CHAPTER - I

GENERAL INTRODUCTION

These days Courts have been playing great role in arbitrating matters affecting educational policies. Previously little attention was paid to this aspect of the matter. Now this has come when those responsible for policy in Higher Education must be acquainted with what the courts are saying, and have been saying about academic community.

University has been defined as republic of scholars. They are autonomous bodies and this autonomy they merit because they are experts in higher education, and who is to judge expertise adequately but expert themselves. Consequently various faculties and administration have enjoyed a large measure of discretion in such matters as settling admissions and graduation requirements, selecting the curriculum, disciplining the students and conducting examinations etc. They also enjoy autonomy regarding recruitment, suspension and dismissal of their employees.

Nearly every exercise of expertise on the campus has two aspects. Was there authority to act, and, if so, was it wisely exercised? The courts have long been accustomed
in examining the first question but have been wary about examining the second one. This makes sense. Discretion is a question of scholarly expertise known best to the faculty and administration. While interfering with the question of discretion and those of authority courts have been using the chapter on fundamental rights in the constitution and principles of natural justice. The question that has been examined in the thesis is how far courts are justified in interfering with the University autonomy?
The question that has been puzzling the minds of the academicians today is whether University is an autonomous body in the complete sense or it has some restricted meaning?

It has therefore, become essential that those persons who are dealing with academic and administrative matters of the University should know the impact which the courts are exercising on the campus. It is to this end that this thesis is confined. The purpose of the research is to broaden the views of the personnel in higher education with the significant reported and unreported judgments of the supreme court and various High Courts. However, special attention has been given to the cases decided by the Gujarat High Court and its effect on the university autonomy.

The important problem is whether or not courts should interfere in the University matters? If 'Yes' whether
Judicial intervention will bring peace to the campuses or some alternative is to be found out e.g. campus tribunals. The question is rather than going to the courts, can not campus problems be solved on campus with comparable integrity and vastly greater expertise? Who knows better the considerations relevant to discipline; the judges or the Faculty and Deans. The basis premises of the thesis is that instead of going to the courts it will be better if campus problems are solved on the campus by the academicians who are experts of it.

The whole thesis has been divided into Nine chapters.

Chapter I st is confined to Introduction dealing with problem and Importance of the topic for research.

Chapter II deals with Evolution, National Development and Problems of University Education.

Chapter III deals with Higher Education and the Constitution of India. Special attention has been given as to whether University is state within the meaning of Article 12 of the constitution.

Chapter IV deals with the existing position of higher education with special reference to State of Gujarat. A survey has been made of the problems concerning higher education.
Education has generally been regarded as one of the forces in the modernization of societies, but he is a boldman who can speak with confidence of the modernizing role of the Indian University. Today Indian universities are in transition. Speaking at Vallabhbh Vidyanagar on September 27, 1968, the late Shri Zakir Hussain warned that if the quality of higher education is not improved, it would strengthen the forces of disintegration. With few doubtful exceptions, Indian universities are untouched by the ideals which have moved educationists and philosophers of education. Their teaching programmers leave, at best, a faintly visible effect on the minds of the alumini. They have even failed to equip the students with a degree which will help them to earn a decent living. In short, the Indian Universities have failed to discharge their responsibilities in providing leadership to our society. Why is this? The purpose of this chapter is to warn against the facile talk of education as a panacea for all the problems of development. The Indian experience shows that the unplanned growth of Universities, with little or no regard for quality of education, imparted through wooden bureaucratic structures may well snuff out creativity and give rise to a situation in which the system may well cave into the chaos which it has itself helped in producing. Even Madhuri Ben Shah, Ex-Chairman, University Grants Commission observed that Indian Education system is not theoretically free. The
question is whether we require new centres of excellence or existing systems of education will meet the present needs of students community? This chapter will dwell on this problem as well. To what extent the institutions of higher education may serve the functions of custodians, critic, interpreter, pioneer, and guide for the whole nation in its pursuit of full self-help and dignity for all the people. In case if any reform is to be needed then in what direction?

