential matters. When such legislative enactments

1. Report, paragraph 13.05
are amended by the legislatures so as to expand or restrict the powers of the university, or when the legislatures vote the annual grants to the universities and thereby exercise control over one does not talk of encroachment upon university autonomy. What is contemplated in university autonomy is the extent of unfettered freedom of action allowed to a university to discharge its various functions as laid down in the legislative enactment incorporating that university. This university autonomy must not be subscriptible to any outside encroachments, more particularly from the executive and administrative organs of the state.

Freedom in regard to all the matters stated above constitute university autonomy. The Education Commission pointed out that the autonomy functions at three levels, namely (i) within the university; (ii) within the university system as a whole; and (iii) in relation to agencies and influences outside the university systems. The autonomy may have structural, functional and financial aspects. The Education Commission made an interesting, though novel, suggestion when it recommended.

The Government of India may request the supreme Court to frame a suitable policy to help the maintenance of university autonomy and the proper development of higher education.
Though one may doubt whether the Government of India can or should request the supreme court to frame such a policy and whether the court can or would accede to such a request, it would be interesting to examine the various cases decided by the supreme court of India and endeavour to discern whether any such "suitable Policy" emerges out of them. This chapter is an attempt in this regard. It is proposed to examine in the light of such decided cases, the extent of judicial control in the area of university autonomy in the context of "four freedoms" articulated in Amrik Singh's above formulation. It is emphasised that wider constitutional issues like classification, protective discrimination, rights of minority institutions, etc., are kept outside the purview of the following survey of decided cases.

The proper sphere of university autonomy lies principally in three fields: -

- The selection of students;
- the appointment and promotion of teachers;
- the determination of courses of study, methods of teaching, and the selection of areas and problems of research.
In the use of its autonomy, the universities will gradually win not only over-riding consideration - their commitment to truth in all fields of activity. This passion for truth must be inculcated in some measure in all their members and there should be some who are wholly dominated by it and find in it their real fulfilment. There is then a likelihood that the universities should be governed by ones self-respect but the respect of society and government and play their proper role in national life.

It is important to recognise that the case for autonomy of universities rests on the fundamental consideration that, without it, universities cannot discharge effectively their, principal functions of teaching, research and service to the community; and that only an autonomous institution, free from regimentation of ideas and pressure of party or power policies, can pursue truth fearlessly and build up, in its teachers and students, habits of independent thinking and a spirit of enquiry unfettered by the limitations and prejudices of the near and the immediate which is so essential for the development of a free society. As Bertrand Russell has observed; 'Where independent thinking dies out, whether from lack of courage or absense of discipline, there the evil weeds of propaganda and authorittarianism proliferate unchecked. The stifling of criticism is thus a much more serious thing than many people realise. Far from creating a living unit of purpose in a
society, it imposes a kind of insipid, brittle uniformity upon the body politic. It is a pity that men in places of power and responsibility are not more often aware of this.'

In considering the question of university autonomy, we must recognise three (somewhat overlapping) levels at which it functions:

1) Autonomy within a university, e.g. autonomy of the departments, colleges, teachers and students in relation to the university as a whole;

2) autonomy of a university in relation to the university system as a whole, e.g. the autonomy of one university in relation to another, or in relation to the UGC and the Inter-University Board (IUB); and

3) autonomy of the university system as a whole, including the UGC and the IUB, in relation to agencies and influences emanating outside that system, the most important of which are the central and the State Governments.

(A) Autonomy within a University:

Before considering the relations between individual universities and of the university system as a whole with
external authorities, it would be desirable to discuss briefly the meaning of autonomy within the university itself.

It is recognized that the representation of lay elements on the various governing bodies of the university is necessary and justified in view of the nature of relationship between the university and the society. It would, however, be contrary to the principle of university autonomy if the lay or non-academic members in these bodies assume a dominating and controlling position. Conventions should be developed which would largely shift the centre of gravity of authority to the academic wing of the university's government. In particular, care should be taken to see that the Academic Council is vested with the final authority in all academic matters. The function of the non-academic element should be mainly to present to the academics the wider interests of the society as a whole, but not to impose them; it should also serve to represent the views and interests of the academics to the wider society and thus make the smooth functioning of the university more easily possible.

It is necessary to ensure that universities do not become administration or administrator dominated and to keep vigilant in this regard. The dominance, if one is to use that word, must be of the academic element and the principal function of the administration is to serve the academic interests of the
(3) In the governance of a university, the principle that good ideas often originate at the lower levels of the hierarchy must be recognized and respected. The tendency to attach importance to ideas and proposals merely because they emanate from persons who happen to hold important positions is unhealthy and particularly out of place in a university where they must be judged objectively and on their intrinsic merit. As Sir Eric Ashby has observed: 'This principle of upward flow is vital to the efficient administration of a university and for the survival of autonomy and self government. Not all professors consult their lectures before decisions are taken as scrupulously as they themselves expect to be consulted by the lay governors in similar circumstances. As faculty boards become larger, there is a temptation for an oligarchy of senior professors to take over the responsibilities of government on behalf of their more junior colleagues. That way danger lies, for any weakening of the principle of self government within the academic body makes it harder to preserve self-government within the university as a whole and correspondingly harder to maintain the autonomy of the university in the modern democratic state'.

(4) The departments of a university are its main operational units on the academic side. I am of the view that wider administrative and financial powers should be delegated to them. Such department should have a Committee of Management under the
chairmanship of the head of the department consisting of all professors and some readers and lectures elected by the staff. It should meet at least once a term to discuss the academic programme of the department, the requirements of laboratories and library, the delegation of duties and related matters, and its proceedings should be circulated to the faculty and the Academic Council. It will be necessary to provide adequate secretarial assistance to each department for the purpose. In the case of large science departments, it may be advisable to appoint a deputy to the head of the department from amongst the professors or readers. He should be assigned specific functions by the head of the department with the approval of the University Executive Council.

(5) It is essential to recognize the freedom and autonomy of colleges.

(6) The university should be visualized as an integrated community in which the teachers are, as it were, 'senior scholars', the students are 'junior scholars' and the administration is a service agency to both. All attempts at polarization between teachers, students or administration should be avoided. I recommend establishment of joint committees of teachers and students in each department and in every college to serve as a forum for the
discussion and, where possible, for the solution of common problems and difficulties. The head of the institution - the vice chancellor or principal - should be kept fully in touch with the work of the committees. In addition, there should be a central committee for the purpose under the chairmanship of the head of the institution consisting of some representatives of staff and students. A machinery of this type, if properly worked, would at least be able to find an adequate solution to the large number of small, easily remediable problems which, for want of due attention at the proper moment, often simmer into bitterness and later engender serious breaches of discipline. It will also, I hope, create better relations and develop a new sense of confidence between the teachers and the students.

(7) As one positive step to encourage students to take part in university government and to make them realise their responsibilities in the day-to-day functioning of the university, I propose that representatives of the student community (including undergraduate students) should be associated with the Academic Councils and the Courts of the Universities. In some universities in Europe and elsewhere, students are members of the Executive Council also.

(B) Autonomy within the University System as a whole:

It is implicit in the concept of autonomy, and desirable even otherwise, that every university should be entitled:
automatically to the membership of the IUB. The degrees conferred by a university should also be automatically 'recognized' by every other university in the country. Further, a certain measure of division of labour among universities is necessary, and this applies more to some fields of study than others. In specialized areas like Chinese studies or nuclear Physics or oceanography of astrophysics, where equipments is very expensive or qualified manpower scarce, the autonomy of each university to teach and to do research is naturally not absolute and must be modified in favour of some reasonable co-operative arrangement amongst them. The universities can initiate such division of labour, which is the only sensible way of dealing with the phenomenal increase in knowledge and specialization, either on their own or in consultation with the UGC, where necessary.

(c) Autonomy in Relation to Outside Agencies:

While universities must have this autonomy, it should be interpreted in the larger context of their obligation and responsibility to the nation and to mankind as a whole. For instance, the national needs for trained manpower have implications for the teaching functions of the universities; and similarly decisions about research which, in a way, must be taken primarily by the universities.
and similarly decisions about research which, in a way, must be taken primarily by the Universities, cannot be taken in isolation from the economic and social needs of the country which must influence them in a large measure. Such decisions are national decisions in which the competing claims of different sectors of the society must be weighed against one another and which long-range programmes must be balanced against immediate needs. It is apparent that the conduct of university affairs cannot be left solely to the academics, their relationship to social needs requires the admission of non-academic persons within the machinery of their Government. The universities have thus to share their decisions with lateral agencies or authorities outside the system just as they have to share them with one another or with organisations within the university system itself such as the University Grants Commission and the Inter-University Board. It is particularly in such problems that issues of university autonomy have to be handled with great skill and imagination and it becomes necessary to develop attitudes and conventions which will do justice to university autonomy as well as to the valid claims of Society.
Cases examined under this head of "first freedom" relate to recruitment, discipline and service conditions of teachers. University's general right as an employer to hire and fire at will has been sufficiently restricted. Which facts situations would attract the court's intervention in the University first freedom can be understood from the following cases.

J.K. Chaudhuri v. R.K. Dutta Gupta raised an interesting question as to whether a principal of a college is also protected under the service conditions made by the Gauhati University for teachers. The respondent was a professor and principal of a college affiliated to this University. The Governing Body of the college had dismissed the respondent as principal and professor after holding the proper inquiry. On his representation the Executive Council appointed, under its relevant statutes, a three member committee to report on the propriety of the action taken. The committee duly inquired into the whole matter and recommended that the dismissal was not justified.

1. A.I.R. 1958 S.C. 722
The Executive Council accepted these findings and directed for reinstatement. It was contended that the categories of principal and professor were distinct and were dealt with in the Act and the Statutes made thereunder separately. The principal was merely the administrative head and a teacher was solely engaged in imparting instructions. The Act itself contemplated for them these different functions. Sections 2(h) and 2(x) of the Act gave distinct definitions of "principal" and "Teacher" respectively. This distinction found support from other provisions safeguarding the service conditions where in the word "principal" was used in its distinctive and restrictive sense, and the words "teacher" or "member of the teaching staff" and employee" were used to refer to a teacher and not to a principal. As a cumulative interpretative effect of all the aforesaid provisions, Kapur J held that these provisions did not apply to any other employee of the college such as a principal. It was further contended that as the respondent was also a professor he was "member of the teaching staff and his case fell within the words" or any other serious grievance of the teaching staff". The Court rejected this argument and held that his grievance as a principal was not included in his grievance as a teacher.

In Dr. S. Dutt V University of Delhi the appellant was a professor of Chemistry in the respondent university which, according to the appellant, did not give him the
selection grade and appointed another person as the Head of the Department and thereby superseded him. As he could not succeed to get this dispute solved by arbitration under the provisions of the Delhi University Act, 1922, he filed a declaratory suit in the civil court. The respondent also was charged of misconduct against him. Thereafter both the parties agreed to have the mutual grievances investigated by two persons and their decision was to be accepted as final and binding. Then the appellant withdrew his suit and the report of investigators was given which was against the appellant. He contended that investigation was not fair and hence not binding and filed a declaratory suit under section 33 of the Arbitration Act. Meanwhile, the Executive Council terminated his services on the basis of the investigator's report. Thereafter the court rejected his application and held that the agreement as to investigation was not a submission to arbitration and so no application under section 33 lay. Appeal to the High Court was also dismissed. After this the appellant asked the university to nominate its arbitrator which it never did, and hence he asked, his arbitrator to act as a sole arbitrator and give his award.

The respondent challenged the arbitrator's jurisdiction and retired from the proceeding after initial participation. The arbitrator made his award in favour of the appellant on all counts and opined that he "still continued to be

1. A. I. R. 1953 S.C. 1050
professor of the University. When the arbitrator filed the award in the court, the High Court set aside the award on the ground that it disclosed an error on the face of it. Sarkar J. agreed with the Delhi High Court that it was not open to the arbitrator to grant Dr. Dutt a declaration that he was still a professor in the University which no court could or would give him. This declaration amounted to specific enforcement of a contract of personal service which was forbidden by section 21 of the specific Relief Act and therefore disclosed an error on the face of the award because it contained a legal proposition which on the face of it was erroneous.

In Akshaibar Lal V Vice Chancellor, Banaras Hindu University the university had terminated the services of eight teachers on various grounds. Originally, the powers of the university to terminate services derived from (a) agreements, (b) ordinance No. 6 and (c) old statute No. 30. The agreements contained general right of a master to terminate the service without any reason. The ordinance preserved this right and gave power to terminate service for certain proved grounds but it can only be involved by taking action in accordance with the ordinance and Rules. By the new amended statute a special ground was required to be proved before effecting termination. This statute provided for special.

action in special circumstances. The university followed the procedure laid down in the new statute 30 and issued show cause notices but subsequently abandoned it because of a stay order from the High Court and proceeded to act under its powers flowing from the agreements and ordinance and terminated the services of teachers who challenged this decision. Hidayatullah J. quashed the resolutions and held that after the special procedure under the statute 30 was invoked it cannot be dropped in the middle course and other powers cannot be exercised. The ordinances were subject to statutes and in case of a clash the former stood down. The powers of the University to terminate services were not cumulative or alternative and it cannot resort to any of the remedies open to it.

The Supreme Court refused to issue the writ of mandamus to the appellant in Shivandra Bahadur V. Nalanda college when he failed to show that he had any right entitling him to get an order of appointment or reinstatement. The respondents reconsidered their earlier resolution appointing the appellant as the principal and advertised and interviewed the applicants among whom the appellant was one of them but was not appointed. Kapur J. stated that the appellant could not show that he had a right to be appointed or reinstated under any legal provision and if he has not

1. A.I.R. 1962 S.C. 1210
that right he cannot come to court and ask for a writ to be issued.

The Court interpreted rule 5 of the Mysore University Staff (Appointment) supplementary Rules (1967) quite liberally in G. Marula Siddaiah V. T. G. Siddapparadha. The rule provided that the Board of Appointment, which overlooked, in appointments, the claim of a person senior in length of teaching experience, must give in writing its reasons for so doing. Mitter J. held that though experience is an important factor, it is not the only determining factor and when the rule is substantially complied with failure to record reasons for disregarding a senior person does not per se vitiate the appointment. The Court interpreted the rule not in its letter but "according to its true intent."

In Kashmir University V. Modhop. Yasin the court considered the question of adhoc appointment of a teacher made by the Vice Chancellor. Under the rules the Vice-Chancellor was authorised to appoint a teacher as a temporary measure for a period not exceeding six months and if the selection committee recommendations are not received during this period, the appointment may be extended for the whole session with the approval of the University Council, but in other cases, only the latter had the power of appointment. Krishna Iyer J. held that the appointment of the appellant, not being made by the

2. A.I.R. 1971 S. C. 2264
1. A.I.R. 1974 S. C. 238
In Vice-Chancellor, Utkal University V. S. K. Gosh\(^1\), the vice chancellor was informed that the Anatomy question paper for the first MBBS examination was leaked which on inquiry was found to be correct. When the ordinary meeting to the syndicate was called, this matter though not on the agenda, was placed before it as the last item under "other matters, if any". It was unanimously decided, on member being absent and not knowing that this matter will be the part of the agenda, after full investigation and deliberation that the result be cancelled and re-examination held. The successful candidates protested this decision and requested for its reconsideration. As another meeting was already called in about a week, the Vice-Chancellor suo motu brought this request in the meeting and again it was not placed on the agenda and hence members had no notice. The former absentee member was present in this meeting but another member, who was present in the first meeting, was absent this time. The second meeting unanimously refused to review the former resolution. The Orissa High Court held former resolution. The Orissa High Court held that the syndicate had unreasonably and without due care and

\(^1\) A.I.R. 1954 S. C. 217
issued a writ of mandamus directing the publication of the results. In appeal against this decision the supreme court held that requirement of proper notice would invalidate the meeting and resolution when such inflexible rigidity is imposed by the incorporating statute. Bose J., speaking for the court, further observed:

The position is different when, either by custom or by nature of the body or by its constitution and rules, great latitude and flexibility are permitted. Each case must be governed by its own facts and no universal rule can be laid down; also it may be that in the same body certain things, such as routine matters, can be disposed of more easily and with less formality than others. It depends on the nature of the body and its rules.

In this case proper notices of both the meetings were issued to all members including the two absentees. The court did not decide the issue whether this matter must also always have been included in the agenda. The court referred to certain English decisions which indicated that its was not necessary, and this view is further justified as "in the present case one of the items in the agenda of both notices was "Other matters", if any." The court gave more importance to substance than form if there is substantial compliance with the spirit and substance of law. An unessential defect in form cannot invalidate otherwise proper and valid resolution.
The Supreme Court further observed that the structures made by the High Court on the Vice Chancellor and the syndecate were not justified. As the matter was urgent they were well within their rights to exercise their discretion in the way they did. The court said: "...(1) It is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgement the matter in question has been entrusted by the law." The authorities were to have acted honestly as reasonable and responsible men confronted with urgent situation are entitled to act. The experts examined and compared two papers and after long deliberations arrived at their decisions. Their action cannot be characterised as hasty, unjust, unreasonable and careless. The Court set aside the order of the High Court. But because of the High Court's intervention the re-examinations could not be held and the university was virtually placed in a position to regard the examinations already held and the results already declared as good. If the status quo were restored the students who were successful would be put two and a half years back and compelled to read the course. However, the university had undertaken not to penalise them.

The Supreme Court dealt with a very vital area of university autonomy in Gujarat University V. Shri Krishna Ranganath Mudholka where it had to consider the question as to whether the university can impose an exclusive medium of

1. A.I.R. 1983 S. C. 703
instruction. The statutes of the appellant university provided and impose Gujarati and/or Hindi in Devnagri script as respondent's son applied for sanction to attend English medium class it was granted for examination but not for instruction, in the light of statute 207. Shah J., delivering the majority judgement, agreed with the view taken by the Gujarat High Court that the statutes of the university in so far they laid down and imposed Gujarati and/or Hindi as an exclusive medium of instruction and examination was unauthorised and hence null and void because the Gujarat University Act did not empower the University to lay down any languages as an exclusive medium of instruction and examination. Subba Rao J. dissented from this view and held that the University had the implied powers to prescribe more or even a sole medium of instruction to the exclusion of others. The majority held that powers conferred upon the senate do not carry with it the concomitant duties to exercise them, but assuming that they do, they do not postulate a duty to prescribe exclusive medium of instruction. Subba Rao J., dissenting, held that there was a correlative duty in such a case as the power to promote Gujarati or Hindi and their use as medium of instruction and examination was a composit power.

