UNIVERSITY AUTONOMY JUDICIAL INTRUSION ?

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BY

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UNIVERSITY AUTONOMY: JUDICIAL INTRUSION?

I am deeply grateful to Principal Shirhatti and the Members of the Governing Body of Lala Lajpat Rai Institute for inviting me today, the birthday of Lala Lajpat Rai, to join in paying our homage and tributes to the memory of one of the illustrious sons of India. To be called upon to deliver a lecture in the Annual Memorial Lecture Series instituted to prepetuate Lalaji's memory is a great privilege accorded to me by the Governing Body, and my added pleasure is that I shall be doing so under the chairmanship of my revered senior honourable Shri Hidayatullah, ex-Chief Justice and ex-Vice-President of India.

Born in a humble but scholarly family Lala Lajpat Rai rose to great heights to acquire a multi-faceted personality. Essentially he was a great freedom-fighter. Along with two other luminaries then shining in the freedom firmament, Bal Gangadhar Tilak and Bipin Chandra Pal, Lalaji led the Indian Revolutionary Movement against the British Raj with such intense fervour and zeal that the triumvirate Lal, Bal, Pal become a by-word with common people representing the spear-head of the movement. His indomitable courage, unflinching patriotism and martial qualities earned for him the richly deserved popular title 'Lion of Punjab'. On 30th October 1928 Lalaji led a mammoth procession in Lahore to register a protest against the royal Simon Commission, and on that occasion braved lathi blows inflicted on his chest, without

any provocation, by a British police officer and even after getting injured grievously addressed the congregation and roaring like a lion warned the alien rulers that "every blow hurled at us today will prove a nail in the coffin of the British Empire". Eighteen days later he died as a result of the injuries suffered by him, but it was a glorious death which made him a martyr.

Fervent patriotism was but one of his facets. Simultaneously he was a social reformer, educationist, trade unionist, banker and a writer. As an educationist he established Dayanand Anglo-Vedic College, and as a banker he not merely founded the Punjab National Bank but worked as its Director for quite some time. It is to perpetuate the memory of such an inspiring personality that this Annual Lecture Series has been instituted by the President and Members of the Governing Body of this Institute for which they deserve congratulations.

Knowing Lalaji's interest in the field of education I have, by way of paying my tributes, chosen for today's lecture the subject "University Autonomy" - a topic of great interest to students, parents, teachers and educational authorities. Even lawyers and judges would be interested in it since I am going to dwell on the supposed judicial intrusion thereon.

At the outset, it will be desirable to have a clear idea about the precise nature and content of the concept of University Autonomy and its relevance and justification in a democratic country like ours.

Relevance and Justification:

'Autonomy', as commonly understood means a right to self-governance and "autonomous body" means an independent body having the right to manage its affairs according to its own reason.

"University Autonomy" has been defined by Shri S.R. Dongarkeri, Vice-Chancellor of Marathwada University, as "a university's right of self-government, or its right to govern its own affairs, and particularly, its right to carry on its legitimate activities of teaching and research without interference from any outside authority."(1)

Dr. Amrik Singh, Secretary, Inter-University Board of India and Ceylon, has given operational definition of the same concept as the right of a university to decide "who shall teach, whom shall the university teach, what shall be taught and how will it be taught".(2) This operational definition could be said to be very apt having regard to the principal functions of teaching and research which every university is expected to perform.

The concept of university autonomy should not be confused with the other allied concept of "Academic Freedom" which is equally essential in university education. The former deals with the freedom of the university as such in discharging its functions whereas the latter indicates the professional freedom of teachers to hold and express their views, however

radical, on the university or college campus where they teach. The Education Commission appointed under the chairmanship of Dr. D.S.Kothari has, in its Report submitted in 1966, observed that a teacher should be free to pursue and publish his research and studies, and to speak and write about the participate in debates 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, and has emphasised the importance of such freedom in these words:

> "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 unsparing, but informed and constructive. All this demands that teachers exercise their academic freedom in good measure, enthusiastically and wisely."

Though at times the two concepts may overlap each other, as for instance, when by a State law some restriction is imposed on teachers, the imposition may intrude or violate both the academic freedom of the teachers as also the autonomy of the university, the distinction will become apparent if it is realised that an autonomous university can deny academic freedom to its teachers and non-autonomous university can guard it for its teachers against outside onslaught.

