JUDICIAL REVIEW OF ACADEMIC DECISIONS

THESIS SUBMITTED BY
S. GOPAKUMARAN NAIR
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN
FACULTY OF LAW

COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY
KOCHI- 682 022

MARCH 2010

CERTIFICATE

This is to certify that this thesis entitled **Judicial Review of Academic Decisions** submitted by Shri. S. Gopakumaran Nair for the Degree of Doctor of Philosophy is the record of *bona fide* research carried out under my guidance and supervision in the School of Legal Studies, Cochin University of Science and Technology. This thesis, or any part thereof, has not been submitted for any other Degree.

Cochin
21-12-2009

Prof. (Dr.) K. N. Chandrasekharan Pillai
(Supervising Teacher)

DECLARATION

I do hereby declare that this thesis entitled **Judicial Review of Academic Decisions** is the record of *bona fide* research carried out by me under the guidance and supervision of Professor (Dr.) K. N. Chandrasekharan Pillai, Dean, Faculty of Law, Cochin University of Science and Technology. I further declare that this study has not previously formed the basis for the award of any degree, diploma, associateship or other similar title of recognition.

Cochin
21-12-2010

S. Gopakumaran Nair

CONTENTS

PREFACE

Education in India is being increasingly controlled and guided by the courts. The presence of courts in the campus has been recognized gradually either out of necessity or of compulsion. All concerned in education-teachers, students, managements and universities- have played their own roles in inviting the court to the campus. This has resulted in and has gone to the extent of regulating the conduct of college union elections and maintaining the law and order in the campus by banning the menace of ragging and also interfering in admission, examination, valuation, selection of teachers etc., which are considered to be inherently academic matters.

In the given context, this study makes an attempt to assess the involvement of the court in regulating education and its role or interference in the conventional concepts of 'academic freedom' and 'university autonomy'. The attempt herein is to find out the extent of judicial intervention in academic matters and its justification, logic and reasoning and also to see whether the courts are maintaining the constitutional balance or are succumbed to the compulsions of contingencies and indulge in judicial encroachment into the academic areas.

The study mostly concentrates on the jurisdiction under Article 226 of the Constitution and its invocation in academic matters with particular reference to the decisions of the Kerala High Court. Instead of directly entering into the case law discussion, the study, to begin with, glances through in its 2nd chapter the origin, concept, history, growth, development and the present position of the doctrine of judicial review in the common law world including India. It also traces

the relationship of the doctrine with the dominant constitutional principles of rule of law, separation of powers and democracy and their foundation on common law. The constitutional propriety of the doctrine, its reliance on the doctrine of *ultra vires*, the rationale of judicial review and its criticism are also being looked into. Though the attempt is not to have a comprehensive study of the jurisdictional parameters of judicial review, a study of the fundamentals and first principles of the doctrine of judicial review and its development was necessitated so as to find out the legitimacy of its involvement or encroachment in academic matters in the present day context.

Coming to the Indian context, the concept of judicial review in the Constituent Assembly, initial approach of the Supreme Court of India towards the doctrine, gradual empowerment of Indian judiciary in this area and the resultant judicial activism have been highlighted in chapter 3. The smooth, orderly and uniform development of the doctrine by the Indian Supreme Court, which was made possible by the written constitution and its specific provisions for judicial review to safeguard the fundamental or any other rights of the citizens, has been traced in the said chapter with a view to finding out the limitations imposed on the High Courts while invoking Article 226 of the Constitution.

The study proceeds through the analysis of 'academic freedom' and 'university autonomy' in the 4th chapter. This chapter attempts to probe academic freedom and university autonomy in India, England and United States and autonomy of Indian universities before and after independence. It also attempts to find out the myth and reality behind university autonomy and the tension between academic freedom and administration. The recent trend in India of downsizing higher education by the policy of privatization and liberalization affecting the university autonomy is also highlighted.

Chapters 5 and 6 deal with analysis of the judgments of the Supreme Court of India on the subject. While the former deals with the background and the general principles of the initial non-interference and subsequent interference in academic matters, the latter deals with the judgments under various separate sub-titles dealing with specific issues of academic governance.

Chapter 7 is about Kerala High Court on academic matters, again dealing with the judgments available on non-interference and interference of the court on academic matters and on specific issues under separate sub-titles. Chapter 8 sums up the conclusion and presents the suggestions of the study.

The study originally envisaged was on the topic ' Judicial Review- Its jurisdictional Parameters'. Having found that it is a vast and unwieldy subject, which could not be effectively contained in a doctoral study, my Guide, Professor (Dr.) K. N. Chandrasekharan Pillai suggested to confine the work to any particular or specified area of the said subject. He suggested that in view of the ever-increasing volume of writ litigation on academic matters, tracing the jurisdictional contours of judicial review in respect of academic decisions vis-à-vis the 'academic freedom' and 'university autonomy' could be an effective and meaningful study, which could come out with some concrete proposals and suggestions useful to mould the future development in the area.

It is the tremendous motivation and encouragement given by Professor Chandraskharan Pillai that helped me to achieve my dream and bring out this study while pursuing my professional career simultaneously. I must bring on record that but for the confidence that he has instilled and infused in me ceaselessly of my ability to undertake

this research work in the midst of my professional duties, I could not have ventured to shoulder this burden. On completion of the study, I have a feeling of proud achievement and a resultant complacence that I could finally do it, which I could not do at my prime age. My indebtedness to him is not only for going through my draft on every chapter and guiding me through the proper course by intermittent discussions, but for relentlessly persuading me for not giving up the idea in the midst. My thanks are also due to Prof. (Dr.) Sadasivan Nair, Dr. A. M. Varkey, Dr. D. Rajeev, Dr Soman and other faculty members of the School of Legal Studies, CUSAT for constantly encouraging me to complete the work and for giving appropriate suggestions and ideas.

I owe my obligations to all concerned of the School of Legal Studies, CUSAT, Kochi, the Indian Law Institute, New Delhi, the Law Faculty, Delhi University, the Bar Council of India, New Delhi, the University Grants Commission, New Delhi, the Indian Institute of Public Administration, New Delhi, the Supreme Court Library, New Delhi, the National Law School of India University, Banglore, the National University of Advanced Legal Studies, Kochi, the Kerala University, Trivandrum, the University of Calicut, Kozhikode, the Kerala High Court Library, Ernakulam and the Kerala High Court Advocates' Association Library, Ernakulam for their institutional support for completion of my research study.

The next single obligation that I owe is to Dr Abraham P. Meachinkara, my colleague, who assisted me by helping to find out materials, case law and other empirical details for the study and for sitting along with me through long hours for days together for transcripting my dictation and the manuscripts in the computer. The motivation and assistance which was extended to me by Dr. Abraham and his push and pull had been invaluable.

My thanks are also to Mr. M. Chanmdra Bose and Mr. A. Rajasimhan colleagues in my chamber, who had shared my professional burden substantially making me free from my professional obligations, especially at the last stage of the work, when I was fully immersed to give final shape to this study.

Though they may not expect it from me it would be thankless on my part if I would not mention about the support rendered by my wife and children by making me totally free and unbothered about family obligations and children's studies during the final stages of my study. My children might have been benefited and motivated by seeing their father working in late hours untiringly, writing and re-writing, as a devoted student. And, finally, when I could complete the work it is and should be a lesson for them to be admired and emulated.

The ultimate source of every creative inspiration is ones own parents. My mother would be proud, as usual, in every small and big achievement of mine, and without her blessings, I am sure that this work could not have been completed. My departed father, who was an ardent admirer of English language, and who gave his children quality education spending even beyond his resources, must have bestowed on me his unseen blessings from the Heavenly abode. To his sweet and cherished memory I submit this humble work of mine.

CHAPTER - I

INTRODUCTION

1.1 Background

India is a constitutional democracy governed by rule of law. Constitution envisages three agencies: the legislature, the executive and the judiciary. Every state action is to be in accordance with law. It is for the judiciary to ensure compliance of this rule by all agencies of governance. The executive powers of the state are distributed among various public functionaries and agencies. The day to day administration may result in conflicts between these functionaries and the citizens involving constitutional issues. The extra ordinary constitutional power of the superior courts to resolve these conflicts by having a second look on the decisions of the authorities discharging public functions and duties, affecting the rights of the people, by verifying the legality, rationality and procedural propriety of the decisions under challenge is, in essence, the power of judicial review of administrative actions.

The power is discretionary and neither appellate nor revisional in nature. It is a prerogative power to oversee whether the authority concerned has acted in accordance with law and within the parameters of its power. Court plays the role of an umpire, compelling the public authorities to stick on to the rules of the game, without playing the game by itself. The justification for the power of judicial review is that neither the administrator nor the legislator can be the arbiter in his own cause and hence the role of an adjudicator becomes inevitable to preserve the rule of law in a constitutional democracy. Since the impugned public decision sought to be reviewed has not been passed by the court and since the court is not having a second look of its own decision, in the literal sense the expression 'judicial review' may be a misnomer, and 'judicial scrutiny' would have been the apt usage. But, as the judiciary is the third limb of the state the

connotation may be that the state is re-checking or re-viewing the validity of its own decisions affecting the rights or interests of its subjects on the touch-stone of constitutionality through the instrumentality of judiciary.

The scope, content and extent of the power of judicial review have become a contentious matter because of its impact on public administration and legislation in all democracies. In the United States with its written constitution, and in England with its unwritten constitution, the doctrine of judicial review was nurtured and nourished by the superior courts, drawing inspiration from the constitutional principles and the common law traditions. Historically, the common law principle of judicial review had been evolved for the purpose of ensuring transparency, accountability and fairness in public decisions and actions.

The constitutional power of judicial review in the modern democracies has its origin from the prerogative of the King while discharging his judicial functions. Both in England and in the United States, this doctrine, to start with, had a very reluctant appearance in public law, in so far as the power was exercised by the courts scarcely. But, by the middle of the 20th century, it had assumed unquestionable dominance in the public law in the United States and was fastly gaining momentum in England also[1]. As far as India is concerned, as the power of judicial review is engraved in the Constitution itself[2], the growth and development of the doctrine was smooth, uniform and orderly, drawing inspiration from the common law principles. In India also initially the growth was slow and reluctant, though at times, it was imposing and assertive, and has now assumed the role of the central pillar of constitutionalism and good governance.

---

[1] S. A. de Smith *et al, Principles of Judicial Review*, Sweet & Maxwell, London (1999), p.54

[2] See Articles 32,136,226 and 227 of the Constitution of India.

The growth and development of the judge-made law in this field is overwhelming that it gives an impression that the non-elected judiciary super-imposes on the democratically elected legislatures and Governments, central and states, and other public bodies in the matter of legislations, the day to day administration and even in policy making. This has resulted, it is apprehended, to some extent in the development of a parallel stream of public administration governed or guided by the judiciary. But, the fact remains that the body of case law evolved under this constitutional doctrine reflect the social commitment, creativity and ingenuity of the judiciary in the democratic world.

Although, there are self-imposed restrictions and jurisdictional parameters for this extra ordinary judicial power, often they give way to judicial discretion, breaking the parameters and creating an unbound territory in public law. The power of judicial review or 'judicial scrutiny' of administrative as well as legislative actions is a constitutional doctrine accepted as a basic feature of the Indian Constitution[3]. It comes within the domain of public law and serves as an effective check on the administrative and legislative arbitrariness. The Indian experience has convincingly established that availability of judicial review is by far the most effective safeguard against administrative and legislative excesses and executive high-handedness[4]. The foundation of this doctrine is the concept of the rule of law which is the antithesis of rule of men. The rule of law is rightly regarded as a central principle of constitutional governance[5].

The concept of rule of law coupled with the constitutional principle of 'separation of powers' has made judicial review of public

---

[3] *Kesavananda Bharati* v. *Union of India,* A.I.R. 1973 S.C. 1461

[4] Soli J. Sorabjee, "Obliging Government to Control itself -Recent Development in Indian Administrative Law", [1994] P.L. 39.

[5] Paul Craig, "Formal and Substantive Conception of the Rule of Law: An Analytical Frame Work", [1997] P.L. 487.

administration inevitable. In the constitutional framework of separation of powers, the role of the adjudicator or umpire is given to the judiciary. On the legislative side, innumerable number of laws are being enacted every year by the Parliament and State Legislatures, creating new powers and duties for the executive, to be implemented in the day to day life of the citizens, and leaving all these powers to be executed by the administration. In this process, disputes are bound to occur between citizens and public authorities about the discharge of public functions and duties affecting the rights and interests of citizens. No other agency than the judiciary can be contemplated or is available to deal with this function of adjudication at the final round. Therefore, the doctrine of judicial review came to stay; to start with, peeping in out of necessity, later staying in as a principle of prudence and, still later, asserting with might as the sole or better repository of wisdom in the matter of public administration.

The power of judicial review has and should have its self imposed restraint. Even while expanding this doctrine to control the executive bull, courts were slow and reluctant to tread into certain areas of administration which, by their very nature, could not have been effectively supervised by the courts, due to its inherent inability and institutional limitations to deal with those areas. Policy decisions of the Government, defence strategies, religious matters, academic matters, taxation, international covenants, national security etc. are some of them. And there is the category of purely ministerial decisions, which do not result in any civil consequences and are only mechanical functions, which are almost totally left out of judicial control.

But, the fact remains that even in such restricted areas as aforesaid, almost all the grounds of judicial review are still available with the courts and the reluctance is only self-imposed, depending on the judge's perception to deal with the situation, or due to theoretical inhibition or even due to a careful and guarded approach not to create

an impression that the courts have high-jacked the administration. But, even these areas of judicial humility is increasingly getting shrinked as years pass on and the judicial omnipotence is becoming all pervasive by its insistence on the principle of legality in administration[6], more evidently in India, where the power of judicial review is protected by written constitutional provisions rather than by unwritten constitutional conventions.

1.2 Scope and Object of the Study

Judiciary has been exercising restraint in reviewing certain categories of decisions for obvious reasons. Academic decisions constitute one such area. Still, it is constrained to touch this area as well if the situation calls for such review. Academic decisions stand apart from the ordinary administrative decisions due to the nature and content of the decisions as well as the constitution and expertise of the academic authorities or bodies concerned. It is the settled position in law that courts should not interfere in academic decisions and matters as a matter of routine. This proposition is reiterated by the Supreme Court and the High Courts in India as they have recognized and accepted the fact that the academic bodies consisting of experts in their respective fields are pre-eminently the best persons to make authoritative decisions in specialized subjects and matters. As regards universities, it is accepted that they are self-governing autonomous institutions and, therefore, should be given sufficient academic freedom and independence in taking decisions in pursuit of academic excellence.

The main objective of this study is to find out whether the above proposition is true in practice or it remains in theory only and whether the judicial interference in the academic field is increasing and, if so, whether it is justified or not. Since a large volume of case

---

[6] Bernard Schwartz, *An introduction to American Administrative Law,* Sir Isaac Pitman & Sons Ltd., London (1958), p. 25. The author rightly observe: "It is a fact that on the whole public administration in England is carried on with a remarkably high degree of integrity and responsibility", p. 25.

law pertaining to academic decisions and matters is being pronounced by the Supreme Court and High Courts every year in India, naturally the question arises as to whether the present rate and trend of intervention in this jurisdiction is justifiable. Therefore, this study makes an attempt to trace out the changing trend of increasing judicial intervention in academic mattes and academic decisions and to analyze the reasons thereof.

While, an executive or administrative authority has to receive orders and directions from their superiors in the Government and on many occasions act on their terms and dictates, an academic authority will normally be free in its decision making process and need not have to oblige the Government or the superiors or to take instructions from them in passing its orders. The element of discretion vested with the academic authorities is wide and extensive when compared to that of the executive authorities. In fact, academic authorities are entrusted with specialized jobs for which they are the competent persons going by their expertise in the field. On the other hand, executive authorities are routine functionaries of the administrative machinery, who have to execute the policy decisions of the Government. Therefore, academic decisions are something akin to policy decisions of the Government, which, although not impregnable for judicial review, still stand at a safer distance from the 'judicial policing'.

The administrative or executive authorities, however high they may be, are amenable to the supervisory jurisdiction of the higher courts, when they are wrong in the exercise of their powers. Whether this principle applies to the academic authorities, with the same vigour and rigour with which it interferes in administrative or executive decisions, is the core theme of this study. The power of judicial review of academic decisions dealt with herein and the scope of the study is limited with reference to Article 226 of the Constitution of India as invoked by the High Court of Kerala and its jurisdictional

parameters in the light of the principles settled down by the Apex Court.

It is made clear that this study is not an elaborate attempt to trace out the jurisdictional parameters of judicial review. Rather it is confined to the limited area of judicial review of academic decisions. The scope of the study is restricted to the justifiability of judicial intervention on decisions of academic nature, rather than decisions of academic bodies. In other words, the study is not based on the nature of the decision makers but based on the nature and content of the decisions. Accordingly, the highly volatile area of the modern professional education dealing with admissions therein, reservation of seats, collection of capitation fee, quota system of admissions, minority rights etc., dealt with in the mile stone decisions like *TMA Pai*[7], *Unnikrishnan*[8], *Inamdar*[9], *St. Xavier's*[10], *Islamic Academy*[11] and a host of other decisions of the Apex Court and the High Courts in the above areas have not been dealt with in this study, as they are essentially policy decisions of the Government taken on the administrative side and do not belong to the category of academic decisions, the subject matter herein.

To do justice to the subject, one should also find answers to questions like what is an academic decision? In which way or in what manner it differs from an administrative or executive decision? Whether it can claim exemption from the power of judicial review? If yes, to what extent? Finally, what should be the correct approach and guiding principle in this area of the power of judicial review vis-à-vis academic decisions? It has also to be looked into whether the principles settled by the Apex Court in this area are consistent and followed by the High Courts in compliance with Article 141 of the

---

[7] *T.M.A. Pai Foundation and others* v. *State of Karnatka and others* , (2002) 8 S.C.C. 481.
[8] *Unnikrishnan and others* v. *State of Andhra Pradesh and others,* (1992) 1 S.C.C. 645.
[9] *P.A.Inamdar and others* v. *State of Maharashtra and others,* A.I.R. 2005 S.C. 3226.
[10] *Ahmadabad St. Xavier's College Society* v. *State of Gujarat,* (1974) 1 S.C.C. 717.
[11] *Islamic Academy of Education* v. *State of Karnataka,* (2003) 6 S.C.C. 697.

Constitution and in pursuance of judicial discipline. For empirical studies the decisions of the High Court of Kerala on the subject have been analyzed critically in this study.

The Supreme Court decisions are scanned for the purpose of tracing and establishing the scope of judicial interference in academic decisions in the Indian context. After fixing up the boundaries of judicial intervention by scanning through the Apex Court decisions and other literature on the subject, both Indian and foreign, the study makes an evaluation of the approach of the Kerala High Court in this regard.

1.3 Methodology

The study is both analytical and descriptive and is based on primary and secondary sources. Primary sources include the case laws reported from the Supreme Court and the High Court Kerala. Other sources are, *inter alia*, the Government of India Act, 1935, Constituent Assembly Debates, Constitution of India and the constitutions of the other countries, Administrative Law of India and of the other countries, legislations pertaining to education and professional education and professional bodies, texts of different conventions as well as relevant published documents of the Ministry of Human Resources Development of the Union Government and State governments, reports of various organizations and bodies pertaining to education and various university Acts. Secondary sources include relevant books, research articles and general references from the High Court registry and the legal and administrative wings of the universities in Kerala.

1.4 Scheme of the Study

Chapterisation of this work is done in a manner so as to trace the origin and development of the doctrine of judicial review in the common law jurisdiction and its history and constitutional transplantation in India before entering the core area of the study *viz.*,

judicial intervention in academic matters. This is necessitated because unless the scope and ambit of the power of judicial review is broadly understood at least, the justification for its interference in the academic field cannot be properly evaluated. Therefore, a major portion of the trek is through the territory of judicial review before it reaches the protected area or forbidden area of academic freedom. This is to say that the study does not start from the admitted premises of judicial review and directly deals with its interference in academic matters. Instead, the subject is dealt with on a larger canvass of tracing the contours of the power of judicial review first and then cross checking with its intrusion into the academic freedom and autonomy.

The first chapter gives a brief introduction of the subject consisting of the background, object of the study, its scope, limitation and the methodology. The second chapter deals with the theory and concept of judicial review, the origin and scope of the doctrine, its development in English Law, the doctrine and rule of law, the doctrine and democracy, its present position in common law jurisdiction, the constitutional propriety, doctrine of *ultra vires,* the rationale of judicial review, criticism against judicial review and the common law theory of judicial review. The third chapter is on judicial review in the current Indian context dealing with the background of the Indian Constitution, the concept in the Constituent Assembly, initial approach of the Indian judiciary, gradual empowerment of Indian judiciary and judicial activism in India. Chapter four probes into the academic freedom and university autonomy and deals with academic freedom and university autonomy in India, university autonomy in England and United States, autonomy of Indian universities before independence, judicial intervention, tension between academic freedom and administration and downsizing higher education. Chapters five and six focus on Supreme Court's decisions on academic matters. Seventh chapter is on High Court of Kerala's case law on

academic matters. The case law are dealt with under different separate topics. The last chapter is the conclusions and suggestions of the study.

CHAPTER – II

DOCTRINE OF JUDICIAL REVIEW

2.1 Concept

'Judicial review' refers broadly to the jurisdiction of courts to keep the public authorities within their respective domains. Judiciary could only intervene and not interfere. The power is neither a police power nor that of a teacher. The precise role is that of an umpire, who has to closely watch whether the executive and the legislature are complying with the constitutional and statutory limitations and mandates while exercising their powers and, if not, to blow the whistle and stop their moves.

The power of judicial review only looks into the legality, rationality and procedural propriety of the decision and not into the contents, the quality or wisdom of the decision. It is not an appellate power to look into the merits of the decision. It is not revisional power either. It is a power to verify whether the decision making authority is competent to take that decision, and whether the decision is taken in a fair and just manner complying with the procedural requirements. Practically, the power of judicial review is more concerned with the manner in which the decision is taken than with the decision itself. Wherever legal limitations are imposed upon the organs of government, there has to be an adjudicator to decide the disputes arising therefrom and that role is entrusted with the judiciary, which alone is competent to interpret the legal instruments[1].

Judicial review is, in fact, not 'judicial control' of administration, but it is 'judicial protection' of individual against maladministration[2]. But, since the courts provide legal protection to

---

[1] Durga Das Basu,, *Limited Government and Judicial Review*, Tagore Law Lectures, S C Sarkar & Sons, Calcutta (1972), p. 291.

[2] Ederhard Schmidt Abmann, "Basic Principles of German Administrative Law" in M. P. Singh *et al*, *Comparative Constitutional Law*, Eastern Book Company, Lucknow (1989), p. 405.

the citizens against the administration, in a system where challenge against administrative decisions is frequent and common, in an indirect way, the courts control the administration in a substantial manner. The ever-widening role of the executive in every modern state needs consistent vigilance in order that in its zeal for administrative efficiency and with the belief in its monopoly of wisdom, it may not overstep the bounds of its authority and spread its tentacles into domains, where the citizen should be free to enjoy the liberty guaranteed to him by the constitution[3]. It is not as if the entire administration is under a systematic or institutionalized control of the judiciary. Therefore, judicial review does not amount to judicial supremacy, but only defend the constitutional supremacy and that of rule of law.

The effect of the intermittent and sporadic review of executive or administrative decisions will give an impression to the administration that their decisions, if disputed, are liable to be challenged and to be interfered with by courts. This may, to a large extent, indirectly influence most of them to be fair and just in their actions and decisions against the citizens, thereby improving the general quality of administration in a system, where the public administration is under perpetual surveillance of the judiciary as mentioned above. The administration would thereby become more accountable and its performance would be more qualitative than the other systems, where there is no such check.

This is precisely the case with the legislature, when it goes astray from the constitutional limitations and norms while enacting legislations. There is no difference in this matter between the civil law or common law systems. Irrespective of the form or the venue, the question is whether there is a neutral and independent agency to intervene, when an illegality or injustice from the administration is

---

[3] M. C. Setalvad, "Problems Before the Legal Profession", A.I.R. 1952 (J.) 50.

challenged by an aggrieved person. Therefore, the scope of judicial review is super-imposing in all constitutional systems governed by rule of law, so long as man hates injustice emanating from public power. This is applicable *pari materia* to the legislature also. The principle of constitutionality and validity of legislation coupled with the remedy of judicial review of legislation make it incumbent upon the Parliament and the state legislatures to be watchful, guarded and accountable in their performance.

In this way, if all the three organs of the State – legislature, executive and judiciary - accept the doctrine of constitutionalism and judicial review in its proper legal spirit as permissible under the Constitution, without being influenced by the ego of institutional supremacy, there cannot be any better institution or mechanism than that of judicial review to balance branches of public administration. Therefore, the courts and judicial review are, in effect, shock absorbers of the society, which not only absorb the shock of all irregularities and illegalities but also sweep and clean the system of public administration.

2.2 Origin

The concept of separation of powers - the corner stone of rule of law and the fountain-head of judicial independence - is the basis of the modern judicial system and the soul and strength of the doctrine of judicial review. The history of western political thought portrays the development and elaboration of a set of values- justice, liberty, equality, and the sanctity of property- the implications of which have been examined and debated down through the centuries. Equally important are the institutional structures and procedures which are necessary if these values are to be realised and reconciled with each other. This laid the foundation of the doctrine of separation of powers which was for centuries the main constitutional theory

which distinguished the institutional structures of free societies from those of non-free societies[4].

The rudiments of the modern concept of judicial review appeared in England for the first time in the 17th century[5]. In England the trend-setter of judicial review was the constitutional culture campaigned and asserted by the school of constitutionalism, spearheaded by the English lawyers. The King's power of reviewing or testing the propriety of the state decisions i.e. his own decisions came under challenge in a slow and gradual process. The common law school believed that the King is not above the law and that he is also bound by law. This faith in the letters of law, as opposed to the men, is the essence of common law and the subsequent innovation of the 'rule of law'. The traditions handed down from the constitutional struggles of the 17th century created an all but invincible prejudice against encroachments upon the province annexed by the common law courts in the field of Public Law[6]. Public law and private law became indivisible in substance, procedure and practice. These traditions were reinforced by the exceptional degree of public esteem earned by the superior judges after the Act of Settlement of 1701 had ensured their independence of the Executive[7].

In the process of creating a welfare state, the state started creating numerous public authorities to achieve the goal of social welfare and such public bodies and officials had to be vested with duties and powers to achieve those ends. The sum total of the special legal authority thus created by the state and vested on the public officials and authorities is termed as 'official power'[8]. It is this 'official

---

[4] M. J. C. Vile, *Constitutionalism and the Separation of Powers*, Clarendon Press, Oxford (1967), p. 9.
[5] Jaffe and Henderson, "Judicial Review and the Rule of Law: Historical Origins", (1956) 72 L.Q.R. 345; Jaffe, "Judicial Review: Constitutional and Jurisdictional Fact", (1957) 70 Harv. L.R. 953.
[6] S. A. de Smith, Woolf & Jowells, *Principles of Judicial Review,* Sweet & Maxwell, London (1999), p. 54.
[7] *Ibid.*
[8] C.T. Emery and B. Smythe, *Judicial Review: Legal Limits of Official Power,* Sweet & Maxwell, London (1986), p.15.

power' that is being subjected to judicial review on the administrative as well as legislative spheres as and when called for by the aggrieved citizens.

2.3 Development in English Law

The genesis of modern doctrine of judicial review could be traced back to the principle of 'artificial reasons'[9] propounded by Sir Edward Coke C.J. in *Bonham's* case[10]. Acting as Chief Justice, Coke struck down a law he found insupportable. Coke considered the wisdom of judges superior to that of the legislators. This faith was cemented by his own experience from his career. He believed that the judges are the ultimate arbiters of what is constitutional[11]. Coke C.J. formulated the principle of judicial review and made the judge independent. He gave emphasis to individual case, the specific facts which are at issue and the legal arguments, which may be based on those facts. Coke's most important contribution to law was 'judicial review' including the idea that judges may invalidate statutes passed by the legislature, which later established as the most effective weapon in the judicial armoury. Coke C.J. held[12]:

> "When an Act of Parliament is against common right and reason and repugnant or impossible to be performed, the common law will control it and adjudge such Act to be void".

The basic idea underlying judicial review is generally considered to stem from the above pronouncements, which show how deeply the American idea of judicial review was rooted in the English

---

[9] 'Reason is the life of the law, nay the common law itself is nothing but reason; which is to be understood of an artificial perfection of reason got by long study, observation and experience, and not of every mans natural reasons', Sir Edward Coke, Commentary upon Littleton 97b(Charles Butter ED., 18th Edn. Legal Classics Library 1985)(1682) *c.f.* Allen Dillard Boyer, "Understanding Authority and Will: Sir Edward Coke and Elizabethan Origins of Judicial Review", Boston College Law Review, Vol. 39: 43, 1997, p.44.

[10] (1610)8 Co. 114a , *c.i.* Durga Das Basu, *Limited Government and Judicial Review,* Tagore Law Lectures, S.C. Sarkar & Sons, Calcutta (1972), p.277.

[11] Allen Dillard Boyer, "Understanding Authority and Will" : Sir Edward Coke and Elizabethan Origins of Judicial Review", Boston College Law Review, Vol. 39: 43, 1997, p.45.

[12] Coke's Rep 107 at 118 (1610), *c.i.* S.N. Ray, *Judicial Review and Fundamental Right,* Eastern Law House, Calcutta (1974), p. 17.

legal tradition[13]. For Coke, C.J. it was the common law which assigned to the King his powers, to each of the courts of the realm its jurisdiction, and to English men their rights and privileges. He firmly believed that even Parliament was unable to change the underlying principles of justice embodied in the common law. Coke's mighty efforts to establish the supremacy of the common law were drowned in the on-coming tide of parliamentary supremacy that ultimately prevailed and set the pattern of the English constitutional law for generations to come[14].

The sudden rise of common law supremacy and constitutionalism over the King and his prerogative courts did not last for too long in England. The upsurge of constitutionalism as interpreted by the common law lawyers and propounded by Coke, C.J. could be kept alive till the end of the seventeenth century by subsequent chief justices like Hobart, C.J. (1615), Holt, C.J. (1701) and a host of other common law lawyers and judges. By the end of the 17th century the doctrine of judicial review was marginalized and started losing its legitimacy. Sir William Blackstone inflicted bad strokes on its legitimacy and upheld the parliamentary supremacy[15].

The triumph of Parliament against royal absolutism was established by the Golden Revolution of 1688 and power of the court to adjudge an Act of Parliament had not been heard of much since then[16]. Even during its glamorous period in England, judicial review

---

[13] George H Sabine, "A History of Political Theory", (1957), p.383, *c.i.* S.N. Ray, *Judicial Review and Fundamental Right,* Eastern Law House, Calcutta (1974), p. 17. See also *Stliechter Poultry Corporation* v. *United States*, (1935) 295 U.S. 495, where the U.S. Supreme Court held that the grant of large unspecified powers to the Government is incompatible with the rule of law.

[14] *Id.* at p. 19. These conceptions of the supremacy of the common law and the faith in courts as the defenders of the people's rights were carried by some English men who settled in America. The later tradition of judicial activism in the United States traces back through *Marbury v. Madison* (1 Cranch 5 U.S. 137 (1803) to *Bonham's case* (1610) 8 Co. 114a decided by Coke's common pleas Bench.

[15] Sir William Blackstone, 1 Commentaries 91, 1st Edition, 1765 *c.i.* S.N. Ray, 'Judicial Review and Fundamental Right', (Eastern Law House, Calcutta, 1974), p. 17.

[16] *Supra, n.1*, at p.277.

had started inviting opposition from the Bench[17], as would appear from the following observation of Willes, J., among others[18]:

> "We do not sit here as a court of appeal from Parliament. It was once said- I think in Hobart- that, if an Act of Parliament were to create a man judge in his own case, the court might disregard it. That dictum, however, stands as a warning, rather than authority to be followed....If an Act of Parliament has been obtained improperly, it is for the legislature to correct it by repealing it; but, so long as it exists as law, the courts are bound to obey it".

It appears that the above developments in the 17th century England that lead to the rise and fall of judicial review and the dominance of parliamentary supremacy was the result of institutional conflict and power struggle supported by the intelligentia, mainly consisting of common law lawyers, judges and parliamentarians. Both the doctrines, *viz.,* 'judicial review' and 'parliamentary supremacy' were fighting in the same battleground of 'constitutionalism'. The common law lawyers, motivated by Coke, C.J. and others, sought the help of the parliamentarians to put a full stop to the Kings' arbitrary dispensation of justice on the ground that it opposes the common law, the constitution and democracy. It was the triumph of institutional wisdom as against the King's individual decision or wisdom. It appears, on the same principle Parliament struck back and could succeed in imposing its supremacy on that of judicial review, for the Parliament represent the will of the people at large, opposed to 'judicial review' that represent the will or wisdom of a few selected and not elected judges, howsoever competent and knowledgeable they may be.

Though judicial review of legislation lost its relevance in the English legal system, it was nourished and nurtured by the Privy

---

[17] *Id.*, at p. 278. "If the Parliament should do one thing, and we do the contrary here, thing would turn around. We must submit to the legislative powers" , *Streater's* Case (1653) How St. Tr. 365.

[18] *Id.* at p. 279. It is to be noted that this argument is even now the basis of legislative independence in a true democracy, which could be guided and controlled by people's mandate for and against the legislations, exercised through their franchise in the next election in response to unreasonable legislations and not by the courts. This was proved in the 1977 post emergency period in India when the Indian courts were mute spectators when autocracy was imposed in the name of democracy.

Council, the appellate tribunal for the British colonies, so as to enable the doctrine to resurface and emerge as a powerful legal weapon, controlling the executive and the legislature in the American continent in later years and even now. It was the inevitable result created by the colonial heritage coupled with the written Constitution of America, to which all ordinary laws made by the Congress should conform to, and was not an accidental act of judicial intervention or supremacy.

Right from its origin all-through the course of its development, 'judicial review' had to receive bouquet and brickbats. It would be mistaken to assume that the judiciary originally conceived of intervention on all the now accepted grounds of judicial review. The origin of judicial review is complex, and is interwoven with the intricacies of the prerogative writs[19]. For its critics judicial review may be a bad idea; it may be counter-majoritarian and in that sense anti-democratic. But, it is not an extra-constitutional or unconstitutional institution imposed upon the nation by Sir Edward Coke or by Chief Justice Marshall or by the imperial judiciary. Rather, judicial review finds its origin in the Constitutional text, as understood by those who drafted and ratified it[20].

For its admirers judicial review has emerged as the most effective instrument for preserving and protecting the cherished freedom in a country that pursues the idea of constitutionalism. For its adversaries judicial review amounts to an antithesis between a rigid and doctrinnaire attitude in preserving the fundamental human liberties and the effective pursuit of a social welfare objective by the legislature. They think that a narrow headstrong and conservative insistence on the constitutional sanction of the liberties might easily

---

[19] P. Craig, *Administrative Law,* 5th Edition, Sweet & Maxwell, p. 6. See also S.A. de Smith, "The Prerogative Writs", (1951) II C.L.J. 40. and "Wrong and Remedies in Administrative Law", (1952) M.L.R. 189; L Jaffe and E. Henderson, "Judicial Review and the Rule of Law: Historical Origins", (1956) 72 L.Q. R. 345; P. Craig, "Ultra Vires and the foundation of Judicial Review", (1998) C.L.J 63 and A. Rubinstein, *Jurisdiction and Illegality*, Oxford University Press, London, (1975).

[20] Sai Krishna B. Prakash and John C. Yoo, "The Origin of Judicial Review", 70 U.C.L.R. 887(2003).

frustrate the aspirations and ambitions of a representative democratic legislature. In that event, they believe that judicial review becomes an undesirable obstacle to social dynamics and social progress and assumes a basically negative and undemocratic character[21].

The last two centuries have seen the slow and steady growth of the institution of judicial review world over as the most effective remedial measure against mal-administration and abuse of public power. The concept of rule of law coupled with the constitutional principle of separation of powers has made judicial review of public administration formidable and inevitable[22]. People throughout the democratic world have expressed faith in this judicial mechanism, since there is no better test of excellence of a Government than the efficiency of its judicial system. Nothing more clearly protects the welfare and security of the commoner than his sense of relief and confidence that he can rely on the certain and prompt administration of justice of his country[23]. But its critics commented that it was emergence of a novel and possibly dangerous role for courts. Human rights and extravagant version of the rule of law have already given a significant boost to judicial powers[24]. Therefore the true significance of the part played by judicial institutions in any system of administration cannot be evaluated only by reference to the frequency with which their jurisdiction is invoked[25].

The importance of judicial control cannot be underestimated[26]. This is because the alternatives are either ineffective or inadequate. The fact that Parliamentary control does not control is admitted even in England by the Committee on Ministers Powers. The

---

[21] *Ibid.*

22 'The only remedy for these growing ills is an acknowledged and stable system of administrative law', C. K. Allen, *Law in the Making*, Oxford, 7th Ed. (1964), p.612

[23] James Bryce, "Modern Democracies" *c.i.* P Sarojini Reddy, *Judicial Review of Fundamental Rights*, National Publishing House, New Delhi (1976), p. 17.

[24] Carol Harlow, "Back to Basics: Reinventing Administrative Law", (1997) P.L. 245.

[25] S.A. de Smith, *Judicial Review of Administrative Action*, Stevens, London (1959), p. 3

[26] See A. T. Markose, *Judicial Control of Administrative Action in India- A Study in Methods*, Madras Law Journal, Madras (1956)

legislature has neither the time nor the competence to keep any effective control over the administrative processes even if it is free of any executive dominance. The other type of control *viz.* control by superior administrative authorities is not better. It is only self control. It is not possible at high level where ministers and departmental heads themselves wield the powers. The above factors justify the dependence on judicial review as the last resort of constitutionalism even in England, which still has not allowed the doctrine to grow beyond their favorite ideal of parliamentary sovereignty. Thus the ultimate freedom of movement which the judges enjoy needs to be understood in order to appreciate that the court, if it decides in effect to push out the boundaries of judicial review in the particular case, is not guilty of any constitutional solecism[27].

2.4 Judicial Review and Rule of Law

Judicial review is the product of rule of law and democracy. Its basic justification is counter-majoritarianism and its object is limited to constitutional government. Rule of law, a concept coined by jurists like Prof. A.V. Dicey, Sir. Ivor Jennings and others, envisage a legal set up and form of governance, where all disputes are decided by the ordinary laws of the land and every person, howsoever high he may be, including ministers and high officials to ordinary citizens, are governed by the ordinary laws of the State, administered through the ordinary law courts. Here, there is no demarcation of public law and private law in content when Government and public bodies are involved in litigations as against the citizens.

The above is in conflict with the continental system of *droit administratif* followed by France and other countries, where they have

---

[27] Sir John Laws, "Illegality: The Problem of Jurisdiction", *in* M. Supperstone and Goudie(Ed.), *Judicial Review*, London 1st Edn. (1991), pp. 69-70. *c..i* Mark Elliott, "The Ultra Vires Doctrine in a Constitutional Setting: Still the Central Principle of Administrative Law", The Cambridge Law Journal, 58(1), 1999,129 at p. 132.

separate laws and a separate system of administrative courts to decide the disputes between citizens on one hand and the Government and its officials on the other. There is a clear demarcation of public and private laws, in the sense that Government liability for contract, damage etc. are not the same as that of the private persons, and Government officials are protected against litigations for consequences of their official duties. In fact, both systems are built on the concept of rule of law in its broad sense, that is to say, both function under pre-conceived and settled rules of laws, and, in that sense, continental system is not a rule of lawlessness.

The initial prejudice caused by Prof. Dicey and some of his contemporaries against the continental system had carried away the judges and lawyers in the common law world along with them, which resulted in the retarded growth of that branch of public law *viz.* 'administrative law' in the English legal system. The charisma of the logic and reasoning of the concept of rule of law as propounded by Prof. Dicey and others was so attractive that most of the judges and jurists in England did not even make a serious study of the 'administrative law' and even condemned it as a 'continental jargon'. But, gradually, England had to admit and accept that there is a separate branch of law, which could be termed as 'administrative law', which had come to stay even in England and has been growing day by day. The main principles set down by Prof. Dicey were the expression of the essentials which according to English men a state that desired a workable compromise between efficient government and individual liberty should care to preserve[28]. After so much of trials and tribulations the English people realized that individual liberty was the end of all governments, but to ensure that efficient administration was also an equal necessity. It was this system of constitutional equilibrium that was analyzed by

---

[28] *Supra, n. 26*, at p. 29.

Dicey. These principles were drawn out by Prof. Dicey from English constitutional experience[29].

Administrative law could find only a slow acceptance in England for yet another reason *viz.* the rivalry or suspicion between the powers of judicial review and sovereignty of Parliament. Parliament was unquestionable and sacrosanct for British people. England, the cradle of modern democracy, accepted the political concept of democracy in its plain meaning and literal sense. The British Parliament, the people's representative, was accepted as supreme and the one, which decide the destiny of the nation. In the absence of a written constitution, the English people relied on their constitutional conventions and the constitutional culture, inherited through generations. They believed that whatever Parliament enacts will only be for the good of the country and should be unchallengeable. This faith stood the test of time in view of the quality of the British Parliament, which may not be possible in many other countries with immature democracy. For a highly principled democracy with enlightened parliamentarians, the British system may be ideal than the constitutional supremacy of the judiciary and judicial review, which is managed by a number of selected judges, selected not on the basis of pure merit and competence alone, but on several other considerations also. Therefore, the emerging concept of judicial review was viewed with suspicion as a growing threat to the parliamentary sovereignty and thereby to rule of law and democracy.

The above view had overlooked the fact that the power of judicial review has been exercised, for a major part of it, to protect and enforce compliance of the laws made by the Parliament and to uphold its sovereignty. In comparison to challenges against constitutionality and validity of legislation enacted by the Parliament, challenges against executive actions of the Government and its subordinates for violation of the existing laws and rules are manifold. Therefore, it could be seen

---

[29] *Id.*, at p. 31.

that the major part of judicial review is being exercised for correcting the executive and the administration and not for controlling the legislature. Even where legislature is controlled, it is guided by the constitutional principles and to compel them to go by the provisions of the Constitution and not to the *ipsi dixit* of the courts. Here one may find weak-form and strong-form systems of judicial review. It is pointed out that the United States has a strong-form of judicial review. In asserting that judicial review was necessary to ensure that the legislature may not alter the Constitution by an ordinary Act, Chief Justice Marshal may be taken to assert as well that constitutionalism requires strong-form judicial review[30].

It is argued that it is the constitution, constitutionalism and rule of law that are dominant under judicial review and not the judiciary. It is not the institutional supremacy of the judiciary, but it is that of the constitution that is being defended by judicial review. This constitutional camouflaging challenge the supremacy of the legislature on the ground that the moral significance of the ideal of the rule of law provides justification for judges to reject legislative supremacy and institute judicial supremacy[31]. But, the court must find a way to articulate constitutional law that the nation can accept as its own. The dependence of constitutional law on this continuing dialogue counsels restraint on the exercise of judicial review. Thus constitution becomes a living document, a body of laws that grow and change from age to age in order to meet the needs of a changing society.

The rule of law operates on principles which are known or readily discoverable and hence do not change erratically without notice; which are reasonably clear; which apply uniformly and generally, not in a discriminatory way; which apply prospectively, not retroactively; and which are in force through public trials operating on rational

---

[30] Mark Tushnet, "Alternative Forms of Judicial Review", Michigan Law Review, Vo. 101, (2003), 2781,p. 2801-2802.

[31] Richard Ekins, "Judicial Supremacy and the Rule of Law", L.Q.R., Vol. 119,(2003), p.127

procedural rules before judges who are independent of the state and of all parties[32]. The Rule of law prevents citizens from being exposed to the uncontrolled decisions of others in conflict with them. Saint Augustine thought that without rule of law states themselves were nothing but organized robber hands[33]. The rule of law operates as a bar to untrammeled discretionary power.

The assurance in the speedy and just resolution of disputes by the courts, applying the doctrine of rule of law, is the disinterested application by the judge of the known law, drawn from existing and discoverable legal sources, independently of the personal beliefs of the judge. For fulfilling this task above all the judge requires two things, one is a firm grip on the law applicable; and the other is total probity. Judicial activism in its literal sense badly impairs both the above qualities and tends to the destruction of the rule of law[34].

Probity, the essential judicial virtue, can be adversely affected by various pressures. There are two types of wholly illegitimate pressures pushing a judge away from probity and making him indulge in judicial activism. The first is the desire to state the applicable law in a manner entirely freely and independently by the way it has been stated before because of the perception that it ought to be different. The second is the desire to load judgments with the judge's personal views and opinions on every aspect which may have arisen in the course of the judgment. Because of this trend in judicial process a fundamental change in the judiciary has taken place whereby on many occasions it assumes a different character from that of a generation ago. This has created in the hierarchy of judiciary a large segment of ambitious, vigorous, energetic and proud judges. Ambition, vigor, energy and pride can each be virtues. But together they can be an explosive volatile combination. Rightly or wrongly, many modern judges think that they

---

[32] Dyson Heydon, "Judicial Activism and the Death of the Rule of Law", Otago Law Review (2004), Vol. 10, No. 4, p. 493.
[33] *Id.*, at p. 494
[34] *Id.*, at p. 495.

can not only correct every social wrong, but want to achieve some form of immortality in doing so[35].

For the perseverance of rule of law, courts are not supposed to decide questions which are merely moot and hypothetical. Judges are not supposed to offer opinions which are merely advisory, having no foreseeable consequences on the facts of the case dealt with. Their determinations are conclusive and final on concrete issues, not speculations or controversies which have not yet arisen. Excessive and self-indulgent surveys of the law and debates by the courts about the background or future development of law made unnecessarily and irrelevant to the case in hand are not in consonance with the concept of rule of law. The duty of a judge is to decide the case. It entails a duty to say what is necessary to explain why it was decided so, and a duty to say no more than what is necessary. To breach the latter duty is a form of activism capable of causing insidious harm to the rule of law.

Eighteenth century was the period *par excellence* of the rule of law and it provided highly congenial conditions in which the foundations of judicial control could be consolidated. The spread of the tree still increased and it threw out new branches, but its roots remained where they have been for centuries[36]. An effective restraint on the concept of rule of law and the doctrine of judicial review was imposed only by the doctrine of parliamentary sovereignty as available in England. The sovereignty of parliament is a peculiar feature of the British constitution which exerts a constant and powerful influence[37]. Parliamentary sovereignty, as it now exists in England, profoundly affects the position of the judges. They are not the appointed guardians of the constitutional rights armed with power to declare statutes unconstitutional. They lack the impregnable constitutional status of their American counterpart. But, slowly, case by case they define their

---

[35] *Id.*, at p. 501
[36] Sir William Wade, *Administrative Law*, Oxford University Press, London, (2004), p. 14.
[37] *Id.*, at p. 26.

powers for themselves and have gained a position that the last word on any question of law rests with the courts. This has resulted in drawing a view that so long as the courts derive support from public opinion by moving in step with it, their constitutional subservience need not prevent them from asserting rule of law through judicial review imaginatively even in England[38].

2.5 Judicial Review and Judicial Supremacy

The term 'judicial supremacy' denotes a constitutional order in which the judiciary, rather than the legislature, has final legal authority to determine what is or is not the law, in accordance with the fundamental principles. But in that process the courts must seek a conception of law which realism can accept as true[39]. The protagonists of judicial supremacy endorse a substantive rights-based conception of the rule of law. They argue that the constitution should be regarded as a document of positive law, without having any connections to the beliefs and values of the people. It is argued that "the equal dignity of citizens, with its implications for fair treatment and respect for individual autonomy, is the basic premise of liberal constitutionalism, and accordingly the ultimate meaning of the rule of law"[40]. Ultimately there are even limits on the supremacy of Parliament which it is the courts' inalienable responsibility to identify and uphold. They are no more than are necessary to enable the rule of law to be preserved[41]. The political theory of judicial supremacy provides that if judges are given final legal authority to protect individual rights then arbitrary political power will be constrained, and freedom and democracy will

---

[38] *Id.*, at p. 30.
[39] Benjamin N. Cardozo, "The Nature of the Judicial Process", 127 (Gaunt 1998) (1921) *c.i.* Robert C. Post, "Fashioning the Legal Constitution: Culture, Courts and Law", Harv. L. Rev. , Vol. 117: 4, 2003, p. 4.
[40] T. R. S. Allan, "Constitutional Justice: A Liberal Theory of the Rule of Law", (2001), p. 2, *c.i.* Richard Ekins, "Judicial Supremacy and the Rule of Law", L.Q.R., Vol. 119,(2003), p.128.
[41] Rt. Hon. Lord Woolf, "Droit Public- English Style", (1995) P.L. 56, at p. 69.

thereby be secured[42]. Experience shows that even unelected judges respond to popular opinion in their decision making. There is evidence that courts rarely are consistently counter-majoritarian, but, instead, often moderate their decisions to comport reasonably well with public opinion[43].

But, then, what is the constitutional authority of the judiciary to interpret the constitution and the constitutional principles? Whether there is any justification for the judiciary assuming that role as against the legislature? If a *status quoist* judiciary, guided by the principle of *stare decisis* and precedents, create road blocks by the routine and consistent interpretation of the Constitution to the policy implementation of the Government and the Parliament, which they are bound under their election manifesto, how could change take place in the society unless it is through revolution, which annihilates the very concept of constitutionalism and rule of law. Likewise, if an aggressive and over-active judiciary goes on overlooking the fundamental principles of separation of powers and that of parliamentary sovereignty with scant respect for constitutionalism and decide the constitutional destiny of the country as per their idiosyncrasies, how could the constitution and its objectives survive? In both situations it may, in fact, be a matter of changing the judges rather than of changing the constitution[44]. The only way by which such an onslaught on the constitution could be defended is by developing an informed body of public opinion capable of appraising and criticizing the decisions of the judges as they are handed down[45].

---

[42] Theodore W. Ruger, "A Question which Convulses a Nation": The Early Republic's Greatest Debate about the Judicial Review Power", Harv. L. Rev., Vol. 117:826, 2004, p. 855, "In a regime founded on democratic self-governance, the vesting of important constitutional authority in an unelected judiciary is justified, if at all, solely as a corrective devise that remedies problems arising from the ordinary operation of politics.

[43] *Id.*, at p. 884.

[44] Edward Mc Whinney, *Judicial Review*, University of Toronto Press, Toronto, (1969), p. 74

[45] *Id.*, at p. 75.

The irrefutable objection to judicial supremacy is that elected legislators have a far greater democratic mandate than unelected judges to make the political choices that determine the content of the law, especially in respect of morally controversial issues. Judicial supremacy is patently undemocratic, it is argued, because it is an exclusionary form of political organization in which the final legal authority is unaccountable to the citizenry[46]. Therefore there is no convincing justification for the unelected judiciary to constitute the final legal authority, whether it comes up with the correct result or not. The critics of judicial supremacy point out that rule of law do not permit judges to limit the authority of Parliament. On the contrary, the ideal requires judges to continue to respect parliamentary sovereignty. In a truly parliamentary democracy upholding the principle of parliamentary sovereignty like that of the *Westminster* type, the argument that the moral force of the rule of law legally entitles the judiciary to declare itself to be the final legal authority is jurisprudentially unsound[47]. Even in the United States the judicial review power that John Marshal exercised in *Marbury* and that other judges practiced in other cases at the time was more modest than that is being exercised by the modern Supreme Court. It is opined "whatever can be claimed about the general acceptance of judicial review in this era, it was acceptance generated in significant part by the modest character of the doctrine"[48].

There are jurists who justify the existence of judicial review and its constitutional role while upholding the principle of parliamentary sovereignty. According to them courts should not overturn legislations unless "those who have the right to make laws have not merely made a mistake, but have made a very clear one – so

---

[46] *Supra, n.* 31 at p. 146.
[47] *Id.*, at p151.
[48] *Supra, n.* 42, at p. 896.

clear that it is not open to rational question"[49]. The conflict between judicial review and legislations may lead many a times to policy distortions. Judicial efforts to enforce constitutional norms quite often distort policy making of the legislature and the government. Minimal judicial review is one of the responses to this difficulty of policy distortion. In principle, policy decisions ought to be reconsidered if affected interests were not consulted, or the necessary factual basis (if any) for the policy does not exist, or policy was not carefully considered, or new evidence or arguments that undermine the policy have cropped up, or the very policy is against morality or public welfare. In effect, the courts distinguish between principled and political considerations in deciding whether the policy-making process is reviewable[50]. The alternative response is that the judicially articulated constitutional norms should be so clear that legislators will never even propose their most preferred policy as they know it is unconstitutional. However, for democratic constitutionalists the problems associated with judicial review and policy distortion will continue to remain serious ones, perhaps so serious that there may not be an easy solution other than the self imposed restraint and the willingness of the judges and the legislators to imbibe the true spirit of the constitution and the reflection on it of the changing needs of the society.

The question of the limits of the proper judicial role should be seen as fundamentally a question of constitutional interpretation rather than one of abstract moral philosophy of the Rule of Law or political prudence, which may lead to the criticism of constitutional illegitimacy of expansive judicial power[51]. Therefore a powerful case for

---

[49] James Bradley Thayer, *"The Origin and Scope of the American Doctrine of Constitutional Law"*, 7 Havr. L. Rev.129(1893) 144 *c. i.* Mark Tushnet, "Policy Distortion and Democratic Debilitation: Comparative Illumination of the Countermajoritarian Difficulty", Michigan L. R., 95-96, Vol. 94, 1995, p. 245.

[50] Dawn Oliver, "The Courts and the Policy making Process" in J. L. Jowell and D. Oliver *New Directions in Judicial Review-Current Legal Problems*, Stevens and Sons, London (1988), pp. 88-89.

[51] Jack Wade Nowlin, "The Constitutional Illegitimacy of Expansive Judicial Power: A Populist Structural Interpretive Analysis", Kentucky L.J. , Vol. 89, 2000-2001, 387, at pp. 474-476. See also Gopal Snkaranarayanan, "Man, Damn Us", (2009) 9 S.C.C.(J) 6, "Has the judiciary realy extended its

judicial restraint is made by some stressing the inter-penetration of law and politics and inter-dependence of the main institutions in cases involving judicial review of governmental policies[52]. In this process the 'legal' and the 'political' constitutions must be brought into harmony as complementary rather than contradictory viewpoints. But such a harmony is possible only by a persuasive interpretation of the constitution sensitive to both the political realities of practical governance and the demands of the contemporary political morality, which may essentially be the job of the courts[53]. Therefore a 'modified' *ultra vries* doctrine deserves to be respected as an attempt to state a generally acceptable position, reflecting the main strengths and weaknesses of both sides of the argument, since any attempt to choose between legislative intention and judicial endeavour as the real basis of the supervisory jurisdiction is ultimately futile[54].

All the arguments for and against are more or less balanced and had been proved to be so by the countries following either of the schools. If the legislature is influenced by politics, there is also politics in judiciary. If legislature is going on changing in its composition and political colour, the constitution of judiciary is also similarly undergoing changes. If academically and intellectually judges are superior, there are equally brilliant parliamentarians, more in number and rich in experience in any legislature. Quality and integrity wise also the gulf between the two institutions is getting narrower with the passage of time. But, then, how it happened that the judiciary decides what the Constitution is and what are its basic features? The

---

jurisdiction, or has it mearly provided innovative solutions within the exercise of what has always been within its own domain?".

[52] See Griffith, *The Politics of the Judiciary*, 5th Ed. (1997). For the interdependence of courts and Parliament as regards the ultimate constitutional authority. See also Bamforth, "*Ultra Vires* and Institutional Interdependence", in Forsyth (ed.) *Judicial Review and the Constitution c.i.* T.R.S. Allan in "The Constitutional Foundations of Judicial Review: Conceptual Conundrum or Interpretative Inquiry", (2002) C.L.J. 87 at p.96.

[53] T.R.S. Allan, "The Constitutional Foundations of Judicial Review: Conceptual Conundrum or Interpretative Inquiry", (2002) CLJ 87 at p. 96

[54] Mark Elliot, "The Ultra Vires Doctrine in a Constitutional Setting: Still the Central Principle of Administrative Law", (1999) CLJ 129 at p.131.

answer is not in the Constitution but in the historical development of the two institutions in any country and the outcome of their conflicts in the battleground of constitutionalism, and the power balancing between the two institutions.

The main logic that differentiates judicial review from parliamentary supremacy is that the former stand for counter-majoritarianism *viz.* protection of minorities and individuals based on certain essential values and rights embedded in the Constitution. Constitution does not speak for the majority. It is a balanced document, a document of compromise and not one of consensus. Constitution has to safeguard the interest of all citizens equally and without any discrimination. Therefore, if this essential value of the Constitution is to be defended and justice rendered, the implementation and interpretation of the constitutional provisions and that of the Acts passed by the Parliament and state legislatures cannot be exclusively entrusted with the majoritarian legislature, whose concern, it is argued, will invariably be to protect the majority interests. The concept of constitutional government and limited government balance the conflict between the judiciary, the executive and the legislature.

2.6 Judicial Review in a Representative Democracy

Simultaneously with the establishment of judicial review as the constitutional doctrine overseeing the enforcement of constitutionalism, there arose an equally forceful criticism that the institution of judicial review handled by few selected judges against the representative legislature and its executive is counter-majoritarian and therefore undemocratic. The attack on judicial review as undemocratic rests on the premise that the constitution should be allowed to grow without a judicial check and in this way the electoral process will determine the course of constitutional development. The constitutional scholars were preoccupied or rather obsessed by the perceived difficulty

or necessity of legitimizing judicial review in a representative democracy[55]. Judicial review stands in tension with the democratic theory. It was commented that the American Supreme Court was playing a statesman-like role in national controversies by engaging in dialogue with the other branches of the government, thereby influencing and leading the public opinion[56]. Therefore the court could not be seen as a passive body. The court's ability to define and insist for the enduring values and principles that stood at risk in the day-to-day administrative and political process was viewed with suspicion. The justification for the court's interference in the discharge of public powers was also being questioned[57].

There are others who look at the problem of counter-majoritarian theory and judicial legitimacy from a different angle. They argue, the every day process of constitutional interpretation integrates all the three branches of government: executive, legislature and judiciary. For them in the above process the constitution is interpreted on a daily basis through an elaborate and meaningful dialogue and courts play their own unique role in balancing the dialogue[58]. Courts serve to facilitate and mould the national dialogue concerning the meaning and interpretation of the Constitution as teachers in a vital national seminar[59]. As per this theory, the Supreme Court's role must be assessed within the dynamic, interacting and functioning governmental system[60]. The limitation and separation of powers, if they are to survive, require a procedure for independent mediation and construction to reconcile the inevitable disputes arising over the

---

[55] Erwin Chemerinsky, "Foreword: The Vanishing Constitution", 103 Harv. L. Rev., 43, 46 (1989). See also Alexander M. Bickel, *The Least Dangerous Branch*, Yale University Press, Yale, (1962), p.16, who said "the root difficulty is that judicial review is a counter-majoritarain force in our system"

[56] See Alexander M. Bickel, *The Least Dangerous Branch*, Yale University Press, Yale, (1962).

[57] Barry Friedman, "Dialogue and Judicial Review", Mich. L. R.(1993) , Vol. 91: 577, p. 580.

[58] *Ibid.*

[59] See Eugene V. Rostow, "The Democratic Character of Judicial Review", 66 Harv. L.R., 193, 208, (1952).

[60] See Stephen L. Carter, "Constitutional Adjudication and the Indeterminate Text: A Preliminary Defense of an Imperfect Muddle", 94 Yale L. J., 821, 866 (1985)

boundaries of constitutional power, which arise in the process of governance[61].

There is an argument that the judicial review is in essence a 'right to hearing' and a 'right to voice a grievance' which the representative legislature is unable to provide in defense and in the true spirit of democracy. This conception of judicial review, it is argued, portrays the judiciary as an ally of the legislature[62]. Admittedly the 'right to a hearing' conception involves a corporate understanding of the relationship between the legislature and the judiciary. Such an understanding perceives both courts and legislatures are entities within one large organization, *viz.* the state. It is pointed out, conflicts between the legislature and judiciary do not necessarily reflect institutional imperfections; rather these conflicts arise naturally from the fact that the right to a hearing may require courts to overturn the legislature's decision[63]. It is wrong to insist that no society is democratic unless it has a government of unlimited powers, and that no government is democratic unless its legislature has unlimited powers[64]. The power of judicial review exercised by an independent judiciary is a tool of proven use in the quest for an open society of varying interests and of widely dispersed powers. In a vast country, of mixed population, varying languages, different cultures and with widely different regional problems, the above judicial experiment is the surest base for the hopes of democracy, argue the critics of counter-majoritarian theory[65].

In a society which makes laws by the procedures of democratic and representative governments, 'enacted laws' are always compromises of competing forces and interests and therefore to disturb them by a majoritarian adamance or through legislative supremacy is

---

[61] Eugene V. Rostow, "The Democratic Character of Judicial Review" *in* Leonard W Levy *et al, Judicial Review and the Supreme Court- Selected Essays*, Harper and Row, New York (1967), p. 76.
[62] Yuval Eylon and Alon Harel, "The Right to Judicial Review", Virginia Law Review, Vol. 92, No. 5, (2006), 991, at p. 1016.
[63] *Id.*, at p. 1017.
[64] *Supra, n.* 61, at p. 80.
[65] *Ibid.*

in fact anti democratic and not vice-versa[66]. Therefore, judicial refusal to declare the true meaning of the constitution means the withdrawal of legal recourse from legal problems. It undermines the constitution's legal status without being able to restore its political status[67]. The task of interpretation of the constitution is entrusted with the courts as the constitution is conceived as the fundamental law, and because it is the business of courts to resolve interpretative problems arising in law. A law which is to be applied by a court, but is not to be interpreted by the court, is a solecism simply unknown to the legal process[68].

The counter-majoritarian theory of judicial review is also confronted by the reality that vast majority of judicial over-ruling of governmental activity is concerned not with statutes or actions of the legislatures but with the work of administrative officials and bureaucrats. These actions range from administrative policy making to application of administrative rules. In such cases the counter-majoritarian theory against judicial review may find it difficult to be supported.

The advocates of the counter-majoritarian aspect of judicial review, it appears, have been led by a faulty assumption of 'judicial finality' in the decision making process. But the fact remains that a judicial decision need not necessarily be the last word on the subject. Still the critiques of judicial interference with popular will tend to see the constitutional decisions of the court as road blocks to majoritarian actions. Looking deep into the issue of judicial finality, it may be found that finality is neither likely to be achievable nor necessarily desirable. It is human nature to challenge that which we do not agree with. We make mistakes which we want to correct in future. The court can say that its word is final until they say that it is not final and not obliged to

---

[66] *Id.*, at p. 84.
[67] Sylvia Snowiss, *Judicial Review ands the Law of the Constitution*, Yale University Press, Yale, (1990), p. 194.
[68] Charles L. Black, Jr., *The People and the Court- Judicial Review in a Democracy*, The Mcmillan Company, New York (1960), p. 15.

admit the possibility of non-compliance[69]. But people may ignore judicial decisions, or challenge them with which they disagree, or even evade judicial decisions. The Court's ban against *Hartals* and *Bandhs*[70] appealed and organized by political parties and its non-compliance or frequent violations is an illustration of such situation.

Because the Constitution is spacious no single interpretation of its text is likely to be accepted as correct now and for all time. The court is free to change its mind. The people are free to disagree with the court. The court is free to disagree with the people. The members of the court are free to, and usually do, disagree with one another. As disagreement occurs, the document will take on new meanings through a participatory process. This is the moving force behind the constitutional growth and development that has resulted in earlier decisions being modified, clarified and overruled by the courts.

Some believe the process of constitutional interpretation through judicial review is an elaborate discussion and dialogue between judges and the body politic[71]. The court facilitates and shapes the constitutional debate. It sparks the discussion as to what the constitution's text should mean by agreeing with one interpretation or synthesizes several and come to an independent finding. The process of reaching an interpretative consensus on the text is dynamic. The court's opinions lead debate that may ultimately change the opinion already shaped. The accepted interpretation may shift and change as constituencies shift and grow in strength. In this process the court in fact mediates the views of various people, several segments and different interests so as to give a democratic content to its process of adjudication and to its ultimate verdict. This process of constitutional

---

[69] See Robert A. Burt, "Constitutional Law and the Teaching of the Parables", 93 Yale L. J. 455(1984), discusses the role of adjudication when its possibility of non-compliance is present. Despite their inability to coerce compliance, he argues, that court decisions may serve to impose a dialogue in which parties are forced to listen to one another and respond.

[70] *Bharat Kumar K. Palicha* v. *State of Kerala*, A.I.R. 1997 Ker 291 (F.B.); *Communist Party of India (M)* v. *Bharat Kumar*, (1998) 1 S.C.C. 201; *James Martin* v. *State of Kerala*, (2004) 2 S.C.C. 203.

[71] *Supra, n.* 57, at p. 653.

interpretation is interactive and the ultimate result depends upon participation by all interested groups. This is why and how in all important cases of constitutional interpretation all interested parties are allowed to implead themselves in the case if they are not already in the party array. This is required for safeguarding the fundamental constitutional rights, increasingly protected by the developed doctrines of modern public law, which cannot logically be a function of the parliament or its laws. By representing judicial decisions as the execution of Parliament's will may undermine the courts' duty to defend the constitutional rights[72]. To say that Parliament's sovereignty extends to abrogation of the rule of law is as if an institution deriving its powers from a constitution could lawfully use them to destroy or undermine the constitution itself. Therefore common law principles and legislative purpose have to be combined, so that the work of courts, Parliament and public officials can be conceived as aiming to achieve in different ways a common order of fundamental values, which are the essence and spirit of the rule of law.

Despite all the arguments in favour of judicial review and defending judicial supremacy to an extent, there is something 'uncomfortable' about the courts deciding the limits of their own competence[73]. The public lawyer feels the subconscious shudder of *nemo judex in re sua,* the maxim which provides that no person should be a judge in his own cause[74]. One may ask as to whether the courts are going to be best able to determine which of the system of government deems appropriate for them to decide. Of course, one may argue that all the courts' decision making ultimately is subject to parliamentary constraint, because, in theory, Parliament could through its sovereignty decide whether a particular subject matter is inside or

---

[72] Sir John Laws, "Illegality: The Problem of Jurisdiction", *in* Supperstone and Goudie (Eds.), *Judicial Review*, p. 418-419, *c.i* T.R.S. Allan "The Constitutional Foundations of Judicial Review: Conceptual Conundrum or Interpretative Inquiry", (2002) C.L.J. 87 at p. 102-103.

[73] B. V. Harris. "Judicial Review, Justiciability and Prerogative of Mercy", (2003) C.L.J. 62 631 at p. 634.

[74] *Ibid.*

outside the jurisdiction of the court. But, in practice, the fact remains even in the United Kingdom any such exercise of sovereignty is now likely, through the Human Rights Act, 1998, to be tampered with by the influence of Article 6(1) of the European Convention on Human Rights on citizens' access to judicial processes[75].

Pointing out the constitutional pre-commitment to judicial review, it is argued that a constitutional democracy is deeply ambivalent about judicial review[76]. In deciding constitutional issues, the court has often invoked a vision of how politics should work, justifying judicial influence as a response to fill up the gaps between that vision and the political reality[77]. This permits courts to perceive and portray themselves as servants of democracy, even as they strike down the actions of the democratic governments. In this process, judiciary make it feel that they are protecting the constitution's most crucial commitments: commitments defining the values that a society, acting politically, must respect[78]. For those who would fill up the gaps left by the constitution's ambiguities and silences perhaps one of the core issues is the value of protecting certain minorities from perennial defeat in the political arena. The recent sensational judgment[79] of the Delhi High Court in legalizing the gay sex and indirectly validating homosexuality is one such instance, where the court came to the rescue of the gays on an issue which the gay activists could not have won in the political arena in the near future as it is anathema to public morality.

While dealing with judicial accountability vis-à-vis the counter-majoritaraian criticism, Prof. Barry Friedman has rightly pointed out the limitation and the required reasonableness of the power

---

[75] *Ibid.*
[76] Lous M. Seidman, "Ambivalence and Accountability", 61 Cal. L. Rev. 1571(1988) pp. 1590-91.
[77] Laurence H. Tribe, *Constitutional Choices*, Universal Law Publishing Co. Pvt. Ltd., New Delhi, (2000), p. 9.
[78] *Id.*, at p. 10
[79] *Naz Foundation* v. *Government of N.C.T. and others*, 160 (2009) D.L.T. 277

of judicial review by quoting a story of a Little Prince and a King[80]. The author tries to emphasise that it is the balancing factor of 'reasonableness' that justifies the judicial authority as against the counter-majoritarian criticism by neither understating nor overstating the role of the judiciary in a constitutional democracy.

The constitutional role of the judiciary also mandates taking a perspective on individual rights at a higher pedestal than majoritarian aspiration. To that extent courts play a counter-majoritarian role[81]. In this balancing process courts may have to resist the public opinion on many occasions when it run counter to the rule of law and constitutionalism[82]. A judiciary that can only tell the government when it is wrong and not the people when they are wrong, is not an independent but a timid judiciary[83]. To be numerous is not necessarily to be just or even to be right. Justice does not trim its sails to flap with every passing wind. In this way judicial conservatism is concerned about both enforcing firmly established constitutional values and not erroneously intruding on valid democratic discretion[84]. This suggests that the true basis for putting one's faith in the democratic process is not a naïve believe that it will always produce the best results, but a lack of naivete about the alternatives[85]. It is argued that there is no reason to suppose that rights are better protected by the practice of judicial review than they would be by democratic

---

[80] *Supra, n.* 57, at pp. 680-682.

[81] *Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra,* (2009) 6 S.C.C. 498 at p. 537. The debate whether courts play a counter-majoritarian role in democracy is not only relevant in the annals of judicial review, but also to criminal jurisprudence.

[82] *Ibid.* See also *Khatri (II)* v. *State of Bihar,* (1981)1 SCC 627 (Bhagalpur Blinding case) and *Sanjay Dutt* v. *State(II),* (1994) 5 S.C.C. 410 (Bombay Bomb Blast Case). See also Ardrew Ashworth and Michael Hough, *Sentencing and Climate of Opinion,* 1996 Crl. L. Rev. *c.i Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra,* (2009) 6 S.C.C. 498 at p. 538, "The views of sentencing held by people outside the criminal justice system – the general public- will always be important even if they should not be determinative in court." Capital sentencing is one such field where the safeguards always takes strength from the constitution and therefore the public opinion does not have any role to play.

[83] P. B. Mukerjee, "Aspirations of the Indian Constitution", A.I.R. 1955 (J) 106.

[84] David Chang, "Discriminatory Impact, Affirmative Action and Innocent Victims: Judicial Conservatism or Conservative Justices", Colombia Law Review, Vol. 91:790, 1991, at p.842.

[85] Einer R. Elhauge, "Does Interest Group Theory Justify More Intrusive Judicial Review", The Yale Law Journal, Vol. 101: 31, 1991, at p. 110.

legislatures[86]. At the same time the fact remains that a democracy that has to rely solely on courts to save itself from unwise and unfair legislation becomes a weak democracy[87].

2.7 Present Position in Common Law Jurisdiction

Judicial review is so dynamic that it was nurtured and nourished by its proponents from Sir Edward Coke to Prof. Dicey in England and was inherited by her erstwhile colonies. Each country developed the concept in its own way to suit their constitutional principles and political needs. Thus England built up its own system of judicial review limiting it mostly to administrative decisions and actions only. The English common law system has the most restrictive notion of *stare decisis*, the most monolithic conception of legislative supremacy and the least powerful judiciary in the common law world[88]. It is commented that it is one of the greatest ironies of legal history that the nation of the common law's birth is now the common law nation with the most anemic common law judiciary. India and the United States with their written constitutions followed the path of constitutional supremacy making all the three organs of the state, including the legislature, accountable to the fundamental law of the land, the Constitution. The legislative function of the Parliament and the state legislatures is also being subjected to judicial review by testing the validity of the laws enacted by them on the touchstone of the Constitution, when called for.

In the light of historical experience with judicial review in the English speaking countries the written constitutions are subjected to a form of selective judicial interpretation with some provisions of the constitution assuming an over-riding, paramount importance and the

---

[86] See Geremy Waldron, "The Core of the Case against Judicial Review", The Yale Law Journal, Vol. 115: 6, 2006, p.1346.
[87] *Supra, n.* 84.
[88] Douglas E. Edlin, "From Ambiguity to Legality: The Future of English Judicial Review", The American Journal of Comparative Law, Vol.. 52, 2004, p.383.

rest receding into the background. It is interesting to note that stripped down to their policy and doctrinal essentials, almost all of the great American civil liberty cases could be readily subsumed under one or other of the free speech or due process guarantee in the American Bill of Rights[89]. Likewise in India also the large volume of constitutional and public law litigation have centered around Part III of the constitution dealing with fundamental rights supported by Articles 32, 136 and 226 of the Constitution dealing with the writ jurisdiction of the superior courts. Hence, in the common law jurisdiction as a result of judicial review, it is clear that the meaning and content of the Constitution is undergoing changes as the society undergoes changes.

Within the framework of the present constitutional arrangement it is of great significance that Government continues to implement their policies through various statutes conferring specific powers on particular authorities rather than by a few statutes conferring broad yet unspecified powers on the government in general[90]. This makes clear that the Government considers that a change in the law is necessary to give effect to a particular administrative intention or sanction. This might otherwise have been the subject of simple administrative instructions such as ministerial circulars, if broad and unspecified powers had been conferred on the Government by limited statutes[91]. This was the pattern of "government according to law" that emerged from the constitutional resettlement of the seventeenth century England[92], which continues till date in almost all modern democracies in the common law world.

English law of judicial review had been influenced by the traditional notions of the rule of law or the government under law. Judicial review in England is regarded as an integral part of the constitutional scheme prevailing in the country. This has resulted in

---

[89] Edward Mc Whinney, *Judicial Review*, University of Toronto Press, Toronto, (1969), pp. 203-204.
[90] *Supra, n.* 8, at p.15.
[91] *Id.*, at p. 16
[92] *Id.*, at p. 16.

the development of administrative law in England, as a branch of public law. The central purpose of administrative law is to promote good governance. It deals with the rules relating to the control of governmental power. The ultimate object of administrative law and its principal remedy of judicial review in the common law system is to see that the governmental powers are kept within their legal bounds and their duties are performed in accordance with law so as to protect the citizen against their abuse.

2.8 Constitutional Propriety

The constitutional propriety of judicial review is being judged by the consistency and certainty of the principles that are applied by the courts while invoking its prerogative power under judicial review. Although critics say that judicial review of administrative actions is inevitably sporadic and peripheral[93], time and experience have proved that the institution of judicial review is the best available legal mechanism and remedy by which the common law principle of rule of law can be legitimized and sustained. Apart from the prerogative writs available under the review jurisdiction *viz. certiorari, prohibition, mandamus* and *quo warranto*, the common law remedies of injunction and declaration are also being made use of to supplement the prerogative remedies. The common law remedy of injunction originated in the court of Chancery and that of 'declaration' was of statutory origin evolved in the 19th century. In addition to the prerogative remedies, these two common law remedies are also widely used with approval in the common law jurisdiction and are available to a party who can seek intervention of court by establishing that a public authority has acted *ultra vires* i.e. outside its powers or jurisdiction. Historically, the prerogative writs were moulded by the court of King's Bench for the purpose of keeping the inferior public authorities within their bounds. They are referred to as the prerogative remedies since

---

[93] de Smith, Judicial Review of Administrative Action, p.3, *c.i.* C.T. Emery and B. Smythe, *Judicial Review: Legal Limits of Official Power*, Sweet & Maxwell, London (1986), p.22.

they were originally available only to the crown. Even now in England the crown is the plaintiff in the proceedings for the prerogative remedies[94], though the actual plaintiff is the party aggrieved, who is making the direct challenge.

The essence of constitutional democracy that prevails in the common law jurisdiction had been made explicitly clear in the seventeenth century that "the King hath no prerogative but that which the law of the land allows him..."[95] Dealing with the prerogative power, the House of Lords unanimously held[96]:

> "whatever their source, powers which are defined, either by reference to their object or by reference to procedure for their exercise, or in some other way, and whether the definition is express or implied, are....normally subject to judicial control to ensure that they are not exceeded".

But certain powers have, however, not been subjected to judicial control[97]. For example, the courts do not have power to interfere in treaty making and the courts are not the place to determine whether a treaty should be concluded[98], or to direct the armed forces' disposal in a particular manner[99] or to decide whether the Parliament should be dissolved on one date rather than another[100]. The reasons for the decision maker taking one course rather than another are in the administrative realm in many cases. This involves competing policy considerations, which is the executive's discretion and, if wisely employed, can weigh against one another, a balancing exercise which judges by their upbringing and experience are ill-qualified to perform[101]. Thus the controlling factor today in determining whether

---

[94] As it appears from the title of cases , eg *R.* v. *Secretary of State for the Home Department, ex-parte Fire Brigades Union* (1995) 2 A.C. 513; *R v. Lord Chancellor*, ex-parte Witham (1998) Q.B. 575 etc.
[95] Case of Proclamation (1611) 12 Co. Rep. 74 (extracted in Keir and Lawson, Cases in Constitutional Law, 6th ed., p. 108 and *c.i.* C.T. Emery and B. Smythe, *Judicial Review: Legal Limits of official Power*, Sweet & Maxwell, London (1986), p.74.
[96] *Council of Civil Service Unions* v. *Minister for the Civil Service.* (1985) A.C. 374 at 399.
[97] *Ibid.* Lord Diplock
[98] See eg. *Blackburn* v. *Att. Gen.* (1971) 1W.L.R. 1037.
[99] See eg. *Chandler* v. *D.P.P.* (1964) A.C. 763
[100] *Supra n.* 96. Per Lord Roskill at 418.
[101] *Id.*, Per Lord Diplock at 411.

the exercise of prerogative power is subject to judicial review is not its source but its subject matter[102].

In England the doctrine of judicial review has grown rapidly in recent years extending well beyond the sphere of statutory powers to include diverse forms of public power in response to the changing needs of the society and the changing architecture of governments[103]. Not only has judicial review grown wider in scope; its intensity has also increased. In spite of this growth the central perception of judicial review in England and the rest of the common law jurisdiction is that courts may not ordinarily interfere with exercise of discretion (of the public authorities) and that courts intervene only if some specific fault can be established, for example if the decision was reached procedurally unfairly or in an illegal manner being contrary to any statutory provision, or as a *mala fide* exercise or in an irrational or illogical manner so as to become *per se* unreasonable. The judicial recognition of the so-called distinction between appeal and review has fundamentally shaped the power of judicial review in conformity with the constitutional propriety. Thus, while recognizing the above fact, the courts themselves had carved out the jurisdictional parameters of judicial review. But experience shows that in modern times the jurisdictional demarcation of judicial review has become difficult to be maintained with clarity and certainty and consistent with the constitutional propriety.

While exercising the power of judicial review the courts usually do not go into the merits of the cases; they deal with the legality of the decision. This is made clear by Laws J. in *R v. Somerset County Council* ex. Parte Fewings[104] thus:

---

[102] *Id.*, Per Lord Scarman at 407.
[103] Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd Ed. p.6. See also Gopal Sankaranarayanan, "Man, Damn Us", (2009) 9 S.C.C. (J) 6, " With the passing of the Human Rights Act, 1998, the role of the judiciary has for the first time extended to neutralising those governmental actions that are inconsistent with its provisions".
[104] (1995) 1 All. E. R. 513 at 515.

> "In most cases, the judicial review court is not concerned with the merits of the decision under review. The court does not ask itself the question, "is this decision right or wrong?" Far less does the judge ask himself whether he himself would have arrived at the decision in question.... The task of the court, and the judgment at which he arrives, have nothing to do with the question, "which view is the better one?"