The Court applied the Gujarat University case to similar facts & situation in D. A. V. College Bhatinda V. State
of Punjab in which the Punjabi University prescribed Punjabi as a sole medium of instruction and examination with certain relaxation made later on. As a result of this students of appellant college, which was managed by the Arya Samaj, a religious minority having a distinct script, were compelled to learn all subjects in Punjabi and write their examinations in Gurumukhi script. P. Jagamohan Reddi J. applied the Gujarat University case and held that 'sole' meant 'exclusive' and such directive of the exclusive use of a language and script as medium of instruction and for examination in regard to the minority institutions is violative of their rights. If the University compulsorily affiliates such college and prescribed a sole or exclusive language and script as medium of instruction and examination which are different from their own, then it interferes with their fundamental rights. The national policy to develop education in regional languages. Else such institutions should not be forced to be compulsorily affiliated. The Court struck down the University circular and held that "while the University can prescribe Punjabi as a medium of instruction it cannot prescribe it as an exclusive medium and compel" the minority colleges to adopt it. P. Jaganmohan Reddy J. reiterated this view again in the D. A. V. College, Jullunduv V. State of Punjab

1. A.I.R. 1971 S.C. 1731
and held that "while the State or the University has every right to provide for the education of the majority in the regional medium", neither the University nor the state can provide for imparting education in a medium of instruction in a language and script which stifles the language and script of any section of the citizen. "The Court constructed section 4 (3) of the Guru Nanak University Amritsar Act, 1969 which provided for promotion of Punjabi as not compelling the minority affiliated colleges to adopt it."
In St. Xaviers College V. State of Gujarat the Court had to decide a question about the relationship between the minority instruction and a University. The Court held that when such institutions choose to participate in system of general education of a University, it can lay down reasonable regulations in the interest of secular education. Such regulatory measures may relate to the courses of study, the qualifications and appointment of teachers, their conditions of employment, health and hygiene of students, facilities for libraries and laboratories. These regulatory measures for affiliation are necessary for uniformity efficiency and excellence in academic matters. But where do the court draw the delicate line between unconstitutional conditions and constitutional regulations? "Hands-off administration altogether" is a tall claim today at the same time, "hand-cuff managements into uniformity" is also not correct. A regulated liberty which neither abridges nor exaggerates autonomy should be ensured. To regulate the autonomy is not to restrict it but it facilitates its effective exercise. Krishna Iyer J. in G. F. College Shahjahnpur V. Agra University based the majority judgement on these arguments, applied the St. Xavier's College case and negativied the "untouchable

1. A.I.R. 1975, S. C., 1821
2. A.I.R. 1975, S. C., 1821
absoluteness urged by the managements." The court held the statute 14 A of the Agre University Act providing for membership of the principal and seniormost teacher in the Governing Body of a minority institution as valid, as they are "insiders" appointed by the Governing Body and not "outsiders" and it has a regulatory character to secure better administration of the institution.

Some observations:

From the above examination of cases under this head the following principles can be crystallised:

(i) The Court refused to lay down any universal and inflexible rules governing internal administration. In urgent matters, if the university has acted honestly, reasonably and responsibly and has substantially complied with the spirit of the law, the Court showed readiness to ignore defects in form.

(ii) Though the Court considered the right of the State to prescribe regional language as a medium of instruction and examination, in general, the court did not allow its prescription as such in case of minority institutions as sole or exclusive medium, if there is compulsory affiliation for such institutions. However, if a sole or exclusive medium is prescribed, the minority institutions should be free to seek affiliation elsewhere.
(iii) When the minority institutions participate in secular education, they are bound by university's reasonable regulatory measures.

There is one case which, though, is not strictly coverable under any of the above "four freedoms" heads, is hailed by the academic community as a landmark decision protecting a university's autonomy from legislative and executive onslaught. D. S. Reddi, Vice-Chancellor, Osmania University V. Chancellor, Osmania University is a classic example of "the historic fight" which "deserves to inscribed in letters of gold in the history of university autonomy in India." The State Government sought to amend the Osmania University Act which was strenuously opposed by the teachers and others, and the appellant was one of them, on the ground that the autonomy of the University was sought to be interfered with by the Government. Ultimately an amendment was made by which, inter alia, the term of office of the Vice-chancellor was fixed at three years under section 13. Thereafter by a second amendment of the Act a new section 13A was inserted which, in plain terms, provided that the incumbent Vice-Chancellor was to hold that office until a new Vice-Chancellor was appointed, who was to be appointed within ninety days. It further provided that on the appointment of such new Vice Chancellor, the incumbent Vice-Chancellor shall

cease to hold that office. The appellant challenged the constitutional validity of section 13 A and contended that this vested right to hold his office for full term of five years could not be taken away during the currency of period because if virtually amounted to his removal without giving him any opportunity to show cause against such removal.

Valiadlingam J. accepted the appellant's contention based upon Art. 14 and held section 13 A to be discriminatory and violative of Art. 14 and struck it down as unconstitutional. The section made a classification between the incumbent and the new appointee but such classification was not founded on intelligible differentia which can distinguish between the two. The Court did not find any policy underlying the Act justifying the differential treatment to the appellant.
Cases examined under this head of "second and third freedoms" relate to position of a student in regard to discipline and his academic attainments.

As stated earlier problems regarding eligibility or otherwise in admission matters are outside the scope of this paper. This head covers two "freedoms" of the university.

In Board of High School V. Ghanshyam¹ the appellant cancelled the examination result of the respondent without giving him any opportunity to defend himself. The appellant contended that its committee had acted under its Regulations after a through inquiry and as it was acting merely administratively it was not necessary to give hearing to the respondents. Wacnchco J. held that as the nature of misconduct is of a serious nature and may even lead to prosecution the committee must have acted judicially in these circumstances. Though there is no express provision casting a duty to act judicially, the manner of disposal and serious

¹. n. I. R. 1962 S.C., 1110
effects may cast a duty to act judicially. It was further held that what the procedure should be in detail will depend upon the nature of the tribunal. Where some quasijudicial duties are entrusted to an administrative body to perform its duties, it must follow the principles of natural justice.

The supreme court had to decide an interesting question as to whether the university can refuse to permit a student to the course because he had failed for number of times under its authority to maintain standards.

In Mysore University V. Gopal Gowda the respondent had failed for four successive times in passing the first year examination of B. V. Sc., and was informed that he "had lost" his right to continue studies in view of Regulation 3 (C) made by the Academic Council for "maintenance of standards". Shah J. held that the Academic Council had the power to control the entire academic life of the student from the stage of admission to the ultimate conferement of a degree. The power to prescribe conditions for admissions of students implies the power to weed out students if they are unfit to prosecute their training on

1. A.I.R. 1965 S. C. 1932
account of their general inaptitude for that training or
on account of supervening disability, and failure in four
examinations is a reasonable test of such inaptitude or
disability. The Court gave wider meaning to the expression
"maintenance of the standards" in addition to usual matters
like minimum attendance, length of the course and minimum
academic attainments.

The Supreme Court cautioned the High Courts that in
dealing with matters relating to orders passed by authorities
of educational institutions they should normally be very slow
to pass ex parte interim orders under Art. 226. In principal, Patna College v. K. S. Raman the appellant did not allow the respondent to appear at the university examination as the latter had not attended adequate number of practical classes and his record of practical work was not satisfactory, and as such he did not fulfil the requirements of Regulations of Patna University. Gajendragadkar C. J. held that while interpreting a regulation framed by the Academic Council of a University that High Court should ordinarily be reluctant to issue a writ of certiorari. When such a regulation is capable of two constructions, it would not be expedient for the High Court to reverse the decision of the educational institution on the ground that construc-

1. A.I.R. 1966 S.C. 707
ction placed by such authorities on that regulation appears to the High Court less reasonable than the alternative construction which it accepts. The Court criticised the High Court that having regard to the facts of the case it ought not to have accepted, the writ petition at the bungalow of the Chief Justice and passed the interim orders on Sunday night.

In the Bihar School Examination Board V. Subhash Chandra 1 the Court had to consider a situation in which a vast majority of examinees had adopted unfair means at a centre. The tabulators, moderators and the unfair means committee all reported, after due inquiry unfair means on a mass scale. The Chairman then cancelled the examination and ordered for supplementary examination. Hidayatullah C. J. held that there was no need to take action for a complainant. It was further held in such cases of adoption of unfair means on a mass scale vitiating the examination it was "not necessary for the Board to give an opportunity to the candidates" to defend themselves and it does not fit in the mouth of those who were themselves grossly guilty of breach of fair play to complain about its absence. The Court did not want it to be understood that an inquiry with a right

to representation must always precede in every case despite difference, it said:

To make such decisions depend upon a full fledged judicial inquiry would hold up the functioning of such autonomous bodies as universities and school Board.

The Court conceded that the Universities are responsible for their standards and the conduct of examinations. It further observed.

The Court conceded that the Universities are responsible for their standards and the conduct of examinations. It further observed.

It (i.e. the Board) cannot hold a detailed quasi-judicial inquiry with a right to its alumini to plead and lead evidence etc., before the results are withheld or cancelled. If there is sufficient material on which it can be demonstrated that the University was right in its conclusion that the examinations ought to be cancelled then academic standards required that the university's appreciation of the problem must be respected.
In Prem Prakash V. Punjab University the appellant attempted to prove that the answers written by him in the answer book were his own written by him without the aid of any other source. Grover J. held that these are the matters on which the High Court cannot entertain a writ petition and it was for the University to arrive at its own conclusion. It was further held that the examinee must be adequately informed of the case against him and be given a full opportunity of meeting it, the extent and content of that information depends on facts of each case. No hard and fast rules can be laid down. If the Court is satisfied that adequate and sufficient opportunity was afforded to the examinee, it will not interfere with any prejudicial orders to him made by the University.

The supreme court refused to intervene in favour of the petitioner even though he succeeded in making out a case for condition of deficiency in attendance. In Ashok Kumar V. Himachal Pradesh University the appellant had deficiency of attendance in lectures and under the rules of the university the principal could condone the deficiency up to 15 lectures. But, as in this case, the deficiency exceeded

1. A.I.R. 1972 S.C. 1408
2. A.I.R. 1973 S.C. 221
this limit, it was beyond the jurisdiction or competence 
of the principal to condone. Mukherjee J. held that since 
the principal was the only authority who can condone, and 
since he could not condone the shortage, the appeal must 
fail. In Shri Krishan V. Kurukshetra University the 
Court held that once the candidate is allowed to take the 
examination, rightly or wrongly, then the statute empower­
ing the University to withdraw his candidature has sorked 
out and he cannot be refused admission subsequently for any 
infirmity like shortfall in attendance or lack of good moral 
character. The authorities should take care in scrutinising 
the admission form. Chandrachud J. in Punjab University V. 
Vijay Singh held that where the Syndicate had the power 
to appoint the standing committee and incidental power to 
fix quorum, and when notices of the meeting of committee 
were served on all the members, the decision of the committ­
ee disqualifying the respondent from the examination cannot 
be said to be without jurisdiction merely because only two 
members, constituting the quorum, and not all the three 
members, participated in the proceedings.

1. A.I.R. 1976 S.C. 376
2. A.I.R. 1976 S.C. 1441
In these appeals before the Supreme Court the common question involved was about the correct interpretation of Rule-27.1 (a) in Chapter-III of the Punjab University Regulations. There is also proviso in the said rules which says that the grace marks be also awarded to the candidates if by awarding such marks he can earn exemption or compartment in subject/s and part/s. The observation of the Hon'ble Supreme Court about the provision of the grace marks made in the rules is more important that the interpretation of the said provision. The Supreme Court in no uncertain way indicated their disapproval of the position obtaining in the Punjab University that in respect of post-graduate studies grace marks are being awarded.

We must indicate our disapproval of the position obtaining in the Punjab University that in respect of post-graduate degrees grace marks are being awarded. A
master's degree in any speciality is considered to be the highest qualification in the normal run. It is much necessary that such a degree should be conferred only on the deserving students who has subject and taken the conducted by the end of such study, the degree on the batermance. There should looking for grace marks and the sooner the abandons the practice works in respect of promotions the better it interest of higher country.
Framing of statutes, passing ordinances and making regulations are matters of subordinate legislation and is in the exclusive province of the University bodies and authorities. The Act itself might indicate the authorities to make the specified subordinate legislation. The legislative while passing the University Act might broadly lay down the policy and leave the working details to be chalked out by the University authorities or bodies.

The University by itself may not have power to make its subordinate legislation retrospective in nature. But from the law made by the legislative if the intention of the legislature to give retrospectivity effect to the statutes to be made by the University could be gathered even by implication, the University could pass its statutes etc. with retrospective effect.

If it is provided in the University Act that certain matter are to be regulated by a statute and not by an ordinance and University makes an ordinance concerning that matter instead of drawing up a statute, the ordinance becomes ineffective. Where under a University Acts discipline of students is to be regulated by a statute and not
by an ordinance, it was held that the ordinance made by the University to regulate discipline among the students was ineffective.

Ordinances:

Ordinances are generally made by the executive council in conformity with the University Act and to carry out its objects. The first ordinances are generally made by a committee appointed for this purpose and they came into force on such as the chancellor may direct. All the other ordinances are made by the executive. Regarding amendment of ordinance,

It was held in the case of Bansidhar V. University of Rajasthan, .. that

(a) The scheme of the University of Rajputana Act, 1946, was to place the question of admission to the University or its examination and courses of study, etc. primarily under the control of the Academic Council so that the Syndicate could not itself initiate or amend any proposal relating to those matters.

(b) Under section 30 (1) of the Act, the syndicate did not have the power to consider an ordinance unless a draft thereof had been proposed by the Academic Council.

1. A.I-R. 1963 Raj. 172
(c) Even if the resolution of the Academic Council was
taken to be a proposal for amending the ordinance,
it was still necessary under section 22- A of the
Act, before that proposal could have the effect
of amending the ordinance, that the syndicate
should have approved it after the resolution of the
Academic Council had been passed.

(d) Therefore, the requirement of the law for the
making of amendment to the ordinance has not been
fulfilled.

(e) If the intention of the University is to amend
the relevant ordinance and the regulation, it
is incumbent upon it to proceed to do so in the
regular manner indicated by the law and not
short circuit the same.

The ordinance can be repealed only after following
the procedure prescribed for enacting the ordinance as
laid down in the Act. The repeal of the ordinance is
the legislative function and therefore, the repeal can
also take place after following the same procedure for
making the ordinance. The University of Jodhpur by

1. University of Jodhpur V. Ram Chandra Sharma
2. Ibid;,
a new rule took away the erstwhile regulation 38 which was favourable to the petitioner. The Court held that there was no express or implied terms in the new rule as to whether it was to be given a retrospective effects, the new rule was only prospective.

Regulations:

The University authorities like Court, Academic Council and Executive Council make Regulations consistent with the University Act, statutes and ordinances which lay down the procedure to be observed at their meeting and for providing for all matters which by the University Act, statutes and ordinances are to be prescribed by Regulations.

In some university Acts, the Executive Council is empowered to modify or annul any Regulation made by any Authority or body other than Court. If any authority or body is not satisfied with such modification or annulment it may appeal to the University Court for a small decision in the matter.

1. Virendra Kumar V. University of Rajasthan,

Modification of Regulations:

In the case of Virendra Kapur V. University of Jodhpur,

the petitioner had joined the Bachelor of Engineering course in Engineering College, Jodhpur. This College was affiliated to the Rajasthan University at that time. In 1962, the University of Jodhpur was established, and the affiliation of the College was transferred from Rajasthan University to the University of Jodhpur.

In 1962, the petitioner appeared in the Second Year B. E. Examination and secured more than 55% of marks in aggregate but failed in one of the papers. According to Regulation 38 of the University of Rajasthan, he was entitled to keep term in the next higher class and to re-appear and pass in the paper in which he had failed.

As the petitioner fulfilled the conditions of the regulation, he was permitted to appear in the Supplementary examination held in August, 1963, but he failed again in the same subject. According to the regulation of the University, he was entitled to appear again in that subject and to keep attending the higher class as well.

Regulation 38 of the Rajasthan University had been adopted by the University of Jodhpur with certain modifications according to which the petitioner was required to revert to the Second Year bachelor class and attend classes in that class as a regular student.

It was contended by the petitioner that -

(a) he was governed by the Regulations which were in force when he joined the Engineering course in 1961, and
(b) the Regulations could not be changed to his detriment unless he had gone through the entire course, and
(c) the modification in the regulation introduced by the Jodhpur University did not repeal its counterpart as formulated by the Rajasthan University.

The petitioner, therefore, claimed that -

(I) he should be permitted to continue in the third year Bachelor of Engineering classes and be allowed to re-appear in the subject in which he had failed,
(II) he was entitled to do this in accordance with Regulation 38 of the University of Rajasthan as originally formulated.

It was held by the full Bench of the Rajasthan High court that -
1. The point of substance is that the petitioner had joined the University or taken an examination on the faith of a certain state of things, and the University as a statutory body was, and would be, under a duty to act up to that faith, and, if it commits a breach of that faith, then aggrieved party would have a legitimate cause of grievance of calling for redress.

2. The University must obey the rules and regulations by which it professes to be bound and not adversely affect the right of others.

3. Accept that old Regulation 38 stands, by necessary implication, repealed and replaced by the new Regulation, the latter should be given a prospective effect only.

It cannot be held from the language of the new regulation as enacted by the Vice-Chancellor that it is expressly or by necessary instruction made retrospective in its operation in the sense that it deprives candidate of the benefit of old Regulation.¹

1. A.I.R. 1954 Assam 65; A.I.R. 1952 Ori. 1;
A.I.R. 1971 Punj. 384 (DB) & A.I.R. Cur LJ 588
The position which emerges from the above decision is that -

(a) parties, having the benefit of advantageous system, acquired a valuable right or privilege and are entitled to be governed by the same;

(b) that right could not be interfered with by the subsequent notification to their disadvantage; and

(c) as a natural corollary therefore, if the opportunity which a party is entitled to, is the advantageous position which is not available, then the party is entitled to the beneficial or advantageous position which may be available in the facts and circumstances of the case.

