Autonomous Character of Indian Universities and Role of Judiciary

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This research paper is based on studying the effect of autonomous character of Indian Universities on its various administrative and academic decisions. The various books, websites, Acts, reports of committees, articles and case laws are referred and critically analyzed on the subject for the purpose of this study. Constitutionally, the University is autonomous in character. Its autonomy is an established fact of Indian attitude. University’s actions are clearly defined based on Statutes, ordinance and regulations. Its independence is not the subject of dispute in principle but it is influenced by various unsystematic, vicarious arrangements and pressures. The Government acts on University in haphazard ways, influencing, bullying and being never quite consistent about what it wants. A major hallmark of 60 years of India’s independence has been that except to some extent in US, nowhere in the world the judiciary has enjoyed that much independence as in India. The judicial review in matters related to higher education had been progressive and aimed at keeping the education at the desired level of excellence. Court role is narrow but clear. Court duty is to see the rules are followed by University and its officials. The Courts have shown great restraint and unwillingness to interfere with the ‘internal autonomy’ of educational institutions. The Courts do not like to interfere in sacred relation between a student and a teacher. In matters connected with admission, indiscipline, examination and also in matters with other bodies such as elections of Executive Council (EC) or the University Court, the Courts

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have preferred not to interfere with the decision of Education Authorities. Supreme Court in its various decisions held that Courts would interfere when there is a substantial violation of law which has occasioned injustice in a board and general sense. Court will interfere if authority concerned has acted malafide arbitrarily actuated by superfluous circumstances. Universities and its official need to understand the limits of autonomy and act under the sphere of powers conferred as their arbitrary decisions may spoil the career of students as precious time of the critical phase of their career being wasted in judicial proceedings which are time consuming. Courts should also take-up matter related to students on priority and act for fast disposal of case related to students.

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4. **Analysis**

4.1 **Autonomy of Universities**

The Indian Universities are modelled on British pattern of London University with autonomy and academic freedom as its distinguished features. Lord Reading, then Viceroy of India in First Conference of Indian Universities at Shimla in 1924 said that “there is not the slightest disposition in any quarter to interfere with or detract or subtract in any manner whatsoever from the autonomous or self-governing power of the various Universities”.

In report of Higher Education in Britain Lord Robbins had said that “Freedom of Institutions as well as individual freedom is an essential constituent of a free society.”

Freedom of individual development is the basis of democracy. Exclusive control of education by the State has been an important factor in facilitating the maintenance of totalitarian tyrannies. In such states, institutions of higher learning controlled and managed by government agencies promoting the political purpose of the State.

Radhakrishnan Committee held that “Higher education is undoubtedly, an obligation of the State but State aid is not to be confused with state control over academics, policies and practices; intellectual progress demands the maintenance of the spirit of free enquiry.”

The governmental domination of education is contrary to the interest of democracy and is a symptom of tyranny. This statement, according to the Supreme Court is the best exposition of autonomy in education. The Court, therefore, made the following observations in T.M.A. Pai’s Case:

“’There cannot be a better exposition than what has been observed by these renowned educationists with regard to autonomy in education. The aforesaid passage clearly shows that the governmental domination of the educational process must be resisted. The observations referred to herein above clearly contemplate educational institutions soaring to great heights in pursuit of intellectual excellence and being free from unnecessary governmental control.’”

As per the report of Education Commission “the proper sphere of University autonomy lies in the selection of students, the appointment and promotion of teachers and the determination of courses of study, methods of teaching and selection of areas and problems of research. There are three levels at which University autonomy functions: autonomy within a University, autonomy in a system of higher education and autonomy of University system as a whole in relation to agencies outside the system.”

Supreme Court in State of Maharashtra v. Association of Maharashtra Education Services held that guidelines prepared by University Grants
Commission (UGC) are only recommendatory not giving rise to any right enforceable in a Court of law, the UGC has in fact and effect enforced its guidelines under the threat of withholding grant and has thus become more potent. 42nd amendment to the Constitution has also changed the constitutional equation by giving legislative priority to the Central Government in terms of Art. 254. The State Universities are thus not able to either complete or disregard the UGC in any manner. The UGC controls academics in the Universities and prescribes and syllabus.

The All India Council for Technical Education (AICTE) had even claimed that Universities established by law have to seek its permission to establish engineering colleges. However, the Supreme Court in case of Bharathidasan University v. AICTE\(^9\) authoritatively decided that Universities are outside the authority/jurisdiction of the AICTE.

