

Interference in Academic and Non-academic Expressions of Academicians as a Threat to Professional Immunity: A Legal Research Specially Focused on Bangladeshi Universities

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Abstract

It requires no reference all over the world to claim that where there is a duty, there is a right. But sometimes, exceptions are found unexpectedly. Though the concept of Intellectual Property Law is not very ancient in nature, but it covers a great part of rights of meritorious people over intangible assets. It has been observed by the researchers that some sorts of IP are yet overlooked by the lawmakers while making a focused area of IP. It has been found through analysis that the question of recognition of reflection of personal thoughts of a university teacher in a classroom is not irrelevant in Bangladesh perspective. And a mentionable number of unexpected events have been experienced like copying and publishing papers which could easily be called plagiarism if were done from a written research. The level of interference is so frustrating that some teachers even have been victimized physically and socially. Such humiliating harassment is expanded even up to police arrest. It has been found inconsistent that there are available examples of non-recognition of personal thought as IP, but abusing interpretations are available as to sufferings. This seems a threat to education system of Bangladesh as professional immunity is hampered in a mentionable manner in this process which is easily exercisable in other professions. This research bonafidely attempts to unveil some hidden issues and recommend a relevant solution.

Keywords: Academic Freedom, Academicians, University, Professional Immunity

1.0. Introduction

Though the need of time creates the urge of professionalism all over the world and the universities are not also exceptional, even then, it is apprehended that the facilities which other professionals enjoy, are not so frequent in the University teachers of Bangladesh. In the private universities, the concept of academic freedom for betterment of professionalism seems a myth. Even in the public universities, there are mentionable number of cases where academic freedom has been challenged in a frustrating manner. The authors think that “teaching” is the only profession which supervises all other professions all over the world. But, sorry to say, the question of dignity, the

question of security, the question of professionalism all are ignored in Bangladesh. While a judge gives his/her judicial decision, is being provided professional immunity, as judicial decisions can never be wrong, though can be changed over review-revision-appeal-second appeal etc. While a doctor makes an operation and cannot save the patient even after having proper caution, the law itself provides him/her professional immunity as it is necessary for professional safeguards. Such immunities are provided also for the lawyers, tailors, engineers, contractors, police, defence forces, executive organs of government etc. But, the teachers, who are the nurses of all such professions, are not being provided such immunity. Such ill treatment of a parent profession risks enough to create more disable professions in future, if only once the teachers decide to do so. This is the right time to stop ignoring and start taking care of academic freedom in Bangladesh.

1.1. Statement of Problem/ Sorts of Interference the Academicians Usually Face

- i. Sacking, suspension from job
- ii. Making official pressure
- iii. Social harrasment
- iv. State responsibility: Police arrest, remand, custodial torture
- v. Life threat, killing, extradition, driving away from country

2.0. Methodology

2.1. Research Approach

Though the proposed study is primarily qualitative in nature, both qualitative and quantitative approaches have been used for validity and reliability. In order to find out an adaptable legal solution as means of accelerating strategies comparative study has been held.

2.1.1. Sources of Data

Necessary data has been collected from both primary and secondary sources. The secondary data has been collected from relevant books, journal articles, research reports, official publications, thesis, dissertations etc. and primary data has been collected from judges, advocates, litigant peoples, members of law commissions, secretary of Law and Justice division of Ministry of Law and Parliamentary Affairs, relevant laws for disposal of civil cases and reports, monthly and yearly statements of the Supreme Court, Law Commission, Law Ministry and District Judge Courts.

2.1.2. Research Questions

In what perspective the current practice of professionalism of University teachers of Bangladesh is objectionable?

Is academic freedom totally absent, or partially challenged?

Is the law itself, or practices liable for the negative situation?

What sort of amendments are necessary?

Is legislative amendment sufficient to remove the problem from society?