Section 30 (1) of the Rajasthan University Act had vested the power in the Syndicate to make ordinances. However in matters concerning admission to the University or to its examinations, course of study, schemes of examination or attendance and appointment of examiners the ordinances could be passed only in terms of the draft of such ordinance proposed by the Academic Council. The Syndicate was not to have powers to amend any draft proposed by the Academic Council under the provision of sub-section (1) but might reject it or return it to the Academic council for reconsideration either in whole or in part, together with any amendments which the Syndicate may suggest. The Academic council had proposed to restrict admission to degree courses only to those regular and not private candidates who had passed
intermediate examination. This resolution was extended by the Syndicate to post-graduate courses, though there was no recommendation by the Academic Council to that effect. Thus the amendment made by the Syndicate adding a proviso to the existing ordinances was held to have no force. The Court had that the provision of section 30 (1) in so far as it laid down that the condition that the Academic council must have its say, the Syndicate was powerless to act except in conjunction with the Academic Council. The Court also rejected the claim that the Syndicate was superior to the Academic Council under the Act, because the Syndicate and the Academic council enjoyed coordinate powers. When such an amendment had been declared illegal on the ground that the Syndicate has passed the resolution without recommendation of the Academic Council a mere subsequent ratification by the Academic Council should not validate such amendment unless the Syndicate again approves the ratified draft.

When such procedure is not adopted, the amendment would still be invalid and any action taken thereby would not be in accordance with the law.

1. Sucha Singh V. University of Rajasthan,
   L.R. 1961 (11) Raj. 768.

2. Banshidhar V. University of Rajasthan,
LEGALITY OF UNIVERSITY RESOLUTION:

Thakorlal Pranlal Desai V/s State of Gujarat & Ors.

1994 (1) GLR, 481 1.

In this case the petitioners were the teachers in Government colleges. The Government Colleges are affiliated to the Gujarat University. There was no dispute that the petitioners were government servants. As such they will be governed by the Bombay Civil Services Rules framed under Article-309 of The Constitution of India. Rule-161 of the said Rules prescribed the age of superannuation of government servants of the category of petitioners as 58 years. The petitioners therefore could not be in service beyond the age of 58 years. However, the contention of the petitioners are that they were in the field of coveting the age of 60 for super-annuation on the ground that the Government Colleges, in which they were working were affiliated to the Gujarat University and as per the conditions of service prescribed by the authority under the Gujarat University Act, 1949 governing the Gujarat University the age of

1. 1994 (1) GLR, 481.
superannuation of teachers in the affiliated colleges would be 60 years. For this purpose the petitioners placed reliance on the resolution of the Executive Council of the Gujarat University dt. 20-8-77. But for affiliation to the Gujarat University the government colleges in which the petitioners were working service wise of their staff, teaching and non-teaching as have nothing to do with the Gujarat University. The affiliation is the link. The High Court in the L.P.A. rejected the aforesaid contention of the petitioners on the ground that in this case there was only a resolution of the Executive Council speaking on the subject and it would not be binding the affiliated colleges. The High Court further stated that the affiliated colleges are bound to comply with the conditions of service provided or prescribed by statutes, ordinance and regulations hence if affiliated colleges are to be made bound by any prescription concerning the conditions for service of their staff made by the Gujarat University it could be done only through the statutes, ordinances and regulations and not resolutions. As stated earlier, there was only a resolution and hence it would not be binding on the affiliated colleges and the contention of the petitioners was rejected.
Academic freedom has been defined by Russel Kirk as 'a security against hazards to the pursuit of truth by those persons' whose lives are dedicated to conserving the intellectual heritage of the ages and to extending the realm of knowledge' Professor R. M. MacIver says:

'Academic freedom is intellectual freedom within the institution of learning. Like any other kind of institutional freedom, it depends at once on the government of the institution and on the spirit that animates the government, i.e. the body of educators.

Academic freedom is the very essence of dynamism that must characterize the educational programme of any country.

Academic Freedom is the precious life-blood of a University. Without it a university must necessarily wither, fail to fulfil its high purpose, and impoverish society. The university exists for the preservation, the spread, and the creation of knowledge and must provide for intellectual leadership in a society. Knowledge does not grow merely by
a process of accumulation. Some of the old knowledge is discarded; some of it is restated and reinterpreted; some of it is a product of fresh exploration. The University is a 'community of scholars' and their true function 'is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself. In performing this function of what might appropriately be called creative and constructive dissent, the scholar in the university and the faculty as a whole must be free to pursue unhindered its main functions. 'Within the confines of a university, knowledge is its own end not merely a means to an end. The essence of the institution is epitomized by the spirit of free inquiry; to follow the argument wherever it may lead; to examine, question, dispute, or rework customary ideas and beliefs. To a scholar unchallengeable dogma and hypothesis are fundamentally incompatible, and the concept of an immutable doctrine is repugnant to the very life spirit of a university.'

Academic freedom, is the freedom of scholars and researches in the university and in all institutions of higher learning and centres of research to teach and publish the results of their inquiry without interference either from the institution or from outside interests. 'Experience has proved and probably no one would now deny'. said President Lowell, 'that knowledge can advance, or at least
can advance most rapidly, only by means of an unfettered search for truth on the part of those who devote their lives to seeking it in their respective fields, and by complete freedom in imparting to their pupils the truth that they have found. This has become an axiom in higher education, in spite of the fact that the searcher may discover error instead of truth, and be misled, and mislead others thereby. We believe that if light enough is let in, the real relations of things will soon be seen, and that they can be seen in no other way.... This freedom, the university must carefully nourish till it becomes an unquestionable and unchallengeable tradition; it must fight to preserve it from every form of interference, direct or indirect, open, covert, or clandestine. It must protect itself from outside pressures from whichever quarter it might come. It must zealously safeguard its operational autonomy and provide the atmosphere for the preservation of its traditionally recognized freedom the freedom to determine, on solely academic grounds, who would teach, what may be taught, how it shall be taught, and who may be admitted to study.

In the advanced countries of the world, the university teacher has a socially recognised position, and by virtue of his membership in the faculty has a right to speak and merit the attention of policymakers and society at large.
He is more than the average citizen in so far as he has both the leisure and the competence to speak on matters of high social import. It is the teachers's privilege to demand academic freedom not in the sense in which a citizen claims his civil liberties but as the essential condition for the role he is called upon professionally to play in society. This academic freedom covers not only those circumstances when he speaks on his own area of specialization but also those in which he feels it necessary to comment on any subject of public import. The physicist is entitled as much as the social scientists to speak on the consequences of atomic energy. If the university exists as the most important institution in society to facilitate the process of orderly change, it is the function of the teacher, whatever his area of specialization, to submit the ideas of his time to careful scrutiny. The University by virtue of its being the generator of critical and rational inquiry, presents, by its very nature, a challenge to the dominating ideas of philosophy of the society in which it functions. It constantly invites a sharp reaction in the name of stability and order from the government and administration and from leaders of groups and sections in society. But 'Intellect', as Carlyle said, 'is like light; from chaos it makes a world.' Rational and scientific thinking is the indispensable condition of ordered progress in any society and it is for this reason that the safeguards of academic freedom become vitally
important. The teacher must be encouraged to perform this function of the critic and live in meaningful contact with society. His social awareness must fertilize his theoretical studies (and this is more likely to be the case if he happens to be a social scientist) which in turn must facilitate the process of social transformation. Academic freedom, like all freedom, involves its own responsibilities, the violations of which present a perennial problem for university authorities. In the language of William Rainey Harper, the first President of the University of Chicago:

(1) An instructor in the university has an absolute right to express his opinion. If such as instructor is on an appointment for two or three years, and if during these years he exercises this right in such a way as to do himself and to the institution serious injury, it is of course the privilege of the university to allow his appointment to lapse at the end of the term for which it was originally made.

(2) If an officer on permanent appointment abuses his privilege as a professor, the university must suffer and it is proper that it should suffer. This is only the direct and inevitable consequence of the lack of foresight and wisdom involved in the
original appointment. Freedom of expression must be
given to the members of a university faculty, even
though it be abused; for,..... the abuse of it is
not so great an evil as the restriction of such
liberty.

(3) A professor is guilty of an abuse of his
privilege who promulgates as truth ideas or opinions
which have not been tested scientifically by his
colleagues in the same department of research or
investigation.

(4) A professor abuses his privilege who takes
advantage of a classroom exercise to propagate the
partisan views of one or another of the political
parties.

(5) A professor abuses his privilege who in any way
seeks to influence his pupils or the public by
sensational methods.

(6) A professor abuses his privilege of expression
when... he undertakes to speak authoritatively
(italics mine) on subject which have no relationship
to the department in which he was appointed to give
instruction.
A professor abuses his privilege of freedom of expression when he fails to exercise that quality ordinarily called common sense... A professor ought not to make such an exhibition of his weakness so many times that the attention of the public at large is called to the fact.

The dangers of outside attack constitute only one aspect of the threat to academic freedom. More serious because more insidious - are the dangers that lurk within the academic community itself. The faculty members could, through an all-absorbing conformism, destroy the atmosphere conducive to fruitful intellectual work. They might allow politics to dominate the university and destroy the academic element in every decision. They might water down standards in response to populist pressures or from the student body as a whole. When the university becomes a hotbed of intrigue and fraction, it ceases to perform its high function in society. The standard and morals of a university tend to reflect the character of the society in which it exists and a corrupt seeks to drag the university down to its own level. But there is nothing inevitable in this process and to break the vicious chain is the first condition of growth for an underdeveloped country. 'Universities must counteract', says President Lowell, 'rather than copy the defects of contemporary civilization.'
Academic freedom cannot be preserved by formal arrangements, rules, and regulations alone. It is a product of slowly built-up traditions and, like democratic traditions in any society, take a long time to be formed. In the intellectual history of the West there has been a tradition of untrammeled inquiry, and even then there have been periods when the university has been under a siege not to mention the local forays which it has had to repel from time to time. Academic freedom is the product of a whole range of complex social and cultural factors together with institutional arrangements. It is conditioned by the attitude of the Government and bureaucracy, of the political parties and of society in general; it is affected by the state of the economy and by the economic condition of the faculty. It survives in the ideals and modes of behaviour which have over a period of time become an indispensable part of the daily life of the community of scholars who constitute the university.

Any discussion of academic freedom in India either revolves around platitudinous statements or around particular instances and personalities. There is neither, in the first case, and attempt to strengthen these generalizations with concrete examples, nor, in the second case, any effort to relate these particular cases to a set of principles. Apart from this, any study of academic freedom in this country is bogged down by paucity of authenticated data. It is for this
reason that many believe that academic freedom is by and large a reality in Indian universities and colleges. This seems to be the view of the Education Commission too. The Report says:

In theory there is no serious restriction or curtailment of academic freedom, but we would like to see teachers practising more of it and vigorously. In fact, it is an inherent obligation of the academic community to play an active and positive role in critical examination, evaluation and evolution of concepts and policies over the entire spectrum of the society's concern and involvement. The universities have a major responsibility towards the promotion and development of an intellectual climate in the country which is conducive to the pursuit of scholarship and excellence, and which encourages criticism, ruthless and unsparing but informal and constructive. All this demands that teachers exercise their academic freedom in good measure, enthusiastically and wisely.

The Commission seems to create an impression of not only regarding the problem of academic freedom as of not much significance (there are just two paragraphs on academic freedom in a volume of nearly 700 pages) but of also suggesting that there are hardly any institutional barriers to academic freedom and all that is necessary is for the teachers to exercise this freedom enthusiastically and wisely'. It must be admitted, as
mentioned earlier, that there is no sufficient authenticated evidence of infringements of academic freedom in India. But it will be hasty to conclude that this is so because there is not the case that there are no infringements of academic freedom. Most of us are afraid to speak out. The veil of silence put on by teachers makes it difficult to get a full view of the situation. But more than fear, and more deadly than it, is the inertia of the teachers induced by an administrative system which is inimical to academic values. Caught up in a set-up not of their own making the teachers are gradually emptied of all academic virtues. Academic freedom ceases to be infringed because it is hardly exercised. And even where it is shown to be under attack, it is not felt so by most teachers. Habits of conformism and compromise are quick to harden and academic freedom is looked down upon not merely as irrelevant but even as a dangerous aberration.

Various grounds of justification have been offered for academic freedom. It has been justified on the ground that it is a Human Right, a part of the right of free expression. The ground is laudable but it is misleading to associate academic freedom with those rights which are generally justiciable. Academic freedom is not a justiciable right. No constitution recognises this right, and to identify it with the free expression is to add to the confusion. Moreover, as indicated earlier, academic freedom is not merely freedom of
expression exercised by the teacher. It has been further justified on utilitarian grounds. It has been argued that not only the scholar would gain by academic freedom but the community also would benefit by it. I do not deny the truth in this, nor do I deny its value. At the same time, however, the demand that institutions confer immediate or easily visualizable benefits upon a community can be a subtle weapon in the hands of self-appointed guardians of the community to bring in controls. I wonder in what meaningful sense the Academic of Plato can be regarded as having conferred 'benefit' on the Athenian community of its time. Its benefits have been to mankind, but it was very often at loggerheads with the community in which it was located. Academic freedom has also been justified on the ground that it is an intrinsic part of the mode of functioning of universities which seek to promote what has been described as education for democracy. This justification too is inadequate and has its dangers. First, no real academic institution can have a purpose which is overtly didactic, however noble. Academic freedom, no doubt, flourishes best in a democracy. But it is not the end of academic freedom. Universities educate for democracy only indirectly, by example and not by exhortation or doctrinaire teaching. Moreover, democracy is very often identified with a particular type of form of polity as defined by a political party. It may then result in a
university being used as a weapon of indoctrination into a particular way of life. But if by democracy one means the basic freedoms inherent in the individual, then there would be no objection to speaking of education for democracy, as the basic principles of academic freedom and university purposes are in harmony with these.

Academic freedom needs no greater justification than the fact that institutions of higher learning which seek to pursue truth need this freedom. For, in MacIver’s words:

"The genuine teacher is interested in knowledge for its own worthwhileness no matter what else it brings. The genuine student is interested in learning for its own sake no matter what utility it may also serve. In seeking knowledge he is seeking truth".

If the task before the universities of the West has been to preserve their autonomy against outside attack, the problem in India is one of creating a tradition well worth fighting for - a tradition of independent and critical inquiry and removing the hindrances to effective scholarship. The tasks and functions of the university are not widely understood and appreciated by the faculty itself. The Indian university originated as an examination
conducting body rather than as a community of scholars in the pursuit of truth. And even this limited function it has performed at a low level of competence. Teachers in Indian universities have for the most part been the purveyors of factual information and have been looked upon as instructors rather than as teachers. Only in very recent years has been an awareness of the function of the university as an instrument for social transformation. The universities grew up as agencies of the colonial bureaucracy and in their actual operation adopted the methods of work and the attitude of mind which were to be found in government departments.

Private enterprise established colleges in some parts of the country, particularly in Western India. There were, besides, institutions set up by missionaries of different denominations. All these institutions were affiliated to some university or the other. They retained their administrative autonomy; the university only laid down the standards for the examination and in more recent years regulated aspects of the teacher's salary and working conditions. As a result of this somewhat diverse activity in the field of education, colleges in India today abruptly of three types: the government college, the missionary college, the private college.
Conditions of work relevant to the freedom of the teacher vary in these three types of institutions. In government colleges, the administrative hierarchy is pronounced and crushes initiative, for all promotions are strictly on the principle of seniority. Many of the teachers in these colleges have gradually over the years, ceased to live up to the ideals of scholarship which they once cherished. Government rules in these institutions have not changed over decades. A college teacher must for instance, seek permission for what he writes and even if he wishes to speak in public he must seek prior consent. Teachers are deputed to conferences on the understanding that they will not participate in any controversial discussions. An independent minded teacher if he exists at all - is quickly transferred to some other institution in some out of the way place. The atmosphere of government colleges - in so far as one gathers from the teachers themselves - is singularly inimical to a life of scholarship, particularly in the social sciences. It is perhaps no accident that the research or academic output of teachers in government colleges is distressingly low even by Indian standards.

The missionary colleges present a different set of problems. In Jesuit institutions the distinction between those in orders, lay Catholics, and others is carefully
preserved. By convention, the top administrative positions, are held by the Fathers. Subjects which make room for heterodox interpretation, like philosophy or political thought, or world history are generally monopolized either by the Fathers or by lay Catholics. In one of the colleges, a teacher came into conflict with the nuns for mentioning 'population control' (not birth control) in a lecture in Indian Economics; in another, a professor of philosophy got into trouble for expressing unorthodox opinions in philosophy; and still another professor incurred the displeasure of the authorities by speaking highly of Thomas Hardy. Conditions in missionary institutions vary a great deal and it is, of course, unfair to generalize.

The administration of private institutions again present variations and in some of them the governing body consists of life-members. In these institutions, teachers in general feel insecure and take the line of least resistance. There is often a feeling that what is casually remarked in the teachers' common room is transmitted to the principal and there is an atmosphere of inhibition. Where the principal is himself the employee of the management, he tends to side with it and, in general, fails to take an academic view of problems. If the consideration of the management is merely one of getting a large number of students on the rolls, the principal tends to side with the students rather than with the teaches.
in conflict-situations, much to the detriment of discipline in the institution. An independent and academic minded principal comes sooner or later into conflict with the management. The most vicious feature of the private college is the subordination of academic interests to the commercial cupidity of the managing boards. Although the university supervises these institutions, supervision tends to be perfunctory and routine in character. Tutorials and seminars are held 'on paper', teachers are overloaded with work and given the maximum lectures and tutorials permissible under the rules; Libraries are mismanaged; in general, the teachers work at a disadvantage and not seldom in an atmosphere of insecurity. Academic work is neglected and the only criteria applied for a 'good' teacher are the high percentage of passes in his subject, his ability to maintain discipline over a rowdy class of a hundred and fifty; his general 'popularity' with the students and his willingness to work on college committees connected with sports, dramatics and other extra-curricular activities. Since a large number of his students must pass, a teacher is compelled to hold additional classes and dictate notes, particularly in undergraduate classes. The serious teacher concerned with expounding his subject in the light of his own study is ignored by the students as useless from the examination point of view. Nor does the management consider scholarship necessary in a college teacher. The serious
teacher is true left severely alone, with no appreciation from the management for whom one teacher is perfectly substitutable by another, often a profitable thing to do, for a new teacher can be appointed once again on the basic salary without increments. There are no formal restrictions on academic freedom in these institutions as in government colleges. But there is so little encouragement, either financial or even in terms of appreciation, and the teacher is so overworked, that he settles down to a routine and becomes at best a glorified schoolmaster.