The Medical Council of India was however more effective than any other body as it controls admissions, examinations, degrees and the standard of teaching in medical colleges all over the country.

Similarly, Bar Council of India established under the Advocates Act 1961 controls law education in the country in spite of Supreme Court holding that law education is the responsibility of the University.

Since erosion of university autonomy indirectly affects the legislative authority and administrative control of State Governments many of them have leg stated to establish Private Universities. At one time, State of Uttarakhand and Chhattisgarh are said to be responsible for about 125 private universities functioning all over the country.

Raipur the capital city of Chhattisgarh State had once a unique distinction of accommodating about 40 such universities and many of them function in a residential building or even a car garage. Most of them established their own Engineering College or Business Management Institute awarding B.E. or M.B.A degrees. Since these Universities did not depend on grants from UGC, they are free from day to day control of UGC and enjoy almost total autonomy.

However, Supreme Court in case of Prof. Yashpal v. State of Chhattisgarh\(^{10}\) held all these universities illegal.

4.2 Role of Judiciary

A major hallmark of 60 years of India’s independence has been that except to some extent in US, nowhere in the world the judiciary has enjoyed that much independence as in India. Exercising the power of judicial review, the courts and in particular the Supreme Court has not only turned down number of executive actions and legislative enactments but also indulge in law making and even occasionally Constitution making.

The judicial review in matters related to higher education had been progressive and aimed at keeping the education at the desired level of excellence.
Justice Krishna Iyer in case of J.P. Kulshrestha v. Allahabad University\textsuperscript{11} very aptly and lucidly outlined the scope of judicial review in universities as under:

“It is rule of prudence that courts should hesitate to dislodge decisions of academic bodies but University organs for that matter any authority in our system is bound by rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the courts keep its hands off, but where a question of law has to be read and understood, it is not fair to keep the Court out.”

Earlier a similar view was expressed in case of Govind Rao\textsuperscript{12} but Justice Krishna Iyer clarified that “to respect an authority is not to worship it unquestioningly since the bhakti cult is inapt in the critical field of law.”

Pandit Nehru had once said that “University stands for humanism, for tolerance, for reason, for adventure of ideas and for the search of the truth. It stands for the onwards march of the human race towards even higher objectives. If the Universities discharge their duties adequately, then it is well with nation and the people.”\textsuperscript{13}

The Law Courts have shown great restraint and unwillingness to interfere with the ‘internal autonomy’ of educational institutions.\textsuperscript{14} The Courts do not like to interfere in sacred relation between a student and a teacher. In matters connected with admission, indiscipline, examination and also in matters with other bodies such as elections of Executive Council (EC) or the University Court, the Courts have preferred not to interfere with the decision of Education Authorities. Courts have shown faith in the proper exercise of discretion and power by persons responsible for running educational institutions. So far as the autonomous bodies creations of statutes, keep within statutory limits and conduct their business according to rules and regulations both in letter and spirit, the Courts are reluctant to interfere.

In Jang Bahadur v. Principal Mohindra College\textsuperscript{15}, Teja Singh C.J. observed that “relation between student and teacher had always been held to be sacred in India and it is in the interests of students as well as of entire body of the citizen that discipline amongst students is insisted upon.”

Regarding assessment of merit of student, the Court in Jawaharlal Nehru University v. B.S Narwa\textsuperscript{16} held that “When duly qualified and academic authorities examine and assess the work of a student over a period of time and declare work to be unsatisfactory, we are unable to see how any question of a right to be heard can arise.”

Regarding the admission, the Apex Court laid down the law in Charles K. Skaria v. C.Mathew\textsuperscript{17} as under:

“Principled policy, consistent with constitutional imperatives (Art. 14 and 15) must guide admissions to courses in higher profession education but Governments and Universities not infrequently takes liberty with this larger
obligation under provincial pressure and institutional compulsions and seek asylum in reluctant pragmatism mindless of hostility to constitutionality. Nothing more harrowing for the Court, over-burdened with increasing litigation and thereby forced into slow motion and unwilling to intervene in an administrative area, than to hamper the strategic stages of educational processes like admissions and deciding questions of constitutionality especially when educational authorities shape policies, change rules and make peace with the crisis of the hour, ignoring the parameters of the national Charter.’’

The above law even being applied now as evident from case of Thapar Institute of Engineering & Technology's case\textsuperscript{18} where the court held that:

“The Court would normally not interfere with such prescribed standards in their respective institutions. The scope of judicial review in such matters would be very limited.”