The importance of university autonomy, in a democratic set up cannot be overemphasized. Its necessity arises from the nature of invaluable services a university renders to the community at large. On the nature of work performed by a university I can do no better than quote Sir Richard Livingstone, who highlighted it in these words:

> "If you wish to destroy modern civilization, the most effective way to do it would be to abolish universities. They stand at its centre. They create knowledge and train minds. The education which they give moulds the outlook of all educated men, and thus affects politics, administration, the professions, industry and commerce. Their discoveries and their thought penetrate every activity of life."(3)

The justification for autonomy of universities has been explained by the Education Commission (Dr. Kothari Commission) in its Report thus :

> "The case for autonomy for 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 pressure of party or power politics, can pursue truth fearlessly and build up, in its teachers and students, habits of independent

thinking and a spirit of enquiry unfettered by the limitations and prejudices of the near and the immediate, which is so essential for the development of a free society."

In all democratic countries the importance of university autonomy is well recognised. In India, whose Constitution declares that we are a democratic republic and promises to secure to all its citizens Justice, social, economic and political, Liberty of thought, expression, belief, faith and worship, Equality of status and opportunity and Fraternity among them all, assuring the dignity of the individual and unity and integrity of the nation, in the scale of values, university autonomy can be put in the same category as the independence of the judiciary and the freedom of the press. The judiciary acts as a sentinel on the *qui vive* protecting the fundamental and other rights of citizens and individuals against any onslaught thereon from any quarter; the press, apart from disseminating information, guarding freedom of expression and moulding public opinion acts as a watch-dog ensuring accountability of the government, public officials and all other institutions for their acts of omission and commission; and the universities on their part through teaching (training of minds) and research (creation of knowledge) provide intellectual and moral leadership. Each one needs Independence, freedom and autonomy for effectively contributing to the development of a decent, enlightened and healthy public life. However, experience of the last two decades has shown that attempts have been and are being made to erode the independence of the judiciary

and the freedom of the press, and if such erosion can take place with impunity, one need not be surprised at the inroads that are being attempted into the university autonomy.

Area of operation and sources of intrusion:

Dr. Amrik Singh's operational definition of the concept indicates the areas in which the autonomy of a university operates or rather ought to operate. According to the Report of the Education Commission, the essential constituents of university autonomy are: (i) freedom in appointments and promotions of teachers (who shall teach), (ii) freedom in selection of students (whom the university shall teach), and (iii) freedom in determining courses of study and methods of teaching and in selecting areas and problems of research (what shall be taught and how will it be taught). The Report has further pointed out that such autonomy functions at three levels: (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 *raison d'etre* of preserving the autonomy of a university in the aforesaid areas of operation is that these areas pertain to purely academic matters in which the requisite competence and expertise lie with the academicians (professors and teachers). It is true that the internal management of all the Indian Universities constituted under various Acts of parliament and State Legislatures is vested both in the academic element comprising several categories of teachers and the lay element which includes admini-

strators, government officials and representatives of various interests in the society such as the learned professions (of law, medicine, engineering and accountancy), business, industry and commerce, but reason and propriety demand that the academic matters are best left to the discretion and control of the academic element which should predominate over the lay element. In other words, in matters pertaining to framing of curricula or organising courses of studies and maintenance of standards therein, granting admission to students, holding tests or examinations leading to award of degrees and preventing misconduct or malpractices, threat, maintenance of discipline in and outside the campus, granting affiliation to colleges and their disaffiliation and the like, the final control should vest in the academic element. This implies that among the governing bodies of a university the Academic Council should be supreme in all academic matters and the role of the non-academic lay element should be to subserve the academic interests of the university.

The next question is, how far is the university autonomy in the aforesaid sense preserved in the Indian universities? To what extent it is intruded upon and what are the sources of intrusion? Though the necessity to preserve the autonomy of a university is recognised on all hands, it is common knowledge that it is interfered with and diluted on diverse occasions at different levels by outside agencies or authorities. Sources of interference and dilution are several. In the first place, since all the Indian universities are constituted and established