The reviewing court thus confines itself to questions of legality and avoids substituting its view for that of the decision-maker on the merits. It is argued that the appeal/review distinction is keyed into the doctrine of parliamentary sovereignty[105]. The idea is this: if the sovereign legislature has given power to a particular administrative body and there is no appeal provided for, the courts are not entitled to interfere with the decision except on the ground of illegality. Therefore, in the common law jurisdictions in the matter of judicial review, courts have consistently accepted the appeal/ review distinction and have confined themselves to the question as to whether the decision is illegal, irregular, unfair or *mala fide* and have avoided to look into the contents of the decisions that may result in consideration of the merit.

But, in recent years this distinction between appeal and review has come under pressure due to various reasons reaching out to an expansive approach to the jurisdictional parameters of judicial review. At least in certain areas, say for example while applying the newly developed grounds of substantive 'legitimate expectation' or the principle of 'proportionality' etc. the courts are looking into the content and merit of the administrative decisions more closely than they have traditionally done so far[106]. But, still, if one wants to make a realistic assessment of the development of judicial review and its gradual infiltration into the other two compartments of the state over the period of years and to trace out its reasons, one has to keep in

---

[105] *Supra, n.* 103, at p.7.
[106] *Ibid.*

mind the traditional distinction between the scope and ambit of appeal and review and its rationale as the benchmark for the inquiry to evaluate the legitimacy of judicial review and its widening horizons in the common law jurisdictions. However, there is general agreement that the superior courts are appropriate organs for keeping administrative authorities within their powers, for ensuring that they observe the basic elements of fair procedure in dealing with questions affecting private rights, and for requiring them to carry out certain public duties; but it is not so generally agreed that the courts are the appropriate organs for reviewing the merits of the exercise of the discretion vested in administrative authorities[107].

2.9 Doctrine of *Ultra Vires*

In the light of the criticism for and against judicial review it may be summed up that the central theme of the courts' power is the doctrine of '*ultra vires*'. The principle of *ultra* vires permits the court to look into the legality and validity of the actions of the inferior authorities and not to look into the merits or contents of the actions. Whenever a decision maker is acting '*ultra vires*' i.e. beyond his powers conferred by the legislation, the courts may intervene if they are approached by the aggrieved person. On the other hand, acting '*intra vires*', i.e. within the powers, administrative acts are lawful and valid. Here, it is argued, courts are not imposing their power, but are enforcing the limits of the administrative powers under challenge within the bounds of the statute and thereby enforcing the will of the Parliament (legislature). Fundamentally, this theory provides the justification for the court's exercise of its supervisory jurisdiction[108].

---

[107] Bernard Schwartz, *An Introduction to Administrative Law*, Sir Isaac Pitman & Sons Ltd., London (1958), 166. But see for a view of granting advisory jurisdiction to courts in public law- Sir John Laws, "Judicial Remedies and the Constitution", The Modern Law Review, Vol. 57, 1994, p. 213.

[108] 'The logic behind the doctrine provides an inherent rationale for judicial review... The self justification of the *ultra vires* doctrine is that its application consist nothing other than an application of the law itself and the law of Parliament to prevail' . Baxter, *Administrative Law*, (Cape Town, 1984)

This shaped the power of judicial intervention as one of 'review' and not that of 'appeal'. Its underlying logic is particularly compelling in a legal system, like that of the United Kingdom, which embraces the principle of parliamentary sovereignty. But in other common law jurisdictions like the United States, India etc. the doctrine of *ultra vires* as the sole basis of judicial review has been a subject of debate and has not been accepted whole heartedly.

In the elaboration of the principles of judicial review, the courts have imposed and enforced judicially created standards of public behaviour and exercise of public power. Critics say that these deviations are categorically judicial creations. They have nothing to do with the will of the Parliament[109]. It is therefore argued that the *ultra vires* doctrine is a 'fig-leaf'[110] which simply covers the true origin of judicial review and as a 'fairy tale'[111]. Thus it is effectively put that "no one is so innocent as to suppose that judicial creativity does not form the basis or grounds of judicial review"[112]. If this criticism of the *ultra vires* principle of judicial review is rejected, it appears, there is no justification for any further 'activism' or 'dynamism' on the part of the judiciary in seeking to extend their power of review beyond the scope of ascertaining the will of the legislature and acting thereupon.

The phrase *'ultra vires'* is indicative of action being beyond power. Whether it is the legislature that has fixed the limits of the power or whether the limits are a common law creation of the courts is the issue behind the debate about the foundations[113].

---

at 303, *c.i.* Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd ed., p.12.

[109] See Laws (1995) P.L. 72 at pp78-79.*c.f.* Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd ed., p.12.

[110] *Ibid.*

[111] See Woolf (1995) P.L. at p. 66 *c.f.* Mark Elliott *et al Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd ed., p12.

[112] Forsyth (1996) C.L.J. 122 at p. 136 *c.f.* Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd ed., p.12.

[113] For the preposition that the rule of *ultra vires* cannot provide the real foundation for judicial review, see D. Oliver, "Is the Ultra Vires Rule the Basis of Judicial Review?", (1987) PL 543; P. Craig, "Ultra Vires and the Foundations of Judicial Review", (1998) C.L.L. 63; D. Dyzenhaus, "Reuniting the Brain:

Therefore it was suggested that judicial review has moved on from the *ultra vires* rule to a concern for the protection of individuals, and for the control of power, based on the constitution's mandates or common law principles, rather than powers or *vires*[114]. Notwithstanding the supremacy of Parliament, the courts impose standards of lawful conduct upon public authorities as a matter of common law, and it is arguable that the power to impose such standards is a constitutional fundamental[115]. In England, in the absence of a written provision authorizing judicial review, the judicial overseeing of administration draws its justification from the constitutional doctrines of separation of powers and the rule of law[116]. This is the very justification for the doctrine of *ultra vires*, the simple foundation of the power of judicial review and the central principle of administrative law[117].

The increasing significance and prominence of judicial review has inspired the academic search for the constitutional foundations of the supervisory jurisdiction, which has proved to have deeper roots than those which the *ultra vires* doctrine has. The modern approach recognizes the creative role which the judges undoubtedly play in the development of limits on public power. In this way judicial review is inherently integrated to the broader constitutional principles such as the rule of law and the separation of powers, which furnish a more convincing and constitutionally

---

The Democratic Basis of Judicial Review", (1998) 9 Pub. Law. Rev. 98; P. Craig, "Competing Models of Judicial Review", (1999) PL 428; N. Bamforth, "*Ultra Vires* and Institutional Independence", p. 111; D. Oliver, "Review of (Non Statutory) Discretions", p. 307; and J . Jowell, "Of *Vires* and Vacuums: The Constitutional Context of Judicial Review", p. 327 *in* C. Forsyth (Ed.), *Judicial Review and Constitution*, Hart Publishers, Oxford (2000); P. Craig and N. Bamforth, "Constitutional Analysis, Constitutional Principle and Judicial Review", (2001) P.L. 763; P Craig, "Constitutional Foundations, the Rule of Law and Supremacy", (2003) P.L. 92. Whereas T.R.S. Allan in "The Constitutional Foundations of Judicial Review: Conceptual Conundrum or Interpretative Inquiry", (2002) C.L.J. 87 doubts the utility of the debates.

[114] Dawn Oliver, "Is the *Ultra Vires* Rule the Basis of Judicial Review?" *in* Christopher Forsyth, *Judicial Review and the Constitution*. Hart Publishing, Oxford, (2000), p. 3. (First Published in (1987) P.L. 543)

[115] Wade and Bradley, *Constitutional and Administrative Law*, (10th ed., 1985), p. 594.

[116] See Joweel and Oliver, (Eds.), *The Changing Constitution*, Oxford, (2004), Ch. 1.

[117] Wade and Forsyth, *Administrative Law*, (Oxford, 2004) at p. 35.

satisfactory basis for judicial review than that of a straight-jacketed formula of *ultra vires* [118]. The long history of the doctrine of the separation of powers reflects the developing aspirations of the society over the centuries for a system of government in which the exercise of governmental power is subject to control. This basic aspiration towards 'limited government' has had to be modified and adapted to changing circumstances and needs[119].

It is the maintenance of balance of powers, instead of a blind separation of powers, that will protect the liberty of the subject and individual rights from the abuse of powers from any of the three branches[120]. Therefore, in a system of responsible government, the three branches of government should institutionally interact constantly for the welfare of the people without, of course, the judiciary not loosing its independence[121]. Neither the constitutional propriety nor the *ultra vires* doctrine, properly understood, requires the courts to conceal the true nature of their enterprise in this regard, as the doctrine of rule of law is the foundation of the constitution.

Whatever be the practical challenges against the *ultra vires* theory, in the English system of parliamentary sovereignty, the courts' supervisory jurisdiction and the sovereignty of Parliament can be reconciled only by means of the *ultra vires* doctrine. This leads to the inevitable conclusion that to abandon *ultra vires* is to challenge the supremacy of Parliament, which is still unthinkable in the British

---

[118] Mark Elliott, "The Ultra Vires Doctrine in a Constitutional Setting: Still the Central Principle of Administrative Law", The Cambridge Law Journal 58(1), 1999,129 at p. 131.

[119] *Supra, n.* 4, at p. 20.

[120] See Robert Stevens, *The English Judges- Their Role in the Changing Constitution*, Hart Publishing, Oxford (2005), pp. 85-86.

[121] See Lord Mustill in *R.* v. *Secretary of State for the Home Department*, ex-parte Fire Brigades Union (1995) 2 A.C. 513 who argues: " For myself , I am quite satisfied that the unprecedented judicial role has been greatly to the public benefit. Nevertheless, it has its risks, of which the courts are well aware. As the judge themselves constantly remark it is not they who are appointed to administer the country. Absent a written constitution much sensitivity is required of the Parliamentarian, Administrator and judge if the delicate balance of the unwritten rules evolved successfully is not to be disturbed".

system and not wholly justifiable in the rest of the common law jurisdiction too.

The doctrine of *ultra vires* come in direct conflict with the specific statutory provision of exclusion of judicial review through the finality clauses in the statutes. Therefore, if the rationale for judicial review is that the courts are thereby implementing the legislative intent this leads to difficulty where the legislature has stated in clear terms that it does not wish the courts to intervene with the decisions made by the agency[122]. But, in fact such clauses have not served to exclude judicial review since the courts have interpreted such clauses as being incapable of protecting decisions which were nullities[123]. Such clauses in a statute are clearly intended to avoid judicial intervention. In such cases the legislature was merely trying to emphasise that it preferred the view of a specialist agency to that of the reviewing court. The courts are over-reaching or overcoming this statutory restriction by resort to the constitutional doctrine of judicial review independent of the will or intent of the legislature. The courts thereby assert that access to judicial review and the protection which it provides should be safeguarded by the courts, and that any legislative attempt to block such access should be given the most restrictive reading possible, despite the legislative intent therein and irrespective of whether the court acts under the principle of *ultra vires* or not.

2.10 The Rationale of Judicial Review

The rationale of judicial review, apart from its constitutional foundation and legitimacy, may be its creativity and mobility so as to meet the changing needs of a fast moving society and the nation on novel interpretation of the constitution, which is dynamic and non-static. It suit and balance the changing needs,

---

[122] See P. Craig, '*Ultra Vires* and the Foundations of Judicial Review', C.L.J. 63 (1998)
[123] *Anisminic Ltd.*v. *Foreign Compensation Commission,* (1996) 2 A.C. 147

which help the societal fabric to be intact and the nation to survive all crisis over generations without losing the basic constitutional values and norms. The political legitimacy of judicial review depends, in the ultimate analysis, on the assignment to the courts of that function by the general consent of the community. The efficacy of judicial review therefore depends on the consensus and confidence of the community at large in the way in which the courts perform the function assigned to them. Social consent and public confidence are pragmatic requirements without which even the common law would not have evolved[124]. Therefore the common law lawyers argue that judicial review is a 'judicial creation' applying the standards of a higher order of law that is logically prior to the command of the legislature[125]. Some jurists see this judicial creativity as a co-operative endeavour in consonance with and not in conflict with the legislative intent[126]. Therefore it is unreasonable to suppose that Parliament intended to confer unlimited discretionary power on an executive agency, and unrealistic to argue that the statutes fully prescribes the relevant limits. The conclusion is drawn that Parliament has delegated to the courts the task of defining the boundaries of the executive's jurisdiction, in pursuance of the rule of law[127].

Ideally, the non-judicial parliamentary remedies like ombudsman, inquiries, tribunals etc. are more suited to maintain the quality of administrative justice. But for the last several decades parliamentary justice has proved to be ineffective and time consuming. To avoid a vacuum in which the citizen would be left without protection against misuse of executive powers, the courts

---

[124] Sir John Laws, "Judicial Review and the Meaning of Law" *in* Mark Elliott, *The Constitutional Foundations of Judicial Review,* Hart Publishing, Oxford (2001), p. 174.

[125] Jeffrey Jowell, "Of *Vires* and Vacuums: The Constitutional Context of Judicial Review" *in* Mark Elliott , *The Constitutional Foundations of Judicial Review,* Hart Publishing, Oxford (2001), p. 327.

[126] See Mark Elliott, "Legislative Intention Versus Judicial Creativity? Administrative Law as a Co-operative Endeavour", *in* Mark Elliott, *The Constitutional Foundations of Judicial Review*, Hart Publishing, Oxford, (2001), p. 341.

[127] T. R.S. Allan, "The Rule of Law as the Foundation of Judicial Review" *in* Mark Elliott, *The Constitutional Foundations of Judicial Review*, Hart Publishing, Oxford, (2001), 413.

have had no option but to occupy the 'dead ground' in a manner which could not be resisted by the Parliament[128]. This has never been voluntary or *suo motu* exercise of power by the judiciary. Judicial intervention has in fact been invited by the citizens aggrieved. Therefore the expansion of judicial review has been and is being necessitated by the executive inertia or indifference and the parliamentary ineptitude and inefficiency in making administrative justice a reality. It is interesting to note that the proper constitutional relationship of the executive with the court had been put in a most intelligent manner but in a lighter mood that "the courts will respect all acts of the executive within its lawful province, and that the executive will respect all decisions of the court as to what its lawful province is"[129].

The court-oriented model of administrative justice, which places judicial review at its centre stage, is closely associated with the Diceyan conception of rule of law which emphasizes the primacy of 'ordinary law' administered by courts. Apart from the theoretical concept, in truth, the growth of judicial review must be located on a wider canvass of growth of literacy and education, increased standard of life and social awareness, the increasing faith in judiciary to redress all administrative injustice and the associated rise of a rights-based culture[130] which emphasizes the entitlements of the individual vis-à-vis the state. The evolution of judicial review is thus the product of a complex web of political and philosophical changes concerning the state, the individual and their relationship with one another[131].

2.11 Criticism against Judicial Review

According to some jurists following a pluralistic approach, judicial review should play a decidedly modest role rather than

---

[128] Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London (3rd ed.), p.8.
[129] Nolan L. J., *M* v. *Home Office*, (1992) 1 Q.B. 200 at. pp.314-315.
[130] See Irvine (1998) P.L. 221
[131] *Supra, n.* 103, at p.9.

leaving everything to the courts[132]. Scepticism about judicial review stems out of not only from practical concerns, but also on ideological grounds. It is argued that judges cannot be politically neutral because they are inevitably affected by the rather narrow social, educational and ethnic backgrounds from which the judiciary is presently drawn[133]. Therefore, in the public law sphere any further judicialisation of the administrative process is strongly opposed to[134]. A much more limited conception of judicial review, contending that 'the review of substantive policy decisions made by public authorities acting within the four corners of their statutory or prerogative powers should be out of bounds to the courts'[135]. The crux of the matter is 'whether in a parliamentary democracy particular decisions are best taken by the courts or by the Government'[136]. This creative tension lies at the heart of judicial review and has fundamentally shaped it[137]. The above controversy has led to a school of thought which argue for greater reliance on the political branches to supplement or even supplant judicial enforcement of the constitution[138].

When excessive and liberal practice of judicial review has invited criticism from many quarters, judicial activism in the name of judicial review has been subjected to severe criticism. Tom Campbell calls it 'treason' because it is breach of trust and an abuse of judicial power that undermines the foundations of constitutional

---

[132] The regulatory tasks can more appropriately be performed by other institutions like ombudsman, legislature, tribunals etc. See Arthurs (1979) 17 Osgoode Hall Law Journal 1 *c.i.* Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd Ed., p.9.

[133] See Griffith, 'Politics of the Judiciary' (London) 1997 Ed. *c.i.* Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd Ed., p.10.

[134] (1979) 42 M.L.R. 1 at 19 *c.i.* Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd Ed., p.10.

[135] See Sedley, (1994) 110 L.Q.R.,270 and (1995) PL 386 *c.i.* Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd Ed., p.10. who argues that an enhanced judicial review jurisdiction provides the best safeguard for individual liberty.

[136] (2001) 117 L.Q.R. 42 at 64 *c.i.* Mark Elliott *et al*, *Beatson, Mathews and Elliott's Administrative Law – Text and Materials*, Oxford University Press, London, 3rd Ed., p.11.

[137] *Supra, n.* 103 at , p.11.

[138] Cornelia T. L. Pillard, "The Unfulfilled Promise of the Constitution in the Executive Hands", 103 Mich. L. Rev., 676.

democracy[139]. The comment high-lights the lack of accountability of the judges appointed with fixity of tenure and with no disciplinary control on their judicial work compared to the accountability of the executive and the legislature to the people who elect them to power. The critics of judicial activism argue "judges whose authority come from the will of the people, and who exercise authority upon trust that they will administer justice according to law, have no right to subvert the law because they disagree with a particular rule. No judge has a choice between implementing the law and disobeying it"[140].

2.12 The Common Law Theory of Judicial Review

Judicial review has developed to the point were it is possible to say that no power – whether statutory or prerogative- is any longer inherently unreviewable[141]. Courts have in due course of time expanded the principles of judicial review to those institutions which are not 'public bodies' in the traditional sense of the term. Here the power of judicial review is exercised against a certain degree of power (public) wielded by such institutions, that can be read into the provisions of the articles of association, bye-laws or other government documents under which the body operates. There is an increasing prominence of such bodies performing public functions but not created by statutes or exercising statutory powers[142]. The Control of such institutions which do not owe their existence to statutes leads to a situation where the fiction of parliamentary intention as the basis for judicial review should be dispensed with and in its place it should be acknowledged that there exists a set of principles of good governance and administration evolved by the courts which they apply to all decision making functions and power[143] having an

---

[139] Tom Campbell, "Judicial Activism- Justice or Treason", Otago L. R. 2003-4, Vo. X, p. 307, p.312.
[140] Murray Gleeson, The Rule of Law and the Constitution, ABC Books, Sydney (2000), p. 127.
[141] De Smith's Judicial Review, Edited by Rt. Hon. The Lord Wolf *et al*, Sweet & Maxwell, London (2007), p. 15.
[142] Oliver (1987) P.L. 543.
[143] *Ibid.*

element of public nature. This principle of judicial review if extended further, would exclude from its purview purely private decisions only and would be more or less based on the nature of the power exercised by the receiving institution and the nature of remedies rather than the statutory source of its power. But in the absence of judicial discipline and restraint, it may eventually blur the distinction between public law and private law in the matter of judicial review. This school of thought and deviation from the '*ultra vires* doctrine' as the foundation of judicial review has resulted in the modern concept of 'common law theory' of judicial review, supported by many jurists[144].

Thus the common law theory of judicial review openly acknowledges that those principles are largely the creations of the judiciary, just as common law principles of tort, contract etc. and have been evolved by judges. Therefore the common law theorists argue that the justification for judicial review principles lies not in some notional parliamentary intention but in the fact that such principles are desirable to secure good governance. Thus judges can no longer hide behind the 'fig-leaf' of the supposed parliamentary intention[145]. Instead they must be able to defend the principles of judicial review to the same critical scrutiny as other judge-made bodies of common law. Within the common law theory of judicial review, it can simply be acknowledged that the nature and level of judicial control of administration varies over time and from country to country, as circumstances change.

The creativity of judges in the process of judicial review has been highlighted by many scholars. It would be unrealistic not to acknowledge that the composition of the court on a given occasion is often a factor of paramount importance; and in judicial review of

---

[144] See Craig (1998) C.L.J. 63; (1998) PL 428; (2001) P.L. 763; Laws (1995) P.L. 72; Supprestone and Goudie , Eds, *Judicial Review* (London) 1997, Ch 4 , etc.
[145] *Supra, n.* 103, at p.15.

administrative action the opportunities for distinguishing inconvenient precedents that are open to a judge, who desires to break new ground or to return to older paths, are manifold. Indeed, one of the main reasons why the law of judicial review does not lend itself at all readily to the traditional methods of exposition is that it provides so striking a demonstration of the creative functioning of judicial process[146]. In fact, in hard cases there are no correct legal answers. The judge must use his discretion in deciding between alternative solutions each of which is legally permissible. The choice between the alternative answers should be made by reference to extra legal criteria. Only some dispute will be hard cases to which the law does not provide a correct answer. But to resolve those disputes one requires a judiciary trained to understand the impact of extra legal factors and capable of applying those factors[147].

Thus the judicial control of administration becomes rather a juristic device through which even private or quasi public bodies are subject to the control, which the courts believe should operate on those who possess the power. But this cannot discard the *ultra vires* theory altogether as meaningless since the legislative intention, at least in the broad sense, that the courts must be faithful to the statutory scheme as a whole, is plainly relevant to the application of the various grounds of review, even if it is irrelevant to their abstract formulation and intellectual defence. Legislative intention need not be apparent and evident. It could as well be implied that concepts such as fairness and reasonableness are also part of the general statutory scheme, which Parliament intend in all matters. Therefore the notion of implied parliamentary intention (under *ultra vires*) and generalized concepts such as fairness and reasonableness (in common law) are both being able to stretch to any extent and capable of forming a smoke screen, behind which the

---

[146] *Supra, n.* 107, at p. 26.
[147] David Pannick, "Judicial Discretion" *in* Rajeev Dhavan *et al, Judges and Judicial Power*, Sweet & Maxwell and N. M. Tripathi Pvt. Ltd., Bombay (1985), p. 50.

judicial policy preferences may be advanced, unarticulated and largely unseen[148].

Although it is widely accepted in the common law jurisdiction that the Parliament is sovereign and can therefore, at least in theory, do as it pleases, the reality is that a high level of protection is conferred upon the rule of law and constitutionalism by means of statutory interpretation[149] resorted to by the courts, whereby administrative justice is secured for the citizens in deserving cases, presumably in accordance with the intention of the Parliament. This is the case with the United States and India, where the Congress and Parliament are still the first among the equals in the power structure of the state, for justifying the expanding horizon of judicial review

The Indian and American approach makes the legislature also subject to the fundamental principles of fairness, reasonableleness etc. which are elevated to the status of constitutional fundamentals of personal liberty or due process of law. Thus the legislative power must be understood in relation to the rule of law which includes principles of administrative justice also whose fundamentality is such that it cannot be replaced or displaced even by legislation. This theory envisages that the courts approach statutory texts on the assumption that parliament legislates consistently with a tradition of respect for fundamental constitutional values, including the principles of administrative justice which is guarded by judicial review.

When Parliament enacts legislation which confers wide discretionary power on the decision-makers without any explicit reference to the regulatory mechanism of such power, the courts are

---

[148] *Supra, n.* 68, at p.16

[149] See *Anisminic Ltd.* v. *Foreign Compensation Commission* (1969) 2 A.C. 147 and *R* v. *Lord Chancellor*, ex-parte Witham (1998) Q.B. 575 in which the court went to considerable extent to find interpretation of the statutes which are consistent with the constitutional principle of access to justice.

justified to assume that it was Parliament's intention to legislate in conformity with the rule of law principle. It is this interpretation of a modified *ultra vires* theory that bridges the gap between legislative silence on the regulation of executive discretion and the developed body of administrative law built up by the process of judicial review. In the ultimate analysis it could be seen that power of judicial review in the common law jurisdiction draws its justification from constitutionalism by protecting the fundamental constitutional rights, values and norms through the medium of common law and rule of law[150]. It was argued that there are no limits to judicial power that the superior courts have; and in the final analysis the power they say they have[151]. This, so far as it goes, is correct, at least in the United States and in India, where judicial review is at its zenith. It may fairly be said that the rule of law is the constitutive principle of every constitution, regardless of whether it is written or unwritten, evolutionary or proclaimed. It may be noted here that in New Zealand the concept of rule of law has replaced *ultra vires* as the organizing principle of administrative law[152]. In order to justify the above proposition of upholding the rule of law in every executive and legislative action the "judges have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given"[153]

In the ultimate analysis, going by the above principles of constitutionalism and rule of law, a court which wishes to intervene can do so with ease on the ground that interpretation of any question of law or mixed fact and law is the exclusive power of the court vested under the constitution. In effect, although the court claims that it is

---

[150] See *I. R. Coelho* v. *State of Tamil Nadu*, A.I.R. 2007 S.C. 861.
[151] Philip A. Joseph, "The Demise of *Ultra Vires*- Judicial Review in the New Zealand Courts", (2001) P.L. 354, at p. 358.
[152] *Id,*. at p. 359. But see for a different view Mark Elliott, "The *Ultra Vires* Doctrine in a constitutional Setting: Still the Central Principle of Administrative Law", (1999) C.L.J. 129, at pp. 131-134.
[153] Marshal, C.J. and David L. Shapiro, "Jurisdiction and Discretion", 60 N.Y.U.L Rev. 543, 544 (1985) *c.f.* Martin Redish, "Abstention, Separation of Powers and the Limits of the Judicial Function", 94 Yale L.J. 71(1984).

only looking into the legality of the decision of the inferior authority and not looking into its merits, many a times the decision on legality will be a decision on merits also[154]. Here the interpreter *viz.* the court becomes more powerful than the maker *viz.* the legislature, since the maker has no opportunity to say what was its intention behind enacting the provision under challenge. Therefore the intention of the maker is sought to be ascertained without his help and by resort to the principles of interpretation of statutes. Thus, despite the theoretical confinement of the doctrine of judicial review, in practice, quite often the theory is conveniently forgotten when the court wants to disturb the impugned order. The freedom that the court gets while interfering with a discretionary power of an administrator in the larger canvas of the concept of 'reasonableness' is unlimited that the judge decides the matter by his own, unfettered by the theoretical shackles on the power of judicial review[155].

2.13 Conclusion

In order to avoid the controversy as to the rationale of the doctrine of judicial review and the consequential academic turmoil on the same, it would be wise to see the power of judicial review, not as 'judicial control' of administration and legislation but as 'judicial protection' of individual against abuse of power. The possibility of a judicial challenge against perversity in exercise of public power may dissuade the administrator as well as legislator from stepping out of the constitutional guidelines and the common law principles while exercising their powers. Judicial review has laid down its solid foundation on the reasoning that it is the constitution, constitutionalism and rule of law that are being protected by the

---

[154] See P.P. Craig, *Administrative Law*, 5th Ed., Sweet & Maxwell, London.

[155] See T.R.S. Allan in "The Constitutional Foundations of Judicial Review: Conceptual Conundrum or Interpretative Inquiry", (2002) C.L.J. 87- The startlingly frank admission that the courts "can make the doctrine mean almost anything they wish by finding implied limitations in Acts of Parliament", allowing them to "stretch" the notion of *ultra vires* in order to extend their own jurisdiction. It is not surprising that many have thought that the question of the legitimacy of judicial review of administrative action demanded rather more anxious attention.

judiciary; and that it is not the institutional supremacy of the judiciary, rather it is that of the constitution that is being defended by judicial review. All the arguments for and against the doctrine have not yet settled the issue, which continues to occupy the centre stage of debates on public law.

However, the fact remains that public power should carry with it some check and balance to ensure that they are not exceeded or abused. The concept of constitutional government and limited government, maintained through the mechanism of judicial review, balance the conflict between the judiciary, the executive and the legislature. As the Constitution is organic, it demands creative and meaningful interpretation suiting the needs of the changing times. Despite the valid criticism against the undue expansion of the limits of judicial review, the fact remains that, it acts as a safety valve on moments of crisis created by conflicting interests in the society, so as to ease societal tension and to avoid civic conflicts. It functions as a shock absorber to absorb the illegalities and irregularities without the impact being suffered by the society.

It is for the judiciary to ensure that the interpretations that they give are in public interest and for public good. If there is any judicial onslaught on the constitutional equilibrium, it should be defended by informed public opinion capable of appraising and criticizing the consequences and constitutional implications of such judgments. An organized and scholarly attempt in this direction is unfortunately lacking in India as the academics are not associated with the Bar and the Bench and mostly feel diffident to indulge in creative criticism of the judges and their verdicts. This is unlike in England and United States where academics make scathing criticism for and against judgments that give new direction and dimension to constitutional development.

But the academic silence in this field is likely to continue in India in the present comtext where the erudite and competent professors, who can make critical analysis of judgments, are absorbed as members in the faculty or as vice-chancellors of the national law universities, which are directly or indirectly controlled by the higher judiciary. As per the constitution of most of these law schools either the Chief Justice of India or the Chief Justice of concerned High Court is the visitor of the law school and members of the higher judiciary are present in their executive and governing councils. The active presence of the higher judiciary in the administrative and academic bodies of these premier law institutes, without forgetting the advantages that it brings in, is liable to make their faculty diffident and dormant in the matter of scrutinizing judgments of the higher courts with an analytical view and coming out with different conclusions.

CHAPTER - III

JUDICIAL REVIEW IN THE INDIAN CONTEXT

3.1 Background of the Indian Constitution

The Government of India Act, 1935, which is considered to be the foundation of the Constitution of India, framed by the British Parliament, did not contain any provision for judicial review although there was a Federal Court and High Court established under it. Part IX of the Act deals with the 'Judicature' and Chapter 1 deals with the 'Federal Court'. Chapter 2 deals with the High Court in British India. Although section 204 grants original jurisdiction to the Federal Court, the said original and exclusive jurisdiction was confined to disputes between units of the Federation or between the Federation and any of the units. It did not provide an authority to entertain suits brought by the subject against the administration. The absence of this most important power, contained in most of the modern constitutions, in the 1935 Act had presumably been due to the influence of the unwritten constitution of England that made it reluctant to admit such a supervisory power of judicial review for the courts in one of her colonies.

The Constitution of India contains specific provisions under Articles 32, 226 and 227 enabling the Supreme Court and the High Courts to grant any writs named therein for the enforcement of the fundamental rights or for any other purpose. Indian Constitution is one of the few constitutions in the world that had given the power of judicial review to the higher courts by making specific provisions with so much of clarity and in unambiguous and express terms. Even in the written Constitution of the United States, where the power of judicial review of both executive and legislative acts had grown to disproportionate dimensions, there is no express provision for the power of judicial review of the higher courts. When compared to England and the United States, in India the growth and development

of judicial review as a formidable constitutional doctrine was a natural consequence flowing from the written Constitution with specific provisions of judicial review. In India the doctrine has been accepted and approved as one of the basic features of the Constitution[1].

How far the framers of the Constitution have envisaged the scope and ambit of this power, when they engraved it in the Constitution, is not evident from the discussions and debate in the Constituent Assembly. But, it has to be noted that the developments on this line in the public law in U.S., that has already established the institution of judicial review as a powerful tool to control maladministration and abuse of public power, must not have missed the attention of our constitution makers, who had scanned the other constitutions of the world to follow and included their better features in the Indian Constitution. Therefore, it is hard to believe that the Indian constitution makers did not envisage the possible future conflicts between judiciary and the other two limbs of the State in a growing pluralistic democracy like India.

It is surprising that when some other Articles which are comparatively of lesser importance had attracted elaborate debates in the Constituent Assembly, Articles 226, 227 and 32 have drawn only very little attention in the debates despite their vast potential for judicial supremacy over the other two organs of the state in future. It may be presumed that the framers of the constitution have not either applied their mind so deep as to forecast possible or eventual conflicts between the judiciary and the other two organs of the state, or that the constitution makers themselves wanted and envisaged the judiciary to be the final arbiter of all disputes of whatever nature arising in the Republic. It is worthwhile to note the observation of the Parliamentary Joint Committee in their report in this connection. They observed:

---

[1] See *Keshananda Bharti v. State of Kerala,* A.I.R. 1973 S.C. 461.

> "The success of a constitution depends, indeed far more upon the manner and sprit in which it is worked than upon its formal provisions. It is impossible to foresee, so strange and perplexing are the conditions of the problem, the exact lines which constitutional developments will eventually follow, and it is, therefore, more desirable that those upon whom responsibility will rest should have all reasonable scope for working out there own salvation by the method of trial and error"[2].

3.2 The Concept in the Constituent Assembly

According to Dr B.R. Ambedkar, the founder of the Indian Constitution, the provisions for judicial review and the writ jurisdiction, which guard the citizens against infringement of their fundamental rights, is the soul and heart of the Constitution[3]. The moving force behind the Indian independent struggle was, like in many other countries, an urge for evolving a constitutional bill of rights. This had finally crystallized into the fundamental rights enshrined in Chapter III of the Constitution and their protective shield provided under Articles 32 and 226 of the Constitution. These extraordinary prerogative remedies are available on the original side of the Supreme Court and High Courts. Considering the importance of these provisions and their impact on personal liberty and other valuable rights available to the citizens, there has been a forceful argument for extending the original jurisdiction of judicial review to the subordinate courts also even during the Constituent Assembly debates[4]. Politically, the strong stand of the Indian National Congress for adopting the civil liberty rights in the form of a constitutional bill of rights must have persuaded the Constituent Assembly finally to incorporate specific provisions in the nature of judicial remedies in the

---

[2] Joint Committee on Indian Constitutional Reforms, Vol. I (Part 1), Report, Para 22. *c.f.* C.L. Anand, *Constitutional Law and History of Government of India*, University Book Agency, Allahabad (1990), p. XXXIV.

[3] 7 *Constituent Assembly Debates*, p. 953.

[4] Argument of Mr. Naziruddin Ahmed, 7 *Constituent Assembly Debates*, p. 931.

Constitution for protecting the fundamental and other valuable rights of the citizens[5].

The whole trend of the debate on this aspect in the Constituent Assembly was in favour of the British system of writ jurisdiction and judicial review. This must have happened due to India's long standing with England and the resultant colonial heritage, due to the influence of English education on the national leadership, including Nehru and Ambedkar, and also due to the sophistication of the English principle of rule of law. Owing to India's association with the Soviet Union and due to Nehru's commitment to democratic socialism, India wanted to bring about large socio-economic reforms in the form of land reforms and other radical steps. Therefore, Nehru and some other members of the Constituent Assembly naturally wanted to safeguard the progressive and egalitarian constitution from a possible negative judicial attitude that might prevent legitimate socio-economic reforms[6].

It appears the constitution makers did not want the American model of judicial review be transplanted in India, under which the court could examine whether a law was just or fair[7]. Instead, they preferred the British model of judicial review which only seek to ascertain whether the legislature and the executive act within their realm and limits and make sure that they acted according to law. While speaking on the rights to property, Prime Minister Nehru dealt with the role of judiciary thus[8]:

> "Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong

---

[5] The Nehru Committee which gave its report on the fundamental rights in 1928, strongly recommended that the future Constitution of India should contain a declaration of fundamental rights as *c.i.* Sathe, S.P., *Judicial Activism in India*, Oxford University Press, New Delhi (2002), p.35.

[6] Sathe, S.P., *Judicial Activism in India*, Oxford University Press, New Delhi (2002), p.36.

[7] *Id.*, at p.37.

[8] 9 *Constituent Assembly Debates*, p. 1197

> here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, ultimately the whole Constitution is a creature of Parliament."

The above statement clearly shows that India wanted to follow the British model of judicial review with its restricted power of review of legislative actions and legislations. Every effort was taken to make the Constitution specific and detailed so that the courts could not impose further restriction on the legislature. Nehru made it clear that if despite such meticulous care taken in avoiding invalidation of such property legislations by courts, the court did intervene; they could get the Constitution amended, because the Constitution was the creature of Parliament[9]. While making this assertion, it was doubtful whether Nehru and others in the Constituent Assembly had foreseen the gradual empowerment of the Indian judiciary under the specific constitutional provisions of judicial review by interpreting the said power as a basic structure of the Constitution and, therefore, beyond the scope of amendment, and later extending its arms even to Article 34 B of the Constitution and the IXth Schedule, which is constitutionally insulated from judicial review.

Though, as discussed above, Nehru was against a bigger role being given to the judiciary, he did envisage an appropriate limited role to it laying down, probably indirectly, the foundation for the logic of the future development of the doctrine of judicial review in modern India. Speaking in the Constituent Assembly Shri. Nehru opined[10]:

> "But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the detached atmosphere of the

---

[9] *Supra, n.* 6 at p.37.
[10] 9 *Constituent Assembly Debates*, pp. 1197-98.

> courts, they should see to it that nothing is done that might be against the Constitution, that might be against the good of the country and against the community in the larger sense of the term. Therefore, if such a thing occurs, they can function in the nature of a third house, as a kind of third house of correction. So, it is important that with this limitation the judiciary should function."

Dr Ambedkar had, on the contrary, a definite vision about the pro-active role of the judiciary. This is evident from his categorical statement on Article 32 which runs thus[11]:

> "If I was asked to name any particular article in this Constitution as the most important- an article without which this Constitution would be a nullity- I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance."

The above stand of Dr. Ambedkar, it appears to be influenced by the historical fact that Dr Ambedkar's fight was not only against foreign rule but also against the tyranny of the caste Hindus and social injustice that the pre-British indigenous regimes had perpetrated[12]. One may think that he was bound to be skeptical of the legislative supremacy and wanted a counter majoritarian safeguard such as judicial review[13].

Dr. Ambedkar was more fascinated by the British system of constitutional legal remedies in the form of specific prerogative writs and found them to be more efficacious and inalienable if they are given constitutional coverage and protection. Therefore, during his debate on draft Article 25 (Article 32) he argued[14]:

> "These writs have been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was

---

[11] 7 *Constituent Assembly Debates*, p. 953.
[12] *Supra, n.* 6 at p.39.
[13] *Ibid.*
[14] 7 *Constituent Assembly Debates*, p. 952.

> hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, if I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it was desirable to do so."

When he said that it was hardly possible to improve upon the writs from the British position, Dr. Ambedkar might not have contemplated the improvement and development that the Indian judiciary had given to these traditional writs in the Indian context, which had taken judicial review in India far ahead of its stand in England. He could not have thought that a generation of activist judges would carry the doctrine to its fullest extent in future and would convert the writs the most effective weapon in the judicial armory to be used to establish a people-oriented, liberty-oriented jurisprudence in the public law in India. Many of the statements of Dr. Ambedkar signify that he was an ardent supporter of the British system. He said[15]:

> "I prefer the British method of dealing with rights. The British method is a peculiar method, a very real and a very sound method. British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that makes a right real. If there is no remedy, there is no right at all, and I am, therefore, not prepared to burden the Constitution with a number of pious declarations, which may sound as glittering generalities, but, for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution. I am very glad that this House has seen that the remedies that we have provided constitute a fundamental part of this Constitution."

---

[15] *Id.*, at pp. 953-954.

However, on going through the debates in the Constituent Assembly, the unarticulated apprehension of Dr. Ambedkar on the writ jurisdiction and the power of judicial review under the Constitution framed on the basis of the British system, one may be confused as to whether it is apprehension expressed or faith reposed that has turned out to be true. But it is only conceivable that a Constituent Assembly consisting of representatives of various interests and groups of the society at that time could not precisely contemplate and perceive all the future developments that may occur in the legal and judicial systems in the nascent democracy. Constituent Assembly had been guided by the basic principles and concepts which other democratic countries have proved to be successful by then. However, it could be seen from the ocean of case law in India in this jurisdiction that the concept of the Constituent Assembly on judicial review and writ jurisdiction still holds good and has proved that there can be no right unless the Constitution provides a remedy.

3.3 Initial approach of the Indian Judiciary

Although the scope of this study is confined to the jurisdictional parameters of judicial review under Article 226 of the Constitution in respect of academic decisions, before entering the subject it is essential to have a glance of the general approach and attitude of the Supreme Court of India towards the constitutional power of judicial review and its development in the first decade of the Indian Supreme Court. It was made clear by the Supreme Court at the outset that Article 32, though itself a fundamental right that enables the Supreme Court to issue writs, is subject to a limitation that it could be invoked only as against infringement of a fundamental right,

and not for any other right or for any other purpose[16]. But, at the same time, it was held[17] that "Article 32 does not merely confer powers on the Supreme Court as Article 226 does on the High Courts.... as part of its general jurisdiction. On the other hand Article 32 provides a guaranteed remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III... The jurisdiction thus conferred on the Supreme Court by Article 32 is not concurrent with the one given to High Court under Article 226."

The restraint with which the Supreme Court had approached the exercise of the writ jurisdiction by the High Courts and the enthusiasm that the High Courts have shown in enjoying its newly installed constitutional prerogative in the first decade of independence is evident from the following observation that the Apex Court was constrained to make[18]:

> "The Advocate General of Bombay, appearing on behalf of the appellants, took strong exception to the manner in which the learned judges below disposed of the objection to the maintainability of the petition. He complained that, having entertained the petition on the ground that infringement of fundamental rights was alleged, and that the remedy under Article 226 was, therefore, appropriate, the learned judges issued a writ without finding that any fundamental right had in fact been infringed. Learned counsel for the State of West Bengal also represented that parties in that State frequently got petitions under Article 226 admitted by alleging violation of some fundamental right, and the Court sometimes issued the writ asked for without insisting on the allegation being substantiated. We are of opinion that it is always desirable, when relief under Article 226 is sought on allegation of infringement of fundamental rights, that the Courts should

---

[16] *A.K. Gopalan* v. *State of Madras*, A.I.R. 1950 S.C. 27 at p. 32.; see also *Romesh Thappar* v. *The State of Madras* A.I.R.1950 SC 124; *Election Commission of India* v. *S. Venkata Rao,* A.I.R. 1953 S.C. 210; *Janardhan Reddy and others v. State of Hyderabad,*A.I.R. 1951 S.C. 217 etc.

[17] *Romesh Thappar* v. *The State of Madras*, A.I.R. 1950 S.C. 124.

[18] *The State of Bombay and others* v. *The United Motors India Ltd.*, A.I.R. 1953 SC 252.

satisfy itself that such allegations are well founded before proceeding further with the matter"[19].

In the absence of the Constitution specifying the scope and ambit of the powers of the Court under the Constitution, the Supreme Court tried to carve out the same in the following words[20]:

> "It is necessary to bear in mind the scope and ambit of the powers of the Court under the constitution. The powers of the Court are not the same under all Constitutions. In England, Parliament is supreme and there is no limitation upon its legislative powers. Therefore, a law duly made by Parliament cannot be challenged in any Court. The English Courts have to interpret and apply the law; they have no authority to declare such a law illegal or unconstitutional. By the American Constitution the legislative power of the Union is vested in the Congress and in a sense the Congress has the supreme legislative power. But the written Constitution of the United States is supreme above all the three limbs of Government and, therefore the law made by the Congress, in order to be valid, must be in conformity with the provisions of the Constitution. If it is not, the Supreme Court will intervene and declare that law to be unconstitutional and void".

The Court further observed[21]:

> "In India the position of the Judiciary is somewhere in between the Courts in England and the United States. While in the main leaving our Parliament and the State Legislatures supreme in their respective legislative fields, our Constitution has, by some of the Articles, put upon the legislatures certain specified limitations some of which will have to be discussed hereafter. The point to be noted, however, is that in so far as there is any limitation on the legislative power, the Court must, on a complaint being made to it scrutinize and ascertain whether such limitation has been transgressed, and if there has been any transgression, the court will courageously declare the law unconstitutional, for the Court is bound by its oath to uphold the Constitution".

---

[19] But, see Article 226 which says "...every High Court shall have powers, ... to issue .... orders or writs.... for the enforcement of any of the rights conferred by Part III (fundamental rights) and for any other purpose (emphasis given). Therefore Article 226 can be invoked not only for the violation of fundamental rights, but also for that of any other legal right.

[20] *A.K. Gopalan* v. *State of Madras*, A.I.R. 1950 S.C. 27, at p.106

[21] *Ibid.*

But it was further clarified by the Court[22]:

> But outside the limitations imposed on the legislative powers, our Parliament and the State Legislatures are supreme in their respective legislative fields and the Court has no authority to question the wisdom or policy of the law duly made by the appropriate Legislature. Our Constitution, unlike the English Constitution, recognizes the Court's supremacy over the legislative authority, but such supremacy is a very limited one, for it is confined to the field where the legislative power is circumscribed by limitations put upon it by the Constitution itself. Within this restricted field the Court may, on a scrutiny of the law made by the Legislature, declare it void if it is found to have transgressed the constitutional limitations.

In Article 245 (1) of the Indian Constitution the legislative power is definitely made "subject to the provisions of this constitution". Article 13(2) provides that "the state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void". This clearly put a definite limitation on the wide legislative powers given by Article 246. It is certainly within the competency of the court to judge and declare whether there has been any contravention of the constitutional limitation. In this respect again the Court has a correctional power over the legislature. Thus it could be seen that from the very beginning there had been efforts to demarcate the specific boundaries of the power of judicial review. In fact the source of all powers including power of judicial review emanate from the Constitution which is supreme as declared by the Court[23] thus:-

> "In India, it is the Constitution that is supreme and the Parliament as well as the State legislatures (and also the judiciary) must not only act within the limits of their respective legislative spheres (and jurisdiction) as demarcated....and also that of Part III of the constitution

---

[22] *Ibid.*
[23] *Id.*, at p. 91

> guaranteeing to the citizens certain fundamental rights which the legislative authority (and the executive) can on no account transgress"

Judiciary's supervisory role under the Indian Constitution had been restrained and tried to be contained even from the very beginning of the interpretational process[24]. The Indian Constitution having thus preferred the English doctrine of parliamentary supremacy to a large extent, the words "procedure established by law" contained in Article 21 of the Constitution must be construed in accordance with the English view of 'due process of law' and not the American view of going into the substance of the law also.

The importance of judicial review of legislative power, more important than that of the executive power juristically, was thus emphasized and underscored by the Supreme Court when it was held by Patanjali Sastri J. that[25]:

> "the insertion of a declaration of fundamental rights in the forefront of the constitution, coupled with an express prohibition against legislative interference with these rights (Article 13) and the provision of a constitutional sanction for the enforcement of such non-interference by means of a judicial review (Article 32) is, in my opinion, a clear and emphatic indication that these rights are to be paramount to ordinary state made law".

From the above juristic approach it could be seen that even at the threshold of our constitutional interpretation and at the very beginning of the Indian Supreme Court, the Indian Judiciary had laid strong foundation for the power of judicial review using the cement and mortar of constitutionalism, though they have started building up the edifice slowly and reluctantly at the initial years of independence. It could also be seen that right from the inception, the Supreme Court has been upholding the sanctity of fundamental rights and was thinking on higher planes than even the written words of the

---

[24] *Id.*, at p. 56.
[25] *Id.*, at p.74.

Constitution in preserving the constitutional concept of fundamental rights and personal liberty[26]. But this the court did very carefully and cautiously without trampling upon the legislative sovereignty and without imposing judicial supremacy. Through this slow and gradual process of judicial empowerment the court made its role formidable as the correctional agency having supervisory jurisdiction over both the executive and the legislature.

The above approach became evident in *Charanjit Lal Chowdhury* v. *The Union of India and others*[27]. It was an application by a holder of one ordinary share of the Sholapur Spinning and Weaving Company Ltd. for a writ of mandamus and certain other reliefs under Article 32 of the Constitution, challenging an enactment passed in respect of the company on grounds *inter-alia* that it violated Article 14 of the Constitution. Relying on the observation of Hughes J. in *McCabe* v. *Atchison*[28], it was held that no one except those whose rights are directly affected by a law can challenge the constitutionality of that law. The petition was dismissed. It may be noted that the petitioner was not a total stranger. He was one of the share holders, still the court held that he had no *locus standi*. This position had to be changed by the court in due course of time as is evident from the case law reported in the

---

[26] See Ibid. at pp. 92 and 98- Quoting famous 39th chapter of Magna Carta that: " no free man shall be taken or imprisoned or disseized or outlawed or exiled or in any way destroyed; nor shall we go upon him nor send upon him but by the lawful judgment of his Peers and by the law of the land" B.K. Mukerhea J. observed that " detention I such (preventive) form is unknown in America It was resorted to in England only during war time, but no country in the world that I am aware of has made thus (preventive detention) an integral part of their Constitution as has been done in India . This is undoubtly unfortunate, but it is not our business to speculate on question of policy or to attempt to explore the reasons which lead the representatives of our people to make such a drastic provision in the Constitution itself, which cannot but be regarded as a most unwholesome encroachment upon the liberties of the people.

[27] A.I.R. 1951 S.C. 41- where Patanjali Sastri J. and S.R. Das J. dissented from the majority consisting of Kania C.J., Fazl Ali J. and B.K. Mukherjea J.

[28] *Id.*, at p. 44. (1914) 235 U.S. 151: " It is an elementary principle that in order to justify the granting of this extraordinary relief, the complainants need of it and the absence of an adequate remedy at law must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other person who may be injured are person of the same race or occupation. It is the fact clearly established of injury to the complaint - not to others- which justifies judicial interference.

next decade. If one looks into the case law of the Supreme Court pertaining to 1970s, one may see that the court allowed petitions filed by persons very remotely connected with the issues and by strangers also. For this drastic change on the concept of *locus standi* to take place Indian judiciary took two decades. The court was also very cautious in dealing with the allegation of violation of Article 14. Emphasizing that it is to be vigilantly guarded, the court warned that Article 14 should not be construed by adopting a doctrinaire approach[29].

As regards Article 32 also the court expressed a very limited view. It was held[30] that Article 32 is not directly concerned with the determination of constitutional validity of particular legislative enactments. What it aims at is enforcement of fundamental rights guaranteed by the Constitution, no matter whether the necessity for such enforcement arises out of an action of the executive or the legislature. To make out a case under this Article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular legislative body as not being covered by any of the items in the legislative lists, but also that it affects or invades his fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order. The rights that could be enforced under Article 32 must ordinarily be the rights of the petitioner himself, who complains of infraction of such rights and approaches the court for relief. A proceeding under this Article cannot really have any affinity to what is known as declaratory suit. Therefore a prayer in the shape of a general declaration is inappropriate to an application under Article 32.

The Court in its initial years had exercised general restraint on its power of review following the first principles evolved by

---

[29] *Id.*, at p. 47.
[30] *Id.*, at pp. 52-53.

the common law and the principle of constitutionalism. The Apex Court was very careful and cautious in molding the Indian law on the subject before starting developing and molding the same in the Indian context. The contours of this power came to be articulated by the Supreme Court in the context of writ power in *Verrappa Pillai*[31] thus:

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officials act wholly without jurisdiction, or in excess of it or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice."

It is further held[32]

> "however extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made"

With regard to the inherent limitation of the writ jurisdiction, the above view has been consistently held to be relevant and valid[33].

Adverting to the question as to what should be an error apparent on the face of the record, the Supreme Court held[34] that an error which has to be established by a long drawn process of

---

[31] *G. Verrappa Pillai* v. *Raman & Raman Ltd., Kumbakonam*, A.I.R. 1952 S.C. 192, at pp.195-196

[32] *Ibid.*

[33] See *Ebrahim Aboobaker and another* v. *Custodian General of Evacuee Property*, A.I.R. 1952 S.C. 319; *Narendra Nath Bora and another* v. *Commissioner of Hills Division and Appeals, Assam and others,* A.I.R. 1958 S.C. 398, a writ of certiorari is not meant to take the place of an appeal when the statute does not confer a right of appeal; *Associated Cement Co. Ltd.* v. *P. D. Vyas and others*, A.I.R. 1960 S.C. 665, where it was held in a petition for writ of certiorari it would normally not be open to the appellant to challenge the merits of the findings made by the authorities under the Act; *Shri Ambica Mills Co. Ltd.* v. *Shri S. B. Bhatt and another,* A.I.R. 1961 S.C. 970. See also *Sub-Divisional Officer, Konch* v. *Maharaj Singh*, (2003) 9 S.C.C. 191, when the High Court under Article 226 re-appreciated the entire evidence and disagreed with the Enquiry Officer, it was held the High Court exceeded its jurisdiction;

[34] *Satyanarayan Lekshminanarayan Hedge and others* v. *Mallikarjun Bhavanappa,* A.I.R. 1969 S.C. 137. See also *Narendra Nath Bora and another* v. *Commissioner of Hills Division and Appeals, Assam and others,* A.I.R. 1958 S.C. 398, it was held High Court has exercised its supervisory jurisdiction in respect of errors in appreciation of documentary evidence or affidavit or errors in drawing inferences by scrutinizing in great detail the impugned orders, which could not be said to be errors of law apparent on the face of the record.

reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. In other words, it must be a patent error which can be corrected by certiorari and not a mere wrong decision[35]. It was held[36] that the possible test is that no error could be said to be apparent on the face of the record if it was not self evident and if it requires an examination on arguments to establish it. It was pointed out that mere formal or technical errors, even though of law, will not be sufficient to attract this extra-ordinary jurisdiction.

In *Sankari Prasad Singh Deo and others* v. *The Union of India and others*[37], the question that arose for decision was whether the Constitution (First Amendment) Act, 1951 purporting to insert, *inter alia*, Articles 31-A and 31-B was constitutionally valid. The petitioner argued that the amendment abridged his rights conferred by Part III of the Constitution. Before the addition of Article 31-A and 31-B and the introduction of the IX Schedule in the Constitution, the petitioner had the right under Article 226 to seek appropriate writs declaring the Zamindari Abolition Act unconstitutional because of their violating his fundamental rights, and then the Supreme Court could entertain appeal from High Courts under Article 132 or 136. The new articles thus affected the power of judicial review. It was therefore submitted that the newly inserted articles required ratification under the proviso to Article 368. Rejecting the above arguments it was held, the arguments proceeded on a misconception. In an attempt to justify or salvage the newly inserted articles and the introduction of the IX Schedule in the Constitution it was held as follows[38]:

> "It is not correct to say that the powers of the High Court under Article 226 to issue writs... or of this Court under

---

[35] *T. C. Basappa* v. *T. Nagappa and another*, A.I.R. 1954 S.C. 440.
[36] *Hari Vishnu Kamath* v. *Ahamad Ishaque and others*, A.I.R.1955 S.C. 233.
[37] A.I.R. 1951 S.C. 458.
[38] *Id.*, at p. 464.

> Articles 132 and 136 to entertain appeals from orders issuing or refusing such writs are in any way affected. They remain just the same as they were before. Only a certain class of case has been excluded from the purview of Part III and the courts could no longer interfere, not because their powers were curtailed in any manner or to any extent, but because there would be no occasion hereafter for the exercise of their powers in such cases".

The reasoning above was evasive and illogical and had to be corrected by the Supreme Court later[39], when it was held that inspite of inclusion of statutes in the IX Schedule by virtue of Article 31B, the constitutionality of such enactments could be challenged and looked into by the courts since the power of judicial review cannot be annihilated as it is part of the basic structure of the Constitution.

In a case, where the Division Bench of the Madras High Court issued a writ of certiorari for quashing part of an order passed by the Labour Commissioner, Madras in an enquiry under section 51 of the Madras Shops and Establishment Act, it was held[40] :

> "The Commissioner was certainly bound to decide the question and he did decide them. At the worst, he may have come to an erroneous conclusion, but the conclusion is in respect of a matter, which lies entirely within the jurisdiction of the Labour Commissioner to decide, and it does not relate to anything collateral, an erroneous decision which might affect his jurisdiction. The records of the case do not disclose any error apparent on the face of the proceeding adopted by the Labour Commissioner which goes contrary to the principles of natural justice. Thus there was absolutely no ground here which would justify a superior Court in issuing a writ of 'certiorari' for removal of an order or proceeding of an inferior tribunal vested with powers to exercise judicial or quasi-judicial functions. What the High Court has done really is to exercise the powers of an appellate Court and correct what it considered to be an error in the decision of Labour Commissioner. This obviously it cannot do".

---

[39] See *I. R. Coelho* v. *State of Tamil Nadu*, (2007)2 S.C.C. 1 at p. 111.

[40] *Parry and Co. Ltd., Dare House, Madras*, v. *Commercial Employees Association and another*, A.I.R. 1952 S.C. 179 at pp. 180-181.

The fact that the Apex Court did not want to enlarge the writ jurisdiction at its initial stage and was imposing self restraint, following the principle and law as settled in England in respect of judicial review of legislation is evident from many of its early decisions[41]. While dealing with the power under Article 32, the Supreme Court was not willing to expand the concept of *locus standi*. It was held[42] that a person who is not a member of a certain class and as such is not aggrieved, cannot attack a provision of an Act on the ground that the classification implied therein contravenes Article 14 of the Constitution, and that the only persons who can impugne any given piece of legislation under Article 32 are those who are aggrieved thereby. In the initial years, the jurisdiction of the Supreme Court under Article 32 was construed as more formal and straight jacketed. It was held[43], objection not raised in the petition cannot be permitted to be raised in argument and that the petitioner will not be allowed to urge grounds which he had not taken in the petition[44].

In a case of voluntary settlement of tax liability by the petitioner, it was held[45], Article 32 is not intended for relief against the voluntary actions of a person, where he challenged certain provisions of the impugned Act after making a voluntary settlement under the said Act. In another case of assessment of income tax, where the petition under Article 32 was presented two years after the impugned

---

[41] See *The State of Orissa* v *Madan Gopal Rungta*, A.I.R. 1952 S.C. 12; *N. P. Ponnuswamy* v. *The Returning Officer, Nanakkal, Salem and other*, A.I.R. 1952 S.C. 64, where the prayers of the petitioner was refused to be dealt with under Article 226 inasmuch as the statute *viz.* the Representation of Peoples' Act envisaged a procedure for dealing with complaint and the petitioner should seek that statutory remedy.

[42] *Hans Muller of Nurenburng* v. *Superintendent Presidency Jail, Calcutta and others*, A.I.R. 1955 S.C. 367.

[43] *Bhikaji Narain Dhakras and others* v. *State of Madhya Pradesh and another*, A.I.R. 1955 S.C. 781

[44] *The Tropical Insurance Co. Ltd. and others* v. *Union of India* , A.I.R. 1955 S.C. 789. See also *M.S.M. Sharma* v. *Sri Krishna Sinha and others*, A.I.R. 1959 S.C. 395, it was held the petitioner cannot raise a question of fact in the rejoinder which was not raised in the petition as the other party will not get an opportunity to reply the same.

[45] *Gopal Das Mohta* v. *Union of India and another*, A.I.R. 1955 S.C. 1. The impugned proceedings under the impugned Act was concluded more than two years prior to the petition under Article 32 was presented and the impugned assessment orders under the Income Tax Act were made against the petitioners more than three years prior to the court was moved.

proceedings of assessment of tax and after the property of the petitioner was sold by public action for recovery of the income tax assessed, it was held[46], in the peculiar circumstance of the case the petitioner was not entitled for any relief under Article 32. In *Vice-Chancellor, Utkal University and others* v. *S. K. Ghosh and others*[47], when the Syndicate of a University unanimously decided to cancel an examination on proof of leakage of question paper, though the item was not formally included in the agenda and, therefore, there was no notice to the members, the judgment of the High Court in quashing the above resolution of the Syndicate was set aside by the Supreme Court, holding that the university authorities acted honestly as reasonable and responsible men confronted with an urgent situation are entitled to act in the manner in which they had acted. This is one of the earlier decisions, and probably the first reported decision, in which the Apex Court has demarcated and settled down the parameters of judicial review in academic matters.

At a time when the Court was not willing to enlarge the scope of judicial review or rather reluctant to open up its vistas, came the decision of the Supreme Court in *Bengal Immunity Co. Ltd.* v. *State of Bihar and others*[48], probing into the possibilities of judicial review under Article 226 of the Constitution. It was one of the earliest decision of the Supreme Court canvassing wider scope for Article 226 bereft of technicalities raised therein. The appellant company challenged levy of a new tax. Rejecting the argument that the appellant being a company and not a citizen cannot claim any fundamental right, the Supreme Court accepted[49] the appellant's contention that the Act which authorizes the assessment, levy and collection of the sales tax on industrial trade contravened and constituted an infringement of Article 286 and was therefore *ultra*

---

[46] *Laxmanappa Hanumantappa Jamkhandi* v. *Union of India and another*, A.I.R. 1955 S.C. 3.
[47] A.I.R. 1954 S.C. 217.
[48] A. I.R. 1955 S.C. 661.
[49] *Id.*, at p. 669.

vires, void and unenforceable, even when there was no infringement of any fundamental right. Dismissing the further contention that the writ petition was premature, it was held[50] that when an order or notice is issued by a public authority directing the petitioner to do something, it compels obedience although the order or notice may eventually turn out to be *ultra vires* and bad in law. Therefore such a person is entitled to be told by the court whether he should comply with it or not. The argument on availability of alternative remedy was also repelled[51] by the Apex Court when it found that the remedy under an Act cannot be said to be adequate and is, indeed, nugatory or useless if the Act which provides for such remedy is itself *ultra vires* and void.

In spite of its initial reluctance to a liberal application of the power of judicial review in the Indian context and dehors the British influence of legislative supremacy at the beginning, the Apex Court reversed the judgment of the High Court of Patna in a petition under Article 226, and allowing the appeal struck down[52] a legislation passed by the Bihar State Legislative Assembly. The semblance of judicial activism was visible in the following decisions rendered at the initial years of the Supreme Court, though the general trend was one of reclusiveness.

In *State of Madras* v. *V. G. Row*[53] the respondent who was the General Secretary of an association(society) challenged the impugned Act[54], under which the impugned order was passed declaring the respondent's society to be an unlawful association within the meaning of the said Act. The Full Bench of the High Court

---

[50] *Ibid.*

[51] *Ibid.* See also *State of U.P.* v. *Mohammed Nooh*, A.I.R. 1958 S.C. 86, it was held availability of alternative remedies and the rule of exhaustion of statutory remedies before a writ being filed is a matter of policy and certiorari being a constitutional remedy will be available although a right of appeal has been conferred by the statute. See also *A.V. Venkateswaran, Collector of Customs, Bombay* v. *Ramchand Sobhraj Wadhwani and another*, A.I.R. 1961 S.C. 1506.

[52] *Ram Prasad Narain Sahi and another* v. *The State of Bihar and others*, A.I.R. 1953 S.C. 215

[53] A.I.R. 1952 S.C. 196.

[54] Section 15(2) (b) of the Indian Criminal Law Amendment Act, 1908, (Act No. 14 of 1908) as amended by the Indian Criminal Law Amendment (Madras) Act, 1950

of Madras allowed the application filed under Article 226 of the Constitution. The State of Madras came up in appeal. Dismissing the appeal, the Supreme Court held[55]:

> "...We think it right to point out, what is sometimes overlooked, that our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme court has assumed extensive powers of reviewing legislative acts under cover of the widely interpreted "due process" clause in the Fifth and Fourteenth Amendments. If, then, the Courts in this country face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the "fundamental rights", as to which this Court has been assigned the role of a sentinel on the 'qui vive'. While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the Courts in the new set up are out to seek clashes with the legislatures in the country."

The above observation of Patanjali Sastri J. gives the positive clue that the specific provisions for judicial review in the Indian Constitution had emboldened the Indian judiciary to shape India's constitutional development and the public law in India through judicial review.

Even at the early stage, the Supreme Court of India had decided to declare independence from the influence of the English law on the subject, though the fundamental principles of writ jurisdiction settled in England had been accepted as the guiding principles, as the doctrine of judicial review through writs had been borrowed from the English concept of rule of law and the common law. In an appeal filed against the judgment of a Division Bench of the Mysore High Court by which the High Court allowed an application under Article 226 of the Constitution presented by the respondent and issued a writ of

---

[55] *Supra, n.* 53 at p. 199.

certiorari quashing the proceedings and order of the election Tribunal it was held[56] as follows:

> "In view of the express provision in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law."

While trying to emphasize the Scope of Article 226 in its letter and spirit, in a case[57] where an order of confiscation and penalty was imposed by the Customs authorities, it was held that an order of confiscation or penalty under the Sea Custom Act is not a mere administrative or executive act, but is really a quasi-judicial act and, therefore, a writ of certiorari would lie against such an order.

The year 1959 brought out one of the decisions which raised intricate issues of administrative law. The distinction between administrative orders or proceedings and the quasi-judicial proceedings and the duty to hear in compliance with natural justice were the issues raised. In the decision divided by three against two judges, the Supreme Court held[58] that the right to carry on business in transport vehicles on public pathways is certainly one of the fundamental rights recognized under Article 19 of the Constitution. The State Government of Andhra Pradesh established a Road Transport Corporation under the Road Transport Corporation Act,

---

[56] *Supra, n.* 35.

[57] *Sewpujarirai Indrasanarai Ltd.* v. *Collector of Customs and others,* A.I.R. 1958 S.C. 845.

[58] *Gullappally Nagaeswara Rao* v. *A.P.S.R.T. Corporation,* A.I.R. 1959 S.C. 308. See also *Radheshyam Khare and another* v. *The State of Madhya Pradesh and others,* A.I.R. 1959 S.C. 107. Probing the scope and ambit of the writ jurisdiction, the court referred to the following celebrated definition of quasi-judicial body given by Atkin L.J., as he then was in *Rex v. Electricity Commissioners*: "Whenever any body of persons having legal authority to determine question affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these writs".

1950. The said Corporation decided to implement the scheme of nationalization of bus routes under a phased manner. The petitioners who were plying their buses on various routes were apprehending that their routes would be taken over by the Corporation pursuant to the aforesaid scheme. Therefore they contended that the provisions of Chapter IV A of the Act violates their fundamental rights and therefore the scheme framed under the Act was *ultra vires*.

With regard to the duty to act judicially it was held in the above case that whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder. If an authority is called upon to decide the respective rights of the contesting parties or, to put it in other words, if there is a *lis*, ordinarily there will be a duty on the part of the said authority to act judicially. Therefore, essentially it is the nature or consequence of the decision that decided whether the decision is administrative or quasi-judicial and the nature of the decision has to be ascertained from the provisions of the particular statute and the facts of each case. Applying the above test, the majority judges found that the Act imposes a duty on the State Government to decide judicially in approving or modifying the scheme proposed by the Transport Undertaking. It was found that the scheme propounded may exclude persons from a route or routes and the affected party is given a remedy to apply to the Government and the Government is enjoined to decide the dispute between the contesting parties.

In the present case, it was the Secretary of the Transport Department who received the objections of the parties and who heard them personally or through their representatives. The Secretary of the Department is its head under the Government Rules. One of the parties to the dispute before the State Government was the Transport Department represented by its head, the Secretary. Therefore on the facts of the case one of the parties received the objections, heard the

parties, recorded the entire proceedings and presumably discussed the matter with the Chief Minister before the latter approved the scheme, though the formal orders were made by the Chief Minister. Relying on certain Indian[59] and English[60] decisions, it was observed that "it is also a matter of fundamental importance that a person interested in one party or the other should not, even formally, take part in the proceedings though, in fact, he does not influence the mind of the person, who finally decides the case. On the above principle it was held that the hearing given by the Secretary, Transport Department certainly offended the said principle of natural justice and the proceeding and the hearing given, in violation of that principle, are bad.

Kavalapara Kottrathil Kochunni alias Mooppil Nayar v. *State of Madras and others*[61] had, along with some other cases cited above, marked a distinct deviation in the Apex Court's attitude towards the power of judicial review in general and the power under Article 32 in particular. In this case the petitioner who was a *sthanam* (title) holder filed a petition under Article 32 praying for a writ of mandamus or any other writ, order or direction to be issued for commanding the respondents to forbear from enforcing any of the provisions of the Madras Act 32 of 1955 against the petitioner, his Kavalappara *Sthanam* (title) and the Kavalappara estate and for declaring the said Act to be unconstitutional and invalid. The 1st respondent was the State of Madras and respondents 2 to 17 were the members of the petitioner's *tarward*. Rejecting the argument that the subject matter of the case comprised disputes between two sets of private individuals unconnected with any state action, it was held[62] that the petitioner's grievance was certainly against the action of the

---

[59] *New Prakash Transport Co. Ltd* v. *New Sawarna Transport Co. Ltd.*, A.I.R. 1957 S.C. 232 and *Nagendra Nath Bora* v. *Commissioner of Hills Division*, A.I.R. 1958 S.C. 398

[60] *Local Government Board* v. *Arlidge* 1915 A.C. 120; *Rex* v. *Sussex Justice Ex Parte, Mc Carthy* I 1924-1 K B 256; *and Rex* v. *Sussex Justices; Ex Parte Perkins*, 1927-2 K. B. 475 etc.

[61] A.I.R. 1959 S.C. 725

[62] *Id.*, at p. 730.

state, which included the Legislature also. Therefore, it was held that the petition under Article 32 was not governed by the decision in *P.D. Shamdasani* v. *Central Bank of India*[63] and the petitioner could not be debarred from availing himself of his constitutional right to invoke the jurisdiction of the Supreme Court for redressal against the infringement of his fundamental rights.

In the above case many of the settled propositions governing the scope and ambit of the power of judicial review were disturbed and were modified and given a liberal interpretation in favour of the petitioner (citizen). Discarding the plea of adequate alternative remedy against the petition, it was held[64] that the mere existence of an adequate alternative legal remedy cannot *per se* be a good and sufficient ground for throwing out a petition under Article 32 if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is *prima facie* established in the petition. Another contention against the petition that an application under Article 32 cannot be maintained until the state has taken or threatens to take any action under the impugned law was also rejected. It was observed that an enactment may immediately on its coming into force take away or abridge the fundamental rights of a person by its very terms and without any further overtact being done. The impugned Act is one such enactment. It was held[65] that in such a case the infringement of the fundamental right is complete on the passing of the enactment and, therefore, there can be no reason why the person so prejudicially affected by the law should not be entitled immediately to avail himself of the constitutional remedy under Article

---

[63] A.I.R. 1952 S.C. 59, where it was held that violation of rights of property by individuals is not within the purview of Articles 19(1)(f) and 31(1) of the Constitution. Neither Article 19(1) (f) nor Article 31(1) on its true construction was intended to prevent wrongful individual acts or to provide protection against nearly private conduct. Article 19 show that the same was intended to protect the freedoms incorporated therein against state action..

[64] See *Supra, n.* 61 at p. 730.

[65] *Id.*, at p. 731.

32. In such an event it will be denial of the benefit of a salutary constitutional remedy which is itself his fundamental right.

With regard to the disputed question of fact involved in the petition, it was held[66] that the proposition that the Supreme Court may decline to entertain an application filed under Article 32 on the simple ground that it involves the determination of disputed questions of facts cannot be countenanced, lest the court should be failing in its duty as the custodian of the fundamental rights. It was observed[67] that the court was not unmindful of the fact that if the Supreme Court entertains a petition under Article 32 to decide the same on merits may encourage litigants to file many petitions under Article 32 instead of proceeding by way of a suit. It was held, that consideration cannot, by itself, be a cogent reason for denying the fundamental right of a person to approach the Supreme Court for the enforcement of his fundamental right, which is infringed. It was further found that questions of fact can and very often are dealt with in affidavits.

While meeting yet another challenge against the petition that the proceeding under Article 32 cannot be converted into or equated with a declaratory suit under section 42 of the Specific Relief Act, it was held that the Court's power under Article 32 are wide enough to make even a declaratory order, where that is the proper relief to be given to the aggrieved party. It was further held that under Article 32 the court must, in appropriate cases, exercise its discretion and frame their writ or order to suit the exigencies of the case. On the above reasoning and findings it was held that none of the above objections to the maintainability of the writ application could be sustained and therefore the application had to be heard on merits.

---

[66] *Id.*, at p. 734.
[67] *Ibid.*

It may be noted that *Kavalapara Mooppil Nayar* was a path-finding decision rendered at the initial years of the development of the Indian constitutional law, and at a time when the Apex Court was eager to settle down the law and to assert its jurisdiction in the constitutional scheme. But, as years passed on, the same liberal trend could not be maintained by the court due to heavy influx of litigation and the mounting arrears in the court. As of now, Article 226 is being viewed as an effective alternate remedy by the Supreme Court and direct invocation of Article 32 even in violation of fundamental right is being increasingly discouraged due to the heavy work load of the Supreme Court despite the facts that the remedy under Article 32 itself is a fundamental right.

3.4 Gradual Empowerment of Indian Judiciary

On a perusal of the case law from the Supreme Court of India right from 1958 onwards one could see the gradual development of the judicial assertion of supremacy on one way or the other. Initially the Apex Court was very modest in its approach, cautious, and slow. But, at the same time, it was steady and persistent in developing its jurisprudence of judicial supremacy[68]. This, in fact, had invited the criticism that the Indian Supreme Court is a centre of political power which can influence the agenda of political action, though a vulnerable one[69]. It is the fact that the Supreme Court of India can be used by political parties for gaining their political ends in certain

---

[68] See *Badrinath* v. *Government of Tamil Nadu and others*, (2000)8 S.C.C. 395, while observing that normally the Supreme Court does not enter into the question of correctness of assessment made by Departmental Promotion Committees (DPC) and that unless there is a strong case for applying the Wednesbury doctrine or there are *mala fides* courts and tribunals cannot interfere with such assessments of the DPC in regard to merit or fitness for promotion, it was held that when the assessment is found to be based on inadmissible, irrelevant, insignificant and trivial material and if an attitude of ignoring or not giving weight to the positive aspects of one's career is strongly displayed, then the power of judicial review under Article 226 of the Constitution is not foreclosed. On the facts of the case, assessment made by the Joint Screening Committee about the petitioner's eligibility for promotion was held to be illegal and arbitrary and hence violative of Article 16 of the Constitution

[69] Upendra Baxi, *The Indian Supreme Court and Politics*, Eastern Book Company, Lucknow (1980), p. 10.

situations beyond the control of the Court[70]. It is commented that if in the United States every political question in the end becomes a judicial question, in India every judicial question becomes a political question[71]. Thus the observation that in the Indian context, the Supreme Court is not a court of the last legal recourse, but quite often it may also be the court of the last political recourse[72]. Therefore, the judicial process at the Supreme Court is a species of political process and that constitutional adjudication is essentially a political activity at the judicial level expressed through the medium of legal and jurisprudential language[73].

In a reference[74] made by the President under Article 143 of the Constitution about a sharp conflict that arose between the Legislative Assembly of the Utter Pradesh and Allahabad High Court, it was held, the court is entitled to deal with a petition of an aggrieved party challenging the legality of the sentence of imprisonment imposed on him by the Legislative Assembly for breach of its privileges. The conflict arose since the High Court had ordered to release on bail a person whom Assembly had committed to prison for contempt. The Assembly considered that the action of the judges making the order and the lawyer concerned in moving the High Court amounted to contempt and started proceedings against them on that basis. The High Court, thereupon, issued orders restraining the Assembly and its officers from taking steps in the matter. When the situation reached this stage, President made a reference under Article 143.

---

[70] *Id.*, at p. 16. This happens in cases where judges-mostly of High Courts- passing disparaging remarks that are unwarranted against the Government, especially in sensitive public interest litigations, which are flared up by the media and, in turn, made use of by the interested parties.
[71] Chief Justice Hidayatullah quoted in Ibid.
[72] *Id.*, at p. 17.
[73] *Id.*, at p. 28. See also Charles L. Black, Jr., *The People and the Court- Judicial Review in a Democracy*, The Mcmillan Company, New York (1960), p. 29- " Every constitutional decision is of course 'political' in some sense of that word, and every constitutional decision can therefore be assailed as entrenching on the forbidden ground of the 'political question'.
[74] Special reference No. 1 of 1964, A.I.R. 1965 S.C. 745.

The controversy, disclosed by the five questions[75] formulated by the President, was whether the Assembly was the sole and exclusive judge of the issue as to whether its contempt had been committed, where the alleged contempt had taken place outside the four-walls of the Assembly, and whether, if in enforcement of its decision the Assembly issues a general or unspeaking warrant, the High Court was entitled to entertain a habeas corpus petition challenging the validity of the detention of the person sentenced by the Assembly. The majority opinion through Gajendragadkar, C.J., among other issues, held that, the court was competent to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly for breach of its privileges and to pass orders releasing Keshav Singh on bail pending the disposal of his said petition[76]. But Sarkar, J., writing the dissenting opinion held "that the order of the Hon'ble Judges was to interfere with a perfectly legitimate action of the Assembly in a case where interference was not justifiable and was certainly avoidable"[77].

The *Golaknath's*[78] case was an important turning point in the constitutional development, more so, with respect to judicial review. The facts of the case are that, in May 1965, the Punjab Government declared 418 acres of land as surplus, leaving all the heirs just 30 acres to be shared among them. *Golaknath* took the case to the Supreme Court under Article 32 challenging the 1953 Punjab Act on the ground that it denied them their fundamental constitutional rights to acquire and hold property and practice any profession, and to equality before and equal protection of the law. Other important aspect of the case was to declare Constitution 1st, 4th

---

[75] *Ibid.*
[76] *Id.*, at p 791.
[77] *Id.*, at p.810.
[78] *C. Golaknath and others* v. *State of Punjab and another*, A.I.R. 1967 S.C. 1643.

and 17th Amendment Acts, which placed the Punjab Act in the 9th Schedule to the Constitution as *ultra vires.*

The case involved, among others, two major questions. They were:

(1) Article 13 (2) provides that the state shall not 'make any law which takes away or abridges' the fundamental rights. A constitution amendment Act is a 'law' within Article 13(2), and therefore it cannot take away or abridge a fundamental right; and

(2) Also there are inherent and implied limitations on the amending power of Parliament. Therefore, in exercise of its amending power Parliament cannot destroy the basic structure of the Constitution, and fundamental rights are a part of the basic structure

For the first time, a Bench of eleven judges considered the correctness of the view that had been taken in *Sankari Prasad*[79] and followed in *Sajjan Singh*[80]. By a majority of six to five, the above two decisions were overruled. It was held that the constitutional amendment, is 'law' and therefore, if it takes away or abridges the rights conferred by Part III thereof, it is void. It was declared that the Parliament will have no power from the date of judgment to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enshrined.

Subba Rao, J., delivered the majority judgment of the Court on behalf of himself, Shah, Sikri, Shelat and Vidyalingam, JJ., and upheld the validity of the impugned state Act and the 17th Constitution Amendment Act by the application of prospective overruling and made a policy declaration that in future Parliament

---

[79] A.I.R. 1951 S.C. 458.
[80] A.I.R. 1965 S.C. 845.

would have no power to amend the fundamental rights. Thus, he decided the immediate question in favour of the state and obliterated the power of the Parliament to amend the fundamental rights indiscriminately.

In *Keshavananda Bharathi* v. *State of Kerala*[81], an attempt was made to question the plenary power of the Parliament to abridge or take away the fundamental rights if necessary by way of amendment under Article 368 of the Constitution. In the 13 judges Bench, six learned Judges (Ray, Palekar, Mathew, Beg, Divivedi and Chandrechud, JJ.) upheld the validity of 29th Amendment, but did not subscribe to the basic structure doctrine. The other six learned judges (Sikri, C.J., Shelat, Grover, Hegde, Mukherjee and Reddy, JJ.) upheld the 29th Amendment subject to it passing the test of basic structure doctrine. The 13th learned Judge (Khanna, J.) though subscribed to basic structure doctrine, upheld the 29th Amendment agreeing with six learned judges who did not subscribe to the basic structure doctrine. Justice Khanna took a distinct view and held that Parliament had the full power of amending the Constitution but because it had the power only "to amend", it must leave the "basic structure or framework of the constitution" intact. Therefore, it appears as of now that the opinion of a single Judge, Khanna J., of a limitation of the Parliament's power on the basic structure of the constitution has passed of as the law[82].

Thus we see a major shift in position from *Golaknath* to *Keshavananda.* Far reaching changes have taken place in the law relating to the power of Parliament to amend of the constitution, partly as a result of constitutional amendment and partly as a result of judicial decisions. This development falls into four broad periods[83]. The first period began in 1951 with *Sankari Prasad* case and ended in

---

[81] A.I.R. 1973 S.C. 1461

[82] T. R. Andhyarjuna, "Basic Structure of the Constitution Revisited", The Hindu, 21st May 2007, p.12.