2.2. Definition of Academic Freedom

Academic freedom is 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. The right to academic freedom is recognized in order to enable faculty members and students to carry on their roles. (Academic Freedom in e-dictionary)

Academic freedom is the belief that the freedom of inquiry by faculty members is essential to the mission of the academy and that scholars should have freedom to teach or communicate ideas or fact including those that are inconvenient to external political groups or to authorities without being targeted for repression job loss or imprisonment.

In the opinion of Mr. Justice Douglas, "when suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect." In *Sweezy vs New Hampshire* (Sweezy Vs New Hampshire case, 354. U.S. 234 1957, accessed on 12/12/2015), the decision reached by four concurring Justices turned in the end on a denial of due process through failure to show that the questions asked of a visiting lecturer at the University of New Hampshire about his lectures and party affiliations, during an official investigation, came within the authorized scope of the inquiry. The opinion of these four Justices, by Chief Justice Warren, expressed special concern over academic freedom. "The essentiality of freedom in the community of American universities is almost self-evident," he wrote: "No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. Here, "We believe that there unquestionably was an invasion of petitioner's liberties in the areas of academic freedom and political expression-areas in which government should be extremely reticent to tread." The same view was elaborated in a concurring opinion by Justices Frankfurter and Harlan, basing the decision on the freedom issue. As a result, in the later *Barenblatt* case (*Barenblatt V. United States* case, 360 U.S. 109 1959), the majority of the Court stated in an

opinion by Mr. Justice Harlan that, broadly viewed, inquiries cannot be made into the teaching that is pursued in any of our educational institutions. When academic teaching-freedom and its corollary learning freedom, so essential to the well-being of the Nation, are claimed, this Court will always be on the alert against intrusion by Congress into this constitutionally protected domain. In the eyes of the Court majority in this case, however, the coercive effect of investigations into communist associations and activities of students and teachers is outweighed by the public interest in discovering such conduct, where there is reason to suspect it. A broad scale disclosure of all organizational affiliations cannot, however, be required of teachers in public institutions.

2.3. Development of Academic Freedom

European universities began during the Middle Ages as self-constituted communities of scholars, whether teachers or learners. The institutions they founded came under the sponsorship of the medieval church and to some degree under its authority; and the faculties, of course, were composed largely of clerics. Before the eighteenth century the Roman church and in some areas its protestant successors exerted sporadic controls against which the universities or members of their faculties found it necessary at times to contend. Scholars outside of the universities, including early scientists, engaged in the same struggles, however, and the total story is one of the efforts of the human intellect to escape from bondage, rather than simply of university faculties and students to be free of external control. Within the universities, a considerable censorship by dominant groups, giving rise to internal controversies, prevailed for a long time. The boundaries to learning maintained by this censorship receded on the whole, even though vestiges remained for long. At Oxford and Cambridge religious tests and restrictions for students were not removed until the latter half of the nineteenth century. In the eighteenth and nineteenth centuries, the political state became the sponsoring authority for most universities throughout the world-although some under religious auspices remained and in the United States particularly independent private colleges and universities have continued to exist alongside the public ones. Instances of actual or attempted political interference with public institutions have continued to arise in various countries down to the present time.' In the United States, political control by state governments remains a danger which assumes reality under demagogic governors from time to time," despite the generally good record of the states in relation to the colleges and universities they maintain. In Europe dictatorships of several varieties have supplied object-lessons of the extent to which political control can regiment and distort intellectual endeavor even while stimulating the development of learning along selected lines.' In some other countries, political influence may play a significant although immeasurable role in the