by legislation, their freedom gets circumscribed by the enactments creating them and since their constitution and powers are liable to be amended or altered by further legislation, they cannot be said to enjoy complete autonomy. Provision making the Chancellor (who invariably happens to be the Governor of a State) the sole authority for appointing a Vice-Chancellor, provision making the sanction of the Chancellor or the Government necessary for bringing into effect the Statutes, Ordinances and Regulations passed by the governing bodies and provisions making the government's voice final in the matter of affiliation or disaffiliation of colleges are instances falling within this category which impinge on the autonomy of a university. Another authority could be the State Government which provides funds to them either directly or through a statutory body like the University Grants Commission which can influence the university's decision by allocating or withholding financial aid for carrying on or expanding its activities. Yet another agency that could interfere with the university's autonomy could be the professional bodies controlling the professions of law, medicine, engineering and accountancy for which the university trains its students, by prescribing the qualifications necessary for the practice of the profession. Even faculty members disturb the autonomy by challenging appointments and promotions of rival teachers. The administrative staff and students also can, by agitational behaviour, launch harassing assaults on the university's freedom to carry on its normal activities, and last but not the least, are the politicians sitting on the policy-making bodies of the

university and power-brokers from outside having influence in official circles, seek to and often succeed in getting academic decisions suitably changed. Securing permission from the State Government to start a college despite adverse recommendation of the University and further securing affiliation for it from the State Government in teeth of opposition from the University or compelling the University to lower its standards, as for example, securing the facility of what is known as A.T.K.T. in University circles even for students who have failed in all the subjects at an examination are instances falling in this category of intruding on the University's autonomy.

A reference to the B.Ed. scandal that gave rise to a serious student agitation in Maharashtra will not be inappropriate. I am not concerned with the merits of the dispute involved in it but would like to deal with the theoretical aspect of one thing which has a bearing on university autonomy and that is the provision dealing with granting of permission to start a new college and granting affiliation to it contained in Maharashtra Universities (Bombay) Act, 1974. Both these powers are finally located int the State Government (Section 43(4A) (c-i & ii) and 43 (6) respectively), the role of the Academic and Executive Councils and the Senate being recommendatory. This is a clear negation of university autonomy in a prurely academic matter.

Historically speaking, prior to the enactment of the Indian Universities Act, 1904, the constitutions of the first

five universities in the country vested this power of affiliation of colleges in the universities and government had no voice in the matter. By transferring that power to the Government the Act of 1904 increased the Government's control over the universities. Late Honourable Gopal Krishna Gokhale tried his best to get an exemption for Bombay University from the operation of the Bill on the ground that the Western Presidency had enjoyed the advantage of being led in educational matters by men of great wisdom and ability, but since the Bill covered other universities as well, the plea failed. It will be interesting to note that the reason put forward for this shift in power was that the universities had been very lenient in granting affiliations with the result that some inefficient and weak colleges had come into existence.

Experience has shown that due to devaluation of standards in social, economic and political fields the pendulum has swung to the other extreme and the evil of commercialisation of education has firmly entrenched itself with the result that colleges having bogus teaching programmes have sprung up at the instance of unenlightened, unscrupulous power brokers having a clout with higher ups in politics and government officials. Even so, the power to grant permission to start new colleges and to grant affiliations continues to vest in the Government to the detriment of university autonomy. It is high time that the same reverts back, with appropriate safeguards, to the university to which it properly belongs. At any rate, till it so reverts-and only as a stop gap measure,

because revert it must - a provision should be made in the Act making it incumbent on the Government to record and communicate to the university its reasons for declining to accept the university's recommendation, which will curb unbridled exercise of discretion by the Government. Even the policy of permitting colleges to be opened on no-aid and no-grant basis which has led to the commercialisation of education needs to be reviewed.

Apart from these sources of intrusion it cannot be disputed that university autonomy is challenged in courts and gets circumscribed by court decisions.

Elizabeth C. Wright, Academic Planner in the University of Wisconsin, U.S.A., in her Research Paper on "Courts and universities - impact of litigation on University autonomy"[4] has succinctly summarised the sources of intrusion on university autonomy in India in these words:

> "Interference with the autonomy of universities in India has been studied from numerous angles. University's freedom is constrained by the legislation that creates them, by the governments that fund them, by professional associations that regulate accredition, by politicians who sit on policy-making bodies of universities, and by behaviour of university staff, faculty and students. These sources of intrusion are acknowledged parts of the environment in which the Indian University exists.

In addition to these sources, university autonomy increasingly is challenged in and constrained by the courts of law."

Judicial Intrusion?

Coming to the gravament of the subject you will appreciate that I have put a question mark against the sub-title "Judicial Intrusion". Such a question mark necessarily carries with it a disputed insinuation that Courts of law while dealing with university cases intrude on the academic autonomy of a university. As pointed out earlier, it cannot be disputed that university autonomy is time and again challenged in courts whose intervention on or interference is sought and the autonomy may get circumscribed as a result of courts' decisions. But to regard every intervention, interference or circumscription by the court in any academic matter/decision as an intrusion on the university's autonomy is to completely misunderstand the true role of courts in university cases.