[83] H. M. Seervai, *Constitutional Law of India – A Critical Commentary*, 3rd Eds. Vol.2 , N. M. Tripathi Pvt. Ltd., Bombay and Sweet & Maxwell Ltd. , London (1984), p.2635.

1967 with *Golaknath's* case. In *Golaknath* it was held by six to five that none of the fundamental rights were amenable to amending powers in the Constitution. Whereas in *Keshwvananda* by seven to six it was held that though Parliament can amend any part of the Constitution (*Golaknath* was overruled), in exercise of its amending power, it cannot alter the basic structure or framework of the Constitution and reserved the power of judicial review to invalidate any amendment to any provision of the Constitution if it alters the basic structure of the Constitution. The last period of development of judicial review was from *Kesavananda Bharati* to *Coelho*[84]. During this period, other cases such as *Indira Nehru Gandhi*[85], *Minerva Mills*[86], *Waman Rao*[87] and *Chandra Kumar*[88] dealt with the issue of judicial review and held the power of judicial review an integral and essential feature of the Constitution. In *I.R. Coelho*, the nine-judges Bench considered the ambit of judicial review under the basic structure principle following the common law tradition[89].

The gradual empowerment of Indian judiciary in exercising its review jurisdiction has resulted in judicial interference even in the prerogative powers of the President and the Governors to grant clemency and reduce or cancel the sentence in criminal cases. It was held[90] "the exercise or non-exercise of pardon power by the President or Governor, as the case may be, is not immune from judicial review and limited judicial review is available in certain cases". The Governor's decision to grant remission in the case was not approved by the Supreme Court. Supreme Court has also interfered in

---

[84] *I.R.Coelho* v. *State of Tamil Nadu*, A.I.R. 2007 S.C. 861.
[85] *Indira Nehru Gandhi* v. *Raj Narain*, A.I.R. 1975 S.C. 2299.
[86] *Minerva Mills Ltd. and others* v. *Union of India*, A.I.R. 1980 S.C. 1789.
[87] *Waman Rao and others* v. *Union of India and others*, A.I.R. 1981 S.C. 271.
[88] *Chandra Kumar* v. *Union of India and others*, (1997) 3 S.C.C. 261.
[89] The Court has summarized the scope and ambit of judicial review under the basic structure theory as protection of fundamental constitutional rights through common law, the main feature of common law constitutionalism. It was held that judicial review is the basic feature of the Constitution and an essential element of rule of law.
[90] (2000) 8 S.C.C. 161, p. 171. See also *Swaran Singh* v. *State of U.P.*,(1988) 4 S.C.C. 75 and *Satpal* v. *State of Haryana*, (2000) 5 S.C.C. 170.

the power of appropriate Government for remission of sentences. In *Mitthu* v. *State*[91] the court struck down section 303 I.P.C., which made death sentence mandatory, on the ground that there is alternative punishment provided for in section 302 I.P.C. *'Mitthu'* was the result of persistent indifference of the executive and the legislature towards the constitutional philosophy hallowing Article 21 as expounded by the courts in repeated decisions. The Apex Court was constrained to observe:

> "These decisions (*Maneka Gandhi, Bachan Singh* etc.) have expounded the scope of Article 21 in a significant way and it is now too late in the day to contend that it is for the legislature to prescribe the procedure and for the courts to follow it, that it is for the legislature to provide the punishment and for the courts to impose it".

In *G. Krishna Goud* v. *State of A.P.*[92] Justice Krishna Iyer had to express the courts frustration as follows[93]:

> "As judges, we cannot rewrite the law whatever our views of urgent reforms, as citizens, may be. And the sentence of death having been awarded by the courts, the judicial frontiers have been crossed...".

The above decisions have now introduced a new punishment of 'life imprisonment till the death' of the convict[94]. This the courts have achieved through judicial review and by an innovative process of interpretation of the statutory provisions and the constitutional philosophy in the matter of sentencing. Thus judicial review, even in an area, where it was not understood to be employed, came to be practiced and it did generate, if not legislation, pure and simple rules having all the trappings of legislation. It is felt that this development deserves approbation rather than criticism[95].

---

[91] (1983)2 S.C.C. 277.
[92] (1976) 1 S.C.C. 157.
[93] *Id.*, at p.159.
[94] *Swami Shradhanand* v. *State of Karnataka*, (2008)13 S.C.C. 767.
[95] K. N. C. Pillai, "Judicial Review of Execution of Sentences", (2009) 10 S.C.C. (J) 17

3.5 Towards Judicial Restraint

While getting gradually empowered to respond to the changing needs of the society by enlarging the scope of judicial review, the court used to remind itself the inherent limitations in the exercise of its review jurisdiction as is disclosed from the following cases.

In a petition[96] filed under Article 226, the M.P. High Court directed the Central Government to re-schedule the timings of the Awantika Super Fast Express so as to reach Bombay Central Railway station at 8 a.m. Allowing the Central Government's appeal the Supreme Court held that what would be the schedule timings for a train for its departure and arrival is an administrative decision keeping in view the larger public interest or public convenience and not the convenience of the public of a particular town. It was held that such a decision is within the exclusive administrative domain of the Railways and is not liable to be interfered with under Article 226 of the Constitution.

In the matter of imposition of penalty or punishment it was held[97] that unless the punishment or penalty imposed by the disciplinary or appellate authority is either impermissible or such that it shocks the conscience of the court, the court should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a punishment of particular nature or category of its choice.

In one case[98], where the Bharat Petroleum Corporation invited application for distributorship of LPG, the Dealer Selection Board recommended the appellant for selection since he scored the

---

[96] *Union of India and others* v. *Nagesh and others*, (2002) 7 S.C.C. 603.

[97] *Regional Manager and Disciplinary Authority, State Bank of India, Hyderabad and another* v. *S. Mohammed Gaffar*, (2002)7 S.C.C. 168. See also *Union of India and others* v. *P. Chandra Mouli and others*, (2003) 10 S.C.C. 196, *State of U.P.* v. *Jaikaran Singh*, (2003) 9 S.C.C. 228, where the order of dismissal from service was found to be not commensurate with the gravity of the alleged misconduct and hence altered into one of compulsory retirement.

[98] *Vinod Kumar* v. *S. Palani Swamy and others*, (2003) 10 S.C.C. 681.

highest marks. One of the aspirants challenged the selection. The Single Judge set aside the selection on the ground that there was failure on the part of the appellant to give particulars of the land to be offered for dealership. The appeal was dismissed by the Division Bench. It was held by the Apex Court that over proceedings and decisions taken in administrative matters the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. Since the capability of the appellant to otherwise perform as an LPG dealer is not in dispute, it was held that the High Court was not justified in interfering with the decision of the Selection Board and the appeal was allowed.

In *Union of India and others* v. *P. Chandra Mouli and others*[99] it was held that since the respondents were convicted and sentenced on a criminal charge, the compulsory retirement of the respondents ordered in exercise of the power under Rule 19(i) of the CCS Rules cannot be faulted with. Therefore it was held that the High Court was wholly unjustified in interfering with the order of compulsory retirement and directing that it would be open to the Union Government to give a lesser punishment. While allowing the appeal it was held that the court ordinarily would not interfere with the quantum of punishment once the court comes to a conclusion that there is no infirmity with the procedure[100].

Regarding the scope of judicial review in a taxation matter, where the appellant's 'Opel Astra' car was taxed on 'value basis' under Karnataka Motor Vehicles Taxation (Amendment) Act 8 of 1997 and the constitutional validity of the Act was under challenge, it was held[101] that the impugned classification indicates a measure of a rate of tax applied differently on different vehicles depending upon various circumstances. So long as there is competence to levy and

---

[99] (2003)10 S.C.C. 196.
[100] See also *State of U.P.* v. *Jaikaran Singh,* (2003) 9 S.C.C. 228.
[101] *Mohandas n. Hedhe (died) through L.Rs.* v. *State of Karnataka and another,* (2005) 4 S.C.C.64.

collect the tax under Entry 57, List II of the Seventh Schedule, the levy cannot be struck down only on the ground that the incidence of the tax fell differently on different categories of vehicles. The burden has to be distributed on different classes of vehicles or on different persons, who owned the vehicles. How equitably such tax could fall on different persons is a policy decision and is not for the court to decide.

In *Karnataka State Industrial Investment and Development Corporation Ltd.* v. *Cavelet India Ltd. and others*[102] while allowing the appeal, it was held that in a matter between the Corporation and its debtor, a writ court has no say except in cases of a statutory violation on the part of the Corporation or where the Corporation acts *mala fide*, unfairly or unreasonably. It was held that in commercial matters the courts should not risk their judgment for the judgments of the bodies to which that task is assigned.

In the matter of promotion to a selection post when the government considered the eligibility of the candidate on the basis of merit, in the nature of past records, credibility and confidence, having regard to the sensitive nature of the post, it was held[103], it would not be for the court to sit in appeal over the view taken by the appointing authority and substitute its own view that another incumbent should have been appointed. The decisions of expert bodies like the Pay Commission is not ordinarily subject to judicial review obviously because pay-fixation is an exercise requiring probe into various aspects of the post held in various services and nature of the duties of the employees[104]. In the case of land acquisition for the public purpose of constructing a road, out of the land acquired only a portion was utilized and the remaining land was unused. The respondent requested the District Collector to reassign the land unused. It was

---

[102] (2005) 4 S.C.C. 456.
[103] *State of W. B. and others* v. *Manas Kumar Chakraborthy and others*, (2003) 2 S.C.C. 604.
[104] *State of U. P. and others* v. *U.P. Sales Tax Officers Grade II Association*, (2003) 6 S.C.C. 250.

held[105] whether the unused remaining land was sufficient or not for the purpose of constructing revenue office is for the competent authorities to decide and the High Court was not right in interfering.

3.6 Judicial Review in Policy Matters

With regard to policy matters, the Apex Court had always a consistent stand of non-interference unless the policy itself is contrary to law, unconstitutional or *per se* arbitrary and *mala fide.* Thus the scope of judicial scrutiny would be far less where the price fixation is not governed by the statute or statutory order. Where the legislature has prescribed the factors which should be taken into consideration, the court would examine whether those considerations are kept in mind by the government. The court would not go beyond that point[106]. In *Pallavi Refractors and others* v. *Singareni Collieries Co. Ltd. and others*[107] where the respondent, a State owned company selling coal, issued the price notification providing that "any linked customers who are drawing B, C and D grades of coal are required to pay 20 % additional price over and above the notified price" and when the notification was under challenge, it was held that the price fixation is neither the function nor the forte of the court[108]. The court is neither concerned with the policy nor with the rates. But, in appropriate proceedings, it may enquire into the question whether irrelevant considerations have gone in and relevant consideration kept out while determining the price. It was further held that in case the legislature has laid down the pricing policy and prescribed the factors which should guide the determination of the price, the court will, if necessary, enquire into the question whether the policy and factors were present in the mind of the authorities specifying the price.

---

[105] *Government of A.P.* v. *Syed Akbar,*(2005) 1 S.C.C. 558.
[106] *Rayalaseema Paper Mills Ltd.* v. *Government of A.P. and others,* (2003)1 S.C.C.341.
[107] (2005) 2 S.C.C. 227.
[108] See also *Sri Sitaram Sugar Co. Ltd* v. *Union of India,* (1990) 3 S.C.C. 223. Judicial function in respect of price fixation stands exhausted once it is found that the authority empowered to fix the price has reached the conclusion on rational basis.

When the respondent's refusal to grant rebate on excise duty in accordance with a notification issued by the Government of India was under challenge it was held[109] that "the grant of rebate, exemption or concession is in the nature of policy of the Government. Normally in such policy matters the court will not interfere unless the policy itself is shown to be contrary to law, inconsistent with the provisions of the Constitution or otherwise arbitrary or unreasonable". On the facts of the case it was held that since the policy decision as reflected in para 3 of the notification cannot be said to be arbitrary, unreasonable or inconsistent with the statutory provisions, a person claiming the protection under the said notification has to comply with the condition laid down in the notification.

In *Food Corporation of India and others* v. *Bhanu Lodha and others*[110] it was held that when there are a number of posts to be filled up, the decision to fill up or not to fill up a post is a policy decision and there is no scope for interference in such a case under judicial review. It was held that merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the Rules. Unless the decision not to fill up the posts is inflicted by the vice of arbitrariness, there is no scope for interference under judicial review. However, the decision not to fill up the vacancies has to be taken *bonafide* and must pass the test of reasonableness so as not to fail on the touchstone of Article 14[111].

In a case[112] relating to change in policy of the government and legitimate expectation of the affected parties, the facts show that at the time of setting up of the appellant unit and starting its commercial production there was no assurance or promise from the Government, which was made only subsequently. It was held that

---

[109] *Sidheshwar Sahakari Sakhar Karkhana Ltd.* v. *Union of India*,(2005) 3 S.C.C. 369.
[110] (2005)3 S.C.C. 618.
[111] See also *Govt. of Orissa* v. *Haraprasad Das* (1998) 1 S.C.C. 487 and *The State of Orissa v. Bhikari Charan Khunta* , (2003) 10 S.C.C. 144.
[112] *Bannari Amman Sugar Ltd.* v. *Commercial Tax Officer and others*. (2005) 1 S.C.C. 625.

there was no substance in the plea that before a policy decision is taken to amend or alter the promise indicated in any particular notification, the beneficiary is to be granted an opportunity of hearing. It was further held that while taking policy decision to amend the existing rules, the Government is not required to hear the affected parties/persons who have been granted the benefit which is sought to be withdrawn.

Accepting 'policy decisions' of the executive as somewhat forbidden areas for judicial interference, the Supreme Court, at the same time, did not surrender its review jurisdiction in that area unconditionally. In *State of N.C.T. of Delhi and another* v. *Sanjeev alias Bittoo*[113] an order of the Dy. Commissioner of Police passed under the Delhi Police Act directing the respondents to move out of Delhi for a period of one year was under challenge. It was observed that the present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties etc. Considering the scope of judicial interference in matters of administrative decisions and discretion in the light of the English decisions like *C.C.S.U.* case[114], *Padfields* case[115] and *Wednesbury* case[116], it was held in *C.C.S.U. case* that one can conveniently classify the grounds on which administrative action is subject to control by judicial review under three heads. They are 'illegality', 'irrationality' and; procedural 'impropriety'. The observation of Lord Diplock in *CCSU case* that more grounds could in future become available including the 'doctrine of proportionality' was quoted with approval. In *Bittoo* it was held that scope of judicial review is limited to consideration of legality of decision-making process and not legality of

---

[113] (2005) 5 S.C.C. 181.
[114] (1985) A.C. 374
[115] (1968) A.C. 997
[116] (1966) 2 Q.B. 275.

the order *per se.* It was further held that mere possibility of another view cannot be the ground for interference.

While issuing excise licenses for Indian/foreign liquor shops, the Supreme Court gave certain directions[117] to be complied with in the matter of selection of licensees. Relying on *Cellular Operators Association of India v. Union of India*[118], it was held that it is now beyond any cavil that economic policies of the State, although ordinarily would not be interfered with, they are still not beyond the pale of judicial review. In *O. Konavalov v. Commander, Coast Guard Region and others*[119] it was held that there will be no excluded category of State policy or practice which can claim exemption from judicial consideration. Considering the role of judicial review and court craft in environmental adjudication it was observed that it is more urgent to see judicial review as one of the most immediate means of generating concern for life beyond us in the minds of people wielding economic and social power.

The court also criticised the so-called compassionate jurisdiction. In *Sujesh* v. *State of Kerala and others*[120] the licence for a toddy shop was held by one contractor for a particular year. His licence was not renewed for the next year. The licensee committed suicide. His widow, the 4th respondent, filed a representation praying to renew and transfer the licence in her favour. The High Court directed the Excise Commissioner to consider the same. In the meantime in the auction proceedings the shop was allotted to the petitioner in the writ petition. However, the Excise Commissioner allowed the 4th respondent's application. Setting aside the orders, it was held that if on a sympathetic ground the court declined to interfere with an illegal order the same would destroy the legitimacy of

---

[117] *Ashok Lanka and another* v. *Rishi Dixit and others,*(2005) 5 S.C.C. 598.
[118] (2003) 3 S.C.C. 186.
[119] (2006) 4 S.C.C. 620.
[120] 2005(2) K.L.J. 200.

the judicial process and that when an order is found to be illegal, normally, the petitioner is entitled to get an order quashing the same.

3.7 Judicial Review and Separation of Powers

The rational basis for the gradual empowerment of the Supreme Court was the strict compliance of and insistence on the doctrine of separation of powers. The doctrine is not recognized by the Indian Constitution in specific terms. But it is evident from the various Articles of the Constitution which enable the judiciary to play a correctional role on the decisions of the other two branches of the State. The doctrine has been broadly held to be a basic feature of the Indian Constitution[121]. The Constitution does not envisage assumption of functions that essentially belong to one of the organs by the other[122]. In *Raja Ram Pal* v. *Hon'ble Speaker, Lok Sabha*[123] expulsion of certain members of Parliament for accepting money as a consideration for raising certain specified questions in the House was under challenge. In the writ petition filed before the Supreme Court the two Houses did not cooperate. However Union of India defended the impugned order. The questions arose as to whether the Supreme Court has jurisdiction to decide the content and scope of the powers, privileges and immunities of the legislatures and its members and whether the power of expulsion of members by the legislature is subject to judicial review.

Despite the assertion of the judicial authority to go into the question of the powers, privileges and immunities of the legislature, the Court found that the power of expulsion can be claimed by the Indian legislatures as one of the privileges inherited from the House of Commons under Article 105 (3) of the constitution. Examining the question as to whether the exercise of such power is subject to judicial review, the court dispelled the argument that once

---

[121] *Indira Nehru Gandhi* v. *Raj Narain*, (1975) Supp. S.C.C. 1
[122] *Ram Jawaya Kapor* v. *State of Punjab*, A.I.R. 1955 S.C. 549.
[123] (2007) 3 S.C.C. 184

the privilege is found to exist, the exercise of the same and the manner of its exercise must be left to the domain of the Parliament. It was observed that there is no scope for a general rule that the exercise of powers by the legislature is not amenable to judicial review, as it is neither the letter nor the sprit of the constitution. While accepting that the scope of judicial review in matters concerning parliamentary proceeding is limited and restricted as specified in Article 122(1), it was emphasized that judicial scrutiny of parliamentary powers cannot stop especially when breach of other constitutional provisions has been alleged.

In *I. R. Coelho* v. *State of Tamil Nadu*[124] the court has re-emphasized the importance of the separation of powers and the check and balances in the constitution. It observed that for preservation of liberty and prevention of tyranny the doctrine of separation of powers is absolutely essential. It was held that separation of powers constitutes one of the basic features of the Indian constitution. In a clear case of separation of powers, *Hindustan Aeronautics Ltd.* v. *Dan Bhadhur Singh and others*[125], where the respondents claimed regularization in service and grant of a particular pay scale, the Apex Court, reversing the judgment of the High Court, held that creation and regularization of posts and their abolition are purely executive functions and that court cannot create a post where none exist and cannot issue any direction to absorb the respondents and to continue them in service nor to pay them the salary of regular employees as these are purely of executive fiat. In a similar matter in *S. C. Chandra* v. *State of Jharkhand*[126] it was held granting pay scale is purely an executive function and hence the court should not interfere in the same. It was observed that fixation of pay scale by courts by applying the principle of equal pay for equal work upsets the high

---

[124] (2007) 6 S.C.C. 1
[125] (2007) 6 S.C.C. 207.
[126] (2007) 8 S.C.C. 279. See also *Fruit Commission Agents' Association* v. *Government of A. P.*, (2007) 8 S.C.C. 511 where it was held that fixation of rent is an administrative function.

constitutional principle of separation of powers. It may be noted that the Apex Court has only settled the fair principle of equal pay for equal work on the lofty ideal of Article 14 and it is always open to the employer to establish that the work is not equal or there are other compelling circumstances which justify the unequal pay. Further, in such cases the court is not fixing the pay scale by evolving a new pay scale, instead court only applies an existing pay scale of an identical post or cadre on the basis of same nature of work.

3.8 Judicial Review and Judicial Activism in India

The expression 'judicial activism' or 'judicial dynamism' was something unknown to the Supreme Court of India in the initial years of its existence, though the court had displayed judicial creativity even at that time. To start with, in the 1950s the attitude of the court was little introvert, and had been more or less relying on the literal interpretation of the constitutional provisions while dealing with issues of administrative and constitutional law. But, it slowly gathered momentum through constitutional interpretation. The transformation into an activist court has been gradual and imperceptible. In fact semblance of judicial activism could be seen right from the beginning. In *A. K. Gopalan* v. *State of Kerala*[127], though the court conceived its role in a narrow sense, it asserted that its power of judicial review was inherent in the very nature of the written constitution[128].

Judicial review has two facets. One is a technocratic or rather beaurocatic approach in which judges go by a literal interpretation of the law and hold a law invalid if it is *ultra vires* the powers of the legislature. The other is an innovative and creative approach where the court interpret the provisions of the Constitution liberally in the light of the spirit underlying the Constitution and keeps the Constitution abreast of the times through dynamic

---

[127] A.I.R. 1950 S.C. 27.
[128] *Ibid.*

interpretation. In *Rajendra Prasad* v. *State of U.P.*[129], Justice Krishna Iyer categorically declared the need for constitutionalisation thus[130]:

> "It is fair to mention that the humanistic imperatives of the Indian Constitution, as paramount to the punitive strategy of the penal code, have hardly been explored by courts, in this field of 'life or death' at the hands of the law. The main focus of our judgment is on this poignant gap in human rights jurisprudence within the limits of the penal code impregnated by the Constitution".

Although the above decision was overruled in *Bachan Singh*[131] it was as a result of this reasoning that the court could strike down section 303 of the Indian Penal Code that prescribed mandatory death penalty[132]. It is the intricacies of judicial process as displayed in *Rajendra Prasad,* influenced by lofty ideals and high ethical values embedded in the Constitution that has helped the forward march of law towards the new horizon of culture and civilization. There is no doubt that the court has gained its present prestige by effectively utilizing the instrument of judicial review and the imprint left is that the law should conform to the constitutional philosophy.

A court giving new and novel interpretation and meaning to a legislative provision so as to suit the changing socio-economic needs of the country and the society is said to be an activist court. Judicial activism can be positive as well as negative. A court engaged in altering the power relations to make the same more equitable is said to be positively activist and a court using its ingenuity to maintain the *status quo* in power relations in a rigid manner and refusing to take cognizance of the changing times and needs is said to be negatively activist. While tracing through the growth and development of the power of judicial review in India in the above

---

[129] (1979) 3 S.C.C. 646.
[130] *Id.*, at p. 659.
[131] *Bachan Singh* v. *State of Punjab* (1980) 2 S.C.C. 684, wherein it was declared that death penalty was constitutional as there is ample discretion for the court to impose death or life imprisonment under section 320 IPC.
[132] See *Mittu* v. *State* (1983) 2 S.C.C. 277.

perspective, one finds that the Supreme Court of India had been ideologically consistent as an activist court allthrough, but the tenor and tempo of activism had varied from judge to judge, depending on their individual vision and approach to the constitutional principles, which had, to a large extent, been influenced by their socio-economic background resulting in their individual predilections. A close scrutiny of the Indian case law on the subject may disclose that the judicial process involved was embedded more on the substantive theory of justice and personal liberty than on any particular theory of justification or assertion of the power of judicial review. Hence the factors determining the scope and extent of judicial review of administrative decisions are essentially temporal in nature, varying with the attitude of the particular court, the subject and nature of the administrative activity and its consequence, the method by which the review is sought, and other elements which vary widely from case to case depending on the facts of the case[133]. A judicial interpretation that furthers the rights of the disadvantaged sections or imposes curbs on absolute power or facilitates access to justice is positive activism. Judicial activism is inherent in judicial review. Whether it is positive or negative activism depends upon each individual judge's vision of social change.

Judicial activism is not an aberration, but is a normal inevitable phenomenon of judicial review. But judicial activism has to operate within the constitutionally permissible limits. The limits of institutional viability, legitimacy of judicial intervention, and resources of the court draw some of these limits. Since through judicial activism the court changes the existing power relations, judicial activism may appear to be political in nature. In this process judicial activism makes the constitutional courts an important power center in democracy. Among the several important judgments discussed above the most significant and path-breaking is the one in *Keshavananda*

---

[133] Frank E. Cooper, *Administrative Agencies and the Courts*, University of Michigan, Michigan (1951), p. 330.

Bharati case, which was the zenith of judicial activism[134]. The decision was subjected to severe criticism[135], particularly on the ground that the judges had by the decision, in effect, amended the Constitution and exercised supra-legislative functions by importing limitations, which are not to be found in Article 368. But in later years, the basic structure doctrine evolved in this case, the product of judicial activism, has proved to be an effective safeguard against politicizing the Constitution by those in power to the detriment of the nation.

The Supreme Court has reiterated in more than one decision beginning with the *R. C. Cooper* case[136] (Bank Nationalization case) and culminating in its landmark decision in *BALCO* case[137] that it is not 'within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy merely because a different policy would have been more fair or wise or scientific or logical. But the court had, while reminding this inherent limitation of the power of judicial review, however, made it clear[138] and asserted that if a policy is in contravention of a constitutional provision or if it is in breach of a mandatory statutory provision or is *mala fide,* judicial intervention will be available. Therefore, it was declared in *R. C. Cooper* that the Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969 is invalid and the action taken or deemed to be taken in exercise of the powers under the Act is declared unauthorized. But in *BALCO* case it was held that the disinvestment by the government in

---

[134] In *Kesavananda* the eleven separate judgments were delivered by nine judges.
[135] See H. M. Seervai, Constitutional Law of India – A Critical Commentary, 3rd Eds. Vol.2 , (N. M. Tripathi Pvt. Ltd., Bombay and Sweet & Maxwell Ltd. , London, 1984) pp.. 2637- 2705 See also for a criticism. T. R. Andyarjuna, "Basic Structure of the Constitution Revisited", The Hindu, May 21st 2007.
[136] A.I.R. 1970 S.C. 564.
[137] *BALCO Employees Union* v. *Union of India,* A.I.R. 2002 S.C. 350
[138] *Supra, n.* 136.

BALCO Company was not invalid, as the policy of disinvestment cannot be questioned as such.

While liberally interpreting the Constitution and thus expanding the rights of the people, the Supreme Court also changed the laws regarding *locus standi* thereby introducing public participation in the judicial process. The Indian courts facilitated access by (i) entertaining letters from persons interested in opposing illegal acts[139]; (ii) allowing social activist organizations or public spirited individuals to take up matter on behalf of the poor and disadvantaged sections, who possessed neither knowledge nor resources for activating the legal process[140]; and (iii) permitting citizens to speak on behalf of a large unorganized but silent majority against bad governance, wrong development, or environmental degradation[141].

Locus standi was given to a prisoner to draw attention of the court to the torture inflicted by prison authorities on another prison inmate[142], to a social action group called the People's Union for Democratic Rights to draw the attention of the court to the exploitation of unorganized labour in the construction of a stadium[143] or to another social action group called the Bandhua Mukti Morcha to draw the attention of the court to the miserable plight of bonded labourers[144]. A professor of economics could raise question regarding the legality of re-promulgation of ordinances in total disregard of the provisions of Article 213 of the Constitution[145] and lawyers could petition the court against politicization of the appointments and

---

[139] *Bandhua Mukti Morcha* v. *Union of India,* A.I.R. 1984 S.C. 802.
[140] *Vikram Deo Singh Tomar* v. *State of Bihar* ,A.I.R. 1985 S.C. 1782.
[141] *Vellore Citizens Welfare Forum* v. *Union of India*, A.I. R. 1996 S.C. 2715; *Indian Council for Enviro Legal Action* v. *Union of India,* A.I.R. 1996 S.C. 1446; *M.C. Mehta* v. *Union in India*, A.I.R. 2001 S.C. 1544.
[142] *Sunil Batra* v. *Delhi Administration,* A. I. R. 1978 S.C. 1675.
[143] *P.U.D.R.* v. *Union of India*, A.I.R. 1982 S.C. 1473
[144] *Supra., n.* 139.
[145] *D. C. Wadhwa* v. *State of Bihar*, A.I.R. 1987 S.C. 579.

transfer of judges of the High Court and Supreme Court[146]. Thus the court has allowed public interest petitions filed by citizens against governmental lawlessness in a variety of cases. The liberalized rules of *locus standi* i.e. 'right to challenge' enabled many matters to come to court. This is popularly known as public interest litigation (PIL). Such litigation has been against violation of human rights, for honest and efficient governance, and against environmental degradation filed by public spirited citizens and organisations.

During the first phase of public interest litigation, the emphasis was on human rights of the weaker sections of society[147]. During the second phase, the emphasis shifted on governance[148]. In the 1990s, the emphasis shifted from governance to environment[149]. But in the present stage, the courts are cautious in entertaining public interest litigations as the institution is being abused for personal gains, private profit, political attack or other oblique considerations of vested interests. Entering frivolous public interest litigations leads to waste of judicial time and energy, further lengthening the long queue of *bona fide* litigants before the courts. Passing fanciful orders places an undue burden on the administration and detracts from the immense utility of public interest litigation causing ill-reputation to the judicial process. In such cases misplaced judicial activism has baneful consequences in the legal and judicial process.

Despite the criticism, public interest litigation has brought the courts closer to the people and has made judiciary a powerful and reliable institution. Decisions upholding the rights of the poor and socially disadvantaged people and protecting them by giving them improved access to justice had definitely enhanced the image of the Indian courts. By the passage of time, public interest litigation has

---

[146] *S.P. Gupta* v. *President of India*, A.I.R. 1982 S.C. 149
[147] *Supra., n.* 6 at p. 16.
[148] *Ibid.*
[149] *Ibid.*

become a well established institution in India and what all criticism it had invited of late, the Supreme Court has only to guide its course and not to annihilate the same. The Apex Court has held[150] that while hearing a public interest litigation, the court acts as the sentinel by discharging its obligation as custodian of the constitutional morals, ethics and code of conduct- well defined by a series of judicial pronouncements. In a genuine case of public interest litigation one does not find reason or justification to deviate from this view[151].

While pursuing judicial dynamism, in *Indira Nehru Gandhi* v. *Raj Narain*[152] the Supreme Court established that judicial review and free and fair elections were a fundamental part of the Constitution beyond the reach of the amending power. Although the Constitution does not say so, it was inferred by the Supreme Court from the constitutional scheme. Later, in 1980, in *Minerva Mills Ltd.* v. *Union of India*[153] the court applied the doctrine of the basic structure while considering a challenge to a provision in the Constitution 42nd Amendment Act, 1976, which shut out judicial review of constitutional amendments. The Constitution Bench of the Supreme Court, following the ratio in *Kesavanda Bharati* v. *State of Kerala*[154], declared in *Minerva Mills* case that exclusion of judicial review violated the basic structure of the Constitution and struck down that part of the 42nd Amendment.

The basic structure doctrine of judicial review was conceived by the Supreme Court in *Kesavananda Bharathi* after allowing the unlimited power of the Parliament to amend the Constitution in the first two cases, *Sankari Prasad* and *Sajjan Singh.* The basic structure doctrine derives its strength from certain basic principles or values underlying the basic document viz. the

---

[150] *Padma* v. *Hiralal Motilal Desarda*, A.I.R. 2002 S.C. 3252.
[151] See *Common Cause(A Regd. Society)* v. *Union of India*, (2008) 5 S.C.C. 511
[152] *Supra., n.* 121.
[153] (1980) 3 S.C.C. 625.
[154] (1973) 4 S.C.C. 225.

Constitution. These values are pre-constitutional, that are universally perceived as basic human rights and are considered essential for the very existence of a human being as distinct from that of an animal existence. These are certain 'intrinsic' or 'foundational values'[155], which exist as such in the scheme of nature. Such values are not a gift from the state to the citizens, but exist independently of any constitution by reason of the fact that they are members of human race[156]. These are invariably crystalised in the Constitution in the form of fundamental rights, which occupy a unique place in the lives of civilized societies[157]. This is the approach of the Indian Supreme Court towards the fundamental rights and the power of judicial review. Thus it could be seen that in the Indian context the edifice of judicial review is built up more on the foundation of common law theory and constitutionalism than on the bed rock of *ultra vires*. It is more fundamental and substantive. It may be argued that it is more or less a modified *ultra vires* theory finding its inspiration more from constitutionalism and rule of law than from the concept of parliamentary sovereignty.

The common law tradition and constitutionalism has been explored by the Indian Supreme Court. The nine-judge bench in *I. R. Coelho case* considered the ambit of judicial review under the basic structure doctrine by resorting to the common law tradition and held that the "protection of fundamental constitutional rights through common law is the main feature of common law constitutionalism"[158]. Thus the power of judicial review in the Indian context is the integral or inseparable part of the basic structure of the Constitution. Without judicial review the basic structure doctrine is simply inoperable and non-functional. Power of judicial review is imperative for maintaining

---

[155] *I. R. Coelho* v. *Sate of Tamil Nadu*, A.I.R. 2007 S.C. 861at 875.
[156] *Ibid.*
[157] *Id.*, at 872.
[158] *Id.*, para 44-47.

the basic premise of constitutional supremacy[159] and thereby that of rule of law. In *I. R. Coelho* the power of judicial review vis-à-vis that of parliamentary supremacy came in direct conflict in the context of Article 31B[160] along with the Ninth Schedule of the Constitution which were introduced by the very first amendment of the Constitution Once the laws passed by the legislature are placed in the Ninth Schedule of the Constitution, they become immune from any judicial challenge on the ground of violation of any of the fundamental rights enumerated in Part III of the Constitution. This constitutional power was a direct affront to the power of judicial review. It was insurmountable because there was no criteria controlling the said power of Parliament under Article 31B. This position is incompatible with the very concept of constitutionalism and rule of law. In such a situation it was held: "The absence of guidelines for exercise of such power means the absence of constitutional control which results in destruction of constitutional supremacy and creation of parliamentary hegemony[161]. It was therefore held that non-application of the basic structure doctrine (and that of judicial review) would make the controlled constitution uncontrolled[162].

In *Rameswar Prasad and others* v. *Union of India*[163], a milestone decision of the Constitution Bench, it was held that absolute immunity has no place in our constitutional jurisprudence and is anathema to our constitutional scheme in which judicial review is a basic feature of the Constitution and rule of law is the golden

---

[159] Virendra Kumar, *Basic Structure of the Indian Constitution: Doctrine of Constitutionally Controlled Governance*, 49(3) J.I.L.I. 375

[160] Article 31 B- Validation of certain Acts and regulation-
Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by any provisions of this part, and notwithstanding any judgment, decree or order of any court or tribunal to the country, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

[161] *I. R. Coelho* v. *State of Tamil Nadu*, A. I.R. 2007 S.C. 861.

[162] *Id.*, at 890

[163] (2006) 2 S.C.C. 1.

thread infusing our constitutional provisions. Conferment of absolute immunity would in effect and substance tantamount to denial of judicial review which would also affect the principle of rule of law[164]. Judicial review would remain an integral part of the Indian constitutional law and practice simply because the Supreme Court, relying on popular sentiments on an independent judiciary vis-à-vis a seemingly corrupt, incompetent and inefficient administration, has definitely said so[165].

In the above case the President's rule based on Governor's report in Nagaland and Karnataka was held to be unconstitutional because of *mala fide,* legal and personal, and incorporation of completely irrelevant materials and extraneous factors. It was held that it is open to the court, in exercise of judicial review, to examine the question whether the Governor's report was based upon relevant materials or not and whether the facts have been duly verified or not. It was held that the absence of the above factors would result in the declaration of dissolution of the State Legislature invalid. Meeting the argument that due to lack of judicially manageable standards, the court should leave such complex questions (of facts) to be determined by the President, the Council of Ministers and the Governor, it was held that similar arguments having not found favour before a nine-judges Bench[166] cannot be accepted by the Court.

Regarding the basic structure theory of the Constitution vis-à-vis judicial review it may be noted that the opinions expressed first in *Golak Nath* and later in *Kesavananda* were products of divided courts. Though they aroused the controversy and the contention, the basic structure theory has come to stay. It was evolved from the great silence in our Constitution on the argument that though the Constitution did provide for its amendment, surely it does

---

[164] *Ibid.*
[165] Fali S. Nariman, "The Silence in our Constitutional Law", (2006) 2 S.C.C. (J.)15, p. 26.
[166] See *S.R. Bommai* v. *Union of India*, (1994) 3 S.C.C. 1.

not say that it could be abrogated, or that its basic features could be thrown to the winds. It may be noted that while inventing limitations on the power of Parliament to amend the Constitution, the Court had through the above historic decisions intelligently introduced a flexible and judicially determinable concept of the basic structure of the Constitution about which the Constitution is silent.

3.9 Conclusion

It could be found from a series of decisions of the Supreme Court of India that over a period of time the Supreme Court has gradually and convincingly developed the scope and ambit of judicial review in India with public approval by making use of the inertia, incompetence and the administrative indiscipline of the executive and, to an extent, that of the legislature. For this the Apex Court made use of not only the recitals of the Constitution but also the silence in the Constitution[167]. The Apex Court was more or less conscious about the extent of its judicial review jurisdiction all-through and tried "never seek to enlarge the judicial power beyond its proper boundary, nor fear to carry it to the fullest extent that duty requires"[168]. The power to declare law, said a great American Judge, carries with it the power and, within limits, the duty to make law where none exist[169]. But, the gradual stretching of the judicial review jurisdiction by the Supreme Court, making it as elastic as possible, was not without criticism. By propounding it to be the guardian of the Constitution, the Apex Court had at one bound become guardian over the Constitution, it is critised. The criticism that adjudicators had assumed the role of constitutional governors may also be admitted as forceful[170].

---

[167] *Supra, n.*165, "..the words of the Constitution though important are never decisive; because the silence in our constitutional law speak louder than words..." at pp.31-32.
[168] *Ibid.* Sir John Marshal, quoted
[169] *Id.*, at p. 25.
[170] *Id.*, at p. 25.

According to the critics, even under the American Constitution "judicial review was conceived in quite narrow terms - as a means of policing the constitutional boundaries, the 'limits' of a given power"[171]. Since this 'policing function' is to be undertaken solely by means of the application of the specific intent of the framers, any departure form their intent is nothing but an exercise of arbitrary judicial discretion. In such situations the constitution would be seen not as the embodiment of fundamental and clearly articulated principles of government, but only as a collection of vague and meaningless words and phrases inviting judicial construction, it is argued. But the problem is how to find out the real intent of the framers when disputes arise on specific issues. It is here that through judicial creativity judges have consistently made attempts and have succeeded in a large measure, to fill up the silences in the constitution and to interpret the same as per the needs of the changing times. This has precisely happened in the United States also even in the absence of any specific constitutional provision of judicial review[172]. But regarding the manner in which and the purpose for which this power was exercised by the Supreme Court of the United States there is difference of opinion[173].

The construction of judicial power must be understood against the background of the framers' persistent fear of the capacity

---

[171] See Raoul Berger, "Government by Judiciary: The Transformation of the Fourteenth Amendment", (2nd ed.), Indianapolis: Liberty Fund (1997).

[172] See *Estep v. United States*, 327 U.S. 114, 120 (1946) *c.i.* Bernard Schwartz, *An Introduction to American Administrative Law,* Sir Isaac Pitman and Sons Ltd., New York (1958), p. 162, where it was held, "For the silence of Congress as to judicial review is not necessarily to be construed as a denial of the power of the federal courts to grant relief in the exercise of the general jurisdiction which Congress has conferred on them".

[173] See Henry Steele Commager, "Judicial Review and Democracy" *in* Leonard W. Levy, *Judicial Review and the Supreme Court- Selected Essays*, Harper and Row, New York (1967), p.72, where Commager has commented that it is familiar enough to students of the American constitutional law; less familiar, perhaps, to the lay man who believed that the court was continuously intervening to protect the fundamental rights life, liberty, and property from congressional assault, that in effect it was not so. In reality, he argues, that the court had effectively intervened, again and again, to defeat congressional attempts to free the slave, to guarantee civil rights to negroes, to protect workers, to outlaw child labour etc.

of legislative majorities to perform acts of injustice[174]. What ever be the criticism against the growing influence of judicial review, the fact remains that the constitutional role of our courts has only been people-oriented and beneficent. Without the Supreme Court's increasingly enlightened interpretation of the fundamental rights enshrined in Part III of the Constitution, more particularly the personal liberty and the right to life under Article 21 of the Constitution, we would not have reached the present height and stature as an enlightened constitutional democracy[175]. The people seem to regard the Court as their conscience keeper[176]. Its restraining power holds "the standard aloft and visible to those who must run the race and keep the faith"[177].

In short, the power of judicial review, as we do have in the Indian Constitution, entrusted with a independent judiciary having character and integrity and academic acumen is the safest and best available mechanism in a constitutional democracy like India for safeguarding the constitutional rights of the citizens and the constitutional values and ethos. But a judiciary bereft of the above qualities is bound to handle this powerful weapon for its own destruction and that of the peoples' faith in the rule of law and constitutionalism. Therefore, the anxiety should be not to challenge or dilute the power, but to strengthen the institution qualitatively.

---

[174] Mark Kozlowski, *The Myth of the Imperial Judiciary: Why the Right is Wrong about the Courts*, (New York University Press, New York, (2003), p. 65.

[175] See Anthony Lewis, Foreword to Mark Kozlowski, *The Myth of the Imperial Judiciary: Why the Right is Wrong about the Courts*, New York University Press, New York, (2003), p. Xiii, with particular reference to the American Supreme Court and its interpretation of the 'freedom of speech' promised by the First Amendment

[176] See for the identical American position, Leonard W. Levy, *Judicial Review and the Supreme Court: Selected Essays*, Harper and Raw, New York (1967), p. 42.

[177] *Ibid.* See Benjamin N. Cardozo, "The Nature of the Judicial Process", (New Haven, 1921), p. 93

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[1]:

> "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 proportionate 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.

---

[1] *c.i.* H.K. Manmohan Singh, "University Autonomy not the same as Academic Freedom", The Tribune, 19th August, 2007

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 functions[3].

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 says[4]:

> "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

---

[2] Fuchs, R.F., "Academic Freedom- Its Basic Philosophy, Function and History", Law and Contemporary Problems, XXVIII (1963), 431

[3] See Eric Asbhy, *Universities: British, Indian , African,* Weidenfield & Nicolson, London (1966).p. 290

[4] Report of Education Commission, Government of India, 1964-66, p.326.

> 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[5]:

> "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[6]. 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[7]. The British universities are all self-governing communities, whose *defacto* control resides largely in

---

[5] *Ibid.*

[6] Dongerkery, S.R., *University Autonomy in India*, Lalvani Publishing House, Bombay (1967), p.7.

[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[8].

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[9]. 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[10].

Like academic freedom, university autonomy is based on tradition and public opinion rather than on charters or statutes. The Kothari Commission observed[11]:

> "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

---

[8] Cook. J.W., 'Apartheid and the world's universities', Pamphlet No. 10 of the series of Science and Freedom, Manchester, February, 1956 c.i. Dongerkery, S.R., *University Autonomy in India*, Lalvani Publishing House, Bombay (1967), p.8.

[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.

[11] Education Commission Report, Government of India,1964-66, (N.C.E.R.T., New Delhi, 1972), p. 326.

> up, in its teachers and students, habits of independent thinking and a spirit of enquiry, unfettered by the limitations and prejudices of the near and the immediate, which is so essential for the development of a free society".

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[12].

Autonomy, the Commission points out, functions at three levels, *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;

---

[12] *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

---

[13] Amrik Singh, "Universities and Government" *in* A.B. Shah *et al, Higher Education in India*, Lalwani Publishing House, Bombay (1967), p. 69.

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,

[14] J. N. Kaul, *Governance of University Autonomy of the University Community*, Abhinav Publications, New Delhi (1988), p. 20.
[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[16].

The British universities enjoy the highest degree of autonomy among all the universities in the world[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[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[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[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

---

[16] Michael Polanyi, *The Logic of Liberty*, Routledge and Kegan Paul, London (1951), pp. 41-42.
[17] *Supra, n.* 6 at p.18.
[18] *Id.*, at p. 19.
[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 7th Congress of the Universities of the Commonwealth (Cambridge, 1953).
[20] *Supra, n.* 18.

the teachers are looked upon as members of a society, and not as employees[21].

The American universities can be broadly divided into two categories namely (i) 'private' and (ii) 'state'[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 *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 19th 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[23].

---

[21] *Ibid.*,
[22] *Id.*, at p.26
[23] *Supra, n.*6 at p. 27. Mac Iver, Robert M., *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[24].

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[25].

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

---

[24] *Id.*, at p.31.

[25] *Id.*, at p. 28. Mac Iver, Robert M., *Academic Freedom in Our Time*, Columbia University Press, New York (1955) pp. 21

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 Brryant 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[26] 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[27].

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[28]. It however, deprecated control by government even in affiliating universities, and much more so in teaching universities[29].

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[30]. 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"[31].

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

---

[28] *Id.*, at p. 32. Commission Report, pp. 255-258.
[29] *Id.*, at p. 33. Commission Report, pp.260-261.
[30] *Ibid*
[31] *Id.*, at p. 33. Commission Report, p.262.

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[32]. 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[33]; (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[34]; (iii) requiring its sanction for giving effect to regulations passed by the Senate[35]; and (iv) making the election of ordinary Fellows subject to the approval of the Chancellor[36].

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"[37].

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

---

[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[38]. 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

[38] *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[39].

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 Asuthosh 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

---

[39] *Ibid.*

an administration that was not broad-based, and liable to criticism as being part of the bureaucratic system of an alien government"[40].

It was observed[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 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

---

[40] *Id.*, at p.40.
[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[43]. 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

---

[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[44].

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[45]. 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[46]. To-day there is about four hundred and twenty three universities across the country[47].

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[48]. The threat from the Judiciary to academic freedom and university autonomy is comparatively insignificant and not aggressive.

---

[44] *Id.*, at p.49
[45] *Id.*, at p.50.
[46] J. N. Kaul, *Governance of University Autonomy of the University Community*, Abhinav Publications, New Delhi (1988), p. 74.
[47] http//www.ugc.nic.in
[48] A. D. Oak, "University Autonomy: Reality or Myth?", E.P.W., No.52 December 17, 1997, p.3312.

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[49] (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)[50] 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

[49] Council constituted under the All India Council for Technical Education Act of 1987.
[50] 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)[51], 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[52]. 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[53], 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

[51] Council constituted under Section 4 the Advocates' Act of 1961.
[52] See Section 7 of the Advocates Act, 1961.
[53] 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[54]:

> "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[55]. 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[56].

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

---

[54] Elizabeth C. Wright, "Courts and Universities- The Impact of Litigation in University Autonomy", 1985 (J.I.L.I.) 27 (1), p. 36.
[55] *University of Mysore* v. *Govinda Rao,* A.I.R. 1965 S.C. 491.
[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[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[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 *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[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[60]:

(1) The volume of litigation has increased because there are more universities, more colleges and more students, faculty and staff. There

---

[57] *Keshab Chandra* v. *Inspector of Schools* A.I.R. 1953 All. 623 at 624.
[58] *Himendrd Chandra* v. *Gauhati University* A.I.R. 1954 Assam 65.
[59] Kothari Commission, University Grants Commission, 1966, p.338.
[60] *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[61].

(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[62], 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[63].

---

[61] *Indra Sawhney* v. *Union of India*, 1992 Supp. (3) S.C.C. 217.

[62] *Y. Shatha* v. *Government Medical College* A.I.R. 1978 Kant. 66,: *G.M. Vaz v. Dean , Goa Medical College*, A.I.R. 1981 Goa 21; *M. Philipose* v. *State of Kerala*, A.I.R. Ker. 149 (F.B.)

[63] *Puttaraju* v. *Bangalore University* A.I.R 1980 Kant 39: *Punjab University v. P.C. Honda*, A.I.R. 1971 P.&H. 177.

(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"[65] that the volume of university litigation is increasing year by year. These rights among others include equal treatment under the law[66], prohibition of discrimination on ground of religion, race, caste, sex or place of birth[67], and equality in matters of public employment[68]. 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 accessable 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

---

[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[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[70]. Judges also tender advice regarding the administration of examination[71], appointments[72], conduct of student election[73] and general state of higher education[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[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

---

[69] *Supra, n.* 54 at p. 48.
[70] *Ibid.*
[71] *Ajaya Hasia* v. *Khalid Mujib*, A.I.R.1981 S.C. 487
[72] *J.P. Kulshestha* v. *University of Allahabad*, A.I.R.1980 S.C. 2141
[73] *University of Kerala (1)* v. *Council Principals' Colleges, Kerala and others*, (2006) 8 SCC 304; *University of Kerala (1)* v. *Council Principals' Colleges, Kerala and others*, (2006) 8 SCC 486.
[74] *Omkar* v. *Shri Venketsawara University*, A.I.R. 1981 A.P. 163 at 165; *Ramlal Agarwala* v. *Sambalpur University*, A.I.R. 1981 Ori. 102 at 104.
[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*[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[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[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[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.

---

[76] A.IR. 1980 S.C. 2141.
[77] *Ibid.*
[78] *Supra, n.* 54 at p. 58
[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 department[80].

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 institutions[81] 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

[81] T Ravi Kumar & Vijender Sharma, "Downsizing Higher Education- An Emergent Crises", E.P.W., February 15, 2003, 603 at p. 606.

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)[82]. 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[83].

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[84].

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.

---

[82] *Id.* at p.607.
[83] *Ibid.*
[84] *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[85].

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[86]. It is evident that the blame could not be placed on the courts. Neither the Central Government could be blamed for that[87]. 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

---

[85] 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 Universities*, Indian Institute of Advanced Study, Simla, (1971), p. 86

[86] Amartya Sen, "The Crisis in Indian Education", *in* S.C. Malik, *Management and Organization of Indian Universities*, Indian Institute of Advanced Study, Simla, (1971), p. 248.

[87] *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"[88]. 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[89].

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[90]. 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[91]. 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

---

[88] *Id.*, at p.250
[89] *Id.*, at p. 251.
[90] K. Sudha Rao, "Autonomy in Education", *in Encyclopedia of Indian Education*, National Council of Educational Research and Training, New Delhi, (2004), p. 142.
[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[92]. 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

[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 enveloping. 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.

CHAPTER - V

JUDICIAL REVIEW OF ACADEMIC DECISIONS OF UNIVERSITIES- AN ANALYSIS OF SUPREME COURT DECISIONS - Part - A

5.1 Background

Jurisdictional parameters of judicial review in India are controlled and developed by the self-restraint and innovation of the Indian judiciary, drawing inspiration from the common law principles. This power could be compared to that of a mountain river, at times aggressive, and still later, calm and quiet. But, there is a uniform rythm for the constitutional flow all throughout and the exceptions are only the upsurge of mud and lather which had subsided sooner than later.

Self-restraint adopted by the judiciary in exercising the power of review has left certain banks untouched or only rarely touched like policy decisions, taxation, foreign affairs, international agreements, defence strategies etc. These areas are not disturbed by the courts unless the decisions under challenge are constitutionally so fragile and unsustainable. Academic decisions of the universities and other educational institutions requiring expertise and experience belong to the above category. If an academic decision is legal and lawful, the reasonableness and propriety of the same may not be questioned by the courts. In other words, among the *Wednesbury* principles of 'illegality', 'irrationality' and 'impropriety', if the decision can get over the first test, it may withstand the other two tests, unless it is shockingly unreasonable, perverse or improper.

It is to be reiterated here that all decisions and actions of the academic bodies like universities, colleges, schools etc., are not academic decisions. When many of the decisions of such institutions are fully academic in content and nature, there is a still larger area of decision making power of such institutions in respect of their administrative powers, disciplinary jurisdiction, financial matters etc.

Therefore, the truly academic decisions are to be distinguished from the administrative decisions of the academic bodies. For a better appreciation of the role played by the courts in disciplining the universities the important decisions of the Supreme Court on academic issues are to be scanned in this perspective.

5.2 Supreme Court and Academic Decisions in General

It is in the above background of judicial review dealt with in the previous chapter that one has to look into its parameters in the academic field in respect of academic decisions. Theoretically, purely academic decisions are treated as beyond the courts reach though, on facts, in several cases the court did interfere. Therefore, the guiding principle and the proposition of law in so far as judicial review of academic decisions is concerned stands as on to-day undisturbed that the court should be slow to interfere and should only seldom interfere in academic decisions of academic bodies. The reluctance for interference of the court in the initial years is evident from the following decisions.

In *University of Mysore and others* v. *Gopala Gowda and another*[1] the regulations framed by the Academic Council of the University prescribed that in the case of a candidate for the B. V. Sc. course failing four times in the first year examination the university can refuse to grant permission to continue the course. When the regulation was under challenge, the High Court of Mysore held that the regulation was beyond the competence of Academic Council or the University and those bodies had no power to prevent the two students from prosecuting their studies and from appearing at the subsequent examination. In the Special Leave Petition moved by the university, the Supreme Court disagreed with the view taken by the High Court and held:

> "The Academic Council is invested with the power of controlling and generally regulating teaching courses of

[1] A.I.R. 1965 S.C. 1932.

> studies to be pursued, and maintenance of the standards thereof, and for those purposes the Academic Council is competent to make regulations, amongst others, relating to the courses, schemes of examination and conditions on which students shall be admitted to the examinations, degrees, diplomas, certificates and other academic distinctions. The Academic Council is thereby invested with power to control the entire academic life of the student from the stage of admission to a course or branch of study depending upon possession of the minimum qualifications prescribed".

It was further found that failure by a student to qualify for promotion or degree in four examinations is certainly a reasonable test of such inaptitude or supervening disability. If after securing admission to an institution imparting training for professional course, a student is to be held entitled to continue indefinitely to attend the institution without adequate application and to continue to offer himself for successive examinations, a lowering of academic standards would inevitably result. Power to maintain standards in the course of studies confers authority not merely to prescribe minimum qualification for admission, courses of study, and minimum attendance at an institution which may qualify the student for admission to the examination, but also authority to refuse to grant a degree, diploma, certificate or other academic distinction to students who fail to satisfy the examiners' assessment at the final examination. Though the court found that the view taken by the High Court was erroneous, on facts since the respondents were permitted to continue the course of study in pursuance of the High Court order and the University having not applied for any interim orders pending disposal of the appeals, the court did not want to deprive the respondents of the benefit of the course that they had already attended and therefore the appeals were dismissed.

In *Principal, Patna College and others* v. *Kalyan Srenivas Raman*[2]the issue was with regard to the shortage of attendance of a

---

[2] A.I.R.1966 S.C. 707.

student for presenting him in the examination. The High Court took the view that he could be presented for the examination as its interpretation of the regulation favoured such a position. In appeal, the Supreme Court held that where the question involved was one of interpreting a regulation framed by the Academic Council of a University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions. It is generally not expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by such authorities on the relevant Regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept.

It was further held[3] that in dealing with matters relating to orders passed by authorities of educational institutions the High Court should normally be very slow to pass *ex-parte* interim orders under Article 226 since matters falling within the jurisdiction of the educational authorities should normally be left to their discretion and the High Court should interfere with them only when it thinks it must do so in the interest of justice.

In the matter of equivalency of qualification, when a question arose as to whether the foreign degree of a candidate for appointment to the post of Reader is equivalent to a high second class Masters Degree of an Indian university as prescribed in the qualification, it was held[4] that the question relate purely to an academic matter and courts should naturally hesitate to express an opinion. The Boards of Selection for appointment to the posts of teachers are nominated by the universities and when recommendations made by them and the appointments made on its basis are under challenge before courts, normally the courts should be slow to interfere with the opinion expressed by the experts. It is also observed that the Board is not in the position of an executive authority

---

[3] *Id.*, at p.713.

[4] *The University of Mysore and another* v. *C.D. Govinda Rao and another*, A.I.R. 1965 S.C. 491.

issuing an executive fiat, nor does it act like a quasi-judicial tribunal deciding disputes referred to it for its decision. The Supreme Court opined that what the High Court should have considered was whether the appointment made by the Chancellor on the recommendation of the Board had contravened any statutory or binding rule or ordinance or was vitiated by *mala fides*. In doing so, the court said the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor had acted.

In *The Bihar School Examination Board* v. *Subhas Chandra Sinha and others*[5] 36 students of a school moved the High Court under Article 226 against the order of the Board cancelling the annual secondary school examination of their centre and praying for a mandamus directing the Board to publish their results. The High Court quashed the order of cancellation of examination and directed the Board to publish the petitioner's results. On the question of compliance of principles of natural justice it was found by the Supreme Court that in the case of adoption of unfair means by vast majority of examinees at a particular centre, when the examination Board cancelled the examination as a whole at that centre, the opportunity to represent their case to all the candidates was not necessary before the cancellation order was passed. It was further held that if it is not a question of charging any one individually with unfair means, but to condemn the examination as a whole, the Board was not bound to give an opportunity of hearing to the candidates. It was also found that apart from the report of the experts, the results speak for themselves. The court upheld the right of the Board thus:

> "If there is sufficient materials on which it can be demonstrated that the University was right in its conclusion that the examination ought to be cancelled then academic standards require that the university's appreciation of the problem must be respected."

In *Sadhna Devi* v. *State of U.P.*[6] minimum qualifying mark was prescribed as basis for selection to medical post-graduate courses in the entrance examination. A circular issued by the State Government removed the above requirement of obtaining the minimum qualifying marks for candidates belonging to S.C./S.T./O.B.C.s. It was held by the Supreme Court that the said circular is invalid and is liable to be quashed. The State, having chosen to hold entrance examination for selection instead of making selection wholly on the basis of performance in M.B.B.S. examination, and having prescribed the minimum qualifying marks in the entrance examination for admission, it would not be open to it to altogether do away with that criterion for the reserved category of candidates, though it could have prescribed lesser qualifying marks for them.

In a case[7] dealing with the emergency power of the Vice-Chancellor provided in the University Act, invoking the said power, the Vice- Chancellor appointed the respondent, which was approved by the Executive Council. Later the Executive Council decided to re-advertise the post, which was under challenge. It was held that the power of Vice-Chancellor was confined to making a tentative decision only and was subject to confirmation by the Executive Council. Allowing the appeal of the university, it was further held that in a matter touching either the discipline or administration of the internal affairs of a University, courts should be most reluctant to interfere.

In *Jawaharlal Nehru University* v. *B.S. Narwal*[8] it was ruled that the court should not interfere where qualified academic authorities decide to remove a student from the university on the basis of assessment of his academic performance. In this case a student was removed from the rolls for continuous fail in examinations and for consistent unsatisfactory academic performance. The court held that in the absence of any allegation as to bias or *mala fides*, the student in

---

[6] (1997)3 S.C.C. 48.
[7] *Varanaseya Snaskrit Viswavidyalaya and another* v. *Dr Raj Kishor Tripathi and another* (1977) 1 S.C.C. 279.
[8] (1980) 4 S.C.C. 480.

such a case has no right to hearing and as such the university authorities were not obliged to afford any such opportunity before striking off his name from the rolls. On facts it was held that the authorities applied their mind in passing the order of removal and hence the order is valid. Therefore the appeal was allowed and the High Court order, quashing the decision of the Executive Council on the ground that the respondent was given no opportunity to show cause before his expulsion and that the university had not applied its mind, was set aside. It was observed thus:

> "The case is merely one of assessment of academic performance of a student which the prescribed authorities of the university are best qualified and the courts, perhaps, are least qualified to judge... One does not hear a claim to be heard when a candidate fails to qualify in an aptitude or intelligence test, written or oral. When duly qualified and competent academic authorities examine and assess the work of a student over a period and declare his work to be unsatisfactory, we are unable to see how any question of a right to be heard can arise. The duty of an academic body in such a case is to form an unbiased assessment of the student's standard of work based on the entirety of his record and potential"

The court relied on *Herring* v. *Templeman*[9] to arrive at the above finding. It was further held:

> "The very nature of the function of 'academic adjudication' (if the use of the word 'adjudication' is permissible in the context) appears to us to negative any right to an opportunity to be heard. If the assessment by the academic body permitted the consideration of non-academic circumstances also, a right to be heard may be implied".

But, if the assessment is confined to academic performance, a right to be heard may not be implied. Of course, if there are allegation of bias or *mala fides*, different considerations might prevail. In the absence of allegation of bias or *mala fides* the declaration by an academic body that a student's academic performance is unsatisfactory is not liable to be questioned in a court on the ground that the student was not given

[9] (1973) 3 All. E. R. 569 at, p584

an opportunity of being heard. It is held on the facts of the case that there are limits to attempt at unnatural extensions of the doctrine of *audi alteram partem*[10]. It appears from the logic and reasoning of the above decision that in such instances the examinations already held by the educational agency are the opportunities granted to the student concerned to prove his academic performance and hence a fresh opportunity is not required to prove his standard of performance.

Maharashtra State Board of Secondary and Higher Secondary Education and another v. *Parithosh Bhupeshkumar Sheth and others*[11] is a landmark decision dealing with the rights of students for inspection and scrutiny of answer books and for revaluation of the same. The High Court in a batch of petitions held that the Regulation to the effect that no disclosure or inspection of the answer books shall be permitted was *ultra vires* the regulation making power of the Board and therefore the Board was directed to permit inspection of answer books. In second batch of writ petitions, the High Court held the provision denying revaluation of scripts as unsustainable since the right to inspection and disclosure of answer scripts would serve no purpose in case the further right of revaluation was denied. Therefore the regulation was declared void and the Board was directed to grant the facility of revaluation of answer scripts to those students who have applied for.

In appeal the Supreme Court held the impugned regulation to be valid and not unreasonable. It was further held that reasonableness does not depend upon the court's own views on the legislative policy as to what it ought to be. It was held that the court

---

[10] See *Controller of Examination and others* v. *G. S. Sunder and another,* 1993 Supp (3) S.C.C. 82, were the respondent admitted malpractice appointed by the Syndicate of the University and the student and the student was debarred for three years, the High Court allowed the respondent's writ petition holding that the respondent's admission is unbelievable. Allowing the appeal the Supreme Court held there was no violation of natural justice as the respondent knew the charges fully well and had admitted his guilt. See also *Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions* v. *Pindigar Sridhar and others,* (2007) 13 S.C.C. 352, where respondent got appointment on compassionate ground suppressing the fact that his mother was employed. Held show cause notice would not have improved his case because the respondent had admitted the fact of suppression.

[11] (1984) 4 S.C.C. 27. See also *Bhushan Uttam Khare* v *Dean, B.J. Medical College and others,*(1992) 2 S.C.C. 220.

should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men, possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlling them. It will be wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded.

It was observed that the Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the Regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the Regulations issued by the Board. In the circumstances, when all the safeguards against errors and malpractices have been provided for, there cannot be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation. If revaluation of the answer papers is to be done in the presence of the candidates, that would, instead of advancing public interest and fair play to the candidates in general, defeat the same. In framing the impugned Regulation, it is submitted that the University might have been guided by the experience and the practical difficulty of dealing with large number of applications for revaluation, to be entertained on remittance of a token fee, and the consequential dislocation they cause in the examination schedule and the delay caused in publication of results.

Another important academic question relating to equivalency of qualifications came up for consideration in *Rajendra Prasad Mathur* v. *Karnataka University and another*[12]. Neither the higher secondary examination held by the Secondary Education Board, Rajasthan after 11 years of schooling nor the 1st year B.Sc.

[12] 1986(Supp.) S.C.C. 740.

examination of the Rajasthan and Udaipur Universities were regarded as equivalent to the pre-university examination of the Pre-University Education Board, Bangalore, which was attained on culmination of a full 12 years course of study. It was held by the Apex Court that the decision of the Karnataka University not to recognize such qualifications for admission to the 1st year Engineering Degree course in Karnataka could not be said to be arbitrary, fanciful or unreasonable.

It was further held that it is for each university to decide the question of equivalence and it would not be right for the court to sit in judgment over the decision of the university because it is not a matter on which the court possesses any expertise[13]. The university is best suited to decide whether any examination held by a university outside the state is equivalent to an examination held by them having regard to the courses, the syllabi, the quality of teaching and the standard of examination. It was held that it is an academic question in which the court should not interfere.

In *University of Allahabad and others* v. *Amrit Chand Tripathi and others*[14] a resolution of the Admission Committee of the university to conduct an entrance test (examination) for admission to degree courses was challenged under Article 226 on the ground that such a proposal should originate from the Academic Council and thereafter take the form of an Ordinance passed by the Executive Council. The High Court accepted the contention and quashed the resolution of the Admission Committee under challenge. In appeal, the Supreme Court held the Admission Committee had power to provide for an entrance test for admission at the first instance. It was also held the Executive Council as such had no power to overrule the decision of

---

[13] See also *Medical Council of India v. Silas Nelson and others,* (1993)3 S.C.C. 184. In a case of migration from a foreign unrecognised Medical College to Indian recognised Medical College it was held the equivalence between the courses of study in the two Medical Colleges is to be decided by the Medical Council of India and not by the Court having no expertise in this regard.

[14] (1986) 4 S.C.C. 176.

the Admission Committee, except by making an Ordinance on a proposal made by the Academic Council.

In *Dalpat Abasaheh Solunke and others* v. *Dr. B.S. Mahajan and others*[15] the selection and appointment of the appellant to the post of Chief Extension Education Officer by the respondent university on the recommendation of Selection Committee duly constituted as per the Statute was under challenge. The Supreme Court ruled that it is not the function of the court to hear appeals over the decisions of the Selection Committee and to scrutinise the relative merits of the candidates. The High Court decision was set aside. The question whether a candidate was fit for a particular post or not is to be decided by the duly constituted Selection Committee, which had the expertise on the subject and the court had no such expertise.

In *Neelima Misra* v. *Harinder Kaur Paintal and others*[16] the appellant as well as the respondents offered themselves as candidates for appointment to the post of Reader in the university. While respondent possessed Ph. D. degree the appellant had no Ph. D. The Selection Committee scrutinizing the appellant's thesis, which was nearing completion, as also her published works found that she had satisfied the alternative qualification of published work of a high standard in the subject. Therefore, on the basis of the research work, publications, experience and performance at the interview graded the appellant at the top in the select list prepared by the respondents and recommended the appellant for appointment to the post. But the Executive Council by a majority of 5:4 disagreed with the recommendation on the ground that the appellant did not fulfill the

---

[15] (1990) 1 S.C.C. 305. See also *University of Mysore* v. *C D Govind Rao*, A.I.R. 1965 S.C. 491; *Kulshreta* v. *Chancellor, Allahabad University*, (1980) 3 S.C.C. 418 ; and *University of Rajasthan, Jaipur* v. *Dr Bhik Lal Jain and others*, (1992) 1 S.C.C. 106, were the decision of the Selection Committee as per the Act to prepare a reserve list of 50 % of the vacancies in addition to the candidate selected was uphelled by the Supreme Court on the ground that when the Selection Committee acts in accordance with the provisions of the Acts and Statutes, it should have been upheld by the High Court..

[16] (1990) 2 S.C.C. 746. See also *Berhampur University and another* v. *Dr. Sailahal Padhi*, (1997) 5 S.C.C. 53, where it was held the order of the Chancellor was final under the Orissa University Act of 1989 and therefore the opinion expressed by the sub-committee of the Syndicate contrary to that of the Selection Committee lost its sanctity. The Chancellor had the advantage of the opinion expressed by the Selection Committee to re-advertise the post and had accepted the same. This was upheld by the Supreme Court as against the decision of the sub-committee of the Syndicate to appoint the respondent.

requirement of essential qualification *viz.* Ph. D. in the subject and therefore was not suitable for the post and further opined that respondents, graded as 2nd and 3rd in the select list, were more suitable for the post. The matter was referred to the Chancellor, who rejected the Executive Council's opinion and accepted the Selection Committee's recommendation on the ground that the appellant possessed the essential qualification as she satisfied the alternative condition.

The Division Bench of the High Court quashed the Chancellor's order in the above case with a direction to reconsider the matter. It was held that the Chancellor had to make a judicial approach to the question and he was enjoined to act quasi-judicially under the Act. Allowing the appeal and setting aside the judgment of the Division Bench the Supreme Court held that there was no justification for the High Court's interference in an academic matter like this. It was further found when appointment were based on recommendation of experts nominated by the Universities the High Court had only to see whether the appointments had contravened any statutory provision or binding Rule or Ordinance. It was held the High Court should have shown due regard to the opinion expressed by the experts constituting the Selection Committee and its recommendation on which the Chancellor had acted[17]. But on another occasion the court had made it clear that the Chancellor must not be guided by extraneous or irrelevant consideration[18]. Regarding the grievance of non-compliance of rules of natural justice by the Chancellor in selection matters, it was held[19], the shift now is to a broader notion of

---

[17] See also *The Chancellor and another* v. *Dr. Bijayanda Kar and others and connected case,* A.I.R. 1994 S.C. 579, where it was held whether a candidate fulfils the requisite qualification or not is a matter which should be entirely left to be decided by the academic bodies.

[18] *E.P. Royappa* v. *State of T.N.* (1974) 4 S.C.C. 3; *Maneka Gandhi v. Union of India* (1978) 1 S.C.C. 248, *Ajay Hasia* v. *Khalid Mujih Sehravardi* (1981) 1 S.C.C. 722 and *Som Raj* v. *State of Haryana.* (1990) 2 S.C.C. 653.

[19] *Keshav Mills Co. Ltd.* v. *Union of India,* (1973) 1 S.C.C. 380; *Mohinder Singh Gill* v. *Chief Election Commissioner*, (1978)1 S.C.C. 405; *Swadeshi Cotton Mills* v. *Union of India*, (1981) 1 S.C.C. 664 and also *M.S. Nally Bharat Eng. Co. Ltd.* v. *State of Bihar*, (1990) 2 S.C.C. 48.

'fairness' or 'fair procedure' in the administrative action, rather than strict compliance of rules of natural justice.

The exclusion of principles of natural justice does not necessarily connote unfairness in action[20]. As stated in *Mohinder Singh Gill's* case[21] in many of those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or to meet a case. From the above, it would seem that the courts are moving away from the insistence on the technical observance of the rules of natural justice to one that in substance satisfies the essence of the principles of fairness, keeping the practical realities of the situation in view. Fair play in action evokes application of a sensitive judicial conscience to the facts of the case.

In *Bhushan Uttam Khare* v. *Dean, B.J. Medical College and others*[22], while dealing with a dispute in respect of revaluation, dismissing the SLP it was held by the Supreme Court that there had been sufficient materials before the Executive Council to proceed in the manner in which it has done. Here the petitioner along with 166 others applied for revaluation of the answer scripts of the 3rd year M.B.B.S. examination held by the University of Poona. When the revaluation results were declared certain students filed representation to the University that their answer papers were revalued by the same set of examiners. The Executive Council of the University enquired about the matter and decided to cancel the revaluation results and to conduct a fresh revaluation of the answer scripts. This decision to cancel the first revaluation was challenged by the petitioner, who had scored high marks in the first revaluation which was cancelled. The High Court dismissed the writ petition. The Apex Court found that in deciding matters relating to orders passed by educational authorities, the court should normally be very slow to pass orders in its jurisdiction because those matters should be left to discretion of those educational

---

[20] Ed's note in (1978) 1 S.C.C. 405 at p. 434.
[21] (1978) 1 S.C.C. 405.
[22] (1992)2 S.C.C. 220.

authorities and the court should interfere only in the interest of justice.

While disposing a bunch of appeals filed by a group of educational institutions, where the State Government declined to recognise the institutes on the ground that they have failed to satisfy the conditions for grant of recognition as provided under the Tamil Nadu Minority Schools (Recognition and Payment of Grants) Rules, 1977, it was held[23] that the conditions regarding the extent of land, size of class rooms, cost of library books number of bath rooms, furniture and equipments etc. are not violative of Articles 14 and 30(1) of the Constitution. It was further held that it is for the state and not for the court to determine the requirements of the institutions. It was found that the institutions that were granted recognition prior to the commencement of the Rules are also bound to comply with the conditions so as to be entitled for permanent recognition. It was held[24] that courts should not issue fiat to allow the students of unrecognized institutions to appear in different examinations pending disposal of the writ application since such interim order affect the career of several students and cause unnecessary embarrassment and harassment to the authorities, who have to comply with the subsequent directions of the court.

In *Council of Homeopathic System of Medicine, Punjab and others* v. *Suchintan and others*[25], while interpreting Regulations II(IV) and (VI), 9 and 10 of the Homeopathy (Diploma Course) D.H.M.S. Regulations, 1983, the Supreme Court held that on failure to pass in any subject(s) in an annual examination, though a student can be admitted to supplementary examination to be held six weeks after the main examination, prior to passing the supplementary examination no provisional promotion to the next higher class can be granted to him. But passing the supplementary examination would not relate back to

---

[23] *St. Johns Teachers Training Institute (For Woman) Madurai and others* v. *State of Tamil Nadu and others*, (1993) 3 S.C.C. 595.
[24] *Id.*, at p.608.
[25] 1993 Supp. (3) S.C.C. 99.

the main examination in which he had failed. Only after passing the supplementary examination the whole becomes complete and after passing the supplementary examination during commencement of the next session, he will lose that session and will be entitled to be admitted to the next examination only

In *Central Board of Secondary Education* v. *Vineetha Mahajan (Ms) and another*[26] during the course of examination the invigilator found the respondent in possession of written materials kept in the pencil box. The Result Committee of the Board found the respondent guilty of using unfair means at the examination and as a punishment her examination for the year 1993 was cancelled. The writ petition filed by the respondent was allowed by the High Court and the punishment was set aside mainly on the reason that the committee has found that the petitioner had not copied despite having written materials with her. Allowing the appeal the Supreme Court held that the High Court fell into a patent error in reading a rebutable presumption in the language of the Rule. It is held that the *sine qua non* of the misconduct under the Rule is the recovery of the incriminating material from the possession of the candidate. The rule does not make any distinction between the *bonafide* or *malafide* possession of the incriminating material. The very fact that the petitioner took the paper concerned and was found to be in possession of the same by the invigilator in the examination hall is sufficient to prove the charge of using unfair means in examination hall.

In *State of Punjab and others* v. *Renuka Singla and others*[27] the question arose whether the court can direct creation of additional seat contrary to the statutory provisions in order to accommodate the litigating candidate. Replying in the negative the Supreme Court held[28]:

> "The High Courts or the Supreme Court cannot be generous or liberal in issuing such directions which in substance

[26] (1994) 1 S.C.C. 6.
[27] (1994) 1 S.C.C. 175.
[28] *Id.*, at p. 178.

> amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. Technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of institution and number of admissions, on "compassionate grounds". The High Courts should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination".

Therefore, it was found that the High Court was not justified in directing admission of respondent 1 on "compassionate ground" and to issue a fiat to create an additional seat which amounts to a direction to violate section 10-A and section 10-B(3) of the Dentists Act.

When cancellation of examination on account of mass copying by notification issued by the Chairman, J & K Board of Secondary Education under the Regulations of the Board was under challenge, it was held[29] the Chairman as delegate of the Board was competent to take action and pass orders in the matter and therefore the notification was valid. It was further held the Board being an expert body comprising of persons experienced in the field the court should not interfere with the decisions of the Board unless there was error in compliance with Rule, Regulation or Notification and manifest injustice perpetrated on the candidates[30].

In a purely academic matter when Regulation 6(5) of the Medical Council of India Regulation on Graduate Medical Education, 1997 provided that a student will pursue 18 months of prescribed study at the transferee Medical College before appearing for the IInd

---

[29] *Chairman, J & K State Board of Education* v. *Feyaz Ahmed Malik and others,* (2000) 3 S.C.C. 59. See also *Union of India and others* v. *Rajesh P.U. Puthuvayalnikathu and others,* (2003) 7 S.C.C. 285.

[30] See also *Union of India and others* v. *Rajesh P.U. Puthuvayalnikathu and others,* (2003) 7 S.C.C. 285, where it was held if it is possible to weed out the beneficiaries of irregularities or illegalities like mass copying in examination from out of the selectees enblock cancellation of the selection or examination is not justified. It was found that cancellation of the selection in its entirety in the absence of any specific or categorical finding of wide spread infirmities undermining the selection process is violative of the proportionality principles in administrative law.

professional examination, the High Court took the view that the proper construction of the Regulation should be that a student, who has migrated from one university to another university, should have completed 18 months study combined in both the colleges together, that is in the college from where he has migrated and in the transferee college. In other words, if he completes 18 months study altogether, he will be eligible to appear for the examination. Disposing the appeal, the Supreme Court found[31] that the object of the Regulation appears to be that although the course of study leading to the IInd professional examination is common to all Medical Colleges, the sequence of coverage of subjects varies from college to college. Therefore, the requirement of 18 months study in the transferee college from where the student wants to appear for the examination is appropriately insisted upon. In the absence of such a stipulation as contained in the Regulation, it is clear that the migrated student is likely to miss instructions and study in some of the subjects, which will ultimately affect his academic attainments. Therefore, it was held the strained meaning given by the High Court which actually changes the language of Regulation 6(5) is not permissible.

In yet another strictly academic matter, in *Thaper Institute of Engineering and Technology and another* v. *Gagandeep Sharma and another*[32] under the unamended regulation of the appellant institute which was in vogue during 1997-98 students of the 1st year failing to secure minimum specified grade in any paper were given benefit of repeating the examination in the said paper(s) and if they fail to secure the specified grade in the second chance also they were asked to leave the institute. The regulation was amended w.e.f. 10th May 1999 whereunder the minimum percentage of pass marks was reduced but the right to repeat the examination was taken away and student who

---

[31] *Medical Council of India* v. *Sarang and others*, (2001) 8 S.C.C. 427. See also *University of Mysore* v. *C.D. Govinda Rao*, A.I.R. 1965 SC 491; *State of Kerala* v. *Kumari T.P. Roshana*, (1979)1 S.C.C. 572; *Shirish Govind Prabhi Desai* v. *State of Maharashtra*, (1993) 1 S.C.C. 211, where all it was reiterated that in matters of academic standards court should not normally interfere or interpret the rule and that such matters should be left to the experts in the field.

[32] (2001) 9 S.C.C. 157.

failed to secure the minimum specified grade were asked to leave the institute. Respondents joined the course in the academic year 1997-98 and on their failure to secure the minimum grade they availed the benefit of repeating the examination under the unamended regulations, but they having again failed to secure the specified grade, their names were removed from the rolls of the institute. But respondents, having secured the reduced minimum percentage of pass marks provided under the amended regulations, claimed to have passed the first year course. The Supreme Court held the respondents cannot be heard to say that they should be allowed to repeat the papers as was provided under the unamended regulations and should also be allowed the advantage of the amended regulation in so far as the reduced percentage of the minimum specified marks is concerned, despite the fact that the amended regulation took away the right to repeat the papers. Allowing the appeal and restoring the judgment of the learned single Judge of the High Court, it was held[33]:

> "Prescribing the academic standards falls exclusively in the domain of the special bodies like Senate, Board of Governors, Syndicate etc. The court would normally not interfere with such prescribed standards and especially when they are intended to improve the academic standards in their respective institutes. The scope of judicial review in such matters would be very limited".

While considering the role of the national statutory bodies governing professional and technical education in their respective field it was held[34] the N.C.T.E. is an expert body created under the provisions of the National Council for Teachers Education Act, 1993. The conclusion of an expert body should not be lightly tinkered with by a court of law without giving due weightage to the conclusion arrived at by such expert body. Therefore, it was held the High Court erred in holding that there was no reasonable justification for the NCTE for not recognizing the B.Ed. (vacation course) which was being imparted by

---

[33] *Id.*, at p. 160.
[34] *Union of India and others* v. *Shah Goverdhan L. Kahra Teachers College*, (2002) 8 S.C.C. 228.

the respondent institution and the impugned judgment of the High Court was set aside by allowing the appeal.