Chapter V is confined to university autonomy, student unrest, discipline and legal process. Unrest among students and the outbreak of violence through which it manifests itself is no longer an isolated phenomenon. Today it has spread its tentacles practically over the whole state and it seems together momentum with time. There are some people who would look upon consider the phenomenon as the teething troubles of our young democracy.

Prolonged student unrest in the sense of agitation and demonstration and off-repeated occurrence of violence involving the youth of the country affects the vitality of India; it impairs the cause of education, erodes the fundamental values of our society and inexorably undermines the apparatus and operations of democracy.
In the state in most cases the student unrest has taken shape of violent agitations against all established authority resulting in wide-spread disturbances. These disturbances have raised several issues. Are these the expressions of a conflict of generations of youth losing faith in the old system? Or are these symptomatic of times, the age of unrest and tensions we live in, part of the conditions all the world over? Or are they a manifestation, at one more level, of some sense of general frustration within the country? Or are the conditions in our universities really so poor or have suddenly so deteriorated that young men are genuinely agitating about them? Or have the academic and administrative standards, so woefully gone down in our seats of learning that the students community feels frustrated to resort to frequent acts of indiscipline? Or do they point to some fundamental deficiencies in our educational system? Or again, could it be that our students are acting under inspiration from examples in other parts of the world or are led or mislead by extraneous influences and forces within the country? These and host of other questions arise and call for investigation, answer and remedy.

Chapter VI deals with impact of courts on university autonomy, Academic freedom and higher education. The extensive search for a solution to campus unrest has
produced a major congressional, leading to setting up of several commission and reports, many books and articles, holds numerous seminars, extensive revision of University codes of conduct and disciplinary procedures, increased court litigation, and a wave of state and central legislation. Notwithstanding these efforts, the basic question remains unsolved as to what extent should the interference 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, alienates legislators, benefactors, trustees, and parents. This how results 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.

The Chapter VII examines the existing provision for settlement of disputes and redressals of grievances in the Universities and colleges of the various states with special reference to Gujarat State. It pinpoints the shortcomings and develops a detailed model for such a machinery at the grass root, state and the all India levels. The proposed model is replete with prescriptions for the composition of the tribunals, mode of appointment of the members, their tenure and jurisdiction. It thus takes a
step further, by making the proposal to establish a Central Education Tribunal mooted by the Law Commission of India wide its working paper published in the University News Journal.

The researcher has also examined in the chapter the working of Gujarat University affiliated Colleges Tribunal. A chart has also been prepared of the important judgments delivered by the Tribunal.

Chapter VIII is confined to writ jurisdiction of the High Courts and its effect on the working of Universities. The relief can be moulded since the benign power under Article-226 of the Constitution of India is a special instrument of justice which, with flexible pragmatism and genius for equity, inhibits social trauma even while upholding individual rights. The writ jurisdiction is geared to community good. Article 32 of the constitution of India guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights conferred by Part III of the constitution and it confers on the Supreme Court power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Similarly, Article 226 of the constitution empowers the High Courts in India to issue the above types of writs for enforcement of the fundamental rights.
Chapter IX is conclusion in which some suggestions have been made to improve the existing system.

The work on the thesis was started by issuing a comprehensive questionnaire which is reproduced in 'Appendix-A' to the thesis for eliciting expert opinion on various aspects of the problem of reforms in higher education and the effects which court judgments are having on the working of Universities specially in the state of Gujarat. The questionnaire was sent to eminent Judges, Advocates dealing with University cases, Vice-Chancellors of various universities, registrars, professors, eminent academicians etc. who it was considered, might have deep insight of the problem and are in a position to give suggestions for reform. The response was good. (List is attached in Appendix-'B').

The present researcher conducted interviews of eminent academicians and advocates at various times and at different centres. Reports of various commissions reports, other relevant publications, research articles, etc. were also studied. Some of the recommendations made by various commissions are coloured with traditional approach. What we need today is drastic change because we want to solve problems in their character and consequences. But even so, some of the recommendations made by the Education Commission are still good, and the present researcher has unhesitatingly relied on them.