The problem of academic freedom at the university level presents other aspects and the problem varies in different parts of India. As already noted, academic freedom is a product of social, cultural, and institutional factors, and in some parts of the country the atmosphere of the university is vitiated by local politics, factions, and intrigues within the university. Few universities escape entirely the ravages of academic politics. Doubtless a degree of politics is present in most universities of the world but in India it exists to a degree which prevents reform. Probably the greatest danger to academic freedom in India comes not from the outside—although these exist to a degree—but from within the university itself where the faculty has not grown intellectually alive to its responsibilities.
'Here, autonomy, the right to non-interference, has been used as a shield of the university caucus for its manipulative anti-educational activities. It has afforded protection to the group to vitiate the university atmosphere in which alone a caucus can flourish. Technically the autonomy of the universities is preserved, but the objective it is not intended to achieve, have been completely defeated. The vast majority of the teachers have little or no voice in the determination or shaping of the educational enterprise of the university. The academic independence, the right of each teacher to contribute his best to the success of this enterprise has been denied. In this denial of academic independence lies the denial of the autonomy of a university, albeit not by the government or the community but by the university authorities themselves. The university has lost its case for autonomy against the community.

A visitor to one of the universities of India recently described to the present writer the pall of fear that overhaunt the university. Its teachers moved and talked with caution, always afraid that their opinions would be quickly communicated to the Vice-Chancellor. Teachers could not attend seminars without the knowledge of the authorities and even of the head of the department. One of the teachers agreed to attend a seminar secretly on his way home during the vacation. This atmosphere of the concentration camp is not unknown in other universities in the country. Teachers are reluctant to criticize, academically, the views
of senior teachers either in their own university or outside, though fear that the latter might be on some selection-committee at some future date and might penalize them for their impertinence.

An atmosphere of sycophancy - singularly inimical to academic freedom - overhangs academic life in the country. Where seminars are conducted with financial help from some government agency like the university Grants Commission, there is a general feeling that one ought not to criticize the government. It must be added that the university Grants Commission has been open-minded and has welcomed criticism and suggestions from university teachers. What is singularly distressing is the spectacle of academic men voluntarily receding behind intellectual barbed wire, at a time when the country needs their help most. In a developing country, financial assistance to many research projects must come necessarily from the government or from one of its agencies but it has given rise to a habit of dependence on the bureaucracy. Research bodies, set up to carry out research on their own, often load their executive committees with officials with the result that the quality of research which emerges from these institutions is seriously impaired. At student functions and college associations, and even at seminars and conferences of learned bodies, it is the politicians and the officials who must be invited to inaugurater them. Seminars are even cancelled if a particular minister is not available to inaugurate it. A certain magnified
conception of the 'sarkar' has become part and parcel of the intellectual make-up of the academic mind in India and along with it goes, as its necessary accompaniment, the deadening conformism, which is the bane of intellectual life in this country.

Other inhibitory factors on academic freedom within the university may also be touched upon. Since the university began under initiative, they have been run as government departments, with its pronounced emphasis on the hierarchy with the pattern of the professor for one department; its outmoded rules of audit leave little room for departmental flexibility in expenditure and the subordination of the faculty to the administration of the university. The constitution of the existing university leaves little room for departmental autonomy even in academic matters. Teachers at the postgraduate level today do not enjoy the fourfold freedom referred to earlier. They do not determine the admission of students, their final rating and evaluation, nor even the methods of instruction. The formalities connected with syllabus change present innumerable difficulties and unconscionable delay. Nor do the departments themselves function democratically. Decisions are not syndicatively arrived at but by the head of the department in his individual capacity.
From the foregoing examination of cases under "four freedom" it can be concluded that supreme court has fairly well respected university's autonomy in matters of its internal administration and has adopted a cautious approach while it had to interfere in university's decisions. It has recognised university's competence in educational matters and if the university's action is honest, reasonable and responsible it has not insisted on formalism. In matters when natural justice is to be followed, the court has refrained from laying down any hard and fast rules and has allowed the university to have adequate flexibility in its autonomous affairs. It is only then when the university's action is discriminatory and violative of fundamental rights guaranteed to individuals and minority educational institutions that the court's approach is legalistic. But even such minority institutions are placed under regulatory jurisdiction of university. Even in quasi-judicial action the tendency of the court has been to generally uphold the university's decision. In matters within the exclusive jurisdiction of the university the court is not much inclined to intervene. However, when the university action is patently illegal being in violation of a mandatory rule it has struck it down. On the whole while exercising control over university autonomous affairs the court has adopted a supervisory or big brotherly role. In fact it has stepped forward as a protector and defender of university autonomy against assault upon it from the executive, legislative and administrative organs of the state. Thus in these principles one can find the "suitable
policy to help the maintenance of university autonomy" as is expected by the Education Commission.

So far as academic freedom is concerned it is a product of social and economic conditions and the fundamental problem is one of creating in the body of teachers a spirit of dedication to the ideals of the University and an awareness of their functions in a developing Indian Society. It is, firstly, a problem of morale with its implications of grades and working conditions, tenure and privileges. It is important to make the profession of teaching respectable and it cannot achieve respectability unless it is also socially recognized in material terms. It is also necessary to liberate the teachers from the fear of insecurity. Like all professions, the teachers as a body cannot hope to fight for their privileges unless they have a formal organization through which they can act. Every university in the country would do well to adopt a charter of academic liberties.

Guaranteed satisfactory working conditions, the problem is one of giving teachers a sense of involvement in decisions which affect educational problems in the country and a meaningful participation in the organization in which they function. 'To us in Britain it seems', writes Eric Ashby, 'that one other practical step which could be taken to preserve the tradition that university teachers are members of a society,
not employees, is at the level of departments. In most of our universities, departments have no official existence anyway: they do not appear in the charter or statutes. But they are nevertheless the loci of power. It is in the department, over departmental decisions, that the young university teacher can, if he is given the chance, play the most useful and effective part in academic government.

This calls for administrative and educational reform of a far-reaching character. Indian colleges and universities are known to be dictatorial and authoritarian in character with a highly concentrated system of decision making. It is hardly necessary to elaborate on the administrative maladies of educational institutions and university departments in India. If academic freedom is to be translated into organizational terms it is necessary to make the department in the university the centre for decisions in all matters connected with the academic programmes with which it is concerned. I have indicated elsewhere the possibilities of democratizing the hierarchical structure of the university department in India. I may here briefly mention the possibility of breaking down the more vicious aspects of administrative hierarchy in the university by making room for a number of professorships in the same department, making it unnecessary for the teacher either to move into another university for financial reasons alone or to dissipate his energies in other non-academic activities.
within the university. Important decisions relating to the admission of students, to rating and evaluation and other matters must be collectively decided within the departments. It is necessary, as a consequence of this, to internalize the examination system making the teachers of the department solely responsible.

It might be argued that the baffling complexities and variations of conditions within the country and within the same university - make any reform of a meaningful character difficult. The universities as they now exist are hardly capable of improving on their own and creating the conditions favourable for the growth of a healthy intellectual life. The cliques and the factions within the university will successfully sabotage any scheme of radical change which affects their own self-interests. Sir William Hamilton's remarks on the condition of British universities in 1834 has relevance to the educational maladies of present day India: "The history of Universities - in truth, of all human institutions, lay of clerical, proves, by melancholy experience that seminaries founded for the common weal, in the furtherance of sound knowledge, are, if left to themselves, if left without an external and vigilant, an intelligent and disinterested supervision, regularly deflected from the great end for which they were created, and perverted to the private advantages of those through whom that end, it was confidently hoped, would be best accomplished."
Incorporation of the University :-

The Chancellor, and the Vice-Chancellor and the Pro-Vice-Chancellor of the University and the members of the Court, the Executive Council, Academic Council of the University and also person who may hereafter become such officer or member so long as they continue to hold such office or membership are constituted a body corporate by name 'The Gujarat University'.

The University shall have a perpetual succession and a common seal and shall sue and be sued by the said name.

The University shall be competent to acquire and hold property, both movable and immovable, to lease, sell or otherwise transfer any movable or immovable property which may have been vested in or been acquired by it for the purpose of University and to raise loans upon the security of its assets and to contract and to do all other things necessary for the purpose of this Act.
Powers of the University:—

(1) to provide for instructions, including correspondence courses, teaching and training in such branches of learning and courses of study as it may think fit to make provision for research, advancement and dissemination of knowledge, and to conduct special undergraduate courses for talented students;

(2) to make such provision as would enable affiliated colleges, recognised institutions and approved institutions to undertake specialization of studies;

(3) to establish, maintain, take over by agreement and manage colleges, departments, centres and institutes of research or specialized studies;

(4) to organize common laboratories, libraries, museums and other equipment for teaching and research; to establish within the University area or outside that such field stations, specialized laboratories and other units for research and instructions as are necessary for the furtherance of its objects;
(5) to appoint or recognise persons as professors, readers or lecturers, or otherwise as teacher of the University;

(6) To guide teaching and research work in colleges, University Departments, University centres and recognised institutions;

(7) to institute degrees, diplomas and other academic titles and distinctions;

(8) to hold examinations or tests and confer degrees and diplomas on, and grant certificates, to persons who have pursued approved courses of study in the University or in an affiliated college, unless exempted therefrom, in the manner prescribed by the Statutes, Ordinances, Regulations and Rules and have passed the examinations or tests prescribed by the University, or have carried on research under conditions prescribed by the Statutes, Ordinances, Regulations or Rules;
(9) to confer honorary degrees or other academic distinctions in the manner laid down by Statutes;

(10) to grant such diplomas to, and to provide such lectures, instruction and training to, persons who are not enrolled students of the University, as may be determined by the Statutes, Ordinances, Regulations and Rules; to withdraw or cancel any degree, diploma or certificate conferred or granted by the University in the manner prescribed by the Statutes;

(11) to associate or admit educational institutions with or to the privileges of the University by way of affiliation, recognition or approval;

(12) to create such teaching administrative and other posts, as the University may deem necessary from time to time and to make appointments thereto;

(13) to institute professorships, readerships, lecturerships and other posts of teachers required by the University,

(14) to withdraw or modify either in whole or in part, affiliation, recognition or approval of educational institutions;
(15) to submit to the State Government proposals for conferment of autonomy on any affiliated college or a University college, or a University Department or a recognized institution entitling it to privileges in the matters of admission of students, prescribing the courses of study, imparting instruction, teaching and training in the courses of study, the holding and conduct of examinations and the powers to make necessary rules for the purpose;

(16) to recommend to the State Government withdrawal of autonomy conferred on any affiliated college, recognized institution or a University College or Department;

(17) to inspect colleges, recognized institutions and approved institutions and to take measures to ensure that proper standards of instruction, teaching and training are maintained in them and that adequate library and laboratory provisions are made therein;

(18) to lay down and regulate the salary scales, allowances, and other conditions of service of the members of the teaching, other academic and non-teaching
staff of the University;

(19) to lay down and regulate the salary scales, allowances and other conditions of service of the members of the teaching, other academic and non-teaching staff in the affiliated colleges and recognized and approved institutions;

(20) to provide for the establishment and recognition of Students' Unions or associations of teachers, academic staff or other employees of the University affiliated colleges and recognized institutions;

(21) (a) to control and co-ordinate the activities of, and to give financial aid to, affiliated colleges and recognized and approved institutions, and

(b) to regulate the fees to be paid by the students in affiliated colleges, and recognized and approved institutions;

(22) to hold and manage trusts and endowments;

(23) to institute and award fellowships, travelling
fellowships, scholarships, studentships, medals, prizes
and other awards;

(24) to make special provision for the spread of
University education among classes and communities
which are educationally backward;

(25) to lay down courses of study to meet the requirements
of rural planning, development and reconstruction and to
provide for instruction, teaching and training such courses;

(26) to make special provision for disseminating
knowledge and promoting arts and culture;

(27) to fix, to demand and to receive or recover such
fees and other charges as may be prescribed by Ordinances;

(28) to establish, maintain and manage hostels; to
recognize hostels not maintained by the University, to
inspect such hostels and to withdraw recognition therefrom;

(29) to co-ordinate, supervise, regulate and control
the residence, conduct and discipline of the students
of the University and to make arrangements for promoting
their health and general welfare;
(30) to take disciplinary action against the students of the University and to impose such punishments upon them as may be deemed fit for breach of discipline or misconduct, within or outside the University, including the use of unfair means at an examination or in relation thereto by themselves or by any other persons or abatement thereof;

(31) to conduct, co-ordinate, supervise, regulate and control post-graduate teaching and research work in the University Department, affiliated colleges and institutions recognized or approved by the University;

(32) to co-ordinate, supervise, regulate and control the conduct of under-graduate teaching and instruction in the affiliated colleges and to undertake the same in University colleges;

(33) to make provision -

(a) for Continuing Education, Adult Education, Extra-moral teaching, Extension Services and other recognized educational activities;
(b) for physical education, National Cadet Corps, National Service Scheme, National Sports Organisation, Military training and such other recognized activities;

(c) for Students' Unions; and

(d) for sports and athletic activities;

(34) to co-operate with any other universities, authorities or associations or any other public or private bodies in such manner and for such purposes as the University may determine;

(35) to institute and manage -

(a) Printing and Publication Department,

(b) University Extension Boards,

(c) Information Bureau, and

(d) Employment Bureau

(36) to make arrangements for training for competitive examinations for recruitment of services under the Union and State Governments;
(37) to promote the development of the study of Gujarati and Hindi (in Devnagari script) and the use of Gujarati or Hindi (in Devnagari script) or both, as the media of instruction and examination;

(38) to acquire, hold, manage and dispose of any property movable and immovable, including trust or endowed property within or outside the University area, for the purposes or objects of the University and to invest any funds representing such property in such manner as the University thinks fit;

(39) to raise public loans on the security of the assets of the University for the purposes of the University, with the previous approval of the State Government;

(40) to enter into any agreement for the incorporation in the University or any other institution and for taking over its rights, properties and liabilities and for any other purpose not repugnant to this Act;

(41) to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be
requisite in order to further the objects of the University and generally to cultivate and promote Arts, Science and other branches of learning and culture.

FUNCTIONS AND POWERS OF THE UNIVERSITY:


Conferring of degrees and diplomas is main function of University. Manner of holding examination is left to Academic Council and Executive Council. No blanket power of total exemptions from examination or cancellation.

Gujarat University has the implied power to prescribe for the purposes of higher education a number of media of instructions or even a sole medium of instruction of the exclusion of others; Clause-27 confers an additional power on the University to promote the development of the study of Gujarati or Hindi in Devnagari script and the use of them as medium of

* 1981 GLR, 934 = AIR, 982, Guj. 37.
instruction and examination. This is a composite power. It enables the University not only to develop the study of that language but also to use them, as media of instruction.

As the University has got powers to provide for the exclusive medium and also to promote for the use of said two languages as media of instructions the Senate is authorised to make statutes providing for the former in exercise of its powers under Section-18(1)(i) and for the latter under Section-18(1)(xiv). As the promotion of the development of the study of Gujarati and Hindi in Devnagari script, the Senate, the Syndicate and the Academic Council may make the requisite law in exercise of the appropriate powers conferred upon them.

JURISDICTION AND ADMISSION TO PRIVILEGES:

(1) No educational institution situate within the University area shall, save with the sanction of the State Government, be associated in any way with, or seek admission to any privileges of, any other University established by law.
(2) Any such privileges enjoyed from such other University before the date on which this section comes into force by any educational institution situate within the University area shall be deemed to be withdrawn with effect from such date.

(3) With effect from such date all educational institutions admitted to the privileges of the University of Bombay and situate within the University area shall be deemed to be admitted to the privileges of the University, and the University shall, as far as may be possible and consistent with this Act, admit such institution to all such privileges as they had from the University of Bombay immediately before such date.

(4) Any educational institutions in the State of Gujarat situate outside the University area or in other territories outside the State may subject to such conditions and restrictions as the University and the State Government think fit to impose, be admitted to the privileges of the University.
The State Government may, by notification in the Official Gazette, direct that this Act shall cease to apply to any area included in the University area and on such date as may be specified in the notification; and on the from the said date all the educational institutions situate within the said area shall cease to be associated with and to enjoy the privileges of the University.

1. Gujarat University and Anr.

2. State of Gujarat ...Applicants

V/S.

1. Shri Krishna Rangnath Mudholkar & Others ...Respondents

1. Principal, St. Xaviers College, Ranchi

2. Council for the Indian School Certificate Examination & Ors. ...Interveners


Constitutional validity of the Statutes—Statutes 207, 208 and 209 contravene Articles 29(1) and 30(1) of the Constitution. Persons whose rights, as distinct from infringements of fundamental rights, are affected can maintain petition under Article—226. Threat to right is sufficient. Actual infringement not necessary.

UNIVERSITY OPEN TO ALL IRRESPECTIVE OF SEX, RELIGION, CLASS, CREED OR OPINION:

(1) No person shall be excluded from any office of the University or from membership of any of its authorities or from admission to any degree, diploma, or other academic distinction or course or study on the sole ground, of sex, creed, class, religion, belief or political or other opinion;

Provided that the University may, subject to the previous sanction of the State Government, maintain, affiliate or recognize any institution exclusively for women or reserve for women or member of classes and communities which are educationally backward places for
the purposes of admission as students in any institution maintained by the University.

(2) It shall not be lawful for the University to impose on any person any test whatsoever relating to sex, race, creed, class, religious belief or profession of political or other opinion in order to entitle him to be admitted as a teacher or a student or to hold any office or post in the University or to qualify for any degree, diploma or other academic distinction or to enjoy or exercise any privileges of the University or any benefaction thereof.