Court's role in university cases:

At the outset, it has to be borne in mind that a university is a creation of some legislation and its internal management pertaining to administrative as well as academic matters is governed by the provisions of the parent legislation, the Statutes, Ordinances, Regulations, Rules and Contracts- all of which must again be consistent with our fundamental law, the Constitution of India; and the Court's primary function

is to hold the university and its authorities and bodies accountable to the Constitution, the concerned university Act and the other subordinate laws and contracts that apply to it. It is for the purpose of keeping a university and its authorities and bodies within their legal bounds and for redressing violations, if there be any, that Courts interfere in its affairs, administrative or academic. Moreover, unlike other outside agencies, Courts step in only when they are moved by somebody affected by some apprehended or accomplished violations, if, therefore, Courts in exercise of their legitimate function of keeping university authorities within their legal bounds and for redressing either apprehended or accomplished violations intervene or interfere in the academic matters/decisions, and that too at the instance of an aggrieved party, can such intervention or interference be really regarded as intrusion on the academic autonomy of the university? Quite obviously the answer must be in the negative.

Apart from substantive or procedural breaches of the parent legislation or subordinate laws or contracts governing the activities or affairs of a university which furnish a legitimate ground to Courts to intervene or interfere in academic matters/decisions, factors like a blatant deviation from any other law, infringement of a fundamental right, breach of principles of administrative law or of natural justice, abuse of or fraud on power and malafides which vitiate not merely administrative but even academic decisions, also justify Court's interference. If acting within the aforesaid parameters Courts intervene or interfere with university's decisions, albeit

purely academic, Courts can never be accused of having intruded on the academic autonomy of a university.

Areas of Litigation

It may be stated that the primary areas of litigation concerning a university are faculty appointments and promotions, admissions and examinations of student , disciplinary matters and administrative matters including representation on bodies like Boards, Courts or Councils. Elaborating on the motivation of university litigation Elizabeth C. Wright, in her aforementioned Research Paper, has observed: "Much litigation by teachers is a last effort to salvage a career or prestige and a livelihood; a college degree is a ticket to a better life which is worth litigating to preserve." It is but natural, therefore, that grievances, genuine or fanciful, of teacher-student community, occupying a pivotal position in higher education, should abound the law reports.

I would like to assert that in each one of the above areas of litigation concerning university cases, Courts have usually acted within the parameters mentioned above and that they have normally displayed an attitude of judicial deference to academic expertise by declining to interfere with academic decisions, unless the impugned decision fell foulof one or the other parameter. In fact in a large number of cases, Courts have declared it to be a well recognised principle that in academic matters concerning a university,

the court should not substitute its judgement for that of the academicians. A few illustrative cases may be mentioned.

In University of Mysore v/s. Govinda Rao,[5] where the appointment to the post of a Reader made by the Chancellor on the recommendation of a Board of Experts was called in question, the Court, out of a difference to the opinion and recommendation of the Board, declined to interfere and observed thus:

> "Boards of Appointments are nominated by the universities and when the recommendations made by them and the appointments following on them are challenged before Courts, normally Courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about malafides against the experts who constituted the present Board and so we think it would normally be wide and safe for the Courts to leave the decisions of academic matters to expert who are more familiar with the problems they face than the Courts generally can be."

In the case of Principal, Patna College v/s. K.S.Raman,[6] the question was whether the student had completed the regular course of study that had been prescribed in order to become eligible for being sent up to the university examination and that depended upon the proper construction of Regulation No. 4, and even with regard to such a question, the Supreme Court observed:-

> "Where the question involved is 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, and it would generally not be 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."

In other words, even when it was a question of law involving the interpretation of a rule or regulation and two constructions were reasonably possible, the Court leaned in favour of the construction placed on it by the academic body.

In Shudarshan Lal v/s. Allahabad University, (7) as the students had failed in the first year Bachelor of Science examination they were refused permission by the University to take the second year examination even though they had attended appropriate second year classes. The University's action was challenged, but the Court upheld it on the ground that the University authorities had the right to set the rules relating to examinations and conferring degrees. The Court took the view that unless the act complained of was clearly beyond jurisdiction or was clearly against the rules of natural justice, the Court would not interfere in such matters which related to the internal working of the University.