appointment of staff members. There is a genuine interaction between academic freedom and healthy political democracy, causing each to strengthen the other. It would be too much to say, however, that the former is wholly dependent upon the latter; for given enlightenment on the part of an autocratic government, academic freedom in a genuine sense may coexist with it, as it did in nineteenth century Germany.' It was, indeed, in nineteenth century Germany that the modern conception of academic freedom came to be formulated. The idea of the university as a place where scholars are to pursue truth, as well as to formulate and transmit it to students, who at the same time learn to pursue truth for themselves, came to be dominant there. Especially in an age of science, knowledge grows as individuals ferret it out; and the free interplay of ideas is the means of purifying it. Intellectual discipline over the members of the university community is excluded, lest it distort their search. Attracted by this conception and its results, distinguished young scholars from abroad, especially from the United States, went to the German universities in numbers. There they were imbued with the conception, an enlargement of which has since been dominant in this country. Professor Friedrich Paulsen of the University of Berlin formulated systematically in 1902, in his book on *The German Universities and University Study*, the conception of academic freedom which had arisen in his country during the preceding decades. "It is no longer, as formerly," he wrote, "the function of the university teacher to hand down a body of truth established by authorities, but to search after scientific knowledge by investigation, and to teach his hearers to do the same. ...For the academic teacher and his hearers there can be no prescribed and no proscribed thoughts. There is only one rule for instruction: to justify the truth of one's teaching by reason and the facts. Paulsen, however, introduced a qualification. The professor of philosophy must be absolutely free; but the professor of theology "must assume a positive relation to religion and the church in general," and the professor of political and social science in a state institution must do so toward "the people and the state." The professor "who can find absolutely no reason in the state and in law, who, as a theoretical anarchist, denies the necessity of a state and legal order ... may try to prove his theory by means of as many good arguments as he can, but he has no call to teach the political sciences at a state institution." The state, for example, is not bound to tolerate adherence to the "principles of the social-democracy" on the part of professors of political science. To permit such theories to be taught would indicate that "the authorities regarded the lectures of professors as harmless and insignificant. So long as the state takes the universities seriously, such a form of political science as has been described will be impossible in its institutions of learning." Paulsen also expressed the view that political partisanship on the part of a faculty member is a disqualification, notwithstanding the fact that professors may be

"men of noble discontent" who sow "the thoughts for future acts." The things which universities "are called upon to cultivate transcend the boundaries of countries and nations. The German universities dwell in their own world, outside of politics, and their highest achievements are in science." Hence the professors, "the representatives of science, should not engage in politics, but should reflect upon the state and the law." Academic freedom, in other words, is internal to institutions of higher education, and does not apply to external activities of academic personnel. The conception of academic freedom which is dominant in American colleges and universities and in other countries today has discarded the limitations that remained in nineteenth century Germany. It accepts, rather, another statement of Paulsen's that "a people," who establish and maintain a university, cannot as such have an interest in the preservation of false conceptions. Its ability to live depends in no small measure upon its doing that which is necessary from a proper knowledge of actual conditions. And hence the people and the state ...can have no desire to place obstacles in the way of an honest search for truth in the field of politics and social science, either by forbidding or favoring certain views. It follows that a society will be strengthened by permitting honest condemnation as well as defense of the state in institutions of higher learning, whether publicly or privately maintained. As to participation by professors in politics, specialization and attention to duty will ordinarily keep the faculty member from an active role; but he cannot be barred from testing his views or gathering data in action, or from urging his conclusions in the world of affairs, whether relevant to his academic subject or not, by joining organizations or by other means. In addition to "full freedom" in research and publication and "freedom in the classroom in discussing his subject," the faculty member in any field of study, speaking or writing as a citizen, "should be free from institutional censorship or discipline. (Robert P. Ludlum, *Academic Freedom and Tenure: A History: The Antioch Review*, Vol. 10, No.1)

2.4. Academic Freedom in United State

The conception of academic freedom which is dominant in colleges and universities in the United States today rests mainly on three foundations:

- a. The philosophy of intellectual freedom, which originated in Greece, arose again in Europe, especially under the impact of the Renaissance, and came to maturity in the Age of Reason;
- b. The idea of autonomy for communities of scholars, which arose in the universities of Europe.
- c. The freedoms guaranteed by the Bill of Rights of the federal constitution as elaborated by the courts. Here institutional integrity and individual self-direction both stand in need of