INSPECTION AND INQUIRY:

(1) The Chancellor shall have the right to cause an inspection to be made by such person or persons as he may direct of the University, its buildings, laboratories, libraries, museums, workshops and equipment; of any institution, college or hostel maintained, recognized by, or affiliated to, the University, of the teaching and other work conducted by the University, and of the conduct
of examination held by the University; and to cause an inquiry to be made in respect of any matter connected with the University. The Chancellor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made and the University shall be entitled to be presented thereat.

(2) The Chancellor shall communicate to the Executive Council and to the Court his views with reference to the results of such inspection or inquiry and shall, after ascertaining the opinion of the Executive Council and the Court thereon, advise the University on the action to be taken.

(3) The Executive Council shall report to the Chancellor such action, if any, as it has taken or may propose to take upon the results of the inspection or inquiry. Such report shall be submitted with the opinion of the Court thereon and within such time as the Chancellor may direct.

(4) Where the Executive Council does not within a reasonable time take action to the satisfaction of the Chancellor, the Chancellor may, after considering any
explanation furnished or representation made by the Executive Council issue such directions as he may think fit and the Executive Council shall comply with such directions.

(5) The State Government may whenever it deems fit cause a like inspection or inquiry to be made in the manner described in sub-sections (1) to (3) and shall have, for the purposes of such inspection or inquiry, all the powers of the Chancellor under the said sub-sections.

OFFICERS OF THE UNIVERSITY:

The following shall be the officers of the University, namely:

(i) The Chancellor,

(ii) The Vice-Chancellor,

(iii) The Pro-Vice-Chancellor,

(iv) The Deans of Faculties,

(v) The Registrar,

(vi) The University Librarian, and

(vii) Such other officers in the service of the
University as may be declared by the Statutes to be officers of the University.

THE CHANCELLOR:

The Governor of Gujarat shall be the Chancellor of the University. The Chancellor shall, by virtue of his office, be the head of the University and the President of the Senate and shall, when present, preside at meetings of the Senate and at any convocation of the University. The Chancellor shall have such other powers as may be conferred on him by this Act or the Statutes.

The Chancellor is the highest officer of the University. In the Central Universities it is the Chancellor who is the Vice-President of India. In the State Universities the Chancellor is the Governor of the State. The Chancellor is used to be a non-controversial dignity commanding over from all concerned. However, in the recent years due to the political involvement of the Governors, the Chancellor is not receiving that respect. In Tamilnadu, the Chief Minister and the Governor i.e. the Chancellor could not see eye to eye on several matters with the result that the Governor has ceased to hold this office. It is this process
of political indifference that the Governor can continuously play the role of giving the healing touch between the University and the State. But if there is no co-ordination between the Chancellor i.e. the Governor and the State, there will be grievous blow on the autonomy of the University.

In the Gujarat University, the Governor i.e. the Chancellor by virtue of his office remains present at the meeting of the Senate and at the time of convocation of the University.

Under Section-7, the Chancellor has powers to the inspection in the affairs of the University or its colleges, or hostels or for the conduct of the examinations, but in all such cases he has to give notice to the University, to cause such inspection or inquiry. The University has a right to be conveyed conclusions of the inspection. The Chancellor may give his conclusions as he may deem fit. The Executive Council has to comply with such directions.

The Chancellor has powers to nominate persons on the Senate and after the selection of the members to chose as Vice-Chancellor. Despite of these powers conferred
on the Vice-Chancellor these provisions are not generally invoked in the working of the University. Vice-Chancellor is the principal of Executive and Academic Council of the University. He is appointed by the Selection Committee or by a search committee. The constitution is laid down in the Act or the Statute framed thereunder under Section-10 of the Gujarat University Act according to which the Vice-Chancellor is appointed by the State Government amongst the three persons.

POWERS OF THE VICE-CHANCELLOR:

(1) The Vice-Chancellor shall be the principal executive and academic officer of the University and shall, in the absence of the Chancellor, preside at meeting of the Senate and any convocation of the University. He shall be an ex-officio member and the Chairman of the Executive Council and of the Academic Council. He shall be entitled to be present, with the right to speak, at any meetings of any other authority or body of the University, but shall not be entitled to vote thereat unless he is a member of that authority or body.
(2) The Vice-Chancellor shall have power to convene meetings of the Senate, the Executive Council and the Academic Council. He may delegate this power to any other officer of the University.

(3) It shall be the duty of the Vice-Chancellor to ensure that this Act, the Statutes, Ordinances and Regulations are faithfully observed and he shall have all powers necessary for this purpose.

(4)(a) In any emergency which, in the opinion of the Vice-Chancellor requires that immediate action should be taken, he shall take such action as he deems necessary and shall at the earliest opportunity thereafter furnish information regarding his action to such officer, authority or body as would have in the ordinary course dealt with the matter.

(b) When action taken by the Vice-Chancellor under this sub-section affects any person in the service of the University such person shall be entitled to prefer an appeal through the said officer, authority or body to the Executive Council within fifteen days from the date on
which action is communicated to him.

(5) The Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, dismissal, suspension and punishment of the persons in the service of the University or teachers of the University or regarding the recognition or withdrawal of the recognition of any such teacher and shall exercise general control over the affairs of the University. He shall be responsible for the discipline of the University in accordance with this Act, the Statutes and Ordinances.

(5) (a) Subject to the provisions contained in sub-section (4) and notwithstanding anything contained in section (4) and notwithstanding anything contained in sub-section (5) where the Vice-Chancellor after making such inquiry as he deems fit is of opinion that execution of any order or resolution of an authority specified in or declared under section 15, or the doing of anything which is about to be done or is being done by or on behalf of the University:-

(1) is inconsistent with the provisions of this Act or of any statute, ordinance, rule or regulation, or
(ii) is not in the interest of the University, or

(iii) is likely to lead to breach of peace; he may forward
a copy of the order or resolution or as the case may be,
refer the doing of the thing, with a statement of reasons,
to the authority which made the order or passed the
resolution or proposes to do the thing for reconsideration
by that authority as to whether the said order or resolution
may not be rescinded or revised or modified in the manner
stated by him, or the doing of the thing be refrained from.

(b) Where the authority after reconsideration revises or
modifies the order or the resolution in the manner stated
by the Vice-Chancellor, then notwithstanding anything
contained in clause(s) such revised or modified order or
resolution shall revive from the date of such revision or
modification.

(c) Where the authority revises or modifies the order
or resolution in such manner as is inconsistent with the
manner stated by the Vice-Chancellor, the Vice-Chancellor
shall refer the matter to the State Government for its
decision.
(d) The State Government may, on such reference, being made, revise or modify the order or resolution or direct that the order or resolution shall continue to be in force with or without modification permanently or for such period as it may specify;

Provided that the order or resolution shall not be revised or modified continued by the State Government without giving the concerned authority a reasonable opportunity of showing the cause against the order.

(e) The order, resolution or, as the case may be, the doing of thing, shall remain in abeyance from the date of the action of the Vice-Chancellor of forwarding the copy of the order or resolution of making reference under clause (a) till the date of the order of the State Government under clause (d).

(6) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes, Ordinances and Regulations.

Sonal V. Shah V/s. Gujarat University. AIR,1982, Guj.37.¹

¹ AIR, 1982, Guj.37.
It is a general proposition of law that if any power is conferred on a public authority to enable that authority to discharge its duties to a citizen or to the public at large, that authority cannot refuse to exercise those powers on the specious plea that to exercise the power or not to exercise the power is within its discretion or sweet will. In procedural or peripheral matters, such enabling provisions are to be treated as discretionary, but, in matters of substance, in matters of public concern, they are to be treated as the mandate of law that cannot be escaped by involving claim that power is an enabling one which power may or may not be yielded by the authority concerned. The University have a useful social purpose to be served. There are provisions of rules and regulations which lay down that acquisition of a particular kind of degree is a requisite qualification for a person to be qualified for a certain public appointment or for a certain public assignment. Recognised University degrees and diplomas, therefore, have to serve public purpose apart from serving the individual needs of examinees or candidates. A university cannot arrogate to itself the claim that it
will not conduct examinations and will not confer degrees and
diplomas or grant any certificates. The power is not a
matter of its sweet will or discretion or caprice but it
is a matter of duty to be discharged within certain frame
work.

The Vice-Chancellor under emergency power granting
mass promotion - Executive Council and Academic Council
ratifying it when the mass promotion is given, the validity
of such promotion and the main function of the University,
the only acknowledged mode of testing the acquisition of
instruction or knowledge and training is the examination.
If that is done away with, despite insistence on them in
the Act, itself it is to be held that the University by
giving on platter the option to the students to appear or
not at these examinations, has abdicated its necessary and
compulsory functions.

Punjab University, Chandigadh & Anothers V/s. Sunder

When the court finds that even reputed academicians
are remiss in technical decisions and have taken decision
against the provisions of law and without there being any

1. AIR, 1984 S.C. 919
provision of law enabling to grant mass promotion, it becomes inevitable to say that they had fallen from their high standards and had become time-servers for the time being. After all, law is not the respector of personalities.

As far as the conduct of examinations is concerned, it is within the purview of the Executive Council. As far as the maintenance of the standards of teaching and maintenance of the standards of the examinations is concerned, it is the function of the Academic Council as per Section-22(1) of the Act. When both the Executive Council and the Academic Council had taken the decision of the Vice-Chancellor as the basis of their subsequent actions or decisions, then it can not be said that the power is ultra-vires or that the Vice-Chancellor had purported to act without any authority of law.

There are enough guidelines in Section-11(4) as to when those powers can be exercised by the Vice-Chancellor. The guidelines are the existence of the emergency as understood by the Vice-Chancellor and reporting the matter either to the Executive Council or to the Academic
Council in whose sphere the subject matter of the Vice-Chancellor's decision falls.

PRO-VICE-CHANCELLOR:

(1) The Pro-Vice-Chancellor shall be appointed by the State Government from amongst three persons recommended by the Vice-Chancellor.

(2) The Pro-Vice-Chancellor shall hold office for a term of three years and he shall be eligible for reappointment to that office for a further term of three years only; Provided that no person appointed as a Pro-Vice-Chancellor shall continue to hold his office as such after he attains the age of 65 years.

(3) The Pro-Vice-Chancellor shall be a whole time salaried officer and his emoluments and conditions of service, shall be such as shall be determined by the State Government; Provided that the emoluments and conditions of service of the holder of such office shall not during currency of the term of the holder of that office, be varied to his disadvantage without his consent.

(4) The Pro-Vice-Chancellor shall be the principal
inspecting officer of the University and shall exercise such of the powers and perform such of the duties of the Vice-Chancellor as the Vice-Chancellor may either specially or generally confer or impose on him with the approval of the Executive Council.

(5) The Pro-Vice-Chancellor shall, in the absence of the Vice-Chancellor, or in the event of his being unable to perform the duties of his office, exercise all the rights and powers and discharge all the functions and duties of the Vice-Chancellor.

(6) The Pro-Vice-Chancellor shall preside:

(a) in the absence of the Chancellor and the Vice-Chancellor at the meetings of the Senate; and

(b) in the absence of the Vice-Chancellor at the meetings of any other authority of the University or a committee thereof.

THE REGISTRAR:

The Registrar shall be a whole-time salaried officer and shall act as the Secretary of the Senate of the Executive Council and of the Academic Council. He shall
be appointed by the Executive Council in accordance with the recommendation made by the Selection Committee to be constituted by the Executive Council in the manner prescribed by Statutes and his qualifications, emoluments and conditions of service shall be determined by such Statutes. He shall exercise such powers and perform such duties as may be prescribed by the Statutes, Ordinances and Regulations.

OTHER OFFICERS:

The powers and duties of the officers of the University referred to in clause (vi) of Section 8 shall be such as may be prescribed by the Statutes, Ordinances and Regulations.

Authorities of the University

Authorities of University: The following shall be the authorities of the University, namely:

(i) The Court,
(ii) The Executive Council,
(iii) The Academic Council,
(iv) The Faculties,
(v) The Boards of University Teaching and Research,
(vi) The Boards of Studies,
(vii) The Board of Extra-Mural Studies,
(viii) The Board for Students' Welfare,
(ix) The Board for Hostel's Management,

(x) The Academic Planning Board,

(xi) Such other bodies of the University as may be declared by the Statutes to be the authorities of the University.

The Court:

(1) The Court shall consist of the following members, viz:

**Class I Ex-Officio Members**

(A) University Officers.

(i) The Chancellor,

(ii) The Vice-Chancellor,

(iii) Ex-Vice-Chancellors of the University residing in the State,

(iv) The Pro-Vice-Chancellor,

(v) The Registrar,

(vi) The University Librarian;

(B) Others:

(i) The Directors of Higher Education, or an officer not below the rank of a Joint Director of Higher Education designated by such Director;

(ii) The Director of Technical Education, or an officer not below the rank of a Joint Director of Technical Education designated by such Director;
(iii) The Director of Health and Medical Services and Medical Education or an officer not below the rank of a Joint Director of Health and Medical Services and Medical Education designated by such Director;

(iv) The Director of Employment and Training, if any, or an officer not below the rank of a Joint Director of Employment and Training designated by such Director;

(v) The Director of Food and Drugs Control Administration, or an officer not below the rank of a Joint Director of Food and Drugs Control Administration designated by such Director;

(vi) The Chairman of the Gujarat Secondary Education Board.

Class-II Ordinary Members

(A) Elected as specified below:

(i) two members by the Gujarat Legislative Assembly from amongst its members;

(ii) one member by each of the following bodies from amongst its members, namely:

(a) The Municipal Corporation of the City of Ahmedabad,

(b) The Chamber of Commerce, Ahmedabad,

(c) The Registered Trade Unions in the University area in the manner specified in the Statutes;
(iii) one member by Head Masters of Secondary Schools within the University area from amongst themselves in the manner specified in the Statutes;

(iv) one member by secondary teachers of high schools excluding head masters thereof within the University area from amongst themselves in the manner specified in the Statutes;

(v) one member each elected facultywise by registered graduates in each of the Faculties from amongst themselves in the manner specified in the Statutes;

Provided that the number of such members shall not exceed ten and if the number of Faculties exceeds ten, the Faculties shall be suitably grouped in ten groups in the manner specified in the Statutes for the purpose of electing ten such members;

(vi) one member each by

(a) the Bar Council of the State of Gujarat from amongst its members,

(b) the Gujarat Medical Council from amongst its members,

(c) the Institute of Engineers (India) Gujarat Centre from amongst its members;

(vii) three members by the governing bodies of colleges affiliated to the University in the manner specified in the
Statutes, as follows:-

(a) one member by the governing bodies of such colleges situated within the limits of the City of Ahmedabad as constituted under the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949) and

(b) two members of the governing bodies of such colleges situated outside the limits of the City of Ahmedabad;

(viii) forty-two members of teachers of affiliated colleges (excluding Deans of Faculties and Principals of Colleges), of whom fourteen shall be teachers having teaching experience of less than ten years in a college or in any University established by law in the State, from amongst themselves in the manner specified in the Statutes;

(ix) such number of Principals of affiliated colleges, not exceeding thirty five, as may be fixed in the proportion of one for every four Principals of such colleges, from amongst themselves in the manner specified in the Statutes.

(x)(i) twelve students to be elected in the manner specified in the Statutes, as follows, namely:-

(a) one member each elected by post-graduate students of each of the Faculties of Arts, Science and Commerce from amongst themselves;
(b) one member each elected by undergraduate students of each of the Faculties of Arts, Science and Commerce from amongst themselves,

(c) five members elected Facultywise from amongst themselves by post-graduate and under-graduate students of each of the Faculties other than the Faculties of Arts, Science and Commerce;

Provided that the number of such Faculties exceeds five, the Faculties shall be suitably grouped in five groups in the manner specified in the Statutes for the purpose of electing five such members,

(d) one member elected by the Gujarat University Vidyarthi Sansad from amongst those members of the Sansad who are students;

Provided that where a student has been a member for any two academic years, he shall not be eligible for re-election thereafter,

(ii) one representatives of the members of non-teaching staff of the University, affiliated colleges, recognised institutions and approved institutions to be elected in the manner specified in the Statute;

Provided that for the purpose of election of
ordinary members a person entitled to stand as a candidate or to vote in more than one constituency shall before such date as may be appointed by the Statutes, elect the constituency from which he desires to stand as a candidate or to vote at the election and shall not be entitled to stand or vote in more than one constituency.

(C) Two members to be elected in the manner specified by the Statutes from amongst themselves by donors each donor donating money or property of the value of not less than such sum of rupees as may be specified in the Statutes:

(a) to, or for purposes of, the University, or
(b) to, or for purposes of, a college or institution affiliated to or recognized by the University, irrespective of whether the donation was made before or after such affiliation or recognition;

Provided that the right of electing members on the Court shall not extend beyond the period of twenty years from the date of acceptances of such donation by the college, institution or, as the case may be the University.

Explanation: For the purpose of this paragraph, the value of property the market value of the property at the date
of acceptance and the decision as to market value shall
rest with the Executive Council and shall be final.

(D)(i) Twelve members nominated by the Chancellor as
follows; namely -

(a) four Deans of Faculties,
(b) three Professors of University Departments,
(c) three University teachers other than Professors of
University Departments;
(d) two heads of recognised institutions

Provided that the nomination of such numbers by
the Chancellor shall be made by rotation from amongst the
class of persons eligible for nomination.

(ii) eight members nominated by the Chancellor from
amongst distinguished educationalists, social workers,
representatives of backward communities, women and such
other class of persons.

(2) The term of office of elected members other than
those referred to in clause (i) of paragraph (B) in
Class-II and of the nominated members referred to in
Paragraph (D) in Class-II shall be five years and of the
members referred to in clause (i) of paragraph (B) in
Class-I shall be for one academic year;
Provided that every person elected under paragraph (A) or paragraph (B) in Class-II or nominated under clause (i) of paragraph (D) in Class II shall continue to hold office of a member of the Court so long only as he is a member, of the electing body or, as the case may be, bodies or is a Principal or a head master or a secondary teacher of a high school or a teacher or a student, or Dean of Faculty or Professor of University Department or University teacher or a Head of a recognized institution, as the case may be.