In Keshab Chandra v/s Inspector of Schools,[8] a case involving punishment for indiscipline, Chief Justice Malik of the Allahabad High Court put the matter on a higher pedestal thus:

> "To hold that the 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 their internal autonomy of educational institutions".

Numerous cases of indulgence in the use of unfair means and/or malpractices by students at examinations have come up before Courts and Courts have not interfered with university's action taken by way of cancellation of the examinations or the results unless a clear breach of some principle of natural justice was involved during the enquiry that affirmatively concluded the guilt of the concerned students. A typical case of mass copying came to be decided by the Calcutta High Court in Rajkumar Agarwala v/s. University of Calcutta[9]. In this case, the University cancelled the entire LL.B. examination due to mass copying by the examinees. The petitioners challenged the cancellation order on three grounds: (i) that they took no part in the mass copying, (ii) that they had been given no opportunity to defend their case, and (iii) that looking to their past records and extra-curricular activity, the order was arbitrary, malafide and against the principles

of natural justice. Justice Mukherjee first defined the phrase 'mass copying' to mean copying on such a large scale by a number of examinees that it was not possible to distinguish between those who had actually taken part in the activity from who had not, and looking to the nature of mass copying, held hat the cancellation of the examination who justified even though honest and bonafide students might be victims of such an action.

It will be interesting to mention that courts have taken a serious view and adopted a stiff attitude towards ragging which was rampant till recently, especially in medical and engineering colleges. It partakes the character of a group action and involves infliction of great physical as well as mental harm to the victim. In R. C. Thampan v/s. Medical College, Calicut,(10) the senior students of the college were suspended for varying terms for ragging of the first year M.B.B.S. students which included the use of filthy language, performing obscene acts and inflicting great physical and mental harm. The concerned students sought protection of the Court on the ground that the minimum requirement of natural justice had not been complied with. The Court rejected the plea observing that the norms of natural justice were not be encased in the straight jacket of any rigid rule or formula but must be tailored to suit the requirements of the situation and exigencies of the case; it found that witnesses had changed their statements at a later stage and some had not co-operated with the enquiry Committee at the second stage. Chief Justice

Gopalan Nambiar held that judging from the acts and circumstances obtaining in the case the minimum requirement of principles of natural justice was complied with. The High Court apparently followed the principle enunciated by the Supreme Court in Bagleshwar Prasad's case,[11] viz., in enquiries conducted by domestic tribunals or committees in academic disciplines, rules of natural justice are undoubtedly required to be followed, but it would be unreasonable to import into these enquiries all considerations which govern criminal trials in ordinary courts of law. These cases clearly demonstrate that Courts generally lean in favour of upholding the academic decisions.

On the question of Court's attitude showing deference to academic expertise it may be stated that the National Council of Educational Research and Training conducted a "Study in Trends in Judicial Review of Education" for the period from 1947 to 1964 and in its Report published in 1965 the authors of the Report have observed:

> "The law Courts have shown great restraint and unwillingness to interfere with the 'internal autonomy' or 'internal workings' of educational institutions. In matters connected with admission, examination and indiscipline of students an also in matters connected with other bodies of educational institutions such as elections 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 administrations....."

It may be stated that in support of their conclusion, the authors of the study have cited a number of cases decided by various High Courts in India. True, in the years that followed, the crop of university litigation has increased tremendously. But by and large the Courts have adhered to their attitude of showing deference to academic expertise in university cases.

Real Intrusion:

True, Courts interfere when the universities break the law, but Courts possess the power to decide what the law is and what constitutes its breach, and therefore, it is the Court's definition of its own role and delimits the university's autonomy. Real intrusion on university autonomy can arise if the Courts seek to interfere with academic decisions by exceeding or going beyond the permissible parameters of their action. It is well-known that hard cases make bad laws and some times out of sympathetic considerations and at times impressed by the justness of a cause in a given case and prompted by a keen desire to do justice in that case, judges accord a secondary place to the principle of showing deference to the academic experts. At times, even while honouring a university decision, Courts are not reluctant to make observations and/or recommendations to the university authorities as to what should have been done and what they might do to avoid similar problems in future; occasionally, even when no illegality in the academic decision is found, Courts recommend a course of action which they regard as the most reasonable one. Such observations and recommend-

ations which transcend the immediate parties to the dispute really constitute deferred intrusions on university autonomy. Strictly speaking, such observations or recommendations have no legal force, but since these emanate from high judicial authorities enjoying reputation for dispensing justice regardless of the litigants' status, they carry weight and universities are obliged to adjust their policies and course of action accordingly. In recent years in the name of judicial activism and transforming its powers into affirmative structuring of relief Courts. have started impinging on not merely the autonomy but even policy decisions of academic bodies. A couple of illustrative cases would suffice to bring home the point.