In *Regional Officer, C.B.S.E.* v. *Kum. Sheena Pethambaran and others*[35] the Apex Court has severely crticised the tendency of showing misplaced sympathy or rendering compassionate justice through interim relief by the courts. Passing of class IX examination was a condition precedent and an eligibility criterion to appear in class X examination conducted by the C.B.S.E. Respondent who failed in class IX examination was therefore not eligible to attend the class X examination. But, the High Court in a writ petition filed by the respondent initially by an interim order permitted the respondent to appear in class X examination subject to the decision in the writ petition, but subsequently directed that her result should be declared. High Court finally disposed off the writ petition holding that since the respondent had appeared in the class X examination and her result had been declared provisionally, directed the C.B.S.E. to declare the petitioner's result of the class X examination and to issue a fresh mark sheet without any endorsement thereon. This was appealed against. It was held by the Supreme Court that the High Court's approach was erroneous since validity of the examination undertaken by the respondent should have been properly scrutinized in the light of the relevant bye-laws of the C.B.S.E. It was observed that the Apex Court on several earlier occasion had criticized and deprecated the practice of permitting students to pursue their studies and to appear in examination under the interim orders passed. In most of such cases ultimately it is pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions against the legal provisions[36].

---

[35] (2003)7 S.C.C. 719.

[36] See also *C.B.S.E.* v. *P. Sunil Kumar* (1998) 5 S.C.C. 377, *Guru Nanak Dev University* v. *Parminder Kr. Bansal,* (1993) 4 S.C.C. 401 and *A.P. Christian Medical Education Society* v. *Government of A.P.*, (1986) 2 S.C.C. 667.

After citing several decisions on the point, the Court extracted the following passage from *Guru Nanak Dev University* case with approval[37]:

> "We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy, quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice, exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

In utter anguish and despair it was further observed[38]:

> "We cannot by our fiat direct the university to disobey the statute to which it owes its existence and the regulation made by the university itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws".

In *National Board of Examinations* v. *G. Anand Ramamurthy and others*[39] for admission to medical super specialty examination the eligibility criterion was that the candidate should have completed three years training in the specialty after post graduate degree. Respondent would have completed three years training only by 30th June, 2006. The Apex Court held they were ineligible to appear for the June 2006 examination as they were not qualified as per the above

---

[37] See (1993) 4 S.C.C. 401 at p. 403.
[38] See also *A.P. Christian Medical Education Society* v. *Government of A.P.*, (1986) 2 S.C.C.667 at p. 678.
[39] (2006) 5 S.C.C. 515.

eligibility clause. It was held that direction by the High Court under Article 226 permitting respondents to sit for the examinations as per the schedule dates in the bulletin as prayed for was not proper. It is further held that the High Court was not justified in directing the petitioner to hold the examination against its eligibility condition and in complete disregard of the mandate of the Supreme Court for not interfering in academic matters, particularly when the interference led to perversity and promotion of illegality.

It was further held[40] in the above case that when it is mentioned in the Bulletin in no uncertain terms that the instructions contained in the Bulletin, including the schedule of examinations, were liable to changes based on the decisions taken by the educational agencies, there could be no embargo in the way of the petitioner management bonafidely changing the examination schedule, more so when it had admittedly reserved its rights to do so to the notice and information of the students. Regarding the schedule of pattern of academic year, it was held[41] the decision as to when the academic year should start and should end be left to the educational authorities without any interference being made under the writ jurisdiction.

Thus, glancing through the above and other reported decisions of the Supreme Court on the subject of academic matters, one would find that judicial non-interference in academic matters is the rule and interference is the exception, provided the decision under challenge is of purely academic nature. Generally courts refuse to scan through the academic decisions and to probe into their legitimacy, particularly when the decision is taken by academic experts. But court does interfere when the impugned decision is *prima facie* illegal and irregular being violative of the provisions of the University Act, Statute or Regulations or is shockingly arbitrary and manifestly unreasonable or unjust or is visibly *mala fide*. Being public bodies, universities, their affiliated colleges and other academic bodies have not been left totally

---

[40] *Id.*, at p. 519.
[41] *State of U.P.* v. *D.K. Singh*, (1986) 4 S.C.C. 160.

free by the courts from the constitutional accountability of judicial review. Therefore it was observed[42]:

> "No islands of insubordination to the rule of law exists in our Republic and that the discretion to disobey the mandate of law does not belong even to university organs or other authorities. The retreat of the court at the site of an academic body, as has happened here, cannot be approved".

It was also observed[43] that while legal shibboleths like "hand-off universities" and meticulous forensic investigation of educational organs may both be wrong, a balanced approach of leaving universities in their internal functioning well alone to a large extent, but striking at illegalities and injustice, if committed by however high an authority, educational or other, will resolve the problem.

Regarding the malpractice of copying in examination it was held in *Prem Prakash Kaluniya* v. *The Punjab University*[44], that the question whether an examinee had copied at the examination is a matter for the competent authority of the University to decide and that the conclusion reached on evidence by the said authority cannot be re-examined by the court except on certain very limited grounds. Regarding the opportunity to be furnished to such an examinee, the court found that the examinee must be adequately informed of the case he has to meet and be given a full opportunity of meeting the same. As to what the extent and content of that information should depend on the facts of each case and no hard and fast rule can be laid down in this regard. Once the court is satisfied about the sufficiency and adequacy of the opportunity granted, court will not interfere with the orders of the university authorities prejudicial to the examinee

While dealing with policy decisions of the State Government and the university on compulsory study of state regional language as well as eligibility for admission, the court reiterated its unwillingness to interfere. In the former, when the Government made study of the state regional language compulsory in schools, it was

---

[42] *Dr. J. P. Kulshrestha and others* v. *Chancellor, Allahabad University and others*, (1980) 3 S.C.C. 418, p. 421.
[43] *Ibid.*
[44] A.I.R. 1972 S.C. 1408.

held[45] that the compulsion was not an undue burden on students. In the latter when the respondent university has confined the eligibility for admission for the entrance examination for post-graduate courses to those graduates who have undergone a 10+2+3 years course of study as opposed to 10+2+2 pattern, it was held[46] that the above admission policy was on a perfectly rational basis that the impugned decision was to co-ordinate and maintain standard of education at the pre-postgraduate level.

Adopting a pro-active role the court had interfered in purely academic matters as well, apparently justifying its interference on the basis of the relevant facts of the case, where it could not be avoided in defense of constitutional principles or in the interest of justice. It could be seen that the interference has even affected purely academic decisions as that of selection of books for the course, grants of marks for interview for admission, prescription of syllabus, medium of instruction, selection of faculty and such other matters which, in the normal course, squarely come within the concept of purely academic decision.

Thus when constrained to interfere in a purely academic matter as to the selection of books for educational institutions, where some of the members of the committee or sub committee set up for selecting the books are themselves authors, whose books are also to be considered for selection, it was held[47] that possibility of bias cannot be ruled out. Justice can never be seen to be done if a man acts as judge in his own cause or is himself interested in its outcome. It is held that the principle '*nemo judex in caus sua*' that is, no man shall judge his own cause, is firmly established and is applicable to not only to judicial proceedings but also to quasi judicial and administrative proceedings.

---

[45] *English Medium Students Parents Association* v. *State of Karnataka and others,* A.I.R. 1994 S.C. 1702.

[46] *Jawaharlal Nehru University Students' Union* v. *Jawaharlal Nehru University and another,* (1985) 2 S.C.C. 32.

[47] *J. Mohapatra and Co. another* v. *State of Orissa and another,* (1984) 4 S.C.C. 103.

When 50 marks out of total 150 marks was allotted for interview for admission to medical colleges although it was split into 10 marks each for physical fitness, personality, aptitude, general knowledge and general intelligence, it was ruled[48] that 50 marks for interview out of 150 marks does seem excessive especially when the time spent was not more than four minutes for each candidate. It is also observed that it is difficult to see how it is possible within the short span of time to make a fair estimate of a candidate's suitability on a consideration of the five specified factors. It was further held that the fact that allotment of marks is in accordance with a policy decision may not conclude the matter in all circumstances. If that decision is found to be arbitrary and infringing Article 14 of the Constitution, it cannot claim immunity from challenge. But, considering the fact that the students selected have already completed two terms, the court confined itself by expressing its hope that in future years the Government would reduce the percentage of marks for the interview.

In the matter of prescribing syllabus for a subject there were instances where the court intervened. In *State of M.P.* v. *Raghubir Prasad Agrawal and others*[49] one of the subjects of secondary education in Madhya Pradesh was 'Rapid Reading' for which the State Government after laying down the syllabus, produced necessary text books and distributed the same among students in many schools in exercise of its power under section 5 of the M.P. Act 13 of 1973. Until then the books of the respondent, who is a private publisher, were in use for 'Rapid Reading'. The respondent challenged the Government action in a writ petition before the High Court demanding withdrawal of the Government's text books. The High Court allowed the petition. In appeal by the State Government one of the questions that came up for consideration of the Supreme Court was whether the Government was simply complying with the requirements of 'syllabi' under section 3(2) of the Act; or whether the State has the facultative power to undertake

---

[48] *Ms Nishi Maghu and others* v. *State of J & K and others*, (1980) 4 S.C.C. 95.
[49] (1979) 4 S.C.C. 686.

the academic job. Relying on *Naraindas Indrkhya* v. *The State of Madhya Pradesh and others*[50] and partly allowing the appeal, the Supreme Court found that after hearing the publishers of text books on relevant matters on the selection of text books and considering them on their merits, if the Government considers it proper to take over the text book business under section 5 of the Act it is free to do so. It was made clear that the private sector has no right and government's jurisdiction is wide. It was also, however, observed that the State need not be allergic to private publishers if books of excellence, inexpensive and well designed are readily available.

For the purpose of creating a uniform pattern and schedule for the medical education throughout the country the Supreme Court in *Dinesh Kumar (Dr.)* v. *Motilal Nehru Medical College and another*[51] prescribed a time schedule for the various stages of the courses, examinations etc. and meticulous compliance was insisted upon. It was reiterated[52] that the time schedule fixed in *Dr Dinesh Kumar's* case must be strictly followed by every one running post graduate medical courses and that default, if any, shall be seriously viewed. This cannot perhaps be described as interference in academic matters.

While considering what ought to be medium of instruction in a university, it was held it has necessarily to be decided by the university having regard to the need for maintenance of standards. However, in *Gujarat University and another* v. *Shrikrishna Ranganath Mudholar and other* [53] the Supreme Court ruled that the Gujarat University's prescription of Hindi/Gujarati as medium of instruction in the place of English was *ultra vires* the Gujarat University Act. It was also ruled that maintenance of standards of education is the area of legislation earmarked for the central legislature.

---

[50] (1974) 4 S.C.C. 788.
[51] (1990) 4 S.C.C. 627.
[52] *State of Bihar* v. *Sanjay Kumar Sinha (Dr)*, (1990) 4 S.C.C. 624.
[53] A.I.R. 1963 S.C. 703.

In *Ashok Chand Singhvi* v. *University of Jodhpur*[54], when a candidate concealed nothing from the university at the time of his admission and the authorities granted admission to him after considering all the relevant facts, it was held by the Supreme Court on the principle of estoppel and on equity that he cannot be made to suffer by keeping in abeyance or cancelling his admission after his joining the classes for the mistake committed by the authorities themselves in granting the admission on the basis of a resolution which was contrary to the university Statutes. It may be noted that on some other occasions also the court had come to the rescue of the petitioner student, if the petitioner was not responsible for the impasse or crises, which has resulted in an illegal decision being made by the university, which the university wanted to rectify.

Although it is the proclaimed policy of the Supreme Court that selection to academic posts should entirely be left to the selection committees consisting of experts constituted for the purpose and that the court should be loath to interfere in the same, in *Dr. J.P. Kulshrestha and others* v. *Chancellor, Allahabad University and others*[55] the Supreme Court set aside the panel prepared by the selection committee and approved by the Executive Council and directed a fresh selection to be conducted among those candidates who were qualified in the light of the court's interpretation of the relevant Ordinance in respect of the selection.

It was interesting to examine this decision to perceive the court's opinion as to what should be its approach towards the university's autonomy. It indeed declared that it would respect university autonomy but at the same time asserted that it had a constitutional obligation to see that justice was done. Its observations[56] signify this concern. The court observed:

> "...a fine line of distinction between internal autonomy for educational bodies and insulation of their operations from

---

[54] (1989) 1 S.C.C. 399.
[55] (1980) 3 S.C.C. 418.
[56] *Id.*, at p.421.

judicial interference on one hand and the constitutional obligation of the court to examine the legality of academic actions and correct clear injustices on the other, is jurisprudentially a demarcation between the two positions".

While considering the implication of the ordinance that prescribes "high second class" as qualification it was held[57], 'high second class' is one where the marks fall a little short of first class marks and the candidate narrowly misses the first class. It was observed, the interpretation will misfire if we disregard the intent and effect of the adjective "high" and indifferently read it to mean merely the minimum marks needed to bring the candidate within the second class. "High" is high and a superior second class denotes marks somewhere near the "1st class marks", it was observed.

In the matter of conferment of doctoral degrees it was held[58], it is not a right of the candidate submitting the thesis but it is only a privilege. The respondent submitted his thesis for the Degree of D.Sc. Two of the three members of the Board of examiners recommended for award of the Degree. Whereas the third examiner dissented. Petitioner was informed by the Registrar that in the absence of a unanimous recommendation by the Board no further action could be taken in the matter. Setting aside the judgment of the High Court directing the University to award D.Sc. to the respondent, the Apex Court directed the Syndicate to consider the matter. Although under the relevant Rule, the Syndicate of the University is the competent authority to confer the Degree, the matter never went to the Syndicate. Therefore it was held that the decision ought to have been taken by the Syndicate which could either rely upon the majority view or the minority view after examining the matter, or could even refer the matter to another Board of Examiners. With the above direction, the appeal was allowed.

---

[57] *Id.*, at p.425.
[58] *University of Calcutta & others* v. *Dr. Amiya Kumar Chakraborthy,* (2000) 10 S.C.C. 39.

In *St. Stephen's college etc.* v. *The University of Delhi etc.*[59] the University circular issued to colleges stipulated admission of students based on the marks secured in the qualifying examination. Whereas the college combined the qualifying marks as well as marks obtained in an interview conducted by them. It was held, the admission solely based on the marks obtained by students in their qualifying examination cannot be the best available objective guide to future academic performance. The admission programme of the college based on the test of promise and accomplishment of candidates seems to be better than the blind method of selection based on the marks secured in the qualifying examination. Therefore, it was held that the college is not bound by the circular issued by the Delhi University regarding the method of selection for admission of the students and that the college need not follow the programme for admission laid down by the university and need not admit students solely on the basis of their marks secured in the qualifying examination. It was thus a decision in which the court approved an improvement on the quality of academic programme. Indeed, it did not uphold the authority of the university.

In a case where a recognized course came to be de recognized while petitioners were undergoing it, it was held[60], it would be unjust to tell the students that though at the time of their joining the course was recognized, yet they cannot be given benefit of such recognition and the certificates obtained by them would be futile, because during the pendency of the course it was de-recognized by the State Government. Therefore, Government of Haryana was directed to recognize the certificates issued to the students who joined the course before the course was de-recognized. It was further held that the students who joined the course after its de-recognition were not entitled to the benefit of the judgment. In this case it was in fact not any academic issue that was involved. Rendering justice to the

---

[59] A.I.R. 1992 S.C. 1630.
[60] *Suresh Pal and others* v. *State of Haryana and others,* A.I.R. 1987 S.C. 2027.

students was the real issue and it appears this aspect made the court to intervene.

In yet another case of purely academic issue, it was found[61] that if a paper-setter commits an error while indicating the key answer to a question set by him, the students, who answer that question correctly, cannot be failed for the reason that though their answer was correct, it did not accord with the key answer supplied by the paper-setter to the university as the correct answer. Again, what was involved was an instance of injustice.

Regarding the lack of qualification of the Principal, the court asserted its right to interfere. In a case[62] of appointment to the post of principal without essential qualification, it was held that it was inherent lack of qualification and not mere irregularity and hence such appointment is amenable to writ jurisdiction.

Policy decision is one area where court has consistently been reluctant to interfere with. It is so even in respect of policy decisions of the executive or the legislature. This judicial policy has also excluded the educational or academic policy decisions from its consideration with greater reverence. Occasional interference was called for only when the policy itself was illegal having opposed to the Constitution or any statutory provision.

Thus, in *Jaya Gokul Educational Trust* v. *Commissioner and Secretary to Government Higher Education Department and connected cases*[63] the appellant Trust submitted an application to the University of Kerala and to the All India Council for Technical

---

[61] *Kanpur University and others v. Samir Gupta and others*, A.I.R. 1983 S.C. 1230.

[62] *Commissioner, Lucknow Division and others* v. *Kumari Prem Lata Misra*, A.I.R. 1977 S.C. 334.

[63] (2000) 5 S.C.C. 231. See *Shivaji University through Director* v. *Bharti Vidhyapeeth through Joint Secretary and others*, (1999) 3 S.C.C. 224 were it was held that refusal by the appellant University to permit the respondent educational institution to start a new law college on the basis of the policy of the State Government that there was already a law college in existence in the district concerned was illegal. While dismissing the High Court's order of granting deemed approval to the law college, the matter was remanded to the University for fresh consideration in the light of the observations. See also *Vidharbha Sikshan Vyawastapak Mahasangh* v. *State of Maharashtra and others*, A.I.R. 1987 S.C. 135, were the State Government restrained some colleges from admitting students in the first year of the course on the ground that admission of 3,000 students every year will result in large scale unemployment, accepting the reasoning, it was held the impugned order of the Government was not arbitrary or unreasonable.

Education (A.I.C.T.E.) for approval of their self-financing Engineering College. Separate inspections were carried out by the University as well as the A.I.C.T.E. By a communication, A.I.C.T.E. informed the appellant that they are granting conditional approval to the college subject to the fulfillment of certain conditions specified therein. The appellant under an impression that State Governments' permission was also required to be taken, wrote to the State Government for their approval. Meanwhile, the university included the appellant's college in their approved list of the colleges and courses for affiliation forwarded to the Government. Thereafter, the State Government issued a letter to the Trust rejecting permission for the college. The Trust filed a writ petition challenging the Government decision, which was allowed and the Government was directed to re-consider its decision. The University was also directed to consider the appellant's case for affiliation without reference to the State Government's order. But the appeal preferred by the Government was allowed and the writ petition was dismissed.

Before the Supreme Court it was contended by the State in the above case that at the relevant time it was the "policy" of the State of Kerala not to permit establishment of more engineering colleges in the State in view of the larger number of already existing colleges and bearing in mind the interest of students and the employment situation. Allowing the appeal, it was held that section 10(k) of the All India Council of Technical Education Act, 1987, a Central Act, occupied the field for grant of approval for establishing technical institutions[64]. Whereas the provisions of the Mahatma Gandhi University Act and its Statutes, more specifically, Statute 9(7) merely required the University to obtain the views of the Government, this could not be characterized as requiring the 'approval' of the State Government. If the University statute requires approval of the State Government it would be repugnant to the provisions of Section 10(k) of the A.I.C.T.E. Act, 1987 and would be void. It was held, there are enough provisions in the

[64] See *State of T.N.* v. *Adhiyaman Educational Research Institute*, (1995) 4 S.C.C. 104

A.I.C.T.E. Act for consultation by the A.I.C.T.E. with various agencies, including the State Government and the universities concerned[65]. These were sufficient safeguard for ascertaining the views of the State Governments and universities.

Although the question of affiliation in the above case was not covered by the Central Act, the university could not impose any condition inconsistent with the provisions of the A.I.C.T.E. Act or its Regulations or the conditions imposed by the A.I.C.T.E. It was held Regulation 8(4) of the A.I.C.T.E. Regulations, 1994 only required calling for the comments/recommendations of the State Government and of the University. In case there was difference of opinion between the State Government, University or the Regional Committee of the A.I.C.T.E., the Central Task Force was to make the final recommendation under Regulation 8(4). Here the letter of approval of the A.I.C.T.E. shows that the Central Task Force had given its approval for the appellant's college. The said approval was also based on the inspection by the expert committee of the A.I.C.T.E. If the State Government had any valid objection, other than those that they have already raised during the consultation its only remedy was to place its objections before the AICTE council under the AICTE Act or before its State Level Committee.

It was further held that the so-called 'policy' of the State was not a ground for refusing approval to the college. The State could not have any policy outside the A.I.C.T.E. Act and if it had a policy, it should have placed the same before the A.I.C.T.E. before the latter granted permission. It was therefore held that the University ought to have granted affiliation to the appellants' college without waiting for any approval from the State Government and should have acted on the basis of the permission granted by the A.I.C.T.E. and other relevant factors in the University Act or Statutes. Therefore the appeal was allowed confirming the High Court order of the learned single Judge quashing the Government's letter, and with the direction to the

---

[65] *Ibid.*

University to consider the appellant's application for final affiliation on the basis of the A.I.C.T.E.'s approval.

In a public interest litigation raising the scope of judicial review of the National Education Policy, it was held that it was for the Parliament to take a decision on the National Education Policy one way or the other and that court could not take a decision on the good or bad points of an educational policy[66]. It was mainly contended that National Curriculum Framework for School Education (N.C.F.S.E.) published by the National Council of Educational Research and Training (N.C.E.R.T.) was against the constitutional mandate, anti-secular and without consultation with the Central Advisory Board of Education (C.A.B.E.) and therefore sought to be set aside. In the petition filed under Article 32 of the Constitution it was contended that N.C.F.S.E. and syllabus are also violative of the fundamental right to education, fundamental right to development, fundamental right to information and also Articles 27 and 28 of the Constitution of India. On considering the issue of national importance in detail it was held[67]:

> "It is ultimately for Parliament to take a decision on the National Education Policy one way or the other. It is not the province of the Court to decide on the good or bad points of an education policy. The Court's limited jurisdiction to intervene in implementation of a policy is only if it is found to be against any statute or the Constitution."

It was found that there was nothing in the educational policy or the curriculum which was against the Constitution. However the Union of India was directed to consider the matter of filling up the vacancies in the membership of CABE and convening a meeting of CABE for seeking opinion on the policy and the curriculum.

5.3 Conclusion

From the case law citied above, both in respect of non-interference and interference of the court in academic matters, it may be possible to draw a conclusion that the Apex Court has never shown

---

[66] *Ms Aruna Roy and others* v. *Union of India*, (2002) 7 S.C.C. 368.
[67] *Id.*, at p.412.

any enthusiasm or over-anxiety to interfere in academic issues. As far as possible, the Apex Court was reluctant to upset or disturb the findings and decisions of the academic bodies consisting of experts and the university authorities *viz.* Syndicate, Academic Council, Board of Studies, Selection Committee etc. This was particularly so in respect of educational policy matters. At the same time, the Court did not want to run away from the realities in academic field and abandon their constitutional obligation altogether for the mere fact that they are being confronted with a university or an academic authority and the issue to be decided is an academic issue. It could be seen from the law reports that unlike in some other areas of judicial review, the Apex Court has, all along, displayed self restraint in the matter of interfering with academic decisions and has never shown any undue eagerness to expand their jurisdiction over the period of years.

If the frequency and volume of judicial interference has increased gradually in the academic field, it is not reflective of the change in the attitude of the court. During the last decades there has been an enormous growth in the number of colleges, students and faculty, thereby leading to a consequential increase in the volume of litigation in this field. Over politicization of university campuses, the student unions and faculty associations and, above all, commercialization of education and the resultant maladministration and lack of transparency have all contributed to the expanding horizon of university litigation.

In view of large number of case law reported in respect of the educational institutions and university-related matters it may be of real use if the decisions of the Apex Court are categorized under different heads. Therefore, an orderly attempt to pursue the track of judicial interference by the Supreme Court under distinct sub-heads like admission, examination, revaluation, syllabi and course contents, malpractices and disciplinary proceedings, recognition of degrees and their equivalence, selection of faculty etc. will be of substantial help to have a clear appreciation as to how the court has made the distinction

between academic and non-academic issues in the area so as to justify their interference.

A careful scrutiny of the logic and reasoning adopted by the judiciary in India, as evident from the above discussion, may lead to the conclusion that the judiciary has retained the two grounds *viz.* 'arbitrariness' and 'unreasonableness' to interfere in any decision as they deem fit, where, in fact, judicial discretion comes into play. In order to know whether a decision is arbitrary or unreasonable court can also look into whether the findings of facts are reasonable and based on evidence and whether such findings are consistent with the laws of the land. In any case the yardstick of reasonableness is judicially determinable by the court.

CHAPTER VI

JUDICIAL REVIEW OF ACADEMIC DECISIONS OF UNIVERSITIES- AN ANALYSIS OF SUPREME COURT DECISIONS – Part - B

This chapter attempts to analyse the approach of the Supreme Court towards various categories of academic decisions.

6.1 Recognition/Affiliation

The recognition and affiliation involve exercise of statutory power either by the universities or the national statutory bodies concerned in the case of professional colleges. Although the relevant Acts prescribe the procedural formalities to be complied with for grant of affiliation, recognition, approval, accreditation etc., of the academic institutions, the decision making process involves experience and expertise of academicians to be applied. Inspection of the premises of the applicant institute/college, physical verification of its infrastructure and assessment of the qualification and experience of its faculty are various factors to be satisfied before a decision on affiliation/recognition is taken finally. For this, specific statutory powers are granted to universities and other special statutory bodies like the Bar Council of India (B.C.I.), Medical Council of India (M.C.I.), Nursing Council of India (N.C.I.), All India Council for Technical Education (A.I.C.T.E.), National Council for Teacher Education (N.C.T.E.) etc. The decisions of the Supreme Court in this area at a glance would give an idea of the stand taken by the court in this matter.

Emphasising the importance of the power of affiliation/recognition of the educational institution it was ruled[1] by the Supreme Court that right to establish educational institution does

---

[1] *Unni Krishnan J.P. and others* v. *State of Andhra Pradesh and others* , A.I.R. 1993 S.C. 2178.

not create or carry with it the right to recognition or affiliation. The affiliation or recognition is the primary requirement for private educational institutions that give them credibility and public acceptance. Therefore the authorities granting affiliation/recognition have the right to prescribe conditions which the colleges seeking permission are bound to comply with. When the N.C.T.E. rejected the application for recognition to the B.Ed. course (vacation course) made by the respondent, the Supreme Court upholding the stand of the N.C.T.E. held[2] that the N.C.T.E. is an expert body created under the provisions of the N.C.T.E. Act, 1993 and the Parliament has imposed upon such expert body the duty to maintain the standing of the examination, particularly that of teacher education.

Though not purely of academic nature, but more or less on the administrative realm, the Supreme Court has recognized the supremacy of the national statutory bodies like A.I.C.T.E., B.C.I., M.C.I., N.C.T.E. etc. in deciding the question of grant of recognition/ affiliation to the professional colleges in compliance with their statutory provisions in their Regulations. Thus in *National Council for Teacher Education and another* v. *Committee of Management and others*[3], it was held that the time limit fixed by the regulation under the National Council for Teacher Education Act for submitting application for recognition of the teacher training institutes must be complied with by the applicant and delay, if any, cannot be condoned and the plea for relief on the ground that other institution similarly situated had been recognized cannot be allowed[4].

In the case of Medical Degrees obtained from foreign universities, mainly from universities in erstwhile Russia, for grant of

---

[2] *Union of India* v. *Shah Goverdhan L. Kabra Teachers College,* (2002) 8 S.C.C. 228.
[3] (2006) 4 S.C.C. 65.
[4] See *Krishnaswamy Reddiar Educational Trust* v. *Member Secretary, National Council for Teacher Education and Another and connected cases,* (2005) 4 S.C.C. 89, where the NoC to be issued by the State Government had not accompanied the application. See also *St. Johns Teachers Training Institute* v. *Regional Director, National Council for Teacher Education and Another,* (2003) 3 S.C.C. 321, where it was held the Regulation requiring the application to be accompanied by the NoC of the State Government is *intra vires* the parent Act and the grant or refusal of NoC by the Government is not conclusive or binding on the NCTE and the views expressed by the Government are only to be considered by the Regional Committee of the NCTE while taking a decision for grant of recognition.

permanent registration by Medical Council of India it was held that candidates seeking registration from MCI must qualify the screening test irrespective of the date of joining the foreign course. Aggrieved by the denial of registration, the petitioners filed a writ petition under Article 32 of the Constitution. Dismissing the writ petitions the Supreme Court in *Sanjeev Gupta* v. *Union of India*[5] held that the M.C.I. is the expert body which can lay down the criteria for grant of permanent registration to a person to practice Medicine. It was observed even otherwise the petitioners cannot be permitted to practice Medicine overriding the provisions of the Act as the court has to take into consideration the interest of the public at large as well. It was held[6] that it was not for the Supreme Court to decide as to who was duly qualified to practice medicine. M.C.I. being the expert body is the best judge to do so. It was also noticed that the policy decision to subject the students to undergo a screening test has been upheld by the Supreme Court earlier[7].

The High Court, while refusing to issue direction to grant affiliation, directed the university to hold the first professional examination for students of the unaffiliated and unrecognized dental college at the risk of such students[8]. It was held such a relief was totally unjustified. It was also held that a relief must be such as could be considered permissible in law and worked out on the basis of legally recognized principles. The Supreme Court held that where an educational institution embarks upon granting admission without getting the requisite affiliation and recognition and the students join the institution with their eyes wide open as to the lack of legitimacy in the admission, it would be preposterous to direct the university to hold examinations for the benefit of such students.

The court showed reticence in interfering with the decision of authorities with regard to the affiliation of institutions.

---

[5] *Sanjeev Gupta and others* v. *Union of India and another and Connected cases*,(2005) 1 S.C.C. 45.
[6] *Ibid.*
[7] *Medical Council of India* v. *Indian Doctors from Russia Welfare Association*, (2002) 3 S.C.C. 696.
[8] *Dental Council of India* v. *Harpreet Kaur Bal and others*, 1995 Supp (1) S.C.C. 304.

When the institutions/colleges affiliated to the universities in Chhattisgarh were already abolished and when approached by the students of such colleges, the Supreme Court found that the court cannot issue a direction to any university to grant affiliation. It was held[9] that the court would not issue any direction in this regard either to the State or to the universities concerned. It was for them to take appropriate decisions.

However, the position was different when the court was to handle delay in grant of affiliation. When grant of affiliation was unreasonably withheld or prolonged it was held[10], court's interference was called for as the essential pre-requisites for affiliation were fulfilled. On the facts, temporary affiliation was granted to the appellant, a minority medical institution seven years ago. Students were admitted and permitted to write the examination under the direction of the Supreme Court. The Medical Council of India and other authorities conducted inspections of the institution as directed by the court. But on each inspection new deficiencies were pointed out. The court found that the deficiencies are not such as to permit withholding of affiliation. Therefore the steps for grant of affiliation was directed to be expedited. It was found the manner in which the deficiencies have been pointed out from time to time - each time the old deficiencies were shown to have been removed new deficiencies were shown - gave the impression that the affiliation was unnecessarily delayed. Therefore despite the consistent stand of the court that recognition/affiliation of institutions is to be decided by the competent statutory authorities, the court directed the respondents to issue necessary orders without loss of further time.

When discrimination was practiced by the authorities, the court was quick in interfering. Thus in *Anjuman-E-Islam* v. *State of Karnataka and another*[11], an extreme case in peculiar facts and circumstances, the court has gone to the extent of directing the

---

[9] *Rai University* v. *State of Chhattisgarh and others and connected cases,* (2005) 7 S.C.C. 330.
[10] *Al Karim Educational Trust and another* v. *State of Bihar and others,* (1996) 8 S.C.C. 330.
[11] (2001) 9 S.C.C. 465.

respondents to grant affiliation to the appellant from the ensuing academic year onwards. On facts, application for affiliation was filed for the B.Ed. College for the academic year 1980-81. Application was rejected on the ground of Government policy not to grant affiliation to new B.Ed. colleges in the 8th Plan Period. In the writ petition, High Court found that other applicants had been granted affiliation during the period and the appellant had been discriminated. Therefore, High Court directed the respondent to consider the claim of the appellant. After reconsideration, appellant's request for affiliation was again rejected. In these circumstances the Supreme Court directed[12] the respondent to grant affiliation to the appellant. It was however further said that the order should not be treated as a precedent. The courts have been very cautious in interfering with decisions of academic bodies with regard to grant of recognition and affiliation to colleges as the same is necessary for the institutions to exist as such in the educational system.

6.2 Equivalence of Degrees, Diplomas and Courses

Decisions on equivalence of degrees and diplomas being an issue which is purely academic in nature and content, the Supreme Court had interfered very seldom as it requires academic expertise, experience and wisdom which, normally, no court can substitute. In a case where the respondent's admission to the general nursing course was cancelled on detecting that she did posses the prescribed educational qualification, the High Court directed the Nursing Council to re-admit the respondent. But in appeal, the Supreme Court ruled[13] it is not for courts to decide whether a

---

[12] *Ibid.*

[13] *State of Rajasthan and others* v. *Lata Arun* , (2002) 6 S.C.C. 252. See also *Rajendra Prasad Mathur* v. *Karnataka University and Another,* A.I.R. 1986 S.C. 1448; *Smt. Juthika Bhattachara* v. *State of Madhya Pradesh,* (1976) 4 S.C.C. 96, were considering the equivalency of the B.T. course to that of post graduation, it was held by 'post graduate' degree it means a Masters Degree like M.A. or M. S.C.. and not a Bachelors Degree like the B.T.; *Rampalit Vyakaran Acharya and others* v. *Punjab University, Chandigarh and another,*(1976) 3 S.C.C. 282, were Supreme Court has held that Acharya (Sanskrit) is equivalent to M.A. (Sanskrit) and directed to allow the revised Scale to the appellant

particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification, and such matters are to be decided by the appropriate authority[14].

Where the M.C.I., which is the authority to decide the equivalence of studies in two institutions, had come to the conclusion that there cannot be a migration from unrecognized institution to a recognized Medical College, it was held[15] the High Court was not justified in playing the role of the expert body and hold on ground of equivalence that the candidate was entitled to such migration. As equivalence of courses was required for migration to the 1st year M.B.B.S. course between the two institutions in question, it was held the candidate was not entitled to be transferred to the first year course of the recognized Medical College from the unrecognized medical college as maintained by the M.C.I.

When question arose as to whether the 'evening law course' is a 'part time course' or a regular full time course, the Division Bench of the A. P. High Court held, it was a full time course. But the Full Bench later considered the issue and ruled that the said course was a part-time course. On appeal it was held[16] by the Supreme Court that there was no dispute that the college, though called evening law college, imparts tuition to the students during evening hours, was in all respect on par with the so-called day colleges. The duration of hours of study in the college was the same as that of the day college. It offers the same syllabus over the same number of years as was the day course. The students appear for the same examination of the same university and get the same law degree as do the students of the day colleges. The entrance examination held

---

Acharyas, which was denied to them earlier on the ground that they did not have an M.A. degree in Sanskrit.

[14] *Guru Nanak Dev University* v. *Sanjay Kumar Katwal and another,* (2009) 1 S.C.C. 610. Equivalency is a technical matter to be decided by the academic body and to be declared by publishing specific order or resolution, with which court will not interfere

[15] *Medical Council of India and others* v. *Silas Nelson and others and connected case*, A.I.R. 1994 S.C. 777

[16] *Osmania University and others* v. *A.V. Ramana and others,* A.I.R. 1991 S.C. 2127.

for admission was also common. The only difference was that in the case of evening college the admission to the course was restricted only to employed persons. It was also observed that the question as to whether a course of study is part time or full time is to be determined by the university concerned and in the instant case the university had pointed out to the court that the law course offered by the present college was a full time course which was accepted by the Division Bench. Therefore the appeal was allowed and the High Court's order was set aside.

Considering the question whether a candidate without having a Bachelor's Degree can obtain a Master's Degree, it was held some universities confer Master's Degree without possessing a Bachelor's Degree subject to fulfilment of certain conditions and requirements and such Master's Degree are valid in the eye of law[17]. But this position was reconsidered and distinguished on facts in *Annamalai University, represented by Registrar* v. *Secretary to Government, Information and Tourism Department and others*[18], where it was held that the Master's Degree awarded in violation of Regulation 2 of the U.G.C. Regulation 1985 by a university under the open university system without requiring the three year graduate basic Degree is void.

6.3 Admission

Students' admission to educational institutions, particularly the professional colleges, is another important area of academic activity that result in court proceedings. This is more so with respect to medical education. Seats in M.B.B.S., B.D.S. and post graduate medical courses are hot cakes chased by affluent parents for their wards. Almost all the major disputes relating to admission to medical courses invariably reach upto the Supreme Court. Every volume of Indian Law Reports, particularly of recent times, carry case

[17] *Supra n.* 14.
[18] (2009) 4 S.C.C. 590.

laws in respect of admissions to professional colleges. However, this study has eschewed the decisions on admissions to professional colleges relating to reservation of seats under various categories and the quotas for admission to the professional courses as it is only mechanical interpretation of the relevant rules and contains hardly any academic element. It could be seen from the case law that courts have seldom interfered in the right of educational institutions to regulate the admission to their institutions provided they follow the rules and the norms prescribed by the university and the Government.

In *Veterinary Council of India* v. *Indian Council of Agricultural Research*[19], allowing the appeal of the V.C.I., the Supreme Court held, sub section (1) of section 66 of the V.C. Act confers powers to frame Regulations to carry out the purposes of the Act. Under this power read with section 21(1)(b) and 22 of the V.C. Act, the V.C.I. is authorized to frame Regulations relating to prescribing standards of veterinary education for granting veterinary qualifications and such an authority must include the power to regulate admissions to the course so as to maintain the 'standards of education". It was held, it is no longer possible to argue that norms for admission come into the picture only after admissions are made and have no connection with "standards of education". On the contrary, regulations of admission have a direct impact on the maintenance of standards of education and, therefore, in exercise of its power to prescribe and maintain standards of education, the V.C.I. has the right as well as an obligation to regulate admissions to the veterinary institutions. It was therefore held that the V.C.I. is competent and has the requisite power to hold the all India entrance examination for filling up of 15% of the total number of seats of the All–India quota on merit.

In *Naseem* v. *State of Haryana and others*[20], when petitioner was denied admission on the ground that she had passed

---

[19] (2000) 1 S.C.C. 750.

[20] (2003)9 S.C.C. 357. See also *Mallikarjuna Nudhagal Nagappa* v. *State of Karnataka and others*, (2000) 7 S.C.C. 238; See also *State of Punjab* v. *Renuka Singh*, (1994) 1 S.C.C. 175 and *State of Maharashtra* v. *Vikas Sahebrao Roundale*, (1992) 4 S.C.C. 435 in all these cases admission was

the qualifying examination from an institution not recognized by the respondent, it was held that court could not compel an autonomous educational institution to grant admission to a candidate not holding the requisite eligibility qualification and cannot direct the institution to admit a student, holding a qualification from an institution not recognized by it.

When the transparency of the entrance examination for admission to the post graduate course of M.D.S. conducted by the appellant college was under challenge, Supreme Court concurred with the High Court in cancelling the entrance test. It was alleged in the writ petition that only short notice was given for the entrance test so as to prevent candidates from applying for the test and that students who sought admission were denied application forms. In such circumstances, the Apex Court affirmed[21] the view of the Division Bench of the High Court that the entrance examination was not fair and transparent. But, instead of the High Court direction to fill up the entire seats from the list prepared by the Gujarat University, the Supreme Court directed that all the 24 applicants to be subjected to a fresh merit assessment test conducted by the A.I.I.M.S. and to admit those students who were found meritorious in the test and to fill up the remaining seats from the University list.

In *Kurukshtra University and another* v. *Jyoti Sharma and others*[22] dealing with admission to the M. Sc. Course, all seats having been filled up on the last date of admission, the admissions were closed. But four students left the course for vacancies arising after the last date of admission. The Handbook for admission did not specify as to what should be done in such circumstance. Hence the Vice-Chancellor issued orders for filling up the vacancies on the basis of

---

granted to the students to seats in excess of the allotted strength, which amounted to un approved or un recognized seats as in the case of unrecognized institutions.

[21] *Romil B. Shah (Dr.) and others* v. *State of Gujarat and others and the connected cases,* (2006) 6 S.C.C. 268.

[22] (1998) 6 S.C.C. 763.

merit by calling eligible candidates whose application were pending including those who had been called earlier but had not deposited their fees. Respondents filed writ petition in the High Court and obtained order for admission. The High Court held that the Vice-Chancellor could not have exercised the emergency power under section 11(5) of the Act on the facts of the case. In appeal, the Supreme Court confirmed the order of the High Court and held the orders issued by the Vice-Chancellor do not fall under section 11(5) there being no emergency situation. It was also found no reasons were recorded in writing by the Vice-Chancellor showing that immediate action was necessary to protect the interest of the university and of the student community as required by the 1st proviso to section 11(5).

On a careful reading of the judgment it appears to have deviated from the settled principles of judicial interference in academic matters, particularly in the matters of admission, and more so in respect of the powers of the Vice-Chancellor to act in cases of emergency. It is the admitted case that the Admission Hand Book does not deal with a situation that has arisen in the case, *viz.* filling up of vacancy that have arisen after the admissions were closed. In such a situation, the Vice-Chancellor in exercise of his powers under sections 11(4) and (5) had ordered that the vacancies arisen after the last date of admission be filled up on the basis of merit by calling eligible candidates whose applications were pending including those who had been called earlier but had not deposited their fees and, accordingly, the vacancies were filled up. The respondent being lower in order of merit was not called for interview regarding which there was no dispute. It is submitted that in the given facts of the case the High Court was not justified in quashing the admission given on merit basis and in directing to admit the respondent on the grounds that she was physically present for the selection, that there was no emergency for the Vice-Chancellor which warranted him to fill up the vacant seats(on merit) and that the Vice-Chancellor had not recorded any reasons for invoking the emergency provisions. It was submitted by the university

that under the rules the physical presence of students seeking admission is required only in the 4th list and for the three earlier list students were not required to be physically present but were required to deposit their admission fees after getting their testimonials checked. It was further submitted at the time of 4th list the two most meritorious students were got admitted which was under challenge in the writ petition.

It is sad that the submissions made by the university in the above case that the Vice-Chancellor is the principal executive and academic officer of the university and is empowered to exercise general supervision and control over the affairs of the university; that it was a case of emergency inasmuch as the academic year had begun and there were students who were eligible for admission, could not convince the Apex Court, which had upheld the High Court verdict without holding anything on the above submissions. The fact that in a genuine case of emergency which is evident from the context and circumstance the reasons are implied and understood from the very order was also overlooked by the Apex Court. What the Vice-Chancellor did in the instant case was to give option to the students irrespective of the fact whether they had appeared earlier or not and then the admission was granted to more meritorious students. It was also pointed out and not disputed that earlier for the academic year 1996-97 when such contingency had arisen and the Vice-Chancellor exercised his powers, the same were approved by the Admission Committee of the university. But, still, the Apex Court did not budge and observed that the above contentions were not raised before the High Court and therefore, the High Court had no opportunity to consider the same.

As regards the objection of the university that there could be more meritorious students than the respondent, it was observed that no one else has come forward claiming the seat and therefore the respondent was entitled to the seat. It is all the more unfortunate that the Apex Court has passed such a strained order settling bad law in a

case where admittedly three seats were vacant when the case came up for hearing and all the three students including the respondent had been accommodated therein and were continuing their studies. Having found that the appeals in the above circumstance would appear to be rather more of academic interest, the Apex Court found that two questions have arisen for its consideration- (1) if the Vice-Chancellor was justified in invoking his powers under section 11(5) of the Act and (2) could respondent, who was lower in the merit list be admitted without giving opportunity to other candidates higher in order of merit. After raising the two questions it is sad that the Apex Court has not answered the same in either way. Instead, the court set aside the order of the High Court not by settling down the correct principle of law, but for the reason that all the three candidates including the two candidates whose admission was cancelled by the High Court have been accommodated in the available vacancies. One fails to understand why in a case which had become infructuous on account of admission being given to both the contesting parties, the court had ventured to spend its time and energy to create strange law deviating from the settled principles.

Supreme Court had to consider the question of discrimination in the matter of admission in many cases. It was held[23] that even in private affiliated colleges, reservation of seats for wards of employees of such institutions or of the company which founded such institution was violative of Article 14. It was further held that even though the reserved seats are in addition to general seats and admission made on the basis of the marks obtained in the entrance examination, the admission to the reserved seats made by drawing a

---

[23] *Thapper Institute of Engineering & Technology* v. *State of Punjab and another and connected cases*, (1997) 2 S.C.C. 65. See *Mohan Bir Singh Chawala* v. *Punjab University, Chandigarh and another*, (1997) 2 S.C.C. 171, where, however, the Supreme Court accepted the provision for a weightage to candidates, who passed the qualifying examination from the University concerned in principle, though it was found that 10 percent weightage was on the higher side and held that it should not exceed 5 percent. It was also held that college-wise preference is not permissible in any event, but university-wise preference and preference on the basis of domicile/residence is not bad provided it is within reasonable limits. See also *State of Rajasthan and another* v. *Dr Ashok Kumar Gupta and others*, (1989) 1 S.C.C. 93.

separate list would be unconstitutional. It was also held[24] that even if the institution itself is a deemed university, it cannot make admission on the basis of such reservation for the wards of the employees of such institution or the company which founded the institution.

Upholding the binding nature of the guidelines of A.I.C.T.E. on universities and allowing the appeal, it was held[25] by the Supreme Court that the High Court has erred in directing the appellant to admit the respondent diploma holders contrary to the other necessary concomitants' prescribed by the A.I.C.T.E. for the purpose. It was held that such a direction was contrary to even the guidelines of the A.I.C.T.E. relied on by the respondent.

In an *interse* dispute for admission to the M.S. course the 3rd respondent was not admitted since she had already joined another course and the High Court also rejected her claim for admission. On her request the High Court directed the university to keep one seat vacant. The 3rd respondent argued that in as much as none of the deserving six candidates, who were above her in the order of merit, have chosen to approach the court complaining about their non-admission, they should not be considered for admission against the said seat and that, she, who had approached the court at the earliest possible moment, should be admitted to that seat. Rejecting her contention, the Supreme Court held[26] that the allotment of seats should go according to the merit and that it did not depend upon who came to court and who did not. A more deserving candidate may not have the means to approach the court. It was found by the court that out of the six candidates above the 3rd respondent in the merit list, two of them had indicated their willingness to be admitted against the vacancy available.

---

[24] *Ibid.*
[25] *Regional Engineering College, Hamirpur* v. *Gurjeet Singh and others,* (1996) 11 S.C.C. 312
[26] *Dr. Santhosh Kumari (Mrs.)* v. *Union of India and others,*(1995) 1 S.C.C. 269.

In *State of Madhya Pradesh and another* v. *Kum. Nivedita Jain and others*[27], the Government by an order, completely relaxed the minimum qualifying marks for S.C./S.T. candidates for admission to MBBS on non-availability of qualified candidates of those category. The respondent who was deprived of a seat due to the above order, approached the High Court challenging the impugned order as it destroys equality and violates Articles 14 and 15 and as the order contravened Regulation II of the M.C.I. and would hit section 19 of the I.M.C. Act, 1956. By an interim order respondent was admitted to the Medical College. The High Court allowed the writ petition. The Supreme Court, on appeal held, in the special circumstances of the state, it was valid and not violative of Article 14 and 15. By virtue of the authority conferred by the Medical Council Act, it was held, the Medical Council could prescribe the eligibility of a candidate, who may seek to get admitted into Medical College for obtaining recognized medical qualification. But as to how the selection has to be made out of the eligible candidates for admission into the Medical College necessarily depends on circumstances and condition prevailing in particular states and does not come within the purview of the Council. It appears that this decision may not tally with the accepted principle settled by the Apex Court that it is the statutory right of the M.C.I. to prescribe the eligibility criteria for admission to medical courses in view of their statutory obligation to maintain the standard of medical education. But, it is seen in the instant case that the Supreme Court has relied on Note (ii) of Rule 20 that empowers the Government to grant in case of candidates belonging to the category of Scheduled castes and Schedule Tribes special relaxation in the minimum qualifying marks to the extent considered necessary in the event of the required number of candidates in these categories not being available. On facts the respondent who was already admitted to medical college on the basis of interim order was allowed to continue her studies.

---

[27] (1981) 4 S.C.C. 296 See also *State of Madhya Pradesh and others* v. *Indian Medical Association, M.P. and others*, (1981) 4 S.C.C. 516.

In order to make up the quota meant for S.C./ST candidates in the medical colleges, the State of Madhya Pradesh relaxed the minimum qualifying marks in English for S.C./ST candidates and on such reduced percentage admission were offered to additional S.C./ST candidates under the reserve quota. The Government also offered that students securing admission by virtue of the above relaxation would be given special coaching in English. The High Court refused to accept the contention and directed that the seats made available to the S.C./S.T. candidates by virtue of the relaxation would revert to the general category students. The Supreme Court relying on its three earlier decisions *viz. State of M.P.* v. *Kumari Nivedita Jain*[28], *Aarti Gupta* v. *State of Punjab*[29], *Ombir Singh* v. *State of U.P.*[30] allowed the appeal holding[31] that it has consistently held that the State Government is empowered to relax the minimum qualifying marks requirement to ensure that candidates belonging to S.C./S.T./O.B.C. category secure admission to professional courses.

The Supreme Court had been critical on the tactics of creating additional seats for courses, particularly for post graduate medical courses, for accommodating petitioners who have approached the court. In *State of Madhya Pradesh and others* v. *Dr Sumedha Gajendragadkar (Mrs.) and another*[32], number of post graduate students to be admitted in the Medical College depended upon the number of Professors and Readers available for teaching. Appellant state freezed the existing strength of medical teachers. Consequently a

---

[28] (1981) 4 S.C.C. 296
[29] (1988) 1 S.C.C. 258
[30] A.I.R. 1993 S.C. 975.
[31] *State of M.P. and another* v. *Rakesh Menon and another,* (1995) 2 S.C.C. 134. See also *Rajesh Kumar Verma* v. *State of M.P. and others and connected case,* (1995) 2 S.C.C. 129; *State of Uttar Pradesh and others* v. *Dr. Anumpam Gupta and others, 1993Supp (1) S.C.C. 594* ; and *Dr Sanjay Mehrotra and another* v. *G.S.V.M. Medical College, Kanpur and others, (1989) 1S.C.C. 559*on the same point.
[32] 1993 Supp (2) S.C.C. 185. See also *State of Maharashtra* v. *Minoo Noazer Kavarna and others and connected case,* (1989) 2 S.C.C. 626, where it was held that the High Court was not justified in directing creation of 19 additional seats despite the objection of IMC and the State Government. It was held in exceptional circumstances and for the ends of justice the court may direct creation of one or two additional seat after giving the IMC an opportunity of being hared but certainly the court should not direct creation of so many additional seats when neither the Government nor the IMC has consented to it.

post of Reader in ophthalmology remained unfilled. As a result, admission was denied to respondent because of non-availability of a Reader in Ophthalmology. In the writ petition filed by the respondent direction was issued by the High Court to make appointment of an additional Reader so that on the added strength of Readers the respondent could be admitted to post graduation. Allowing the appeal, the Supreme Court held that the said direction of the High Court was not justified since filling up of vacancies is a policy decision to be taken by the Government. It was further held the High Court was not justified in giving the direction to fill up the vacancy of Reader merely for creating an additional seat for the post graduate course to be offered to the petitioner.

Rejecting the challenge against the Regulation for admission that distinguished between graduates and post graduates in the matter of qualifying marks for admission, it was held by the Supreme Court that the distinction was proper since graduates and post graduates cannot be treated equally. In *Sanatan Gauda* v. *Berhampur University and others*[33], for qualifying for admission to the 3 year degree course in Law, one of the requirements under the university Regulation was that the candidate should have passed the Bachelors Degree with 40 percent or more than 39.5 percent marks in aggregate. Under another Regulation the requirement was passing Masters Degree with minimum 36 percent of marks in aggregate and without any minimum pass marks for any paper subject to provision for deduction of marks obtained which is less than 25% in any paper from the aggregate. The appellant obtained M.A. Degree with above 36 percent in aggregate even after deducting 13 percent marks obtained in one paper. Allowing the appeal it was held by the Supreme Court that a post graduate like appellant need not further satisfy the requirement under the first Regulation, which was intended for graduates only and that for post graduates the requirement under the second Regulation was sufficient.

---

[33] (1990) 3 S.C.C. 23.

The appellant was admitted to the 3 year law course, allowed to appear for the examination and later admitted to the final year course, but at the stage of declaration of his results at the pre-law and inter-law examinations, objections to his eligibility to be admitted was raised by the university on the basis of its own interpretation of the relevant Regulation. It was held[34] by the Supreme Court, by allowing the appeal, that when the appellant had made no false statement and suppressed no relevant fact before anybody, the university is etopped from refusing to declare the appellant's examination results or from preventing him from pursuing his final year course.

In *Pavai Ammal Vaiyapuri Education Trust* v. *Government of Tamil Nadu and others*[35], the Supreme Court considered the *interse* relationship and obligation in respect of admission of students between an affiliated college, the university and the authority further approving the affiliation *viz.* the Bar Council of India. It was held by the Supreme Court that the college shall admit students strictly in the order of merit from among those applying to it for admission. The merit shall be determined only and exclusively on the basis of marks obtained in the qualifying examination. The court further held that this obligation, was inherent in the permission for establishment granted by the Bar Council of India and the affiliation granted by the University. The very fact that the University is admitting this college, a private body, to its privileges means that the private body must subject itself to the discipline inherent in such affiliation.

In *The Principal, Cambridge School and another* v. *Payal Gupta and others*[36] an interesting question arose as to whether a

---

[34] Ibid. see also *Asok Chand Singhvi* v. *University of Jodhpur and others,*(1989) 1 S.C.C. 399, where the applicants application for B.E. Degree course under a university resolution was approved by the Dean and the Vice-Chancellor and appellant remitted the fee and joined the class. Later Dean kept the admission in abeyance on the ground that admission are to be made under University Statutes and the resolution has no effect. The contention was rejected allowing the appeal by the Supreme Court on the ground that there was no fault on the appellant

[35] A.I.R. 1995 S.C. 63.

[36] A.I.R. 1996 S.C. 118. See also *Principal, Kendriya Vidyalaya and others* v. *Saurabh Chaudhary and others,*(2009) 1 S.C.C. 794, where it was held if a student of the same school passes class X

particular school can impose an additional cut off mark other than the pass mark in class X public examination conducted by the C.B.S.E. for granting admission to the next higher class, class XI. The facts of the case show C.B.S.E. introduced 10+2 scheme of education up to the level of 10+2 class, visualizing two distinct stages, one up to class X and the other up to class XII so that the student with certain competence should alone pursue education beyond class X. The Cambridge School, New Delhi with a view to achieve the aforesaid objective and to upgrade the academic standard of each student through special programme prescribed a cut off level of 50% marks for admission to class XI of the said school. Aggrieved by the order of the school, few students and their parents approached the Deputy Education Officer (D.E.O.), who directed the school authorities to admit students without any pass percentage. The school authorities objected the jurisdiction of D.E.O. as the power to regulate admission under Delhi School Education Rules vests in the head of the school. In the writ petition filed by the students, the High Court took the view that an un-aided recognized school cannot of its own fix a criterion of not admitting its own student to class XI unless they secure certain minimum percentage of marks in class X examination, and that such a restriction would be arbitrary, unreasonable and irrational. In Appeal by the school, while confirming the High Court verdict the Supreme Court held[37] that the 'the scheme of the Act and Rules made thereunder show that once a student is admitted to a school the same admission continues class after class until he passes the last examination for which the school gives training and no fresh admission or readmission is contemplated from one class to the other. It was further held in a Higher Secondary School such as the one in question, the examination of 10th class cannot be regarded as a terminal examination for those who want to continue their study in 11th and 12th classes of the said school'.

---

examination, then irrespective of whether he could secure the cut-off marks or not, his promotion to class XI would be automatic without involving any fresh admission or re-admission.

[37] *Ibid.*

In *Guru Nanak Dev University* v. *Sanjay Kumar Katwal and another*[38] for admission to the LL.B. course the qualification prescribed by appellant university was Bachelors Degree with not less than 45% marks "or" Masters Degree. Appellant university's interpretation that Masters Degree was considered as an eligible qualification only where a candidate had not secured 45% marks in Bachelor's Degree course was rejected and it was held the word "or" is used in disjunctive sense indicating that the two qualifications were alternative and possessing either of them would make a candidate eligible for admission.

The University's contention that the Master's Degree of the petitioner student secured under distance education had not been recognized as equivalent by the appellant to that of their regular Master's Degree was overruled[39] by the Supreme Court on the facts of the case that the student was admitted through an entrance examination, that he had not suppressed anything at the time of admission, that he was permitted to write the 1st semester examination and also permitted to complete the course under orders of the High Court. Therefore, it was held irrespective of the fact that the M.A. Degree secured by the student may not be recognized as equivalent to the M.A. of the appellant university his admission should not be cancelled and the university was directed to treat the admission as regular and to declare his results.

In *Modern Dental College and Research Centre and others* v. *State of M.P. and others*[40] the Supreme Court had to consider the competing claims of the autonomy of private unaided professional colleges *vis-à-vis* the governmental control over the same in the matter of admission of students and fixitation of fees structure in private professional colleges. It was held that private unaided institutions have the right to devise rational manner of selecting and admitting students. However, certain degree of state control is required since state has the

[38] (2009) 1 S.C.C. 610.
[39] *Ibid.*
[40] (2009) 7 S.C.C. 751.

duty to see that high standards of education are maintained in all professional institutions, which has a direct bearing on the welfare of the public.

Following the ratio in *T.M.A. Pai Foundation*[41] it was held[42] the right to establish and run educational institutions is a fundamental right, but such right, as in the case of all other fundamental rights, is subject to reasonable restrictions. Therefore the impugned state Act of 2007 providing entire selection process for under graduate, graduate and post-graduate Medical/Dental colleges and the fee fixitation therein by the state government or its agencies is *prima facie* unconstitutional since it is contrary to and inconsistent with the ration in *T.M.A. Pai.*

The Apex Court had to consider the justifiability of the High Court's direction for shifting of candidates to other colleges after admission process is over, and held[43] that such a practice should be avoided, especially when the competent authority has strictly followed the rules and procedure relating to admission. It was held more meritorious candidates are entitled to exercise preference depending on creation of vacancies in other colleges after the first round and at the end of final selection. Allowing the appeal, it was held respondent no.1 being less meritorious as his ranking position is 963, than respondent no.2, whose ranking position is 869 and respondent no.3, the second respondent's claim for shifting his admission to the other college where vacancy has arisen cannot be rejected.

It is found that in matters of admission of students, the court, though not normally expected to interfere, is constrained to mix up compassion with expediency in some cases. In one such case[44] in the matter of M.B.B.S. admission, when the High Court ordered provisional admission of the petitioner and later permitted him to

---

[41] (2002) 8 S.C.C. 481.
[42] *Supra, n.* 32
[43] *State of Maharashtra and others* v. *Sneha Satyanarayan Agrwal and others,* (2008) 15 S.C.C. 353.
[44] *Kunal Pankaj Kumar Shah* v. *Justice R. J. Shah (Rtd.) Admission Committee and others,* (2008) 10 S.C.C. 709.

continue the course and the Supreme Court, while admitting the S.L.P., permitted the appellant to appear for the first year examination, it was directed by the Supreme Court to regularize the admission of the petitioner in one of the admitted vacancies in the N.R.I. quota, where a student left the course, and to publish the petitioner's first year M.B.B.S examination result and to further permit him to prosecute his studies.

6.4 Examination

Conduct of examination is a sensitive area belonging exclusively to the academic regime, where courts are extremely reluctant to tread into. The rigidity of the stand taken by the Supreme Court in this matter is evident from its decision in *National Board of Examination* v. *G. Anand Ramamurthy and others*[45].

In the above case, as regards eligibility for appearing in super specialty examination, the requirement under the relevant clause was that candidates should have completed three years training in the specialty after post graduate degree. Respondents were to complete three years training only by 30th June, 2006. It was held by the Supreme Court that the respondents were ineligible to appear for June 2006 examination as they were not qualified as per the above clause. It was held the High Court's direction to the petitioner institution to hold the examination against their policy is leading to perversity and promotion of illegality and hence was not justified. An argument of denial of legitimate expectation of the students was also rejected.

Regarding change in the examination Schedule, it was held[46] that there could be no embargo in the way of the petitioner institution bonafidely changing the examination Schedule, more so when it had admittedly and categorically reserved its right to do so to the notice and information of respondent candidates.

---

[45] (2006) 5 S.C.C. 515.
[46] *Ibid.*

In *Preeti Kumari Sharma (Smt.)* v. *University of Rajasthan and others*[47], appellant had passed Maha Vidushi examination conducted by Mahila Gram Vidyapith, Prayag, Allahabad in 1985. This was considered equivalent to 11th standard examination at that time. She was admitted in 1986 to the 1st year of the three year Degree course (Arts) of the University of Rajasthan as it was permissible then. She failed in the 1st year examination. Thereafter appellant discontinued her studies. In the year 1993 she applied to the Board of Secondary Education, Ajmer Rajasthan for permission to appear in the Senior Secondary School Examination (12th standard examination) conducted by the 2nd respondent, who have never recognized the qualification of Maha Vidushi. In 1986 this qualification was recognized by the Rajasthan University. However, shortly thereafter on 21.7.1986 the Rajasthan University derecognized with immediate effect this qualification of Maha Vidushi. This was in view of the direction from the University Grants Commission relating to certain fake universities. Therefore, it was held that in 1993 this qualification did not make the appellant eligible for admission to the 12th standard examination conducted by the 2nd respondent Board. She had sought admission to the 2nd respondent Board for the first time in 1993. At no point of time the qualification she possessed was recognized by the 2nd respondent Board. Therefore, while upholding the authority of the Board to decide the eligibility of candidates for appearing for their examinations it was held that the High Court had rightly dismissed the appeal and the S.L.P. was also dismissed.

Where the M.C.I. and University prescribed a minimum period of three years training for eligibility to appear M.D. examination, the respondent candidate was given leave for 42 days subject to the condition that he would have to repeat the training before appearing in the final examination. The university though empowered to condone 30 days absence did not exercise the said

power. It was held[48] the respondent could appear only in the next examination on account of 42 days shortage in the required training period. On the peculiar facts of the case High Court directed the University to declare the result of the respondent, who, though not satisfying the prescribed requirement of minimum period of attendance, had been admitted to the M.D. examination provisionally on the basis of an interim order of the High Court. High Court further directed that the said case should not be treated as a precedent. However, the record showed that the said decision was followed repeatedly by the High Court and lower courts. It was held by the Supreme Court, that in such circumstances with a view to uphold the sanctity of the requirement of the M.C.I. and the university, the decision of the High Court was to be set aside. It was clarified by the Supreme Court that if the present case had been an isolated one, it might not have interfered with the impugned decision.

The court, it is felt, was guided quite often more by equity and justice rather than by mere laws. The following case signifies this approach. In the admission entrance test for Medical courses, wrong type of answer book was given to the appellant, which after some time was replaced by correct one, resulting in loss of examination time for the candidate. Appellant who answered 170 out of 200 questions and obtained 94.555% of 170 marks intimated the convenor of the examination that the replacement of the answer book had caused loss of half an hour to her but that no extra time was granted to her to compensate the same. In the absence of redress, appellant filed writ petition seeking her answer book to be assessed on the basis of 170 marks instead of 200 marks. Before Supreme Court, the respondent submitted that the first answer book was not traceable and that treating it as a spoiled one the authorities must have weeded out the same. In such circumstances, it was held[49] that it had to be assumed that the answer book, if produced, would have substantiated the

---

[48] *Maharshi Dyanand University* v. *Dr. Anto Joseph and others*, (1998) 6 S.C.C. 215.
[49] *C. Thulsi Priya* v. *A.P. State Council of Higher Education and others*, (1998) 6 S.C.C. 284.

appellant's case that she wrote her answers on the wrong answer book for about 20 minutes. It was held that the High Court should not have refused to interfere on the ground that the matter required investigation into facts. Therefore, in order to do complete justice, the appellant was directed to be considered for admission in a Medical College in the quota of the State concerned for the current academic session on the basis that she had secured 94.555% marks at the admission test. In the instant case, the student sent a telegram and a letter to the examination authorities on the next day seeking relief against the loss of time for answering the questions. It was held the High Court should not have refused relief on the ground that the student had participated in the examination without submitting written protest then and there as a young and nervous student could not be expected even to think of doing so. Therefore, there was no question of estoppel by participation.

While interpreting the Homeopathy (Diploma Course) D.H.M.S. Regulation, 1983, it was held[50] by the Supreme Court that the plain meaning of the Regulations regarding examinations should be accepted. Under the Regulation, on failure to pass in any subject(s) in an annual examination, a student can be admitted to the supplementary examination to be conducted six weeks after the main examination. It was held prior to passing the supplementary examination, no provisional promotion to the next higher class can be granted to the student and that passing in the supplementary examination would not relate back to the main examination in which he had failed. Only after passing the supplementary examination the whole becomes complete. After passing in the supplementary examination during the commencement of the next session, he will

---

[50] *Council of Homeopathic System of Medicine, Punjab and others* v. *Suchintan and others,* 1993 Supp (3) S.C.C. 99. See also *University of Rajasthan, Jaipur* v. *Roshan Lal Seth,* (1974) 1 S.C.C. 371, where interpreting the University Regulation that the candidate should obtain at least 36 percent of the aggregate marks in all the papers in the M.A. previous examination as well as in the M.A. final examinations separately, it was held that the total marks obtained in the previous and final examinations cannot be added to make up the requisite 36 percent of aggregate marks for getting a pass in M.A. as the language of the Regulation is plain and unambiguous, which should be accepted

lose that session and will be entitled to be admitted to the next examination only on satisfying the requirement of Regulation 9. In view of the literal interpretation of the Regulation, the appeal was allowed and it was held that hardship to the student is irrelevant and that the plain meaning of the Regulation should be accepted.

Regulation 117 of the Orissa Higher Secondary Education Regulation, 1982 empowered the Examination Committee "to frame general rules giving benefit to hard cases". It was for the Examination Committee to decide in which hard case the benefit should be given. Clause (8) of the Regulation says the benefit of the hard case rule shall not be extended to candidates whose paper(s) of examination have been cancelled for violation of examination Rules. It was held[51], it cannot be said that clause (8) of the rules was unrelated to the object and purpose underlying the Regulation or that it was unreasonable. Nor could it be said that clause (8) amounted to inflicting double punishment. There was only a case of refusal to extend the benefit to a certain category of candidates. Therefore, the appeals were allowed and the judgment and orders of the Orissa High Court were set aside.

Considering the liability of the University that allows a candidate to wrongly attend an examination without scrutinizing his eligibility for attendance, it was held by the Supreme Court in *Shri Krishna* v. *The Kurukshetra University, Kurukshethra*[52] that once the candidate was allowed to take the examination, rightly or wrongly, then the statute which empowers the university to withdraw his candidature had worked itself out. The candidate in such a case could not be refused admission to the examination subsequently for any infirmity which should have been looked into before permission was given to the candidate to appear in the examination. It was further

---

[51] *Council of Higher Secondary Education, Orissa and another* v. *Dyuti Prakash Das and another,* 1993 Supp (3) S.C.C. 657.

[52] (1976) 1 S.C.C. 311. See also *The Board of High School and Intermediate Education, U.P. and others* v. *Kumari Chitra Srivastava and others,* A.I.R. 1979 S.C. 1039, where it was also held that the Board in cancelling the examination of the respondent for shortage in attendance was exercising a quasi judicial function and it was incumbent upon it to have issued a show cause notice to the respondent before inflicting the penalty of cancelling her examination.

held, if neither the head of the department nor the university authority took care to scrutinize the application form and allowed the appellant to appear for the examination without the minimum required attendance, the question of the appellant committing a fraud did not arise.

In *Prem Prakash Kaluniya* v. *The Punjab University*[53] while dealing with enquiries conducted by the universities in respect of examination malpractices and as to the right of the student, the role of the university, and the nature of the enquiry, the following guidelines and norms were fixed by the Supreme Court:

i) An examinee should be adequately informed of the case he has to meet and be given full opportunity of meeting it. As to what extent and content of that information should be, would depend on the facts of the case. The examinee can ask for more details or information with regard to the materials or evidence and the enquiring authorities should supply such details of evidence. No hard and fast rules can be laid down in this respect.

ii) Under Article 226 of the Constitution, the matters and evidence adduced before the enquiry committee of the university cannot be re-examined or re-assessed by the court. It was for the Standing Committee to arrive at its own conclusions on the evidence before it and such evidence cannot be re-examined in a writ petition filed under Article 226 of the Constitution.

iii) Evidence of direct nature may not be available in such cases. But so long as the enquiry held was fair and it afforded the candidate adequate opportunity to defend himself, the matter should not be examined by the courts with the strictness as applicable to criminal charges[54]. When the findings are based on probabilities and

[53](1973) 3 S.C.C. 424. See also *The Board of High School and Intermediate Education, U.P.* v. *Bagleswar Prasad and others*, A.I.R. 1965 S.C. 875.

[54] See also *Union Public Service Commission* v. *Jagannath Misra*, (2003) 9 S.C.C. 237

circumstantial evidence, such findings cannot be said to have been based on no evidence.

While coming down heavily on the practice of allowing students of unrecognized institutions to appear in the university examinations under interim orders passed by the courts, it was held by the Supreme Court in *St. John's Teachers Training Institute (For Women), Madurai* v. *State of Tamil Nadu and other*[55] that in view of series of judgments of this court, the high courts should not issue such fiat pending disposal of the writ application. Such interim orders affect the career of several students and cause unnecessary embarrassment and harassment to the authorities who have to comply with such directions of the court. It was held that there is no occasion for the courts to be liberal or generous, while passing interim orders, particularly when the main writ applications have been filed only when the dates for the examinations have been announced. In this process students, without knowing the design of the organizers of such institutions, become victims of their manipulations.

Dealing with the ineligible interlocutory justice and benevolence shown by the courts, it was reiterated[56] by the Supreme Court that to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the court and then to compel the Board to issue certificates in favour of those, who have undertaken the examination, would tantamount to subversion of law and academic discipline leading to serious impasse in academic life.

---

[55] A.I.R. 1994 S.C. 43. See also Central Board of Secondary Education v. Nikhik Gulati and another, A.I.R. 1998 S.C. 1205; A.P. Christians Medical Education Society v. Government of Andhra Pradesh, A.I.R. 1986 S.C. 1490; and State of Tamil Nadu v. St. Joseph Teachers Training Institute, (1991) 3 S.C.C. 87, where the Apex Court had already condemned the practice of issuing interim orders allowing students to appear for examination during the pendency of W.P.s of the management for recognition of the college.

[56] *C.B.S.E. and another* v. *P. Sunil Kumar and others*, A.I.R. 1998 S.C. 2235. See also *State of Maharashtra* v. *Vkas Sahebrao Roundale*, A.I.R. 1992 S.C. 1926 and *Guru Nanak Dev University* v. *Parminder Kr. Bansal*, (1993) 4 S.C.C. 401.It was held that loose and ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. But see also *Bhartiya Homeopathy College, Bharatpur* v. *Students Council of Homeopathy Medical College*, A.I.R. 1998 S.C. 1110 where the Vice-Chancellor permitted the student of a college not affiliated due to a contingency and when it was ratified by the Syndicate it was held to be valid.

The compassionate approach shown by the court in the matter of genuine and *bona fide* grievances is further evident in *Abhijit* v. *Dean, Government Medical College, Aurangabad*[57]. In the matter of admission to M.S. course, the petitioner was seriously ill and hospitalized during final terms of IIIrd M.B.B.S. and was unable to attend classes and did not even submit the examination application form in that year. Instead, the petitioner passed M.B.B.S. with the next batch as permitted on his own application to attend classes and clinics regularly with the next batch. It was held by the Supreme Court that deduction of five percent marks on the ground that he passed the qualifying examination in second attempt and consequential denial of admission to the M.S. course was not proper or justified. While interpreting the relevant Rule it was held if the rule has the effect of treating failure to appear at the examination because of serious illness as non-appearance at the examination so as to make the candidate liable to a deduction of five percent of marks when seeking admission to a post graduate course the rule is indeed arbitrary.

6.5 Malpractices in Examination

Decisions on malpractices in examinations resorted to by students came to be reviewed by the judiciary quite often and the court's stand has been generally deterrent[58]. Regarding cases of mass copying it was held that principles of natural justice need not be strictly complied with[59]. In one case, respondent's result in the Intermediate examination was withheld as a suspected case of using unfair means. He was issued with a provisional mark list without showing that his result has been withheld. Later, in another provisional mark sheet issued after the cancellation of his

---

[57] A.I.R. 1987 S.C. 1362

[58] See *Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh and others* v. *Varbhav Singh Chauhan,* (2009) 1 S.C.C. 59. High Courts approach of imposing proportional punishment on a candidate who was found in possession of a slip in the examination hall was rejected observing that there must be purity in examinations and that no sympathy should be shown to candidates resorting to unfair means. It was held mere possession of the slip is a malpractice irrespective of the fact whether or not the slip was actually used.

[59] *The Bihar School Examination Board* v. *Subhas Chandra Sinha and others,* A.I.R. 1970 S.C. 1269.

examination, it was shown that the respondent's result was withheld. It is also admitted that the respondent did not apply for nor was given the final mark sheet nor any certificate of passing the examination. On the basis of the provisional marks sheet respondent passed his B. A. and M. A. examination and got an employment as Teacher in a college. Later, some inquiry was conducted as regards his passing of the Intermediate examination, as a result of which the Principal of his college informed him that his result of the Intermediate examination of the year 1984 was cancelled. It was held[60] by the Supreme Court that once fraud is proved it will deprive the person all advantage and benefit obtained thereby and delay in detection thereof and in taking action cannot raise any plea of equity. It is observed that a student who has taken admission on the basis of a provisional mark sheet would keep a watch over the situation and would make repeated enquiries as to what action have been taken and why a final mark sheet has not been issued.

The above decision appears to be a hard case which does not go with the dictum laid down by the Supreme Court that once the candidate has not suppressed anything at the time of admission and he has been permitted to appear for the final examination, he cannot be denied with the result of his examination. In the instant case, barring the fact that his result was withheld for an alleged malpractice in examination, he has not suppressed any thing at the time of seeking admission for the B.A. and M.A. courses, instead got admission to said courses based on the provisional mark sheet issued to him. It was the duty of the authorities of the college(s) from were he took his graduate and post graduate degrees to have insisted for production of either the final mark sheet or the qualifying degree itself before he being sent to the examinations. Instead, making him liable for the inordinate delay that happened in the enquiry proceedings in respect of his alleged examination malpractice is devoid

---

[60] *Ram Preeti Yadav* v. *U.P. Board of High School and Intermediate Education and other,* (2003) 8 S.C.C. 311.

of compassion and equity, particularly when he had obtained a job and got settled on the basis of his B. A. and M.A. degrees.

In *Madhyamic Siksha Mandal M.P.* v. *Abhilash Siksha Prasar Samithi and others*[61], the Madhyamic Siksha Mandal cancelled the examination on the report of the Naib Tehsildar who had visited the examination centre and found the students copying with impunity even before distribution of the question papers. Valuer's report also showed that there was mass copying. It was contended by the petitioners that the Naib Tehsilder was not authorized to visit the examination centre. The Supreme Court said that what is important and relevant is that he did visit the centre and found the students copying even before the question papers were distributed. This clearly implies that the students were aware of the questions indicative of the leakage of the question papers. The Naib Tehsildar states that neither the Superintendent of the centre nor the invigilators were prepared to interfere and were not able to explain how the students could enter the hall with books etc. and copy there from with impunity. Allowing the appeal it was held by the Supreme Court that in the above facts there was no justification for the High Court to have interfered in the decision taken by the Board cancelling the examination.

It was also held that the contention that innocent students become victims of such misbehaviour of their companions cannot be helped and that the Board is left with no alternative but to cancel the examination. It was very difficult for the Board to identify the innocent students from those indulging in malpractices. The Board had no other alternative but to cancel the examinations. It was held that it should serve as a lesson to the students that such malpractices will not help them succeed in the examination. It was directed that those in charge of examination should also take action against the supervisors/invigilators etc. who either permit such activity or become silent spectators thereto. If they feel insecure because of the strong arm tactics of those who indulge in

---

[61] (1998) 9 S.C.C. 236

malpractices, the remedy is to secure the services of the uniformed personnel, if need be and ensure that students do not indulge in such malpractices.

In the area of evaluation of answer sheets, where the courts would normally not interfere, evaluation of the answer sheets by the staff of the Public Service Examination was held[62] to be valid, even though they had no knowledge of the subject, as the examination was of objective type and the key answers had been supplied by the paper setter. It was found that no candidate was put to any disadvantage as there was no negative marking and the decision as to the mode of evaluation had been taken by the full Commission in its meeting. It was also held, when the evaluaters were merely asked to give marks with reference to key answers supplied by the question setters there was no need to send the answer books for outside valuation.

In the objective type of examination an inference was drawn by the High Court that the question paper contained controversial questions. It was held[63] by the Supreme Court that in the absence of appointing an expert body and obtaining its opinion about the confusing or controversial nature of the questions such inferences are not justified.

The flying squad found many students in possession of incriminating materials. On seeing the squad, the students threw it to the floor. Later the subject expert on examining the answers found that the answers were copied down by the respondents from the incriminating materials. The Standing Committee of the university on comparison found that the answers were verbatim copies from the incriminating material. The respondents were charged for using unfair means in the examination and were issued with show cause notice and were asked to appear before the Standing Committee. Not satisfied with the replies submitted, the respondents were found guilty

---

[62] *Subash Chandra Verma and others* v. *State of Bihar and others,* 1995 Supp. (1) S.C.C. 325.
[63] *Ibid.*

and were disqualified from appearing in the examination for two years under the relevant Ordinance of the University. When challenged, the High Court quashed the proceedings of the Standing Committee on ground of non-recovery of the incriminating material from the possession of the respondents. Allowing the appeal, it was held[64] by the Supreme Court that the expression 'unfair. means' as defined in the Ordinance of the university is on the face of it inclusive and not exhaustive. It was observed that the menace of copying has already reached an alarming stage and in fact is a disgrace to our education system. There is no end to the ingenuity in discovering new techniques and methods of copying in the examination halls. The court observed that it is not, therefore, possible to give an exhaustive definition of 'unfair. means'.

In a clear case where written material relevant to the examination was recovered from the examinee, it was held[65] that it is sufficient to establish the use of unfair means in the examination under the relevant Rules. It was also held that the presumption cannot be rebutted by proving the non-use of the material so possessed. The *sine quo non* was the recovery of the incriminating material from the possession of the candidate. Once the candidate was found to be in possession of papers relevant to the examination, the requirement of the Rule was satisfied and there was no escape from the conclusion that the candidate had used unfair. means in the examination. The Rule does not make any distinction between *bona fide* or *mala fide* possession of the incriminating material. The very fact that the candidate took the papers relevant to the examination in the paper concerned and was found to be in possession of the same by the Invigilator in the examination hall was sufficient to prove the charge of using unfair means by her in the examination under the Rules. Therefore, the appeal was allowed, the judgment of the High Court was set aside and the writ petition was dismissed.

---

[64] *Guru Nanak University and Another* v. *Harjinder Singh and Another*, (1994) 5 S.C.C. 208.
[65] *Central Board of Secondary Education* v. *Vineetha Mahajan (Ms.) and Another*, (1994) 1 S.C.C. 6.

Commission of fraud by students in the examinations has always been harshly dealt with by the court when it was established as in the case of *Controller of Examination and others* v. *G. S. Sunder and another*[66]. Here, roll number of the respondent was systematically interchanged with that of another student in some subjects in the semester examination, as a result of which, the respondent passed in those entire subject while the other student failed. Respondent admitted before the Sub-Committee of the Syndicate of the University about commission of the malpractice. The recommendation of the Sub-Committee for debarring the respondent from appearing in examination was accepted and approved by the university. The writ petition filed by the respondent was allowed by the High Court holding that the admission made by the respondent before the Sub-Committee was unbelievable and the charge was vague and also that there was violation of the principle of natural justice. It was held by the Supreme Court that the court would not normally interfere with the decision of educational authorities in the matter of enforcement of discipline as interference of courts in every such case may lead to unhappy results making the system of examination a farce. Therefore it was held that the technicalities of law should not be imported to further the cause of a student who had indulged in malpractice. Even if others are also involved that does not absolve the 1st respondent from his guilt.