N.M. Rajguru V/s. Guj.University, 1984 (1) GLR,349

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Scheme of election to the teacher's constituency under Clause (v) of Section 16(1) one member each is to be elected facultywise by registered graduates in each of the faculties from amongst themselves. Evidently each faculty is a separate constituency with the modification that if the number of faculties exceeds ten, the faculties are to be suitably grouped in ten so that the sum total of representative of registered of the various faculties does not exceed 10. When we look at clause (viii) there is reference to facultywise representation in the Act, but only representation for 42 numbers by teachers of affiliated colleges from 1984 (1) GLR,349.
amongst themselves. Similar is the case with clause (ix) which envisages one constituency of Principals of affiliated colleges. The number of members of that constituency is to be fixed in the proportion of one for every four Principals, but not exceeding 35 in all. Therefore there is a clear indication in the section itself as to what a constituency would be where a specific faculty is to elect a member or members independently, in the sense independent of members of other groups. Each faculty then forms a constituency. But in the case of teachers, the 42 members constitute one constituency under the Act.

Applicability of other provisions by analogy -

When the Statutes adopt a system of proportional representation by single transferable vote it must necessarily envisage contingencies where despite the system being adopted there may have to be fresh elections such as by reason of vacancies arising by death, resignation and the like. The fact that the statutes envisage these situations and provide for elections to some seats or other when such situations arise does not in any affect the character of proportional representation system for these are in-built provisions in
the Act and it is subject to those provisions that the system itself is envisaged. To secure representation in such contingencies as are envisaged in Section 55(1)(2) of the Act as also Section 16(2) of the Act provision has been made in the Act itself. So is the case with a fresh election where a member who stands for more than one seat and gets elected for more than one has to give up one or the other as contemplated by Statute 172. By analogy this cannot be extended to all situations, for it would be reading into the enactment provisions which are not there. In other words merely because statute provides for certain specified situations in which there could be fresh election to one or other of the seats in the 42 members constituency and that is required because of the exigencies of the situation in the nature of the system itself, it cannot be said that even where the statutes does not provide for splitting up the 42 member constituency it may be so split up and election held more than once particularly when the consequence is what we have discussed above.
Constitutional powers and functions of the Senate of University of Gujarat.

Section-15 of the Gujarat University Act, 1949 provides for a court as the highest authority, of the University consisting of the following:-

(1) Ex-officio members and ordinary members.

(2) University officers and others - elected members and students.

It will be seen that because of the large membership the Senate can not interfere very much in the management of the University. Further more because of the election of staff members, more particularly teachers and students when the problem arises. It is of course a matter of status to become a member of Senate in many universities. Huge amounts are spent in election. In this respect serious thinking is required that either the highest body is wholly nominated or election element is reduced to the limit.

Under Section-17 meeting of the Senate is fixed by the Chancellor once a year known as annual meeting. Under Section-17(2) Vice-Chancellor may upon a resolution in writing signed by not less than 25 members can call a meeting of the Senate.
Powers and Functions of the Senate:

Section-18 of the Act gives some important powers to the Senate as under:-

(1) to consider and to decide matters of general policy relating to the progress and development of the University;

(2) to suggest steps to be taken by the authorities of the University in pursuance of the policy decided upon by the Senate;

(3) to suggest the establishment of new areas of teaching and research;

(4) to institute, confer or grant on the recommendations of the Executive Council and the Academic Council, degrees, diplomas and certificates;

(5) to confer, on the recommendations of the Executive Council and the Academic Council, honorary degrees, or other academic distinctions;

(6) to make, amend or repeal Statutes;

(7) to consider, record, cancel or refer back, but not amend, Ordinances,

(8) to consider and pass resolutions on the annual reports, annual accounts and financial statements,
(9) to consider the annual audited accounts and to make suggestions thereon, if any.

(10) to raise, on the recommendation of the Executive Council public loans on the security of the assets of the University, with the previous approval of the State Government;

(11) to elect office-bearers and authorities as provided in this Act and the Statutes;

(12) to elect members to the various authorities of the University as prescribed by the Statutes;

(13) to make provision relating to the use of Gujarati or Hindi (in Devnagari script) or both as media of instruction and examination;

(14) to institute on the recommendations of the Executive Council and the Academic Council, any Departments and Faculties in the University;

(15) to submit to the State Government, the recommendation of the Executive Council, proposals for conferment of autonomy on any affiliated college or a recognized institution or a University Department or University college, entitling it to privileges in the matters of admission of students prescribing the courses of study, the
holding and conduct of examinations and the powers to make necessary rules for the purpose;

(16) to recommend to the State Government withdrawal of autonomy conferred on any affiliated college, recognized institution or a University college or Department;

(17) to sanction the transfer of any immovable property on the recommendation of the Executive Council;

(18) to exercise such other powers and perform such other duties as are or may be conferred or imposed upon it by or under this Act.

Out of these all important powers, the important power is to enact, repeal the statutes. It can also refer back but not amend the Ordinance of the University. Another important power is to elect the members who sit in various authority of the University, the Executive Council etc. It has some ceremonial functions to confer on the recommendations of the Executive Council and Academic Council to grant degree, diploma and various certificates.

EXECUTIVE COUNCIL:

In almost all the Universities, the body directly concerned with the day-to-day management of the University
The Executive Council is in control of property and funds of the University. It is also in occupation to enter into the contract on behalf of the University, provide for custody and delegate the courts of the common seal of the University. All the powers of the University are with it. They are also having powers of punishment for indiscipline and to control over and co-ordinate and professors of affiliated colleges. The Constitution of the Executive Council determines the amount of autonomy available in the University in order to ascertain that up to what extent outside interference takes place in the decision making authority of the University. One has to minutely study the constitutional powers and functions of this vital body.
It is not possible to make comparative study of Executive Council from 200 Universities of India from the point of view of their powers to take independent decision e.g. the State University, the State Government ensures that Executive Councils are full of their nominees. Thus the State Government is the financial adviser in many of the fields. The State Government plays very important role in the field. There are certain institutions and faculties of the University which are maintained by the State and the decision to take independent decision it becomes a right of the State Government and not of the Vice-Chancellor. In such eventuality a Vice-Chancellor can hardly afford to exercise his independent judgment.

The second important factor is sizable numbers of elected members such as teachers, Deans, heads of departments, professors, lecturers effectively obtain representation of such body in the pressure of their power constituency. This is true particularly in respect of large university like Banaras Hindu University, Jawaharlal Nehru University, Delhi University all these universities have powerful unions of teachers and others and also employees and teachers.
The decision making in the Executive Council is not solely on the merit and the extent but with affiliation of the various group which is other than the Executive Council. Of course there are yet Executive Councils in many Universities which in the name of democratical decision making even encourage the students to demand representation in the Executive Council.

In order to have correct appraisal of the body in the University of Gujarat it would be necessary to analyse the provisions of Section-16 of the Act the powers and duties of the Executive Council.

The Executive Council

1. The Executive Council shall consist of the following members, namely:

   (i) The Vice-Chancellor, Ex-Officio Chairman;
   (ii) The Pro-Vice-Chancellor, if any;
   (iii) The Director of Higher Education, and if he is unable to attend, the officer designated under clause (i) of paragraph (B) of Class I of sub-section (1) of Section 16;
   (iii-a) The Director of Technical Education, and if he is
unable to attend, the officer designated under clause (ii) of paragraph (B) of Class I of sub-section (1) of Section-16;

(iii-b) The Director of Health and Medical Services and Medical Education and if he is unable to attend, the officer designated under clause (iii) of paragraph (B) of Class I of sub-section (1) of Section-16;

(iv) One Dean of a Faculty nominated by the Vice-Chancellor, by rotation from amongst the Deans of Faculties;

(v) Three persons elected by the Court from amongst its members who are not teachers;

(vi) Two University Professors elected by the Court from amongst its members;

(vii) Three Principals of affiliated colleges elected by the Court from amongst its members.

(viii) One teacher of a University Department, other than a Professor, elected by the Court from amongst its members;

(ix) Three teachers of affiliated colleges, other than Principals, elected by the Court from amongst its members;

(x) Two members of the Academic Council who are teachers elected by the Academic Council from amongst the members of the Court;

(xi) Two persons, not being teachers nominated by the Chancellor from amongst the members of the Court;
Four persons nominated by the State Government from amongst distinguished educationists, teachers, social workers and such other class of persons, irrespective of whether they are members of the Court.

One representative of the governing bodies of affiliated colleges elected by the Court from amongst its members:

Provided that a member nominated under clause (iv) or (xi) or elected under clauses (v) to (x) and (xii) shall cease to hold office as such member if he ceases to be a member of the Court or, as the case may be, of the Academic Council or to be a Dean, a University Professor, a University teacher, a Principal, or, as the case may be, a teacher.

The term of office of the elected and nominated members shall be three years.

It will be thus observed that the State Government nominates 4 persons, two are nominated by the Chancellor, out of which three are the head of the higher education, technical education. All of them are under the employment
of State Government in other parts. There are about 11 teachers, two University professors, 3 members of affiliated colleges other than principals and two members of academic council and few more to represent the chair.

It can hardly be contended that the Executive Council as presently constituted will enable it to function democratically and on an autonomous body in the execution and construction.

Powers and Duties of the Executive Council:

Like other Executive Council of the University Section-20 of the Act enumerates long list of powers which are as under:-

(1) Subject to such conditions as may be prescribed by under the provisions of this Act, the Executive Council shall exercise the following powers and perform the following duties, namely:-

(1) to hold, control and administer the property and funds of the Universities;
(ii) to enter into, vary, carry out and cancel contracts on behalf of the University in the exercise or performance of the powers and duties assigned to it by or under this Act or Statutes;

(iii) to determine the form, and provide for the custody and regular the use, of the common seal of the University;

(iv) to administer the funds placed at the disposal of the University for specific purposes;

(v) to frame the annual financial estimates of the University and to place them before the Court for suggestions;

(vi) (a) to adopt the annual financial estimates after considering the suggestions, if any, of the Court;

(b) to reduce the amount of any budget grant;

(c) to sanction the transfer of any amount within a budget grant from one minor head to another, or from a subordinate head under one minor head to a subordinate head under another minor head; and

(d) to sanction the transfer of any amount within a minor head from one subordinate head to another, or from one primary unit to another;
(vii) to make provision for buildings, premises, furniture, apparatus and other means needed for carrying on the work of the University;

(viii) to accept, on behalf of the University, bequests, donations and transfers of any movable or immovable property to the University;

(ix) to transfer any movable or immovable property on behalf of the University;

(x) to recommend to the Court the raising of public loans on the security of the assets of the University, with the previous approval of the State Government;

(xi) to manage and regulate the finances, accounts and investments of the University;

(xii) to institute and manage -

(a) Printing and Publication Department;

(b) University Extension Boards;

(c) Information Bureau;

(d) Employment Bureau;

(xiii) to make provision -

(a) for extra-mural teaching and extension courses
and research and other recognized educational activities;

(b) for physical education, National Cadet Corps, National Service Scheme, National Sports Organisation, military training and such other recognized activities;

(c) for continuing Education and Adult Education;

(xiv) to manage and maintain colleges, departments, institutes of research or specialized studies, laboratories, libraries, museums and hostels of the University;

(xv) to establish within the University area or outside that area such field stations and specialized laboratories and such other units for research and instructions as are necessary for the furtherance of the objects of the University;

(xvi) to recognize hostels, to inspect such hostels and to withdraw recognition therefrom;

(xvii) to provide housing accommodation for University teachers and other employees, to the extent the finances of the University permit;
(xviii) to register high schools situate outside the State of Gujarat as may be provided by the Statutes;

(xix) to affiliate colleges and to approve institutions as may be provided by the Statutes;

(xx) to arrange for, and to direct, the inspection of affiliated colleges recognised and approved institutions and hostels and to issue instructions for maintaining their efficiency and for ensuring proper conditions of employment, including salary scales and allowances for the members of their teaching, other academic and non-teaching staff;

(xxi) (a) to recognize institutions of research or specialised studies;

(b) to withdraw, either in whole or in part, or to modify the rights conferred on a college by affiliation or on an institution by recognition or approval;

(c) to recommend to the State Government withdrawal or reduction of a grant to a college which makes default in carrying out the conditions of affiliation;

(xxii) to recommend to the Court on the advice of Academic Council the conferment of autonomy on any affiliated
college, a University College, a University Department or a recognized institution entitling it to privileges in the matters of admission of students prescribing the courses of study, imparting instruction, teaching and training in the courses of study, the holding and conduct of examinations and the powers to make necessary rules for these purposes;

(xxiii) (a) to control and co-ordinate the activities of, and to give financial aid to, affiliated colleges and recognized or approved institutions, and,

(b) to regulate the fees to be paid by the students in affiliated colleges and recognized or approved institutions;

(xxiv) to call for reports, returns and other information from colleges, recognized or approved institutions;

(xxv) to supervise and control the residence, conduct and discipline of the students of the affiliated colleges, University Colleges and University departments, and recognized and approved institution and to make arrangements for promoting their health and general welfare, and to take disciplinary action against the students;
(xxvi) to recommend to the Court, the institution and
conferment or grant of degrees, diplomas and certificates,
in the manner prescribed by Statutes;

(xxvii) to recommend to the Court the conferment of honorary
degrees and other academic distinctions in the manner
prescribed by Statutes;

(xxviii) to institute and award fellowships, travelling
fellowships scholarships, studentships, medals, prizes and
other awards;

(xxix) to appoint academic, administrative and other staff
of the University, fix their, emoluments, and define their
duties and conditions of service and to take disciplinary
action against them;

(XXX) to recognize a member of the staff of an affiliated
college or recognized or approved institution as a professor,
reader, lecturer or teacher of the University and to withdraw
such recognition;

(XXXI) to fix remuneration of examination and to arrange for
the conduct and publication of results of University
examinations and other tests;
(xxxii) to fix, demand and receive such fees and other charges as may be prescribed by Ordinances;

( xxxiii) to make, amend and cancel Ordinance;

( xxxiv) to make provision for instruction, teaching and training in such branches of learning and courses of study as it may think fit, for research and for the advancement and dissemination of knowledge;

( xxxv) to make such provision as will enable affiliated colleges and recognized or approved institutions to undertake specialization of studies;

( xxxvi) to organise and make provision for common laboratories, libraries, museums and other equipment for teaching and research;

( xxxvii) to institute professorships, readerships, lecturerships and posts of teachers required by the University;

( xxxviii) to lay down and regulate salary scales, allowances and conditions of service of officers, members of the teaching, other academic and non-teaching staff of the University;

Chakorlal Pranlal Desai V/s. State of Gujarat

and Others - GLR 1994 (1) 481

1. GLR 1994 (1) 481.
(xxxix) to lay down and regulate the salary scales, allowances and conditions of service of the members of the teaching, other academic and non-teaching staff of affiliated colleges and recognised or approved institutions;

(xl) to recommend to the Court the institution of new Departments and Faculties in the University;

(xli) to enter into any agreement for the incorporation in the University of any other institution and for taking over its rights, properties and liabilities and for any other purpose not repugnant to this Act;

(xlii) to exercise such other powers and perform such other duties as may be conferred or imposed on it by or under this Act, Statutes, Ordinances and Regulations;

(xliii) to exercise all powers of the University not otherwise provided for in this Act or the Statutes and all other powers which are requisite to give effect to the provisions of this Act or the Statutes.

(2) The Executive Council shall not transfer any immovable property in exercise of its power under clause (ix) of subsection (1) except with the previous sanction of the Court;
and no transfer of immovable property which is not made with such previous sanction shall be binding on the University.

(3) The exercise of the powers by the Executive Council under clauses (xxxviii) to (xxxix) of sub-section (1) in so far as they relate to the laying down and regulating salary scales and allowances of officers, members of the teaching, other academic and non-teaching staff of the University, affiliated colleges and recognised or approved institutions, shall be subject to the approval of the State Government.

(4) The Executive Council may by Ordinances appoint committees to carry out its administrative work and define their constitution, functions and tenures.

(5) The Executive Council shall make a report of every case of acceptance of property under clauses (viii) of Sub-section (1) to the Court.

1. Ahmedabad Kelavani Trust V/s. State 1978 GLR 671

It was held that even though the Executive Council
can issue an Ordinance but there is nothing in the Scheme of the Act which says that it can not act except by Ordinances. The court held that democratically set up body unless compelled by statute to act in certain manner may act by resolution. The only requisition was that of majority Act. As far as matter of routine decisions are taken by concensus but where there is certain controversy it becomes necessary to exercise. The vote of all the members would determine the issue by voting.

ACADEMIC COUNCIL:

The Academic Council the highest academic body of the University. It has predominence of teachers. In fact academic council is the aggregation of highest specialised teachers coming from numerous discipline. For the purpose of scrutinising, creating and overseeing the work of academic council of the University. In view of its large membership it meets only once in a year, or special meeting as may be called by the University. In many of the Universities there are permanent standing committee of the council, it takes decision on behalf of the council and reports it in their next meeting. Since the power of
the Academic Council in relation to the Academic Council

there are not many controversy in relation to their
constitution and method of working.

Academic Council of Gujarat University:-

Section-21 of the Gujarat University Act deals with Academic
Council of Gujarat University. The Vice-Chancellor is the
Chairman of the Council.

As soon as the Academic Council is constituted under
sub-section (1) it may co-opt as its additional members two
eminent persons who are experts in any of the subjects taught
in the University, whether they are or are not connected
with the University as its members, teachers or otherwise.

Powers and duties of the Academic Council:-

(1) The Academic Council shall have the control and
general regulation of, and be responsible for, the maintenance
of the standards of teaching and examinations with the
University.

