CHAPTER- IV

ACADEMIC FREEDOM AND UNIVERSITY AUTONOMY

4.1 Academic Freedom and University Autonomy in India

This chapter analyses the nature and content of academic decisions in the context of university autonomy. Unless the academic element in the exercise of the power under challenge is distinguished from the ordinary executive and administrative powers, a realistic assessment about the judicial intervention in the academic area cannot be made. In the University administration there are powers, purely executive and administrative in nature, having no academic content therein. In other words, all university actions and decisions or decisions in the educational field need not be academic in nature. Academic decisions in the educational field and research stand apart. They have a specialized nature by virtue of their academic content, which keeps them away from judicial intervention. The judicial restraint is mainly due to lack of competence or lack of expertise of courts to decide the disputes on such matters. Therefore, this chapter seeks to prepare the groundwork before proceeding further to find out the jurisdictional parameters of the power of judicial review in the area of academic decisions and the legitimacy of judicial intervention in academic matters.

The concepts of academic freedom and university autonomy demand an analytical approach to the subject of 'judicial review of academic decisions' and its jurisdictional equilibrium. Unless the territory of academic freedom and the university autonomy is chartered and its legitimate boundaries fixed, one cannot make an academic evaluation of the extent of judicial intervention in academic matters in the present context.
Eugene Vinaver, Professor of French Language and Literature at the University of Manchester, in an address to the faculty of the University stressed on the uniqueness of the University as public institution and observed:

"that the condition under which academic work can prosper can never be equated with the political structure of a state or the administrative structure of an army or, for that matter, the rational structure of a large concern. Efficiency in all such enterprises requires within certain limits the abandonment of equality. In an academic body, on the contrary, efficiency is strictly proportional to the degree of individual freedom, for such is the nature of human intellect that when its freedom is violated, destruction ensues."

Autonomy means the right of self-government, or the right to take ones own decisions and to govern own affairs. Academic autonomy means, particularly, the right to carry on the legitimate activities of teaching and research and to take decisions on the attendant matters, without interference from any outside authority. The Oxford Dictionary defines the word ‘autonomy’ as ‘the right of self government’ and also gives ‘personal freedom’ as an alternative meaning.

University autonomy means the autonomy of its various teaching departments, its teachers and students and its elected bodies in relation to the affairs of the University as a corporate body. The important implication of autonomy within the university is that the academic element represented by the teachers in the University should have the final authority in all academic matters and that the lay or non-academic element represented by the administrators should serve the academic interest of the University, and not seek to dominate the academic element. In that way intellectual freedom is the essence of university autonomy. It is seriously contended that a non autonomous university is a contradiction in terms.

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The concept of university autonomy is quite distinct from that of academic freedom, though they overlap in meaning. While university autonomy relates to the freedom of the University as an institution with certain functions to fulfill as an integral part of the nation and of society, ‘academic freedom’ is nothing more or nothing less than the professional freedom of the teaching community as members of the University or college in the matter of prescribing the syllabi and curricula, deciding the equivalency of degrees, diplomas etc., conduct of examinations, valuation, teaching etc. and such other academic activities, including research which involve accumulation, impartation and creation of knowledge.

Academic freedom emanates from the autonomy of universities. The purpose being free flow of ideas, exchange of views, interrogation of the present and formulation of the future, uninfluenced by the Government in power. Academic freedom is defined as “that freedom of members of the academic community, assembled in colleges and universities, which underlies the effective performance of their functions of teaching, learning, practice of arts and research”2. There are no two opinions in saying that both university autonomy and academic freedom are essential for enabling a university to fulfill its functions4.

The Government of India, in the year 1964, constituted an Education Commission under the Chairmanship of Dr. D. K. Kothari to study on various aspects of Education. The Commission in its report distinguished autonomy and academic freedom. Referring to academic freedom, it says4:

“we would like to emphasize the freedom of teachers to hold and express their views, however radical, within the class room(and out side), provided they are careful to present the different aspects of a problem without

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confusing teaching with 'propaganda' in favour of their own particular view". The report adds that a teacher should be free to pursue and publish his research and studies, and to speak and write about, and participate in debate on significant national and international issues, even though his views and approach may be in opposition to those of his seniors or the head of his department. The report emphasizes that:

"the universities have a major responsibility towards the promotion and development of an intellectual climate in them which is conducive to the pursuit of scholarship and excellence and which encourages criticism, ruthless and inspiring but informed and constructive. All this demands that teachers exercise their academic freedom in good measure, enthusiastically and wisely".

The importance of university autonomy is recognized in all democratic countries. It is put on the same footing as the independence of the judiciary and the freedom of the Press, which are essential for the development of a healthy democracy and public life. The former guarantees the maintenance of rule of law and the latter guards the freedom of expression of opinion by providing the right to information. The universities, on their part, provide intellectual and moral leadership, making the intellectual freedom of the people meaningful.

In ancient Indian universities, there could not have been any problem with regard to the maintenance of their autonomy, as learning and scholarship were highly respected by the rulers as well as by the people of those times. In Europe, the concept of university autonomy could be traced back to the middle ages, when the guilds or corporation of scholars and masters, which constituted the universities, enjoyed perfect freedom. The British universities are all self-governing communities, whose defacto control resides largely in

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5 Ibid.
7 Ibid.
their academic bodies. The universities are free to appoint their own teaching staff, which is one of the essential features of university autonomy. The universities are entirely free to determine whom they will admit as students, to lay down their own courses of study and to control the test leading to the award of their degrees.

Despite the fact that the teaching community in ancient India had enjoyed absolute freedom and had derived great reverence from society, that even rulers had subjected themselves to the guidance and advice of their teachers, the modern concept of 'university autonomy' and 'academic freedom' have been borrowed by us from the West. Nationalist educationists in India and foreign observers alike have commented on the alienation of the universities in India from their cultural roots and native intellectual traditions. Since these were and are increasingly irrelevant to the Indian universities and that adherence to this romantic double fiction (a state of mind in which hope triumphs over experience) is delaying a rational consideration of and a pragmatic solution to the contemporary problems of governance of the Indian universities.

Like academic freedom, university autonomy is based on tradition and public opinion rather than on charters or statutes. The Kothari Commission observed:

"the care for autonomy of universities rests on the fundamental consideration that, without it, universities cannot discharge effectively their principal functions of teaching and research and service to the community; and that only an autonomous institution, free from regimentation of ideas and pressures of party or power politics, can pursue truth fearlessly and build}

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9 J. N. Kaul, Governance of University Autonomy of the University Community, Abhinav Publications, New Delhi (1988), p. 20. See also Education Commission Report, Government of India, 1964-66, (N.C.E.R.T., New Delhi, 1972), p. 501, "Indian universities remain alien plantations, not integrated with the New India.... This is one reason why, to the observer from outside, the Indian intellectual remains a culturally displaced persons, nostalgically treasuring his threads of communication with England". 
10 Id., at pp.17-18.
up, in its teachers and students, habits of independent
tinking 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”.

Essential constituents of university autonomy as observed
by the Kothari Commission are:
(i) freedom in the selection of students;
(ii) freedom in the selection, appointment and promotion of
teachers;
(iii) freedom in determining courses of study and methods of
teaching and in finding areas and problems of research;
(iv) freedom in recognition of equivalence of degrees, diplomas
etc.;
(v) freedom in conduct of examination, assessment of
merits (valuation and revaluation etc.); and
(vi) freedom in maintenance of discipline in the campus\textsuperscript{12}.