In a case[67] of mass copying, the examinations in all subjects at a particular centre were cancelled on the ground that unfair means were practiced on a large scale at that centre. The examinees were allowed to appear in the supplementary examination. It was held by the Supreme Court that no principle of natural justice was violated for the reason that no opportunity was given to the

---

[66] 1993 Supp (3) S.C.C. 82.

[67] *The Bihar School Examination Board* v. *Subhas Chandra Sinha and others,* 1970 (1) S.C.C. 648. See also *Chairman, J & K State Board of Education* v. *Feyaz Ahmed Malik and others*, A.I.R. 2000 S.C. 1039, where notification issue by the Chairman of the Examination Centre cancelling the examination as delegated by the Board of Education, which has the power of cancellation under the Act, was held to be valid and not *ultra vires* to he Act.

candidates. It was held it would be wrong to insist that the Board must hold a detailed enquiry into the matter by examining each individual case to satisfy itself as to which of the candidates had not adopted unfair means and therefore the examination as a whole had to go. It was also held, when the Chairman of the Board had emergency powers to act, it is co-terminus with the powers of the Board and therefore when Chairman's decision to cancel the examination was later endorsed and ratified by the Board, it must be treated as an order of the Board.

Reasserting the need for a fair and impartial enquiry in matters of examination malpractices, the Supreme Court held in *Suresh Koshy George* v. *University of Kerala and others*[68] that the decision of the Vice-Chancellor to appoint another Principal to enquire into the misconduct against the appellant instead of appointing the Principal of his college, who was also the father of the appellant, was fair and impartial. It was further held that there was no breach of principle of natural justice even if the Vice-Chancellor did not make available to the student a copy of the inquiry report particularly when the examinee had not asked for the same and also that there was no requirement of law for two inquiries, one before and one after the issue of show cause notice. Going by the principle of natural justice itself that no man should be judge on his own cause, this case appears to be a case fit for imposing cost on the petitioner, as the demand for the enquiry to be conducted by his own father, who happens to be the principal of the college, on the ground that the enquiry is to be conducted by the principal of the same college, is far exceeding a legitimate grievance to occupy the attention of the Apex Court

The question arose before the Supreme Court as to whether the Examination Committee of the appellant Board was acting administratively when they cancelled the examination of the respondents for alleged unfair practice and whether they were bound to afford an opportunity of hearing to the respondents. When the

[68] A.I.R. 1969 S.C. 198.

results were published the three respondents passed the examination. But, later, they were informed from their college that the Examination Committee of the appellant Board had cancelled their examination. In the writ petition filed by the respondents it was held by the High Court that an opportunity of hearing was necessary in the instant case. In appeal it was held[69] by the Supreme Court that though there is nothing express one way or the other in the Act or the Regulation, casting a duty on the Committee to act judicially, the manner of disposal based on materials placed before the Committee and the serious consequence of the decision on the examinees concerned, must lead to the conclusion that the Committee is to act judicially in the matter.

Although the general trend is that the court will be reluctant to interfere in decisions of university authorities in the matter of examination malpractices, there are occasions of judicial interference on peculiar facts of the case. In *Sarat Kumar Panigrahi* v. *Secretary, Board of Secondary Education, Orissa*[70], a piece of paper containing some Sanskrit scripts was found lying near the appellant's table in the examination hall which was alleged to be an unfair means adopted by the appellant. Though appellant was answering the paper in Oriya and the seized paper had no relevance to his answer paper, it was alleged that it could be useful to other candidates sitting in the same hall and as such it would amount to possession of incriminating material in examination hall constituting malpractice. His writ petition was dismissed by High Court. The Supreme Court on special leave petition on the given facts of the case set aside the judgment of the High Court and quashed all proceedings against the appellant. It was observed that the report alleged to have been prepared on the date of the incident, although in the pro-forma for the purpose, was signed by the Central Superintendent, who was not present in the hall. The pro-forma stipulates that in column numbers 16 and 17 the invigilator

[69] *Board of High School and Intermediate Education, U.P. Allahabad* v. *Ghanshyam Das Gupta and others*, A.I.R. 1962 S.C. 1110.
[70] (2003) 9 S.C.C. 83

should sign, but he has not signed. There was also controversy as to whether the seized paper was a manuscript or a printed paper and as to whether it was seized from the floor or from inside the pocket of the appellant. In these proceedings the candidate lost one year and in the subsequent examination he has come out with flying colours. It was held on the above facts that the appellant shall be deemed to have passed the H.S.C. Examination in the first attempt and without any stigma.

In the A.M.I.E. examination conducted by the Institute of Engineers (India), answer of some of the questions given by a number of candidates in an examination centre were found to be exactly the same. The appellants (candidates) explained that similarity in the answer could be as a result of preparation from the same text books available in the market and that as per the sitting plan in the examination centre none of them was close to each other and were sitting in different rooms and therefore there was no scope for copying each other. The High Court directed the respondent to re-consider the matter after hearing the petitioner's contentions. The respondent, instead of taking into account the answer books, sitting plan etc., resorted to a new technique of asking the appellants to cram a passage from the particular book to justify their claim of exact reproduction from the text book in the examination. The appellants failed to comply with. It was held[71] by the Supreme Court that the novel method of cramming from the text book cannot prove the conspiracy of the candidates to adopt unfair means. Hence the decision of the respondent institute to cancel the result of the appellants and to debar them from appearing in the next two chances was set aside by allowing the appeal with cost. This decision appears to be not in consonance with the consistent stand of the court that in cases of examination malpractices the court has to rely on the *bona fides* of the examining authority concerned, particularly when the authority in the instant case had adopted a novel method of making

[71] *Rajesh Kumar and another* v .*Institute of Engineers (India),* (1997) 6 S.C.C. 674.

the students cram from a passage from the same book to disprove their verson that the exact similarity in the answers of several students happed to be there as all of them followed the same book for answering the question.

6.6 Re-valuation

In the matter of re-valuation, the Apex Court has always been consistent that re-valuation cannot be demanded as a matter of right unless it is specifically prescribed under the Ordinance of the University concerned. If every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books are kept in safe custody so as to eliminate the danger of their being tampered with, that the evaluation is done by the examiners applying uniform standards with checks and cross checks at different stages and that measures for detection of malpractice etc. have also been effectively adopted, in such cases it was held[72] that it will not be justifiable on the part of the courts to strike down the provision prohibiting revaluation, disclosure and inspection of answer books on the ground that it violates the rules of fair play. The Supreme Court found that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as fool proof as can be possible and is entirely satisfactory. It was further held that the Board is a very responsible body and that the candidates have taken the examination with full awareness of the provision contained in the Regulation and in the declaration made in the application form for admission to the examination. In these circumstances there cannot be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation.

Regarding the right to re-valuation of answer scripts it was reiterated by the Apex Court[73] that the court should be extremely

---

[72] *Maharashtra State Board of Secondary and Higher Secondary Education and another* v. *Paritosh Bhupeshkumaar Sheth and others and connected case*, (1984) 4 S.C.C. 27.

[73] See *Goa, Daman and Diu Board of Secondary Education* v. *Kumari Hema Laad and others*, (1984) 4 S.C.C. 58.

reluctant to substitute its own view as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlled by them. It will be wholly wrong for the court to make pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problem involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. Hence the appeal was allowed and the validity of the disputed Rule under the Goa, Daman and Diu Secondary and Higher Secondary Board Act prohibiting inspection and/or revaluation of answer books was upheld.

When the entrance examination of the medical courses conducted by the Orissa Government fell into trouble on the correctness of key answers to some of the questions, the High Court ordered re-evaluation of the answer books. On appeal, the Supreme Court referred the disputed question to an expert committee of the Delhi University. On the basis of the opinion of the expert committee the Supreme Court found[74] that the students' grievance was justified to a large extent and, therefore, the High Court's order for re-evaluation of the answer books was proper and valid. It was also held that the order of the High Court limiting the relief only to those candidates, who approached the High Court till the date of its decision, was not improper. The Apex Court reasoned this stand by the principle of 'sitting on the fence' theory, that only those who are diligent and who approach the court in time who can be given such relief, as the academic year cannot be extended for any length of time for the benefit of those who choose to approach the court at their sweet will and pleasure.

It is submitted that the above reasoning may not be justified in the instant case where the grievance of the students was

---

[74] *State of Orissa and others* v. *Prajnaparamita Samanta and others.* (1996) 7 S.C.C. 106.

regarding the correctness of key answers to some of the questions. The Supreme Court, having found from the report of the expert committee appointed by it that the students' grievance was justified to a large extent, ought to have given the benefit of its order to all the students, who were affected by the incorrect key answers. It is unfortunate to deny the benefit of the court's order to those who are equally aggrieved but do not have the means to seek the court's help by way of litigation, especially when the defect pointed out was not due to the fault of the students. Further, the reasoning that the academic year could not be extended indefinitely also does not appear to be sound and fair as, anyhow, the academic year had to be extended as far as the beneficiaries of the order were concerned, in which case there was no harm in including all the affected candidates within that extension.

Giving due importance to the statutory right for re-evaluation, the Supreme Court declined to accept the technical objection of a few days delay in filing the application for revaluation. Appellant's application for re-evaluation filed within 20 days of dispatch of detailed marks card by the respondent University as permitted in the university ordinance was held to be a valid application. It was held[75], the High Court erred in holding that the revaluation application of the petitioner was time barred as per the ordinance and therefore consequential relief was granted to the appellant by the Supreme Court.

6.7 Grace Marks

In the area of granting concession to fill up shortage of marks in examinations, while dealing with the claim of a candidate for grant of grace marks as provided under the Regulation, Supreme Court held as follows[76]:

---

[75] *Shalini* v. *Kurukshetra University and another*, (2002) 2 S.C.C. 270.

[76] *Maharashtra State Board of Secondary and Higher Secondary Education* v. *Amit and Another*, (2002) 6 S.C.C. 153. See also *Board of School Education, Haryana* v. *Arun Rathi and others*, (1994) 2 S.C.C. 526, where the Board decided to take away the grace marks with retrospective effect, it was held that there was no right accrued to the student for the benefit of grace marks nor can principle of

> "Academic standards are laid down by the appropriate authorities which postulate the minimum marks that a candidate has to secure before the candidate can be declared to have passed the examination. The award of grace marks is in the nature of a concession, and there can be no doubt that it does result in diluting academic standards. The object underlying the grant of grace marks is to remove real hardship of a candidate who has otherwise shown good performance in the academic field but is losing one year of his scholastic career for the deficiency of a mark or so in one or two subjects, while on the basis of his overall performance in other subjects, he deserves to be declared successful".

However, a rule for the award of grace marks must be considered strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority. It is only in a case where the language of the statute is absolutely clear that the claim for the award of grace marks can be sustained. Normally the court shall be slow to extend the concession of grace marks and grant a benefit where none is intended to be given by the appropriate authority[77]. It was also held that when grace marks are available under more than one heads and the candidate is eligible under several heads, as for example where he might have participated in sports at state levels, in Republic Day parade and also in Presidents Rally, the same should be awarded under one head only. But, earlier, a liberal view was taken by the court and it was held[78] that in the absence of express provision in the Regulation confining the benefit of grace marks to the main examination only, it applies to

---

estoppel be invoked in such a case. See however, *Punjab University* v. *Subhas Chand and another,* (1984) 3 S.C.C. 603, where it was held there cannot be any retrospectivity in applying the amended rules to candidates admitted prior to the amendment and that the University Senate is entitled to effect amendment to the Rules from time to time, and the Rules prevailing at the time of the examination and not those which obtained at the time of admission would be applicable to the examinations. It was also held in the absence of any contention of *mala fides*, failure to give notice of change in the Rules and declaring the result as per the amended prevailing Rules is not unreasonable.

[77] See *Controller of Examinations, Utkal University* v. *Paurnami Das* , (1995) 6 S.C.C. 81 where it was held grace marks of 0.5 percent of the maximum marks in the Honours subject for pre-degree as well as final degree examinations to obtain the Honours degree cannot be 0.5 percent of the total maximum marks allotted for the Honours subject in the pre-degree as well as final degree examinations for the particular subject, but only be 0.5 percent of the maximum marks allotted either in the pre-degree examination or in the final degree examination

[78] *Satish Kumar* v. *State of Bihar and others,*1990 (Supp.) S.C.C. 1.

compartmental examination i.e. additional examination in which a failed student is allowed to reappear as well. It was held object of the Regulation was to adopt a liberal policy in favour of a candidate who passed in all subject except one and the petitioner falling under that category is entitled to the benefit of the Regulation.

The Supreme Court in *Council of Higher Secondary Education, Orissa and another* v. *Dijuti Prakash Das and another*[79] held that grace marks should not be granted to a student whose examination was cancelled for his malpractice. Here the court, it appears, has followed the spirit and literal meaning of the word 'grace' and found that such candidates who face allegation of malpractice are not entitled for any 'graceful' treatment or deserve any concession at the hands of the University.

The Apex Court was not very much willing to support the provision for grace marks. Therefore, in *Punjab University, Chandigarh* v. *Sri. Sunder Singh and connected case*[80] the court ruled that the practice of awarding grace marks in respect of post graduate degrees prevailing in the Punjab University was to be deprecated. Court observed that a Masters Degree in any specialty is considered to be the highest qualification in the normal run and it is very much necessary that such a degree should be conferred only on the students who deserve the degree on the basis of their performance, and not on any concession[81].

6.8 Campus Discipline

Though not strictly an academic issue, maintaining discipline in the academic campus has always been a problem faced by the educational authorities. Considering their age and energy, students are always susceptible to lack of discipline. Apart from

---

[79] A.I.R. 1994 S.C. 598.
[80] A.I.R. 1984 S.C. 919.
[81] See also *State of M.P. and others* v. *Mahesh Kumar and others,* (1997) 6 S.C.C. 95, when grace marks allotted to constables of one zone in the examination for promotion, leaving out constables of other zones, it was held the constables had no vested right for grace marks.

students, teachers and other staff are also prone to indiscipline at times, particularly when they are in agitation against the university or college authorities pressing their demands. In the present day universities and college campuses in India, riddled with party politics, both among students and among faculty and staff, and managed by politically elected or nominated syndicates, campus indiscipline is causing serious concern to academic discipline and academic standards. Student union elections and ragging in the professional colleges are two major sources of campus indiscipline.

In the matter of students' union elections, guidelines have been issued by the Supreme Court for the conduct of the elections based on the recommendations of the Lyngdoh Committee as an interim measure. It was directed[82] that these guidelines should be implemented and followed in the student union elections of all colleges/universities to be held after the date of the order until further orders. Security of members of the academic community during examinations and college elections was also considered by the Supreme Court and held that the Superintendent of Police of the respective area should provide enough police protection and ensure that no untoward incident takes place by providing adequate number of police personnel to be posted in or around the campus.

In the matter of ragging, another root cause of indiscipline in professional colleges, it was suggested[83] on the lines done for the college elections, a committee may be set up to look into the problems of ragging in the educational institutions and to suggest remedial measures which can be taken. Although shocking incidents of campus indiscipline arise from ragging which, at times, assume inhuman and brutal nature, it was held[84] the menace of ragging is to be primarily dealt with within the institution by exercise of disciplinary authority of teachers; and students ought not ordinarily be subjected to police

---

[82] *University of Kerala (1)* v. *Council, Principals', Colleges, Kerala and others,* (2006) 8 S.C.C. 304.
[83] *University of Kerala (2)* v. *Council, Principals', Colleges, Kerala and others,* (2006) 8 S.C.C. 486.
[84] *Vishwa Jagritri Mission* v. *Central Government through Cabinet Secretary and others,* A.I.R. 2001 S.C. 2793

action. The Supreme Court also laid down certain guidelines to curb the menace, in exercise of the jurisdiction conferred by Article 32 and Article 142 of the Constitution. In order to obliterate the menace of ragging, the court directed[85] to implement some of the recommendations of the Raghavan Committee appointed by court immediately, including round-the-clock vigil to be provided in hostels and making the local police responsible for curbing ragging. It appears that the above shift in the attitude of the court in the matter of police interference in cases of ragging has been prompted by recurring incidence of crimes perpetrated in the campus under the guise of ragging. In one of the universities in Himachal Pradesh where problems of indiscipline and alcoholism was rampant, the Chancellor of the University was directed[86] to appoint a Committee as a part time measure to oversee the implementation of the directions in the case. A detachment of police was directed to be posted in the university campus till discipline was restored. A committee of psychiatrists is also directed to be set up to go into the problem of alcoholism and for suggesting de-addiction measures.

Malpractices in examinations was treated by the court as a consequence of campus indiscipline and a root cause and therefore dealt with seriously in *Controller of Examination and others* v. *G.S. Sunder and another*[87]. For an examination malpractice committed by the respondent student, the Syndicate's enquiry committee recommended debarring respondent from appearing for any university examination for three years. It was approved by the university and the order was served on the 1st respondent student. When it was challenged, the single Judge found the allegation of malpractice unbelievable, which was confirmed by the Division Bench of the High Court. In appeal, it was held by the Supreme Court that in matters of enforcement of discipline the court must be very slow to interfere since the authorities in charge of education know how to deal with

[85] *University of Kerala* v. *Council, Principals' Colleges, Kerala and others,* (2009)7 S.C.C. 726.
[86] *Id.,* at p.733.
[87] 1993 Supp (3) S.C.C. 82.

situations like this. It was held that such unhealthy practices in examination must be rooted out lest it should lead to campus indiscipline. The appeal was allowed, but the period of debarring was reduced and respondent was permitted to write the next examination.

The above attitude was an approach with equanimity. The court emphasized the need for discipline. Simultaneously it dealt with the student with sympathy. This trend was evident in another case also. In this case, few students passed 6th, 7th and 8th standard examinations from Novadaya Vidyalaya in U.P. and thereafter were transferred to the Navodaya Vidyalaya in Kerala. Soon after their transfer, they became violent and indisciplined. Navodaya Vidalaya Kerala issued transfer certificates to the petitioners with adverse remarks and discharged them. Because of the adverse remarks the Navodaya Vidyalaya U.P. also refused to readmit them. The Supreme Court found[88] that the so-called indiscipline of the students was nothing but a manifestation of maladjustment and they ought to be dealt with sympathetically and with indulgence. Therefore, the adverse entries made against petitioners were expunged and they were allowed to prosecute their studies in the 9th standard in the Navodaya Vidyalaya, U.P.

In another case, after narrating the wide powers of the Vice-Chancellor of a university as the conscience-keeper and the executive and academic head of the university, the Supreme Court held[89] where the Act and Statute have entrusted with the Executive Council the power to take disciplinary action against officers of the University for their removal, the said power cannot be exercised by the

---

[88] *Rohit Singhal and others* v. *Principal, Jawahar N. Vidyalaya and others,* A.I.R. 2003 S.C. 2088.

[89] *The Marathwada University v. Seshrao Balwant Rao Chavan,* A.I.R. 1989 S.C. 1582. See for a contrary view *Sahiti and others* v. *Chancellor, Dr. N. T. R. University of Health Sciences and others,* (2009) 1 S.C.C. 599, where it was held that the plea that in the absence of specific provision enabling the Vice-Chancellor to order the re-valution of answer scripts the re-valution ordered by the Vice-Chancellor is invalid cannot be accepted, as the provisions of the university Act and statutes confer both express, implied, residuary and ministerial powers on the Vice-Chancellor to take appropriate actions relating to the affairs of the university, which include conduct of examination also. But on the facts of the case it was found the decision of the Vice-Chancellor was not taken independently on the merits of the case, but was on the pressure of students and their parents and therefore interfered with.

Vice-Chancellor and can be exercised only by the Executive Council. It is true that the Executive Council could delegate its powers to the Vice-Chancellor. But prior approval of the Chancellor was required for the Vice-Chancellor to act in the matter. No such approval was obtained in the instant case. Therefore it was held the order of dismissal issued by the Vice-Chancellor was not sustainable. It was also held that the subsequent ratification of the Vice-Chancellor's action by the Executive Council was of no avail. The principle of ratification apparently does not have any application with regard to exercise of powers conferred under statutory provisions. The statutory authority cannot travel beyond the power conferred and any action without power has no legal validity, is *ab initio* void and cannot be ratified.

In another case, while considering the scope of the powers of the Chancellor and Vice-Chancellor under the U. P. State Universities Act, 1973, it was held[90] that the Chancellor can consider whether the decision of an authority is in conformity with the Act or the statutes of a university or an ordinance made thereunder, but the Chancellor is not supposed to consider intricate questions requiring interpretation of the Act or jurisdictional issues. For such matters appropriate remedy is filing a writ petition in the High Court. It was held that the Chancellor being a creature of the Act could not look into the validity of the Act. Applying the same principle when the Vice-Chancellor of the university to which the college was affiliated interfered in the case of dismissal/ suspension of the principal of a minority college under section 68 of the Act and when the matter involved challenge against the validity of the statute, it was held that it was not an equally efficacious alternate remedy since the validity of the statutory provisions and jurisdictional errors cannot be decided by the authority created by the selfsame statute

---

[90] *Committee of Management and another* v. *Vice-Chancellors and others*, (2009) 2 S.C.C. 630.

6.9 Attendance

Taking the plain meaning and the literal interpretation of the relevant rule of the Punjab University calendar, in a case where petitioner's deficiency in attendance exceeded 18 lectures in Economics and 20 lectures in Civics, whereas the Principal under the rule could condone only the deficiency up to 15 lectures per subject, confirming the judgment of the High Court and dismissing the appeal, it was held[91] by the Supreme Court that it was beyond the jurisdiction or competence of the Principal to condone the above deficiency in attendance of the petitioner. Indeed in this case the court did express its opinion on the condonation in general in academic matters.

Adopting a rigid standard in the matter of condonation of attendance in *Regional Engineering College, Hamirpur and another* v. *Ashutosh Pandey*[92] the Supreme Court ruled that the High Court erred in condoning the long absence of the respondent on the ground of respondent's good academic records and reversed the High Court judgment. Petitioner's writ petition was allowed by the Division Bench and his result was directed to be declared. The Supreme Court considered the question whether after giving the general benefit of 25 percent, a further shortage of 11percent could be condoned or not and found that chapter 4 of the Academic Regulations of the college does not give any scope for condonation in excess of 10 percent after giving the benefit of 25 percent exemption. The Supreme Court intervened in the matter of condonation though it is an academic matter because what was proposed to be done was based on no law. This was despite the fact that the difference in the shortage of attendance in the instant case was only one percent more than the permissible limit of condonation.

---

[91] *Ashok Kumar Thakur* v. *University of Himachal Pradesh and other*, (1973) 2 S.C.C. 298

[92] (2002) 9 S.C.C. 720.

6.10 Migration

Migration of students from one institution to another is becoming more common than earlier for several reasons. Although apparently it is only an administrative order, quite often academic content also come into play in the form of course contents of both the institutions, their admission schedule, pattern of academic year etc. so as to see that the student can effectively and meaningfully pursue his studies in the migrated institution. Migration may not be treated as a right of the student. The Supreme Court held[93] that the student cannot claim migration and admission to a college of his own choice on the strength of the marks obtained in the first year examination in the college where he was studying.

But in *Anamika Bishnoi (Ms)* v. *Mangir Chaudhry (Ms) and others*[94] the court found that migration could not be denied on unreasonable grounds and could not be cancelled to the detriment of the student. In this case migration was not granted for failure to produce the mark sheet along with the application for migration. The mark sheet was submitted later. Migration was denied on the ground that the mark sheet was not annexed to the application. Since the applicant appellant was second in order of merit, the Medical Council of India directed the University to grant her migration and accordingly migration was granted to the appellant. But High Court quashed the grant of migration to the appellant. It was held by the Supreme Court that the admission of the appellant on migration could not be quashed at the late stage when she was undergoing third year M.B.B.S. course, particularly when she was admitted on the strength of her marks and on the recommendation of the Medical Council of India.

In the matter of transfer of some students from one engineering college to another the consent of the Principal of the college to which migration was sought was obtained contrary to the rules. Before the actual admission of the migrated students, the

---

[93] *Puneet Sardana* v. *State of Haryana and others*, (1996) 2 S.C.C. 565.
[94] (1996) 2 S.C.C. 144.

consent was revoked. The Punjab and Haryana High Court held that the Principal having given his consent earlier could not resist the migration after it was approved by the university. Reversing the decision, the Supreme Court held[95] having given his consent the principal could not resist. The High Court ought to have considered whether the consent given by the Principal earlier was in accordance with law and if it was not, what was its effect. It was found that the Principal had no power to agree to the transfer contrary to the said Rule. Since he had no discretion in the matter he was bound to reject the applications. But, in view of the fact that the respondents had migrated to second college long back under interim orders of the High Court and the appellants had not chosen to challenge the same at the proper juncture, respondents 1 to 4 were not sent back to their earlier college. The Supreme Court had further deprecated the interim relief granted by the High Court as foreclosing the options at the final hearing.

6.11 Selection/Appointment of Academic Staff

The selection, appointment and promotion of academic staff i.e. members of the faculty is an area that quite often breeds litigation. The incidents of cases challenging the selection in the academic field and of non-teaching staff of the universities are on the rise on account of politicization of the university administration and its authorities including the Senate and the Syndicate. On account of partisan politics governing these bodies the credibility of the selection committees constituted by them and the selection process is susceptible to challenge since it is not retaining the confidence of the candidates facing selection.

On the general aspects of selection and appointment to University, it was held[96], it is not the function of the court to hear appeals over the decisions of the selection committees and to

---

[95] *Home Secretary, U.T. of Chandigarh and another* v. *Darshjit Singh Grewal and others,* (1993) 4 S.C.C. 25.

[96] *Dalpat Abasaheb Solunke and Others* v. *Dr. B.S. Mahajan and others,*(1990) 1 S.C.C. 305.

scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not is to be decided by the duly constituted selection committee which consists of the experts on the subject as its members. The court has no such expertise. In the instant case, the University has constituted the committee in due compliance with the relevant statutes. The committee consisted of experts and it selected the candidates after going through all the relevant materials before it. It was therefore held that the High Court went wrong and exceeded its jurisdiction in sitting in appeal over the selection so made and in setting it aside on the ground of the so-called comparative merits of the candidates as assessed by the High Court.

With regard to the constitution of the committee, it was held that inclusion of a person who was teacher of a candidate could not vitiate selection of that candidate particularly when the aggrieved candidate was also student of that teacher[97]. On the basis of long delay in filling up the vacancy, the High Court set aside the appointment on the ground that the delay was intentional for enabling the appellant to acquire the preferential qualification. But the Supreme Court found that the appellant had already possessed the minimum qualification. Absence of such an allegation in respect of other posts advertised together with the post in question also taken note of[98]. With regard to allegation of bias, it was held that the University is not an individual who can be said to have had an interest in a particular person or persons[99]. As has been pointed out by the university and the appellant, during the relevant period the university had more than one Vice-Chancellor and Registrar and it does not suggest that all of them had an interest in the appellant.

---

[97] *Id.*, at p.310. The High Court curiously discarded this fact by observing that in point of time, the appellant was closer to respondent 4, who was a member of the selection committee, as his student at a later date.

[98] However see *Union of India and others* v. *Rajesh P.U. Puthuvalnikathu and another,* (2003) 7 S.C.C. 285, where it was held if out of the selectees, it is possible to weed out the beneficiaries of irregularities and illegalities, there was no justification to deny appointment to those selected candidates whose selection was not vitiated in any manner.

[99] *Supra, n.* 96 at p. 308.

The nature of a post, whether it is teaching or non teaching is correlated to the age of retirement as both the teaching and non-teaching staff have different retirement age in several universities. Thus it was held[100] by the Supreme Court that the post of Senior Pilot Instructor(Glider) is a technical post as the academic qualification prescribed was Intermediate only and the selection committee was constituted under Statute 12(3)(e) which ordinarily would apply to technical staff only. It was found that the High Court erred in accepting the plea of the respondent that the post held by him was an academic post and as such he was entitled to retire at the age of 62 years, the age of superannuation of teaching staff. Therefore the appeal was allowed and the High Court judgment set aside and writ petition filed by the respondent was dismissed.

In the matter of reservation of the posts of Principal, Lecturer and Superintendent of the hostel of a women's college in favour of women on the ground that it is precaution against possible exploitation, the Punjab and Haryana High Court by a majority decision held that the provision for such reservation for women were violative of Article 14 and 16 of the Constitution since it cannot be deduced from the duties of the above posts that the girl students could be subjected to any sort of exploitation. Allowing the appeal, the Supreme Court held[101] in the light of established propositions of law interpreting Articles 14 to 16 there could be classification between male and female for certain post, and that such classification cannot be held to be arbitrary or unjustified. If separate colleges or Schools for girls are justifiable rules providing for appointment of a lady Principal or lady Lecturer in such institutions would also be justified. It was held that it is not for the court to sit in appeal against the policy taken by the State Government. It is doubted whether the above decision has followed the spirit of the constitutional provisions of Articles 14 to 16 in the matter of public employment. The logic based on existence of

---

[100] *I.I.T., Kanpur* v. *Umesh Chandra and others*, (2006) 5 S.C.C. 664.
[101] *Vijay Lakshmi* v. *Punjab University and others*,(2003) 8 S.C.C. 440.

separate colleges for boys and girls to defend the impugned order may be open to question as such colleges do not infringe the right of equal opportunity for public employment but is only an optional choice for the students to get admission. The reason of possible exploitation of girl students by the male faculty in a womens' college is unjustifiable as it is equally applicable in all cases of co-educational colleges were girls are studying. When the Constitution clearly prohibits discrimination on the basis of sex, a reservation policy based on sex, even if described as a classification, may not be congenial to the equality doctrine and such a reservation may be insulting to the teaching profession.

In *G. N. Nayak* v. *Goa University and others*[102] selection of the appellant as Professor of Marine Science in the University of Goa was challenged under Article 226 by respondent no. 5, who was also a candidate for the selection. The challenge was upheld by the High Court *inter alia* on the ground that the selection committee was not legally constituted, no records had been maintained by the selection committee as to how the *inter se* grading was done between the candidates and the selection process was biased. By allowing the appeal, it was held by the Supreme Court that when appointments are made to posts as high as that of a Professor, it may not be necessary to give marks as the means of assessment. Whatever be the method of measurement of suitability used by the selection committee, it was found that it was a unanimous decision and the courts will, in the circumstances obtaining in this case, have to respect the same[103].

Regarding the contention of bias, it was held that it is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reasons and actuated by self interest-whether pecuniary or personal. Therefore, every preference would not vitiate an action. If it is rational and unaccompanied by personal interest, pecuniary or otherwise, it does not vitiate an action.

---

[102] *G.N.Nayak* v. *Goa University and others,* (2002) 2 S.C.C. 712.
[103] *Dalpat Abasahek Solunke* v. *Dr B.S. Mahajen,* (1990) 1 S.C.C. 305 was relied on.

Here, the allegation of bias was raised on the basis of the lavish praise given by respondent No.2 in his note submitted prior to the selection to the university on the performance of the appellant. It was held as the Head of the Department, it was only natural that he formed an opinion as to the abilities of the Readers working under him.

It is submitted, on the basis of the above serious contentions raised by the petitioner in the writ petition, the glaring circumstances and the materials available in support of the same, the interference made by the Apex Court in reversing the High Court judgment in the instant case may be susceptible to criticism. The facts of the case show that the appellant Dr. Nayak and the 5th respondent were candidates for the post of Professor of Marine Science in University of Goa; that before the date of the interview to the post a note was written by the 2nd respondent, Head of the Department, to the Vice-Chancellor requesting for holding urgent interview for the post; that the note extolled the qualities of the appellant and concluded with the statement that the services of the appellant are very essential for the Department of Marine Science of the Goa University and that the note earnestly requested the Vice-Chancellor to hold the interview to the said post without re-advertising the same so that Dr. Nayak is given a chance to answer the interview. The facts further show that in the interview held in September 1995 the second respondent, Head of the Department, did not participate. The Selection Committee found that neither the appellant nor the 5th respondent was suitable for the post. Later a fresh advertisement was issued for the post in October 1995, retaining the essential qualifications but with amended additional qualifications. A fresh Selection Committee was constituted pursuant to the second advertisement which met in May 1996 with the second respondent Head of the Department as one of the members in the Committee. The Committee unanimously recommended the appointment of the appellant without any grading of the candidates by marks or any yard stick being used to assess their comparative merit or qualifications. The records of the selection committee shows that

one of its members was absent resulting in lack of quorum for the selection committee but the minutes of the selection meeting produced along with the affidavit of the Registrar showed that the member concerned had attended the selection committee meting and had signed therein. The recommendation of the selection committee was accepted by the Executive Council and the appellant was appointed. The appointment was successfully challenged by the 5th respondent in his writ petition before the High Court.

In view of the above facts, it cannot be said that the apprehension of the 5th respondent regarding the reasonable possibility of bias or prejudice in the mind of the Head of the Department, an important member of the selection committee, can be ruled out. The Apex Court having found that 'being a state of mind, a bias is sometimes impossible to determine' ought to have reaffirmed the settled preposition of law that a reasonable possibility or apprehension of bias would suffice to prove the violation of natural justice. The fact that the decision making authority has been partial to the receiver of the benefit of the decision and that there are clinching materials to prove the same itself constitute bias without any personal gain for the decision maker. The further finding of the court that 'when appointment are being made to posts as high as that of a Professor it may not be necessary to give marks as the means of assessment' may also be open to criticism that the said proposition may be applicable in the case of selection to menial posts, where the scope of assessment of merit is very little, and not in the case of high academic post like that of Professor, where somewhat equally qualified academicians are competiting each other and therefore the assessment of the comparative merit and quality is vital to the interest to the institution. The court may not have been carried away by the fact that the recommendation of the selection committee was unanimous as the selection committees themselves are the creation of the Executive Council, which in the present day university set up, is over politicized.

Recruitment of adhoc lecturer contrary to the selection procedure and without the involvement of university and government has been condemned by the Apex Court in *Maharishi Dayanand University* v. *M.L.R. Saraswathi College of Education*[104]. The respondent recruited eight ad hoc lecturers through a selection committee which did not include any representative of the appellant university and of the Director of Higher Education. The selection was done without proper advertisement, without the candidates sending copies of applications to the university. No list of such selected staff was sent by the college to the university as required. The college sent up the list of its faculty including these adhoc lecturers to the N.C.T.E. based on which N.C.T.E. permitted admission of 80 more students on the basis of the additional 8 ad hoc lecturers. The university objected to the N.C.T.E.'s permission to the additional seats without reference to the University. Thus the university rejected the request of the respondent college to permit admission of 150 students as approved by the N.C.T.E. The respondent college filed writ petition before the High Court for a direction to the appellant university to permit admission of the additional 80 students, which was allowed. In appeal, Supreme Court held that the selection of the 8 ad hoc lecturers was done in total violation of the procedure. It was held that the college reversed the entire process by first going to the N.C.T.E. and then to the university and therefore the selection of ad hoc teachers was illegal. It was held the High Court's direction was contrary to the guidelines of the N.C.T.E. and the procedure prescribed by the university Statutes. The court pointed out that it has laid down in several cases that the courts cannot issue directions contrary to the rules.

But, as it happened in many of the cases on academic matters, particularly in admission of students, since the additional 80 students in the instant case have completed the two years course and paid the examination fee and the appellant had accepted the same, those students were allowed to take the examination and their results

[104] (2000) S.C.C. 745

were directed to be released[105]. But faced with such illegal acts of unscrupulous managements admitting students without approval of the authorities concerned, the court was constrained to observe[106] that it is time that the courts evolve a mechanism for awarding damages to the students whose careers are seriously jeopardized.

The Supreme Court had occasion to consider whether a wrong selection would amount to illegal deprivation of the candidate's right to be selected, resulting in a consequential claim by him for damages. In a selection to the post of Lecturer under the appellant university, the respondent was not selected. In the writ petition filed by him the High Court ordered that damages of Rs. One lakh be awarded to the respondent payable by the Lucknow University and the opposite party recoverable jointly or severally from both "for the deprivation of the equal right of opportunity of public employment". Allowing the appeal, the Supreme Court held[107] that it cannot agree with the observation that the petitioner in the writ petition had been illegally deprived of the appointment as Lecturer. It was observed that may be the selection was wrong, but on that score it cannot be held that there was an illegal deprivation of respondent's right to be selected. In spite of the qualification, it was held he might not have been selected since selection is entirely a matter which rests with the selection committee unless of course vitiated by other grounds. Therefore that part of the High Court's order awarding the damages was set aside by the Supreme Court while allowing the appeal

---

[105] See also *Council for Indian School Certificate Examination* v. *Isha Mittal and another,* (2000) 7 S.C.C. 521. In an appeal against an interim order it was held by the Supreme Court that if the career of the student had not been involved the court would have certainly interfered with such order, but after the declaration of the result and issuance of the mark sheet, the petitioner might have taken admission in any university or college. Hence the court found not appropriate to allow the appeal, since the entire career of the student would be adversely affected.

[106] The Court relied on *State of Maharashtra* v. *Vikas Sahebrao Roundale* (1992) 4 S.C.C. 435 and *State of Punjab* v. *Renuka Singla,*(1994) 1 S.C.C. 175 where the practice of High Courts directing the authorities concerned in violating their rules and regulations in respect of admission of students was condemned by the Supreme Court. See also *Mallokarjuna Mudhagal Nagappa* v. *State of Karnataka,*(2002) 7 S.C.C. 238 which relied on the above two decisions.

[107] *Vice-Chancellor, Lucknow University and another* v. *M. Ismail Faruqui and others* , 1999 Supp (1) S.C.C. 320

The Supreme Court had been consistently assertive in defending the role and importance of the statutory selection committees in the matter of selection to academic posts in the teaching faculty. In *Dr. Kumar Bar Das* v. *Utkal University and others*[108], a post of Professor was advertised prescribing 'about ten years' experience of 'teaching and /or research' stipulated in the advertisement. Connotation of the words "about", "teaching" "and/or research" came up for consideration. Appellant had teaching experience of 7 years, 7 months and 14 days and research experience of 1 year, 5 months and 14 days, thus in all teaching and research experience of 9 years and 1 month. Selection Committee having highly qualified experts treating it as "about ten years' experience and awarded 4 out of 10 marks for it. Finally the Selection Committee placed the appellant as No. 1 and the 5th respondent as No. 2 in the select list. The Syndicate of the university approved the list and the appellant was appointed as Professor and he joined. Later, the 5th respondent represented to the Chancellor of the university that the appellant was not eligible to be considered for the post of Professor as he had only 7 years and 17 months teaching experience on the date of application instead of 10 years. A show cause notice was issued to the appellant as well as the Syndicate against the appointment and both replied. But the Chancellor rejected both the replies and passed orders annulling the appellant's appointment on the ground that he was ineligible and directed fresh advertisement. The appellant challenged the order in writ petition but the same was dismissed by the High Court.

In appeal Supreme Court held that not only teaching experience but research experience should also be counted in ascertaining the total experience. It was further held that having regard to the high qualification of the experts and the reasons furnished for their subjective assessment of merits of the candidates made by the expert body, the selection by the expert body is not vitiated, especially when no mala fides or collateral reasons having

---

[108] (1991) 1 S.C.C. 453.

been shown[109]. It was held that the Chancellor's view that experience must be of minimum of ten(10) years and therefore zero marks ought to have been awarded to the appellant towards "teaching experience", cannot be accepted as that would amount to ignoring altogether the words in the advertisement. Relying on several decisions[110] it was held that the experts' views are entitled to great weight. It was ruled[111] by the Supreme Court that even the Chancellor cannot normally interfere with the subjective assessment of merit of candidates made by an expert body unless *mala fides* or other collateral reasons are shown.

In *Raj Pal Verma and others* v. *Chancellor of Meerut University*[112], section 31(8) (a) of the U.P. State Universities Act, 1973 prescribed that in the case of appointment of teachers of the University, if the Executive Council disagrees with the selection committee it shall refer the matter to the Chancellor along with the reasons for such disagreement, and Chancellor's decision thereon shall be final. The Chancellor instead of taking the decision by himself referred back the matter to the Executive Council after filling up some of the seats in the Executive Council which were vacant. The Executive Council approved the selection made by the selection committee and pursuant thereto the 3rd respondent was appointed as the Professor in Ancient History. The appointment was challenged in the High Court, which dismissed the matter in limine. It was held in such a case the proper procedure to be adopted by the Chancellor was that he should

---

[109] See also *Osmania University represented by its Registrar, Hyderbad* v. *Abdual Rayees Khan and others*, (1997) 3 S.C.C. 124, where the Selection Committee consisting of a High Court Judge made the selection of Professors and Readers, it was held that it is not necessary to award marks to each candidate in the selection like the selection of Class II and Class III employees. It was reiterated that generally the court may not interfere with the selection in the educational field and academic matters may be left to the expert body

[110] See *University of Mysore* v. *Govinda Rao*, A.I.R. 1965 S.C. 491; *J.P. Kulshrestha* v. *Chancellor, Allahabd University*, (1980) 3 S.C.C. 418; *Neelima Misra* v. *Harinder Kaur Paintal* , (1990) 2 S.C.C. 746; and *Osminia University* v *Abdul Rayees Khan*, (1997) 3 S.C.C. 124.

[111] See also *Dr. Rajni Bala Agrawal* v. *Lalit Narain Mithila University, Darbhanga (Bihar) and others*, (1999) 5 S.C.C. 683, *Chancellor* v. *Sankar Rao and others*, (1999) 6 S.C.C. 255, where it was held the Chancellor cannot re-evaluate the merits of the candidate and on that basis reject the candidate selected by the Board of Appointment. If the Board had violated the provisions of the Act or Statutes, he can reject the Board's recommendation. However, if the Board under the Statutes has a power to relax the qualification or to assess the qualification such as research experience and judge whether it is of the requisite standard, the assessment so made by the Board would have to be accepted by the Chancellor.

[112] (1997) 6 S.C.C. 365

have remited the matter to the Executive Council to reconsider the matter in terms of his guidance expressing in the meanwhile his opinion for such a course of action. He could also have taken a decision by himself and it would have been final. If the Executive Council even after the remittance still disapproved the selection, the Chancellor was entitled to take his own decision and his decision then would be final. Therefore, it was held by the Supreme Court that there was no infirmity in the decision taken by the Chancellor to remit the matter to the Executive Council for reconsideration.

Emphasizing the importance of the statutory selection committee even in the case of temporary appointments, it was held[113] in the case of a post that continued from time to time for more than twenty years the post cannot be treated as a temporary post and that even for a temporary post the statutory selection committee has to be constituted as prescribed under the Act. It was further held[114] that when the statutory requirement was advertisement of the post in three local news papers, it was mandatory and that advertisement in two news papers was not sufficient. This appears to be too technical an observance of compliance of statutory provisions, but shows how strict and rigid is the court in the matter of statutory compliance.

Prescribing eligibility and suitability criteria of candidates for recruitment is vested primarily with the rule making authority. Therefore, it was held[115], the selection criteria cannot be laid down by the selection committee unless specifically authorized. Power to make rules regulating the conditions of service of persons is vested with the employer. But, if the rules made are silent on any subject or the point at issue, the omission can be supplied and the rules can be supplemented by executive instructions. In the instant case Government did not issue any executive instructions with regard to the

---

[113] *Konch Degree College, Conch Jalaun and others* v. *Ram Sajiwan Shukla and another,* (1997) 11 S.C.C. 153. See also *Dr.Abdul Hameed Fazil and another* v. *Adam Malik Khan and others,* (1996) 11 S.C.C. 423.

[114] *Ibid.*

[115] *Dr Krushna Chandra Sahu and others* v. *State of Orissa and others,* (1995) 6 S.C.C. 1.

criteria on the basis of which suitability of the candidates was to be determined. In the absence of criteria the members of the selection board, of their own, decided to adopt the confidential character rolls of the candidates, who were already employed as Homoeopathic Medical Officers, as the basis for determining their suitability. It was held by the Supreme Court[116] that the members of the selection board or for that matter any other selection committee do not have the jurisdiction to lay down the criteria for selection unless they are authorized specifically in that regard by the Rules made under Article 309. It is basically the function of the rule making authority to provide the basis for selection. Therefore, the appeals were disposed of with direction for fresh selection and that the Government shall either amend the rules or issue necessary administrative instruction laying down the basis on which the suitability of the candidates may be determined.

The Supreme Court had occasion to look into the merit and qualification of the members of the selection committee at least in some cases. In *Dr. Trilok Nath Singh* v. *Dr. Bhagwan Din Misra and others*[117] the candidates for the post of 'Reader in Linguistics in Department of Hindi' were interviewed by a selection committee consisting of the Vice-Chancellor, the Head of the Department of the University and three Heads of Department of Hindi of other Universities as external experts. The Committee recommended the name of the appellant for appointment and placed the respondent in the second place. The respondent challenged the selection in a writ petition on the ground, *inter alia*, that the selection committee was not a legally constituted committee and its recommendation should not be acted upon. The writ petition was allowed by the High Court. It was held by the Supreme Court mainly relying on the prospectus of the University, which shows M.A. Part I and Part II in the subject of Hindi Language and Literature and Linguistics separately, that the appointment of all experts in the present case in Linguistics from the

---

[116] *Ibid*
[117] (1990) 4 S.C.C. 510.

subject of Hindi for selection of the post of Reader in Linguistics in the Department of Hindi was totally wrong and illegal.

In the matter of transfer and posting of a Principal of a college as the Reader of another college, the Supreme Court held[118] while dismissing the appeal, that Principal of a college cannot be transferred to the post of Reader in another college since the two posts even if carrying same grade and pay are not equivalent. It was held that the post of Principal has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the college has many statutory rights. Thus it was held[119] that the post of the Principal cannot be treated as equivalent to that of a Reader for purposes of section 10 (14) of the Bihar State Universities Act, 1976. It was also observed that when the affairs of a college maintained by the university are mismanaged, the Vice-Chancellor may for administrative reasons, transfer a Professor or Reader of any department or college maintained by it to the post of the principal of such college, but the converse may not be right.

The Supreme Court had to consider the issue as to what should be the quorum of the selection committee when there was no provision for quorum of the committee meeting. In the matter of recommendation of the committee for appointment of the Vice-Chancellor, when there was no provision for quorum of the committee meeting and two members of the committee were present and one member absent, it was held[120] where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute as a valid meeting and matters considered there cannot be held to be invalid. Thus the appeal was allowed and the order of the Chancellor revoking the appointment of the appellant was set aside and the appellant was declared to have been validly appointed as the Vice-Chancellor.

---

[118] *Vice-Chancellor, L.N. Mitthila University* v. *Dayanand Jha.* (1986) 3 S.C.C. 7.
[119] *Ibid.*
[120] *Shri Ishwar Chandra* v. *Shri Satyanarian Sinha and others,* (1972) 3 S.C.C. 383.

Regularisation of service of ad hoc appointees in the cadre of Research Associates as Lecturers in the Himachal Pradesh University on recommendation of the statutory selection committee and allowing the unsuccessful ones to continue as such till selected by the committee was held[121] by the Supreme Court to be improper and contrary to the provisions of the Ordinance of the university for making appointment only by advertisement. However, since the appointment had been approved by the Executive Council eleven long years ago and the appointees possessed of the requisite qualifications, their appointments were left undisturbed by the Supreme Court with direction that it should not be treated as a precedent. It was held[122] that invoking the principles of equity, justice and fair play to regularise the adhoc appointees made de horse the rules was not proper and the appointments were *ultra vires*. Adhocism in all services, particularly in cases of appointment of Professors, Readers and Teachers in university was deprecated by the Supreme Court. It was also observed that proper and disciplined functioning should be the hall mark of the universities for which adhocism may not help. While agreeing with the dictum of the decision that adhocism cannot be resorted to contrary to the rules and regulations for appointment of faculty, it may be commented that while making the above general observation against adhocism, the Apex Court might not have contemplated the changing scenario in the employment sector generally, and particularly in the educational field, of inducting competent hands on adhoc basis i.e. on contract basis as members of the faculties in various institutes of repute, which has become prevalent in western countries. This practice, it is submitted, in fact, more than creating indiscipline and lack of accountability among the faculty, do create competition in talent and merit for the purpose seeking larger and brighter opportunities.

---

[121] *Dr Mera Masset(Mrs), Dr Abha Malhotra and Dr S.C. Bhadwal and others* v. *Dr. S.R. Malhotra and others,* (1998) 3S.C.C. 88

[122] *Ibid.*

Considering the importance of the post of Principal of a college, the Supreme Court had found that seniority alone is not the criterion for consideration for appointment by promotion. In the matter of appointment by promotion as Acting Principal of the affiliated college, it was held[123] that in view of the pendency of criminal trial under section 302 of I.P.C. against the appellant, even assuming the appellant to be senior to the respondent in the lower post of Lecturer, the relief sought for by the appellant for appointment to the post of Acting Principal of the college cannot be granted to the appellant under Article 136.

The Supreme Court had also occasion to consider the disputes on *inter se* qualification of the contesting candidates for faculty posts and about the suitability of the qualification for particular post or subject. In the matter of appointment to the post of Reader the appellant, who was possessing M.A. and Ph.D. in Political Science, was selected to the post of Reader in Public Administration. Both the university and the U.G.C. have taken the stand that qualification in Political Science and Public Administration are interchangeable and interrelated. It was held[124] that when the academic authorities have regarded the two subjects as interchangeable and interrelated it is not appropriate for the Supreme Court to sit in appeal over the opinion. In this case, the court had to consider a contra view taken in *Bhanu Prasad Panda (Dr.)* v *Chancellor, Sambalpur University*[125] and held[126] that 'the decision of a court is a precedent if it lays down some principle of law supported by reasons. Mere casual observation or direction without laying down any principle of law and without giving reasons does not amount to a precedent'. It was further observed[127] that in deciding *Bhanu Prasad* case the court did not have the benefit of the views of the University and the University Grants Commission

---

[123] *Dr. Mahak Singh* v. *Chancellor, Ch. Charan Singh University and others and the connected case,* (1996) 11 S.C.C. 760.
[124] *Rajbir Singh Dalal (Dr)* v. *Chaudhari Devi Lal University, Sirsa and another,* (2008) 9 S.C.C. 284.
[125] (2001) 8 S.C.C. 532.
[126] *Supra, n. 124* at p.296.
[127] *Id.,* at p. 298.

and the conclusion was arrived at on the basis of a personal understanding of Public Administration and Political Science.

But, in later and recent decision, *Mohd. Sohrab Khan* v. *Aligarh Muslim University and others,* where a post of Lecturer in Chemistry was notified for which the educational qualification prescribed was first class Masters Degree in Chemistry, the candidate having qualification in Industrial Chemistry was selected as opposed to the petitioner who was having Masters Degree in Pure Chemistry on the reasoning that the selectee was better qualified and suited as a Lecturer in the University Polytechnic. It was contented by the petitioner that the essential qualification for the post was Masters Degree in Chemistry and not Industrial Chemistry and, therefore, the respondent was not eligible for appointment. It was held by the Supreme Court that if it was necessary for the university to fill up the post from the stream of Industrial Chemistry it would have so indicated in the advertisement itself that a person holding a Masters Degree in Industrial Chemistry should only apply or that a person having such a degree could also apply along with other persons. It was held, in the matter of selection of a faculty opinion of the selection committee should be final, but at the same time, the selection committee cannot change the criteria/qualification in the midstream. It was observed there could have been intending candidates having the changed qualification who would have and could have also applied for the post had they knew that the changed qualification was required or sufficient for the post.

It may be seen that the above reasoning is applicable in *Rajbir Singh Dalal's* case also and the court should not have left the matter to the *ipsi dixi* or the subsequent justification of the university authorities and the U.G.C. that the subjects of Political Science and Public Administration are interchangeable, when a candidate with qualification in Political Science was selected to the post of Reader in Public Administration. Though the court may be justified in accepting the academic opinion of the university and the U.G.C. that the subjects

are interchangeable, the court should have, however, set aside the appointment under challenge on the well settled principle that if alternate qualifications are acceptable as equivalent, those qualifications should be notified so as to enable all aspirants having those qualifications to apply for the post and should have directed the university to conduct a fresh selection to the post after notifying the qualifications in Political Science or Public Administration as the prescribed qualifications.

6.12 Effect of Interim Orders

Interlocutory justice granted through interim orders passed mainly at the stage of admission with regard to admission to college, appearance in examinations, conduct of re-valuation etc. concerning the educational prospects and fate of the students, is a highly controversial zone in the realm of academic justice or campus justice. On many such occasions justice at its final stage will be the casualty, when faced with unwarranted and undeserving interlocutory orders, which would progress the case beyond a point where the court cannot implement its final judgment in view of the irreparable injury and hardship that would visit the students and parents in such cases.

In *Council for Indian School Certificate Examination* v. *Isha Mittal and another*[128] in an appeal filed against an interim order passed in the respondent's writ petition, it was held by the Supreme Court as follows:

> "Actually the relief which the court could have granted finally has been granted by means of the interim order. If the career of the students had not been involved, this court would have certainly interfered with such orders, but after the declaration of the result and issuance of the mark-sheet, the petitioner might have taken admission in any university or college. Hence it would not be appropriate for this court to allow this special appeal because the entire career of the student would be adversely affected. In view of the aforesaid reason only we dismiss the appeal but observe that this

[128] (2000) 7 S.C.C. 521.

special appeal has been dismissed considering the facts and circumstances of the present case only and it would not be a precedent for similar other cases."

If the law was, as the High Court observed above, in favour of the appellant before it, the court was obliged to make an order in favour of the appellant. Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law. Therefore having regard to what moved the High Court to pass an order contrary to the law, the Supreme Court held that the special appeal should stand restored to the file of the High Court to be decided according to law.

Emphasising the inconvenience and the injustice caused by the undeserving interlocutory orders, prompted by misplaced sympathy[129] and benevolence of courts, the Supreme Court held[130] that interim orders granting admission to educational institutions should not be passed at any stage without full hearing.

6.13 Miscellaneous Matters

In the matter of admission to post graduate courses in Medicine, when minimum percentage of marks was prescribed for eligibility by the Medical Council of India, while considering its binding effect on State Government, it was held[131] that the High Court's decision holding such minimum marks prescribed in the Regulation to be relaxable by the State Government and to be not applicable to the in-service candidates(doctors) was improper and not justifiable. Consequently, the admissions given to such of the in-service candidates, who have secured marks less than the minimum

---

[129] See *M. G. University* v. *Gis Jose*, 2008(4) K.L.T. 216 (S.C.). Respondent student was admitted to M.Sc. course with only 53.3 % marks in her qualifying examination against the minimum requirement of the cut off marks of 55 %. She was allowed to complete the course and further allowed to write the examination. When her results were withheld by the university, the High Court declared publication of results. Allowing the appeal, it was held, the misplaced sympathy should not have been shown by the High Court in total breach of the rules.

[130] *State of Uttar Pradesh and others* v *Kum. Ramona Perhar*, A.I.R. 1995 S.C. 241. See also *K John Koshy* v. *Tharakeshwar Prasad Shaw (Dr.)*, (1998) 8 S.C.C. 624

[131] *Harish Verma and others* v. *Ajay Srivastava and another*, (2003) 8 S.C.C. 69.

prescribed in the Regulation framed by the Medical Council of India, was struck down by allowing the appeal and setting aside the impugned judgment of the Full Bench of the High Court of Rajasthan and by restoring the judgment of the learned single Judge.

In *Harsh Pratap Sisodia* v. *Union of India and others*[132] the Supreme Court, faced with injustice shown to the student, had gone to the extent of directing the respondent that the appellant student should be given attendance from the date when the admission was granted to him, including the period during which he was kept out of the college subsequently on wholly unjustified and illegal grounds. In this case petitioner who appeared in the All India Pre Medical Entrance Examination conducted by the C.B.S.E. became qualified in the examination against 15% All India Quota. Later on, petitioner was informed that he had been allotted a seat for admission to M.B.B.S. at a particular college. The college, however, did not grant admission to the petitioner on the ground that he passed the Intermediate Examination without Biology and then passed Biology as his subject next year, and hence did not fulfill relevant Rule of eligibility in the Information Bulletin, 1998, which required passing of the examination in one and the same attempt. Allowing the petition under Article 32 of the Constitution, it was held by the Supreme Court that under the modified scheme for admission approved by the C.B.S.E., M.C.I. and the Supreme Court, the eligibility criteria for admission to the 15% All India quota for M.B.B.S. is prescribed, and hence it is not open to any State to fix any additional eligibility criteria in cases of candidates who fall under the 15% All India quota. Therefore, the denial of admission to the petitioner was held to be wholly illegal and unjustified and the respondent was directed to grant admission to the petitioner in the first year M.B.B.S. course under the 15% All India quota forthwith.

In *Dr. Preeti Srivastava and another* v. *State of Madhya Pradesh*[133] it was held by the Supreme Court that excellence in post

---

[132] (1999) 2 S.C.C. 575.
[133] (1999)7 S.C.C. 120.

graduate medical education comes within the standards of education which is also comprised in the admission criteria which could be laid down by central legislation under List I Entry 66 and List II Entry 25 and that State's competence under List III Entry 25 to control and regulate higher education is subject to the standards so laid down by the Union of India. It was further held that states have competence to prescribe rules for admission to post graduate medical courses so long as they are not inconsistent with or do not adversely affect the standards laid down by the Union of India or its delegate. Prescribing minimum qualifying marks for passing the entrance test for admission to the post graduate medical courses comes within the purview of the standard of post graduate medical education. Therefore it was held it is for the Medical Council of India to determine reservation of seats, if any, to be made to the special categories, the extent thereof and lowering of qualifying marks in their favour on the basis of proper balancing of public interests. This stand of the Apex Court involved re-consideration and overruling of the views taken in *Ajay Kumar Singh* v. *State of Bihar*[134] and *Post Graduate Institute of Medical Education and Research* v. *K.L. Narasimham*[135].

It was held by the Supreme Court that in every case the minimum standards as laid down by the central statute have to be complied with by the state while making admissions. It may, in addition, lay down additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down. Thus once the minimum standards are fixed or laid down by the authority having the power to do so, any further qualifications laid down by the state which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But in order

---

[134] (1994) 4 S.C.C. 401.
[135] (1997) 6 S.C.C. 283.

that the action of the state is to be valid it should not adversely impinge on the standards prescribed by the appropriate authority.

Considering the nature and object of the common entrance examination, it was held by the Apex Court that P.G.M.E.E. is not a mere screening test. Candidates who have qualified from different universities and in courses which are not necessarily identical, have to be assessed on the basis of their relative merit for the purpose of admission to a post graduate course. It is for the purpose of proper assessment of the relative merit of the candidates who have taken different examinations from different universities in the State and outside that a uniform entrance test is prescribed. Such a test necessarily partakes the character of an eligibility test as also a screening test. In such a situation minimum qualifying marks are necessary.

It was also held that the final pass marks in an examination indicates that the candidate possesses the minimum requisite knowledge for passing the examination. There is a great deal of difference between a person who qualifies with the minimum pass marks and a person who qualifies with high marks. If excellence is to be promoted at the post graduate levels the candidates qualifying must have good marks while qualifying and not mere pass marks. It may be that if the final examination standards of the qualifying examination itself is high even a candidate with pass marks would have a reasonable standard. Basically there is no single test for determining standards. It is the result of a sum total of all the inputs- caliber of students, caliber of teachers, teaching facilities, hospital facilities, standard of examinations etc- that will guarantee proper standards of the students at the stage of exit.

It was also held that the power of the M.C.I. under section 20 of the Medical Council Act, 1956 to prescribe minimum standards of post graduate medical education is not merely advisory in nature, but is binding on the universities. In the matter of reservation of seats for super specialty courses it was held that at the level of super

specialisation no reservation is permissible for any class and admissions should be entirely on the basis of merit since wider interests of the society and nation cannot be ignored. Therefore no special provision for admission to super specialty courses is permissible.

Therefore it was held at the level of super specialization there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and educational training. At the level of super specialty, something more than a mere professional competence as a Doctor is required. It was held by the Supreme Court while concluding that at the super specialty level it is the unanimous view of all the judgments of the Apex Court that there should be no reservation. This would also imply that there can be no lowering of minimum qualifying marks for any category of candidates at the level of admission to the super specialty courses. Therefore at the level of admissions to the super specialty courses no special provisions are permissible they being contrary to national interest. Merit alone can be the basis of selection[136]. In the above premises the impugned Act and Government Order of the Madhya Pradesh Government were set aside[137].

It may be criticized that in the above decisions the Supreme Court had made an attempt to interfere with educational policy making. Providing reservation for admission or prescribing minimum qualifying marks for admission or in the entrance

---

[136] See *Dr Jagadish Saran* v. *Union of India,* (1986) 2 S.C.C. 768, where it was held at the highest levels of specialty the best skill or talent must be hand-picked by selection according to capability. The higher the level of education the lesser should be reservation. See also *Dr Pradeep Jain* v. *Union of India,* (1984) 3 S.C.C. 654, where it was observed that at the highest level of education excellence cannot be compromised to the detriment of the Nation.

[137] See also *Dr Sadhna Devi and others* v. *State of U.P. and others*, A.I.R. 1997 S.C. 1120, where the circular issued by the U.P. State Government directing that there shall be no minimum qualifying marks for S.C./ST/OBC candidates in the entrance examination for admission to post graduate and diploma courses was quashed by the Supreme Court on the ground that the Government having laid down a system of entrance examination, is not entitled to do away with the requirement of obtaining the said minimum qualifying marks for the special category candidates. It was directed if the special category candidates fail to obtain the minimum qualifying marks in the admission test, then such seats should be made available to the general category.

examination for special category candidates do not involve anything academic. Instead, they are policy decisions with a social objective for enabling protective discrimination as permitted by the Constitution. Judicial interference in such an area, whatever be its logic and reasoning, may appear to be an encroachment into the inherent jurisdiction of the executive and the legislature to evolve administrative and social policies for the well being of the people. If reservation and special benefits for admission to the special categories is possible and permissible upto the post graduate level in the professional education one may fail to understand why the same benefit or logic not extended to the super specialities. The difference between post graduation and super speciality is almost the same as between graduation and post graduation, both in the nature and standard of the courses as well as in the availability of seats. Therefore, it may not be justifiable in differentiating between post graduate and super specialities when that distinction is not there between graduation and post graduation. To draw a demarcating line in a policy matter at the final stage on the basis of substance of the course, quality or merit of the candidates or on scarcity of seats available is not the job of the court.

While dealing with reservation of seats at the super specialty stage, the Apex Court had again defended the stature of the super specialty courses in *A.I.I.M.S. Students' Union* v. *A.I.I.M.S. and others*[138]. It was held by the Supreme Court that some preference to students of the same institution at postgraduate level was permissible but not at the super specialty level[139]. Even in the post graduation

---

[138] (2002) 1 S.C.C. 428.

[139] See also *Sanyay Ahlawat* v. *Maharishi Dayanand University, Rohatak and others,* (1995) 2 S.C.C. 762, where for admission to post graduate courses in medicine preference given to candidates in the form of weightage of 10 extra marks to graduates from the existing medical colleges in the State of Haryana so as to make their service available in the State in view of dearth of medical facilities there was upheld by the Supreme Court. But in *Municipal Corporation of Greater Bombay and others* v. *Thukral Anjali Deo Kumar and others,*(1989) 2 S.C.C. 249, where admission to post graduate degree/diploma courses in medical colleges run by the Municipal Corporation college-wise institutional preference was given under the rules of admission framed by the Municipal Corporation on the contention that the Municipal Corporation has to spent a lot of money for the colleges run by it,

level the preference should not be to such an extent as to render the merit criterion practically non-existent. One of the factors for assessing reasonableness should be whether the character and quantum of reservation would stall or accelerate the ultimate goal of excellence. The court further held reservation at primary or lowest level is permissible, but beyond that the protection needs to be withdrawn in the interest of perfection and excellence.

Denying the claim of a reserved candidate, who found place in merit list both as a reserved as well as a general candidate, for claming the seat under both categories in the counseling, it was held[140] by the Supreme Court that since he was able to secure admission in the first counseling as a reserved category candidate, he could not be adjusted against a general seat though his turn for admission came in the subsequent counseling under general category also. It was also observed that the system of counseling for the purpose of granting admission to various medical colleges in the state is now regarded as most equitable one, where options are given for various seats to the students in accordance with their overall merit position in the combined entrance examination. If options are given to the candidates based on their overall merit position in the combined entrance list, it is rather difficult to appreciate as to why the petitioner's option from the merit list i.e. in the general category which he was entitled to was denied to him.

In *Gurdeep Singh* v. *State of J & K and other*[141], the Apex Court refused to accept an admission procured by illegal means without giving equal opportunity to other eligible candidates also to compete. The appellant got admission to the medical course under the sports quota representing an approved item of sports. Respondent associated with an unapproved sport secured equal marks along with the appellant in the entrance examination. However, respondent's

---

dismissing the appeals the Supreme Court held there is no intelligible differentia for the classification by way of college-wise institutional preference as provided by the impugned rules.

[140] *Rajiv Mittal* v. *Maharshi Dayanand University and others*, (1998) 2 S.C.C. 402.

[141] 1995 Supp (1) S.C.C. 188.

sport item was recognised as an approved one with retrospective effect so as to confer retrospective eligibility on the respondent, the lone candidate of that type, thereby enabling him to supercede the appellant at the selection. After unsuccessfully challenging the Government order in the High Court, appellant approached the Supreme Court. Allowing the appeal it was held that selection procured by illegal means should not be permitted to continue on human consideration as it is a misuse of power. It was held both at the time of sending the applications for entrance examination as well as at the time when the candidates offered themselves for selection before the Sports Council, the candidates were to set out the specific basis of their claims for inclusion in the sports quota and furnish requisite certificates. The inclusion of mountaineering, the respondent's item, as an approved sporting activity at a later stage denied the other candidates who might have had similar eligibility, an equal opportunity to compete. It was observed that considerations of judicial policy also dictate that wrongs gained by such tactics could not be retained with the help of court.

In *Renu Verma and another* v. *Principal, Government Medical College and another*[142], consistent with its strict interpretation of the University ordinances on examinations in its literal sense and agreeing with the High Court it was held by the Apex Court while interpreting the Ordinance of the Punjab University that unless and until all the subjects of the 1st professional MBBS examination having cleared, no student is entitled to be promoted to or to attend the 2nd professional course even provisionally. The High Court was called upon to interpret the Ordinance of the Punjab University relating to M.B.B.S. examination. The amended Ordinance read that: "no candidate shall

---

[142] 1995 Supp (1) S.C.C. 277. See also *K. Sujatha* v. *Marathwada University and others*, 1995 Supp. (1) S.C.C. 155, where the University Ordinance prescribed the candidate for M.B.B.S. examination to have obtained certain percent of total marks at one and the same attempt in the qualifying examination and the appellant had passed the qualifying examination in two attempts, it was held that the appellant was not eligible for admission. It was further held that different rules of eligibility for open merit seats and for discretionary seats of the management is impermissible and that there could not be different rules of eligibility for admission from different sources.

be promoted to the second professional course unless he has passed the first professional examination in full in all the subjects". The High Court came to the conclusion that the students who failed to pass all the subjects in the 1st professional examination were not entitled to join the 2nd professional course. Overruling its decision in *Harvinder Singh* v. *Principal, Guru Govind Singh Medical College, Faridkot*[143] the Supreme Court upheld the High Court judgment.

The Central Council of Health and the Central Family Welfare Council in a joint conference recommended that 5 percent of the seats in medical colleges should be reserved for candidates from other states on a reciprocal basis. The state of J&K, A.P., Karnataka, Kerala and T.N., agreed to it and decided that each of them would have the right to nominate candidates to seats reserved in medical colleges of the other participating states. J&K State Government made nomination not merely by the marks obtained by the students in the qualifying examination but also by the ability to project the appropriate image and the culture of the state in the state to which they are nominated. This was challenged by the petitioners stating that State Government made nominations in their absolute and arbitrary discretion and being influenced by the personal relationship of the candidates to persons in the ruling political party or to the Government officers in position of high authority. Allowing the writ petition, the Supreme Court held[144] that nomination of candidates by the states for admission to the reserved seats should not be arbitrary, unconditional and unguided and directed Medical Council of India to formulate proper policy and the states to nominate candidates strictly on merit basis in the meantime. In this case, even though the court found admission to be invalid, refrained from directing the states to revoke such admission on facts.

---

[143] (1992) 1 P.L.R. 23.

[144] *Suman Gupta and others* v. *State of Jammu and Kashmir and others,* (1983) 4 S.C.C. 339

In *Ajay Hasia and others* v. *Khalid Mujib Sehravardi and others*[145], the petitioners applied for admission to the first semester of the B.E. course in response to a notice issued by the Regional Engineering College (R.E.C.), Srinagar. Its administration and management are covered by a society. Petitioners appeared in a written test consisting of 100 marks as well as an interview consisting of 50 marks, but could not be selected for the admission. They approached the Supreme Court under Article 32 contending that the selection was violative of Article 14 on the ground that the society acted arbitrarily in the matter of granting of admission: first by ignoring the marks obtained by the candidates at the qualifying examination; secondly, by relying on viva-voice examination as a test for determining comparative merit of the candidates; thirdly, by allocating as many as 50 marks for the viva-voice examination as against 100 marks allocated for the written test and lastly, by holding superficial interview lasting only 2 or 3 minutes on an average and asking questions which had no relevance to assessment of the suitability of the candidates with reference to the factors required to be considered at the viva-voice examination.

Dismissing the writ petition Supreme Court held reliance on entrance test ignoring marks obtained in the qualifying examination was not violative of Article 14 and also held the selection by oral interview in addition to written test was valid. But allocation of above 15% of total marks for interview was held to be arbitrary and unreasonable. It was further held that holding interview for only 2 or 3 minutes per candidate and asking irrelevant questions would vitiate the selection. The court further held if *mala fides* established, selection can be quashed even in the middle of an academic session. However, a mere suspicions that some candidates secured admission by getting very high marks in viva-voce though they got comparatively lower marks in written tests, it was held, will not establish *mala fides* on the

[145] (1981) 1 S.C.C. 722.

part of the selectors. On facts, the selection was held to be vitiated, but in view of a laps of eighteen months and the students had almost completed three semesters, court refrained from setting aside the selection.

Self financing private universities which came into existence in many states as sponsored by the State Governments have also landed up in litigation in respect of their constitution. In an extreme case of demeaning the status of universities, the Chhhattisgarh Legislature enacted the Chhattisgarh Niji Kshetra Vishwavidhyalaya (Sthapana Aur Viniyaman) Adhiniyam, 2002 to establish several self-financing private universities in the state. Under section 5 of the said Act, the State has been empowered to incorporate and establish a university by issuing a notification in the gazette and section 6 permits such university to affiliate any college or other institution or to set up more than one campus with the prior approval of the State Government. By virtue of the said power ninety-one private universities were established.

Prof. Yashpal, an eminent educationist and former Chairman of the University Grants Commission, filed writ petition under Article 32 by way of public interest litigation for declaring certain provisions of the above Act as *ultra vires* and for quashing the notification issued by the State Government in exercise of the power conferred by section 5 of the Act. It was contended that the universities established were functioning from a single room or shop on the first or second floor in some congested market areas or in an ordinary flat or M.I.G. house.

The Supreme Court held[146] that a university may be established only through legislative enactment and not by exercise of executive power. Incorporation of universities under the Act being permissible by executive order was held to be *ultra vires* the Constitution and contrary to Regulation 3.1 of the U.G.C. Regulation. It further held that a university having no infrastructure or teaching

---

[146] *Prof. Yashpal and Another* v. *State of Chhattisgarh and others*, (2005) 5 S.C.C. 420.

facility, being in a position to confer degrees, could create complete chaos in the matter of coordination and maintenance of standards in higher education, which could be highly detrimental for the whole nation. Despite incorporation of universities being a legislative head in State List, the whole gamut of the university education comes within the purview of List I Entry 66 and Parliament alone is competent to legislate on the larger issues. It is the exclusive responsibility of Parliament to determine, maintain and ensure uniformity therein, and that the same are not lowered at hands of any state, as it is of great importance to national progress.

The Court further held, an enactment which simply clothes a proposal submitted by a sponsoring body or the sponsoring body itself poses with the juristic personality of a university so as to take advantage of section 22 of the UGC Act, 1956 so as to facilitate for higher studies or research, is not contemplated by either List II Entry 32 or List III Entry 25. Sections 5 and 6 of the 2002 Act being contrary thereto were held to be wholly *ultra vires* and a fraud on the Constitution. The notification establishing the ninety-one universities under the Act was quashed and the universities were abolished. However, to protect the interest of the students admitted by the impugned universities, State Government was directed to have such institutions affiliated to already existing state universities in Chhattisgarh, provided they fulfilled the requisite norms and standards laid down for such purpose.

Though the compensatory jurisprudence has not been developed by the courts in India in the university jurisdiction in particular and in the administrative law in general, there has been stray attempts from some of the High Courts to introduce the said equity principle in the present context, where the universities and colleges are becoming increasingly negligent in the discharge of their statutory duties and unaccountable to students and parents. It appears the Apex Court was not inclined to adopt a positive attitude in

this direction, and in one case refused to uphold the compensation awarded by a learned single Judge of the High Court.

When petitioner's result was not published along with others, the single judge of the High Court in the writ petition directed the University to pay to the appellant/petitioner Rs 60,000/- as monetary compensation and damages and also to take action against the negligent officials. The Division Bench also found the respondent negligent, but found on the facts of the case that the case does not warrant any compensation being imposed on the university. Dismissing the appeal and agreeing with the Division Bench, the Supreme Court held[147] that it would not be correct to assume that every minor infraction of public duty by every public officer would justify the award of compensation in a petition under Article 226 or 32. It was held that before awarding exemplary damages it must be shown that any of the fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act.

There is no academic element in fixing the fee structure of any course. Therefore, whenever disputes have arisen on this issue, courts have shown sufficient laxity and given a reasonably free hand to the universities and other educational institutions and have refused to interfere in the matter of fixation of fee. This may be because courts have treated this power as a policy decision. In one case where the fee structure was under challenge, petitioners, who were N.R.I. students, were admitted to the engineering course of the appellant university on a certain fee structure during 1997-98 and 1998-99. During 1999-2000 the fee structure was reduced for the subsequent batch. Petitioners claimed parity in fee structure vis-à-vis N.R.I. students of the 1999-2000 batch by filing writ petition in the High Court, which was allowed. Reversing the same and by allowing the appeal of the university, the Supreme Court held[148] that it would not be open to

---

[147] *Rabindra Nath Ghosal* v. *University of Calcutta and others*, (2002) 7 S.C.C. 478

[148] *Cochin University of Science and Technology* v. *Thomas P. John*, (2008) 8 S.C.C. 82.

students to contend that they were entitled to claim as a matter of right a reduction in the fee structure to bring them at par with the students admitted later under a low fee structure, notwithstanding that they had been admitted to the course on a certain fee structure. It was held that argument of estoppel would be available to an educational institution in such a case.

It was further held that the matter relating to fixation of fee is a part of the administration of the educational institution and it would impose a heavy onus on such an institution to be called upon to justify the levy of a fee with mathematical precision. An educational institution chalks out its programme year wise on the basis of the projected receipt and expenditure and for the court to interfere in this purely administrative matter would be impinging excessively on this right. It was observed that it would be well impossible for an educational institution to have an effective administration and maintenance of high standards if a downward revision during the pendency of a course would be automatically made applicable to the students admitted earlier under a different fee structure. A periodic revision of fee is also visualized in the directions of the Supreme Court in *Islamic Academy's* case, wherein it has been provided that the fee structure fixed by a committee headed by a retired Judge would be operable for three years. The Supreme Court found that the NRI students were not granted admission on their overall merit but on the basis of the 10% reservation in their favour and therefore the claim of equity may not arise, and secondly, each set of admissions made year wise cannot be said to overlap the admissions made earlier or later.

But in cases where the fixation of fee structure was so unreasonable and discriminatory, the Apex Court did interfere so as to provide uniformity in professional education. It was held[149] medical colleges in a State cannot charge or demand more fees from the students belonging to other states than the fee demanded from the students of that State. Therefore, it was held that medical colleges in

---

[149] *T.M.A.Pai Foundation and others* v. *State of Karnataka and others,*(1998)9 S.C.C. 477.

the State of Maharashtra cannot charge fee at double the rates from students belonging to the states other than the State of Maharashtra. Fixation of the fees chargeable by the Private Professional (Medical and Engineering) Colleges is the function of the Government, affiliating universities and the statutory professional bodies like U.G.C., Indian Medical Council and All India Council for Technical Education and not of the Supreme Court[150]. Hence in the scheme framed by the Supreme Court in the *Unnikrishnan case* the Central Government and these authorities were advised to coordinate their efforts and to evolve a broadly uniform criterion in this regard.

Faced with the menace of capitation fee being demanded by the private managements in the field of professional education, who had converted education as profit monkering business, the Apex Court had to come down very heavily on such trend while restraining the managements. It was held that right to admit non-meritorious candidates by charging capitation fee as a consideration strikes at the very root of the constitutional scheme and our educational system. Restricting admission to the non-meritorious candidates belonging to the richer section of the society and denying the same to the poor meritorious candidates is wholly arbitrary, against the constitutional scheme and as such cannot be legally permitted. Therefore, it was held[151] capitation fee in any form cannot be sustained in the eye of law. It amounts to denial of citizen's right to education under the Constitution and is wholly arbitrary and violative of Articles 14 and 21 of the Constitution of India. It was also held[152] that the state is within its right to enact measures to prevent misuse of school admission for profit-making and commercialization of education.

The judicial process in the Apex Court would go to show that the court has always been exercising self restraint in interfering in academic matters and was viewing the academia and academicians with reverence. In the matter of recognition and affiliation of

---

[150] *T.M.A.Pai Foundation and others* v. *State of Karnataka and others,* (1996) 5 S.C.C. 8.
[151] *Mohini Jain (Miss)* v. *State of Karanataka and others,* (1992) 3 S.C.C. 666.
[152] *Father Thomas Shingare and others* v. *State of Maharashtra and others,* (2002) 1 S.C.C. 758.

educational institutions, the court had readily accepted the supremacy of the universities and the national statutory regulatory bodies like B.C.I., M.C.I., A.I.C.T.E., N.C.T.E. etc. It was held, the right to establish educational institution does not create or carry with it the right to recognition or affiliation. The affiliation or recognition is the life blood of the private educational institutions that give them credibility and public acceptance. Therefore, the authorities granting affiliation/recognition have the right to prescribe conditions, which the colleges seeking permission are bound to comply with.

Likewise, in the matter of deciding the equivalency of degrees, diplomas and courses the court has accepted the rightful claim of the academic authorities for deciding the question of equivalency of the academic awards. It was ruled that it is for the University to decide the question of equivalence of degrees and recognition of qualifications and it would not be right for the court to sit in judgment over the decisions of the University on that matter because it is not a matter on which the court possesses any expertise.

In respect of grace marks, the court made it clear that the academic purpose of the award of grace marks is in the nature of a concession and not as a right of the student and the object underlying the grant of grace marks is to remove real hardship of a candidate, who has otherwise shown good performance in his study, but is facing a crisis in his academic career for a deficiency of a mark or so in one or two subjects.

In the matter of campus discipline, the court had clear idea as to its jurisdiction and held in matters of enforcement of discipline the court must be very slow to interfere since the authorities in-charge of education know how to deal with the situations of indiscipline. At the same time, in two major root causes of campus indiscipline *viz.* elections to the college unions and incidents of ragging, the court did interfere, appointed two expert committees and with their help had framed guidelines on the subjects and directed them to be followed uniformly throughout the country.

Regarding conduct of examinations, the Apex Court had adopted a rigid stand against malpractices in examination and for maintaining purity of examination. This is evident from the stand of the Apex Court faced with mass irregularities in examination that innocent students could also become victims of such irregularities of their companions and it could not be helped. In such cases it was held that the cancellation of the whole examination should serve as a lesson to the students that malpractices will not help them in any way. It was also observed that if the examiners and invigilators feel insecure because of the strong arm tactics of those who indulge in malpractices, the remedy is to secure the services of the uniformed personnel. The practice of grant of interlocutory justice by permitting students to pursue their studies and later to appear in the examination and allowing the students of urrecognised institutions to appear in different examinations pending disposal of the writ petitions, were strongly deprecated by the court. It was also held in the case of mass irregularities that the authorities need not give opportunity to each and every student and examine each individual case so as to find out who were really guilty. In such cases it was held the principles of natural justice could not be asserted.