(2) Without prejudice to the generality of the foregoing
provisions and subject to such conditions as may be prescribed
by or under the provisions of this Act, the Academic Council
shall exercise the following powers and perform the
following duties, namely:

(i) to approve Regulations made by the Faculty concerned
laying down courses of study;

(ii) to approve Regulations made by the Faculty concerned
laying down special courses of study;

(iii) to arrange for co-ordination of studies and teaching
in affiliated colleges and recognised and approved
institutions;

(iv) to promote research within the University;

(v) to approve proposals for allocating subjects to
the Faculties;

(vi) to make proposals for the establishment of University
Departments, Institutions of Research and specialized
studies, libraries, laboratories and museums;

(vii) to approve and to recommend proposals for the
institution of professorships, readerships, lecturerships
and any other posts of teachers required by the University
and for prescribing the duties of such posts;

(viii) to approve and to recommend proposals for the
institution of fellowships, travelling fellowships, scholarships, studentships and medals and other awards and to make Regulations for their award;

(ix) to make Regulations regarding the examinations of the University and the conditions on which students shall be admitted to them;

(x) to make and approve Regulations prescribing the equivalence of examinations;

(xi) to approve Regulations prescribing the manner of granting exemption from approved courses of study in the University or in affiliated colleges for qualifying for degrees, diplomas and certificates;

(xii) to recommend to the Executive Council, the institution, conferment and grant of degrees, diplomas and certificates in the manner prescribed by the Statutes;

(xiii) to recommend to the Executive Council, the conferment of honorary degrees and other academic distinctions, in the manner prescribed by Statutes;

(xiv) to recommend to the Executive Council, the institution of Departments and Faculties;
(xv) to recommend to the Executive Council the affiliation of colleges and recognition or approval of an institution;

(xvi) to refer any academic matter to the relevant University authority or body for consideration;

(xvii) generally to advise the University on all academic matters; and

(xviii) to exercise such powers and perform such other duties as may be conferred or imposed on it by this Act, Statutes and Ordinances.

It has been stated by an expert in the University Education that academic council at present constituted are hardly performing any significant function. In the course of years, the size of the council has been on the increase. This body in its collective capacity does not perform any functions except purporting some of the routine work done by small units such as department, centre of studies, or school or faculties or Board of research and studies. It has been noticed that it is a tradition of having such a huge body to continue what will be the useful purpose it will serve none knows or by keeping such huge members body whether
there should be a drastic curtailment in its membership.

These are some of the questions which are being debated from time to time when one thing is certain that University is known by the standards it has for its education.

DEANS OF FACULTIES:

There shall be a Dean of each Faculty who shall be elected by the Faculty from amongst its members.

(1A) The Dean shall hold office for a term of three years and shall be eligible for being re-elected for that office for a further term of three years only.

(1B) The Dean shall exercise such powers and perform such functions and duties as may be prescribed by the Statute.

Board of Research and Board of Studies:

The specialised boards one meant for post graduate research and the second is for under-graduate studies. Both are constituted in all the Universities. The membership of these Boards varies from the University to University. The function of these Boards are to make recommendation regarding the admission of various courses,
to recommend the qualification of supervisor and research guide. The subject of research and also to frame details, course of syllabus of various courses of the studies. These board perform a very useful function.

In Gujarat University there are three Boards constituted under Section 21(1), 25 & 26 of the Act. Under Section 24(A) for the purpose of organising and co-ordinating there is a Board of university teaching and research consisting of Vice-Chancellor, Pro-Vice-Chancellor.

Constitution of Boards of University Teaching and Research:

(1) Each Board of University Teaching and Research shall consist of the following members, namely -

(1) The Vice-Chancellor,

(ii) The Pro-Vice-Chancellor, if any;

(iii) All Heads of Post-Graduate Departments in the University relating to the subjects in the Faculties pertaining to the Board, who are Professors or Readers;

(iv) All Heads of Post-Graduate Departments of subjects not covered by item (iii);
(v) Five teachers including Principals belonging to different Faculties and imparting education in post-graduate courses to be nominated by the Vice-Chancellor;

(vi) Principals of Post-Graduate colleges and Heads of Recognised Institutions, if any, recognised in respect of post-graduate courses of instruction, studies or research;

(vii) Three persons renowned for their specialized knowledge in the subject, to be co-opted by the Board.

(2) The term of office of the Board other than ex-officio members shall be three years;

Provided that a person shall cease to be a member of the Board on his ceasing to hold the office by virtue of which he is such a member.

Under Section 25 Board of Studies have to be constituted for every subject or group of subjects as may be prescribed by the Statute. Every Board of Studies shall consist of the following members, namely:-

(1) The Head of the University Department, if any, in the subject pertaining to the Board;
(ii) Persons not exceeding such number as may be determined by the Vice-Chancellor to be appointed by the Faculties, by rotation, out of Heads of Departments of the affiliated colleges and recognised institutions where the subject pertaining to the Board is taught for degree course in the final year;

(iii) A post-graduate student in the final year of the Master's degree course, who has obtained the highest number of marks in the subject pertaining to the Board, at the previous University examination.

(iv) Two teachers to be co-opted by the Board, as follows, namely:

(a) One teacher from the University Department, if any, in the subject pertaining to the Board.

(b) One teacher from any of the affiliated colleges where the subject pertaining to the Board is taught for degree course in the final year.

Provided that no person shall be co-opted from such a University Department or an affiliated college, the head of which is a member of the Board under item (i) or (ii);

Provided further that where the member under item
(i) or item (ii) or both is not a teacher of any branch of the subject pertaining to the Board, an additional teacher or teachers may be co-opted under paragraph (a) or paragraph (b) or both, as the case may be, of item (iv);

Provided also that in the case of a Board of studies pertaining to Medical Faculty the members shall be co-opted from Honorary teachers, if any, by rotation;

(v) Two members to be opted by the Board from any two of the following categories, namely:

(a) A University Professor or a Reader of a University in the State,

(b) A University Professor of any other University outside the State,

(c) A person residing in the State who is well qualified in the subject pertaining to the Board,

(d) A member of the Faculty with at least ten years' experience of teaching the subject pertaining to the Board.

Provided that the total number of members of the Board shall not be less than five and more than fifteen.

(2) The Chairman of the Board shall be elected by the members of the Board from amongst themselves.
(3) The term of office of all members other than the member falling under item (iii) of clause (1) shall be three years and that of the member falling under the said item (iii) shall be for one academic year;

Provided that a member shall cease to be a member of the Board on his ceasing to hold the office by virtue of which he is a member of the Board.

In addition to this academic Board, the Act provides for setting up of a Board for extra-mural studies activities, the Board of extra-curricular activity, the Board of Academic Planning.

Constitution of the Academic Planning Board:

(1) The Academic Planning Board shall consist of—

(i) The Vice-Chancellor, Chairman,

(ii) The Pro-Vice-Chancellor, if any;

(iii) Three University Professors belonging to different Faculties to be nominated by the Executive Council;

(iv) Two distinguished persons having academic and administrative experience, to be nominated by the Vice-Chancellor;

(v) Three distinguished and experienced persons from
industry and commerce, to be nominated by the Vice-Chancellor; and

(vi) The Registrar, ex-officio Member Secretary.

(2) The Board may co-opt on an adhoc basis an expert on any subject;

(3) The term of office of the members of the Board, other than the ex-officio members shall be three years;

Provided that a member shall cease to be a member of the Board on his ceasing to held office by virtue of which he is a member of the Board.

Powers and Duties of the Academic Planning Board:

The Academic Planning Board shall advise and prepare long-term plans of the University, to generate new ideas and programmes and help the University in periodical evaluation of its work.

Committee for selection of teachers of the University:

(1) The Committee for selection of full time teachers of the University shall consist of:-

(1) The Vice-Chancellor, Ex-officio Chairman;

(ii) The Pro-Vice-Chancellor, if any;
(2) The Committee shall investigate the merits of the various candidates and report to the Executive Council the names of the persons, arranged in order of merit, whom it considers suitable for the vacant posts;

Provided that in the case of posts of Professors, the Committee may recommend eminent persons who may not have applied.

(3) The Executive Council shall make the final selection out of the persons so recommended, and where it makes the appointment otherwise than in accordance with the order of merit arranged by the Committee, the Executive Council shall record its reasons for doing so.

(4) If the Committee reports to the Executive Council the name of only one person and if the person so reported is not acceptable to the Executive Council, it shall refer the matter back to the Committee with reason for not accepting the same, and if the Committee reiterates its recommendation the case shall be submitted to the Chancellor for final orders.

Committee for Appointment of Examiners:

(1) The Committee appointment to University Examinerships
for each Faculty shall consist of:–

(1) The Vice-Chancellor, ex-officio Chairman;

(ii) The Pro-Vice-Chancellor, if any,

(iii) The Dean of the Faculty;

(iv) The Chairman of the Board of Studies; and

(v) One member of the Board of Studies, nominated by the Vice-Chancellor for the particular year concerned;

(2) The list of the examiners prepared by the Committee shall be placed before the Executive Council and the Academic Council. Where the Academic Council suggests, or the Executive Council makes, any change in the list, it shall record reasons for the same.

(3) No member of the Committee or of the Executive Council shall be appointed as an examiner except by a resolution passed by a majority comprising not less than two-thirds of the total numbers of the Executive Council.

(4) A member of the Committee or the Executive Council who is appointed as an examiner shall not be eligible to receive remuneration exceeding Rs.500/- in any academic year.

Dr. K.K. Bhatt v/s. Gujarat University; (1980) XXI (2) GLR, 484 = 1981 GLH (NOC) 23.¹

Selection to the post of Reader— Functions of the Selection Committee— Recommendations to the Executive Council— Reasons not required to be stated. The function of the Selection Committee, is in terms of cl. (2) of Statute 12, three fold. Its first duty is to investigate the merits of various candidates whom it interviews. Secondly, it is required to report to the Executive Council names of persons whom it has selected. Thirdly, it is required to arrange in order of merit the names of persons whom it recommends to the Executive Committee of the Executive Council. There is nothing in clause (2) which requires the selection committee to state the reasons in support of its recommendations to the Executive Council. This position becomes more clear when reference is made to clauses (3) and (4) where the legislature has expressly provided for giving reasons. Since the Legislature has committed the same in clause (2), there is not statutory requirement on the part of Selection Committee to give reasons under clause (2).

Selection Committee, in the first instance, owes a duty to candidates. In so far as it is required to
objectively consider and assess his merits, next it owes
duty to the Executive Council to whom it is required to
recommend the names of persons whom it selects. Thirdly,
it owes a duty to the Court. In so far as its duty to the
Executive Council is concerned, it is enough if the Selection
Committee has objectively assessed the comparative merit of
candidates. The Selection Committee has no obligation to
tell the candidates what weighed in their minds to select
some and to reject others. It is also under no obligation
to tell them why it specifies a particular order of merit
in respect of candidates to fill in the posts of a full-time
teacher has been left by the Legislature to the Selection
Committee. The Executive Council considers the recommenda-
tions made by it and appoints them to the vacant posts.
Indeed, if something is brought to the notice of the
Executive Council which was not brought to the notice of the
Selection Committee, it may refer back to the Selection
Committee the recommendations made by it. In the context
of scheme of clause (4) of Statute 12, the Executive Council
is neither a super-selection body nor an appellate body
above the Selection Committee. The Selection Committee
selects and the Executive Council appoints.
Each faculty consists of several departments of studies, comprising within the faculty. Each department-faculty is primarily school and is responsible for the teaching and research work within the department. There is a head of department generally ranking of University Professor. When there is a staff of teachers, lecturers, associate teachers consisting of all these. It is a tradition that the head of the University Department principals all the college is used to be directly appointed for a long tenure or on a permanent basis in the course of time. The teaching staff in the most of the Universities express open grievance against the undemocratic arbitrary method of operation of the head of department. For some time now in all the Universities a system of rotation has been introduced including Gujarat University. But this system has also got evils of its own. The head of department takes about 6 months to one year in the learning of the fundamentals of administration of department, but by the time he picks up he finds his way out.
One of the important reason for the fall in the standards of education and discipline of students is the phenomena of rotation of the head of departments, has led to the standards of education and discipline to its root level. Again the students' union also put some pressure on the working of the weak administration in relation to its rules regarding compulsory attendance, standard of examination and conduct of examinations. In many States in India, the department students suffer from the aforesaid defect and as a result of this system of University education has been disrupted.

COLLEGES:

In view of the size and population in India, most of the University are non-teaching Universities. Only some of the Universities are residential teaching Universities. In every states of India a large number of students receive instructions in College. College may be an affiliated college, a constituent college, autonomous college. An affiliated college may be either government college or college established by philanthropic organisation or a minority i.e. by religious group caste or community.
It is a pre-requisite for an affiliated college to seek an affiliation of an University. Before approval is granted by the University, it is usual that there is a Board inspection of the University, which gives its report regarding the facilities available. It has been generally observed that such colleges have political cloud. They have succeeded in receiving affiliation even though it may not have the minimum facilities. In the recent years serious complaints have been made about the medical colleges. About these colleges set up in various parts of the country in which minimum facilities for training of students are not available and inadequate. However, in the Gujarat University, there is example of such college i.e. Karamsad Medical College where the minimum facilities for the medical studies is not available. Nor the staff of the college has been appointed by the authority. Eventhough due to political and other reasons they are pressurising the University. The Inspection report prepared by the Indian Medical Council has been overlooked. Eventhough research colleges are pressurising for recognition on the ground that the question of career of hundreds of students is involved in such matter and they are successful in building up pressure in due
course that the affiliation may be given or granted to such colleges. Same is the issue with the law colleges in various parts of the country. There are law colleges opened which works only for two hours in a day. They do not have the facilities of indispensable materials or the staff yet they are given the affiliation. A good number of affiliate colleges through indiscriminately admit the students and enrol their names and such enrolment of the students raise up to thousands. Number of students who are coming out with the degree who can pull down the structure of the University. In such circumstances how it is possible for the University affiliating such colleges to have any autonomy.

The second variety of college is constituent colleges which are more or less functioning like department of a University. In such constituent colleges there is some discipline in the students, who in the course of years they have become unwise exhibit the same characteristics as it has been brought out in respect of affiliated colleges. Furthermore the constituent colleges within the campus provide a fertile ground for indiscipline, two of the important universities which are having such constituent
colleges exist in Delhi University and Patna University. There are thousands of students enrolled in such colleges and each college provides instructions in several disciplines. This is in fact a University within the University.

Under the Gujarat University Act, 1949 affiliated college has been defined as college which is admitted to the privilege enjoyed by the University on such condition which lays down that college applied for affiliation should send the application on 31st March of any year. For the affiliation of college time schedule is not mandatory. The time schedule by the college has to be carried out as far as practicable. Such carrying out of the programme according to time schedule is not entirely in the hands of the applicant seeking affiliation and it also depends partially on the authority which has also to take appropriate decisions on the matter but time schedule must not be mandatory. Then it is placed before the Executive Council and after the Executive Council has reported to it that the college is in need in that locality and if any doubt arises in this interpretation, regarding the needs in the locality then the Executive Council
refers it to the Vice-Chancellor for the aforesaid matter and the decision of the Vice-Chancellor is final. Thereafter such college is required to comply with the conditions of the Clause-5 of Section-33 as under:

(a) that the college (other than a Government college or a college maintained by the Government) shall within such period, as may be determined by the Executive Council, be under the management of a governing body which shall include amongst its members, the Principal of the college, a representative of the University to be nominated by the Vice-Chancellor and three representatives of the teachers of the college and at least one representative each of the members of the non-teaching staff and the students of the college, to be elected respectively from amongst such teachers, members of the non-teaching staff and students;

(b) that the strength and qualification of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction, teaching or training to be undertaken by the college;

(c) that the building in which the college is or is to
be located is suitable and that provision, has been or shall be made, in conformity with the Ordinances, for the residence in the college or in lodgings approved by the college, of students not residing with their parents or guardians and for the supervision and welfare of students;

(d) that due provision is made or shall be made for a library;

(e) where affiliation is sought in any branch of experimental science, that arrangements have been or shall be made in conformity with the Statutes, Ordinances and Regulations for imparting instruction in that branch of science in a properly equipped laboratory or museum;

(f) that due provisions is made as far as circumstances permit, for the residence of the Principal and other members of the teaching staff in or near the college or the place provided for the residence of students;

(g) that the financial resources of the college are such as to make due provision for its continued maintenance and efficient working,

(h) that the college rules fixing the fees (if any) to be paid by the students have not been so framed as to
involve such competition with any existing college in the same neighbourhood as would be injurious to the interests of education;

(i) that for recruitment of the Principal and members of the teaching staff of the college (other than a Government college or a college maintained by Government) there is a selection committee of the college;

(j) that the college shall comply with the Statutes, Ordinances and Regulations providing for conditions of service including salary scales and allowances, of the teaching and other academic and non-academic staff of an affiliated college;

(k) such other conditions as may be specified in the Statutes in accordance with the provisions of this Act.

AIR, 1982 NOC (GUJ.) 97 = 1982 GLH (NOC) 19.¹

The regulations of the Gujarat University Act are tell-tale and have made the college a part and parcel of the University. One can confidently reach the conclusion

¹ AIR, 1982 NOC (GUJ.) 97 = 1982 GLH (NOC) 19.
that both in view of the statutory provision, Ordinances and Statutes, conditions of affiliation and various relevant considerations, the affiliated college is a statutory in character as the University itself. The minority character of the college is lost. Minority institutions become part and parcel of the University. Because the provisions contained in Section-33-A(a)(i) of the Act recite that every college shall include amongst its members, a representative of the University nominated by the Vice-Chancellor and representative of teachers, non-teaching staff and students of college. The minority institutions by such provisions loses its identity and become part and parcel of the Universities.

Section-33 - Applicability - The section as amended does not apply to institutions established and administered by linguistic and religious minorities.

Ahmedabad St. Xaviers College V/s.State of Gujarat
1 AIR 1974 SC 1389.

Section-34 Extension of affiliation - Where a college desires

1. AIR 1974 SC 1389.
to add to the courses of instruction in respect of which is 
affiliated the procedure prescribed by Section 33 shall, 
so far as may be followed.

Section-35 - Recognition of institutions of research and 
specialised studies.

(1) The Executive Council shall have the power, after 
consultation with the Academic Council, to recognize as a 
recognized institution of research or specialized studies 
other than a college.

(2) An institution apply for recognition under this 
section shall send a letter of application to the Registrar 
and shall give full information in the letter of application 
in respect of the following matters, namely:

(a) constitution and personnel of the managing body;
(b) subject and courses in regard to which recognition 
is sought;
(c) accommodation, equipment, library facilities and 
the number of students for whom provision has been or is 
proposed to be made;
(d) the strength of the staff, their qualifications and
salaries and the research work done by them;

(e) fees levied or proposed to be levied and the financial provision made for capital expenditure on buildings equipment and for the continued maintenance and efficient working of the institution.

(3) Before taking the application into consideration the Executive Council may call for any further information which it may deem necessary.