protection-not from hostile action but from temptation.' Notwithstanding the increasingly broad reach of academic freedom and the current emphasis on the essentiality of autonomy for academic institutions, the freedom of individual faculty members against control of thought or utterance from either within or without the employing institutions remains the core of the matter. If this freedom exists and reasonably adequate academic administration and methods of faculty selection prevail, intellectual interchange and pursuit of knowledge are secured. A substantial degree of institutional autonomy is both a usual prerequisite and a normal consequence of such a state of affairs. Student freedom will follow unless, indeed, individual faculty members or departmental, are permitted to tyrannize over particular students, as occasionally happens. Hence the main concern over developing and maintaining academic freedom in this country has focused upon encouragement and protection of the freedom of the faculty member. Institutional autonomy, constitutional freedoms, and the basic ideology of intellectual freedom have been invoked mainly to this end. Academic freedom is generally taken as the notion of academic freedom defined by the "1940 Statement of Principles on Academic Freedom and tenure ", jointly authored by the American Association of University Professors and the Association of American College. These principles state that, "Teachers are entitled to freedom in the classroom in discussing their subject."

The statement also permits institutions to impose "limitation of academic freedom because of religious or other aims," so on as they are "clearly stated in writing at the time of the appointment." The principles have only the character of private pronouncement, not that of binding law.

2.5. Academic Expression in UK

Academics at the universities of Oxford and Cambridge enjoy far more freedom to participate in - and criticize - their governance than academics at most other UK institutions.

It is a model of self-governance that some such as Terence Karran, who studies issues of academic freedom, would like to see adopted more widely. Given that Harvard University has a similar model, perhaps it is actually part of the fabric of what makes a world-beating institution, he contends.

As established by their own 1923 Act of Parliament, the universities' supreme governing bodies are their Congregation (Oxford) and Regent House (Cambridge). Each consists of all of their 4,000 or so permanent academic staff. And each act almost like a mini-parliament, giving scholars both the capacity to speak truth to power and to democratically stop their administrations dead in

their tracks if they don't like what they are doing. Of course, the bodies are not involved in the day-to-day administration - mostly their approvals are just a rubber-stamp process. But if they desire, academics can speak their minds and flex their muscles.

Imagine standing up in public to your deputy vice-chancellor as a matter of routine and without an ounce of fear and saying the following, as Andrew Aitchinson, a young computer officer in the department of pure mathematics and mathematical statistics at the University of Cambridge, did in November last year. His comments were part of a four-hour debate on proposed changes to weaken disciplinary, dismissal and grievance procedures (so-called Statute U) and which Cambridge's administration and its Regent House are currently locked in battle over.

"Mr Deputy Vice-Chancellor," he began, after stating his name and his department. "I can't tell you what I really feel about the report, since I am unwilling to use what Westminster calls 'unparliamentarily language'. (But) I believe that this proposal, if enacted, will make the university a less good employer, put an unproductive division between academic and academic-related staff, and dilute our academic freedom, so I wanted to be able to stand here and tell you how to make the proposal work better for the interests of the university. I struggled for ages; in the end the best improvement came to me: drop the proposal and stick with what we already have."

Terry Hoad is vice-president of the University and College Union and an Oxford academic. "Ultimately, we do have this power, which is very precious to us. We are not the worst off (when it comes to academic freedom in UK institutions), but we are not immune from the creeping threat either."

2.6. Academic Freedom in France

Professors at public French universities and researchers in public research laboratories are expected, as are all civil servants, to behave in a neutral manner and to not favor any particular political or religious point of view during the course of their duties. However, the academic freedom of university professors is fundamental principle recognized by the laws of the Republic, as defined by the Constitutional Council; furthermore, statute law declares about higher education that "researchers and teachers are fully independent and enjoy full freedom of speech in the course of their research and teaching activities, provided they respect, following university traditions and the dispositions of this code, principles of tolerance and objectivity". The nomination and promotion of professors is largely done through a process of peer review rather than through normal administrative procedures.