Regarding the provision for revaluation, the court found that it was not an invariable rule or fundamental right of the candidate and that it would not be justifiable on the part of the court to strike down the Rule prohibiting revaluation as unreasonable and unfair. It was held that there could not be any denial of fair play to the examinees by reason of the prohibition against revaluation and that the subject has to be covered by the prevailing rules thereon.

In the case of migration from one college to another the court found that it is not an invariable right of the candidate and that the student cannot claim migration and admission to a college of his own choice on the strength of the marks obtained in the first year examination in the college where he is studying.

In the matter of selection and appointments to the academic posts in universities and other educational institutions in almost all cases, except those which are vitiated by extreme arbitrariness and illegality, the court had upheld the selections made by the statutory selection committees consisting of experts. On the general aspects of such selections, the court held that it is not the function of the court to sit in appeal over the decisions of the selection committees and scrutinize the relative merits of the candidates. It was further held the question as to whether a candidate is fit for a particular post or not is to be decided by the duly constituted selection committee, which has the experts on the subject as its members and that the court has no such expertise.

It was also held by the court that invoking the principles of justice, equity and fair play the authorities cannot regularize the ad hoc appointees in educational field made de horse the rules and that the appointments are *ultra vires*. Adhocism in all services, particularly in cases of appointments of professors, readers and lecturers in universities had been deprecated by the court. But, one does not know, in the changed circumstances of hiring the talents on contractual basis in the faculty and appointing guest lecturers and visiting professors as a routine course, how far the court would be able to justify its stand and to stick on to the above view point, which it had taken a decade back.

In the matter of admission to academic institutions the court held that it cannot compel an autonomous educational institution to grant admission to a candidate not holding the requisite eligibility qualification from an institution recognized by it. It was also held that statutory authorities authorized to frame Regulations under the Act relating to prescribing standards of education like the B.C.I., M.C.I. etc. will also have the power to regulate admissions to the courses so as to maintain the "standards of education", which precisely is their power.

In sum, the Indian judiciary has not left any area of education untouched. Whenever there was violation of law even in the forbidden zones, it did trek and cleared the way. But in the case of academic questions, though its claim of following a 'hands off' policy is not fully correct, generally speaking, it should be said to the credit of the judiciary that it exercised restraint in that area.

In the court's view[153], education today is liberation – a tool for the betterment of civil institutions, the protection of civil liberty and the path to an informed and questioning citizenry. The court recognized[154] education's 'transcendental' importance in the lives of individuals and in the very survival of our Constitution and Republic. The court found that education occupies a sacred place within our Constitution and culture. This may be the unwritten logic and spirit that prompted the court, right from the beginning, to adopt a restrained approach to educational matters in general, and academic issues in particular.

[153] *Avinash Mehrotra* v. *Union of India and others*, (2009) 6 S.C,C, 398.
[154] *Ibid.*

CHAPTER VII

KERALA HIGH COURT ON ACADEMIC MATTERS

Right from the very beginning, Travancore-Cochin High Court and, later, the Kerala High Court, established in 1956, has been displaying institutional discipline in the matter of following the principles governing the exercise of writ jurisdiction as settled down by the Apex Court. Thus, in *Kumaraswamy* v. *Transport Authority, Travancore-Cochin and others*[1], a Division Bench of the Travancore-Cochin High Court dismissed the writ appeal and confirmed the single Judge's ruling on the basis of the following passage from G *Veerappa Pillai* v *Raman and Raman Ltd.*[2]

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principle of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made."

At the same time, the court was well aware of the amplitude of the constitutional power under Article 226 for controlling the erring executive. It is evident from the observations in *Mrs. Susan George* v. *State*[3] which run as follows:-

> "The executive authority may have wide powers. But it must not swerve from the limits imposed upon it by the law.

---

[1] 1952 K.L.T. 652

[2] A.I.R. 1952 S.C. 192, at p. 195. It was found by the Supreme Court that the case involves a complete and precise scheme for regulating the issue of permits, providing what matters are to be taken into consideration as relevant and prescribing appeals and revisions from subordinate bodies to higher authorities. The remedy for correction of errors are found in the statute itself and resort must generally be had to those statutory remedies. The Supreme Court therefore refused to interfere with the discretion that was exercised by Transport authorities paying regard to all facts and circumstances of the case.

[3] 1955 K.L.T. 901, at pp.907-908

> Equally important, it should exercise its powers *bona fide* for the purpose for which they have been conferred and not for any ulterior purposes. And whenever there is a transgression by the executive in these respects, let it not be forgotten that it will be pulled up by this Court."

The approach of the Kerala High Court in respect of interference in academic decisions is to be appreciated in the background of the above observations, made at the initial years, regarding the limitation as well as the scope of the writ jurisdiction available to the High Courts in India under Article 226 of the Constitution. Being hesitant to come out of its reclusive shell, the court observed[4] that they "were not prepared to say that the mere factum of affiliation is sufficient to make the management of a private college maintained entirely from private funds a *quasi* public authority amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution". But, later, as agencies, both governmental and private, increased and their activities expanded, the court had to move away from its reticence and extend the writ power to an extent that in a subsequent case it found that even a private college affiliated to a university is amenable to the writ jurisdiction[5].

The challenging expansion of educational activities and the absence or inadequacy of executive's regulatory measures compelled the court to expand the writ jurisdiction in the educational field in course of time. As a result, the court found[6], any authority, whether public or private, aided or unaided, minority or non-minority, imparting education is discharging a public duty and, therefore, is amenable to the writ jurisdiction under Article 226 of the Constitution of India, even if such institutions are not within the fold of Article 12 of the Constitution. Therefore, it was held, whether it be the teachers of private educational institutions or the students, they are entitled to

---

[4] *Joseph Mundassery* v *Manager, St. Thomas College, Trishur,* 1953 K.L.T. 773 at p. 775. See also *Annamma v. State of Kerala,* 1994(1) K.L.T. 309, where it was held, the mere fact that the recognized school was imparting education to the students cannot make the management a public authority amenable to the writ jurisdiction of the High Court.

[5] *Thomas* v. *Manager, Bishop Moore College,* 1987(1) K.L.T. 613.

[6] *Academy of Medical Sciences* v. *Regina,* 2004(3)K.L.T. 628.

invoke the remedy under Article 226 to redress their grievances based on the statutory prescriptions or executive instructions.

It could be seen from the decisions of the Kerala High Court that over a period of years it has travelled along with the Apex Court in developing and enlarging the writ jurisdiction under Article 226 in consonance with the requirements of the changing times and to suit good governance[7]. In *Suter Paul* v. *Sobhana English Medium High School*[8] the court was guided by the spirit of the observation of the Apex Court to the effect that even in the case of institutions which do not receive any grant-in-aid, since it is an institution to impart education, which is a fundamental right of the citizens, an element of public interest is created and since the institution is catering to that element, the teacher, the arm of the institution, is also entitled to avail the remedy under Article 226. When the question arose whether a writ will lie against the Manager of a recognized un-aided school, it was held that the words "any person or authority" used in Article 226 need not be confined only to statutory authorities and instrumentalities of the State. When the termination of service of the petitioner by a recognized un-aided school was under challenge, it was held that having considered the pervasive control of the educational authorities over the recognized un-aided institutions in the State, those institutions are amenable to the jurisdiction of the High Court under Article 226 of the Constitution. This view was taken by the court since the provisions of the Kerala Education Act and the K.E.R. clearly show that the Government have reserved to itself a great deal of control over

---

[7] *Suter Paul* v. *Sobhana English Medium High School,* 2003(3) K.L.T. 1019. Considering the question as to whether petition under Article 226 is maintainable against the Manager of a recognized unaided school, it was held the words ' any person or authority ' used in Article 226 need not be confined only to statutory authorities and instrumentalities of the State. Having considered the pervasive control of the educational authorities over the recognized unaided institution in the State under the Kerala Education Act and the Kerala Education Rules, it was held such institutions are amenable to the writ jurisdiction of the High Court. It was also held that the provisions of the Act and the Rules have reserved to the Government a great deal of control over those institutions. See also *St.Cleta* v. *State of Kerala,* 2001(1) K.L.T. 937. Relying on the subsequent decisions of the Apex Court in *Andimukta Sadguru Shree Muktajee Vandas Swami Suraraa Jayanti Mohotsaw Smaraka Trust and others* v. *V. R. Rudani and others,* A.I.R. 1989 S.C. 1607 and *K. Krishnamacharyalu and others* v. *Shr. Venketeshawara Hindu College of Engineering and other,* A.I.R. 1998 S.C. 295, the earlier decision of the High Court in *Annamma case*, 1994(1) K.L.T. 309 was distinguished by the Court

[8] *Ibid.*

these institutions. It was also observed that the unaided educational institutions are liable to be de-recognized if the Government is of the view that they are guilty of contravention of the provisions of the Act or Rules and, therefore, are controlled by the Government.

Thus the court came out of the initial inertia to interfere in academic matters and started scrutinizing academic decisions and educational matters more and more. But, while being aware of the scope and ambit of the power under Article 226, the court had been more inclined to adopt a stand of non-interference rather than interference and whenever the court had interfered, it was persuaded by the facts of the particular case. This is evident from the following decisions:

7.1 Non-interference

While dealing with a policy decision of the university, in *Pradeep* v. *University of Calicut*[9], it was held that the university's prescription of 35 percent of minimum marks for pass in the viva-voice examination is neither arbitrary nor illegal and that the issue being an academic policy matter, it would not be proper for the court to interfere in such a decision made by the academicians. But, the court cautioned that such a decision should be notified in advance and that the candidates must have notice.

Upholding the statutory right of the Academic Council of the university to decide the eligibility of students for admission to any course, it was held[10], when the university has clearly laid down that

---

[9] 1994(1) K.L.T. 340. See also *Abdul Salam* v. *University of Kerala,* 1997(2) K.L.T. 223, in a writ petition challenging the selection process for admission to the MBA course, where out of the 50 percent of the marks the university had awarded 30 percent towards entrance examination, 10 percent towards group discussion and the remaining 10 percent for the interview, it was held that the norms prescribed by the university for selection was fair and it was entirely for the selection committee to decide what should be the appropriate norms for selection and it was not for the High Court to give a different formula for selection under Article 226 of the Constitution.

[10] *Kumari Kanakakumari P. V.* v. *The Registrar,* 1997 (2) K.L.T. 488. See also *Abdul Salam* v. *University of Kerala,* 1997(2) K.L.T. 223, giving weightage for performance in the qualifying examination was held to be not illegal; *University of Kerala* v. *Alex Saji,* 1997 (2) K.L.T. 100, the guidelines providing that if the re-valued average marks do not exceed five percent or more of the maximum marks of the paper, the original marks will be retained, was neither arbitrary nor discriminatory

students with compartmentalized passing of the C.B.S.E. examination cannot be admitted to the university and that the students should have passed the examination in one single sitting, it is for the university to decide whether the certificate has to be recognized or not. It was held that the court does not find any illegality in the university not approving the compartmental examination of the C.B.S.E. in their Regulations.

Again, in a policy decision, where as per the Regulations of the university, petitioners, who were B. Tech. students, should have passed all subjects up to the IV semester for getting promotion to the VIII semester, and admittedly petitioners have not passed all subjects in the IV semester, it was held[11], petitioners were not entitled for promotion to the VIII semester as it was for the university to frame their Regulations. It was held in the absence of *mala fides* or arbitrariness the court cannot interfere in academic matters and that if in the past a mistake had been committed or leniency shown on the facts of a particular year, it would not be a licence to commit the error in future years. Therefore the court could not direct the university to admit or promote petitioners violating the Rules and Regulations.

While recognizing the binding force of the Rules and Regulations of the national statutory regulatory bodies in the field of professional education, it was held in *University of Kerala* v. *N.C.T.E.*[12] that the N.C.T.E. Act and its provisions and the Regulations framed by the N.C.T.E. cannot be interfered with by the court, and the teacher education institutions are bound to follow the N.C.T.E. Act. Where the provisions of the N.C.T.E. Act mandate the 'examining body' *viz.* the university not to grant any affiliation, whether provisional or otherwise, to any institution which is not recognized under the said Act and makes it obligatory on the part of the university to cancel such affiliation without any notice, it was held[13] there was no illegality

---

[11] *Muarleedharan Pillai* v. *Cochin University,* 1998 (1) K.L.T. 856.
[12] 2003(3) K.L.T. (S.N.) 102.
[13] *Kerala Nadar Mahajana Sangham* v. *State of Kerala,* 2002(2) K.L.T. (S.N.) 146.

in the decision of the syndicate of the university to withhold the affiliation granted to the college.

In a case where the Academic Council found that the degree which is styled as 'triple main degree' is not sufficient to make one eligible for admission for B.Ed. degree course, it was held[14] that the same was purely an academic issue and was not amenable for judicial review under Article 226 of the Constitution. Recognition of a particular degree for the purpose of admission to an advanced degree course was held to be the exclusive privilege of the academic authority. It is for the university to decide whether the learning acquired by reason of that basic degree is sufficient enough to equip the incumbent concerned for admission to the B.Ed. course. It was further held, merely because the petitioner had appeared for examination on the strength of an interim order, when the recognition of the basic degree of the petitioner was called in question, the petitioner does not acquire any vested right to get the result declared or to get the degree recognized.

In *Gerogy K. Joseph* v. *State of Kerala*[15] the question arose whether the marks awarded to a particular answer were proper or not could be enquired into by the court under Article 226 of the Constitution. In this question of purely academic nature, it was held that the court should honour and accept the valuation made by the examiners, unless any serious and apparent irregularity is pointed out. It was pointed out by the appellant that after awarding 49 marks in Biology, it was corrected as 47 marks. On examination of the answer paper, it was seen that such a correction was necessitated on account of the correction in the marks given to the answer for question number 39. Though 3 marks were originally awarded to the answer to question number 39, subsequently the examiner changed

---

[14] *Rajashree* v. *University of Kerala*, 2002(2) K.L.T. (S.N.) 134. See also *Pradeep v University of Kerala*, 2002(2) K.L.T. 144, a private study candidate from Tamil Nadu who obtained Higher Secondary Certificate after 1991 cannot contend that his qualification should be recognized for admission to B.V.M.C. course when the certificate was not recognized by the Kerala University as equivalent to the Pre-degree course.

[15] 2004(1) K.L.T. 950

his mind and gave only 1 mark. It was held that such a correction made by an examiner cannot be said to be an illegality inviting judicial interference. It was observed, normally court will not and should not interfere with the marks awarded to a student on the basis of valuation or re-valuation conducted in accordance with the rules.

While dealing with the binding force of the prospectus issued by the management for admission to courses, in *Riya Mohammed*[16] the court found that according to clause 12 of Ex. P1 prospectus, the failure to turn up for interview at the appointed time and date will result in forfeiture of the candidate's chance. As per clause 8 of the prospectus the additional seats sanctioned during the validity of the select list shall also be filled up from the same. Accepting the binding force of the prospectus, and strictly construing its provisions, it was held that a candidate who failed to turn up for the interview for admission to the originally sanctioned seats has no right to be called for interview for admission to the additionally sanctioned seats. It was further held that the court does not have any jurisdiction to direct the respondents to increase the number of seats to accommodate the candidates who will lose admission on account of the admission of the petitioners. If relief cannot be granted to the petitioners without affecting the rights of other persons such persons will have to be heard before granting the relief.

When the court had to deal with an equally important academic policy matter of awarding moderation marks, it was held[17] that the court could not have compelled the appellant to do something which he could not have done under the rules. It was found that the maximum marks that could be awarded by way of moderation was only 10 marks and that there was no provision enabling or authorizing the appellant to grant more than 10 marks as moderation. Therefore the Court refused to interfere. In *Sree Sankaracharya*

---

[16] *State of Kerala* v. *Riya Mohammed*, 2004(1) K.L.T. (S.N.) 84.
[17] *Commissioner of Examination* v. *Arunshekhar*, 2004(1) K.L.T. (S.N.) 102.

University of Sanskrit v. *Kerala Kalamandalam*[18], the court accepted the power of the university to grant provisional admission to P.G. course pending publication of results and its production before a specified date. Agreeing with the university the court further found that non-production of the result within the specified time would lead to cancellation of admission.

Not only in the matter of recognitation of courses but also in respect of de-recognitation of courses, the court has reaffirmed the role of the Academic Council of the university in such matters of purely academic nature. In *Jayadev* v. *State of Kerala*[19], when the Academic Council of the university decided to de-recognize 3 year B.Sc. (Agriculture) degree offered by other universities after getting a report from a sub-committee consisting of top academicians, it was held that the decision of the university could not be interfered with in proceedings under Article 226. It was found, the sub-committee thoroughly examined all the aspects including the syllabus and curriculum of each course and found that the syllabus of the 3 year B.Sc. (Agriculture) program of the other universities did not cover all the essential requirements of an agricultural graduate to the expected standard. It was also found that the 3 year course was not comparable with the 4 year degree course offered by the respondent which is an autonomous body having its own rules and statutes.

In the matter of selection and appointment of the faculty of the university, the court has always been reluctant to import its views in substitution of that of the expert selection committees. Where applications were invited for appointment to the post of Reader with five years 'experience of teaching' as one of the qualifications, the petitioner contented that 'experience of teaching' could only mean experience as a competently appointed teacher. It was held[20] that to

---

[18] 2004 (1) K.L.T. (S.N.) 28.
[19] 1992(1) K.L.T. 253.
[20] *Sugunan* v. *University of Kerala*, 1984 K.L.T. 1086. See also *Indira Manuel* v. *University of Kerala*, 1982 K.L.T. (S.N.) 49, when qualifications for appointment was Ph. D. or published research work of a high standard and the Selection Committee chose one candidate on the basis of his research work of

construe the expression 'five years of experience of teaching' as experience of teaching as duly appointed teacher will be to add words which are really not there. The court observed that for the post of Lecturer the same Regulations prescribe "two years approved research or teaching experience as minimum qualification", suggesting thereby that research experience is as good as teaching experience for the post. It was also found that the 4th respondent had teaching experience as part of his doctoral research and it could not be said that the quality of such teaching is different from the quality of teaching undertaken by persons appointed as regular teachers. Further, it was observed that the Academic Council must have thought of referring only to 'experience of teaching' and not 'experience as teacher'. It was held except in cases where a clear violation of the norms, statutory or otherwise, is discernible, the courts will not interfere with the assessment made by the expert academic bodies if such assessment is *bona fide.*

The entrance test of the M.B.A. course, entrusted with and conducted by an outside agency, the All India Management Association, was challenged by the petitioner, who also participated in the test. It was held[21], it was an internal decision of a department of the university and that the said decision of the 1st respondent was the decision of the independent expert body constituted with a view to enhance the credibility, reliability and confidentiality of the selection process. Further, no material has been placed before the court to show that the decision was vitiated by *mala fides*. It was reminded by the court that the internal bodies of academic institutions are not totally outside the purview of judicial review, but the courts will normally be slow in upsetting the decisions of the internal bodies or departments of the universities functioning with autonomous powers.

---

high standard, it was held that the Court will not be entitled to go into the selection unless *mala fides* is made out and not merely alleged.

[21] *Justin D. Aruja* v. *Director,* 1995 (1) K.L.T. 119.

Reiterating the limits of judicial interference and restriction thereon in the absence of extraordinary and compelling circumstances, it was held[22], when the recommendation of the Medical Council of India was that "at least 50 percent" of the members the Board of Examiners shall be external examiners, the Board could be constituted with more than 50 percent external examiners, if the university thought it fit to do so. It was observed, there was an implicit indication in the recommendation that it was advisable for the university to constitute the Board of Examiners with more than 50 percent of external examiners in it.

7.2 Interference

While giving a long liverage to the universities and its academic authorities to take decisions on academic matters and reserving a large extent of freedom and autonomy to those bodies in respect of academic decisions, the court, at the same time, has not turned its back against patent illegalities and irregularities committed by the academic bodies leading to unfair and unjust situations. The power of the universities to grand affiliation to colleges is circumscribed by the provisions of the University Acts and Statutes. In *University of Kerala* v. *Vidyadhiraja Charitable Society*[23], the main question arose for consideration was whether the affiliation granted by the three universities in Kerala to colleges during the academic year 1994-95 was in conformity with the provisions of the respective University Acts, the First Statutes and Regulations made thereunder. It was found that the first term and more than half of the second term have already expired by the time the affiliations were granted. After analyzing the facts of the case, particularly the date of applications for affiliations, it was held, under the guise of taking decisions in academic matters if the specific provisions in the University Act and the Statutes are violated, then the court cannot keep its hand away

---

[22] *Dr. Rajan* v. *Vice-Chancellor,* 1987 (1) K.L.T. (S.N.) 3.
[23] 1994(2) K.L.T. 1078.

and allow those violations to be continued. It was observed if the court is to shut its eyes against clear violation of the statutory provisions by the university, the consequences would be disastrous and would result in breach of rule of law.

It has been the consistent complaint of the students and parents that the schedule of examinations, the declaration of results and the starting and duration of courses have all gone out of track in many universities and boards, in some states particularly. Faced with an individual grievance of inordinate delay in publishing the result of the petitioner, it was held[24], a candidate, who has appeared for an examination, is entitled to know the result of the examination within a reasonable time after the examination is over and, therefore, the declaration of the result of the examination cannot be indefinitely postponed unless there are compelling reasons justifying such a course of action. Therefore it was held, there was no valid ground to withhold the S.S.L.C. result of the petitioner for about four years on the spacious plea of non-completion of the action against malpractice allegedly committed by the petitioner.

Normally, recognition of courses is a matter exclusively left to the domain of the universities and their academic councils, which would seldom be disturbed by the courts. But in *Sheeja* v. *State of Kerala*[25], the court went into the details of the M.Ed. Degree obtained by the petitioner through correspondence course, including its syllabus and found that it makes no difference from the regular course of the M. Ed. Degree of the Madras University. Accordingly, the objection raised by the university that the M.Ed. Degree of the University of Madras through correspondence course is not recognized by the N.C.T.E. was overruled by the court and held that the non recognition of N.C.T.E. is not a reason for non-recognition by the

---

[24] *Surekha* v. *State of Kerala*, 1994(1) K.L.T. (S.N.) 18.

[25] 2004(1) K.L.T. (S.N.)39. See *Reeba Elizabeth Chacko* v. *National Council of E.R. and Training*, 2003(3) K.L.T. (S.N.) 136, a rare case where the Court has recognized the nature of a course. It was held 'Law' is a social science and there is no reason to hold otherwise and a law student also comes within the purview of a scheme of scholarship granted to students of social sciences.

universities. It was observed, the consideration for recognition of degree awarded by other universities should be on the basis of the quality of the course conducted and not in the nature of the course. Interfering with the decision of the university, the court held, the power of the Academic Council and the Standing Committee should be exercised as per the provisions contained in the University Act.

It is submitted that the N.C.T.E. being the national statutory regulatory body that control the field of teacher education, and the fact that the course in dispute was a correspondence course, which was not recognized by the N.C.T.E., it is doubtful as to whether the above decision has settled down the correct preposition of law in respect of the academic autonomy of the university in the matter of recognition of courses of the other universities.

In the matter of filling up of faculty vacancies, the court has supported the claim of private college managements for appointing teachers having prescribed qualifications in the vacancies of teaching posts since this has to be done in accordance with the workload prescribed subject to the approval of the university. In *Amina* v. *State of Kerala*[26], it was held that the appointments made are liable to be approved by the university and cannot be rejected on the ground that there was a ban imposed by the State Government against fresh appointments. It was further held in the matter of approval of appointments what was to be followed by the university was the statutory prescriptions, and the executive orders or circulars cannot override the statutory provisions in case of conflict. Consequently, the university was directed to pass appropriate order regarding the approval of appointments without reference to the said Government order.

Dealing with the *inter se* position between the universities and the N.C.T.E. and discarding the contention of the universities that their teacher training institutes are not coming within the purview of

---

[26] 2004(1) K.L.T. 657.

the N.C.T.E. Regulations, it was held[27], the universities are also included in the term 'institution' appearing under section 2(d) of the N.C.T.E. Act. Therefore the contention of the university that their teacher education centres need not follow the N.C.T.E. Regulations was rejected. It was observed, a university which is bound to maintain standards in its educational institutions cannot dilute the norms and say that the centres run by it need not have the necessary minimum infrastructure and educational standards. It was held if the university is continuing the course in their teacher training centres without the recognition of the N.C.T.E., while inviting applications for admission, they should make it very clear in the advertisement itself that the centre is not recognized by the N.C.T.E. and therefore the students who are admitted there for B. Ed. will not get employment in the government or university establishment or in other aided institutions as provided under section 17(4) of the Act.

7.3 Recognition/Affiliation

Recognition and affiliation of courses and educational institutions by universities and respective professional bodies are governed by specific statutory provisions. Therefore the court, when dealing with such questions, has to follow the statutory provisions in the enactments concerned. In *Varghese* v. *State of Kerala*[28] the court had examined the relative positions of the Government and the university in the matter of granting statutory affiliation to colleges. The question arose whether the Government have power to grant or withhold affiliation as envisaged under the provisions of the Kerala University Act, 1974. It was held that the Act and Statutes do not vest in the Government the power to grant or to withhold affiliation and that the power vest with the syndicate of the university. The right of the Government is only to formulate their own views in regard to various applications made by parties, with reference to financial

---

[27] *University of Calicut* v. *N.C.T.E.*, 2004(2)K.L.T. (S.N.) 29.
[28] 1983 K.L.T. 483.

implications involved, the ability of the Government to meet the financial commitment, the educational needs of various localities in the state as well as public interest involved in providing educational facilities and other relevant factors. It was held, Government are entitled to insist that their view should be considered by the syndicate before taking a final decision. The syndicate will not be justified in taking arbitrary decision and impose financial burden on the Government that it cannot bear. At the same time, it was pointed out by the court that the choice made by the Government in regard to various applicants as reflected in its views conveyed to the syndicate is not binding on the syndicate. It was observed, it will be reversal of the scheme laid down by the Act and the Statutes if the syndicate only recommends the applications to the Government and later takes the ultimate decision on the question of grant or refusal of affiliation. The court held that the syndicate is entitled and has also the duty to take an independent decision on consideration of entire materials before it and the power is to be exercised by the syndicate in accordance with the procedure provided in the statutes.

With regard to recognition of degrees and courses of other universities and boards, the court made it very clear that the statutory scheme and the procedural formalities have to be taken into consideration by the university before exercising their statutory power in this regard. In *Manamma Chacko* v. *University of Kerala*[29], the question that arose was whether the Academic Council by a resolution could recognize a degree of a foreign university. It was held it could be done only by framing a new regulation by the Academic Council. In the instant case no regulations have been passed by the Academic Council recognizing the M.A. Degree of the Partrice Lumumba Peoples Friendship University, but only a resolution has been passed in the matter. It was held reading sections 25 and 38 of the Kerala University Act, 1974 together and interpreting the provision in a harmonious manner, that there cannot be any doubt that the Academic Council

[29] 1982 K.L.T. (S.N.) 39.

could decide as to what examinations of other universities may be accepted as equivalent to those of the university. It is also for the Academic Council to recognize the examinations, degrees and diplomas of other universities as equivalent to those of the university. But these could be done by means of Regulations and not by passing resolutions.

The court had also to consider the various stages of processing of application for affiliation, the effect of conflicting reports of the inspection teams of the university and the stage at which the application could be rejected. In *Vraghese* v. *University of Kerala*[30], the syndicate obtained an inspection report on the application for affiliation for the academic year 1981-82. For the academic year 1982-83 another inspection report was obtained. The reports were conflicting in certain respects. The question arose as to whether the applicant should have been heard before rejection of his application on the basis of the second report. It was found that the deficiencies noted in the second report were not pointed out in the first report. It was held, the principle of natural justice required that the syndicate should have informed the petitioner about the alleged deficiencies and given him an opportunity to satisfy the syndicate that there were no deficiencies or that the deficiencies, if any, would be cured. In not doing so, it was held, the syndicate had clearly violated the principles of natural justice.

Regarding the stage at which the application for affiliation could be rejected, it was held that Statutes 7 to 9 read together contemplate only one stage at which application could be eliminated and that is the preliminary stage before the local inquiry, where it could be eliminated for defects. It was held once the syndicate decides to proceed with an application, there is no question of eliminating the applicant midway; thereafter the syndicate can only take a final decision to grant or to refuse affiliation as contemplated in Statute 9,

and in taking the final decision it is necessary that the syndicate should consider the views of the Government also.

Emphasising the importance of the statutory procedure for granting affiliation to new colleges or new courses in existing colleges, the court found[31] in a case, where the application for new courses were rejected by the university without assigning any reasons, that the rejection was arbitrary, illegal and unjust. The university in this case, on receipt of the necessary application for affiliation for new courses had followed the procedures provided for in the Statutes for affiliation and received the required fee from the colleges. The inspection reports of the university were also favourable to the colleges, which recommended affiliation of the new courses. The university however rejected the applications without assigning any reasons. Though it was urged that the rejection by the syndicate was on the basis of a policy decision, no such policy was placed before the court and there was also no reference to such policy decision in the resolution passed by the university. The members of the inspection team were also members of the syndicate, which rejected the application without assigning any reason. It was held an application can be rejected under Statutes 7 only if it is satisfied that the arrangements made are not sufficient or the college has failed to comply with the conditions laid down in respect of any previous affiliation. The syndicate had no case that any such situation existed in any of the writ petitions. It was further found that sanctioning of the courses to the affiliated unaided colleges does not cast any financial burden either to the university or to the state. Therefore, it was held, the decision that not to grant the courses applied for without assigning any reasons is totally restrictive and violative of the fundamental rights guaranteed under the Constitution.

Faced with a dispute regarding the supremacy of the N.C.T.E. Act vis-à-vis the University Act and statutes, the court had to resolve the question as to which would prevail in the event of

---

[31] *University of Kerala* v. *Marthoma College of Science and Technology*, 1999(3) K.L.T. (S.N.) 55.

inconsistency between the two. In *Rural Education and Social Trust* v. *University of Calicut*[32] a Division Bench of the Kerala High Court held that the provisions of the N.C.T.E. Act would prevail if it is inconsistent with provisions of the University Act, the First Statutes or Regulation. It was held that the university is bound to implement the decision of the N.C.T.E., but that does not mean that the university would not follow the statutory provisions. It was found that the petitioner had not succeeded in showing that Act or Statutes are inconsistent with the provisions of the N.C.T.E. Act. Therefore the order of the university rejecting affiliation to the college on specified reasons despite the N.C.T.E. granting recognition for the college was upheld and the writ appeals were dismissed.

Subsequently in *Vikram Sarabhai E. Trust and B.Ed. College* v. *University of Calicut*[33], a single Judge doubted the correctness of the above Division Bench decision and referred the matter to a Division Bench. The Division Bench in turn referred the case to the Full Bench. The Full Bench explained the decision in *Rural Education and Social Trust* case and held that when the central body grants recognition on the basis of the finding that the college has necessary infrastructural facilities, the university has no power or authority to decline affiliation on the ground of lack of infrastructural facilities. Affiliation cannot be declined on the ground that the application for the same was not submitted in time in terms of the provisions of the Calicut University First Statute. The university can insist that the requirements as per the Statutes, which are not in conflict with the provisions of the Central Act and the Regulations, should be complied with, for grant of affiliation. There may be cases in which N.C.T.E. and the Government have conflicting views on the availability of infrastructural facilities and consequent grant of recognition. In such a case, it can be rightly said that the recognition was obtained by fraud. If the university feels that the affiliation has

---

[32] 2007(2)K.L.T. 609.
[33] 2008(2) K.L.T. 1027 (F.B.)

been granted illegally, it has several options before it. It may bring the same to the notice of the N.C.T.E., so that the Council can cancel the affiliation under section 17 of the Act. It may challenge the recognition granted by the Regional Committee of the N.C.T.E. by filing an appeal under section 18 of the Act before the N.C.T.E. or by filing a writ petition before the High Court. In an appropriate case, for example, where recognition has been obtained by fraud, the university may even collaterally attack the validity of the recognition granted in the enforcement proceedings like the present writ petition. After observing as above, it was held, the instant case was not a case of 'no facilities' or the recognition was obtained by fraud and, therefore, the university cannot be permitted to collaterly attack the permission granted by the N.C.T.E. in the writ petition. It has to take recourse to the remedies available to it under the Statute. It was held in the above circumstances the university was bound to act under section 14(6) of the N.C.T.E. Act and grant affiliation to the petitioner college.

In *National Medical Education Charitable Trust* v. *Kerala Nursing and Midwifery Council*[34] in the matter of recognition and approval of nursing colleges, it was held, the Nursing Council Act, 1947 does not empower the Central Council to deal with recognition or approval of institutions imparting education in nursing. Recognition or approval of such institutions is essentially the function of the State Council. The function of the Central Council is mainly concerned with the recognition of qualifications for the purpose of enrolment in the state register. It also enables the Central Council to derecognize any recognized qualification awarded by any authority in view of the provisions contained in section 14 of the Act. Therefore, it was held that in the petitioner's case the power of the Central Council was limited only to de-recognize the qualification obtained from such institutions in other states. Even after the disapproval of the Central Council, the said qualification would remain valid for the parent state.

In the above case petitioner Nursing College obtained NOC from the State Government. The Indian Nursing Council made inspection of the facilities provided by the petitioner and granted permission to it for starting the General Nursing and Midwifery Programme with an intake of 20 students subject to the approval of the State Nursing Council and the Examination Board. Pursuant to the permission of the Central Council, the petitioner moved the State Council for approval for starting the Nursing School during the running academic year itself. The State Council, after inspecting the facilities of the petitioner, issued the impugned order pointing out four deficiencies to be cured for grant of approval. The order of the State Council was under challenge on the ground that the impugned provisions in the Travancore Cochin Nurses and Midwives Act (the State Act) which enable the State Council to consider about the availability of infrastructure are repugnant to the provisions of the Central Act and are therefore unenforceable. Therefore it was argued, once the Indian Nursing Council is satisfied regarding the infrastructure facilities, the State Council cannot reject the approval on the ground that the school does not have the requisite infrastructure facilities.

Rejecting the contentions of the petitioner and dismissing the writ petition, it was clarified that, the permission granted by the Central Council is only a preliminary step in the establishment of a Nursing School. The same can only guarantee that candidates who pass out from such institutions can get enrolment in other states also. It was further held that without getting the approval of the State Council and also the State Examination Board, the petitioner cannot admit students. Therefore it was directed that the petitioner has to comply with the stipulations contained in the impugned order.

In the matter of withdrawal of recognition granted to the Higher Secondary Examination of Tamil Nadu (Private Study) by

Calicut University, it was held[35] the decisions of the university in academic matters should be respected by courts and normally courts should not sit in appeal over such decisions. But as regards date of effect of withdrawal of recognition probably because it involved a vested right of the students, the court took objection to the statement in the impugned order that those who cleared the above said examination will not be admitted to any course from the academic year 2005-2006 onwards. It was therefore held that the withdrawal of recognition can operate only prospectively and all the candidates who cleared the examination before 7.7.2005, when the said course enjoyed the recognition of the university, should be permitted to join the degree courses or to continue their degree course if they had already joined.

The statutory authority of the national regulatory body, the N.C.T.E., has been reaffirmed by the court in *Nirmala Training College* v. *M. G. University*[36]. While dealing with recognition granted by the N.C.T.E. for changed subjects applied by the management, it was held, once the N.C.T.E. grants recognition for changed subjects, the university has no other option but to grant affiliation to the changed subjects. It was clarified that though the N.C.T.E. order does not specify the optionals, since the same was granted pursuant to the application of the college, it has to be treated that the optionals specified in the application are allowed by the N.C.T.E. in its order. Therefore it was held under section 14(6) of the N.C.T.E. Act the petitioner is entitled to get affiliation for the changed optionals.

---

[35] *Ashokan* v. *University of Calicut*, 2006 (2) K.L.T. (S.N.) 11.

[36] 2006(1) K.L.T. (S.N.) 4. See also *Loordhu Ammal Educational Trust* v. *University of Madras*, 2005(4)K.L.T. (S.N.) Mad.12 where the Madras High Court has made a faint attempt to defend the statutory autonomy of the university by holding that when an order of recognition of the N.C.T.E. is produced before the university, the university can make a limited enquiry as to whether the Regional Committee of N.C.T.E. has followed the provision of section 14(3) (a) of the N.C.T.E. Act before granting the recognition. It was conceded that section 14 (6) of the N.C.T.E. Act, no doubt, says that the examining body on receipt of the order under section 14(4) shall grant affiliation to the institution where the recognition has been granted by the university. But this does not mean as soon as an order of recognition from the N.C.T.E. is produced before the University, it must close its eyes and straight away grant affiliation.

While accepting the statutory scheme of conferring ample power on the university to inspect the colleges seeking affiliation, the court did not hesitate to take the universities to task for their delay and latches in the matter of affiliation of colleges. Relying on the well settled principle that the writ court can pass an order which the statutory authority would have passed, had it properly exercised the power vested in it, it was held[37] that if the court is satisfied that the university ought to have granted affiliation to the 1st respondent college, the court can ask the university to grant affiliation, instead of asking the university to consider the application for affiliation. Therefore, the objection taken by the university against the form of the order of the single Judge was found to be only technical by the Division Bench.

In view of the fact that the university was not enforcing the statutory time schedule in granting affiliation and that the affiliation for various years was always granted belatedly, it was held[38] admission of students made by a running college having temporary affiliation for the initial years, for the fifth and sixth batches of students before getting the affiliation for those particular years is not illegal. It appears that in the instant case the court was prompted by expediency rather than by strict rule of law.

7.4 Admission

Admission of students to various courses and examinations in higher education fall within the purview of university Regulations. Disputes on admissions is a contentious issue in large number of cases and the court had to interfere in several of them considering the illegality in the same and the unfairness shown to the applicants. Right to admission to an educational institution has been

---

[37] *University of Calicut* v. *Amala Institute of Medical Sciences,* 2009(3) K.L.T. (S.N.) 78.

[38] *Id.,* at p. 79. See also *Jubilee Mission Medical College and Research Institute* v. *University of Calicut,* 2008(4) K.L.T. 966. If the affiliation originally granted is provisional and for a fixed period, order extending provisional affiliation should be issued prior to commencement of the ensuing academic year.

treated as a statutory right rather than a fundamental right[39]. Therefore for valid and legitimate reasons admission could be denied to a candidate by a college in order to maintain the internal discipline and the code of conduct[40]. But, a challenge against rejection of an application for admission may be well founded if it could be shown by the petitioner that the denial of admission was illegal, capricious or *mala fide.*

In one of the early cases on this topic, *viz. Krishnan Nair* v. *Principal, Law College, Trivandrum*[41], it was held, to say that denial of admission to a professional college is violative of Article 19(1)(g) in that it stops the candidate from practicing the particular profession after successfully completing the course of studies, seems as far-fetched as saying that it is violative of Article 19(1) (f) in that it deprives him of the property he might have acquired by successful exertions in that profession. It was further held, the head of a public educational institution can be under no legal duty to admit a particular candidate. Unless the applicant can show that the rejection of his application was capricious or *mala fide* and that the application has received no consideration at all, he cannot ask for a writ of mandamus against the Principal, directing him to consider the application afresh. It was also held, the head of an educational institution has the right, in the absence of any rule or regulation to the contrary, to deny admission to a candidate, whose character or conduct are, in his opinion, unsatisfactory and not conducive to the welfare of the institution. It was found that the relevant rules in the

---

[39] See *Philip* v. *State*, 1978 K.L.T. (S.N.) 17, age of 17 prescribed under the rules for admission to medical college of the State could not be said to be arbitrary or unreasonable. Students who are under-age and over-age as prescribed under the rules are not to be admitted, since the right to admission is a statutory right. See also *George Joseph* v. *Principal, Medical College,* 1979 K.L.T.(S.N.) 8, rule in the prospectus insisting that science graduates should also satisfy minimum qualifying marks of 50 percent in optional subjects in pre-degree examination, was held to be reasonable as it might be to ensure that the foundation in the basic subjects was well laid. See also *Abdul Salam* v. *University of Kerala,* 1997(2) K.L.T. 223, giving weightage for performance in the qualifying examination for selection for admission as set out in the prospectus of the University was held not illegal.

[40] *Rajendran Nair* v. *Principal, University College and others*, 1978 K.L.T. 204. Admission was denied to student belonging to 'Sidha Samaj' wearing dhoti and shawl instead of shirt. It was held that the issue is one of internal discipline and unless there be weighty reasons to hold that a deviation has to be made in the case of the petitioner, no interference could be called for.

[41] 1963 K.L.T. 945.

case gave the Principal the right to refuse admission to any candidate, whose character or previous conduct had not been satisfactory, and also the right to refuse admission without assigning any reason. Therefore the Principal's decision was upheld.

The court was not inclined to dilute the provisions of the prospectus with regard to admission so as to suit the convenience of the candidates. In *Sainulabdin* v. *State of Kerala*[42] the conditions set out in the prospectus required the applicant to submit an income certificate in the form prescribed, along with the application. Failure to furnish the certificate renders the application defective. It was held the prospectus issued by the university binds the candidate who seeks admission and unless any portion of the prospectus is held to be illegal, court cannot direct either amendment of the prospectus or consideration of the claim of a student in a manner otherwise than that is provided in the prospectus. Therefore, it was held, the appellant cannot seek a remedy under Article 226 of the Constitution on the strength of such a defective application.

In the context of entrance examination also, the court had to decide some dispute involving academic questions. In *State of Kerala* v. *Fathima Seethi*[43] the court had occasion to consider as to what is a 'suspect question' in the category of objective multiple choice questions. It was held a 'suspect question' is one which is incapable of being asked as objective multiple choice question, in that it has no single, unique or 'most appropriate answer'. This may be because the answer requires an explanation or argumentation or reasons for its justification. It was held these are exercises not permissible in an objective multiple choice question, where the candidate has to merely mark a tick in the space provided for it. The answer key is also programmed into the computer. It was further held[44] every 'suspect

---

[42] 1995(2) K.L.T. 629.
[43] 2002(3) K.L.T. 871.
[44] See also *Madhumohan* v. *State of Kerala*, 2000(2) K.L.T. 669, where the court found that the answers given in the answer key itself were wrong and certain question had carried more than one answer and where the prospectus prescribed that there shall not be more than one appropriate response

question' needs to be deleted so that no student gets advantage or is denied advantage in the evaluation of such questions.

After clarifying the above position, it was held that it was not the function of the court to decide what should be the correct answers to the multiple choice questions. In the instant case, no *mala fides* or improper motive was alleged against the Commissioner nor was there any illegality alleged. The Commissioner, it was found, had *bona fide* accepted the advice tendered to him by the experts appointed by him. The credentials of the said experts was also not under challenge nor any *mala fides* attributed against them. In the above circumstances it was held appointment of further experts by the learned single Judge could have produced no better results, but could only have added to confusion that prevailed.

While approving the authority of the academic bodies as final in academic matters, in a case where the answers given in the answer key were wrong and more than one correct answers were given to questions, the court held[45] that the examinees are entitled to have their papers correctly and properly valued, which is ingrained in the fundamental right to education and any infraction of it would be violative of Article 14 of the Constitution. Therefore, it was held arbitrary and capricious acts of the examiners are not immune from interference by High Court under Article 226.

As the power to prescribe the qualifications and mode of admission is with the Academic Council, where the Academic Council has treated those who have undergone three year LL.B. course and five year LL.B. course as equal in the prospectus for admission to the first year LL.M. course, it was held that the Principal could not vary it[46]. But even the Academic Council cannot decide matters of

---

to a question, it was held that those question which carry more than one correct answer should be deleted from the answer key.

[45] *Madhumohan* v. *State of Kerala*, 2000(2) K.L.T. 669.

[46] *Rose* v. *State of Kerala*, 1990(2) K.L.T. 162. The contention of the Principal in the counter affidavit that he can prescribe modalities for making admission was not supported by principle or authority. See also *Varghese* v. *Director, Medical Education*, 1987 (2) K.L.T. 673 and *Varghese Philip* v. *State of*

equivalency of courses and other academic issues, which the University Act has authorized them to take, in a casual and perfunctory manner by passing resolutions, but has to do the same by incorporating in their Regulations. It was therefore held[47] matters covered by section 38 of the Kerala University Act, dealing with equivalency of courses, could only be provided for by Regulations and not by resolution of the Academic Council. It was held in technical matters like the equivalency of the petitioner's I.S.C. Examination to that of Pre-Degree Examination for admission to medical degree course, where, after a proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications, a competent academic authority takes a decision, particularly on the basis of recognition of an expert body, courts, uninformed of the relevant data and unaided by technical insights necessary for the purpose of determining the issue, would not lightly disturb the decisions of the academic authorities.

While recognizing the authority of the head of the educational institution to deny admission to a candidate for justifiable reasons and endorsing the view that the right to admission of an applicant to any course cannot be taken as granted, the court has adopted a different approach in the matter of cancellation of admission of a student after himself undergoing the course for quite some time. It was held[48] that there cannot be the slightest doubt that the order cancelling the admission of the petitioner to the post graduate course in M.S.(General Surgery) after the petitioner had undergone the course for ten months, visits him with highly prejudicial civil consequence. It was held such action ought not to have been taken without affording the petitioner reasonable opportunity of showing cause.

Kerala, 2004(1)K.L.T. 581, it is not permissible to change the eligible criteria for admission to a course by modifying or amending the prospectus after the last date fixed for submission of applications.

[47] *Mary Philipose* v. *State of Kerala and others*, 1981 K.L.T. 380 (F.B.). See also O.P. 7724 and 8815 of 1986, 1987 (2) K.L.T. (S.N.) 38.

[48] *Jacob Mathew* v. *State of Kerala*, 1971 K.L.T. (S.N.) 26.

Though right to get admission to an educational institution has not been treated as a fundamental right, when the eligibility criterion fixed by the Government for granting admission was so arbitrary and discriminatory that it practically reserved the entire seats of the part-time LL.B. course for the Government employees to the exclusion of employees of private institutions, it was held to be violative of the right to equality guaranteed under Article 14 of the Constitution and the Government order is liable to be quashed. It was observed, while even a reservation of admission to a particular category of employees by giving preference to them may have to be supported by proper justification, where, in the name of reservation, all the seats were cornered by a class of employees effectively ignoring the rights of others, there was an annihilation of the rights of such others to seek admission to the course in which normally they should also have a right to be considered with others. Though the court conceded that laying down the criteria for eligibility is the power of the Government and is essentially a question of policy, it should not be exercised in an arbitrary and unreasonable manner without any intelligible reasons[49]. Therefore clause 2 of the Government order in the instant case was held to be violative of Article 14 and hence quashed.

In *Academy of Medical Sciences* v. *Regina*[50] though the court conceded the right of the management to admit students in the management quota, in the absence of a consortium list prepared by a Common Admission Test conducted by the consortium of the management, the said admissions had to be made in accordance with the ranks in the state merit list, and that the admissions cannot be made on the basis of a list prepared pursuant to counseling or interview or on other considerations. It was held, in such cases the

---

[49] See *Jimmy Light C Joys* v. *Mahatma Gandhi University*, 2001(3) K.L.T. 789, eligibility criterion for admission has to be strictly viewed and followed even in the case of seats in management quota , and misplaced sympathy cannot be shown to the ineligible candidates admitted by the management, though the candidates have completed more than one year of the course.

[50] 2004(3) K.L.T. 628.

management can charge a higher rate of fee from candidates admitted in the management quota than that payable by those admitted in Government quota. It was pointed out, admission to management quota may not take place strictly on the ranking in the state merit list.

In *Gopinathan and others* v. *University of Kerala*[51], the question that arose for decision was whether the syndicate of the university had the authority to order an enquiry regarding the alleged irregularities in the matter of admission complained of by candidates who had sought admission but could not succeed. The court had also to consider whether the syndicate had power to issue a direction to cancel the admissions already effected by the college and to conduct fresh selection. With regard to the first point it was found that the complaint was lodged by candidates who had failed to secure admission and therefore they were not students, whereas Statute 4 of the First Statutes stipulates that the complaint in writing should be from teachers or students etc. It was therefore held that the action taken by the syndicate in deputing an enquiry officer to make an on-the-spot enquiry into the allegations of irregularities committed in the matter of admissions based on a complaint filed by non-students cannot be treated as valid. With regard to the second question it was held that in as much as there is no provision either in the Act, Statutes, or Ordinances of the university specifically empowering the university to cancel the admissions already made, it is not possible to recognize the existence of such a power in the syndicate, particularly when the students had already joined the course, commenced their studies and were not responsible for the irregularity alleged. Such an action brings serious adverse consequences to those students who had been admitted. Therefore it was held that the direction of the syndicate to the Principal of the college to cancel the whole admissions was without jurisdiction and hence illegal.

---

[51] 1976 K.L.T. 901

In *State of Kerala and another* v. *Rafia Rahim*[52], the rationale for conducting entrance examination came to be appreciated by the court. It was a case concerning admission to medical colleges on the basis of marks of the candidates drawn from different universities with no uniformity of standards. It was declared that such a selection process was objectionable and violative of Article 14 of the Constitution. It was further held, the best scheme of selection in the above circumstance would be by holding a common entrance examination to secure uniformity of standards, as recommended by the Medical Council of India and was endorsed by the university authorities.

Reiterating the authority of the university to lay down its own standards for attaining academic excellence, it was held[53] that the statutory provision providing for pre- qualifying examination for registration for Ph.D. as a mandatory requirement was not violative of Article 14 of the Constitution. It was held, the university was perfectly within its rights for framing its own rules and regulations in the matter of conducting eligibility test for candidates who intended to register for Ph.D. Degree. This is some what akin to the provision for entrance examination for getting eligibility for admission to professional courses.

In the matter of admission to post graduate degree/diploma courses in medical colleges, it was held in *Dr. C. Mathew* v. *Principal, Medical College, Trivandrum*[54] that, the basic qualifications for eligibility for admission and the special degrees or diplomas for weightage should alike be satisfied by an applicant on the last date for applications. The logic and reason relied on was that under clause 13(k) of the application form, all certificates required had to be produced along with the application and that clause 12 enjoins summary rejection for non-compliance. It was held, if such certificates had not accompanied the application, there was no right for the

[52] 1978 K.L.T. 369 (F.B.)
[53] *Girijan* v. *State of Kerala*, 1998 (20 K.L.T. 333.
[54] 1980 K.L.T. 144 (F.B.)

Government or Special Secretary to overlook the defect and direct the weightage to be given even to those who did not have the diploma.

Though the court was reluctant to interfere in policy matters of admission[55], holding it to be the prerogative of the Government or the university, where the policy has been so arbitrary and unreasonable segregating an equally eligible class of candidates from the others or sought to corner the former as against the others, it was held[56], the court failed to see any rational principle on the basis of which such a segregation can be made, making the opportunities available to the deprived class illusory.

The court adopted a stand in *Philip's* case[57] that the age of 17 prescribed under the rules for admission to the medical colleges in the State was neither arbitrary nor unreasonable. The court had however taken a contrary view when it had to deal with prescription of maximum age limit for admission to 5 year law course in law colleges. It was classified[58], the introduction of an upper age limit for admission to the law course amounts to denial of entry to a large section of students' community to the portals of the law colleges. It was found that the decision to fix an upper age limit for admission was not based on any study or report by the experts in the field and hence the same was *prima face* discriminatory. It was held that the prohibition by the age was artificial and unrelated to the object sought to be achieved in regulating the entry into the educational course. Hence, the relevant provision in the prospectus to the extent it prescribed an upper age limit for admission was declared to be unconstitutional.

---

[55] See *Raniya Mohammed* v. *Commissioner for Entrance Examination,* 2008(4) K.L.T. 866. Faced with the question whether the procedure of allotment of treating the seats in Government colleges as distinct from the merit seats in self-financing colleges is unconstitutional, it was held that the method of allotment followed by the Government does not suffer from any illegality nor it is unconstitutional .

[56] *Ibid.* The 'outside' university graduates were excluded from the general merit pool and were confined to the illusory two percent of reservation. It was held to be irrational and discriminatory against 'outside' graduates who were proclaimed as equally eligible under clause 3 of the prospectus to compete in the open merit pool.

[57] *Philip* v. *State*, 1978 K.L.T. (S.N.) 17.

[58] *K. A. Babu and others* v. *State of Kerala & others,* 1987(1) K.L.T. 730.

Another question that was decided in the above case was the justifiability of the exclusion of a private law college from the common entrance examination for admission to the law colleges in the State. It was held that the Government order under which the prospectus was issued introducing the entrance examination was applicable only to Government Law Colleges. Whether such decision would have been made applicable to the private law college also was a policy decision for the Government. The Government is ordinarily the best judge to evolve a policy and to implement. In the instant case it has chosen not to make the general order applicable to all law colleges including the private law college. Therefore, it was held that the action cannot be characterised as discriminatory.

It is submitted that the above decision may be subject to criticism in the light of the avowed object of Article 14 of the Constitution and the principle against discrimination. It is felt that the logic and reasoning adopted by the court for discarding the age limit as explained in paragraph 10 of the judgment may not be convincing. There is no justification for comparing the upper age limit fixed for admission to the newly introduced five year LL.B. course with that of the qualification of high offices like President, Vice-President, Members of Parliament, Judges of Supreme Court and High Courts etc. The upper age limit is prescribed for the 5 year LL.B. in order to protect the interest of the young and brilliant students joining the course just after passing out from the plus two course. It is all the more justified when the court has found that "it is true that in relation to many situation, age has afforded a reasonable basis for classification". The relevant question was whether persons of any age should be admitted to the course along with young boys and girls, who had just completed their plus two course, and be permitted to compete with those youngsters, especially when the existing three year LL.B. course, without any age limit for admission, had been continuing as a parallel stream, enabling any one to prosecute the law studies with equal eligibility for entry to the legal profession.

It is felt that the object and purpose behind the introduction of a common entrance test for the law course in the state *viz.* to improve the uniform standard of legal education throughout the state by introducing a filtering process at the initial screening stage, has escaped the notice of the court, which had taken the issue as a mere policy matter. It was the discrimination in evolving and implementing the policy that was complained of and highlighted in the petition. The Government, which was anxious to improve the general standard of legal education in the state, ought to have been compelled by the court to bring in the private colleges also within the purview of the entrance examination, since an affiliated college, though unaided, is also duty bound to accept and implement the directions of the Government and the university issued for improving the standards of education. Instead, the court was not justified in merely relying on the plain reading of the Government order, the rationale of which has been challenged by the petitioner on the ground of discrimination.

Faced with a question as to who can reserve seats for admission, whether the institution concerned or the Government, it was held[59] that in any event, an institution cannot adopt its own standard of reservation and that reservation can only be made by the state under Article 16 of the Constitution of India. Petitioner was an unsuccessful candidate for admission to the 1st year M.B.B.S. course in a medical college in the state. She filed writ petition to set aside the admission to the M.B.B.S. course and to declare that she was eligible for admission to the said course pursuant to the notification issued by the respondent. It was contended that the written test conducted for admission without any prior intimation to the candidates was contrary to the notification and was only a method for the respondent to admit their own candidates and to eliminate meritorious candidates like the petitioner. It was further contended that the selection of ten candidates allegedly from the N.R.I. category, after having opened it

[59] *Vandana* v. *State*, 1996 (1) K.L.T. 775.

for all, was discriminatory under Article 14 of the Constitution since the notification intended admission only to Indian residents.

It was held in the above case that holding a written test for admission at the last moment on the vague allegation that there were a large number of applicants; reserving seats for backwards districts not having been provided in the prospectus or rules, and allowing ten N.R.I. students being admitted in the Non-N.R.I. open seats without written test or evaluation- all would amount to arbitrary and illegal exercise of power. In a strong act of determination, without being controlled by any compassionate approach, the court held, the persons who got admission illegally were not to get their admission protected, and that it was a fit case where direction had to be given to remove those wrongly admitted. It was further held, not as a general principle, that the wrongly admitted candidates need not necessarily be parties in the original petition as it was for the second respondent to rectify the error and pay for their lapse. It was observed, since the petitioner had moved the court swiftly within two days of the impugned act, no equities would arise in the case of those admitted wrongly. Hence, the selection made was declared illegal, confining the declaration for one seat for the petitioner and direction was issued to admit the petitioner forthwith to the 1st year M.B.B.S. course.

Highlighting the validity and importance of prospectus issued by the university, it was held[60] in a case, where the prospectus offering to join B.A. degree course upon passing the entrance examination, the stand of the university that all persons who elect to write Commerce as Part III subject are bound to enter the B. Com.

---

[60] *Jeeja* v. *Director, School of Distance Education, University of Calicut,* 2001(1)K.L.T.(S.N.)24. See also *State of Kerala* v. *Riya Muhammed,* 2004(1)K.L.T.(S.N.) 84, As per clause 12 of the prospectus the failure to turn up for the interview at the appointed time and date will result in forfeiture of the chance. As per clause 8 of the prospectus the additional seats sanctioned during the validity of the select list shall also be filled up from it. It was held when clause 8 and 12 are strictly construed , a candidate who failed to turn up for the interview held for the originally sanctioned seat had forfeited his chance and had no right to be called for the interview for admission to the additionally sanctioned seats. It was also found that the Court does not have any jurisdiction to direct the respondent to increase the number of seats to accommodate the candidate who will lose admission on account of the admission of the petitioner, and that if relief cannot be granted to the petitioners without affecting the rights of other persons, naturally such persons will have to be heared before granting the relief.

degree course only and not the B.A. was arbitrary. The university had held out a promise to the appellant that they were free to choose the course of study provided they passed the entrance examination. All the appellants had passed the entrance examination. It was held, the appellants had legitimate expectation to pursue the course of study of their choice in view of the specific promise given in the prospectus and the abrupt denial of the same was unsustainable.

While interpreting the provisions of the prospectus, the court had accepted only the plain and literal interpretation of the clauses, and did not agree for importing the application of the 'general service rules' for interpreting any clause of the prospectus[61]. In the matter of admission for M.D. for Dental Surgery, where the prospectus stated that selection from the service quota will be made on the actual length of service, it was held that Rule 27(c) of the General Rules could not have any application in fixing seniority of the candidates. What was reckoned was only the actual service of the candidate and the same was to be reckoned as the period from the date of joining duty to the last date fixed for submission of applications after deducting all periods of unauthorized absence and/or all periods of leave without allowances.

Rejecting the plea for compassion, the court displayed a rigid and tough stand against showing misplaced sympathy to an ineligible candidate, who got admitted in a course with the aid of an interim order issued by the High Court. It was held[62] the petitioner, who had no legal right to get the relief sought for, should not be allowed to continue the course, merely because a similarly placed person secured an undue benefit with the help of court order on account of the failure of the authorities to challenge the interim order passed by the court. It was observed, notwithstanding the fact that the petitioner would be put to serious hardship and would be forced to a situation where years of labour and academic effort would be

---

[61] *Aravind* v. *Azad*, 2004 (2) K.L.T. (S.N.) 62.
[62] *Wesley Philip* v. *University of Kerala*, 2002(1) K.L.T. 189.

wasted, the court would not be justified in intervening in his favour.

In *Mary Louis Manavalan* v. *State of Kerala*[63] the court had to consider whether students of an unrecognized medical college could be transferred to a recognized medical college on the ground that the institution wherein they were admitted being new and of inadequate facilities. It was held, there being no inherent right in a student admitted to a non-recognized medical college to claim such a migration/transfer, the claim made by the petitioners cannot be allowed. It was also found that in view of the restriction for migration/transfer imposed by the recognized medical colleges on the basis of the recommendations adopted by the Medical Council of India, there was no foundation for the claim for such migration/transfer made by the petitioner.

In another case the court had to consider whether allotment to a new subject after the cut off date for admission would amount to fresh admission or only a change of specialty. It was held[64] re-allotment amounted to admission to a different specialty and therefore a candidate admitted to a specialty cannot seek re-allotment, which is fresh admission, after the cut off date for admission to the course. It is submitted that there could also be an objection in the instant case that more meritorious candidates in the rank list, who wanted to be admitted in the particular specialty to which the petitioner seeks transfer, would have been denied the opportunity to put up their claim.

Normally, the courts are reluctant to interfere with the purely academic function of admission to courses. Faced with peculiar facts displaying arbitrariness, the court did interfere in the interest of justice and to protect the interest of students in *Pradeep Kumar* v. *University of Kerala*[65]. There was delay in commencement of the B. Ed. course for the year 2002-2003 due to intervening orders passed by the Academic Council. Consequently petitioners were denied admission

[63] 2003(1)K.L.T. 609.
[64] *Suresh Babu* v. *State of Kerala*, 2007(4) K.L.T. 645.
[65] 2003(2) K.L.T. 745

for the course for the academic year 2003-2004. It was held it would be unrealistic to treat the B. Ed. course commencing in 2003 and ending in 2004 as a course for academic year 2002-2003. If the petitioners are denied admission for the said course for the year 2003-2004, though it is stated to be for the last academic year 2002-2003, petitioners will loose one year for no fault of theirs. It was held there was no justification for the university to have denied admission to the petitioners for the course commencing in 2003. Therefore the university was directed to reframe the rank list after considering the applications of the petitioners and make a fresh rank list and grand admission based on that.

In *Kerala Unaided B. Ed. College Management Association* v. *University of Kerala*[66], the court had to deviate from the rule that the provisions of the prospectus guide and decide the admission process, when arbitrariness *ex-facie* has been established. In this case the prospectus was as vague as possible, leaving it open for the managements to put their own interpretations to the date on which the candidates should have obtained the minimum qualifications for admission. When the prospectus did not contain any specific last date by which applications for admission to the management seats have to be submitted and no notification was issued by the Government in that regard subsequently, it was held that subsequent introduction of a last date for filing application for admission in the management quota was arbitrary and discriminatory, and the admissions made to the management seats prior to fixing the last date cannot be annulled.

When the provision in the prospectus lead to a situation that a candidate with higher rank will be admitted to a payment seat and another candidate with lower rank will be admitted to a free seat, where one has to make an initial deposit of a high amount and to pay

---

[66] 2006 (4) K.L.T. 864. See also *Aneesh* v. *University of Kerala*, 2007(2) K.L.T. 334 , where the relevant provision in the admission Regulation was declared as violative of Article 14 of the Constitution since it discriminates between students who wrote the SAY (Supplementary)examination and other state Boards.

an exorbitant high rate of fees, it was held[67], the said provision was totally discriminatory and violative of Article 14. It was held petitioner having higher rank than the 4th respondent was entitled to be considered against the ex-service men quota, to which both belong, in preference to the 4th respondent.

Emphasising that there cannot be any discrimination between students of affiliated colleges and those of the university centres, it was held, whether it is in the university centres or the affiliated colleges, the examination is conducted by the universities themselves and therefore there shall not be any discrimination regarding norms of admission between the two, when the degree offered to both are awarded by the university and are treated at par for academic purposes. Therefore, the norm that students who passed degree courses the same year would be eligible for admission to B.Ed. course in the university centres and in other colleges they are not, would certainly amount to discrimination[68].

Relying on the feasibility and credibility of the entrance examinations, the court directed[69] that admissions to the open and in-service quotas of the post graduate dental course shall be based on entrance examinations for achieving uniform standard of selection. The court found that it is unsafe to rely on degree examination results, when students for post graduate admissions are drawn from different universities and as academic standards at graduate level in different universities will not be the same.

As the entrance examinations are slowly losing its charm due to more than one reason, the court found[70] that the method of admission based on marks secured in entrance examination as well as marks secured in the relevant subjects of qualifying examination is valid. The court held, in the absence of any valid regulations made by

---

[67] *Sumi Johnson* v. *Commissioner for Entrance Examination,* 2000(2) K.L.T. 839.
[68] *Kerala Unaided B. Ed. College Management Association* v. *University of Kerala,* 2006 (4) K.L.T. 864.
[69] *Jose Thomas* v. *State of Kerala,* 2007(3) K.L.T. 422.
[70] *University of Calicut* v. *Amala Institute of Medical Sciences,* 2009 (3) K.L.T. (S.N.) 78.

the state, the M.C.I. or the university, the management can devise any reasonable method for admitting students having due regard to the *inter se* merit of the applicants.

7.5 Examinations

The right of a student to appear for university examinations is a statutory right governed by the provisions of the University Act and Regulations. But, this does not mean that the university can arbitrarily and unfairly deny the opportunity to any student. In *Bobby Cyriac* v. *Principal*[71], where the university declared that the examination conducted by the Madhya Pradesh Board of Secondary Education was equivalent to Pre-Degree course of the university and students were admitted for degree courses under the university in different colleges, it was held that university could not later withdraw the equivalency of the examination by cancelling the decision taken earlier. It was held, doctrine of promissory estoppel, rooted deeply in principles of equity, is applicable to administrative law also and the university could not go back on what it held out in Ex. P17.

In a similar situation, where a student after completing the full course of B.Sc. (Nursing) was not permitted by the university to appear in the examination on the ground that the qualifying examination was not recognized, it was held[72], considering the objects of the relevant course and programme of the Indira Gandhi National Open University (I.G.N.O.) to provide opportunity to large segment of in-service nurses to upgrade their knowledge and skills and considering the prospectus, it cannot be held that the basic qualification of the petitioner to join the B.Sc. Nursing Course was not sufficient.

The nature and character of a domestic enquiry conducted by a university or an educational institution in respect of

---

[71] 1991(2) K.L.T. 612

[72] *Leela* v. *Indira Gandhi National Open University*, 2000(3) K.L.T. 904.

alleged malpractice in examination has always been a topic of debate. The courts have varied in their opinion from time to time. In one of the early decisions, the Kerala High Court had laid down the law that tribunals exercising quasi-judicial function are not bound to follow the procedure prescribed for trial of actions in court nor are they bound by strict rules of evidence. In *A. Jacob Mathew* v. *Professor of Medicine, Medical College, Trivandrum and others*[73], where in respect of an alleged malpractice in M.B.B.S. examination, the petitioner supplementing additional answer books on the next day by entering the examination hall on early morning and claiming that the additional book was forgotten to be collected by the invigilator on the previous day and got it forwarded to the examiners separately. On suspicion about the *bona fides* of the answer book, the same was not valued taking it as a manipulation. A preliminary enquiry was conducted that resulted in a finding of *prima facie* case against the petitioner. In the domestic enquiry conducted by the same officer the petitioner was found guilty of malpractice of supplementing the additional answer book by fraud. The university imposed the punishment of cancelling his examination and debarring him from appearing in any examination of the university for the next three years.

The petitioner contended that none of the witnesses was examined in the preliminary enquiry in his presence by the enquiry officer and that petitioner himself was subjected to severe cross-examination; that a copy of the enquiry report was not supplied to the petitioner; that the enquiry officer was biased and disqualified as he himself had conducted the preliminary enquiry and that the impugned order was based on suspicion and not on proof. Rejecting all the above contentions, it was held that the petitioner was apprised of the evidence and the material against him and was afforded sufficient opportunity to cross-examine the witnesses. It was held, the mere fact that the first respondent had held a preliminary enquiry into the

[73] 1966 K.L.T. 866.

matter would in any way not disqualify him from conducting the enquiry and submitting his report. Regarding the contention that the enquiry report was based on suspicion, it was held that perhaps a legal mind, trained in judicial procedure, might have recorded specific findings, but reading of the enquiry report as a whole leaves no doubt that the first respondent had found the charges against the petitioner proved. It was found that the omission to furnish a copy of the enquiry report to the petitioner was not raised as a ground by the petitioner in his affidavit and also that the petitioner did not demand a copy of the same. Therefore it was held that the said omission did not vitiate the proceeding.

In dealing with the nature of enquiry and its procedure in the case of examination malpractices, it was held[74] in another case that notwithstanding the fact that there was no procedure indicated in the Statutes and no particular form of enquiry has been prescribed under the rules, where quasi judicial duties are entrusted to an administrative body, it becomes a quasi judicial body and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity for presenting his case is given to the examinee. It was held in the instant case there was an obligation on the part of the authorities concerned, before passing the order debarring the candidate in question, of placing before him the materials that were available before them and giving an opportunity to the petitioner to controvert those materials that are sought to be used by the syndicate of the university as against the petitioner.

In *Dr. Paul Jayan* v. *University of Kerala*[75], the court had to consider the extent of the power of the Academic Council to prescribe and regulate conduct of examinations without reference to the powers specified in the Statute. It was found that section 24(2) of the Kerala University Act gives the Academic Council the power of control and general regulation of and responsibility for the

---

[74] *T. C. Koshy* v. *University of Kerala*, 1963 K.L.T. 257.
[75] 1977 K.L.T. 88

maintenance of standards of instruction and examinations within the university. This power is in addition to exercising such other powers and performing such other functions conferred by the Statute. The petitioner challenged the validity of a Regulation, making him to appear in the Part I examination of the post graduate medical course, on the ground that the Regulation had not been passed by the Academic Council by publishing the same and submitting the same to the senate. Petitioner therefore contended that prescription of the above examination to him under the Regulation was not legal and proper. It was held that in view of the powers under the Act, it would be very necessary to vest in the Academic Council a general and residuary power regarding the control of examinations and the maintenance of its standards as is provided under section 24(2) of the Act. It was held the existence of the statutory power to frame Regulations and to specifically prescribe matters connected with the examinations of the university, does not deny the existence of a general or residuary power in respect of those matters, so long as such Regulations have not been framed by the Academic Council.

Reiterating the importance of the Regulations of the university in the matter of conduct of examinations, the court held[76] passing of the previous examination is not a condition precedent for sitting for the final examination so long as the Regulations do not prescribe such a restriction. But the results of the final examinations would be published only after the candidate passes the previous examination. Interpreting the expression "limiting the chance to three" appearing in the Regulation, it was held that each chance should be availed by the candidate and need not be one where the candidate had remitted the examination fee but not appeared for the examination. The candidate takes the chance only when he appears for the examination at least in part. It was further held that the expression should be understood only in the sense where a candidate

---

[76] *Mohanadasan v. University of Calicut,* 1984 K.L.T. 102

not only takes the steps to sit for the examination, but also utilizes the opportunity to appear for the examination.

The court had again stuck to the literal interpretation while construing a Regulation of the Calicut University, prescribing minimum marks for passing each subject in Pre-Degree examination. The latter part of clause (iii) of Regulation 9 provides that a candidate who secures minimum of forty percent of marks in any subject under Part III shall be declared to have passed in that subject. This Rule applied only in cases where the candidate did not pass the entire Part III. The candidate could be declared to have passed in a particular subject if he had secured a minimum of forty percent in that subject. Therefore the candidate had to secure not less than sixty marks in each of the subject comprised in Part III. This is the clear effect of the second part of clause (iii) of Regulation 9. The respondent had secured only fifty three marks in third subject *viz.* Economics. The appellant university contended that the respondent could have been regarded to have passed in that subject only if she had secured sixty marks and since she had secured only fifty three marks in that subject, she had failed in the subject. This contention was accepted[77] by the Division Bench and the university's appeal was allowed relying on the clear and direct meaning of the Regulation.

In *Benoy Thomas* v. *Vijaya Bhanu*[78], an interesting question arose, whether the rank should be awarded to the candidate who passed the final examination at the first attempt immediately after the completion of the course in the minimum period prescribed and secures the highest marks or to a candidate who had skipped the first chance of the final examination but appeared in the second chance and secured the highest marks. Supporting the claim of the former, it was held, there is certainly a difference between a candidate

---

[77] *Controller of Examinations* v. *Geetha Rani,* 1991(1) K.L.T. 59.

[78] 1985 K.L.T. 546. See also *Aby D John* v. *University of Kerala,* 2002(3) K.L.T. 931, scheme providing that candidates who do not complete the examination in one appearance but complete the same in more than one appearance shall be placed only in second class, was held to be not arbitrary as the candidate who passes in the first attempt is considered to be superior to a candidate who makes more than one attempts in the same examination but secures higher marks.

who completes the course in the minimum period prescribed and appearing regularly for the relevant examinations and a candidate who takes four or five years for the completion of the course or appears for the examination after an interval of one or two years. The two types of candidates cannot be treated as equals. It was held completion of course within the prescribed minimum period is an index of merit relevant for the purpose of fixing the rank.

It is an accepted preposition that a university has the right and discretion to cancel an examination already conducted and to conduct re-examination in the light of reliable evidence that mass irregularity has taken place in the conduct of the examination. But, when the university had no complaint that the students have indulged in any malpractice, on the basis of an allegation of irregularity from some individuals, it was held that examination could not be cancelled as the Regulations did not permit the same. As per the Regulations the practical test was to be conducted by two examiners, internal and external. When the external examiner did not turn up, the Principal appointed the second examiner from the same college to conduct the test, for which he was authorized. It was held[79], the practical test could not be termed as irregular and defective. In another case, where the university has given a wrong question paper pertaining to another subject to the candidate by mistake, and the candidate attempted the question but failed in the paper, it was held[80], either the university had to give the candidate a chance for a *denovo* examination, or in case of failure to do so, has to declare the candidate to have passed the examination by deeming it that he had appeared for the subject and had come out successfully.

Normally, in the case of action being taken for large scale malpractice in the examination the results are cancelled. Courts will be very reluctant to interfere unless there is total absence of principles of natural justice. A formal inquiry after issuing a charge sheet may

---

[79] *Bijulal* v. *University of Calicut*, 1999(1)K.L.T.(S.N.) 11.
[80] *Kiran* v *M. G. University*, 2002(3) K.L.T. 904.

not be necessary in such cases. Courts cannot apply the same strictness as applicable to criminal charges before a court of law or a domestic enquiry conducted in an industrial matter or in a service matter. A formal enquiry may not be necessary with a right of cross examination or an oral hearing on facts in certain cases. The requirement of natural justice must depend on circumstance of the case, the nature of the inquiry, the rules under which the tribunal is acting and the subject matter to be dealt with etc.

Since disciplinary proceedings against students and proceedings for cancelling the examination for malpractice are quasi judicial proceedings, principles of natural justice should be observed in deserving cases and there cannot be total absence of fair play before the drastic action of cancelling the examination was sought for. Therefore, when the result of the petitioners and twelve others of the fourth semester examination of the B.C.A. was withheld on allegation of the malpractice of copying and the petitioners were not informed why the results were withheld and there was total absence of natural justice, the writ petition was allowed and the proposed action of cancelling the examination was set aside[81].

In the above case, the supervisors in the examination hall did not notice any malpractice. Out of the eighteen students whose marks were withheld, the results of twelve students were published later. The petitioners were informed about the malpractice for the first time after more than one and half year of writing the examination. In these circumstances the court rejected the contention of the university that in a case of malpractice of copying, communication to the petitioners was not necessary and there was no violation of principles of natural justice in the procedure adopted by the university. It was found that it was not a case of mass copying found out by the supervisors where malpractice was plain and transparent. It was found that though a formal inquiry was conducted, all along the process the students were not informed of it and were kept in the

[81] *Shinu Abraham* v. *M. G. University,* 1999(3)K.L.T. 694.

dark, without giving them any chance to explain. Neither the standing committee of the syndicate nor the syndicate before accepting and confirming the report of the enquiry and recommending cancellation of the examination, afforded an opportunity to the students to have their say in the matter. It was found after the final decision of the syndicate to cancel the examination, a show cause notice was issued by the Controller of Examinations asking the students to show cause why the proposed punishment should not be imposed. But, the Controller of Examinations who issued the notice had no power to overrule the decision of the syndicate.

In the above facts and circumstance, referring to a host of English decisions and those of the Supreme Court, it was held that no fair deal was given to the petitioner students. When even the enquiry officers avoided the students and did not examine the supervisors in the examination hall and no evidence was seen in the files regarding commission of malpractice by the petitioners, it was held that the petitioners could not be punished for the mere fact that answers to three or four questions were similar.

The court appreciated the seriousness with which examination malpractices are to be dealt with. However, if the university delayed the proceedings against a student who is suspect in the malpractice case, the court may despite its stand against malpractices, come to the rescue of the student as it may otherwise spoil his career. This became evident in *Sujatha* v. *Controller of Examination*[82]. The appellant in this case appeared in the examination held in April 1988. She was allegedly found to be in possession of a book. A show cause notice was issued to her in October 1998. Till February 2000 no action was taken by the university. In the show cause notice it was proposed to cancel her examination and to debar her from appearing in any examination earlier than March 1999. It was found that, even if the explanation furnished by the candidate was not to be accepted, she would have been entitled to appear in the

[82] 2003(1) K.L.T. (S.N.)25

examination in April 1999. Therefore the failure of the university to decide the matter within time resulted in the loss of one academic year for the appellant. It was found that the culpable delay caused by the university had made it liable to pay due compensation to the appellant and that the compensation awarded was, in fact, not proportionate to the actual damage that the appellant had suffered in her career.

In *Macdeen David* v. *University of Calicut*[83], the court had to consider whether a writ of mandamus could be issued to the Vive-Chancellor, compelling him to relax the Regulation, which required the first year examination to be passed before appearing for the second year examination, when the Vice-Chancellor had the power of relaxation. It was held, though the benefit of relaxation was available to the students of the earlier batches, the appellant could not seek the help of the court under Article 226 of the Constitution to direct the Vice-Chancellor to act contrary to the mandate of the law, when the jurisdiction of the court is to keep the authorities within the bounds of law. It was found there was no legal right for the appellant and there was no corresponding legal duty on the part of the respondent so as to enable the court to give a direction contrary to the explicit terms of Regulation 8.

While dealing with the powers of the university vis-à-vis the Medical Council of India, when the Mahatma Gandhi University Regulations for the graduate medical education prescribed a qualification, which was at variance with the M.C.I. Regulations, for the purpose of taking the supplementary examination for M.B.B.S., it was held[84] that when the field was already occupied by the Regulations framed by the Medical Council of India with previous sanction of the Central Government, the university could not displace the same by framing Regulations under the provisions of the M. G. University Act. It was held that only for the purpose of admission to

---

[83] 2008(2) K.L.T. (S.N.) 39.
[84] *Sathish Anton* v. *M. G. University*, 2006(3) K.L.T. (S.N.) 36.

various courses, the State Government concerned or university may prescribe higher qualifying marks, but regarding the conduct of examination and the eligibility to take such examination, the university cannot bring in any new or different stipulation.

In a subsequent decision, the authority of the State Government to fix a further qualification or an additional qualification to what has been prescribed by the A.I.C.T.E. had been re-affirmed by the court[85] as indisputable. It was held, if the state prescribes in the prospectus that for qualifying for admission to the professional courses in the state, the candidate should have secured a particular minimum mark in the entrance test also, it could not be stated to be without competence, unreasonable or discriminatory.

Another important question that arose in the above case was whether students who were qualified under the criteria fixed by the A.I.C.T.E. are entitled to be admitted to the vacancies available in the colleges, even if they fall short of the criteria prescribed by the state. Answering in the negative, the court held[86] the mere fact that there are vacancies in the colleges would not be a matter, which would go into the question of fixing the standard of education and, therefore, such students who are short of the state prescription could not be admitted to the course. This is justified from another angle also that there cannot be two category of students admitted to the same course with different qualifications or criteria.

In this case question whether prescription of a minimum of ten marks for each paper in the entrance examination is arbitrary or not was also raised. It was held that the minimum prescribed was only ten marks which would be only a minimal fraction of the total marks of each subject. For the qualifying examination if one scores full marks in two subjects and fails in one subject, then he would not be declared as passed in examination. It was held that there was nothing wrong in applying the very same standard to the entrance

---

[85] *Ajit George* v. *State of Kerala*, 2006(3) K.L.T. 743.
[86] *Id.*, at p.751.

examination also. It was observed, if the petitioner's contention was to be accepted, then the very purpose of this clause would be defeated in so far as every candidate who merely appears for the entrance examination would be qualified for admission, with his bare minimum in the qualifying examination, which cannot be permitted. Therefore, the relevant clauses prescribing the minimum marks were upheld.