(4) If the Executive Council decides to take application into consideration, it may direct a local inquiry to be made by a competent person or persons authorised by it in this behalf. After considering the report made as a result of such local inquiry and making such further inquiry as may appear to it to be necessary, grant or refuse the application or any part thereof is granted, the Executive Council shall specify the subject and courses of instruction in respect of which the institution is recognised. Where the application or any part thereof is refused, the grounds of such refusal shall be stated.

35A. Approval of institutions— (1) The Executive Council
shall have the power after consultation with the Academic Council to approve an institution as an approved institution for specialized studies, laboratory work, internship, research or other academic work approved by the Academic Council under the guidance of a qualified teacher.

(2) An institution which desires to have such approval shall send a letter of application to the Registrar and shall give full information in the letter of application in respect of the following matters, namely:—

(a) the name, qualifications, experience and research work of the teacher under whom approval work is to be done;

(b) the nature of work or the subjects for which work is proposed to be done;

(c) accommodation, equipment, library facilities and the number of students for whom provision has been made or is proposed to be made;

(d) fees levied or proposed to be levied and the financial provision made for capital expenditure or buildings and equipment and for the continued maintenance and efficient working of the institution.
(3) Before taking the application into consideration the Executive Council may call for any further information which it may deem necessary.

(4) If the Executive Council decides to take the application into consideration, it may direct a local inquiry to be made by a competent person or persons authorised by it in this behalf. After considering the report made as a result of such local inquiry and making such further inquiry as may appear to it to be necessary, the Executive Council shall, after obtaining the opinion of the Academic Council grant or refuse the application or any part thereof. Where the application or any part thereof is granted, the Executive Council shall specify the subjects and courses of instruction in respect of which the institution is approved. Where the application or any part thereof is refused, the grounds of such refusal shall be stated.

St. Stephen's College V/s. University of Delhi


38B. Conferment of autonomy on colleges etc. in certain matters -

(1) Any affiliated college or University college or a recognised institution or a University Department may, by a letter addressed to the Registrar, apply to the Executive Council to allow the college, institution or, as the case may be, Department to enjoy autonomy in the matters of admission of students, prescribing the courses of studies, imparting instructions and training, holding of examinations and the powers to make necessary rules for the purpose, (hereinafter referred to as "the specified matters").

(2) Either on receipt of a letter of application under sub-section (1) or where it appears to the Executive Council that the standards of education in any affiliated college or University college or recognised institution or University Department are so developed that it would be in the interest of education to allow the college, institution or Department to enjoy autonomy in the specified matters, on its own
motion, the Executive Council, shall

(a) for the purposes of satisfying itself whether
the standards of education in such college, institution
or Department are so developed that it would be in the
interest of education to allow the college, institution
or Department to enjoy autonomy in the specified matters—

(i) direct a local inquiry to be made by a competent
person or persons authorised by the Executive Council in
this behalf, and

(ii) make such further inquiry as may appear to it to
be necessary;

(b) after consulting the Academic Council on the
question whether the college, institution or department
should be allowed to enjoy autonomy in the specified
matters and stating the result of the inquiry under
clause (a) record its opinion on that question; and

(c) make a report to the Senate on that question
embodying in such report the result of the inquiries, the
opinion of the Academic Council and the opinion recorded
by it.
(3) On receipt of the report under sub-section (2), the Court shall, after such further inquiry, if any, as may appear to it to be necessary record its opinion on the question whether the college, institution or Department should be allowed autonomy in the specified matters.

(4) The Registrar shall thereupon submit the proposals for conferring such autonomy on such college, institution or Department and all proceedings, if any, of the Academic Council, the Executive Council and the Court relating thereto, to the State Government.

(5) On receipt of the proposals and proceedings under sub-section (4), the State Government, after such inquiry as may appear to it to be necessary, may sanction the proposals or reject the proposals.

(6) Where the State Government sanctions the proposals, it shall by an order published in the Official Gazette confer on the college, institution or Department specified in the proposals, power to regulate the admission of students to the college, institution or, as the case may be, the Department, prescribing the course of studies in
the college, institution or Department, the impartment of instructions, teaching, and training in the course of studies, the holding of examinations and powers to make the necessary rules for the purpose after consulting the Executive Council and such other powers as may have been specified in the proposals.

(7) A college, recognized institution or University Department exercising the powers under sub-section (6) shall be called an autonomous college, autonomous recognized institution or, as the case may be, autonomous University Department.

(8) In the case of an autonomous college, autonomous recognized institution or autonomous University Department, the University shall continue to exercise general supervision over such college, institution or Department and to confer degrees on the students of the college, institution or Department passing any examination qualifying for any degree of the University.

38C. Standing Committee- (1) For the purpose of enabling it to exercise the powers conferred on it under Section 38B,
an autonomous college, autonomous recognized institution or autonomous University Department shall appoint a Standing Committee consisting of:-

(i) the Principal of the college, or the head of the institution or the Department, as the case may be, as its ex-officio chairman.

(ii) Heads of the Departments in the special subjects taught at degree level in the college, institution or Department, as its ex-officio members, and

(iii) such other members not exceeding five as the college, institution or Department may think fit to appoint.

(2) The Standing Committee shall exercise such of the powers of the college, institution or Department under Section-38B as the college, institution or Department may delegate to it.

(3) The Standing Committee may appoint a special committee or committees for the purpose of exercising such powers and performing such functions of an authority of the University other than the Court, the Executive Council and the Academic Council, in relation to the college, institution or Department as the Standing Committee may,
subject to such conditions as it thinks fit to impose,
assign to it or them.

38D. Autonomous colleges etc. to furnish reports etc.
and inspection of such colleges etc.

(1) Every autonomous college, institution or Department
shall furnish such reports, returns and other information
as the Executive Council may require to enable it to
judge the efficiency of the college, institution or
Department.

(2) The Executive Council shall cause every autonomous
college, institution or Department to be inspected from
time to time by the inspecting committee referred to in
Section 36 or by one or more competent persons authorised
by it in this behalf.

38E. Withdrawal of power of autonomous college, etc.

(1) Where in respect of an autonomous college, institution
or Department the Executive Council is of opinion that the
efficiency of the college, institution or Department has
so deteriorated that in the interest of education it is
necessary to withdraw the powers conferred on the college, institution or Department under Section 38B, the Executive Council shall send an intimation to that effect to the Principal of the college, or head of the institution or Department stating that any explanation in writing submitted within the period specified in the intimation on behalf of the college, institution or Department will be considered by the Executive Council;

Provided that the period so specified may be extended by the Executive Council.

(2) On receipt of the explanation or on the expiry of the period referred to in sub-section (1), the Executive Council, after considering the explanation, if any, and after such inspection by a competent person or persons authorised by the Executive Council in this behalf and such further inquiry as may appear to it to be necessary and after consulting the Academic Council shall make a report to the Court.

(3) On receipt of the report under sub-section (2)
the Court shall, after such further inquiry, if any, as may appear to it to be necessary, record its opinion in the matter:

Provided that no resolution of the Court recommending the withdrawal of the powers conferred under Section 38B shall be deemed to have been passed by it unless the resolution has obtained the support of two-thirds of the members present at the meeting of the Court, such majority comprising, not less than one-half of the members of the Court.

(4) The Registrar shall submit the proposal and all proceedings, if any, of the Academic Council, the Executive Council and the Court relating thereto, to the State Government which, after such further inquiry, if any, as may appear to it to be necessary, shall make such order as it deems fit and communicate it to the Court.

(5) Where in the case of an autonomous college, autonomous recognized institution or autonomous University Department the rights conferred under Section 38B are withdrawn by an
order made under sub-section (4), the college, institution
or, as the case may be, the Department shall cease to be
an autonomous college, institution or Department from
the date specified in the order.

42. Qualification for enrolment of students of the
University.

No student shall be enrolled as a student of the
University unless he has passed -

(i) the Secondary School Certificate Examination in
the relevant standard or the Higher Secondary School
Certificate Examination conducted by the Gujarat Secondary
Education Board in such subjects and with such standards
of attainment as may be prescribed by the Statutes; or

(ii) the Entrance Examination, if any, which may be
instituted by the University with the consent of the
State Government, and held in such subjects and in such
manner as may be prescribed by the Statutes, or

(iii) Any other examination prescribed as equivalent to
the examination referred to in clauses (i) and (ii), and
possesses such further qualification, if any, as may be
prescribed by the Statutes;

Provided that a student who has passed Secondary School Certificate Examination in the tenth standard conducted by the Gujarat Secondary Education Board in such subjects and with such standards of attainment as may be prescribed by Statutes or any other examination prescribed as equivalent to the aforesaid examination may be enrolled as a student of the University for the purpose of such diploma courses as may be prescribed by statutes.

Explanation:— In this section "Higher Secondary School Certificate Examination" means the examination of the students in the twelfth standard.

42A. Eligibility for enrolment without passing Examination in English:—

No student shall be ineligible for enrolment as a student of the University merely on the ground that he has not passed the examination, which he is required to pass for such enrolment, with English as one of its subjects.
43. Residence of students - Every student of the University shall reside in a hostel or under such conditions as may be prescribed by the Ordinances.

44. Degrees, Diplomas and other academic distinctions:—

The Court may on the recommendations of the Executive Council and the Academic Council institute and confer such degrees, diplomas and other academic distinctions as may be prescribed by the Statutes.

45. Honorary degree:— On a recommendation of the Academic Council if not less than two-thirds of the members of the Executive Council recommend that an honorary degree or other academic distinction be conferred on any person on the ground that he is in their opinion, by reason of eminent position and attainments a fit and proper person to receive such degree, or other academic distinction and when their recommendation is supported by a majority of not less than two-thirds of the members of the Senate present at a meeting of the Senate, such majority comprising not less than one-half of the Senate and the recommendation is confirmed by the Chancellor, the Senate may confer on such
person the honorary degree or other academic distinction
so recommended without requiring him to undergo any
examination.

46. Removal from membership of University and withdrawal
of degree or diploma:

(1) The Chancellor may, on the recommendation of the
Executive Council and of the Senate supported by a majority
of not less than two-thirds of the members of each body
present at its meeting, such majority comprising not less
than one-half of the members of each body, remove the name
of any person from the register of graduates or withdraw
from any person a diploma or degree if he has been
convicted by a Court of Law of any offence which, in the
opinion of the Executive Council and the Court is a serious
offence involving moral turpitude or if he has been guilty
of scandalous conduct.

(2) No action under this section shall be taken unless
the person concerned is given an opportunity to be heard
in his defence in the manner prescribed by the statutes.
Finance

48. University Fund:

(1) The University shall establish a fund to be called the University Fund.

(2) The following shall form part of, or be paid into, the University Fund:

(a) any contribution or grant by the State Government.
(b) the income of the University from all sources including income from fees and charges.
(c) bequeaths, donations, endowments and other grants, if any.

(3) The University Fund shall be kept in any scheduled bank as defined in the Reserve Bank of India Act, 1934 (II of 1934), or in a co-operative bank approved by the State Government for the purpose or invested in securities authorised by the Indian Trusts Act, 1882 (II of 1882), at the discretion of the Executive Council.

49. Annual accounts and financial estimates:

(1) The annual accounts of the University shall be
prepared under the direction of the Executive Council and shall be submitted to the State Government for audit.

(2) The Executive Council shall, after the accounts are audited, submit a copy thereof along with a copy of the Audit Report, to the Court and to the State Government.

(3) The Executive Council shall also prepare, before such date as may be prescribed by the Statutes, the financial estimates for ensuing year.

(3A) The Executive Council shall, having regard to the Government grants that are likely to be available, finally prepare the financial estimates for the ensuing year.

(4) The annual accounts and the financial estimates shall be considered by the Court at its annual meeting and the Court may pass resolution with reference thereto communicate the same to the Executive Council which shall take them into consideration and take such action thereon as it thinks fit, and finally adopt the accounts and financial estimates. The Executive Council shall inform the Court at its next meeting of the action taken by it or its reasons for taking no action.
50. Annual Report:

The Annual report of the University shall be prepared under the direction of the Executive Council and shall be submitted to the Court on or before such date as may be prescribed by the Statutes and shall be considered by the Court at the annual meeting. The Court may pass resolutions thereon and communicate the same to the Executive Council which may take such action as it thinks fit; and the Executive Council shall inform the Court at its next meeting of the action taken by it or of its reasons for taking no action.

Supplementary Provisions

51. Conditions of Service:

Save as otherwise provided by or under this Act, every salaried officer and teacher of the University shall be appointed under a written contract. The contract shall be lodged with the Registrar of the
University and a copy thereof shall be furnished to the officer or teacher concerned.

Ahmedabad Kelavani Trust V/s. State. 1978 GLR, 671

Governing body is a statutory body—Relation between teacher and management is not statutory:

Governing body is statutory in character constituting the management and hence an employer, once a teacher is selected by the management, assisted with, with the nominee of the Vice-Chancellor; conditions of service will include all conditions of service from beginning to end and all other relevant consideration, such as work load, his position qua University etc. All this would show that every thing is governed by law, that is, Gujarat University Act and Ordinances framed thereunder. Now when statute is implied, it carries with it a degree of irremovability, i.e. master cannot tell the servant that he should go, that his services are no more required, that his services can be terminated at will. Sec.51-A and Sec.52-A when

1. 1978 GLR, 671.
read together clear by take away power even from governing body to terminate service at its will.

Power of terminating service is controlled and curtailed by the Statutory provisions, to which it owed continued existence, namely, the character of affiliated college, it would unmistakably show that employment of the teacher even if it emanates in contract, it results in status of irremovability because the removability is subject to approval by the outside authority. Both as to appointment and as to termination, provisions of the Gujarat University Act clearly apply to governing body and therefore, if there was any master servant relationship pure and simple, it stands abrogated by the aforesaid provisions. Therefore teacher of an affiliated college qua the management holds the "status".

51A. **Dismissal, removal, reduction and termination of service of staff of college, etc.**

(1) No member of the teaching, other academic and non-teaching staff of recognised or approved institution shall be dismissed or removed or reduced in rank except
after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and until:-

(a) he has been given a reasonable opportunity of making representation on any such penalty proposed to be inflicted on him, and

(b) the penalty to be inflicted on him is approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf.

(2) No termination of service of such member not amounting to his dismissal or removal falling under sub-section (1) shall be valid unless:-

(a) he has been given a reasonable opportunity of showing cause against the proposed termination, and

(b) such termination is approved by the Vice-Chancellor or any officer of the University authorised by the Vice-Chancellor in this behalf;
Provided that nothing in this sub-section shall apply to any person who is appointed for a temporary period only.


(1978) 19 GLR 671.

An analysis of the legal provisions clearly reveals that in a vast country like India when it has numerous economic social problems, it is hard to answer the question whether our Universities are autonomous and if so upto what degree? Some of the functions which have to be looked into in this connection are:

(a) Who is financing the operations of the University?

(b) What is the amount of independence with which the Chief Executive Authority viz. Vice-Chancellor acts;


(1978) 19 GLR 671.
(c) What are the control in relation to decision making bodies i.e. as to what extent the Syndicate/Executive Council dominates over other officers and authorities.

(d) The relationship between the Vice-Chancellor and the Executive Council.

(e) The powers exercised by the Union of teachers, karmacharis, and students.

(f) The size of enrolment.

In so far as the State of Gujarat is concerned, it can not be said that the University in this enjoys autonomy in real sense. It has been however, now and then facing financial crisis. With the result that salary of the teachers and other employees is paid from the provident fund accumulation. Its decision making body do not always act on merits but act by other considerations.
Conclusion:

From the detail discussion under the chapter, the following propositions emerge.

(1) The categories of persons whose service conditions are sought to be protected by rules must be unambiguously and clearly defined else some categories of employees may remain out of its protective umbrella.

(2) In as much as the verdict of the disciplinary proceedings seeks to specifically enforce the contract of personal services of a teacher, it is illegal. However, now that the University is held to be an "industry" under section 2 (j) of the Industrial Disputes Act, 1947, the teachers will get the protection and all remedies under industrial law,

(3) When University's power to terminate services of a teacher is not cumulative or alternative and if it is exercised in this fashion, the action will be liable to be quashed.

(4) The Court will not interfere with this "freedom" if its exercise does not create a legal right in any person.

(5) The Court gave liberal interpretation to rules. But if rules are not properly complied with, it will strike down the action. However, if rules are mandatory, the Court would literally interpret them.
Even if there is no express provision to act judicially, where some quasi-judicial duties are imposed upon the university authority acting administratively, it must act judicially and follow the principles of natural justice when charges of quasi-criminal nature are to be examined.

In the matters of "maintenance of standards" the Court is inclined to give wider parameters to the University to control the student's academic life by allowing it to formulate reasonable tests to decide his ability to learn.

The High Courts are enjoined to be slow to issue ex parte interim orders in academic matters. Even if the decision of University in such matters is somewhat less reasonable, they should be slow in reversing it.

The Court did not insist for full fledged quasi-judicial inquiry with all its accompaniments as a sine qua non, in mass copying situations vitiating the examinations. It did not want to hamper the functioning of autonomous bodies. It refused to lay down any hard and fast rules.
The Court refused to "assess" the answer-books and left this to the university and accepted its conclusion.

The Court was not inclined to intervene in matters that were exclusively within the powers of the University authorities.

So far as academic freedom and Universities are concerned it is felt that like any other kind of institutional freedom, it depends at once on the government of the institution and on the spirit that animates the government, i.e. the body of educators.

Education in India being a State subject under the constitution and the universities being autonomous, there is bound to be opposition to government-originated reform. But the Ministry of Education and the University Grants Commission can exert pressures indirectly and threaten to withhold grants if reforms are not brought about within the university.

If radical changes in the pattern of higher education and in the administrative structure of the universities are impossible, the only alternative for the Ministry of Education would seem to lie in the policy of setting up model
colleges and Universities in every state of the Indian Union which, in decade, will present a glaring contrast to the older Universities and compel them to set their own institutions in order. Meanwhile, the Government of India must reverse its policies of dissipating its meagre resources on Universities and institutions of unquestionably low standards. If the new universities and colleges are worked on sound educational principals from the start - with the help of sound educationists from some of the world's leading universities, if necessary - it may be possible to work them in response to the changing needs of Indian society and build within them the conditions of freedom essential for a democratic society.