2.7. In Germany

The German Constitution (German: Grundgesetz) specifically grants academic freedom: "Art and science, research and teaching are free. Freedom of teaching does not absolve from loyalty to the constitution" (Art. 5, para. 3). In a tradition reaching back to the 19th century, jurisdiction has understood this right as one to teach (Lehrfreiheit), study (Lernfreiheit), and conduct research (Freiheit der Wissenschaft) freely, although the last concept has sometimes been taken as a cover term for the first two. Lehrfreiheit embraces the right of professors to determine the content of their lectures and to publish the results of their research without prior approval. Since professors through their Habilitation receive the right to teach (Latin: *venia docendi*) in a particular academic field, academic freedom is deemed to cover at least the entirety of this field. Lernfreiheit means a student's right to determine an individual course of study. Finally, Freiheit der Wissenschaft permits academic self-governance and grants the university control of its internal affairs. Through the introduction of disciplinary curricula, Lernfreiheit has become a rather empty concept.

2.8. In Philippines

The 1987 Philippine Constitution states that, "Academic Freedom shall be enjoyed in all institutions of higher learning." Philippine jurisprudence and courts of law, including the Philippine Supreme Court tend to reflexively defer to the institutional autonomy of higher institutions of learning in determining academic decisions with respect to the outcomes of individual cases filed in the courts regarding the abuse of Academic Freedom by professors, despite the individual merits or demerits of any cases. A closely watched case was the controversial case of University of the Philippines at Diliman Sociology Professor Sarah Raymundo who was not granted tenure due to an appeal by the minority dissenting vote within the faculty of the Sociology Department. This decision was sustained upon appeal by the dissenting faculty and Professor Raymundo to the University of the Philippines at Diliman Chancellor Sergio S. Cao; and though the case was elevated to University of the Philippines System President Emerlinda R. Roman, Roman denied the appeal which was elevated by Professor Raymundo to the University's Board of Regents for decision and the BOR granted her request for tenure. A major bone of contention among the supporters of Professor Raymundo was not to question the institutional Academic Freedom of the Department in not granting her tenure, but in asking for transparency in how the Academic Freedom of the department was exercised, in keeping with traditions within the University of the Philippines in providing a basis that may be subject to peer review, for Academic decisions made under the mantle of Academic Freedom.

2.9. In South Africa

Section 16 of the 1996 Constitution of South Africa offers specific protection to academic freedom. However,

there have been a large number of scandals around the restriction of academic freedom at a number of universities with particular concern being expressed at the situation at the University of KwaZulu-Natal.

2.10. Sources of Academic Freedom

As there is no specific law regarding academic freedom and it is not included within the arena of intellectual property law, we may mention some indirect sources of academic freedom such as:

2.10.1. Constitutional Law

Though academic freedom is not directly mentioned in the Constitution of Peoples Republic of Bangladesh, article 39 protects freedom of expression as fundamental right subject to any reasonable restrictions imposed by law in the interests of the security of the state, friendly relation with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. According to article 44 and 102 this right is enforceable by the court. Article 17 mentioned right to free and compulsory education as fundamental Principle of state policy. For the purpose of establishing universal system of education academic freedom is *sine qua non*. (The Constitution of the People's Republic of Bangladesh)

2.10.2. Human Rights

Academic freedom can be asserted as a human right in two ways. One is to defend it as a human right to free expression; the other is to defend it as a human right to education. Freedom of opinion and expression are protected as human right by article 19 of the International Covenant on Civil and Political Rights, a treaty ratified by most of the countries, including Bangladesh. The right to education is guaranteed by article 13 of the International Covenant on Economic, Social and Cultural Rights which Bangladesh has ratified (International Covenant on Civil and Political Rights, 1966).

2.10.3. Contractual Rights

Internal sources of contractual obligations may include institutional rules and regulations, letters of appointment, faculty handbooks, and, where applicable, collective bargaining agreements. Academic freedom rights are often explicitly incorporated into faculty handbooks, which are sometimes held to be legally binding contracts.

2.10.4. Academic Custom and Usage

Academic freedom is also protected as part of "academic custom" or "academic common law."