Autonomy, the Commission points out, functions at three levels, \textit{viz.}:
(i) within the University;
(ii) within the university system as a whole; and
(iii) in relation to agencies and influences outside the
university system.

The internal government of a University comprises four
distinct elements:
(i) the academic element made up of the several categories of
teachers and researchers;
(ii) the lay element, including the representatives of different
interest outside the university such as the learned
professions, business, industry and politics, which may
collectively be described as those of society;

\textsuperscript{12} \textit{Id.}, at para 13.05
(iii) the administrative element, consisting of non-teachers concerned with the day to day work of the University; and
(iv) the students.

The governing bodies of the universities comprise the first, second and third element in different proportions, as the case may be. Of late, representation of the fourth element has also been mostly accepted. The principle of university autonomy requires that the lay or non-academic elements should not dominate or control the university, if the university is to function effectively.

Prof. Amrik Singh, leading educationist, 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 cornerstones of university autonomy"\(^{13}\).

In considering the question of university autonomy, one must recognize four or five overlapping levels at which it functions:

(i) Autonomy within University e.g. autonomy of the department, college, teachers and students in relation to the university as a whole;

(ii) 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 AIU or IUB;

(iii) Autonomy of the university system as a whole, including the UGC, AIU or IUB in relation to agencies and influences

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emanating outside that system, the most important of which are the Central and the State Governments;

(iv) **Autonomy of the university vis-à-vis the interference of the professional bodies** such as MCI, AICTE, BCI, NCI, DCI, NCTE etc., who determine the syllabus and structure of the professional courses in their respective areas and approve the affiliation of the colleges; and

(v) **Judicial interference in the university autonomy.**

While analyzing the above overlapping levels, one has to agree with the following safeguards to be adopted minimum to protect the concept of university autonomy.

(i) **Autonomy within a University:**

(A) Practice should be developed to shift the centre of gravity of authority to the academic wing of the University i.e. the Academic Council, and it is to be vested with the final authority in all academic matters

(B) It should be ensured that universities do not become center of administration or administrator dominated. The principal function of the administration in a University should be to serve the academic interests of the University.

(C) The principle of self-governance should be strictly maintained within the academic bodies of the universities to maintain the authority of the universities.

(D) Financial independence and stability should be ensured and further resourcefulness should be generated on its own.
E) Polarization between teachers, students and administration should be avoided.

(ii) Autonomy within the university system as a whole:

(A) University should be given freedom to put stringent academic standards and conditions to maintain higher academic quality in the matter of admission of students, fixation of course content, method of teaching, conduct of examination etc. For example: (i) University should be able to impose a condition that there would be only one compartment in a year, and if a student fails for more than one paper, the student shall repeat all papers of the year/semester; (ii) impose a system of 'all clear papers' in higher class to bring high academic standards; and (iii) impose a condition that the carry forward system should be discouraged.

(B) University should be able to impose higher academic standards than the prescribed norms of UGC or other controlling statutory bodies. The standards prescribed by such bodies, can only be minimum, which could be supplemented or supplanted by the University.

(C) University should be given total freedom to decide the equivalency of its degrees, diplomas, examinations etc. with those of the other universities without any outside interference like that of the Government, Public Service Commission, U.G.C. etc.

(iii) Autonomy in relation to outside agencies:

(A) Universities being dependent on other agencies for funding like U.G.C., Government etc. the funding agencies should
not impose such conditions, which would hamper the autonomy of the academic bodies of the University. Financial assistance to universities should be unconditional.

(B) Representation of the outside agencies, particularly the executive Government, in the governing bodies of the University like Syndicate, Senate etc. should be minimum and taken for the purpose of ventilating their views and not to control those bodies.

(C) Representatives of outside agencies in the University bodies should be qualified and must have scholarship in their respective areas and should not be mere political nominees.

(iv) Interference of the professional bodies:

Professional bodies such as MCI, AICTE, DCI, NCI, BCI, NCTE, etc., who determine the syllabus and structure of the courses in their respective subjects, should have a uniform and responsible role and they should have a consultative process with the universities than to be overreaching and superseding authorities in their respective fields.

(iv) Judicial interference:

(A) The Court shall only intervene and not interfere with the academic matters of the University.

(B) The Court shall intervene only when the acts and decisions of the universities are illegal, per se unreasonable, unjustifiable and mala fide and not otherwise.
(C) The Court should not substitute its rationale, logic or yardsticks to that of the University in the university's decisions, particularly on academic matters like formulation of syllabi and curriculum, admission to courses, selection of faculty, mode of examination, valuation, equivalency of degrees, examinations etc.

(D) In the absence of strong *prima facie* case, Court should not grant compassionate interlocutory reliefs in matters like admission, examination etc. without hearing the other side, which may result in undue and undeserving advantage to the petitioners and total upsetting of the University schedule.

An evaluation of the above factors would reveal the fact that no university has been completely autonomous nor may any university be expected to be wholly self-governing, independent of other social institutions of the times.\(^{14}\)

### 4.2 University Autonomy in England and United States

Universities in western democracies, excepting perhaps the French universities before the 1968 reforms, have had more or less complete freedom in deciding what to teach and what to select for scholarly study and research.\(^{15}\) It is perhaps this freedom that has moulded the modern civilization, where the western influence is all-pervasive subject to the direct or indirect influence exerted by the religion, the organized church. Therefore if institutions of higher education are to make their maximum contribution to the society,


\(^{15}\) *Id.*, at p. 63.
then the state must regard an independent academic life in the same light as it regards an independent administration of justice.\textsuperscript{16}

The British universities enjoy the highest degree of autonomy among all the universities in the world.\textsuperscript{17} Their autonomy is not guaranteed by the state or by any legislative enactment. It is based on tradition and on public opinion, which maintain that universities are among the most important institutions of a civilized society, and that they can flourish only in an atmosphere of complete freedom.\textsuperscript{18}

In England, Government's relations with the universities rest on mutual confidence between Parliament and the executive and between the executive and the universities. The Government gives very large grants to universities without detailed parliamentary control. One Chancellor of the Exchequer in the following words has picturesquely described the attitude of the Government to the universities:\textsuperscript{19}

"The university's task is to cultivate its own garden, and the state's to supply the manure in usual form and quantities and to ask for the fruits in due season, not to pull up the plant by the roots before they flower".

By the very nature of their constitution, Oxford and Cambridge universities enjoy far greater autonomy within the university than the civic universities of England do, with their 'two-tier' system of university and government.\textsuperscript{20} In the civic universities, the members of the governing body, consisting of laymen, were at one time disposed to treat the professors as 'employees'. Conventions have been developed gradually whereby the whole academic business of the University is entrusted to the 'Senate', a purely academic body, and

\textsuperscript{17} \textit{Supra}, n. 6 at p.18.
\textsuperscript{18} Id., at p. 19.
\textsuperscript{19} Id., at pp. 28-29. Speech of the Rt. Hon. R.A. Butler, Chancellor of the Exchequer, U. K., report of the proceedings of the 7\textsuperscript{th} Congress of the Universities of the Commonwealth (Cambridge, 1953).
\textsuperscript{20} \textit{Supra}, n. 18.
the teachers are looked upon as members of a society, and not as employees\textsuperscript{21}.