Madhya Pradesh High Court has adopted a balanced and pragmatic approach in the case of Aditya Soni v. State of Madhya Pradesh\textsuperscript{19} while rejecting the challenge to Ordinance no.1 relating to Student Union elections held that:

“Universities are bound to provided intellectual, social, cultural environment and also enforce discipline to foster innovative, artistic, literary, cultural academic and sports activities, such activities can be and are bound to be part and parcel of universities/colleges calendar as essential ingredient of education and no student can be denied his right to such activities. Environment of learning and teaching is a must in every institution. The only thing better is the travelling deep into sea of education itself and not election. Thus it cannot be said that there is a deprivation of any such right of the petitioner by not conducting or providing for elections for the student’s unions in the university teaching departments and schools of studies.”

Regarding the Co-ordination Committee, the Court held that:

“The decisions of such bodies like Co-ordination Committee are not to be ordinarily interfered with. They are the best judge of interest of the students and academic activities etc. It is for them to consider whether election should be held or nominated bodies should function or bodies created by selection of merit basis.”

The Madhya Pradesh High Court in Anant Prasad v. Secretary, Madhyamik Siksha Mandal\textsuperscript{20} held that:

“Education cannot be regarded as commerce. It is meant to illuminate the students who are the future of the nation.”

The Madhya Pradesh High Court in Dharmendra Kumar v. Jiwaji University\textsuperscript{21} rounded off the secured marks of 49.77% to 50% in order to give eligibility to the petitioner which gesture pulled the petitioner through B.Pharm Degree Course.
In *Ankur Agrawal's case*²² M.P. High Court set aside the demand of the full fee of 4½ years in lump sum for NRI seat in MBBS and directed that the total fee be divided by number of semesters and collected accordingly.

Inspite of it there are several reported and unreported judgments showing that Courts have been sympathetic towards students and had been granting them undue favours. But the Apex Court in cases related to admissions in unaffiliated colleges, re-valuation and giving grace marks to enable the students to pass the examination etc. is very vigilant and disapprove such decisions from time to time.

In *A.P.Christian Medical Educational Society's case*²³, Supreme Court held that “it was not fair for the High Court to direct the college to do anything in violation of binding Statute as it was destructive of rule of law.”

In *Vikash Sahebrao Roundale's case*²⁴, the Apex Court criticized the direction of the High Court permitting students of unaffiliated colleges to appear in the examination and set aside the said direction.

In *Phool Chand Sethi v. Nagpur University*²⁵ Bombay High Court held that “Court won’t interfere if some other statutory remedy is available with-in the framework of the autonomous body.”

In *Prem Narain v. State of Uttar Pradesh*²⁶ it was observed that the Courts would interfere only when there is a substantial violation of law which has occasioned injustice in a board and general sense.

Further in *C.D.Sekkiler v. Krishna Moorthy*²⁷ High Court of Madras held that Court will interfere if authority concerned has acted malafide arbitrarily actuated by superfluous circumstances.

In *C.B.S.E v. P. Sunil Kumar*²⁸, Supreme Court held that:

“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. Admissions cannot be ordered without regard to the eligibility of the candidates. 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 order cannot be allowed to stand. The Courts should not embarrass academic authorities by themselves taking over their functions.”

5. **Conclusion**

Constitutionally the University is autonomous in character. The University is a statutory body governed by Statutes, ordinance, Rules and regulations. Court role is narrow but clear. Court duty is to see the rules are followed by University and its officials.

Regarding the autonomy of Universities, Radhakrishnan Committee held that ‘Higher education is undoubtedly, an obligation of the State but State aid is not
to be confused with state control over academics, policies and practices; intellectual progress demands the maintenance of the spirit of free enquiry’.

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There is imperative need to make balance between autonomy and authority. Universities and its official must understand the limits of autonomy and act under the sphere of powers conferred by Statutes, ordinance and regulations as their arbitrary decisions may spoil the career of students as precious time of the critical phase of their career being wasted in judicial proceedings which are time consuming. Courts also take-up matter related to students on priority and act for fast disposal of case related to students.

Footnotes

2. Ibid.
11. AIR 1980 SC 2141.
12. AIR SC 491.
17. AIR 1980 SC 1230.
18. AIR 2001 SC 3676.
19. 2002 (1) MPLJ 310.
20. 2002(2) MPLJ 369.
22. 2000(3) MPLJ.
23. AIR 1986 SC 1490.
27. AIR 1952 Mad.151.

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