2.10.5. Judicial Decision

Article 111 of the constitution of Bangladesh declares that the judgment of higher courts shall be binding on the lower courts. In this way, judicial decision may be a source of academic freedom. (The Constitution of the People's Republic of Bangladesh)

2.10.6. Specific Cases

While some controversies of academic freedom are reflected in proposed laws that would affect large numbers of students through entire regions, many cases involve individual academicians that express unpopular opinions or share politically unfavorable information. These individual cases may receive widespread attention and periodically test the limits of, and support for, academic freedom.

The Bassett Affair at Duke University in North Carolina in the early 20th century was an important event in the history of academic freedom (Exhibits).

In October 1903, Professor John Spencer Bassett publicly praised Booker T. Washington and drew attention to the racism and white supremacist behavior of the Democratic Party, to the disgust of powerful white Southerners. Many media reports castigated Bassett, and many major newspapers published opinion pieces attacking him and demanding his termination. On December 1, 1903, the entire faculty of the college threatened to resign en masse if the board gave into political pressures and asked Bassett to resign (Exhibits).

President Teddy Roosevelt later praised Bassett for his willingness to express the truth as he saw it. In 1929, experimental psychology Professor Max Friedrich Meyer and sociology assistant Professor Harmon O. De Graff were dismissed from their positions at the University of Missouri for advising student Orval Hobart Mowrer regarding distribution of a questionnaire which inquired about attitudes towards divorce, "living together", and sex. (Nelson, Lawrence J. 2003. Rumors of Indiscretion: The University of Missouri "Sex Questionnaire" Scandal in the Jazz Age.) The university was subsequently censured by the American Association of University Professors in an early case regarding academic freedom due a tenured professor. (A.J. Carlson February 1930. "Report on the Dismissal of Professor De Graff and the Suspension of Professor Meyer). In a famous case investigated by the American Association of University Professors, President Hamilton Holt of Rollins College in March 1933 fired John Andrew Rice, an atheist scholar and unorthodox

teacher, whom Holt had hired, along with three other "golden personalities" (as Holt called them), in his push to put Rollins on the cutting edge of innovative education. Holt then required all professors to make a "loyalty pledge" to keep their jobs. The American Association of University Professors censured Rollins. Rice and the three other golden personalities, all of them dismissed for refusing to make the loyalty pledge, founded the innovative Black Mountain College. (Mary Seymour, "The Ghosts of Rollins and Other Skeletons in the Closet", Rollins)

In 1978, Nobel Prize-winner William Shockley was concerned about relatively high reproductive rates among people of African descent, because he believed that genetics doomed black people to be intellectually inferior to white people. He stated that he believed his work on race to be more important than his work leading to the Nobel Prize (William B. Shockley, 79, Creator of Transistor and Theory on Race).

He was strongly criticized for this stand, which raised some concerns about whether criticism of unpopular views of racial differences suppressed academic freedom. (Kilgore, William J.; Sullivan, Barbara 1975). In the aftermath of the September 11, 2001 attacks, some public statements made by some university faculty were criticized. Most prominent among these were these comments made in January 2005 by University of Colorado professor Ward Churchill. He published an essay in which he asserted that the attack on the United States, while unjustified, was provoked by American foreign policy. On news and talk programs, he was criticized for describing the World Trade Center victims as "little Eichmanns", a reference to Hannah Arendt's Eichmann in Jerusalem. The university fired Churchill in 2007 for research misconduct, and despite initially winning US \$1 in damages from a jury, Churchill ultimately lost his wrongful termination lawsuit on appeal. (Paulson, Steven K., September 10, 2012). At the beginning of the 21st century, Lawrence Summers, while president of Harvard University, led a discussion that was intended to identify the reasons why fewer women chose to study science and mathematics at advanced levels. He suggested that the possibility of intrinsic gender differences in terms of talent for science and mathematics should be explored. He became the target of considerable public backlash ("Summers' remarks on women draw fire").