The American universities can be broadly divided into two categories namely (i) 'private' and (ii) 'state'\textsuperscript{22}. The universities falling in the first category are those that were founded by religious orders or by private individuals, and include some of the oldest and wealthiest among the American universities \textit{viz.} Harvard, Columbia and Yale. Those in the second category are State controlled and depend on the State in which they are located for their maintenance and expansion. University of Michigan is an example. The private universities enjoy more freedom than the state universities, as they are not dependent on the goodwill of the taxpayer. There is always a potential danger of a State university's autonomy being interfered with by the State legislature, though, in practice, such interference is rare.

To the extent that a state university is required to admit all students, who pass out from any of the secondary schools in the state and may seek admission, it may be said that its liberty to select its own students (which is an important part of university autonomy) is restricted, while a private university chooses all its students according to its own standards of admission, which are generally much higher than those of the average high school 'graduate'.

During the 19\textsuperscript{th} century, the tradition came to be established in the USA, to the effect that the government institutions of learning such as universities and colleges should reside in boards composed of lay trustees. There was also a tendency to increase the representation of alumni on these boards, while the teachers not only had no share in the governance, but also were expressly barred by charters or statutes from membership of the boards. Thus, the Charter of Columbia University, New York provides that no professor, tutor or other assistant shall be a trustee\textsuperscript{23}.

\textsuperscript{21}Ibid., \textsuperscript{22}Ibid., at p.26 \textsuperscript{23}Supra, n.6 at p. 27. Mac Iver, Robert M., \textit{Academic Freedom in Our Time}, Columbia University Press, New York (1958), pp 69-70.
The Board of Trustees of an American University has the power to determine the affairs of the institution, to direct its educational policies, to elect its President and other administrative officers, to appoint its teachers and to prescribe its discipline. There are boards of trustees in the state universities also. Though independent of the state legislatures, these boards are amenable to pressures of interest group to a much greater extent than those of the private universities. Conflicts between the trustees and the faculty over academic freedom are more frequent in the state than in the private universities. The cases of violation of autonomy in American universities fall under two broad categories, depending on the nature of the authority and the manner in which it operates. The authority may be operating within the universities, e.g. the Board of Trustees or the President, or it may be an authority exercising control over the university from outside the university such as the State Government or the Federal Government.

In majority of cases, violation has taken the form of control over the academic freedom of the faculty and its members. It virtually amounts to an attack on the university's autonomy in as much as it affects the personal or professional liberty of the teacher and also indirectly affects the institution by interfering with the service conditions of the teacher by compelling him to leave the university if he does not submit to the control sought to be imposed on him. The American Association of University Teachers recorded a total number of 227 separate incidents of violation of academic freedom during the period of five years from 1945 to 1950.

Political control over a university is often exercised by the Government imposing a 'loyalty' oath on members of the faculty or by making grants for specific purposes or services, as in the case of Federal grants. The object of the 'loyalty' oath is to curb subversive

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24 Id., at p.31.
activities. The oath is in the form of a pledge of loyalty to the Constitution of the United States and to the State in which the University is situated. Every citizen is bound by these two loyalties, but what the teachers resent is their being compelled to pledge their loyalty where other citizens are under no such compulsion. What is further resented is the additional requirement that compels the teacher to disclaim particular beliefs or associations before they take up or continue in office.

The strong resentment expressed by President James Bryant Conant of Harvard University when the Chairman of the Maryland Commission requested the University to pass the loyalty of its faculty members and keep a strict watch over their extracurricular activities is indicative of the seriousness of the issue for academics. President Conant rejected the suggestion outright and asked Mr. Grenville Clark, a lawyer, to clarify the position. He opined that to take the course recommended by the Chairman would be “to repudiate the very essence of what Harvard stands for- the search for truth by a free and uncoerced body of students and teachers”. He added that, if Harvard were to accept the suggestion, it would not require six months to destroy the morale of both its teachers and its students, and its usefulness to the country.

4.3 Autonomy of Indian Universities before Independence

In the pre-independent India, control of the government on the universities, though effective, was more indirect than direct, because its control over the statutes and regulations was in the nature of a vetoing power. The visitorial power was held in reserve and exercised but rarely, while the audit was by way of a check after the expenditure had been actually incurred by the universities.

26 Supra, n. 6 at p.29.
27 Id., at p.30.
The Calcutta University Commission set up by the Government which came to examine the role of government in university affairs, remarked that, so long as the universities continued to be primarily administrative bodies dealing with functions delegated by the government, and not corporations of learning, it was inevitable that the Government should, to a greater or lesser extent, control them. It however, deprecated control by government even in affiliating universities, and much more so in teaching universities.

Both in academic matters such as the framing of curricula or organization of studies, which can be best dealt with by the teachers on account of their special competence to undertake these functions, and in the sphere of finance, the Commission disapproved government’s attempt to assume detailed control. It emphatically declared “that a system of full government control of a teaching university, even if the university is wholly financed by government, has very little to recommend it, and that no university is likely to work well unless the sense of responsibility is brought home in the first place to its teachers, and in the second place to those who are immediately entrusted with its financial administration.”

Whether by accident or by design, the constitutions of the first universities left it to the universities themselves to determine the question of affiliating colleges, and the government had no say in the matter. The Indian University Act of 1904 however, made affiliation the act of government, and the powers of the Senate and Syndicate of a merely recommendatory character. The reason put forward for this important change was that the universities had been rather lenient in affiliating colleges with the consequences that some of the week and inefficient colleges had come into existence.

The Committee of University Reform appointed by the Bombay Government in 1924-1925, recommended that, since a
special Act was to be enacted for Bombay, the earlier position ought to be resorted to by revesting the power of affiliation in the Senate, which would exercise it with greater responsibility than under the existing system, where its responsibility was only one of recommendation and the act of affiliation was that of an outside agency. Government, however, did not accept this recommendation, and the Bombay University Act of 1928 allowed the powers of affiliation and disaffiliation to continue with the Government. Today, almost all the universities themselves possess the final authority to affiliate colleges.

One of the effects of the Indian University Act of 1904 was to tighten government control over the universities. Under the Act, the Government extended its control over the universities by (i) reserving to itself the final authority in the affiliation and disaffiliation of colleges; (ii) giving itself the power to define the territorial limits of the jurisdiction of universities, which it did not possess under any of the earlier Acts; (iii) requiring its sanction for giving effect to regulations passed by the Senate; and (iv) making the election of ordinary Fellows subject to the approval of the Chancellor.

It was because of the extension of Government's powers in the manner mentioned above that the Calcutta University Commission remarked that, under the terms of the Act, the Indian Universities were “among the most completely governmental universities in the world” adding that such a system was likely to weaken the sense of responsibility of their governing bodies. The Commission, at the same time, qualified its statement by indicating that it was correct “in theory, though not in practice”.

The first time that any serious difference arose between the Government and the University of Bombay was in 1886, when the Senate wanted to introduce the practice of giving exemption at

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32 Supra, n. 6 at p. 34.
33 See Sections 21, 22 and 24 of the Indian University Act of 1904.
34 See Section 27 of the Indian University Act of 1904.
35 See Section 25 of the Indian University Act of 1904.
36 See Section 6(3) of the Indian University Act of 1904.
37 Supra, n. 6 at p. 40.
university examinations to candidates who had passed in certain subjects and failed in others. Government, at first, declined to approve the Senate's proposal, but gave in later on receiving a representation from the Senate. This was the first occasion on which Government had exercised its power of veto, and that too only in the first instance, in respect of regulations relating to a purely academic matter.