7.6 Revaluation

In *Femina* v. *State of Kerala*[87], dealing with a question whether the court can direct re-valuation or recounting of answer scripts in the entrance examination for selection to M.B.B.S. course, when there was no provision for the same, it was held evaluation of the performance of a student bears little resemblance to the judicial or administrative fact finding process involved in disciplinary determination, to which the courts have always been attaching the requirement of fair procedure. It was held that specific complaints that the guidelines are overlooked or that the criteria are misapplied may occasionally be examined by courts, but judicial excursions into the field of evaluation of candidates in examinations could never be based on mere apprehensions that the petitioners have not received a fair deal at the hands of the examiners. It was observed that judicial scrutiny will be possible, if at all, only when certain minimum fact-situations are available and that proceedings under Articles 226 cannot be investigatory or inquisitorial, solely based on doubts or suspicions entertained by the petitioners, especially where the system itself provide for checking, re-checking and cross-checking.

The further questions that arose for consideration were whether the examinee had a right to inspect his answer script and whether the court could summon for the answer book of every dissatisfied student and got them re-revalued as a matter of course. It was held where the system itself provides for checking, re-checking and cross-checking, amounting to a second verification, the

[87] 1983 K.L.T. 182

preposition that an examinee has a right to inspect his answer script even in the absence of any specific provision, could have only a limited application. Regarding the second question, though the court had justified a random and limited probe of its own into specific allegations of malpractices, such as substitution of answer books, by summoning certain answer scripts at random to find out whether there was any real basis for the complaint, it was held[88] that the preposition that the court has a right to summon and revalue the answer scripts of every dissatisfied student is a far fetched claim.

Upholding the guideline of the university, providing that if the re-valued average marks do not exceed five percent or more of the maximum marks of the paper, the original marks will be retained, and overruling the decision in *Alex Saji* v. *University of Kerala*[89], it was held[90] that the guideline is neither unreasonable nor arbitrary or discriminatory. It was found that a five member committee appointed by the syndicate had opined that a variation of five percent in awarding marks could normally occur in two independent valuations of the same paper, and, hence, it would be appropriate to fix the five percent limit for effecting a change in marks scored on re-valuation. It was on the basis of this recommendation of the committee that the syndicate framed the impugned guideline. Hence, it was held, when such a public authority acts reasonably and in good faith and upon lawful and relevant grounds of public interest, such a decision could not be easily set aside, unless the decision is so absurd that it will not lie within the powers of the authority.

Since the right to re-valuation is a statutory right, the court was only concerned with the provision for the same in the Ordinance of the university. Hence where the Ordinance of the university provided that there was no re-valuation of the answer papers for the post-graduate courses, because of the double valuation

---

[88] *Id.*, at pp. 185-186. See also *Girijan* v. *Sate of Kerala*, 1998(2) K.L.T. 333
[89] 1996(2) K.L.T. 588
[90] *University of Kerala* v. *Alex Saji*, 1997(2) K.L.T. 100

provided therein, it was held[91], the appellant is not entitled to the relief of re-valuation, on the ground that the First Ordinance of the university provides no provision for revaluation of the answer papers of the post graduate courses.

In *M.G. University* v. *Millu Dandapani*[92], the court has gone to the extreme extent of perusing the answer papers of the IIIrd Year LL. B. examination of the 1st respondent and feeling the necessity of a further re-valuation, appointed a learned senior advocate of the High Court to have a fresh look at the answer papers and re-value the same. By the said re-valuation, it came to light that the 1st respondent has secured pass marks in the examination in question. It was observed that but for the intervention of the court, it would not have come to light that the student has secured pass marks and that the court has exercised its power and jurisdiction under Article 226 in the interest of 1st respondent. It was further observed that it is wrong to think that the court is prohibited from perusing the answer papers and ordering re-valuation by a senior advocate. The court held all procedures are open to a court which is not expressly prohibited and that the court has power to mould the relief to suit the requirements.

It is submitted, the above decision had not followed the precedential principles of judicial review and had not laid down the correct principle or good law on the point. The court should have borne in mind that it had not extended the benevolence shown to the 1st respondent to the other students who had failed in the same papers in the IIIrd year LL. B. examination, whose papers were re-valued by professors, probably adopting a different standard and yard-stick of valuation. Therefore, there were different yard sticks for valuation of the answer papers in the same examination on account of

---

[91] *Viswanathan* v. *University of Calicut*, 1999(2) K.L.T. 333. See also *University of Kerala* v. *Muralidharan*, 2000(1) K.L.T. 537. As per the University rules if there is a difference of more than fifteen percent of marks between the first and second valuation i.e. the internal and external valuations, the answer script will go for a third valuation and the marks awarded in the third valuation will be accepted as the actual marks. The University had followed this rule strictly and therefore there was no discrimination.

[92] 2000(1) K.L.T. 351.

the interference of the court. It may be found, as observed by the court, that it exercised its power and jurisdiction under Article 226 'in the interest of the 1st respondent'; and not in public interest or in the interest of justice. It was unfortunate that the court made the above pronouncement of law without even observing that it may not be treated as precedent. The relief granted by the court in the instant case, directing the university to declare the results of the four papers of Part I of the IIIrd year LL.B. examination of the 1st respondent/writ petitioner pursuant to re-valuation of the said papers by the senior advocate appointed by the court and to intimate the result was far-fetched being an encroachment on university autonomy and academic independence, as the university was compelled to declare the result based on the valuation of an outsider as the result of its own valuation.

As the re-valuation process is time-consuming and invariably delayed, when the question arose as to whether the university should wait for expiry of 81 days fixed by the Examination Manuel for publication of the re-valuation results, it was held that the university should not wait for expiry of 81 clear days from the date of publication of results to complete the re-valuation process as the Examination Manuel is only a guideline and not a statutory regulation. It was observed that unless applications for re-valuation are expeditiously disposed of, it would cause serious prejudice to students.

7.7 Discipline

In the matter of disciplinary proceedings relating to examination malpractices, while not giving any concession to the examinees, the court was not, at the same time, willing to forego the principle of fairness being shown to the student for the mere reason that it is an academic matter. Therefore, in a case where the student, who was found guilty of examination malpractice, though not submitted his explanation to the show cause notice issued by the

college, it was held that the disciplinary proceedings initiated against him was vitiated since the show cause notice had not disclosed the specific charge against him, but only contained a vague allegation that he had 'resorted to malpractice during the annual examinations'. The petitioner contented that the nature of the show cause memo was such that no intelligent or valid explanation was possible. It was found that the memo was undoubtedly vague. Therefore, it was held[93] mere non-participation of the petitioner in the further proceedings could not preclude him from contending that the conclusion had been reached without affording an opportunity to him to state his case in regard to whatever be the misconduct that the authorities had in mind of which they thought that the appellant was guilty. Since the proceedings against the petitioner were of a quasi judicial nature, it was held, the petitioner must be told in the first instance what he was charged with and this must be in clear and unambiguous terms, in the absence of which everything that followed, however *bona fide* that may be, was equally vitiated.

Regarding the qualification of the enquiry officer who conducts the domestic enquiry, it was held, an officer who holds the preliminary enquiry and comes to a *prima facie* conclusion does not disqualify himself from acting as an enquiry officer, so long as he conducts the enquiry in a judicial manner. As to the right of the student to get a copy of the enquiry report, it was held, in the absence of any allegation of bias against the enquiry officer or a charge that he did not conduct the proceedings judicially, the omission to furnish a copy of the enquiry report to the petitioner cannot be taken as vitiating the proceedings[94]. The challenge against the jurisdiction of

---

[93] *P.M. Kurian* v. *Principal, Government Victoria College, Palghat,* 1967 K.L.T. 97. *See also Abe Thomas* v. *University of Calicut,* 1983K.L.T. (S.N.) 39. Copy of the enquiry report was directed to be furnished to the petitioner to enable him to make an effective representation against the proposed punishment by challenging the findings in the enquiry report.

[94] See also *Rajesh Dagar* v. *University of Calicut,* 1984 K.L.T. (S.N.) 80 . Considering the serious and grave consequences flowing from a disciplinary action in an examination malpractice, the disciplinary authority is required to act quasi judicially by following the rules of natural justice. But principles of natural justice are not embodied rules and cannot be put in a straight jacket. It is not the principle of natural justice that in every case where an enquiry is conducted, the delinquent is entitled

the enquiry committee was also met by relying on various provisions in the University Act and Statute, where the syndicate could delegate its power to a committee appointed from among its members to regulate the transaction of its business and the syndicate could take cognizance of misconduct of any student.

In a given situation, where the petitioners were debarred from studies from the engineering college for an alleged misconduct of teasing some girl students by using obscene language, and one of them pulling a girl by her arm, and another laying his hands on the thighs of one of the girls, it was held[95] in a situation like that the rigours that accompany an enquiry in other regions do not apply in full force. It was further held that rules like furnishing copies of statements, cross examining witnesses and so on do not apply and a fair hearing and reasonable notice are all that the context calls for. Having found that such a hearing and notice were extended to the petitioners, the findings of the enquiry committee were held to be beyond taint and the punishment of debarring the petitioners was not harsh.

Dealing with a question as to whether it is the Principal of the college or the university who is the custodian of discipline among students in the college, it was held[96], the right and authority of the Principal to take action for maintenance of discipline among students in the college, in consultation with the college council, is virtually absolute, and the university has no authority to interfere with the said power of the Principal. It was found as per Statute 21 of Chapter 24 of the Kerala University First Statute, in every college the Principal shall

---

to a copy of the enquiry report. If he knew the case and evidence against him, the requirement of natural justice are satisfied, even without a copy of the enquiry report being furnished to him. The fact that the rules do not provide for furnishing a copy of the report to the delinquent is relevant though not conclusive.

[95] *George Roy* v. *Mar Athanasius College of Engineering,* 1992 (1) K.L.T. 94.

[96] *Manu Vilson* v. *Sree Narayana College,* 1996(1) K.L.T. 788. See also *Thampan* v. *Principal, Medical College, Calicut,* 1979 K.L.T. 45. Though section 23 and Rule 3 of Chapter 6 of the Calicut University First Statute enable the syndicate to exercise powers of supervision and control under certain circumstances and conditions specified therein, they do not in any way destroy the authority and jurisdiction inherent in the Principal of a college, as the head of the institution, to deal with matters affecting the discipline of the college. In the light of the Rules in the college calendar, it was held there is little force or merit in the plea that the Principal had no disciplinary powers over the students

be the head of the college and shall be responsible for the internal management and administration of the college. Thus, the function of the Principal in maintaining the internal discipline is sacrosanct. This power of the Principal can, under no circumstance, be diluted by the university even. No provision of the Kerala University Act makes an affiliated college an institution of the university. Therefore, the investigation by the university under section 23 (XX) can only be in relation to the management of the college affiliated to the university and cannot interfere with discipline of students, which is to be solely controlled by the Principal. The decision taken by the Principal in accordance with the recommendation of the college council is final and neither the university nor the Vice-Chancellor can interfere with the same. Therefore, the syndicate has no power to interfere with the transfer certificate issued to a student by the Principal of an affiliated college in consequence of the disciplinary proceedings taken against the delinquent student.

In *Kerala Students Union* v. *Sojan Francis*[97], the court had occasion to consider the right of the student organizations to carry on political activities within the college campus. The court found that the Kerala University Act, Statutes, Ordinances and other legislations governing the affiliated colleges and the educational agencies have not recognized the politically affiliated student organizations and that there is no legal relationship between those student bodies and the management of the educational institution or the university or the State Government. Therefore, it was held such student organizations have no fundamental or other statutory rights to carry on their organizational activities within the premises of an educational institution established and administered by the educational agencies in the state as well as by the State Government.

It is submitted that the court in the instant case overlooked the right and freedom of the individual students to organize themselves into associations, including politically oriented,

---

[97] 2004(2) K.L.T. 378

for protecting their legitimate rights and academic interest and for developing their leadership qualities and intellectual acumen. Unfortunately, the court has been carried away by the destructive tendencies of student politics, such as indiscipline, violence, outside interference etc., which are only the aberrations therein and otherwise curable and missed sight of the opportunities for personality development, for intellectual debates and for developing a passion for democracy involved in healthy student politics. Instead of finding the ways and means to remove the present day ills of the campus politics, the court has taken a totally negative stand annihilating the opportunity for the most colourful and interactive part of the campus life, not only for the leaders but for the entire student community who get involved in it.

Dealing with political activities and campus discipline, it was rightly held in the above case strike, *dharna, gherao*, go-slow and abstention from classes are weapons used by the labour force for establishing their demands under the labour laws and they are not academic tools to be used against the teaching faculty or against the management by the students to vindicate their rights. Therefore, such modes of protest or dissent within the campus are undoubted illegal and do not have the support of law and should be prevented, failing which disciplinary action could be taken against the students.

The court had also to consider the mode of elections to the students union and the authority to decide the same. In *Council of Principals' of Colleges* v. *State of Kerala*[98], it was found that clause 7 of the Bye laws of the Mahatma Gandhi University Union, directing the colleges to conduct elections to the students unions following the presidential system of election, has no statutory force and is not binding, as the bye laws have not been framed by the syndicate in accordance with section 41 to bind the various affiliated colleges. It was, therefore, held that the affiliated colleges are free to follow a system which is better for administration and discipline in colleges.

---

[98] 2004(2) K.L.T. 995

While dealing with a case of an individual student staging a *satyagraha,* holding a placard in her hand, in front of the room of the Principal of the college, seeking redressal of her personal grievance against the Principal, it was held[99], her act amounted to indiscipline and misconduct since all individual and organizational rights are subject to the institution's code of conduct. It was held that discipline is the paramount asset of an educational institution as the educational institutions are breeding ground of the future generation. It was held, the action of the appellant was in violation of Rule 5(d) of the Code of Conduct Rules 2005 and, therefore, the order of her dismissal from the college was justified. Later this decision came to be upheld by the Supreme Court.

7.8 Grace Marks

As in the case of re-valuation, in the case of grace marks/moderation also the court had taken a stand that the same being a statutory benefit, there is neither any inherent right for the student nor there is a discretionary power either for the university or for the court to grant grace marks as it deems fit varying from candidate to candidate. In *Commissioner of Examinations* v. *Arunshekher*[100] the maximum marks that could be awarded as moderation was 10 marks. After granting 5 marks to one paper as moderation in Part III, only 5 marks remained. Even if those 5 marks were given to the other paper, the petitioner could not pass in Part III. There was no provision enabling or authorizing the appellant to grant more than 10 marks as moderation. Therefore, it was held, when the appellant was not competent to award 6 marks as moderation to the respondent, the court cannot compel the appellant to do it and the learned single Judge should not have directed the appellant to do something which he could not have done under the rules.

---

[99] *Indulekha Joseph* v. *Vice-Chancellor,* 2008(3) K.L.T. 712.
[100] (2004) K.L.T. (S.N.) 102.

In *Sajaikumar* v. *State of Kerala*[101], a mistake admittedly committed by the university in awarding grace marks was sought to be corrected by the university after 4 years. It was held, the petitioner had acquired a right after obtaining the mark list and that he having passed the examination, there was no necessity for him to re-appear in the examination. It was further held, if any mistake had crept in awarding the grace marks, nothing stands in the way of the university in rectifying the mistake, but it should be done within a reasonable time as otherwise great hardship would be caused to the candidate if mistakes are sought to be rectified after long lapse of years. If the mistake was rectified within a reasonable time, the petitioner could have re-appeared in the examination for the same paper. Petitioner had lost many chances in the mean time. After even the syllabus had changed, petitioner could not re-appear in the examination, even if he wanted. It was held in such circumstances there was clear estoppel restraining the university from cancelling the marks already awarded to the petitioner.

In *Vice-Chancellor, University of Calicut* v. *Thomas*[102] the court has reiterated the authority of the university to award grace marks and the supremacy of its rules in that regard. A claim was raised by the respondent for award of grace marks in the university examination on the basis of excellence in the field of Archery. Recognition of the sports item by the Association of Indian Universities was an essential requisite condition for eligibility for grace marks. Archery was not so recognized. Relying on the rule of the university it was held that refusal to recognize Archery for award of grace marks was not unreasonable.

But, on another occasion, when grant of grace marks to the winners of the *Sanskritotsava* was denied on the ground that the participants in the *Sanskritotsava* are few and that the items in which the students participated are part of the learning in the school and

---

[101] 2003(3) K.L.T. (S.N.) 62.
[102] 2002(3)K.L.T. (S.N.) 32.

therefore they are not loosing the learning hours, it was held[103] there was no logic in the above reasoning. It was further held, participation in items like elocution, recitation etc. in the school youth festival are not different from those items included in *Sanskritotsava.* Therefore, it was found there was no valid reason for treating the winners of *Sanskritotsava* on a different footing.

The grant of grace marks being a matter of concession and which tends to dilute academic standards, it was held[104] that the Regulations dealing with grant of grace marks should not be generously and liberally construed. The discretion could be exercised by .the authorities judiciously on taking note of otherwise overall performance of the student on the subject and the consequence a candidate has to face but for exercising the discretion in favour of the candidate, especially when there is a provision for awarding grace marks.

7.9 Selection and Appointment of Faculty

Selection and appointment to the teaching posts in university and college education is a crucial area, which is prone to litigation. Though it is purely an academic issue to be decided on the basis of relevant statutory provisions, because of the politicization of the university administration and the constitution of the syndicate particularly, many selections to faculty positions had been subjected to challenge. But, court had, by and large, upheld the authority of the university and the academic institutions in this regard, provided there is no violation of the relevant provisions of the Statutes, Ordinances and that of the notification concerned, and the selection is not *mala fide* or biased. Hence in *P.C. Abraham* v. *University of Cochin*[105], meeting a contention that it is not reasonable on the part of the university to insist for the post of a Reader qualifications higher than those required for the post of Professor in Law College, it was held,

---

[103] *Ramakrishnan Namboothiri* v. *State of Kerala,* 1999(3) K.L.T. (S.N.) 73.
[104] *Aish* v. *University of Calicut*, 2003(2) K.L.T. (S.N.) 57
[105] 1972 K.L.T. 810.

subject to any statutory limitations placed on its powers in that regard, it is as much open to the university as to any other employer to decide from time to time, as and when it makes a recruitment to its service, what qualifications should be insisted on in respect of the post to which recruitment is being made. It was held the qualifications prescribed for the posts of lecturers and professors of law colleges in the University Ordinances cannot govern the recruitment to the post of Reader in the university department of law. It was further held the fact that the previous incumbent, who had been appointed to the post in question by the Kerala University in 1969, did not possess either of the two additional qualifications specified in the notification, has little relevancy or bearing in determining the question of the competence of the Cochin University to lay down the said additional qualifications also by way of subsequent notification as mandatory requirements for eligibility for appointments to the post of Reader in its service. Therefore the contention that the university had acted without jurisdiction in issuing the impugned notification was rejected.

When the special qualifications prescribed by the Ordinances framed under the Travancore University Act, 1113 M.E. required that "only persons who have obtained a first class or second class Masters Degree and who have had at least four years teaching experience shall be recognized as heads of departments in colleges", it was held[106] the exception from this requirement contained in the minutes of the syndicate will not be of any help for the appellant to claim that he was qualified to be selected with his M. A. in third class. It was further held, even the syndicate itself had no power to exempt a candidate having M.A. in third class for the purpose of appointing him as head of the department. Hence the claim for appointment of the appellant was rejected.

When a question arose as to whether the Vice-Chancellor is competent to specify the qualification of 'teaching experience' as 'teaching experience at degree level', when the University Ordinance

---

[106] *Joseph K. Francis* v. *Vice-Chancellor, Kerala University and others,* 1974 K.L.T. 175.

have prescribed only 'teaching experience' simplicitor, it was held[107], the words 'teaching experience' were capable of wide meaning and hence, considering the post for which the qualifications have been prescribed, the view taken by the Vice-Chancellor could not be said to be erroneous. The court, while dismissing the writ appeal, however, refused to interpret the rule given in the broad terms and accepted the qualification added to it by the Vice-Chancellor.

The court was inclined to accept the literal meaning of the expression "seniority-cum-fitness" while interpreting the provision occurring in section 57(4) of the University Act, 1969 in respect of qualification for selection. It was held[108], there was no reason to give a meaning different from that attributed to the expression in an earlier Full Bench decision of the Kerala High Court[109] as the interpretation given therein was accepted by the Government and the law has been made in consonance with that interpretation. It was observed, the meaning thus given to the sub-section would enable the management to choose a junior if he is better equipped than senior. The automatic promotion of the senior-most if he is not found to be unfit, is not what is ment by the legislature, since there is an element of comparison in determining fitness[110]. But later this position was overruled and it was held senior person should be promoted unless he is found to be unfit and the discretion of the management is restricted in this regard. It was held seniority- cum- fitness postulates promotion on the basis of seniority subject to rejection of unfit[111]. It avoids controversy, excludes arbitrariness and it is reasonable. However, the management

---

[107] *Narayana Iyer* v. *Registrar, University of Kerala and others*, 1975 K.L.T. (S.N.) 48.
[108] *Mrs. Mercy Mathew* v. *Vice-Chancellor*, 1976 K.L.T. (S.N.) 41 (F.B.).
[109] *V. Rev. Mother Provincial and others* v. *State of Kerala and others*, 1969 K.L.T. 749 (F.B.).
[110] See *Rt. Rev. Dr. M. M. John* v. *Government of Kerala and others*, 1971 K.L.T. 875. The expression 'seniority-cum-fitness' in sub-section 7 of section 53 of the Kerala University Act, 1971 means that due and equal regard should be paid both to seniority and to fitness, and since fitness is a matter of degree, a senior person can be overlooked in favour of a junior who is demonstrably more fit for the appointment than the senior.
[111] See also *Joseph Thaikoodan* v. *State of Kerala*, 2004(1) K.L.T. 416, where clause 4(a) (ii) of the Mahatma Gandhi University Ordinance, fixing seniority alone as a criteria for promotion to the post of head of the department was declared illegal, as seniority-cum-fitness and not seniority alone is the criteria for promotion under section 59(4) of the Mahatma Gandhi University Act.

has been given the discretion to supersede a senior person, if he is found unfit.

Although the selection committee constituted as per the provisions of the University Statutes is given a pivatol role in the selection process and its selection of the candidate is seldom interfered with unless there is violation of the rules and norms or is vitiated by *mala fides* or bias, their recommendation is not invariably binding on the syndicate[112]. When it was found by the syndicate of the university that the candidate selected by the committee was lacking the requisite qualification prescribed and therefore the syndicate interfered with the selection, the court upheld the decision of the syndicate[113]. It was found that the syndicate acted well within its powers in refusing to accept the recommendation made by the selection committee on the ground that the petitioner did not possess requisite qualification at the relevant time for appointment as Reader in German language.

But in *Sobha B. Nair* v. *University of Kerala*[114] a contrary view was adopted by the court and held, once the selection is made by the selection committee, the syndicate has to take follow up steps for appointing the persons concerned and has no residuary or other powers to reject the recommendations. However, here it was found that the selected candidate had the basic qualification prescribed and, therefore, the fact that she happened to be the daughter of former professor of the university or that the rank holders were not selected

---

[112] *Kerala University* v. *Sunny,* 1996(2) K.L.T. 565. Although the recommendation of the selection committee is not binding on the syndicate, such recommendation should not be lightly brushed aside and due weight has to be given to such recommendations and reasons have to be recorded for rejecting the same.

[113] *Bernard Fenn* v. *University of Kerala,* 1979 K.L.T. (S.N.) 12. See also *Sheeja* v. *Dhannia,* 2005(4) K.L.T. (S.N.) 52. Qualification is the prime criteria for selection by the committee. One who does not possess the required qualification cannot be chosen by the selection committee even if found suitable by the committee.

[114] 2004(1)K.L.T. 541. Interpreting Statute 4(3) Chapter 3 of the Kerala University First Statutes, it was held the recommendation of the selection committee is mandatorly to be placed before the syndicate and the syndicate is to make appointment. There is no scope for deliberation or interpolation of opinions. A discretion also has not been conferred on them. The selection committee's decision has to be treated as the decision of the syndicate as the expert committee had been nominated by the syndicate to evaluate the various candidates. Therefore impugned resolution of the syndicate not to accept the recommendation of the committee was held to be illegal and petitioner was directed to be appointed.

cannot be a ground to set aside the selection of the petitioner, who was the sole candidate selected. It is afraid the court has adopted an extreme view in this case to hold that the selection made by the selection committee, a creature of the syndicate, is *per se* binding on the syndicate- the executive committee of the university- and has no residuary or other power for the syndicate to reject the recommendation of the committee. It is to be noted that the selection committee is constituted by the syndicate to conduct the selection in accordance with law subject to the confirmation by the syndicate, which is the appointing authority. That being so, the court ought to have found that if the selection made by the committee is vitiated by basic illegality or any bias or malice it was well within the powers of the syndicate to disagree with the committee and reject the recommendation, for an appointing authority cannot be compelled to make an illegal appointment.

In *Manager, Loyola College* v. *University of Kerala*[115], the question arose whether the prescription of minimum qualifications for teaching staff and Principal with a view to achieve and maintain excellence and the standards of the institution concerned, violates the guarantee of the minority right under Article 30 (1) of the Constitution. Answering in the negative, it was held that the right under Article 30(1) is not an absolute right, but is subject to reasonable regulations imposed by the state in the interest of education. It was held Article 30(1) cannot be read as conferring any such freedom enabling the minority to dictate to expert academic bodies as to what qualifications they should prescribe to enable the minorities to have a field of their own choice, and, therefore, prescription of relevant qualifications does not violate the fundamental right of the minority under Article 30(1). It was noted that the petitioners have no case that 25 years of qualifying service, fixed uniformly for all institutions, has been prescribed by amending the regulations to strike at the minority institutions or to deprive them of

[115] 1989 (1) K.L.T. 241.

their right to appoint the man of their choice as the Principal. Whereas, the university was aiming at only a higher level of experience and expertise in the incumbent to the post of Principal in the interest of the institution, the teachers and the taught.

In *Hari* v. *State of Kerala*[116], the court had to consider a writ of *Quo-Warranto* against the appointment of the Vice-Chancellor of the University of Kerala, filed by a research scholar of the university. Dismissing the challenge, it was held, the *mala fides* of the appointing authority or the motives of the appointing authority in making the appointment of a particular person are irrelevant consideration for issuance of writ of *Quo-Warranto*. The writ could be issued only against the usurper of an office, in other words, against a person who holds the office without any authority. It was found in the instant case that the third respondent was appointed as Vice-Chancellor by the Chancellor of the university on the recommendation of a high power committee. The petitioner had no case that the Chancellor acted against the provisions of the Act or the Statutes in appointing the third respondent as the Vice-Chancellor. It was held in such matters the court would be slow to interfere with as the court has to treat the recommendations of the expert committee with the respect that it deserve[117]. Regarding the allegation of mismanagement and misbehaviour of the Vice-Chancellor, it was held, to attract section 7 (9) of the University Act the mismanagement or the misbehaviour should be done after he assumed the office of Vice-Chancellor, whereas all the allegations in the original petition related to the past conduct of the Vice-Chancellor.

Emphasizing the importance of compliance of the provisions of the Act and the Statutes in the matter of selection to

---

[116] 1993(1) K.L.T. 599.

[117] See also *Narayanan* v *Dr. T. K. Ravindran*, 1991(2) K.L.T. 198. Where there was no dispute relating to the qualification of the respondent and also the legality of the appointment made. The petitioners contention that the respondent was misbehaving, mismanaging and not acting properly and therefore a writ of Quo-Warranto was to be issued was dispelled.

teaching posts in the university, it was held[118], even the first Vice-Chancellor acting in the matter of appointment of teachers, prior to the formation of the syndicate and the Academic Council, was only exercising the powers and performing the duties and the functions of the syndicate and the Academic Council. Therefore, such powers, duties and functions are subject to whatever restrictions and qualifications prescribed by the Act and the Statutes. It was held the Vice-Chancellor was bound to issue proceedings prescribing qualifications for the different teaching posts in exercise of the powers and functions of the Academic Council. Section 31 of the University Act states the Vice-Chancellor's power to appoint the teachers, officers and other employees of the university is to be exercised on the advice of the appropriate selection committee, constituted in the manner prescribed by the statutes. It was therefore obvious that the selection committee had to be constituted under the statutes. In the absence of the First Statutes, no valid selection committee could be constituted by the Vice-Chancellor in exercise of the powers conferred on him under section 24(5) (b) of the University Act. Therefore, it was held, the Vice-Chancellor's action in constituting the selection committee was illegal and without jurisdiction. It was held in the absence of a selection committee constituted under the statutes, the syndicate or the Vice-Chancellor had no power to make the appointments. It was also held, when the candidates were unaware about the constitution of the selection committee, the theory of "sitting on the fence" cannot be applied since they could come to know about the members of the

---

[118] *Sree Sankaracharya University of Sanskrit v. State,* 1996(2) K.L.T. 378. See also *Ashokan v. State of Kerala,* 2003(1) K.L.T. (S.N.) 29. Apart from the First Statutes to be made by the Government, other statutes should be made the syndicate for appointing teachers and other employees in accordance with the provisions of the said statutes. The university was started in 1993. No First Statutes was made by the Government for about initial ten years though all departments of the university became functional, the syndicate of the university after its formation framed the statutes which they had to frame and the same was assented to by the Chancellor (Governor) and published in the Gazette. When the selection and appointment of teachers and other employees of the university made under those statutes were challenged on the ground that the Government had not framed the First Statutes till date, it was held the selection could not be set aside, as the selections were made in accordance with the statutes validly made by the syndicate.

selection committee and their qualifications only when they appeared for the interview.

In the matter of selection to the post of Reader in the Department of Environmental Sciences, the qualification prescribed, *inter alia,* was "eight years' experience of teaching and /or research including up to three years' for research degrees..." . The application of the petitioner, who was working as Scientific Officer in the Department of Aquatic Biology and Fisheries under the respondent university was rejected by the university on the ground that he did not have the prescribed qualification/experience in teaching/guiding research etc. Petitioner contended, supported by the certificate issued by the professor and head of the Department of Aquatic Biology and Fisheries, that he was teaching both theory and practical classes in Marine Chemistry for M. Sc. and M. Phil. Courses and was guiding research for Ph. D. degree in Aquatic Biology for the requisite period.

Rejecting the above contentions it was held[119], petitioner was a member of the non-teaching staff of the university and the mere fact that he was directed to teach both theory and practical classes for M. Sc. did not entitle him to the status of a 'teacher'. It was further held, merely because the petitioner was recognized as a research guide for guiding research scholars, it did not mean that the petitioner was a member of the teaching staff. It was further held, even if the petitioner was having the teaching experience and research guiding experience, sufficiently enough to satisfy the qualification, he had to become a member of the teaching service so as to get the benefit of the First Statutes in this regard. Therefore, the writ petition was dismissed in spite of a similar case of an Assistant Curator in the Department of Aquatic Biology and Fisheries, appointed as a Reader in the same department, as pointed out by the petitioner, on the ground that there were no averments in this respect in the writ petition.

---

[119] *Vasudevan Nair* v. *Vice-Chancellor,* 1997(1) K.L.T. 243.

The above decision cannot escape from criticism as the relevant qualification under dispute, prescribed in the notification, for the post of Reader was "eight years of teaching and /or research including up to three years for research degrees ...", and not the teaching experience or the research guiding experience for the particular period as a 'teacher' of the university. It was unfortunate that the learned single Judge relied on a Division Bench judgment of the Kerala High Court in W.A. No. 1099/88 cited by the respondent, where the question was whether the Deputy Director, Department of Adult Education in the university, who was required to impart instructions and to supervise research, could be treated as a 'teacher' for the specific purpose of determining the age of superannuation[120]. It may be noted that the age of superannuation is different for both teaching and non-teaching staff of the university - fifty five for the non-teaching staff and sixty for the teaching staff - and therefore the dispute arose with regard to the age of retirement, which is inherently integrated with the appointment to a particular post or category.

Whereas in the instant case, the issue in dispute was about the qualification of teaching experience and not the experience of teaching in the capacity as a 'teacher' and research guiding experience, again in the capacity not as a 'teacher'. The notification had not stipulated that the above teaching and research guiding

---

[120] See *Austin Joseph* v. *Cochin University of Science and Technology,* 2001(2) K.L.T. 518. Claim of the petitioner who was Director of Students Welfare to continue in service up to the age of sixty years, i.e. the age of retirement of the teachers of the university was denied on the ground that teachers are employed only in the faculties where any syllabus is specifically prescribed by the Academic Council and that a person engaged in such extra curricular activity as taking class in the N.S.S. programme etc. without any relationship to any teaching post cannot be taken as a teacher. But, see *Sivasankara Kaimal v. University of Calicut,* 2003(1) K.L.T. 146, where it was held coaches appointed by the University to coach students to impart skill in different sports and games are 'teachers of the University' as defined in section 2(28) of the Calicut University Act and, therefore, the petitioners/appellants were declared to be entitled to continue in service up to sixty years *viz.* the age of retirement of teachers as per the Statutes; O.P. 7724 and 8815 of 1986, 1987(2) K.L.T. (S.N.) 38, the Dean of Faculty comes within the definition of 'teacher' under the Kerala Agriculture University Act, 1971; *Cochin University of Science and Technology* v. *Joseph James,* 2005(4) K.L.T. 555, Head of Department of the Physical Education in the University is also a 'teacher' since he has to "guide and supervise all physical/sports/games activities of the university students"; and *E. J. Jacob* v. *University of Calicut,* 1987(2) K.L.T.(S.N.) 56, Director of Physical Education was imparting instruction in Physical Education to students and that the curriculam of the University Examination would also show that Physical Education is a subject of the study in the Examination. Hence, Director of Physical Education is a teacher of the University.

experience should be in the capacity as a 'teacher', a member of the teaching staff of the university. It is also unfortunate that the learned Judge did not take into consideration the definition of the expression 'teacher' contained in section 2(27) of the Kerala University Act, 1974, which reads "teacher means a Principal, Professor, Associate Professor, Assistant Professor, Reader, Lecturer, Instructor or such other person imparting instruction or supervising research (emphasis given) in any of the colleges or recognized institutions and whose appointment has been approved by the university". It may be noted that 'such other person' imparting instruction and supervising research as those in the above specified categories can also claim the teaching experience for the purpose of qualification, though not strictly become a member of the teaching staff. The court was also not justified in rejecting the precedent in the university cited by the petitioner from a similar case of an Assistant Curator, clearly a non-teaching staff, appointed as a Reader in the same department, on the ground that there was lack of pleadings in the writ petition.

While granting the deserving role and statutory importance to the selection committee to be constituted under the statutes, the court was not hesitant in controlling and guiding the selection committee, so as to make the selection on the basis of certain guidelines and written records and also on recorded reasons. In *Haridasan Pillai* v. *Ramakrishna Iyer*[121] it was found that there was nothing to satisfy the court as to how the first respondent was selected for the post of Principal by the selection committee. The minutes of the selection committee only showed that the first respondent was selected on the basis of seniority-cum-fitness. The records of the committee did not show anything more. It was held that the selection committee forgot its duty to keep the records of the proceedings regarding the selection. The committee was interviewing persons who were outstanding in their respective academic fields. It was, therefore, the bounden duty of the selection committee to give

[121] 1998(1) K.L.T. (S.N.) 24.

reasons as to why one was preferred to another, and particularly when they had selected the junior. It was further held that in the absence of a proper selection and when the reasons for selection are not recorded by the selection committee, the Appellate Tribunal was not competent to go into the process of selection, as the duty of the experts could not be usurped by an appellate body. Hence, it was held, the Appellate Tribunal was wrong in embarking upon an enquiry as to who among the candidates was more competent in the absence of any materials.

But, at the same time, the court was not willing to sit in judgment over the marks awarded by the selection committee to a candidate in the oral interview conducted by the committee, unless it is proved or obvious that the marking is indubitably arbitrary or affected by oblique motive. It was held[122] in the matter of selection process the oral interview has great significance since the same is carried out to assess the candidate's personality, communication ability and also to test the intellect of the candidate as it is the only occasion when the selection committee comes face-to-face with the candidate. The appointment was to the post of Reader in Personnel Management/ Industrial Relations. It was held how best a candidate could communicate with the students with the experience he had gathered over the years, and how best he could tackle the issues in personnel management and industrial relations, are matters to be judged by an interview committee. Therefore, it was held, the sole reason that the 2nd respondent obtained more marks than the petitioner in interview, and that made the difference in the matter of selection, cannot be a ground for invalidating the selection.

In *Ajitha* v. *Mahatma Gandhi University*[123], the question arose whether a Guest Lecturer of the university could be treated as an outside expert in the selection committee constituted as per the provisions of the statute. It was held that when a Guest Lecturer in

---

[122] *Pradeep Kumar* v. *Cochin University of Science and Technology*, 1999(1) K.L.T. (S.N.) 4.
[123] 2001(2)K.L.T. 878.

the same university was associated with the selection committee as a member, in place of an outside expert, it could not be said that the selection committee was legally and validly constituted. The contention of the respondent university that the above incumbent is a Dean in another university and is not in the service of the respondent university was rejected in the light of their admission that the person concerned is associated with the Law School of the respondent university for giving lectures on specialized subjects in law. In view of this admitted position that the said expert has got some relationship with the respondent university in the matter of its academic matters and is drawing remuneration from the funds of the university, it was held that the said person could not be treated as an outside expert as mentioned in the First Statute dealing with the constitution of the selection committee, and therefore the selection was vitiated.

7.10 Fee Structure

Though not strictly an academic issue, the question of fixing the educational fee has also drawn the court's attention. Whenever the court felt that the fee was fixed in an arbitrary and discriminatory manner, it did not refrain itself from interfering. Thus in *Akbar Badusha* v. *State of Kerala*[124], it was held that there was no justification for collecting fee at the rate prevalent in the institution prior to its becoming an aided institution. The students were liable to pay the fee at a higher rate upto the date on which it became an aided institution and they will not be entitled to claim any refund of the fee so paid. The position is different after the educational agency became an aided institution. It was held, when the respondent institution was treated on par with private engineering colleges, there could not be any discrimination in the matter of fee alone. It was therefore declared that petitioners were liable to pay fee only at the Government rate as was applicable to the private engineering colleges after 1.1.2000 i.e. the date when the institution became aided. It was further held,

[124] 2003(3) K.L.T. (S.N.) 17.

petitioners would not be liable to pay any fee treating the institution as unaided merely because petitioners were admitted at a time when the institution was unaided.

When a higher fee structure was imposed on the petitioners than their predecessors by the university, it was held[125] even if it was assumed that the funds for meeting the expenses for running the courses had to be collected by way of fees, the university had to place materials on record to show that the expenses during the period from the petitioners' admission till they passed out were different from those charged from the students admitted in the year 1995 or in the year 1999-2000 or thereafter. Since no such data had been placed on record, it was held the action of the university suffered from the vice of discrimination, was arbitrary and unreasonable and therefore contrary to Article 14 of the Constitution.

The above view was adopted in the case of students who were admitted to the engineering courses in the N.R.I. quota of the university, who challenged that there was no rational basis for subjecting them to a higher rate of fee than the rate fixed in the years 1995-96 and 1999-2000. In the written statement filed by the university no basis for a differential treatment had been disclosed. No facts or figures had been given to indicate as to why the three batches of students were treated differently from the students who preceded them or those who succeeded them. Conceding that the N.R.I. students were not admitted on the basis of merit and that they could be treated as a different class and even assuming that the university had the right to fix the fees, it was held[126] that the charge of discrimination appeared to be well founded since nothing had been placed on record to show as to why the N.R.I. students for different batches had been treated differently. Therefore it was held, the petitioners were not estopped from challenging the validity of the fee structure fixed by the respondent university.

---

[125] *Sonia Sebastian* v. *Cochin University of Science and Technology*, 2003(3) K.L.T. 73.
[126] *Thomas P. John* v. *Cochin University of Science and Technology*, 2003(2) K.L.T. (S.N.) 42.

But, in appeal, the Supreme Court reversed the decision and held[127], it would not be open to students to contend that notwithstanding that they had been admitted on a certain fee structure, they were entitled to claim a reduction in fee to bring them at par with the students admitted later or earlier on a lower fee structure.

7.11 General Interference

While asserting for maintenance of highest academic standards in the matter of research and submission of Ph.D. thesis, the court held[128] by an interpretation of the relevant provision of the First Statutes of the Kerala University that the syndicate has power to grant dispensation from the procedural requirements concerning the submission of thesis for research degrees. It was made clear that the above power is limited to the procedure relating to submission of thesis and other matters enumerated in clause (xxix) of Rule 3 of Chapter IX and that there is no power to dispense with the submission of the thesis itself or the supervision of a teacher for the research or requisite standard for acceptance of the thesis or any other matter concerning the thesis, which may not be directly related to the procedure of the submission. It was held, the power of dispensation should be very sparingly and cautiously exercised when the syndicate is satisfied that it is necessary to do so for safeguarding academic standards and should be exercised only in accordance with the well known norms of constitutional propriety.

Though it is rare that the court declares a provision of a university rule as invalid, when confronted with a patently discriminatory clause of differentiating between LL.B. regular students and LL. B. evening class students for the purpose of awarding university merit scholarship for LL. B. students, it was held[129] clause 13 of the Rules for award of university merit scholarships was

---

[127] *Cochin University of Science and Technology* v. *Thomas P. John*, 2008(2)K.L.T. 718(SC).
[128] *Subramoniam* v. *Vice-Chancellor, University of Kerala*, 1976 K.L.T. 524.
[129] *University of Kerala* v. *Benoy Thomas* , 1983 K.L.T. 1103.

discriminatory and violative of Article 14 of the Constitution. It was held to reckon the employment of the candidate or his non-employment as the criterion for determining whether he is poor or not would be a thoroughly irrational approach as some of the unemployed regular students would be very rich and some of the employed evening students may be hailing from very poor families. Upholding the judgment of the learned single Judge, it was held, such a classification cannot be sustained and the writ appeal was dismissed. It is submitted that the fact that in the case of merit scholarship it is merit and merit alone is the criterion and that the financial position of the candidate is irrelevant, was not canvassed before the court.

In *Janharlal* v. *University of Calicut*[130], the question as to when a candidate can attempt for improvement of his marks in a paper already attempted came to be examined. It was held that the improvement arises only when one has passed a subject and not satisfied with the marks obtained therein. Where the petitioner failed in the subject of Mathematics, he had to re-appear for that subject as he had not passed the same. Therefore, it was held there arises no question of retention of marks obtained for Mathematics for the Pre-Degree in the first attempt so as to enable him to secure admission to the B. Tech. course.

The court had occasion to consider about the desirability of private tuitions undertaken by university teachers. In *Varghese* v. *State of Kerala*[131] it was observed that private tuition by itself may not be objectionable, but private tuition, neglecting the basic duty of a teacher is a serious matter. Since it is a policy decision, it was suggested that solutions must be found out with institutional perspectives and legislations, if any needed, should be enacted and the existing laws should be effectively implemented.

In *Kerala Music College Teaching Staff Association* v. *University of Kerala*[132], the dispute to be solved was whether a teacher from a different subject could become a member of Board of Studies in a particular subject. It was held a teacher of the subject concerned alone could become a member of the Board of Studies and therefore the third respondent, who was a teacher in *Sanskrit*, could not have been nominated as a member in the Board of Studies for Music, and the nomination was quashed.

The question arose whether principals of unaided private colleges/self-financing colleges are eligible to participate in the elections to the senate and other organs of the university. In *University of Kerala* v. *Sankaran Nampoothiry*[133], it was answered in the affirmative and held that they are eligible to contest. It was further held that students of all unaided/self-financing but affiliated colleges are also entitled to constitute the college unions. It was held, the teachers and students of unaided affiliated colleges are entitled to the same treatment as their counterpart in aided affiliated colleges.

Where the question involved was one of interpreting Regulation framed by the Academic Council of a university, it was held[134] the High Court should ordinarily be reluctant to issue a writ of *certiorari* where it is plain that the Regulation in question was capable of two constructions. It would generally not be expedient for the court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant Regulation appeared to the High Court less reasonable than the alternative construction, which it is pleased to accept. Similarly, it was held even if there is some ambiguity in the language of an Ordinance or prospectus, one should accept the interpretation placed upon it by the syndicate. It is the syndicate which pass the Ordinance and that is the body which has to prescribe the qualification for admission to the

---

[132] 2002(1) K.L.T. (S.N.) 64.
[133] 2005(1) K.L.T. 229.
[134] *Laila Chacko and others* v. *Principal, Medical College, Trivandrum*, 1967 K.L.T. 52.

course, in the instant case the M.B.B.S. course. The construction as to the scope of the Ordinance by that body is entitled to great weight.

In an era of privatization of education, the court did not hesitate to emphasize the need for bringing in private colleges affiliated to universities within the ambit of public law remedies so as to redress the grievance of persons concerned with them. Recognizing the statutory status behind the process of affiliation, the court held in *Achamma Thomas* v. *Principal, St. Teresa's College, Eranakulam and another*[135] that under the Kerala University Act, a private college, when it is affiliated to university, whether aided or unaided has got certain obligations and duties which spell in the realm of statutory obligations and duties. A private college affiliated to the university, and receiving aid out of the state funds, although owned by a private individual or corporate body, has a public character. Referring to Article 29(2) of the Constitution which provides that no citizen shall be denied admission into any educational institution maintained by the state, or receiving aid out of the state funds on grounds only of religion, caste, language or any of them, it was held this might indicate the public character of a private college. It was further held although a private college may not be a statutory body, statutes or Ordinances made under the Act may cast duties upon it and the college, therefore, has a duty to confirm a teacher who has satisfactorily completed probation. It is submitted that the concept of jurisdiction in judicial review has been expanded in later years to an extent so as to bring in even an unaided but affiliated private college within the scope and ambit of the writ jurisdiction, as the statutory status of affiliation makes it obligatory to discharge public functions.

7.12 Conclusion

A critical analysis of the overall scenario of the High Court's intervention in academic matters in the higher education sector in Kerala, as disclosed from the above cases, would lead to the

[135] 1971 K.L.T. 788.

conclusion that, by and large, the High Court's approach in the subject was in consonance with the judicial policy evolved and adopted by the Apex Court. The deviation, if any, has been justified by the peculiar facts and circumstances of the individual cases, where it had to be done in the interest of justice. When the track of academic litigation is traced, it may be found that the frequency of interference has increased in due course of time, which may be justified due to enhanced volume of academic litigation, arising out of a corresponding downfall in the standard and quality of university administration and the ever increasing quantitative growth of the higher education sector. In the present context, it is apprehended that the growing judicial interference is bound to increase in future years because of the over-politicitzation of the university administration and the resultant subjugation of its autonomy and independence.

CHAPTER - VIII

CONCLUSIONS AND SUGGESTIONS

In India judicial review of academic decisions has always been circumscribed by the policy of the Apex Court that non-interference is the rule and interference is an exception. This is more or less a policy approach guided by self-restraint rather than a principle of law. The reason for this cautious approach must have been the conviction that education is a field earmarked for universities and schools and their autonomy is necessary for the growth of education and knowledge.

A close analysis of the reported decisions of the Apex Court would disclose that among the broad category of academic decisions, which include semi-academic decisions also, the Apex Court has been careful not to disturb purely academic decisions of the educational authorities, involving academic expertise. Matters like prescription of syllabus, curricula, course of study, regulations about examinations, attendance, valuation, re-valuation, rules for admission, award of grace marks, equivalency of qualifications and examinations and the principal's authority to discipline the campus and such other purely academic matters have been left out of the consideration of the court in normal course. It could be seen that the courts have treated the academic decisions more or less similar to the policy decisions of the Government, which are not normally disturbed by the courts as policy-making is not a judicial job. Selection of faculty is yet another area where the courts have been reticent in interfering, if it had been in compliance with the statutory provisions prescribed for the same.

Among the university authorities, bodies like the Academic Council, Board of Studies and the statutory selection committees have been given a privileged position and their decisions have seldom been interfered with. University officials like Vice-Chancellor, Dean, Head of the Department and even the principals of

colleges have been permitted to have discretion, particularly in academic matters, and their decisions have always been respected, wherever possible.

A perusal of the large number of decisions of the Supreme Court on the topic would show that the Apex Court, while being conscious about the dimensions of the writ jurisdiction, had always reminded itself about its constraints and limitations. The general principle that however extensive the jurisdiction may be, it is not so wide or large as to enable the High Court (under Article 226) to convert itself into a court of appeal and examine for itself the correctness of the decisions impugned[1] is made more aptly and precisely applicable to the academic jurisdiction as the courts do not have the requisite expertise to examine the correctness of the decisions under challenge.

At the same time, the Apex Court was not willing to surrender its constitutional prerogative and retained, theoretically at least, almost all the grounds of judicial review available in other areas of public administration in the academic field also, and made them applicable wherever required in extreme cases. But, the Apex Court had consistently displayed self-restraint and reservation in not being very enthusiastic and not readily interfering with the decisions of expert bodies in the academic field and those of the academic authorities on the usual grounds of judicial review of unreasonableness, arbitrariness, irrationality or impropriety. Instead, while dealing with academic questions the court had confined itself to the selected grounds of illegality, *mala fides* and lack of jurisdiction and to the extremities of the normal grounds *viz.* shockingly unreasonable, patently arbitrary and strikingly irrational.

The Apex Court justified its self-imposed restraint on more than one reasons. They are, *inter alia*, lack of expertise for the court in academic matters, the specialized and technical nature of the decision making process, the minimum authority and freedom that

---

[1] *G. Verappa Pillai* v. *Raman & Raman Ltd., Kumbakonam*, A.I.R. 1952 S.C. 192

should be vested with the academic authorities for the innovative development and dissemination of knowledge and may, probably, to avoid the possible criticism that the courts have hijacked the university system and have become the destroyer of academic autonomy.

It could be seen from the case law under discussion that in the initial years the Apex Court was very much reluctant to tread into the academic territory[2]. But, as years passed on, the relative frequency had increased and the restraint of non-interference had been diluted. This may probably be in proportion to the ever growing volume of academic litigation under the writ jurisdiction and the comparative standards, maturity and the institutional discipline displayed by both the higher judiciary and the universities in the immediate post independent India and in the present times.

A scrutiny of the case law reported from the Kerala High Court would show that the High Court has followed the line of thinking of the Apex Court in the matter of academic issues and has followed the Apex Court's path generally. It could be seen that wherever there was deviation from the principle settled by the Supreme Court of minimum and unavoidable interference in academic matters, mostly the decisions impugned had been either violative of the provisions of the university laws i.e. the Act, Statutes, Ordinances, Regulations etc. or vitiated by *mala fides* or lack or excess of jurisdiction or by patent violation of natural justice, or error apparent on the face of the record.

Experience has shown that the range of interference and non-interference in academic matters under the writ jurisdiction in the Kerala High Court varied from judge to judge, depending on the individual judge's perception and outlook about the academic efficiency and institutional discipline of the universities in Kerala and other academic authorities and their falling standards and erosion of

---

[2] The history of the Indian Judiciary indicates that as an institution it resisted all forms of change for the first few decades of its functioning- Indira Jaising, 'The Future of Judicial Power', The Times of India, December 12, 2009, p. 19.

values. Although the Court has always attempted to maintain a uniform yardstick in the matter, at times, the judiciary has crossed the fence and has grazed on the academic meadows of the universities. A forthright critical study of such tendencies could be made only if all or most of the unreported decisions of such instances could be subjected to a critical analysis. There are several such decisions that are unreported, obviously for the reason, that they do not represent good law on the subject, but are the outcome of mis-palced sympathy and sentiments to the petitioner's predicament in the given situation in the case, or due to the persuasion and advocacy of the lawyer and due to the personal idiosyncrasies of the judges concerned and they decided it to be so. In some such decisions one finds an unavoidable tail piece in the judgment that "not to be treated as a precedent". But an analysis of such decisions, which do not represent good law, may not be appropriate in a work like this, which attempts to trace down the accepted, settled and desirable legal principles governing the field, as opposed to the aberrations in the current scenario.

There are five Universities in Kerala. From the previous chapter it is clear that a large number of writ petitions had been filed against universities in the High Court. This shows the volume of judicial work generated in the university sector in Kerala. Not all these cases are strictly on academic matters. Whereas, a good number of them are on academic issues, the remaining are quasi-academic and the rest are administrative or service matters pertaining to the universities. The case laws cited in this study are not precisely on academic issues. Semi-academic decisions are also cited to show the extent of comparative judicial interference in such matters. By and large it could be seen that the courts have seldom interfered in purely academic matters, when compared to the semi academic, administrative and service matters.

There has been a regular growth in the volume of academic litigation in Kerala over the period of years. Almost ninety

percent of the total volume of the litigation is confined to the High Court under its writ jurisdiction. The rest of it are civil suits, petitions in the Lok Ayukta and in the Consumer Protection Forums. The inordinate delay in disposal and the unending process in the civil courts dissuade the aggrieved parties from seeking recourse to civil suits and persuade them to move the writ jurisdiction of the High Court, where the writ procedure is comparatively simple and expeditious.

Of late, after the establishment of the Kerala Lok Ayukta, there is a growing trend of the litigants, particularly from the two southern districts of the state, approaching the State Lok Ayukta, sitting at the capital city of Trivandurm at the southern end of the State, for the redressal of their grievances against the mal-administration in the University of Kerala. A similar trend is appearing gradually in other parts of the State also, where there are camp sittings of the Lok Ayukta where increasing number of petitions are lodged against the respective universities in those parts.

The better chances and possibility of getting interim reliefs in admission, examination, re-valuation matters etc. at the admission stage in writ petitions, even when moved at the last moment, is an added incentive for the petitioners to approach the High Court. Although there is ample scope for development of the compensatory jurisprudence in academic matters as the students' career and future is involved in large number of cases and, further, to dissuade the universities from repeatedly resorting to illegalities and arbitrariness, some how or other, no consistent attempts have been made in this direction by the courts and the petitioners have invariably been contended with the relief sought for. Neither the courts have *suo moto* developed the compensatory jurisprudence against the universities, so as to make them more responsible and accountable to the public interest. It appears that the development of compensatory jurisprudence in academic matters by having recourse

to the consumer protection forums under the Consumer (Protection) Act is also being discouraged on the ground that the statutory bodies like educational boards and universities are only discharging their statutory duties and functions and not rendering any service in conducting examinations, valuing answer scripts and such other academic activities. This leaves an aggrieved person with no alternative other than approaching the civil court in a time consuming civil litigation for seeking compensation or damages for injuries suffered by him at the instance of the academic authorities. This further embolden the universities and educational boards to be recalcitrant and indifferent in the discharge of their statutory duties and the corresponding rights of the individual. Therefore the only recourse available to the aggrieved person is the compensatory jurisprudence under the writ jurisdiction, which, unfortunately, is in its infancy stage in India.

Probed into the main reasons for the ever-expanding litigative trend in university matters, one finds that they are, *inter alia*, the growth and development of higher education, particularly professional education and the resultant rush to join the spree; privatization and liberalization of higher education and the resultant competition arising therefrom; the economic prosperity of the people; the affordable expenses and lawyers' fee for filing writ petitions; the growth of literacy, urbanization and resultant awareness about ones own rights and legal issues; the stake involved in the admission, examination, revaluation etc., particularly in the field of professional education; the informality, accessibility and expediency of the writ jurisdiction and the concern and anxiety of the students, and more than them, of the parents to help their wards in the running race.

Experience shows that writ petitions in academic matters are treated in the routine course along with other matters and interim orders used to be issued for provisional admission to courses, for appearance in examinations and such other purely academic matters. In hundreds of writ petitions that are coming up for admission before

the admission court, it may be difficult to scrutinize the academic decisions particularly and to give a different treatment to academic matters by a meticulous filtering process. The resultant situation is that in many an academic matters undeserving and unjustifiable interim orders are obtained by the petitioners. Many of these interim orders have the practical effect of the final relief sought for and, hence, by the time the writ petitions come up for final hearing after a couple of years, the petitioners therein, who had been admitted to the courses or examinations by virtue of the interim orders, must have substantially changed their position by completing the courses and the matters would have become *fait accompli*. In such cases, the Court will be compelled to invoke something like a 'compassionate jurisdiction' and to issue unmerited final orders half-heartedly, creating bad law on the subject, with the tail piece "not to be treated as a precedent". Such misplaced sympathy and unwarranted benevolence is the most objectionable part of the academic jurisdiction of judicial review, high-lighted by the Supreme Court on many occasions. The sole cause of this is the casual and hurried interim reliefs almost equivalent to final relief granted at the time of admission without proper application of mind by the Judge and before the respondent gets instructions in the matter.

This happens because academic matters are also coming up before the crowded general admission courts, which find it difficult to follow up any matter with special care. In such process the interim orders issued would continue for a long time due to non-completion of process and pleadings and eventually would be confirmed as the final orders "in the interest of justice". It is therefore high time to think about special Academic Benches for all the High Courts, who can keenly follow up each case on academic matters and expeditiously dispose of the matters, without doing any injustice either to the petitioner or to the respondent University. Such a Bench can evolve and adopt a consistent judicial policy in the matter of interference in academic matters in tune with the policy settled by the Apex Court in

the matter. This may not be possible when the academic matters are sent for admission and hearing along with all general matters to different judges sitting in admission courts, who are having different perceptions and conceptions on the subject. Special Academic Benches for admission and hearing of academic matters may bring clarity, consistency, uniformity and certainty in verdicts, both interim and final, and would help to maintain the institutional discipline and a firm line of thinking on the subject. Considering the ever increasing volume of work generated in the educational sector due to liberalization and privatization of higher education also, special Academic Benches of the High Courts are to be welcomed more enthusiastically than any other specialized Benches proposed like the Green Benches, where the volume of work is comparatively lesser.

Apart from students, teachers and non-teaching staff of the universities, another newly emerged category of litigants in the academic jurisdiction are the managements of private colleges, both aided and unaided. Since all these colleges are affiliated to the universities, they have innumerable issues and disputes with the universities in their routine course of 'business', starting from affiliation and proceeding with admission, examination, disciplinary actions etc. Affiliation/recognition being high stake matters for the private parties, who invest crores of rupees in their venture, in many cases the management, whether unitary or corporate, are driven to the Court by the recalcitrant attitude and technical objections of the universities. Admission is the next stage which decides the financial stability of the educational institutions with the provision for payment seats, where the institutions have to continue their legal fight many times against the authorities[3]. If the aforesaid are the persuasions or causations for academic litigation for individuals, the contributions made by the universities and other higher education authorities in driving people to the Court are equally forceful and significant. As a result, litigation has become a major activity and a routine affair for

[3] See *Unnikrishnan, Inamdar, Pai Foundation* etc. cases

all universities for taking care of which there is now separate department and Standing Committee of the Syndicate for most of the universities in Kerala.

The universities do not take stock of their litigation works, make an assessment of the categories of cases, the reasons for the same, the possibility of settlement out of court and study the percentage of success and failure in the verdicts or about its consequences, or make any attempt for creating legal awareness among their staff at the decision making levels. Annual Reports are not called for from the Standing Counsel of the University in the High Court nor any regular interaction take place between the Syndicate or its sub-committee and the Standing Counsel for making a periodical assessment of the volume of litigation and its reasons. This may lead to a criticism that the agency which is least bothered about the university autonomy and most willing to surrender academic freedom to the judiciary is none other than the universities themselves. If the universities sincerely wanted to avoid judicial interference in their academic activities and policy decisions and to maintain their autonomy and freedom in such matters, they could have avoided a major share of the litigation that they have faced and failed by being reasonable, rational and impartial. Instead, the case law discussed would show that on many occasions the provocation had come from the universities and their unreasonable and uncompromising attitude and illegal decisions.

The multitude of reasons leading to academic litigation poses a real challenge to the university autonomy and academic freedom. The challenge is from within the system and not from outside. Autonomy in the academic field is neither a "legal concept" nor a "constitutional concept". On the other hand, it is an "ethical concept" and an "academic concept"[4]. No university can be completely autonomous nor it could be expected to be wholly self governing.

---

[4] Report of the Committee on Governance of Universities, University Grants Commission, New Delhi (1971), p.9.

University autonomy does not suggest that universities are a state within a state and a law unto themselves[5]. Therefore, there cannot be any grievance that judicial interference in the affairs of universities is an onslaught on the university autonomy.

In fact, the Court functions as a balancing power in settling the conflict of interests between the varied components of the system *viz.* teachers, students, staff, the Government, U.G.C. and other regulatory bodies, the University and the managements. Many of the ills of a University start from the inefficiency of its Vice-Chancellor. The Vice-Chancellor is the sacred trustee of the academic conscience of his University. By virtue of his numerous powers and privileges and his position as the executive and academic head of the University and its various authorities, the Vice-Chancellors of Indian Universities hold an unparalleled and unique position in the scheme of public offices. The Vice-Chancellor represents the prestige of his University. There was a time when Vice-Chancellor's used to be selected from among the eminent educationists cum administrators and visionaries, who have kept themselves abreast of the latest developments in the field of higher education. But, in the post-independent era, there has been a gradual deterioration of quality in the selection process and in the caliber of the selectees. In this matter the Chancellor of the University *viz.* in most cases the Governor of the State, has a paramount role to play and much depends on his caliber also. Governor of a State occupies constitutional status and bound by the advice of the Cabinet. Whereas the Chancellor of a University is the creation of a statute, i.e. the University Act, and as such he is neither required to seek nor is bound by such advice in the matter of appointment of the Vice-Chancellor of the University. He is free to act according to his own wisdom and based on certain discernible yardsticks of merit in the matter of experience, administrative efficiency and scholarship of the incumbents. It is sad that at present

---

[5] *Id.*, at p.10.

no such guidelines or yardstick are prescribed or being followed in regard to the selection of Vice-Chancellors[6].

The growing campus indiscipline, the lowered morale of the teaching faculty, the indiscipline of the non-teaching staff, and the pronounced indifference to academic pursuits are all, to a large extent, the consequences of the downfall of the status and image of the office of the Vice-Chancellor and that of the stature of the incumbent therein. Now, many Vice-Chancellors by virtue of their nexus to the political leadership of the Government, are directly or indirectly politicians and many of them are 'teacher-politicians'. If one looks into the selection of Vice-Chancellors in Kerala during the last ten years, one may notice that it has mostly been persons with political backing of the government in power who have become Vice-Chancellors. Such candidates do not command uniform respect from allthrough the system, and their partisan attitude directly or indirectly influence almost all the important decisions of the universities. Sadly, this is a major reason for the mal-administration of universities and the downfall in their academic standards and reputation in India. This has resulted in increasing the frequency and justification of judicial interference in academic and other matters of universities.

Apart from all other ills that have afflicted the university system and the higher education sector in India, which cannot be dealt with in detail in a study like this, the purpose of which is different, the selection and appointment of Vice-Chancellors is the singularly important cause that should be given immediate attention to, if we want to save our university system from total collapse. In order to minimize judicial interference by way of judicial review in the university affairs there is no short cut other than improving the quality of the general performance and functioning of the universities. This is possible only if the right persons, who are men of academic distinction, recognized scholarship and proved administrative ability,

---

[6] Recently it is reported in news papers that the State Government of Maharashtra is proposing to come out with certain statutorily prescribed minimum qualification for the post of Vice-Chancellors.

are adorning the chairs of Vice-Chancellors. But this, in turn, will depend largely upon the integrity and ability of the members of the search committee entrusted with the task of selecting Vice-Chancellors[7] and the firm decision of the Government to give them a free hand.

In any event, judiciary could not be blamed for disrupting the university autonomy or dismantling the academic freedom through the medium of judicial review. Only a small fraction of educational disputes are reaching the Court and the courts are interfering in a still small fraction of the same. Here again, they are not invited by the courts, but the aggrieved persons have brought them for judicial adjudication. The ever increasing number of academic litigation shows the persistent faith of the people in the judiciary and that there is some thing wrong in our universities and in the higher education system

The main question here is who wants university autonomy and academic freedom? If the main stake holders in the system, *viz.* the universities and the academics do not want to resist the judicial aggression, if some may call so, who else can protect their autonomy and freedom? None of the universities in Kerala has taken the initiative to hold seminars and debates on this vital issue of judicial interference in academic freedom and to keep the issue alive. It is the High Court that has shown the restraint *suo motu* from interfering in academic matters. The universities or the academia have not made any institutional campaign or organized pressure on the judiciary to leave their freedom intact. The fact remains that as years pass by, the rate of judicial interference in university affairs is hiking due to reasons more than one. The overall increase in the volume of higher education and the resultant inflation of the number of court cases is one of the main reasons. A large number of affiliated colleges and university centres, including professional colleges, have come into

---

[7] R.P. Singh ,'Role of Vice-Chancellors and their Appointment', in S.C. Malik, *Management and Organization of Indian Universities*, Indian Institute of Advanced Study, Simla (1971), p. 75, at pp. 77-78.

existence in Kerala with massive enrolment of students and large scale selection of teachers. This has necessarily increased the influence of the university administration on higher education naturally giving rise to more and more disputes and conflicts. The second prominent reason is the increasing trend of politicization of university administration[8] and the resultant maladministration, starting from the grant or rejection of affiliation of new institutions and onwards. The third major reason for the increasing number of writ petitions against the universities is the inertia or the indifference of the universities about the consequences of their decisions, the neglect of university laws and rules and the vested interests of the persons concerned. To this could be added the lack of integrity and the partisan attitude of the members of the university bodies.

It is worthwhile to note here the actions taken by the British Government during the 1980s when they became increasingly concerned at the number of successful judicial review challenges and when the departments seemed ill-equipped to respond effectively to actual or potential judicial reviews. The government responded by distributing over 35,000 copies of a pamphlet, prepared by the Treasury Solicitor and endorsed by a Cabinet committee, called *The Judge over your shoulder* to civil servants in 1987[9]. The pamphlet had set out some basic information about the judicial review process and some of the precautions which administrators could take to avoid the risk of challenge. A programme of legal awareness training was also organized for civil servants. In the years that followed, a marked change in the approach of the departments was seen to have occurred and law and lawyers were no longer seen as peripheral to the process of administration.

---

[8] See the views expressed by different former Vice-Chancellors of the universities in Kerala, "Over politicization of universities", The Malayala Manorama dated 5th May, 2009, p.8.

[9] A. Bradley, *The Judge Over Your Shoulder* (1987) PL 485. A second edition of the pamphlet was prepared in 1994, on which see D. Oliver, (1994) PL 514.

In a state like Kerala, located at one end of the country, unless the High Court is very selective and reluctant in interfering with the academic matters, and if the pace of interference is increasing year after year, a time may come when the Court takes over the University administration, including the academic side, without any effective solution for the universities. Owing to the long distance to the Apex Court from Kerala and the meager financial backing of the universities in Kerala, the universities may not be able to challenge all the adverse decisions in the Supreme Court. They will have to accept the verdicts of the High Court as final and binding on them, even if they can't agree with the decisions or the court orders cannot be justified in law or on facts. The more the interference, the more will be the flow of litigation, as it would act as a catalyst or incentive for the litigants. Therefore, in the present scenario of increasing litigative trend against the universities, the question whether the judicial supervision and interference in university affairs is good or bad for the system and the society, is something which time has to answer along with the equally plausible question as to whether there is any other efficacious remedy available in the wake of increasing political interference in university affairs.

Experience has shown that some judges in the Kerala High Court have been a bit hasty and superficial in dealing with university matters, may be due to the work load or being carried away by the petitioners' hardship on the facts of the cases or being influenced by their own predilections and prejudices, by forgetting or conveniently overlooking the jurisdictional parameters settled by the Supreme Court in academic matters. In the case of some others, the pendulum has been swinging to the other extreme and even in genuine cases result was far fetched for the aggrieved petitioners. But a few judges have adopted a balanced stand, reminding themselves about the scope and limitation of the power under Article 226 of the Constitution vis-à-vis academic matters. It may not be fair to catalogue their orders and judgments so as to establish the above fact

in a study like this. Further, unless the study probe into the unreported and 'not-to-be reported' judgments on the subject, some of which had created bad law and perverse precedents, the individual idiosyncrasies and the abuse of judicial discretion cannot be highlighted. However, it is not the scope of or purpose of this study.

In the above factual premises and on an overall assessment of the case law reported from the High Court of Kerala, and the growing trend of judicial interference in academic matters, the following suggestions are worth considerable:

1. Specialized Academic Benches for every High Court presided over by judges, who have absolute clarity about the *Lekshman Rekha* (forbidden line) in the exercise of judicial review in academic matters and university affairs, may be constituted.

2. The universities themselves should build up their in-house mechanism by taking frequent stock of the litigation against them and its reasons and should find out ways and means to reduce the volume of litigation thereby absorbing the shock within the system. University Ombudsmen manned by eminent former Vice-Chancellors or academicians could be thought of for every university or in common as a filtering process of disputes at the university level, before the matter goes to the court.

3. State governments and the political parties in power should put an end to their divisive politics being played in this area of construction, where the nation building process is going on by moulding the future generations, and leave the universities and other academic institutions on their own with sufficient freedom to decide their own course of action, particularly in academic matters.

4. The selection and appointment of vice-chancellors may be given paramount importance and the state governments should see

that narrow political considerations do not creep in the selection process and undeserving and unmerited persons are not selected. If an eminent academician-cum-administrator of proven integrity is selected as the Vice-Chancellor of a university, more than half of the work is done for the future of that institution. To achieve this, there has to be minimum criteria for selection in the form of discernible yardsticks and guidelines, rather than leaving it to the absolute discretion of the Search Committee as in the present system, which enable them or compel them to succumb to the mandates of their political masters.

5. The basic principles and the jurisdictional parameters of judicial review in the area of academic decisions, as pronounced by the Apex Court, can be convincingly and consistently followed by the High Courts, which is possible only if special Academic Benches are constituted. It may be ascertained at the admission stage itself whether an academic issue is involved in the writ petition or not. The Court may not adopt a perfunctory approach and may not exercise its 'compassionate jurisdiction' at the inter locutary stage unless the given facts and circumstance of the case compel and genuinely justifies such an interference.

6. Granting interim orders on the first day of admission hearing, without hearing the counsel for the University and before he gets instructions, and entertaining last moment writ petitions filed just prior to the last date of admission or examination may be discouraged, unless the facts and circumstances of the case reasonably justifies the same. In such cases interim orders granted may be finally considered on merits at the earliest possible date.

7. In disputes regarding valuation and re-valuation of answer scripts, court may strictly follow the provisions of the relevant Regulations. In the absence of any compelling reasons, re-valuation

may not be ordered to be carried out by outside agencies or professors of other universities, which may be an insult to the reputation of the university concerned. It can never be that all professors of the same university will be hostile to the petitioner or persons having lack of integrity.

8. In matters of equivalency of qualifications, degrees, diplomas, examinations etc., as far as possible, the court may not disturb the findings of the Academic Council of the University and the Board of Studies, which are the expert academic bodies of the university, consisting fairly large number of academicians as their members.

9. In disciplinary matters, the court may respect the decisions of the Principal and Staff Council of the college concerned, who are aware about the ground realities and are directly concerned with the maintenance of campus discipline. In such cases court may not interfere on hyper technical grounds, semblance of violation of natural justice or vague allegation of *mala fides*.

10. The powers of the U.G.C. and those of the national statutory regulatory bodies may be confined to introducing higher academic standards, discipline and uniformity on the national level and may be limited to evolving such national policies and their implementation. These bodies may not be permitted to act as super-universities controlling the universities in all academic matters, killing the freedom and creativity of the universities to aspire for higher goals of standards and to pursue new experiments and innovation in the academic field.

11. The recent trend of awarding deemed university status to campus institutions in private sector, having no sufficient standing and contribution to the higher education sector, may not be

encouraged since it may lead to further commercialization of higher education and would be destructive to the uniformity in standards and quality of higher education.

It is made clear that the above conclusions are arrived at and suggestions proposed not strictly on an analysis of the case law reported on the subject, but by an overall consideration of the facts and circumstances that drive the universities to the Court, some of which are evident from the cases discussed in the preceding chapters.

Through innumerable decisions on the subject, the Supreme Court and the High Courts in India have evolved a judicial policy and have fixed the contours of their review jurisdiction on academic matters and university affairs. But, on several occasions the said policy has not been consistently followed with the institutional discipline it deserves by many individual judges, resulting in verdicts coming out not in conformity with the proclaimed judicial policy settled by the Apex Court. The discretionary jurisdiction under Article 226 of the Constitution gives this freedom to each individual judge, though their unjustifiable orders could survive only upto the Division Bench of the Court. This inevitable conflict in the judicial process, arising from the independence of judiciary and the idiosyncrasies of individual judges, has been high-lighted by the Apex Court, though on a different context, while dealing with the scope of the expression 'reasonableness' in the interpretation of legislations. The Court said[10]:

> It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all

[10] *The State of Madras* v. *V.G.Row*, A.I.R. 1952 S.C. 196.

> the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable."

The above caution expressed by the Apex Court is equally applicable to the academic field as well, and the limit to judicial interference with academic judgment can only be dictated by the sense of responsibility and self restraint of individual judges and the sober reflection that 'academic decisions' are taken by academicians, who are experts in their respective field, in exercise of their inherent freedom and in pursuance of the concept of university autonomy and academic excellence.

A critical inspection of the overall scenario of the High Court's intervention in academic matters by a careful evaluation of the judgments would lead to the conclusion that almost all the grounds available for judicial review in other areas of public administration are available and applicable in the academic field also depending on the facts and circumstances of the individual cases. The only difference is that as in the case of policy decisions, in the case of academic decisions too, the court has consistently displayed a self restraint and some reservation in not readily interfering with the decisions on the normal grounds of unreasonableness, arbitrariness, irrationality or impropriety. On the other hand, the court had confined itself to the selected grounds of illegality, mala fides, lack of jurisdiction etc. and to the extremities of the normal grounds *viz.* shockingly unreasonable, patently arbitrary and strikingly irrational. The problem is that the restraint is only self imposed, which could be abandoned at any time by any judge. In order to obviate this, concrete principles settled or to be settled in all aspects of academic adjudication should be followed

with judicial discipline and decorum. This can provide guidance for achieving uniformity in the matter of first principles and certainty in litigation. The Kerala High Court has made more or less an earnest attempt for this, but not with full results due to various reasons as discussed above, most importantly, in the absence of an Academic Bench that could follow the law on the subject with clarity, consistency and candidness.

LIST OF CASES

A. Jacob Mathew v. *Professor of Medicine, Medical College, Trivandrum and others*, 1996 K.L.T. 866.

A. K. Gopalan v. *State of Madras*, A.I.R. 1950 S.C. 27.

A. P. Christian Medical Education Society v. *Government of A. P.*, (1986) 2 S.C.C. 667.

A. V. Jacob and another v. *State of Kerala and another*, 1974 K.L.T. 94.

A. V. Venkateswaran, Collector of Custom, Bombay v. *Ramachand Soghraj Wadhwani and another*, A.I.R. 1961 S.C. 1506

Abe Thomas v. *University of Calicut*, 1983 K.L.T. (S.N.) 39.

Aby D. John v. *University of Kerala*, 2002(3) K.L.T. 931.

Aakanksha Sharma and another v. *State of Punjab and others*, (2001) 9 S.C.C. 745.

Abdul Salam v. *University of Kerala*, 1997 (2) K.L.T. 223.

Abhijit v. *Dean, Government Medical College, Aurangabad*, A.I.R. 1987 S.C. 1362; (1987) 3 S.C.C. 478.

Academy of Medical Sciences v. *Regina*, 1987 (1) K.L.T. 613.

Achamma Thomas v. *Principal St. Tressa's College*, 1971 K.L.T. 788

Admission Committee, CII 1995 and another v. *Anand Kumar and another*, (1998) 8 S.C.C. 333.

Alex Saji v. *University of Kerala*, 1996(2) K.L.T. 588.

Al-Karim Educational Trust and another v. *State of Bihar and others*, (1996) 8 S.C.C. 330.

AIIMS Students' Union v. *AIIMS and others*, (2002) 1 S.C.C. 428

Ahmadabad St. Xavier's College Society v. *State of Gujarat*, (1974) 1 S.C.C. 717.

Ahmadabad Municipal Corporation and another v. *Nilaybahai R. Thkar and another*, (1999) 9 S.C.C. 139.

Aish v. *University of Calicut*, 2003(2) K.L.T. (SN) 57.

Ajay Hasia and others v. *Khalid Mujib Sehravardi and others*, (1981) 1 S.C.C. 722; A.I.R. 1981 S.C. 487.

Ajay Kumar Singh v. *State of Bihar*, (1994) 4 S.C.C. 401.

Ajitha v. *Mahatma Gandhi University*, 2001(2) K.L.T. 878.

Ajith George v. *State of Kerala*, 2006 (3) K.L.T. 743.

Akbar Badusha v. *State of Kerala*, 2003(3) K.L.T. (SN) 17.

Amina v. *State of Kerala*, 2004 (1) K.L.T. 657.

Amitabh Shrivastava v. *State of Madhya Pradesh and others,* (1982) 1 S.C.C. 514.

Anamika Bishnoi (Ms) v. *Mangir Chaudhry (Ms) and others*, (1996) 2 S.C.C. 144.

Anant Madaan v. *State of Haryana*, (1995) 2 S.C.C. 135.

Aneesh v. *University of Kerala*, 2007 (2) K.L.T. 334.

Andhra Kesri Educational Society v. *Director of School Education and others,* (1989) 1 S.C.C. 392.

Andimukta Sadguru Shree Muktajee Swami Surana Jayanti Mohotsaw Samarak Trust and others v. *V. R. Rudani and others*, A.I.R. 1980 S.C. 1607.

Anil Baipadithaya and others v. *Stat of Karnataka and others,* (1995) 6 S.C.C. 531.

Anjuman- E- Islam v. *State of Karnataka and another,* (2001) 9 S.C.C. 465.

Annamma v. *State of Kerala,* 1994 (1) K.L.T. 309

Annamalai University v. *Secretary to Government, I & T Department and others*, (2009) 4 S.C.C. 590.

Anisminic Ltd. v. *Foreign Corporation Commission,* (1996) 2 A.C. 147.

Arif Hameed and others v. *State of J & K and others*, 1989 Supp (2) S.C.C. 364.

Arti Sapru and others v. *State of J & K and others*, (1981) 2 S.C.C. 484.

Arti Gupta and others v. *State of Punjab and others,* (1988) 1 S.C.C. 258; A.I.R. 1988 S.C. 481.

Aravind v. *Azad*, 2004 (2) K.L.T. (S.N.) 62.

Asheesh Pratap Singh and others v. *M. Sachdeva and others,* (2003) 2 S.C.C. 309.

Ashok Chand Singhvi v. *University of Jodhpur and others,* (1981) 1S.C.C. 399.

Ashok Kumar Thakur v. *University of Himachal Pradesh and others,* (1973) 2 S.C.C. 298.

Ashokan v. *State of Kerala*, 2003 (1) K.L.T. (S.N.) 29.

Ashokan v. *University of Calicut*, 2006 (2) K.L.T. (S.N.)11.

Asok Lanka and another v. *Rishi Dixit and others*, (2005) 5 S.C.C. 598.

Associated Cement Co. Ltd. v. *P. D. Vyas and others*, A.I.R. 1960 S.C. 665

Austin Joseph v. *Cochin University of Science and Technology*, 2001(2) K.L.T. 518.

Avinash Mehrotra v. *Union of India and others*, (2009) 6 S.C.C. 398.

BALCO Employees Union v. *Union of India*, A.I.R. 2002 S.C. 350.

B.R. Sharma v. *Special Officer, Commissioner Entrance Test Cell, Government of Karnataka*, (1997) 11 S.C.C.626

Babu Ahamad Kabir v. *Principal, Medical College Kozhikode*, 1996 K.L.T. 919.

Babu Mungipa Medical College and another v. *Government of Tripura and others*, (1998) 5 S.C.C. 608.

Bachan Singh v. *State of Punjab*, (1980) 2 S.C.C. 684.

Badrinath v. *Government of Tamil Nadu and others*, (2000) 8 S.C.C. 395.

Baiju v. *Suguna Prakash*, 2003 (2) K.L.T. 182.

Blacburn v. *Attorney General, (1971) W.L.R. 1037.*

Bandhu Mukti Morcha v. *Union of India*, A.I.R. 2002 S.C. 350.