His critics were, in turn, accused of attempting to suppress academic freedom. (Stephan Thernstrom, George Mason University). The 2006 scandal in which several members of the Duke Lacrosse team were falsely accused of rape raised serious criticisms against exploitation of academic freedom by the university and its faculty to press judgment and deny due process to the three players accused. In 2006 trade union leader and sociologist Fazel Khan was fired from the University of

KwaZulu-Natal in Durban, South Africa after taking a leadership role in a strike. (Fight for Fazel Khan – An archive of documents on the dismissal of Fazel Khan)

In 2008 international concern was also expressed at attempts to discipline two other academics at the same university –Nithiya Chetty and John van der Berg – for expressing concern about academic freedom at the university. (Letter from foreign academics to Mac Mia, Chair of Council, and Malegapuru Makgoba, Vice Chancellor Letter from David William Cohen and 35 others). J. Michael Bailey wrote a popular science style book, *The Man Who Would Be Queen*, which promotes Ray Blanchard's theory that trans women are motivated by sexuality, and dismisses the "woman trapped in a man's body" concept of trans sexuality. Blanchard's theory divides trans women into two groups: autogynephilics and homosexual transsexuals according to their sexual orientation. In an effort to discredit his book, some trans activists filed formal complaints with Northwestern University accusing Bailey of conducting regulated human research by talking informally to trans women without first obtaining written proof of informed consent. They also filed a complaint with Illinois state regulators, requesting that they investigate Bailey for practicing psychology without a license. Bailey, who was not licensed to practice clinical psychology in Illinois, had provided some trans women with free case evaluation letters, saying that he believed they were good candidates for sex-reassignment surgery. Regulators dismissed the complaint. Andrea James, a Los Angeles-based transgender activist, posted photographs of Bailey's children, taken when they were in middle and elementary school, with sexually explicit captions that she provided. (Carey, Benedict, 21 August 2007, "Criticism of a Gender Theory, and a Scientist Under Siege.")

Thio Li-ann withdrew from an appointment at New York University School of Law after controversy erupted about some anti-gay remarks she had made, prompting a discussion of academic freedom within the law school. ("Rights for some people". *Inside Higher Ed.* 8 June 2009). In 2009 the University of California at Santa Barbara charged William I. Robinson with anti-Semitism after he circulated an email to his class containing more than two dozen photographs of Jewish victims of the Nazis, including those of dead children, juxtaposed with nearly identical images from the Gaza Strip. It also included an article critical of Israel's treatment of the Palestinians and a note from Robinson stating "Gaza is Israel's Warsaw -- a vast concentration camp that confined and blockaded Palestinians," the professor wrote. "We are witness to a slow-motion process of genocide" (Helfand, Duke, 30 April 2009; "Professor's comparison of Israelis to Nazis stirs furor"; *Los Angeles Times*). The charges were dropped after a worldwide campaign against the management of the university.

9 SPME statement on the disposition of the case of William Robinson at UCSB, SPME Board of Directors, June 29, 2009. The University of the Philippines at Diliman affair where controversy erupted after Professor Gerardo A. Agulto of the College of Business Administration was sued by MBA graduate student Chanda R. Shahani for a nominal amount in damages for failing him several times in the Strategic Management portion of the Comprehensive Examination. Agulto refused to give a detailed basis for his grades and instead invoked Academic Freedom while Shahani argued in court that Academic Freedom could not be invoked without a rational basis in grading a student ("DILIMAN DIARY").

During the interwar years (cir. 1919-1939) Canadian academics were informally expected to be apolitical, lest they bring trouble to their respective universities who, at the time, were very much dependent upon provincial government grants. As well, many Canadian academics of the time considered their position to be remote from the world of politics and felt they had no place getting involved in political issues. However, with the increase of socialist activity in Canada during the Great Depression, due to the rise of social gospel ideology, some left-wing academics began taking active part in contemporary political issues outside of the university. Thus, individuals such as Frank H. Underhill at the University of Toronto and other members or affiliates with the League for Social Reconstruction or the socialist movement in Canada who held academic positions began to find themselves in precarious positions with their university employers. Frank H. Underhill, for example, faced criticism from within and without academia and near expulsion from his university position for his public political comments and his involvement with the League for Social Reconstruction and the Co-Operative Commonwealth Federation. (Horn, Michiel, "Professors in the Public Eye: Canadian Universities, Academic Freedom, and the League for Social Reconstruction." *History of Education Quarterly*.)