In Bombay because of the lack of facilities in the Government Law College, a new Law College was proposed to be established and the promoters sought for the affiliation of the college to the Bombay University in 1899. The Government declined the request apparently because the Government felt that the college might teach sedition. It was a misplaced fear though. The reasons for the refusal was however mentioned as the non-existence of the need for such a college because the Government College was got revamped in the meanwhile. Indeed, the Government had no power to reject the affiliation there. However, since the college did not go for appeal, the decision remained valid.

There was long spell of non-intervention by Government, that lasted until the Civil Disobedience Movement reached its peak. In 1942-43 however the Director of Public Instruction issued an order to the principals of affiliated colleges in the Bombay University, calling upon them to submit weekly report on the state of discipline maintained by their institutions under various heads, including attendance and conduct of the teaching staff. This was naturally resented to by the principals of colleges not maintained or aided by the Government. At a meeting of the Senate of Bombay University, in June 1943, at the instance of late Sir Chimanlal Setalvad, who had been Vice-Chancellor of the University for an unbroken period of 12 years and a redoubtable Champion of university autonomy, the Senate passed a resolution expressing its apprehension at the attempt of the Director of Public Instruction to exercise supervision and control over non-governmental colleges in the manner mentioned above. The

\[\text{Id., at p.39.}\]
resolution, which was passed by an overwhelming majority, pointed out that the Government became functus officio, once it had passed orders affiliating a college and that the control and supervision over them thereafter vested in the university to the extent prescribed by the University Act.

The Calcutta University was faced with a critical situation in 1922 during the Vice-Chancellorship of late Sir Asutosh Mookerjee, who was known for his dynamic personality and independence. In that year the University had a deficit of more than rupees five lakhs and the salaries of its postgraduate teachers had been in arrears for several months. The Government of Bengal wrote to the University in August intimating its willingness to give financial aid to the extent of Rs. 2.5 lakhs subject to certain conditions. These conditions signified a lamentable spirit of distrust on the part of the Government. One of them was that the actual receipts and expenditure under each head should be submitted to the Government every month. Other conditions were on the whole, rather humiliating. Addressing the Senate on the subject, Sir Asutosh said: “This is the greatest crisis in the history of the University which I have witnessed during a period of 34 years”, and he asked the Senate unhesitatingly to reject the Government’s offer, since the conditions proposed were “the badges of slavery”. The Senate rose to the occasion and, notwithstanding the financial crisis, passed a motion, rejecting the offer.

According to Dongerkery “the occasions on which university autonomy in India was violated or threatened during the fairly long period of British rule, from 1887 to 1947, were comparatively few and far between. It was basically due to two reasons: first was that those who wielded political power found it difficult to resist the influence of the British traditions of University autonomy in which they had been nurtured; the second was that they were genuinely afraid of offending public opinion among the intelligentsia whose co-operation was essential to them for carrying on..."
an administration that was not broad-based, and liable to criticism as being part of the bureaucratic system of an alien government"\textsuperscript{40}.

It was observed\textsuperscript{41}:

"Those who were at the head of the Government in the early years of the life of the Indian universities were, fortunately, men endowed with a broad vision, a liberal spirit and a keen appreciation of the value to be attached to the independence of universities. This was, in large measures, due to the fact that they themselves had been brought up in British traditions, which look upon university autonomy as one of the bulwarks of freedom essential for a healthy national life. The same liberal spirit also inspired the educationists who guided the affairs of the Indian universities during the same period".

4.4 \textbf{University autonomy in independent India during first two decades.}

It is ironical that universities in independent India are in greater danger of attacks upon their independence than they were under the foreign rule. This is, indeed, an unfortunate situation. This has been partly due to the fact that the democratic traditions of university autonomy that came to India from west have not taken root in the soil. The lack of financial independence and the dependence on the Government exchequer may be another important factor. There is a view that self-governance of universities is illusory if they do not have financial autonomy.

The then Government of Bombay was perhaps the first State Government after independence to shatter the illusion that Indian universities would be able to breath in an atmosphere of more or less complete freedom like their counterparts in other parts of the world.

In June 1951, the Secretary to the Government of Bombay, Education Department, addressed a letter to the Bombay University suggesting a novel procedure of granting permanent affiliation to colleges, which had been in existence for five years or

\textsuperscript{40} Id., at p.40.
\textsuperscript{41} Ibid.
more, and had applied for permanent affiliation. The Syndicate rightly viewed this suggestion as an attempt on the part of the Government to interfere with the freedom of the university bodies. It lost no time in pointing out to Government the unreasonableness of their request, involving as it did the adoption of a blanket procedure that would contravene the provisions of section 39, to recommend permanent affiliation for all colleges of standing of five years or more, even though they might not fulfill the requirement of the said section. Not long thereafter, in spite of the university's recommendation that the Khalsa and the Siddharths Colleges be each affiliated for a period of three years only for sound academic reasons, Government issued orders affiliating both the Colleges permanently.42

There was attempt of interference in Gujarat also. The Gujarat Government decided to continue the affiliation of the Prabhudao Thakkar Commerce & Science College, Ahmedabad for teaching courses leading to the First year B.Sc. for a period of one year from the 15th June, 1967, subject to certain conditions. This was after the recommendation of the Senate of the Gujarat University, by a majority of 71 to 8 votes, that the affiliation be not continued. The Syndicate of the University met on 3rd June, 1967 passed a resolution expressing grave concern at the decision taken by the State Government in disregard of the resolution of the Senate, after a careful discussion of the question in all its aspects. It also resolved that the decision was contrary to the fundamental principle of autonomy of a university.

The autonomy of the universities in Bihar was restricted to such an extent that none of the universities had the freedom to appoint its own teachers or to exercise disciplinary control over them. There was unusual feature of the existence of a University Service Commission, a body corporate, consisting of a Chairman, two other members and a whole time Secretary, all appointed by the State

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42 Id., at p.42.
43 Id., at p.44.
Government on terms and conditions determined by it. Subject to the approval of the University, all appointments, dismissals, terminations of service and reduction in rank of teachers of non-government, affiliated colleges have to be made by the governing bodies of the colleges on the recommendation of this Commission.

Another feature of the situation in Bihar State, which impinged on the autonomy of its universities was the State University Grants Commission, a body presided over by the Governor of Bihar as the head of the State, and not as Chancellor. In addition to the allocation of funds available for university education in the State, this Commission performed four different functions, which cannot but be regarded as fetters on university autonomy. They were: (i) to advise the Chancellor in giving or withholding his approval to the affiliation of colleges proposed by a university; (ii) to initiate university legislation; (iii) to advise the universities on their existing and proposed ordinances; and (iv) to approve or withhold approval to a regulation.

4.5 University Autonomy: Myth or Reality

In 1857, when the first three universities were established, one each at Calcutta, Bombay and Madras, there were no more than 15 arts (English and Oriental) colleges with 3,246 students and 13 professional colleges 912 students. To-day there is about four hundred and twenty three universities across the country.

Now, the Indian Universities have lost their autonomy either to the government or to the professional statutory bodies recognized by the Parliament in the respective fields or to the agencies created by the University Grants Commission. The threat from the Judiciary to academic freedom and university autonomy is comparatively insignificant and not aggressive.
Universities did have considerable amount of autonomy both academic and financial prior to 1975 or so, but over the period, it had eroded. The reasons for this erosion are manifold. Failure of the officials to exercise the powers provided for protection of autonomy, overdependence of universities on the grant or finances, lack of accountability in the matter of appointment, expansion activities and negligence towards the welfare of affiliated degree colleges, affiliation of sub standard colleges, fear of inadmissible expenditure and various other factors are some of them.