Bannari Amman Sugar Ltd. v. *Commercial Tax Officer and others*, (2005) 1 S.C.C. 625

Bar Council of India and another v. *Aparna Basu Mallick and other and another case*, (1994) 2 S.C.C. 102

Bar Council of India v. *Board of Management, Dyanand College of Law and others*, (2007)2S.C.C.202; 2007(1)K.L.T. 177(S.C.)

Benedict Mar Gegorious v. *State of Kerala and others*, 1976 K.L.T. 458 (F.B.).

Bengal Immunity Co. Ltd. v. *State of Bihar and others*, A. I.R. 1955 S.C. 661

Benoy Thomas v. *University of Kerala*, 1982 K.L.T. 598.

Benoy Thomas v. *Vijaya Bhanu*, 1985 K.L.T. 546.

Bernard Fenn v. *University of Kerala*, 1979 K.L.T. (SN) 12.

Berhampur University and another v. *Dr. Sailabal Padhi*, (1997) 5 S.C.C. 53.

Bhanu Prasad Panda (Dr.) v. *Chancellor, Sabalpu University*, (2001) 8 S.C.C. 532.

Bharat Kumar K. Palicha v. *State of Kerala,* A.I.R. 1997 Ker 291(F.B.)

Bharathisarsan University and another v. *AICTE and others*, (2001) 8 S.C.C. 676.

Bhartiya Homoeopathy College, Bharatpur v. *Students Council of Homoeopathy, Medical College, Jaipur and others*, (1998) 2 S.C.C. 449

Bhawana Narula (Ms) and others v. *Manju Chaudhary (Ms) and others*, (1996) 2 S.C.C. 155.

Bhikaji Narain Dhakras and others v. *State of Madhya Pradesh and another,* A.I.R. 1955 S. C. 781

Bhushan Uttam Khare v. *Dean, B.J. Medical College and others*, (1992) 2 S.C.C. 220

Bihar School Examination Board v. *Subhas Chandra Sinha and others*, 1970(1) S.C.C. 648.

Bijulal v. *University of Calicut*, 1999(1)K.L.T. (S.N.)11.

Bindu Thomas v. *State of Kerala*, 2003 (3)K.L.T. 21

Bishnu Narain Mishra v. *State of U.P.*, A.I.R. S.C. 1567,

Blackburn v. *Att. General*, (1971) 1 W.L.R. 1037

Bobby Cyriac v. *Principal*, 1991(2) K.L.T. 612.

Board of High School and Intermediate Education, U.P. v. *Ghanshyam Das Gupta and others*, A.I.R. 1962 S.C. 1110.

Board of School Education, Haryana v. *Arun Rathi and others*, (1994) 2 S.C.C. 526.

Bonham Case, (1610)8 Co. Rep. 113b

Brahma Samaj Education Society v. *State of West Bengal*, 2004 (2) K.L.T. 742(S.C.).

Buddhist Mission Dental College and Hospital v. *Bhupesh Khurana and others*, (2009) 4 S.C.C. 473.

C. Golaknath and others v. *State of Punjab and others*, A.I.R. 1967 S.C. 1643.

C. Tulsi Priya v. *A.P. State Council of Higher Education and others*, A.I.R. 1999 S.C. 199; (1998) 6 S.C.C. 284.

C.B.S.E. and another v. *P. Sunil Kumar*, A.I.R. 1998 S.C. 2235: (1998) 5 S.C.C. 377.

Cellular Operators Association of India v. *Union of India,* (2003) 3 S.C.C. 186.

Central Board of Secondary Education v. *Vineeta Mahajan (Ms) and another*, (1994) 1 S.C.C. 6.

Central Board of Secondary Education v. *Nikil Gulati and another*, A.I.R. 1998 S.C. 1205; (1998) 3 S.C.C. 5.

Chairman, Central Council of Homoeopathy v. *Varinder Singh and other*, (2001) 10 S.C.C. 161.

Chairman, J & K State Board of Education v. *Feyaz Ahmed Malik and another*, (2000)3 S.C.C. 59; A.I.R. 2000 S.C. 1039.

Chancellor v. *Shankar Rao and others*, (1999) 6 S.C.C. 255.

Chandler v. *D.P.P., (1964) A.C. 374.*

Chandra Kumar v. *Union of India and others*, (1997) 3S.C.C. 261

Charanjit Lal Chowdhury v. *The Union of India and others*, A.I.R. 1951 S.C. 41.

Charles K Skaria and others v. *Dr. C Mathew and others and connected cases*, (1980) 2 S.C.C. 752.

Cochin University of Science and Technology v *Joseph James*, 2005(4) K.L.T. 555.

Cochin University of Science and Technology v *Thomas P. John*, 2008(2) K.L.T. 718(S.C.).

Commissioner, Lucknow Division and others v. *Kumari Prem Lata Misra*, A.I.R. 1977 S.C. 334.

Commissioner of Examination v. *Arunshekhar*, 2004(1) K.L.T. (S.N.) 102.

Commissioner of Examination v. *Geetha Rani*, 1991(1) K.L.T. 59.

Committee of Management and another v. *Vice-Chancellor and others*, (2009) 2 S.C.C. 630.

Common Cause (A Regd. Society) v. *Union of India & others*, (2008) 5 S.C.C. 511.

Communist Party of India (M) v. *Bharat Kumar*, (1998) 1 S.C.C. 201

Controller of Examination and others v. *G.S. Sunder and another*, (1993)Supp 3 S.C.C. 82: 1992 (2) K.L.T. (S.N.) 13

Controller of Examination, Utkal University v. *Paurumasi Das (Ms) and connected case*, (1995) 6 S.C.C. 81.

Council for Indian School Certificate Examination v. *Isha Mittal and another*, (2000) 7 S.C.C. 521.

Council of Civil Service Unions v. *Minister for the Civil Service*, (1985) A.C. 374.

Council of Higher Secondary Education, Orissa and another v. *Dyuti Prakesh Das and another*, 1993 Supp (3) S.C.C. 657; A.I.R. 1994 S.C. 598.

Council of Homeopathic System of Medicine, Punjab and others v. *Suchintan and others*, 1993 Supp (3) S.C.C. 99.

Council of Principal's of College v. *State of Kerala*, 2004(2) K.L.T. 995

D.C. Wadhwa v. *State of Bihar*, A.I.R. 1987 S.C. 579.

Dar-U-Salam Education Trust and another v. *Government of A.P. and others*, (1998) 5 S.C.C. 358.

Dalpat Abesahab Solunke v. *Dr. B.S. Mahajan*, (1990) 1 S.C.C. 305.

Deepak Sibal v. *Punjab University and another and another case*, (1989)3 S.C.C. 112; A.I.R. 1989 S.C. 903.

Dental Council of India v. *Harpreet Kaur Baland another*, 1995 Supp.(1) S.C.C. 304.

Dental Council of India v. *Subharti KKB Charital Trust and another*, (2000) 9 S.C.C. 477.

Dinesh Kumar (Dr.) and others (II) v. *Motilal Nehru Medical College, Allahabad and others*, (1986) 3 S.C.C. 727.

Dinesh Kumar (Dr.) v. *Motilal Nehru Medical College, Allahabad and others*, (1990) 4 S.C.C. 627.

Director, Medical Education, Lucknow and others v. *Dr. S. Chauhan*, (2000) 10 S.C.C. 585

Divya Ponnan v. *M.G. University*, 2009(4) K.L.T. 281.

Dr. Abdul Haneed Fazil and another v. *Adam Malik Khan and others*, (1996) 11 S.C.C. 423.

Dr. Ajay Pradhan v. *State of M.P. and others*, (1984) 4 S.C.C. 514.

Dr. C. Mathew v. *Principal, Medical College*, Trivandrum, 1980 K.L.T. 144 (F.B.)

Dr Chetkar Jha v. *Dr Vishwanath Prasad Verma an others*, (1970) 2 S.C.C. 217.

Dr. Dinesh Kumar and others v. *Motilal Nehru Medical College, Allahabad and others*, (1985) 3 S.C.C. 22

Dr. Indu Kant v. *State of U.P. and others*, 1993 Supp.(2) S.C.C. 71.

Dr. Jagadish Saran v. *Union of India*, (1986) 2 S.C.C. 768.

Dr. J.P. Kulshreshtha and others v. *Chancellor, Allahabad University and others*, (1980) 3 S.C.C. 418.

Dr. Krishna Chand Sahu and others v. *State of Orissa and others*, (1995) 6 S.C.C. 1.

Dr. Krushna Chandra Sahu an others v. *State of Orissa and others*, (1995) 6 S.C.C. 1.

Dr. Kumar Bar Das v. *Utkal University and others*, (1991) 1 S.C.C. 453

Dr. M.C. Gupta and others v. *Dr, Arun Kumar Gupta and others*, (1979) 2 S.C.C. 339.

Dr. Mahak Singh v. *Chancellor, Ch. Charan Singh University and others and the connected case*, (1996) 11 S.C.C. 760.

Dr. Mera Massey (Mrs.) and others v. *Dr. S.R. Malhotra and others*, (1990) 3 S.C.C. 88.

Dr. Narayan Sharma and another v. *Dr. Pankaj Kr. Lehkar and others and other cases*, (2000) 1 S.C.C. 44.

Dr. Krushna Chandra Sahu and others v. *State of Orissa and others*, (1995) 6 S.C.C.1

Dr. Paul Jayan v. *University of Kerala*, 1977 K.L.T. 88.

Dr. Pradeep Jain v. *Union of India*, (1984) 3 S.C.C. 654.

Dr. Preeti Srivastava and another v. *State of M.P. and others and connected cases*, (1999) 7 S.C.C. 120.

Dr. Rajan v. *Vice-Chancellor*, 1987 (1) K.L.T. (S.N.) 3.

Dr. Rajan Bala Agrawal v. *Lalit Narian Mithila University, Darbhanga (Bihar) and others*, (1999) 5 S.C.C. 683.

Dr. Sadhna Devi and others v. *State of U.P. and others*, A.I.R. 1997 S.C. 1120.

Dr. Sanjay Mehrotra and another v. *G.S.V.M. Medical College, Kanpur and others*, (1989) 1 S.C.C. 559.

Dr. Santosh Kumari v. *Union of India and others*, (1995) 1S.C.C. 269

Dr. Subodh Nautiyal v. *State of U.P. and others*, 1993 Supp. (1) S.C.C. 593

Dr Rajan v. *Vice-Chancellor*, 1987 (1) K.L.T. (S.N.)3.

Dr. Rajni Bala Agrawal v. *Lalit Narain Mithila University, Darbhanga (Bihar) and others*, (1999) 5 S.C.C. 683.

Dr. Triloki Nath Singh v. *Dr. Bhagwan Din Mishra and others*, (1990) 4 S.C.C. 510.

Dr. Uma Kant v. *Dr. Bhikala Jain and others*, (1992) 1 S.C.C. 105.

Dr. Umrao Singh Choudhary v. *State of M.P. and another*, (1994) 4 S.C.C. 102.

Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology & others v. *Vibhav Singh Chauhan*, (2009) 1 S.C.C. 59.

E.J. Jacob v. *University of Calicut*, 1987 (2) K.L.T. (SN) 56.

E. P. Royappa v. *State of Tamil Nadu*, (1974) 4 S.C.C. 3.

Ebrahim Abooker and another v. *Custodian General of Evacue Property*, A.I.R. 1952 S.C. 319.

Election Commission of India v. *S. Venkata Rao*, A.I.R. 1953 S.C. 210

English Medium Students Parents Association v. *State of Karnataka and others with other cases*, A.I.R. 1994 S.C. 1702.

Estep v. *United States*, 327 U.S. 114, 120 (1946)

Father Thomas Shingare and others v. *State of Maharashtra and others*, (2002) 1 S.C.C. 758.

Femina v. *State of Kerala*, 1983 K.L.T. 182.

Food Corporation of India and others v. *Bhanu Lodha and others*, (2005) 3 S.C.C. 618.

Fruit Commission Agents' Association v. *Government of A. P.*, (2007) 8 S.C.C. 511

G. Krishna Goud v. *State of Andhra Pradesh*, (1976) 1 S.C.C. 157.

G. Verrappa Pillai v. *Raman & Raman Ltd. Kumbakonam*, A.I.R. 1952 S.C. 192.

G. M. Vaz v. *Dean, Goa Medical College*, A.I.R. 1981 Goa 21.

G. N. Nayak v. *Goa University and others*, (2002) 2 S.C.C. 712.

Geetha Rani v. *Controller of Examination*, 1988(1) K.L.T. 892

George Joseph v. *Principal, Medical College*, 1979 K.L.T. (S.N.) 8.

Georgy K. Joseph v. *State of Kerala*, 2004(1) K.L.T. 950.

George Roy v. Mar Athanasius College of Engineering, 1992(1) K.L.T. 94.

George Thomas v. *M.G. University*, 2009 (2) K.L.T. 591.

Government of A.P. v. *Syed Akbar*,(2005) 1 S.C.C. 558.

Girijan v. *State of Kerala*, 1998 (2) K.L.T. 333.

Goa Daman and Diu Board of Secondary Examination v. *Kumari Hema Load and others*, (1984) 4 S.C.C. 58.

Gopal Das Mohta v. *Union of India and another,* A.I.R. 1955 S.C. 1.

Gopinathan and other v. *University of Kerala*, 1976 K.L.T. 901.

Government of Orissa v. *Hataprasad Das*,(1998) 1 S.C.C. 487.

Government of Andhra Pradesh and another v. *J.B. Educational Society and another*, (2005) 3 S.C.C. 212; 2005(2) K.L.T. 154 (S.C.).

Gurdeep Singh v. *State of J & K and others*, A.I.R. 1993 S.C. 2638; 1995 Supp (1) S.C.C. 188.

Guru Nanak Dev University v. *Rajesh Bhaskar and another*, A.I.R.1993 S.C. 2412.

Guru Nanak Dev University v. *Parminder Kr. Bansal and others*, (1993)4 S.C.C. 401.

Guru Nanak Dev University and another v. *Harjinder Singh and another*, (1994)5 S.C.C. 208.

Guru Nanak Dev University v. *Sanjay Kumar Katwal and others*, (2009) 1 S.C.C. 610.

Gujarat University v. *Rajiv Gopinath Bhatt and others*, (1996) 4 S.C.C. 60.

Gujarat University and another v. *Shrikrishna Ranganath Mudholor*, A.I.R. 1963 S.C. 703.

Gullappally Nageswara Rao v. *A.P.S.R.T. Corporation*, A.I.R. 1959 S.C. 308.

Hans Muller of Nurenburng v. *Superintendent Presidency Jail, Calcutta and others*, A.I.R. 1955 S.C. 367

Hari v. *State of Kerala*, 1993(1) K.L.T. 599.

Hari Vishnu Kamath v. *Ahamad Ishaque and others*, A.I.R. 1955 S.C. 233.

Haridasan Pillai v. *Ramakrishna Iyer*, 1998 (1) K.L.T. 24.

Harish Verma and others v. *Ajay Srivastava and another*, (2003) 8 S.C.C. 69; A.I.R. 2003 S.C. 3371.

Harsah Pratap Sisodia v. *Union of India and others*, (1999) 2 S.C.C. 575.

Harvinder Singh v. *Principal, Guru Govind Singh Medical College, Faridkot*, (1992) 1 P.L.R. 23.

Herring v. *Templeman*, (1973) 3 All.E.R. 569.

Home Secretary, U. T. of Chandigarh and another v. *Darshjit Singh Grewal and others*, (1993) 4 S.C.C. 25.

Himendrd Chandra v. *Gauhati University*, A.I. R. 1954 Assam 65.

Hindi Hitrakshak Samathi v. *Union of India,* A.I.R. 1990 S.C. 851.

Hindustan Aeronautics Ltd. v. *Dan Bhadhur Singh and others,* (2007) 6 S.C.C. 207.

I. R. Coelho v. *State of Tamil Nadu*, (2007) 2 S.C.C.1; A.I.R. 2007S.C. 876

I.I.T.T. College of Engineering v. *State of H. P. and others*, (2003) 7 S.C.C. 72.

I.I.T., Kanpur v. *Umesh Chandra and others*, (2006) 5 S.C.C. 664.

Indian Council for Enviro Legal Action v. *Union of India*, A.I.R. 1996 S.C. 1446

Indira Manual v. *University of Kerala*, 1982 K.L.T. (SN) 49.

Indira Nehru Gandhi v. *Raj Narain*, A.I.R. 1975 S.C. 2299.

Indira Vij v. *State of Haryana*, 2004 (1) K.L.T. (S.N.) 37.

Indra Sawhney v. *Union of India*, 1992 Supp. (3) S.C.C. 217.

Indulekha Joseph v. *Vice-Chancellor*, 2008 (3) K.L.T. 712.

Islamic Academy of Educational and other v. *State of Karnataka and others*, (2003) 6 S.C.C. 697.

J. Mohapatra and Co. another v. *State of Orissa and another*, (1984) 4 S.C.C. 103.

J. P. Kulshrestha v. *Chancellor, Allahabad University*, (1980) 3 S.C.C. 418; A.I.R. 1980 S.C. 2141.

Jacob Mathew v. *State of Kerala*, 1971 K.L.T. (S.N.) 26.

James Martin v. *State of Kerala,* (2004) 2 S.C.C. 203.

Janardhan Reddy and others v. *State of Hyderabad,* A.I.R. 1951.S.C.217

Janharlal v. *University of Calicut*, 2002(3) K.L.T. 547.

Javid Rasool Bhat and others v. *State of J & K and others,* (1984) 2 S.C.C. 631.

Jaya Gokul Educational Trust v. *Commissioner and Secretary to Government Higher Education Department*, (2000) 5 S.C.C. 231.

Jayadev v. *State of Kerala*, 1992(1) K.L.T. 253.

Jawaharlal Nehru University v. *B.S. Narwal*, (1980) 4 S.C.C. 480.

Jawaharlal Nehru University Students' Union v. *Jawaharlal Nehru University and another*,

(1985) 2 S.C.C. 32.

Jawaharlal Nehru University and another v. *Maj. General Y. M. Bammi and another*, A.I.R. 1994 S.C. 456.

Jaya Gokul Educational Trust v. *Commissioner and Secretary to Government, Higher Education Department, Trivandrum and another with other cases*, (2000) 5 S.C.C. 231: A.I.R. 2000 S.C. 1614.

Jayadev v. *State of Kerala*, 1992(1) K.L.T. 253.

Jeeja v. *Director, S.C.hool of Distance Education*, 2001 (1) K.L.T. (SN) 24.

Jimmy Light C. Joys v. *Mahatma Gandhi University*, 2001 (3) K.L.T. 789.

Jose Thomas v. *State of Kerala*, 2007(3) K.L.T. 422.

Joseph Mundassery v *Manager, St Thomas College, Trishur*, 1953 K.L.T. 773

Joseph K. Francis v. *Vice-Chancellor, Kerala university and others*, 1974 K.L.T. 175.

Joseph Thaikoodan v. *State of Kerala*, 2004 (1)K.L.T. 416.

Jubilee Mission Medical College and Research Institute v. *University of Calicut*, 2008(4) K.L.T. 966.

Justin D. Arya v. *Director*, 1995 (1) K.L.T. 119.

K. A. Babu and others v. *State of Kerala and others* , 1987(1) K.L.T. 730

K. John Koshy v. *Tharakeshwar Prasad Shaw (Dr.),* (1998) 8 S.C.C. 624.

K. Krishnamacharyalu and others v. *Shr. Venketeshawara Hindu College of Engineering and others*, A.I.R. 1998 S.C. 295.

K. Shekar v. *V. Insiramma and others*, (2002) 3 S.C.C. 586.

K. Sujatha v. *Marathwada University and others*, 1995 Supp. (1) S.C.C. 155.

Kanpur University and others v. *Samir Gupta and others*, A.I.R. 1983 S.C. 1230.

Karnataka State Industrial Investment and Development Corporation Ltd. v. *Cavelet India Ltd. and others,* (2005)4 S.C.C. 456.

Kavalapara Kottrathil Kochunni alias Mooppil Nayar v. *State of Madras and others*, A.I.R. 1959 S.C. 725.

Kerala Music College Teaching Staff Association v. *University of Kerala*, 2002(1) K.L.T. (S.N.) 64.

Kerala Students Union v. *Sojan Francis*, 2004(2) K.L.T. 378.

Kerala Nadar Mahajana Sangham v. *State of Kerala*, 2002(2) K.L.T. (S.N.)146

Kerala Unaided B.Ed. College Management Association v. *University of Kerala*, 2006(4) K.L.T. 864.

Kerala University v. *Sunny*, 1996(2) K.L.T. 565.

Kerala University B.Com. Students v. *University of Kerala and others*, 1984 K.L.T. (S.N.) 29.

Kesavananda Bharati v. *State of Kerala*, A.I.R. 1973 S.C. 1461; (1973) 4 S.C.C. 225.

Keshav Mills Co. Ltd. v. *Union of India*, (1973) 1 S.C.C. 380

Keshab Chandra v. *Inspector of Schools*, A.I.R. 1953 All. 623 at 624.

Kiran v. *M.G. University*, 2002(3) K.L.T. 904.

Khatri (II) v. *State of Bihar*, (1981)1 S.C.C. 627

Koch Degree College, Konch Jalaun and others v. *Ram Sajiwan Shukla and another*, (1997)11S.C.C. 153.

Krishna Priya Ganguly v. *University of Lucknow*, (1984) 1 S.C.C. 306

Krishnan Nair v. *Principal, Law College, Trivandrum*, 1963, K.L.T. 945.

Krishnasamy Reddiar Educational Trust v. *Member Secretary, National Council for Teacher Education and another*, (2005) 4 S.C.C. 89.

Kulshreta v. *Chancellor, Allahabad University*, (1980) 3 S.C.C. 418.

Kumaraswamy v. *Transport Authority, Travancore-Cochin and others*, 1952 K.L.T. 652

Kumari Kanakakumar P. V. v. *The Registrar*, 1997(2) K.L.T. 488

Kunal Pankaj Kumar Shah v. *Justice R. J. Shah (Retd.), Admission Committee and others*, (2008) 10 S.C.C. 709

Kurian Lizy v. *State of Kerala*, 2006(4) K.L.T. 264(F.B.)

Kurukshetra University and another v. *Jyoti Sharma and others and another case*, (1998)6 S.C.C. 763.

Laila Chacko and others v. *Principal, Medical College, Trivandrum and others*, 1967 K.L.T. 52.

Laxmanappa Hanumantappa Jamkhardi v. *Union of India and another*, A.I.R. 1955 S.C. 3.

Leela v. *Indira Gandhi National Open University*, 2003(3) K.L.T. 904.

Local Government Board v. *Arlidge*, 1915 A.C. 120.

Loordhu Ammal Educational Trust v. *University of Madras*, 2005(4) K.L.T. (S.N.) Mad. 12.

M. v. *Home Office*, (1992) 1 Q. B. 314

M.C. Mehta v. *Union of India*, A.I.R. 2001 S.C. 1544.

M.G. University v. *Millu Dandapani*, 2001(1) K.L.T. 351.

M. G. University v. *Gis Jose*, 2008 (4) K.L.T. 216 (S.C.)

M.S. Nally Bharat Eng. Co. Ltd. v. *State of Bihar*, (1990) 2 S.C.C. 48.

M.S.M. Sharma v. *Sri Krishna Sinha and others*, A.I.R. 1959 S.C. 395

Macdeen David v. *University of Calicut*, 2008 (2) K.L.T. (SN) 39.

Madhumohan v. *State of Kerala*, 2000(2) K.L.T. 669.

Madhya Pradesh Public Service Commission v. *Om Prakash Gupta and another*, (1997) 6 S.C.C. 645

Madhyamic Siksha Mandal M.P. v. *Abhilash Siksha Prasar Samithu and others*, (1989) 9 S.C.C. 236.

Maharashtra State Board of Secondary and Higher Secondary Education and another v. *Paritosh Shupeshkumar Sheth and others*, (1984) 4 S.C.C. 27.

Maharashtra State Board of Secondary and Higher Secondary Education v. *K.S. Gandhi and others*, (1991) 2 S.C.C. 716.

Maharashtra State Board of Secondary and Higher Secondary Education and another v. *Amit and others*, (2002) 6 S.C.C. 153.

Maharishi Dyanand University v. *Dr. Anto Joseph and others*, (1998)6 S.C.C. 215.

Maharishi Dyanand University v. *MLR Saraswati College of Education*, (2000)7 S.C.C. 746.

Malankara Syrian Catholic College v. *Jose*, 2007(1) K.L.T. 22(S.C.)

Mallikarjuna Mudhagal Nagappa and others v. *State of Karnataka and others*, (2000) 7 S.C.C. 238.

Manager, Loyola College v. *University of Kerala*, 1989 (1) K.L.T. 241.

Managing Committee of Bhagwan Budha Primary Teachers Training College and another v. *State of Bihar and others*, 1990 (Supp) S.C.C. 722.

Maneka Gandhi v. *Union of India*, (1978) 1 S.C.C. 248.

Manamma Chacko v. *University of Kerala*, 1982 K.L.T. (SN) 39.

Manu Vilson v. *Sree Narayana College*, 1996(1) K.L.T. 788.

Marbury v. *Madison, 1 Cranch 5(U.S.) 137 (1803)*

Mary Louis Manavalan v. *State of Kerala*, 2003(1)K.L.T. 609.

Mary Philipose v. *State of Kerala and others*, 1981 K.L.T. 380 (F.B.).

McCabe v. *Atchison*, (1914) 235 U.S. 151

Meenakshi v. *University of Delhi and others*, (1989) 3 S.C.C. 112.

Meena v. *Madras University*, A.I.R. 1953 Mad. 494.

Medical Council of India v. *Silas Nelson and others*, A.I.R. 1994 S.C. 777; (1993) 3 S.C.C. 184.

Medical Council of India v. *Sarang and others*, (2001) 8 S.C.C. 427.

Medical Council of India v. *Madhu Singh and others*, (2002) 7 S.C.C. 258.

Medical Council of India v. *Indian Doctors from Russia Welfare Association*, (2002) 3 S.C.C. 696.

Minerva Mills Ltd. and others v. *Union of India*, A.I.R. 1980 S.C. 1789

Mittu v. *State*, (1983) 2 S.C.C. 277.

Modern Dental College and Research Centre and others v. *State of M. P. and others*, (2009) 7 SCC 751.

Mohanlal v. *State of Jammu and Kashmir*, (1995) 3 S.C.C. 482.

Mohan Bir Singh Chawala v. *Punjab University, Chandigarh and another*, (1997) 2 S.C.C. 171.

Mohandasan v. *University of Calicut*, 1984 K.L.T. 102.

Mohandas N. Hedhe (died) through L.Rs. v. *State of Karnataka and another*, (2005) 4 S.C.C. 64.

Mohd. Sohrab Khan v. *Aligarh Muslim University and others*, (2009) 4 S.C.C. 555

Mohinder Singh Gill v. *Chief Election Commissioner*, (1978) 1 S.C.C. 405.

Mohini Jain (Miss) v. *State of Karnataka and others* (1992) 3S.C.C. 666.

Mridul Dhar (Minor) and another v. *Union of India and others, (2005) 2 S.C.C. 65*

Mrs. Mercy Mathew v. *Vice-Chancellor*, 1979 K.L.T. (S.N.) 41 (F.B.)

Mrs. Susan George v. *State*, 1955 K.L.T. 901.

Ms. Aruna Roy and others v. *Union of India*, (2002) 7 S.C.C. 368

Ms. Nishi Maghu and others v. *State of Jammu and Kashmir and others*, (1980) 4 S.C.C. 95.

Municipal Corporation of Greater Bombay and others v. *Thukral Anjali Deo Kumar and others and connected cases*, (1989) 2 S.C.C. 249.

Muraleedharan Pillai v. *Cochin University*, 1998 (1) K.L.T. 856.

Muzaffarpur Homoeopathic College & Hospital Khabra and another v. *State of Bihar, and others*, (2001) 10 S.C.C. 161.

N. P. Ponnuswamy v. *The Returning Officer, Nanakkal, Salem and other*, A.I.R. 1952 S.C. 64

Naraindas Indrkhya v. *The State of Madhya Pradesh and others,* (1974) 4 S.C.C. 788.

Narayana Iyer v. *Registrar , University of Kerala and others*, 1975 K.L.T. (SN) 48.

Narayanan v. *Dr. T.K. Ravindran*, 1991(2) K.L.T. 198.

Narendra Nath Bora and another v. *Commissioner of Hills Division and Appeal, Assam and others*, A.I.R. 1958 S.C. 398.

Naseem v. *State of Haryana and others*, (2003) 9 S.C.C. 357; A.I.R. 2003 S.C. 4118.

National Council for Teacher Education and another v. *Committee of Management and others*, (2006) 4 S.C.C. 65.

National Board of Examination v. *G. Anand Ramamurthy and others*, (2006) 5 S.C.C. 515.

National Medical Educational Charitable Trust v. *Kerala Nursing Midwifery Council*, 2006(2) K.L.T. 612

Naz Foundation v. *Govt. of NCT and others,* 160 (2009) D.L.T. 277.

Neelima Misra v. *Harinder Kaur Paintal and others*, (1990) 2 S.C.C. 746

Neelu Arrora (Ms) and another v. *Union of India and others*, (2003) 3 S.C.C. 366.

New Prakash Transport Co. Ltd. v. *New Sawana Transport Co. Ltd.*, A.I.R. 1957 S.C. 232.

Nirmala Training College v. *M. G. University*, 2006 (1) K.L.T. (S.N.) 4.

Nishant Puri v. *State of H. P. and others*, (1999) 1 S.C.C. 126.

O. Konavalov v. *Commander Coast Guard Region and others*, (2006) 4 S.C.C. 620.

Ombir Singh v. *State of U.P.*, A.I.R.1993 S.C. 975; 1993Supp.(2) S.C.C. 64.

Omkar v. *Shri Venketsawara University*, A.I.R. 1981 A.P. 163.

Osmania University Teachers' Association v. *State of Andhra Pradesh and another*, (1987) 4 S.C.C. 671.

Osmania University and others v. *A. V. Ramana and others*, A.I.R. 1991 S.C. 2127: 1992 Supp(1) S.C.C.535; 1992(1) K.L.T.(S.N.) 27.

Osmania University v. *Abdul Rayees Khan*, (1997) 3 S.C.C. 124.

P. A. Inamdar and others v. *State of Maharashtra and others,* (2005) 6 S.C.C. 537; A.I.R.2005 SC 3226

P.C. Abraham v. *University of Cochin*, 1972 K.L.T. 810.

P.C. Kesavan Kutty Nayar v. *Harish Bhalla and others*, (2003) 8 S.C.C. 490.

P. D. Shandasani v. *Central Bank of India*, A.I.R. 1952 S.C. 59

P.M. Kurian v. *Principal, Government Victoria College, Palaghat*, 1967 K.L.T. 97.

P.U.D.R. v. *Union of India*, A.I.R. 1982 S.C. 1473.

Padfield v. *Minister of Agriculture, Fisheries and Food*, (1968) A.C. 997.

Padma v. *Hiralal Motilal Desarda,* A.I.R. 2002 S.C. 3252

Pallavi Refractors and others v. *Singareni Collieries Co. Ltd. and others,* (2005) 2 S.C.C. 227.

Paramjeet Gambhu and others v. *State of M.P.*, A.I.R. 2003 S.C. 1338.

Parimelazhagan v. *State of T.N*, 2009(1) K.L.T. (S.N.) 58.

Parry and Co. Ltd., Madras v. *Commercial Employees Association and another*, A.I.R. 1952 S.C. 179.

Pallavi Refractors and others v. *Singareni Collieries Co. Ltd. and others*, (2005) 2 S.C.C. 227.

Pavai Ammal Vaiyapuri Education Trust v. *Government of T.N. and others*, A.I.R. 1995 S.C. 63.

Philip v. *State*, 1978 K.L.T. (S.N.) 17.

Post-Doctoral Research Associate of S.V. University, Dr K Krishna Reddy and others v. *Union of India,* (2002) 5 S.C.C.24.

Post Graduate Institute of Medical Education and Research v. *K.L. Narasimham*, (1997) 6 S.C.C. 283.

Pradeep Jain v. *Union of India*, (1984) 3 S.C.C. 654.

Pradeep v. *University of Calicut*, 1994(1) K.L.T. 340

Pradeep v. *University of Kerala*, 2002(2) K.L.T. 144

Pradeep Kumar v. *Cochin University of S.C.ience and Technology*, 1999(1) K.L.T. (SN) 4.

Pradeep Kumar v. *University of Kerala*, 2003(2) K.L.T. 745

Pramod Kumar v. *U.P.S.E. Services Commission and others*, (2008) 7 S.C.C. 153.

Prasad v. *Philipose Mar Dilshus U.P. S.C.hool* , 2005(3) K.L.T. 487.

Pre-Medical Sangharasg Committee and another v. *Dr. Bajrang Soni and others,* (2001) 8 S.C.C. 694.

President, Board of Secondary Education, Orissa and another v. *D. Suvankar and another*, (2007) 1 S.C.C. 603.

Preethi Srivastawa v. *The State of Madhya Pradesh*, 1999(3) K.L.T. (SN) 31 S.C.

Preeti Kumari Sharma (Smt.) v. *University of Rajasthan and others*, (1998) 9 S.C.C. 435.

Prem Parakash Kaluniya v. *The Punjab University and others,* A.I.R. 1972 S.C. 1408; (1973) 3 S.C.C. 424.

Principal, Patna College, Patna and others v. Kalyan Srinivas Raman, A.I.R. 1965 S.C.707.

Principal, Kendriya Vidyalaya and others v. *Saurabh Chaudhary and others*, (2009) 1 S.C.C. 794

Prof. Yashpal and another v. *State of Chattisgarh and other,* (2005) 5 S.C.C. 420.

Puneet Sardana v. *State of Haryana and others,* (1996) 2 S.C.C. 565.

Punjab University v. *Subash Chand and another*, (1984) 3 S.C.C. 603.

Punjab University v. *P.C. Honda,* A.I.R. 1971 P &H 177.

Punjab Unive ity, Chandigarh v. *Devjani Chakrabarti and others*, (1984) 3 S.C.C. 612.

Punjab University, Chandigarh v. *Sri Sunder Singh and connected case,* A.I.R. 1984 S.C. 919.

Puttaraju v. *Bangalore University*, A.I.R. 1980 Kant 39.

R. v. *Secretary of State for the Home Department, ex-parte Fire Brigades Union*, (1995) 2 A.C. 513.

R. v. *Somerset County Council, ex. parte Fewings*, (1995) 1 All.E.R. 513.

R. v. *Lord Chancellor*, ex-parte Witham, (1998) Q.B. 575.

R. Chitralekha and others v. *State of Mysore and others*, A.I.R. 1964 S.C. 1828.

R.C. Cooper v. *Union of India*, A.I.R. 1970 S.C. 564.

R.K. Khandelwal v. *State of Uttar Pradesh and other,* (1981) 3S.C.C. 592.

Rabindra Nath Ghosal v. *University of Calcutta and others,* (2002) 7 S.C.C. 478.

Radheshyam Kahre and another v. *The State of Madhya Pradesh and others*, A.I.R. 1959 S.C. 107.

Rai University v. *State of Chattisgarh and other cases*, (2005) 7 S.C.C. 330.

Raja Ram Pal v. *Hon'ble Speaker, Lok Sabha,* (2007) 3 S.C.C. 184.

Rajbir Singh Dalal (Dr.) v. *Chaudari Devi Lal University, Sirsa and another*, (2008) 9 S.C.C. 284.

Rajesh Dagar v. *University of Calicut*, 1984 K.L.T.(SN) 80.

Rajesh Kumar Verma v. *State of Madhya Pradesh and others*, (1995) 2 S.C.C. 129.

Rajendra Prasad v. *State of Uttar Pradesh,* (1979) 3 S.C.C. 646.

Rajashree v. *University of Kerala*, 2002(2) K.L.T. (SN) 134.

Raj Kumar Gupta v. *Union of India*, (2007) 2 S.C.C. 214.

Raj Pal Verma and others v. *Chancellor of Meerut University*, (1997) 6 S.C.C. 365.

Rajashree v. *University of Kerala*, 2002 (2) K.L.T. (S.N.) 134.

Rajeev Mittal v. *Maharashi Dayanand University and others,* (1998) 2 S.C.C. 402.

Rajendra Prasad Mathur v. *Karnataka University and another,* (1986) Supp S.C.C.740; A.I.R. 1986 S.C.1448.

Rajendran Nair v. *Principal, University College and others*, 1978 K.L.T. 204.

Rajendra Prasad v. *State of U.P,* (1979) 3 S.C.C. 646.

Rajendra Prasad Mathur v. *Karnataka University and another,* A.I.R. 1986 S.C. 1448.

Rajesh Kumar and another v. *Institute of Engineers (India)*, A.I.R. 1998 S.C. 5; (1997) 6 S.C.C. 674.

Rajesh Kumar Verma v. *State of M.P. and others and connected case*, (1995) 2 S.C.C. 129

Rajiv Kapoor and others v. *State of Haryana and others*, (2000) 9 S.C.C. 391.

Ram Jawaya Kapor v. *State of Punjab*, A.I.R. 1955 S.C. 549.

Ram Prasad Narain Sahi and another v. *The State of Bihar and others,* A.I.R. 1953 S.C. 215

Ram Preeti Yadav v. *U.P. Board of High School and Intermediate education and others*, (2003) 8 S.C.C. 311.

Ramachandra Iyer v. *Union of India,* 1984 K.L.T.(S.N.) 11.

Ramakrishnan Namboothiri v. *State of Kerala*, 1999(3) K.L.T. (S.N.) 73.

Ramesh Thappar v. *The State of Madras*, A.I.R. 1950 S.C. 124.

Rameshwar Prasad and others v. *Union of India*, (2006) 2 S.C.C. 1.

Ramlal Agarwala v. *Sambalpur University*, A.I.R. 1981 Ori. 102

Rampalit Vyakaran Acharya and others v. *Punjab University, Chandigarh and another*, (1976) 3 S.C.C. 282.

Rashtriya Sanskrit Sansthan v. *Jitendra Kumar Sharma*, 2002 (2) K.L.T. (S.N.) 56.

Ravindran NA.I.R. v. *Mahatma Gandhi University,* 2003 (1)K.L.T. 146.

Rayalaseema Paper Mills Ltd. v. *Government of A.P. and others,* (2003)1 S.C.C.341.

Reeba Elizabeth Chacko v. *National Council of E. R. & Training*, 2003(3) K.L.T. (S.N.)136.

Regional Engineering College, Hamirpur v. *Gurjeet Singh and others,* (1996) 11 S.C.C. 312; A.I.R. 1997 S.C. 2168.

Regional Engineering College, Hamirpur and another v. *Ashutosh Pandey*, (2002) 9 S.C.C. 720.

Regional Manager and Disciplinary Authority, State Bank of India, Hyderabad and another v. *S. Mohammed Gaffar,* (2002) 7 S.C.C. 168.

Regional Officer, C.B.S.E. v. *Ku. Sheena Peethambara and others,* (2003) 7 S.C.C. 719; A.I.R. 2003 S.C. 3720.

Renu Verma and another v. *Principal, Govt. Medical College and another,* 1995 Supp (1) S.C.C. 277.

Rex v. *Electricity Commissioners* 1924 K.B. 171

Rex v. *Northumberland Compensation Appellate Tribunal*, 1972-1 K.B. 338.

Rex v. *Sussex Justice Ex Parte, Mc Carthy*, 1924-1 K.B. 256

Rex v. *Sussex Justices, Ex parte Perkins,* 1927 2 K.B. 475.

Rex v. *Sussex Justice, ex parte, Mc Carthy I* 1924-1 K.B. 256.

Rohit Singhal and others v. *Principal, Jawahar Vidyalaya and others*, A.I.R. 2003 S.C. 2088.

Ramesh Thappar v. *The State of Madras,* A.I.R. 1950 S.C.124

Romil B. Shah (Dr.) and others v. *State of Gujarat and others,* (2006) 6 S.C.C. 268 & 2006(3) K.L.T. SN 86.

Rose v. *State of Kerala*, 1990 (2) K.L.T. 162.

Rt. Rev. Dr. M. M. John v. *Government of Kerala and others*, 1971 K.L.T. 875.

Rural Education and Social Trust v. *University of Calicut*, 2007 (2) K.L.T. 609.

S. C. Chandra v. *State of Jharkhand,* (2007) 6 S.C.C. 279.

S. P. Gupta v. *President of India,* A.I.R. 1982 S.C. 149.

S. R. Bommai v. *Union of India,* (1994) 3 S.C.C. 1; A.I.R. 1994 S.C. 1918.

Sadanand Mishra v. *Forest Research Institute and others*, (2002) 9 S.C.C. 419.

Sadhna Devi v. *State of Uttar Pradesh*, (1997) 3 S.C.C. 48.

Sahiti and others v. *Chancellor, Dr. N.T.R. University of Health Sciences and others*, (2009) 1 SCC 599.

Sainulabdin v. *State of Kerala*, 1995 (2) K.L.T. 629.

Sajaikumar v. *State of Kerala*, 2003(3) K.L.T. (S.N.) 62.

Sajatha v. *Controller of Examination*, 2003(1) K.L.T. (S.N.) 25.

Sajjan Singh and others v. *The State of Rajasthan* and others, A.I.R. 1965 S.C. 845.

Sanatan Gauda v. *Berhampur University*, A.I.R. 1990 S.C. 1075; (1990) 3 S.C.C. 23.

Sanchalakshri and another v. *Vijayakumar Raghu Virprasad Mehta and another*, (1998) 8 S.C.C. 245.

Sandeep Subhash Parate v. *State of Maharashtra and others*, (2006) 7 S.C.C. 501

Sanjay Ahlawat v. *Maharishi Dayanand University, Rohtak and others*, (1995) 2 S.C.C. 762.

Sanjay Dutt v. *State(II)*, (1994) 5 S.C.C. 410

Sanjeev Gupta and others v. *Union of India and another*, (2005) 1 S.C.C. 45.

Sankari Prasad Singh Deo and others v. *The Union of India and others*, A.I.R. 1951 S.C. 458.

Santosh Kumar Satishbhushan Bariyar v. *State of Maharashtra*, (2009) 6 S.C.C. 498.

Sarat Kumar Panigrahi v. *Secretary Board of Secondary Education, Orissa*, (2003) 9 S.C.C. 83.

Sarvesh Narain Mishra v. *Vice-Chancellor, AMU, Aligarh and connected cases*, (1982) 2 S.C.C. 363.

Sathish Anton v. *M.G. University*, 2006 (3) K.L.T. (S.N.) 36.

Satish Kumar v. *State of Bihar and others*, 1990 (Supp) S.C.C.1

Satish Anton v. *M. G. University*, 2006 (3) K.L.T. S.N. 36.

Santosh Kumar Satishbhushan Bariyar v. *State of Maharashtra*, (2009) 6 S.C.C. 498

Satpal v. *State of Haryana*, (2000) 5 S.C.C. 170.

Satyanarayan Lekshminarayan Hedge and others v. *Mallikarjun Bhavanappa*, A.I.R. 1969 S.C. 137.

Secretary, Andhra Pradesh Social Welfare Residential Educational Institutions v. *Pindigar Sridhar and others*, (2007) 13 S.C.C. 352,

Secretary, Maharshi Dayanand Arya Shiksha Mahavidyalaya v. *State of Bihar and others*, (1993) Supp (1) S.C.C. 436.

Sewpujarirai Indrasanarai Ltd. v. *Collector of Customs and others*, A.I.R. 1958 S.C. 845

Shafali Nandwani v. *State of Harayana*, (2002) 8 S.C.C. 152.

Shahal H. Musaliar v. *State of Kerala*, (1993) 4 S.C.C. 112.

Shalini v. *Kurukshetra University and another*, (2002) 2 S.C.C. 270

Sharwan Kumar and others v. *Director, General of Health Service and others,* 1993 Supp (1) S.C.C. 632.

Sheeja v. *State of Kerala*, 2004 (1) K.L.T. (S.N.) 39.

Sheeja v. *Dhannia*, 2005 (4) K.L.T. (S.N.) 52.

Shinu Abraham v. *M.G. University*, 1999(3) K.L.T. 694.

Shirish Govind Prabhudesai v. *State of Maharashtra and others and other cases,* (1993) 1S.C.C. 211.

Shivaji University through Director v. *Bharti Viderpeeth through Joint Director and others*, (1999) 3 S.C.C. 224.

Shri Ambica Mills Co. Ltd. v. *Shri S.B. Bhatt and another*, A.I.R. 1961 S.C. 970.

Shri. Ishwar Chandra v. *Shri Satyanarian Sinha and others*, (1972) 3 S.C.C. 383

Shri Krishnan v. *The Kurukshetra University, Kurushetra,* (1976) 1 S.C.C. 311.

Sidheshwar Sahakari Sakhar Karkhana Ltd. v. *Union of India*, (2005) 3 S.C.C. 369.

Sivasankar Kimal v. *University of Calicut*, 2003(1) K.L.T. 146.

Smita Johnbhu Masta and others v. *State of Gujarat and others,* (1981) 4 S.C.C. 542.

Smt. Juthika Bhattacharya v. *The State of Madhya Pradesh,* (1976) 4 S.C.C. 96.

Sobha B. NA.I.R. v. *University of Kerala*, 2004(1) K.L.T. 541.

Som Raj v. *State of Haryana*, (1990) 2 S.C.C. 653.

Sonia Sebastian v. *Cochin University of S.C.ience and Technology*, 2003(3) K.L.T. (S.N.) 73.

Special Reference No. 1 of 1964, A.I.R. 1965 S.C. 745.

Sree Sankaracharya University of Sanskrit v. *State*, 1996(2) K.L.T. 378.

Sree Sankaracharya University of Sanskrit v. *Kerala Kalamandalam*, 2004(1) K.L.T. (S.N.) 28.

Sreedhran v. *Principal, Govt. Ayurveda College*, 1977 K.L.T. (SN)32.

Shri Ambica Mills Co. Ltd. v. *Shri S. B. Bhatt and another,* A.I.R. 1961 S.C. 970

Sri Ishwar Chandra v. *Sri Satyanarain Sinha and others,* (1972) 3 S.C.C. 383.

Sri. Sitaram Sugar Co. Ltd. v. *Union of India*, (1990) 3 S.C.C. 223.

State of Andhra Pradesh and another v. *Lavu Narendranath and others*, (1971) 1 S.C.C. 607.

State of Andhra Pradesh v. *Dar-U-Salam Education Trust and others*, 1990 (Supp.) S.C.C. 3.

State of Andhra Pradesh v. *K. Purushotham Reddy and others*, (2003) 9 S.C.C. 564.

State of Bihar v. *Dr. Asis Kumar Mukherjee*, (1975) 3 S.C.C. 602.

State of Bihar v. *Sanjay Kumar Sinha* (Dr.), (1990) 4 S.C.C. 624.

State of H. P. v. *A Parent of a Student of Medical College, Shimla and others*, A.I.R. 1985 S.C. 910.

State of Kerala v. *Fathima Seethi*, 2002(3) K.L.T. 871.

State of Kerala v. *Riya Muhammed*, 2004 (1) K.L.T. SN 84.

State of Kerala and another v. *Rafia Rahim*, 1978 K.L.T. 369 (F.B.)

State of Kerala v. *Kumari T.P. Roshana,* (1979) 1 S.C.C. 572

State of Madhya Pradesh and another v. *Kum. Nivedita Jain and others,* (1981) 4 S.C.C. 296.

State of Madhya Pradesh and others v. *Indian Medical Association, M.P. and others*, (1981) 4 S.C.C. 516.

State of Madras v. *V.G. Row*, A.I.R. 1952 S.C. 196.

State of M.P. and another v. *Rakesh Menon and another,* (1995) 2 S.C.C. 134.

State of M.P. and others v. *Mahesh Kumar and others,* (1997) 6 S.C.C. 95.

State of M. P. and another v. *Shri Ram Ragubir Prasad Agarwal and others,* (1979) 4 S.C.C. 686.

State of Madhya Pradesh and another v. *Shri Ram Ragubir Prasad Agarwal & others*, (1979) 4 S.C.C. 686.

State of Madhya Pradesh and others v. *Dr. Sumedha Gajendragadkar (Mrs.) and others,* (1993) Supp.(2) S.C.C. 185; A.I.R. 1993 S.C. 1183..

State of Madras v. *V.G. Row*, A.I.R. 1952 S.C. 196

State of Maharashtra and others v. *Ravindra Kumar Rai*, (1999) 2 S.C.C. 48.

State of Maharashtra v. *Minoo Noazer Kavarna and others*, (1989) 2 S.C.C. 626.

State of Maharashtra v. *Vikas Sahebrao Roundale*, (1992) 4 S.C.C. 435; A.I.R. 1992 S.C. 1926.

State of Maharashtra and others v. *Sneha Satyanarayan Agrwal and others*, (2008) 15 S.C.C. 353

State of Maharashtra v. *Indian Medical Association and others*, (2002) 1S.C.C. 589.

State of NCT of Delhi and another v. *Sanjeev alias Bito*, (2005) 5 S.C.C. 181.

State of Orissa and others v. *Prajaparmita Samanta and others*, (1996) 7 S.C.C. 106

State of Punjab and others v. *Renuka Singla and others*, (1994) 1 S.C.C. 175; J.T. 1993(6) S.C. 524.

State of Punjab and others v. *Sardarilal and others, (2003) 10 S.C.C. 253.*

State of Rajasthan and another v. *Dr. Ashok Kumar Gupta and others*, (1989) 1 S.C.C. 93.

State of Rajasthan and others v. *Lata Arun*, (2002) 6 S.C.C. 252.

State of Tamil Nadu and others v. *S.K. Krishnamurthi etc.*, (1972) 1 S.C.C. 492.

State of Tamil Nadu and others v. *St. Joseph Teachers Training Institute and another*, (1991) 3 S.C.C. 87.

State of Tamil Nadu and another v. *Adhiyaman Educational & Research Institute and other*, (1995) 4 S.C.C. 104.

State of Tamil Nadu v. *Bratheep* , 2004 (2)K.L.T. (S.N.) 33.

State of U.P. and others v. *D.K. Singh and others* (1986) 4 S.C.C. 160.

State of U.P. v. *Mohammed Nooh,* A.I.R. 1958 S.C. 86

State of U.P. v. *Jaikaran Singh,* (2003) 9 S.C.C. 228

State of U. P. and others v. *U.P. Sales Tax Officers Grade II Association,* (2003) 6 S.C.C. 250.

State of Uttar Pradesh and others v. *Ku Ramona Perha*, A.I.R. 1995 S.C. 241.

State of U.P. and others v. *Reena Singhal (Dr.),* (2000) 9 S.C.C. 391

State of U. P. and others v *Dr. Anumpam Gupta an others*, 1993 Supp (1) S.C.C. 594.

State of W. B. and others v. *Manas Kumar Chakraborthy and others,* (2003) 2 S.C.C. 604.

St. Cleta v. *State of Kerala,* 2001 (1) K.L.T. 937

St. John's Teacher Training Institute (For Women), Maduri etc. v. *State of Tamil Nadu and others,* etc., A.I.R. 1994 S.C. 43.

St. John's Teachers Training Institute Madurai and others v. *State of Tamil Nadu and others*, (1993) 3 S.C.C. 595.

St. John's Teachers Training Institute v. *Regional Director, NCTE and another*, (2003) 3 S.C.C. 321.

St. Stephen's College v. *University of Delhi*, (1992) 1 S.C.C. 558; A.I.R. 1992 S.C. 1630.
Sub-Divisional Officer, Konch v. *Maharaj Singh*, (2003) 9 S.C.C. 191

Subash Chandra Verma and others v. *State of Bihar and others,* 1995 Supp. (1) S.C.C. 325.

Subromoniam v. *Vice-Chancellor, University of Kerala*, 1976 K.L.T. 524.

Sugunan v. *University of Kerala and others*, 1984 K.L.T. 1086.

Sujatha v. *Controller of Examination*, 2003(1) K.L.T. (S.N.) 25.

Sujesh v. *State of Kerala and others*, 2005(2) K.L.J. 200

Suman Gupta and others v. *State of Jammu and Kashmir and others*, (1983) 4 S.C.C. 339.

Sumi Johnson v. *Commissioner for Entrance Examination*, 2000(2) K.L.T. 839.

Sunil Batra v. *Delhi Administration*, A.I.R. 1978 S.C. 1675.

Surekha v. *State of Kerala*, 1994(1) K.L.T. (SN) 18.

Suresh v. *Manager, SNM College*, 2003(3) K.L.T. 839.

Suresh Babu v. *State of Kerala*, 2007(4) K.L.T. 645.

Suresh Pal and others v. *State of Haryana and others*, A.I.R. 1987 S.C. 2027.

Suresh Koshy George v. *University of Kerala and others*, A.I.R. 1969 S.C. 198; 1969 K.L.T. 290 (S.C.).

Suter Paul v. *Sobhana English Medium High S.C.hool*, 2003(3) K.L.T. 1019.

Supreet Batra and others v. *Union of India and others*, (2003) 3 S.C.C. 370.

Swadeshi Cotton Mills v. *Union of India,* (1981) 1 S.C.C. 664.

Swami Shradhanand v. *State of Karnataka*, (2008) 13 S.C.C. 767.

Swapan Roy v. *Khagendra Nath*, A.I.R. 1962 Cal. 520.

Swaran Singh v. *State of U. P.*, (1988) 4 S.C.C. 75.

T. C. Basappa v. *T. Nagappa*, A.I.R. 1954 S.C. 440.

T. C. Koshy v. *University of Kerala*, 1963 K.L.T. 257.

T M A Pai Foundation & others v. *State of Karnataka and others*, (1996) 5 S.C.C. 8.

T M A Pai Foundation & others v. *State of Karnataka and others,* (2002) 8 S.C.C. 481.

Thampan v. *Principal, Medical College, Calicut*, 1979 K.L.T. 45.

Thapar Institute of Engineering and Technology and another v. *Anupama Arya,* 1990(1)K.L.T.(S.N.) 62.

Thapar Institute of Engineering and Technology and another v. *State of Punjab and another,* (1997) 2 S.C.C. 65.

Thapar Institute of Engineering and Technology and another v. *Gangadeep Sharma and another,* (2001) 9 S.C.C. 157.

The Bihar School Examination Board v. *Subhash Chandra Sinha and others*, (1970) 1S.C.C.648; A.I.R. 1970 S.C. 1269..

The Board of High School and Intermediate Education, U.P., v. *Bagleswar Prasad and others*, A.I.R. 1965 S.C. 875.

The Board of High School and Intermediate Education, U.P., and others v. *Kumari Chitra Srivastava and others*, A.I.R. 1979 S.C. 1039.

The Chancellor and another v. *Dr. Bijayananda Kar and others and another connected case*, A.I.R. 1994 S.C.579.

The Dental Council of India v. *Subharti KKB Charitable trust and another*, A.I.R. 2001 S.C. 2151.

The Marathwada University v. *Seshrao Balwant Rao Chavan,* A.I.R. 1989 S.C. 1582

The National Board of Examination v. *G. Anand Ramamurthy and others*, (2006) 5 S.C.C. 515.

The Principal, Cambridge School and another v. Ms. Payal Gupta and others, A.I.R. 1996 S.C. 118.

The State of Bombay and others v. *The United Motors India Ltd.*, A.I.R. 1953 S.C. 252.

The State of Maharashtra and others v. *Association of Maharashtra Education Service Class II Officers and others*, A.I.R. 1974 S.C. 2184.

The State of Orissa v. *Madan Gopal Rungta*, A.I.R. 1952 S.C.12

The State of Orissa v. *Bhikari Charan Khunta*, (2003) 10 S.C.C. 144.

The Tropical Insurance Co. Ltd. and others v. *Union of India* , A.I.R. 1955 S.C.789

The University of Mysore and another v. *C. D. Govind Rao and another,* A.I.R. 1965 S.C. 491.

Thomas v. *Manager, Bishop Moore College,* 1987 (I) K.L.T. 613

Thomas P. John v. *Cochin University of Science and Technology*, 2003 (2) K.L.T. (S.N.) 42.
Union Public Service Commission v. *Jagannath Misra, (2003) 9 S.C.C. 237.*

Union of India and others v. *Shah Goverdhan Kalra Teachers' College*, (2002) 8 S.C.C. 228.

Union of India and others v. *Rajesh P U. Puthuvayaalnikathu and others*, (2003) 7 S.C.C. 285.

Union of India and others v. *Tejram Parasheraji Bombhate and other and other case*, (1991) 3 S.C.C. 11.

Union of India and others v. *Nagesh and others*, (2002) 7 S.C.C. 603.

Union of India and others v. *P. Chandra Mouli and others, (2003)10 S.C.C. 196*

University of Allahabad and others v. *Amrit Chand Tripathi and others,* (1986) 4 S.C.C. 176.

University of Calcutta & others v. *Dr. Amiya Kumar Chakraborty*, (2000) 10 S.C.C. 39.

University of Calicut v. *N.C.T.E.*, 2004 (2) K.L.T. (S.N.) 29.

University of Calicut v. *Amala Institute of Medical Science*, 2009(3) K.L.T. (S.N.) 78.

University of Delhi v. *Raj Singh and others*, 1994 Supp. (3)S.C.C.516.

University of Kerala v. *Alex Saji*, 1997(2) K.L.T. 100.

University of Kerala v. *Benoy Thomas*, 1983 K.L.T. 1103.

University of Kerala v. *Marthoma College of Science and Technology*, 1999(3) K.L.T. (SN) 55.

University of Kerala v. *Muralidharan*, 2000(1) K.L.T. 537.

University of Kerala v. *N.C.T.E.*, 2003(3) K.L.T. (S.N.) 102.

University of Kerala v. *Sankaran Nampoorthy*, 2005 (1) K.L.T. 229.

University of Kerala (1) v. *Council, Principals', Colleges, Kerala and others*, (2006) 8 S.C.C. 304.

University of Kerala (2) v. *Council, Principals', Colleges, Kerala and others*, (2006) 8 S.C.C. 486.

University of Kerala v. *Vidyadhirraja Charitable Society*, 1994 (2) K.L.T. 1078.

University of Kerala v. *Council, Principals' Colleges, Kerala and others*, (2009) 7 S.C.C. 726.

University of Mysore v. *C. D. Govinda Rao*, A.I.R. 1965 S.C. 491.

University of Mysore and others v. *Gopala Gowda and others*, A.I.R. 1965 S.C. 1932

University of Poona and others v. *Sharkar Narhar Agesge and others*, (1972) 3 S.C.C. 186.

University of Rajasthan, Jaipur v. *Roshan Lal Seth,* (1974) 1S.C.C. 371.

University of Rajasthan, Jaipur v. *Dr. Bhika Lal Jain and others*, (1992) 1S.C.C. 106.

Unnikrishnan, J.P. and others v. *State of Andhra Pradesh and others*, (1993) 1 S.C.C. 645; A.I.R. 1993 S.C. 2178.

U.P. Junior Doctors' Action Committee and others v. *Dr. B Sheetal Nandwam and others and a connected case*, A.I.R. 1991 S.C. 909.

U.P. Junior Doctors' Action Committee and others v. *Dr. B Sheetal Nandwam and others and a connected case*, A.I.R. 1992 S.C. 671.

Union Public Service Commission v. *Jagannath Mishra*, (2003) 9 S.C.C. 237.

Usha Mehta v. *State of Maharashtra*, 2004(2) K.L.T. 696 (S.C.)

V. Rev. Mother Provincial and others v. *State of Kerala and others*, 1969 K.L.T. 749 (F.B.)

V.N. Rajaskharan Pillai v. *Chancellor, M G University*, 2002(1) K.L.T. (SN) 74.

Vandana v. *State*, 1996 (1) K.L.T. 775.

Varanaseya Sanskrit Vishwavidyalaya and another v. *Dr. Rajkrisore Tripathi and another*, (1977) 1S.C.C. 279.

Varghese v. *Director, Medical Education*, 1987 (2) K.L.T. 673.

Varghese Philip v. *State of Kerala*, 2004 (1) K.L.T. 581.

Varghese v. *State of Kerala*, 1983 K.L.T. 483

Varghese v. *University of Kerala*, 1982 K.L.T. (S.N.) 58.

Varghese v. *State of Kerala*, 1989 (2) K.L.T. 333.

Varghese Philip v. *State of Kerala*, 2004 (1) K.L.T. 581.

Vasudevan Nair. v. *Vice-Chancellor*, 1997 (1) K.L.T. 243

Veerappa Pillai v. *Raman and Raman Ltd.*, A.I.R. 1952 S.C. 192

Vellore Citizens Welfare Forum v. *Union of India*, A.I.R. 1996 S.C. 2715.

Vellore Educational Trust v. *State of Andhra Pradesh and others,* 1987 (Supp) S.C.C. 543.

Veterinary Council of India v. *Indian Council of Agricultural Research*, (2000) 1 S.C.C. 750.

Vice-Chancellor, University of Calicut v. *Thomas*, 2002(3) K.L.T. (S.N.) 32.

Vice-Chancellor, L N Mithila University v. *Dyanand Jha*, (1986) 3 S.C.C. 7

Vice-Chancellor, Lucknow University and another v. *M. Ismail Faruqui and others,* 1999 Supp(1) S.C.C. 320

Vice-Chancellor, Utkal University and others v. *S.K. Ghosh and others*, A.I.R. 1954 S.C. 217.

Vidharba Siksha Vyawasthapak Mahasangh v. *State of Maharashtra and others,* A.I.R. 1987 S.C. 135.

Vijay Lakshmi v. *Pubjab University and others*, (2003) 8 S.C.C. 440; 2003(3) K.L.T. (S.N.) 141(S.C.)

Vikram Deo Singh Tomar v. *State of Bihar*, A.I.R. 1988 S.C. 1782.

Vikram Sarabhai E. Trust and B.Ed. College v. *University of Calicut*, 2008(2) K.L.T. 1027 (F.B.).

Vikrant Parihar (Dr.) v. *State of Jammu & Kashmir and others,* (2000) 8 S.C.C. 235.

Vinod Kumar v. *S. Palani Swamy and others,* (2003) 10 S.C.C. 681

Vishwa Jagriti Mission v. *Central Government*, A.I.R. 2001 S.C. 2793; 2001(3) K.L.T. 137(S.C.).

Viswanathan v. *University of Calicut*, 1999(2) K.L.T. 333.

Waman Rao and others v. *Union of India and others,* A.I.R. 1981 S.C. 271.

Wednesbury Corporation v. *Ministry of Housing and Local Government,* (1966) 2 Q.B. 275.

Wesley Philip v. *University of Kerala,* 2002(1) K.L.T. 189.

BOOKS

Allan, C. K., *Law in the Making*, Oxford University Press, Oxford (1964)

Allen, Michael J, *et al*, *Cases and Materials on Constitutional and Administrative Law*, Blackstone Press Ltd., London (1990)

Allan, T. R.S., 'The Rule of Law as the Foundation of Judicial Review' in *The Constitutional Foundations of Judicial Review* Ed. By Mark Elliott, Hart Publishing, Oxford (2001).

Anand, C.L., *Constitutional Law and History of Government of India*, University Book Agency, Allahabad (1990)

Asbhy, Eric, *Universities: British, Indian, African*, Weidenfield & Nicolson, London (1966)

Banerjee, Bhagabati Prosad and Banerjee, Bhaskar Prosad, *Judicial Control of Administrative Action*, Wadhwa and Company, New Delhi (2001)

Basu, Durga Das, *Limited Government and Judicial Review*, Tagore Law Lectures, S.C. Sarkar & Sons, Calcutta (1972)

Baxi, Upendra, *The Indian Supreme Court and Politics*, Eastern Book Company, Lucknow (1980),

Beatson, J and Matthews, M H., *Administrative Law Cases and Materials*, Clarendon Press, Oxford (1989)

Bell, John ,'Three Models of the Judicial Functions' in *Judges and Judicial Power*, Ed. by Rajeev Dhavan, *et al*, Sweet & Maxwell and N. M. Tripathi Pvt. Ltd., Bombay (1985)

Berger, Raoul, *Government by Judiciary: The Transformation of the Fourteenth Amendment,* (2nd ed.) Indianapolis: Liberty Fund (1997).

Bhaya, Lilu K., *Interplay Between University Autonomy, higher education and Courts with Special Reference to Judgments of Gujarat High Court*, Thesis submitted to the University of Gujarat for the Degree of Doctor of Philosophy, University of Gujarat, Ahmedabad, 1993

Bickel, Alexander M., *The Least Dangerous Branch*, Yale University Press, Yale (1962)

Black, Charles L., Jr., *The People and the Court- Judicial Review in a Democracy*, The Mcmillan Company, New York (1960).

Cardozo, Benjamin N., *The Nature of the Judicial Process*, New Haven, (1921)

Craig, P. P., *Administrative Law*, Sweet & Maxwell, London

Commager, Henry Steele, 'Judicial Review and Democracy' in Leonard W. Levy, *Judicial Review and the Supreme Court- Selected Essays*, Harper and Row, New York (1967)

Cooper, Frank E., *Administrative Agencies and the Courts*, University of Michigan Law School, Michigan (1951)

Corwin, Edward S., *The Doctrine of Judicial Review*, Peter Smith, Glouchester (1963)

Cox, Archiblad, *The Court and the Constitution*, Asian Books Pvt. Ltd., New Delhi (1989)

de Smith, S. A., *Judicial Review of Administrative Action*, Sweet & Maxwell, London (1959)

de Smith, S.A., *et al* , *Principles of Judicial Review*, Sweet & Maxwell, London (1999)

Dhavan, Rajeev, *et al*, *Judges and the Judicial Power*, Sweet & Maxwell and N. M. Tripathi Pvt. Ltd., Bombay (1985)

Dongerkery, S. R., *University Autonomy in India*, Lalvani Publishing House, Bombay (1967)

Elliott, Mark, *et al*, *Beatson, Mathews and Elliott's Administrative Law- Text and Materials*, Oxford University Press London

Elliott, Mark, 'Legislative Intention Versus Judicial Creativity? Administrative Law as a Co-operative Endeavour', in *The Constitutional Foundations of Judicial Review* Ed. By Mark Elliott, Hart Publishing, Oxford (2001).

Ely, John Hart, *Democracy and Distrust- A Theory of Judicial Review*, Harvard University Press, London (1980)

Emery, C. T. and Smythe, B., *Judicial Review: Legal Limits of official Power*, Sweet & Maxwell, London (1986)

Exupery, Antoine D E Saint, *The Little Prince*, Katherine Wood Trans (1971)

Forsyth, C., *Judicial Review and Constitution*, Hart Publishers, Oxford (2000)

Gleeson, Murray, *The Rule of Law and the Constitution*, ABC Books, Sydney (2000)

Gordon, R.J.F., *Judicial Review: Law and Procedure*, Sweet and Maxwell, London (1985)

Hamilton, Alexander, *Federalist* (78)

Henderson, Edith G., *Foundations of English Administrative Law*, Harvard University Press, Cambridge (1963)

Iyer, T.K.K., *Judicial Review of Reasonableness in Constitutional Law*, The Madras Law Journal Office, Madras (1979)

Jain, M.P., *Changing Face of Administrative Law- India and Abroad*, N.M. Tripathi Pvt. Ltd., Bombay (1982)

Jones, B.L., *Administrative Law*, Butterworths, London (1989)

Jowell, J.L., *et al*, *New Directions in Judicial Review*, Stevens and Sons, London (1988)

Joweel & Oliver (Ed.), *The Changing Constitution*, Oxford (2004)

Jowell, Jeffrey, 'Of Vires and Vacuums: The Constitutional Context of Judicial Review' in *The Constitutional Foundations of Judicial Review* Ed. by Mark Elliott, Hart Publishing, Oxford (2001)

Kaul, J. N., *Governance of University Autonomy of the University Community*, Abhinav Publication, New Delhi (1988)

Kozlowski, Mark, *The Myth of the Imperial Judiciary: Why the Right is Wrong about the Courts*, New York University Press, New York, (2003)

Laws, Sir John, 'Judicial Review and the Meaning of Law', in *The Constitutional Foundations of Judicial Review*, Ed. by Mark Elliott, Hart Publishing, Oxford (2001)

Levy Lenoard W., *et al*, *Judicial Review and the Supreme Court*, Harper and Row Publishers, New York (1967)

Malik, S.C., (Ed.), Management and Organization of Indian Universities, (Indian Institute of Advanced Study, Simla, 1971)

Markose, A. T., *Judicial Control of Administrative Action in India- A Study in Methods*, Madras Law Journal, Madras (1956)

Massey, I. P., *Administrative Law*, Eastern Book Company, Lucknow (2001)

Oliver, Dawn 'The Courts and the Policy making Process' in *New Directions in Judicial Review-Current Legal Problems*', Ed by J. L. Jowell and D. Oliver, Stevens and Sons, London (1988)

Philips, O. Hood, and Jackson Paul, *Constitutional and Administrative Law*, Sweet and Maxwell Ltd., London (1987)

Polanegi, Michael, *The Logic of Liberty*, Pouthledge and Kegan Paul, London (1951)

Pritcheet, C. Herman, *The Roosevelt Court- A Study of Judicial Politics and Values 1934-47*, The Macmillam Co., New York (1948)

Rajput, J.S., *et al*, *Encyclopedia of Indian Education*, National Council of Educational Research and Training, New Delhi (2004)

Reddy, P. Sarojini, *Judicial Review of Fundamental Rights*, National Publishing House, New Delhi (1976)

Rao, Sudha, 'Autonomy in Education', in *Encyclopedia of Indian Education*, Ed, by J. S. Rajput, National Council of Educational Research and Training, New Delhi (2004)

Ray, S.N., *Judicial Review and Fundamental Right*, Eastern Law House, Calcutta (1974)

Rostow, Eugene V., 'The Democratic Character of Judicial Review' in *Judicial Review and the Supreme Court- Selected Essays*, Ed. by Leonard W Levy, Harper and Row, New York (1967)

Rubinstein, A., *Jurisdiction and Illegality*, Oxford University Press, Oxford (1975)

Sathe, S.P., *Judicial Activism in India*, Oxford University Press, New Delhi (2002)

Schwartz, Bernard, *An Introduction to Administrative Law*, Sir Issac Pitman & Sons Ltd., London (1958)

Seervai, H.M., 'Constitutional Law of India- A Critical Commentry',Vol.2, 3rd Ed., N.M. Tripathi Pvt. Ltd., Bombay abd Sweet & Maxwell Ltd., London (1984).

Sen, Amartya, 'The Crises in Indian Education in Management and Organization of Indian Universities', in *Management and Organization of Indian Universities*, Ed. by Malik, S.C., Indian Institute of Advanced Study, Simla (1971)

Shah, A.B., *et al, Higher Education in India*, Lalvani Publishing House, Bombay (1967)

Singh, Amrik, 'Universities and Government', in *Higher Education in India*, Shah, A. B., *et al*, Lalvani Publishing House, Bombay (1967)

Singh, M. P., *et al, Comparative Constitutional Law*, Eastern Book Company, Lucknow, (1989)

Snowiss, Sylvia, *Judicial Review ands the Law of the Constitution*, Yale University Press, Yale, (1990)

Stevens, Robert, *The English Judges- Their Role in the Changing Constitution*, Hart Publishing, Oxford (2005).

Thayer, James Bradley, 'The Origin and Scope of the American Doctrine of Constitutional Law' in *Judicial Review and the Supreme Court- Selected Essays*, Ed by Leonard W. Levy, Harper and Row, New York (1967)

Tribe, Laurence H., *Constitutional Choices*, (Universal Law Publishing Co. Pvt. Ltd. New Delhi, 2000)

Vile, M. J. C., *Constitutionalism and the Separation of Powers*, Clarendon Press, Oxford (1967)

Wade, Sir William and Forsyth, C., *Administrative Law*, Oxford University Press, Oxford, (2000)

Wade, Sir William, *Administrative Law*, Oxford University Press, Oxford, (2004)

Whinney, Edward Mc, *Judicial Review*, (4th Ed.) University of Toronto Press, (1969)

Wolf, Rt. Hon. The Lord, *et al, De Smith's Judicial Review*, Sweet & Maxwell, London, (2007)

REPORTS

Constituent Assembly Debates, Government of India, New Delhi, 1950

Report of Education Commission, Government of India, NCERT, New Delhi, 1964-66.

Kothari Commission, University Grants Commission, New Delhi, 1966

Judicial Control over Educational Institutions- A study in Trends, Ministry of Education, Government of India and Indian Law Institute, New Delhi, 1983.

ARTICLES

Allan, T.R.S., "The Constitutional Foundation of Judicial Review: Conceptual Conundrum or Interpretative Inquiry", (2002) C.L.J. 87.

Andhyarjuna, T. R., "Basic Structure of the Constitution Revisited", The Hindu, 2007, p.12.

Ashworth, Ardrew and Hough, Michael, "Sentencing and Climate of Opinion", 1996 Crl. L. Rev.

Bradley, A., "The Judges over your Shoulder", (1987) P.L. 485.

Boyer, Allen Dillard, "Understanding Authority and Will: Sir Edward Coke and Elizabethan Origins of Judicial Review", Boston College Law Review, Vol. 39, 43, 1997.

Burt, Robert A., "Constitutional Law and the Teaching of the Parables", 93 Yale L. R. 455(1984)

Campbell, Tom, "Judicial Activism- Justice or Treason", Otago L. R. 2003-4, Vol. X, p. 307

Carter, Stephen L., "Constitutional Adjudication and the Indeterminate Text: A Preliminary Defense of an Imperfect Muddle", 94 Yale L. J., 821, 866 (1985)

Chang, David, "Discriminatory Impact, Affirmative Action and Innocent Victims: Judicial Conservatism or Conservative Justices", Colombia Law Review, Vol. 91:790, 1991, at p.842.

Chemerinsky, Erwin, "Foreword: The Vanishing Constitution", 103 Harv. L.R., 43(1989)

Craig, Paul, "Ultra Vires and the Foundations of Judicial Review", C.L.J. 63 (1988)

Craig, Paul, "Formal and Substantive Conception of the Rule of Law: An Analytical Frame Work", (1997) P.L. 487.

Craig, Paul, "Ultra Vires and the Foundations of Judicial Review", (1998) C.L.J. 63

Craig, Paul and Bamforth, N., "Constitutional Analysis, Constitutional Principle and Judicial Review", (2001) P.L. 763.

Cross, A. R. V., "*Blackstone* v. *Bentham*", (1976) 92 LQR516.

de Smith, S. A., "*The Prerogative Writs*, (1951) II CLJ 40.

Dyzenhaus, D., "Reuniting the Brain: The Democratic Basis of Judicial Review", (1989) 9 Pub. Law. Rev. 98

Douglas E. Edlin, "From Ambiguity to Legality: The Future of English

Judicial Review", The American Journal of Comparative Law, Vol.. 52, 2004, p.383.

Ekins, Richard, "Judicial Supremacy and the Rule of Law", L.Q.R., Vol. 119, (2003) 127.

Elhauge, Einer R., "Does Interest Group Theory Justify More Intrusive Judicial Review", The Yale Law Journal, Vol. 101: 31, 1991, 110.

Elliott, Mark, "The Ultra Vires Doctrine in a Constitutional Setting: Still the Central Principle of Administrative Law", , 58 (1)C.L.J., 1999, 129.

Elliott, Mark, "The Demise of Parliamentary Sovereignty, The Implications for Justifying Judicial Review", (1999) 115 L.Q.R. 122

Elliot, Mark, "The *Ultra Vires* Doctrine in a Constitutional Setting: Still the Central Principle of Administrative Law", (1999) C.L.J. 129.

Fuchs, R. F., "Academic Freedom- Its Basic Philosophy, Function and History", Law and Contemporary Problems, XXVIII (1963) 431.

Flomes, O. H., "The Path of the Law", (1897) 10 Har. L. R. 457

Forsyth, C., "Of Fig Leaves and Fairy Tales: The Ultra Vires Doctrine, the Sovereignty of Parliament and Judicial Review, 1996 C.L.J. 122.

Harries, B. V., "Judicial Review, Justiciability and Prerogative of Mercy, C.L.J. Vol. 62 (3), 2003

Heydon, Dyson, "Judicial Activism and the Death of the Rule of Law", Otago Law Review, (2004),Vol. 10, No. 4, 493

Holmes, O. H., "The Path of the Law", (1897) 10 Har. L.R. 457.

Jaffe, L., and Henderson, E., "Judicial Review and the Rule of Law: Historical Origins", (1956) 72 L.Q.R. 345.

Jaffe, E., "Judicial Review: Constitutional and Jurisdictional Fact", (1957) 70 Harv. L. R. 953.

Jospeh, Philip A., "The Demise of *Ultra Vires*- Judicial Review in the New Zealand Courts, (2001) P.L. 354

Kumar, T. Ravi & Sharma, Vijendra, "Downsizing Higher Education- An Emergent Crises", E.P.W., February 15, 2003.

Kumar, Virendra Kumar, "Basic Structure of the Indian Constitution: Doctrine of Constitutionality Controlled Governance", 49(3) J.I.L.I. 375.

Laws, Sir John, "Judicial Remedies and the Constitution", The Modern Law Review, Vol. 57, 1994, p 213.

Marshal, Shapiro, David, L. "Jurisdiction and Discretion", 60 N.Y.U.L.R. 543, (1988).

Marshal, C.J. and David L. Shapiro, "Jurisdiction and Discretion", 60 N.Y.U.L Rev. 543, 544 (1985)

Mohanty, N. R., "The Few Defending University Autonomy need to be Supported", http://indiainteracts.com/columist/2008/06/26.

Mukerjee, P. B., "Aspirations of the Indian Constitution", A.I.R. 1955 (J) 106.

Nariman, Fali S., "The Silence in our Constitutional Law", (2002) 2 S.C.C. (J) 15.

Nowlin, Jack Wade, "The Constitutional Illegitimacy of Expansive Judicial Power: A populist Structural Interpretive Analysis", Kentucky L. J., Vo. 89, 2000-2001, 387.

Oliver, D., "Is the *Ultra Vires* Rules the Basis of Judicial Review", (1987) P.L. 543.

Pillai, K. N. C., "Judicial Review of Execution of Sentences", (2009) 10 S.C.C. (J) 17.

Pillard, Cornelia T. L., "The Unfulfilled Promise of the Constitution in the Executive Hands", 103, Mich. L. Rev. 676.

Post, Robert C., "Fashioning the Legal Constitution: Culture, Courts and Law", Harv. L. Rev. , Vol. 117: 4, 2003, p. 4.

Prakash, Sai Krishna B. and Yoo, John C., "The Origin of Judicial Review", 70 U.C.L.R. 887 (2003)

Redish, Martin, "Abstention, Separation of Power and the Limits of the Judicial Function", 94 Yale L. J. 71 (1984)

Rostow, Eugene V., "The Democratic Character of Judicial Review, 66 Harv. L. R. 193 (1952)

Sankaranarayanan, Gopal, " Man, Damn Us", (2009) 9 S.C.C. (J) 6.

Seidman, Lous M., "Ambivalence and Accountability", 61 Cal.L.R.1571 (1988)

Singh, H. K. Manmohan, "University Autonomy not the same as Academic Freedom", The Tribune, 19th August, 2007

Sorabjee, Soli J., "Obliging Government to control itself- Recent Development in Indian Administrative Law", (1994) P.L., p. 39.

Thayer, James Boadley, "The Origin and Scope of the American Doctrine of Constitutional Law", 7 Harv. L. Rew. 129(1893)

Tushnet, Mark, "Policy Distortion and Democratic Debilitation: Comparative Illumination of the Countermajoritarian Difficulty", Michigan L. R., Vol. 94, (1995) 246.

Tushnet, Mark, "Alternative Forms of Judicial Review", Michigan L. R., Vol. 101, (2003) 2781

Waldron, Geremy, "The Core of the Case against Judicial Review", The Yale Law Journal, Vol. 115, No. 6, 2006, 1346.

Wright, Elizabeth C., "Courts and University-The Impact of Litigation on University Autonomy",1985 (J.I.L.I.) 27 (1)36.

Woolf, Rt. Hon. Lord, "Droit Public-English Style", (1995) P.L. 56