In Swapan Roy v/s. Khagendra Nath,[12] the Court found no illegality in the order passed against an errant student asking him to leave the college for undesirable agitational activities and consequently upheld the penal action. The Certificate of Transfer issued specified the reason and nature of activities for which action was taken. Counsel for the petitioning student urged that such Certificate would debar him from getting admission in any other college. whereupon Justice Bannerji tendered the following advice:

> "Scratch the green rind of a sapling repeatedly or wantonly twist it in the soil and a scarred or a crooked oak will tell of the act for years to come. So it is with the youngster, treat him unsympathetically or shut to his face all the doors of educational institutions and an uneducated or a half-educated youth may live

> a useless life to proclaim what men wantonly did by refusing him all opportuntities of college education. I can only hope that this will not happen to the petitioner when he seeks admission to another educational institution, with a genuine desire to read more."

Strongly worded observations like these are bound to affect future punishments which a college or university authorities may have an occasion to award.

In Meena v/s. Madras University,(13) the University had refused to give the student credit for examination scores because the college she attended was not recognised by the University. The student asked the Court to order the University to exercise its statutory discretion to make individual exception. The Court rejected the prayer while acknowledging the position that the University had the power to make exceptions. In other words, the Court declined to interfere with the University's discretion, nor did it remand the case to the University for reconsideration but made observations containing a recommendation that the University might reconsider its orders if it deemed fit to do so. The Court felt that it was a fit case for exercising the discretion in favour of the student since the student had not only undergone the full course but also appeared for the examination and was awaiting the results. Under such circumstances it becomes difficult for the University to ignore the Court's wishes.

It will be easily appreciated that fixation of student strength (in terms of seats) and any increase or decrease therein, particularly in engineering, medical or science colleges, are matters for policy decision to be taken by the academic and professional experts as these colleges require an expensive, elaborate infrastructure, adequate highly qualified staff and initial and recurring financial investment. Can a court of law which possesses least expertise int these matters in the name of judicial activism usurp the function of the academic and professional bodies and direct, by way of granting a bonus to the student community as it were, an increase of 30 additional seats straightaway in medical colleges? But this happened in State of Kerala v/s. T.T. Roshanna.(14).

In that case a scheme of the Kerala Government dealing with admissions to M.B.B.S. course in four colleges, three affiliated to Kerala University and one to Calicut University, was under challenge before the Supreme Court. The scheme *inter alia* provided that the seats available for M.B.B.S. course after deducting the seats for mandatory admission would be distributed among the students of the Universities of Kerala and Calicut itn the ratio of the candidates registered for the pre-degree and B.Sc. courses in the above Universities. The basis was the average number of students registered for the last three years. Justice Krishna Iyer declared such allocation bad on the ground that there was no nexus between the registered students strength and the seats to be allotted and that the scheme was discriminatory. After striking down

the scheme the Court felt that if nothing more by way of granting further relief was done, the authorities may have to face agitational choas. On the basis of certain calculations furnished by Counsel on both sides, the Court came to the conclusion that the Calicut University students who had been allotted under the Government formula (which was struck down) 136 seats were entitled to an extra 30 seats, and if these extra seats were assigned to the students emerging from Calicut University, an equal number would have been required to be reduced from out of the Kerala University quota since the total strength sanctioned for all the medical colleges fixed by the two Universities and approved by the Medical Council of India was 525 seats. But resorting to "the play of processual realism and moulding the relief in the given milieu" the Court ordered that for the current term 30 additional seats should be allocated to the University of Calicut without disturbing the quota of the Kerala University. While doing so, the Court realised (and gave expression to it) that it was changing the emphasis of the judicial review from umpiring to "affirmative structuring of redress so as to make it personally meaningful and socially relevant." It appears the two concerned Universities and the Medical Council of India who were summoned before the Court by issuing notices to them discreetly agreed to absorb such addition of 30 seats at some inconvenience. Undoubtedly in the student community, the judgement is hailed as an advance in processual justice. But a more glaring instance of intruding not merely on the autonomy but also on matters of policy of academic and professional bodies may not be found. Such remedial justice

in the name of judicial activism will always be fraught with and pose serious practical problems for autonomous bodies and, therefore, a cautious approach on the part of Courts would be desirable.