Formerly, the authority for approving new institutes of management and colleges of engineering and technology was with the affiliating university concerned subject to the formal consent of the respective state governments. Now, it is not so. After the constitution of the All India Council of Technical Education\(^4\) (AICTE), any establishment which desires to start an institute of management or a college of engineering for running a university course has to seek the approval of the AICTE, preceded by the approval of the Director of Technical Education of the state concerned. The University and the State Government might have approved the college as per the norms laid down by them but the final authority at the all India level remains with the AICTE. Therefore one can say that universities are autonomous and they can award degrees, but such degree carries no meaning unless the institute concerned gets the approval of the AICTE.

In the field of health education Indian Medical Council (IMC), the Indian Dental Council (IDC) and the Indian Nursing Council (INC)\(^5\) are the statutory bodies at the national level to consider the proposal for starting new medical, dental and nursing colleges. The applications are to be submitted through the state governments and its approval or rejection is dependant on the fulfillment of the conditions laid down by the respective council. In the statutory

\(^4\) Council constituted under the All India Council for Technical Education Act of 1987.

\(^5\) Councils constituted under various Central Acts
scheme of things the universities do not have the autonomy to give sanction for starting medical, dental and nursing colleges. The university’s authority is confined to granting affiliation to the college and the final authority to decide whether such affiliation is to be approved and the college be given permission to start is vested with the aforesaid central statutory authorities as per their rules and regulations.

Similar is the case with legal education. After the constitution of the Bar Council of India (BCI)\(^5\), promotion of legal education and laying down its standards and recognition of law degrees of the universities are some of its primary responsibilities among its functions and responsibilities under section 7 of the Advocates Act. All the Law Colleges and the University Departments running law courses or, for that matter, the Law Universities have to seek approval of affiliation and recognition from the BCI for their institutions and degrees to be recognized for the purpose of enrolment as advocates\(^6\). The Bar Council of India is vested with the power to conduct inspection of the universities and their law colleges for ascertaining the infrastructural facilities and academic equipments for granting approval of affiliation to the respective institutes.

The National Council of Teachers Education (NCTE), a national statutory body\(^7\), was set up by the Government of India to look after the uniform development and regulation of teacher education system in the country. All teachers’ training institutions have to seek recognition from the NCTE as per the provisions of the Act. The ambit of the NCTE covers all modes of teacher’s education. Under the provisions of the NCTE Act only the teacher-training qualifications obtained after pursuing a course or training in an institution recognized by NCTE shall be valid for employment. Thus a perusal of the central legislations under which the aforesaid national regulatory authorities have been constituted would show that neither

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\(^5\) Council constituted under Section 4 the Advocates’ Act of 1961.
\(^6\) See Section 7 of the Advocates Act, 1961.
\(^7\) See Section 3 of the National Council of Teacher Education Act of 1993.
the universities nor the UGC have any control over the powers of the said national authorities like AICTE, NCTE, MCI, DCI, NCI or the BCI to control the respective professional education. They are more or less self-governing autonomous statutory bodies who have the final say in the matter of respective professional education.

With respect to admission of students in the universities and colleges to the professional courses, universities do not have any specific role, as outside agencies conduct the entrance tests and counseling. For example, All India Engineering Entrance Examination is conducted for the engineering seats by a central body; All India Medical Entrance Examination is conducted by the Central Board of Secondary Education; Common Law Admission Test is conducted by the consortium of Law Universities. Similarly, for the seats in the state universities and colleges, the Commissioner of Entrance Examinations conducts the state level entrance test for the medical, engineering, dental, agriculture, nursing and law courses.

Thus, it is seen that, the universities and colleges, who teach students and conduct examinations do not have any role in admitting students, at least to the professional courses. Likewise the final authority to approve the institutions imparting professional courses is also not vested with the universities. The syllabus for the professional courses are also prescribed by the above professional bodies, and not by the universities.

4.6 Judicial Intervention

Indian Universities have autonomy within certain recognized areas. The courts scrutinize university decisions when they are under challenge by the aggrieved parties who are affected by university decisions. Through judicial review, the courts impose restraints on the freedom and autonomy of the universities to make them function under rule of law. Judicial interference cannot therefore normally be considered as an encroachment into the academic freedom and autonomy of the university. The causes of university litigation extend
beyond mere breach of law or procedure. Consideration of natural justice, abuse of power, mala fides, violation of statutory provision, excess or lack of jurisdiction and other principles of administrative law take the judges into areas that cannot be fenced off as 'academic' and put beyond the jurisdiction of the courts. Academic matters are interwoven with almost all university administration aspects and therefore, litigation of any content or result in which universities are involved may have to an extent an impact on their academic autonomy.

The National Council of Educational Research and Training (NCERT) conducted a study of trends in judicial review of education from 1947 to 1964. It stated:

"The law courts have shown great restraint and unwillingness to interfere with the 'internal autonomy' or 'internal working' of educational institutions. In matters connected with admission, examination and indiscipline of students and also in matters connected with other bodies of educational institutions such as election for University Court or Executive Council, the courts have not preferred to interfere with the exercise of discretion of the educational authorities with their internal administration".

Judicial abstention from considering university cases historically was based on the attitude that universities are unique institutions that could regulate themselves through tradition and collegial consensus. In few instances when disputes were brought before the judges, they deferred to the judgment of teachers and administrators with respect to academic decisions they were exceptionally qualified to make.

Students found little solace from the courts particularly in disciplinary matters. Courts bowed to the judgment of university authorities acting in loco parentis in decisions concerning students and campus discipline. Students were placed themselves under the

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56 Ibid.
disciplinary authority of the Principal or Vice-Chancellor, when they accepted the privilege of attending the institution of higher education. Judges feared that undue instruction and interference would undermine the universities' disciplinary control over students in academic and non-academic matters. Chief Justice Malik of the Allahabad High Court observed:\textsuperscript{57}:

"To hold that a student has a legal right to come to a court of law and require the head of the institution to justify his action where he has meted out some punishment or taken any disciplinary action will be subversive of all discipline in our schools and colleges....The High Court will not interfere in the internal autonomy of educational institutions."

The High Court of Assam in 1954 affirmed\textsuperscript{58} that the Courts have jurisdiction to issue writs against a university in appropriate cases. The Court noted that even British universities were required to abide by laws applicable to higher education, the most important being fundamental principles of the Constitution. The court cited the case of \textit{King v. Chancellor, Masters and Scholars of the University of Cambridge}, where a writ of mandamus was issued against the English university in 1718.

In 1966, Report of the Education Commission headed by D.K. Kothari observed\textsuperscript{59}:

"The considerable increase in the number of lawsuits filed against the universities in recent years is mainly due to a change in social attitude. In the past, one avoided going to a court of law as far as possible, but now the pendulum seems to have swung to the other extreme."

The Commission did not offer an explanation for the change.

Experience indicate that the pendulum was pushed to the other extreme by a number of factors\textsuperscript{60}:

\begin{enumerate}
\item The volume of litigation has increased because there are more universities, more colleges and more students, faculty and staff. There
\end{enumerate}

\textsuperscript{57} \textit{Keshab Chandra v. Inspector of Schools} A.I.R. 1953 All. 623 at 624.
\textsuperscript{58} \textit{Himendhr Chandra v. Gauhati University} A.I.R. 1954 Assam 65.
\textsuperscript{59} Kothari Commission, University Grants Commission, 1966, p.338.
\textsuperscript{60} \textit{Supra}, n. 54 at pp. 42-43
has been a tremendous growth in the number of institutions of higher education since 1947 and the growth continues unabated.

(2) The body of law that applies to these institutions also is expanding. The desire of the central and state governments to maintain standards and to achieve various public goals is stated in various laws and regulations. Some of these are enforceable only through the law courts.

(3) The Government seeks to carry out a complex of social and economic objectives through higher education, such as uplifting classes of people, who have been held down by casteism and economic disparities. Their objectives are not met easily by the universities and often are at odds with academic interest. Disappointment with university's inability to produce and maintain visible changes in the socio-economic status reduced individuals' reluctance to sue; so the pendulum has swung toward litigation as a means of solution.

(4) Independent of the legislations that universities must follow, the expansion of administrative works has opened up chances for universities to be subjected to judicial review. Codifications of universities laws, policies, practices and customs increase the likelihood of litigation. Instances for courts' intervention are on the increase in university environment.

(5) Several High Courts have construed statements of policy and procedure as contractual promises, which the university may not break. These contractual rights have been explained in constitutional terms, particularly those emerge from the terms and conditions in the prospectus for admission.

(6) The doctrine of in loco parentis has lost its vitality in the context of constitutionalisation of university administration as a result of judicial review.

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(7) Students challenge disciplinary decisions with impunity and with occasional success\(^{64}\), which motivate further challenges.

(8) Selection to faculty and such other decisions having purely academic content have become more and more controlled by extraneous influences especially the political influence of the Government exerted through the elected bodies of the universities, like Syndicate, Board of Studies etc.

Four ways in which the courts normally intrude into academic autonomy are: (i) the courts readily admit petitions for relief, in some cases where there is little or no merit in the petitioner's allegations. The resultant burden of the universities in defending them against lawsuits, diverts their economic and human resources from academic pursuits; (ii) the courts recommend a course of action when they cannot find that the university decision violates an affirmative legal requirement; (iii) the courts directly intervene in academic matters by characterizing university actions as violations of law or procedure or by finding that the actions evince bad faith or bias or are unreasonable and arbitrary; and (iv) the courts grant interim orders having the effect of final relief, particularly in areas like admission of students, permission to write examinations, valuation of answer scripts, dates of examination, declaration of results etc., which cannot be and may not be reversed even when the final orders go against the petitioner in the writ petition. These four categories are not separate and distinct. The first always exist, whether the issues brought for the resolution of the courts are meritorious or frivolous. Apart from the above, frequently, the courts couple orders with extensive recommendations and observations to provide maximum impact and guidance on future decisions of university authorities in the areas dealt with, minimizing the freedom of the universities to pursue their academic goals.

\(^{64}\) *Sarat Kumar Panigrahi v. Secretary, Board of Secondary Education, Orissa*, (2003) 9 S.C.C. 83
It is mainly due to the broad jurisdiction of the Supreme Court and the High Courts under the Constitution to issue writs to vindicate the fundamental rights enumerated in Part III of the Constitution and for "any other purpose" that the volume of university litigation is increasing year by year. These rights among others include equal treatment under the law, prohibition of discrimination on ground of religion, race, caste, sex or place of birth, and equality in matters of public employment. The High Courts have jurisdiction under Article 226 of the Constitution to issue directions, orders or writs to any person or authority for the enforcement of fundamental rights or for "any other purpose". Under Article 32, the Supreme Court also may issue writs and orders to vindicate fundamental rights, and it has jurisdiction to take special leave appeals from decisions of the High Courts under Article 136. Because of the above provisions, a large number of writs are filed against educational institutions, which are increasing day by day. In fact, most of the disputes in the academic sector start not from violation of fundamental rights, but from contractual, statutory or civil rights. Bulk of the litigation in this area start from the easily accessible High Courts under Article 226 and a good number of them finally reach the Supreme Court under Article 136.

University authorities can mitigate the impact of litigation on academic autonomy by instituting various procedures and taking care to practice preventive measures. Nevertheless, the university will continue to be sued because some individuals will not accept decisions outside the judicial process as final. If a university decides to defend the actions of its agents, it must persuade the judge that the decision under challenge was a bona fide academic judgment made within the

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65 See Article 226, Constitution of India.
66 Article 14, Constitution of India.
67 Article 15, Constitution of India
68 Article 16, Constitution of India
university Acts and statutes. If the Court is convinced, it will be 'reluctant' to interfere with that judgment\textsuperscript{69}.

Even when the courts honour university decisions, they frequently are not reluctant to tell the university what should have been done in the context and what university authorities might do to avoid similar problem in future\textsuperscript{70}. Judges also tender advice regarding the administration of examination\textsuperscript{71}, appointments\textsuperscript{72}, conduct of student election\textsuperscript{73} and general state of higher education\textsuperscript{74}. The Court's recommendations may not be binding in normal course, but they are supported by the strength of independent and impartial nature and the reputation for dispensing justice regardless of the litigant's status. When no law has been broken but justice is not adequately served by allowing a university decision to stand, the courts freely give advice to university authorities. Such suggestive interference in university decisions is fairly common. When a court has no legal reason to interfere, it still may attempt to render justice for the individual concerned\textsuperscript{75}. Under such personally compelling circumstances it might be difficult for the university to ignore the court's wishes, particularly when it carries forward the cause of justice. But this gradually create a grey area where university laws cannot be strictly enforced irrespective of its consequence and leave room for judicial interference or guidance in a large number of situations.

The courts are reluctant to interfere with academic decisions. There are but some academic decisions that do not involve some rule, procedure or principle of justice that is susceptible to litigation. The characterization of academic decisions as involving significant legal issues provides a comfortable way for the courts to

\textsuperscript{69} Supra, n. 54 at p. 48.

\textsuperscript{70} Ibid.

\textsuperscript{71} Ajaya Hasia v. Khalid Mujib, A.I.R.1981 S.C. 487

\textsuperscript{72} J.P. Kulsheshha v. University of Allahabad, A.I.R. 1980 S.C. 2141


\textsuperscript{74} Omkar v. Shri Venkatachara University, A.I.R. 1981 A.P. 163 at 165; Ramlal Agarwala v. Sambalpur University, A.I.R. 1981 Ori. 102 at 104.

\textsuperscript{75} Meena v. Madras University, A.I.R.1953 Mad. 494; Swapan Roy v. Khagendra Nath, A.I.R. 1962 Cal. 520
interfere with university autonomy. The case of *J. P. Kulshrestha v. University of Allahabad*\textsuperscript{76}, demonstrate that a number of judges can differ on the merits of judicial interference. There are three reported decisions on this issue. The first decision was delivered by justice K.N. Singh. The second was in a special appeal to a two judge Bench of the High Court. The third and final was in an appeal taken to the Supreme Court.

An important area of university autonomy pertains to teachers’ selection. The selection of teachers may be made on the basis of academic judgments so long as the procedure abide by the Constitution and the university Acts and statutes. Laws and regulations are designed to maintain high academic standards and quality in the matter of selection of the faculty. They are designed to avoid nepotism, favouritism and other non-academic biases. These are real concerns where positions are few; caste, family and friendship ties are strong, and criteria for judging are inflexible and inadequate\textsuperscript{77}.

Indian courts exercise restraint in deciding university cases when university authorities have acted within their authority, exercised their judgment in good faith, and followed the applicable laws, rules and regulations\textsuperscript{78}. Within these acknowledged restrictions, universities have the requisite autonomy to act within their sphere to correct errors of fact and to make their interpretation. The doctrine of academic abstention accommodates this dichotomy between matters legal and academic\textsuperscript{79}. In practice, the courts cross over the gray line between law and scholarship. They tend to interfere with university decisions when a judge disagrees with a reasonable university authority. This may be termed as a judicial intrusion into the academic freedom or university autonomy.

\textsuperscript{76} A.I.R. 1980 S.C. 2141.
\textsuperscript{77} Ibid.
\textsuperscript{78} Supra, n. 54 at p. 58
\textsuperscript{79} Ibid.
4.7 Tension between Academic Freedom and Administration

The academics in India have been trapped through the process in the fostering of which their own contribution is of no mean order. The process has been going on for a fairly long time and many guilty men in the academics have collaborated in promoting it. It is not uncommon to see bureaucrats without any academic credentials being appointed as Vice-Chancellors of universities or national and state level academic institutions being headed by incompetent persons having political or bureaucratic patronage. The organizational structure and rules and procedure adopted by many academic institutions contain within their ambit provisions of their strangulation by the politician-bureaucrat nexus. This is mostly because all such public universities and national institutes are state sponsored and state funded. Therefore the above nexus catch them at their origin by incorporating provisions in their statutes for governmental control of such institutions. Constitution of the various university authorities, particularly the Syndicate and the Senate, with government officials and representatives of various interest like legislature, local bodies, trade unions, etc., who all will be the nominees of the Government, is the classic illustration of this. All said and done about university autonomy, it is the fact that in the matter of appointment of Vice-Chancellors of the State universities, in spite of the independent provisions in the University Acts and Statutes which give the Chancellor the last say in the matter, the selection, in fact, is decided by the State government viz. the State Cabinet on parochial consideration of party politics and even cast considerations.

By and large, the academics have not risen to the challenge. The universities have not become the nerve center of the democratic dissent, as it is supposed to be. Rather they have turned out to be the fellow travelers of the establishment. The Vice-Chancellors in many of our universities have contributed the most to undermining the sanctity of the university's autonomy. They have mostly been busy in appeasing political masters to whom they owe their allegiance and also
for gaining better perks, privileges, position and awards. This has set the trends for others down the line to follow. In almost all states, the State governments are bent upon sending down the message that the universities are constituents of the education department80.

Instances of such executive and political interference in university autonomy in India are innumerable. It is significant to note here that even in the highly literate state of Kerala the Syndicates of all the universities are loaded with persons having specific political allegiance and the bureaucratic representatives of the Government in power so that ultimately if the party in power wants to prevail on any issue in the Syndicate of any university it could easily manage to get through by giving something like an implied whip to its members and the bureaucrats. Accordingly on many occasion policy decisions are taken and crucial appointments are made as decided by the Government in power and the university autonomy is only a mirage.

4.8 Downsizing Higher Education- An interference indirectly

The policy of downsizing and minimizing the role of the Government in any field must be seen as a component of overall government policy of privatization and commercialization. As the mechanism followed the case of disinvesting of the public sector cannot be directly applied in case of publicly funded higher education, an alternative route has been adopted banning the starting of new courses and opening of new educational institutions, mandating ceiling on the student strength in the existing institutions, freezing on recruitment and ad hoc reductions in staff strength and so on. Related measures adversely impacting on accessibility and educational standards include attempts to raise fees, autonomy to institutions81 with practically no controls but with wide ranging powers to the managements, funding linked to mandatory assessment and

80 N. R. Mohanty, “The Few Defending University Autonomy need to be Supported”, http://indiainteracts.com/columnist/2008/06/26
accreditation, and conditionally-laden students loan schemes that will primarily benefit students who already have an asset base.

A driving factor underlying this policy of downsizing is the overall need to liberalize even basic services like education and health under the General Agreement on Trade in Services (GATS). The formal state education sector in India is seen as a major obstacle to the entry of the informal systems of educational institutions and, potentially, a formidable adversary to their expansion. Substantial downsizing of the higher education sector will not only create space for projected alternative forms of education such as transnational universities, institutions franchised by foreign universities, etc. all of which will operate within purely commercial parameters, but will also generate the necessity of 'importing' knowledge-technical knowledge- that is being increasingly protected and restricted under the Intellectual Property Rights regime.

The declining priority being assigned to the higher education sector in India, when compared to the post independent period, is alarming in the light of the contribution of this sector to the overall development of the country. The issues involved in the teachers' agitation, sustained autonomy, maintenance of academic standards, greater availability and accessibility to deprived students are fundamental to the continued health of the higher education system of the country.

It is in addition to the basic problem in these areas that the frequent and persistent conflicts and confrontation take place in the day to day administration of the universities in matters like admission, examination, campus discipline etc. All these conflicts and disputes invite the interference of political parties, pressure groups, the executive Government, the judiciary etc. with the autonomy of the universities, thereby making the said historical concept an utopian idea and an illusion in modern times.

\[1\] Id. at p.607.
\[2\] Ibid.
\[3\] Ibid.
In these series of interference the last and final is bound to be that of the judiciary, which is still careful to impose the institutional limitations on academic matters and university autonomy. A close and careful analysis of the Apex Court decisions would reveal that in India the judiciary has still a reverential approach to academic matters, and generally speaking, it shows reluctance to disturb its sanctity. But, when it comes to the High Courts sometimes a liberal approach is made by the courts, conveniently forgetting the first principles settled down by the Apex Court, and a relief oriented approach is adopted. It could be seen from some of the reported decisions that the basic principles of non-interference, reiterated by the Supreme Court in academic and educational matters, fail to command compliance in the High Court, being carried away by bare facts of the cases. In fact, it ought not to be the case inasmuch as the Supreme Court's decisions are the laws of the land.

The net result of any liberal and unguided policy of judicial interference in academic matters would be that the sanctity of the academic freedom and the university autonomy would erode away fastly, affecting adversely the initiative and dynamism of the universities and the whole higher education system. Fortunately, in Kerala, the High Court has been careful, barring occasional deviations, to see that more or less the judiciary maintains its institutional discipline in respecting the academic freedom and autonomy of universities. An analysis of case law made through the reported decisions in the following chapter of this work justifies this finding.

The issue of academic freedom is directly related to academic excellence. As an eye opener, the Kothari Commission (1964-66) had reported that the holding of a first degree of our universities in arts and science are now generally equated with matriculates in important universities in western countries and are eligible for admission to the first year of their first degree courses. It is undisputed that the universities have a major responsibility towards 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 informed
and constructive. All this demands that teachers exercise their
academic freedom in good measure, enthusiastically and wisely.35

Academic excellence is a qualitative standard and
yardstick used in the context of international standards for assessing
the level of ‘consumption of knowledge’ that can be measured by the
contents of courses prescribed and taught in the institutions of
higher education, and the level of ‘production of knowledge’ that can
be measured by the quality of research produced. Viewed from this
angle, it could be seen that there is seldom any interference by courts
in the academic freedom of the universities in Kerala by interfering in
the contents of courses prescribed and taught or in the quality of
research produced. It could be seen from the reported decisions- most
of them are cited in the succeeding chapters- that judicial intervention
or interference was mostly in semi-academic or administrative matters
only.

It is significant to note here that despite the reluctance of
the Court to supervise and govern academic matters of the
universities, there is a crisis of rapidly deteriorating standards of
education, especially of higher education, as had been pointed out by
Mr. Amartya Sen way back in 1971.36 It is evident that the blame
could not be placed on the courts. Neither the Central Government
could be blamed for that.37 Reasons are elsewhere. If any one single
agency could be blamed more than others for the deterioration of the
standards of higher education, the accusing finger would point against
the universities and the State Governments. The Education

35 Report of Education Commission (1964-66), c.i. "University Authority Structure and Growth of
Academic Excellence" by B.D. Soni, in S.C. Malik, Management and Organization of Indian
36 Amartya Sen, "The Crisis in Indian Education", in S.C. Malik, Management and Organization of
37 Id., at p.248- " Targets of planned growth have been typically under-fulfilled in most branches of
planning. In this overall picture of frustrated growth and sluggishness, education is a field that provides
a comforting contrast.... that whatever may be the characteristics of the crisis in Indian Education,
governmental neglect is not one of them. The allocation of public funds to education has been
substantial, and the share of education in the total Government budget has been growing steadily.
Commission (1964-66) had pointed out that "the rapid expansion (in higher education) has resulted in lowering quality". The problem of declining academic standards and that of the rapid growth of enrolment cannot be overlooked. The exploding educational system, particularly in the higher education, has resulted from the Government's attempt to make the educational system expand at a fantastically high rate without caring for through the economic implications of such a policy.

Education and the intelligentsia nurtured by it have a special role in determining the quality of overall environment of the society. Change and experimentation is the hallmark of any good education system irrespective of the level at which education is being imparted, and autonomy is supposed to provide the licence for experimentation. Therefore if there is no change or experimentation in the system it indicates lack of autonomy. This is the problem of the present day higher education in India. Everything is static and routine. Students are mere degree hunters and teachers are tape recorders. Academic freedom is the liberty granted to the teachers and researchers to ensure them the opportunity for examination and experimentation for challenging the doctrines, dogmas and perceived opinions in the interest of advancing knowledge for the benefit of the society. Realising that vision of free men in a free society is the living faith and inspiring guide of change and progress in democratic institutions, we must move towards the goal of adopting wisely new ideas and innovations suiting the changing conditions in the area of knowledge.

There has been a mushroom growth of institutions in the higher education sector in the country in the recent past, particularly due to the recent trend in Governmental policy-making of allowing

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88 Id., at p.250
89 Id., at p. 251. 
91 Id., at p. 145.
more and more liberalization and privatization in the field of higher education. To start with, there were only universities. Later came the 'deemed universities' and 'national universities'. Now we have accepted the concept of 'private universities' and 'autonomous colleges' also. Therefore there is a simultaneous growth not only in the number but also in the nature and constitution of the institutions to suit the need of the changing times. This has resulted in innumerable numbers of educational institutions coming into existence in all states, starting from universities upto the affiliated colleges and autonomous colleges. This number game has started spoiling the uniformity or the chore and central theme, maintenance of uniform standards and concept of university education in India.

The dilemma is clear. On the one hand, if each university does that which is right in its own eyes, with no regard for the totality of university provisions or university culture, there is a clear danger of anarchy in higher education. On the other hand, if the system becomes too rigid and conventional, there is an equally clear danger that the free growth of academic institutions will be stunted by excessive control. In the process the issue arises as to how much of autonomy could be granted to what all authorities, what are the decisions or areas to be kept in control of the regulatory bodies, and what are those that could be left comfortably to others to ensure that academic freedom is upheld and standard of higher education is enhanced to meet the constitutional goals.

In general, there has been consensus, supported even by the judiciary, that the academic decisions should be left over to be decided by the academicians in the field. But, it may be kept in mind that academic freedom is not a privilege alone, rather it is a great responsibility towards the society and the community at large, at whose cost the universities are nurtured. As the huge funding to the higher education sector comes from public revenue, the question arises whether a developing society can afford to grant complete

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92. id., at p. 148.
autonomy to the education sector without any control? It is here that the relevance of the control by judicial review comes into play, which can sort out the grievances and the relative claims of the citizens, who are the consumers, the Government, the university administration, the academicians and the students. Thus the legal issues involved in the disputes could be settled in a balancing manner, so as to maintain the social harmony and satisfy the ultimate object behind academic freedom and university autonomy viz. making use of the same for the growth and development of the society and the civilization. Therefore, the more the number of institutions grow with their varying contents, nature and constitution, the more may be the requirement and relevance of judicial review of academic matters and university affairs to safeguard and maintain the ‘universality’ of universities and their inherent right for academic freedom.

In the above context it is worthwhile to note an argument in favour of an in-house mechanism of university tribunals both at the state as well as national levels. The argument goes that disputes involving universities have to be handled not by a purely legalistic approach but keeping in view the obligations of the universities to the society and the nation. Therefore, both from the point of view of specialist approach in the matter of resolving disputes involving universities and decentralization of administration of justice with a view to reducing the pressure on High Courts and the Supreme Court, it is argued, that it is time to devise a forum with all-India jurisdiction in which all disputes involving universities, their constituents and their affiliated colleges may be brought for their resolution. It is argued that the jurisdiction of such centralized tribunal must be all encompassing. It must include disputes, controversies and causes involving universities, their financial autonomy, appointment of Vice-Chancellors, their administrative and academic functions, inter relations with the state governments and other regulatory bodies, inter relations with affiliated colleges, selection, appointment and promotions of faculty and non teaching staff and admissions,
examination, valuation and disciplinary proceedings against students etc.

It is significant to note here that almost all the University Acts in Kerala contain the provision for constitution of a University Appellate Tribunal. Accordingly, the Government of Kerala has constituted a common University Appellate Tribunal for all the universities in Kerala. As per section 65 of the Kerala University Act, 1974 the State Government shall constitute an Appellate Tribunal for the purpose of the Act chaired by a judicial officer not below the rank of District Judge nominated by the Chancellor in consultation with the Chief Justice of the High Court. But the powers of the Tribunal or its jurisdiction or area of operation have not been referred to in the Act. In the Calicut University Act, 1975 and in the Mahatma Gandhi University Act, 1985 also the powers or jurisdiction of Appellate Tribunal have not been prescribed. In the Cochin University of Science and Technology (CUSAT) Act, 1986 it is said that the jurisdiction and powers of the Appellate Tribunal shall be prescribed by the statutes. Therefore there is no uniformity with respect to the powers and functions of the University Appellate Tribunal vis-à-vis the universities. As a result, the jurisdiction of the Tribunal does not cover the whole gamut of university affairs and is confined to certain areas only like disputes relating to appointment of teachers in the colleges and other incidental matters.

It is also significant to note that under most of the university Acts the civil court's jurisdiction is ousted in university matters. For example, section 66 of the Kerala University Act provides:

Bar of jurisdiction of civil courts- No civil court have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by any authority or person under this Act. Hence the combined effect of absence of any in-house mechanism for settlement of disputes, the ineffectiveness and the limited jurisdiction of the University Appellate Tribunal and the bar on the civil court's jurisdiction in university matters have inflated the writ jurisdiction of
the High Courts in university affairs as the first and last resort to resolve the disputes wherein universities are involved.