According to Michiel Horn this era marked, "...a relaxation of the unwritten controls under which many Canadian professors had previously worked. The nature of the institutions, natural caution and professional pre-occupation had before the Depression inhibited the professoriate. None of these conditions changed quickly, but even at the provincial universities there were brave souls in the 1930s who claimed, with varying success, the right publicly to discuss controversial subjects and express opinions about them." (Horn, Michiel, "Professors in the Public Eye: Canadian Universities, Academic Freedom, and the League for Social Reconstruction" *History of Education Quarterly*.)

3.0. Case Studies

In *Rajib Hasnat Shakil vs State*, u/s 16(2) of The Special Powers Act, 1974, one Mr. Ahmad

Anwar, lodged an FIR alleging that on 03/07/2014, at 11.05 AM, he came to know through a secret source that there was an agitation among teachers and students at Northern University Bangladesh (NUB), Khulna campus. With the permission of the OC he went to the place of occurrence. There he heard from the people that on 26/01/2014 at 02.30 PM, the accused Rajib Hasnat Shakil (an Assistant Professor of Department of Law, NUB) commented objectionably regarding honorable president, honorable PM and the father of the nation Bangabandhu Sheikh Mujibur Rahman in classroom. Students informed the matter to the campus in charge, Professor Dr. Anwarul Karim. Accompanying with three or four other teachers, the accused Assistant Professor called the father of the nation as "FERAUN" (A tyrant ruler during the period of Musa Ah., the prophet), honorable PM Sheikh Hasina as "NASTIK" (Atheist), honorable president as "BAT TALAR UKIL" (In BD, the less qualified advocates are satire with such name). From 26/01/2014 to 03/07/2014 they criticized trial of war criminals, state, present govt. which harmed the image of Bangladesh abroad.

The accused was arrested on 03/07/2014 from the place of occurrence (NUB, Khulna Campus). His bail prayer was rejected on 07/07/2014. On the same day, police submitted FRT (the occurrence has been committed, but the accused was not involved). Now, this case is under investigation by CID (Rajib Hasnat Shakil VS State, u/s 16(2) of The Special Powers Act, 1974).

Professor Syedur Rahman Khan VS Bangladesh, M.G.R.-738/07 u/r 3(4) - {3} & 8(2) of Joruri Kshomota Bidhimala, 2007.

During the emergencies of 2007, there was a clash between armies and students of Dhaka University. The clash was followed by student revolution all over the country and unpredictable rush took place at Rajshahi and other Universities. Some teachers gave their speeches towards the students on their own ethics. On 24 August, the joint forces hauled in Dhaka University Teachers Association (DUTA) General Secretary Professor Anwar Hossain and Social Science Dean Prof. Harun-or-Rashid at about 12:30 a.m. from their campus residences on the Fuller Road. In Rajshahi, Prof. Saidur Rahman Khan, Prof. Abdus Sobhan and Mology Kumar Bhowmik were arrested. Later, the names of Dulal Chandra Biswas, Sayed Selim Reza Newton, and Abdullah Al Mamun were included among the condemned. On 16 September Prof. Sadrul Amin and on 17 September Prof. Neem Chandra Bhoumik, both DU academicians, surrendered to the court and the court sent them to jail. Later, police remand was given to them. Even it was claimed that the teachers have been victim of custodial torture during remand. Though all the teachers are bailed, but the cases are not dismissed yet. (Sajib Bala, Student Demonstration: The Case Study of 2007 Demonstration in Dhaka University, Bangladesh)

4.0. Negativity in Over Freedom

In the case of Md. Abdul Mannan Bhuiyan vs. University of Rajshahi & Others. 25 BLD (2005) (HCD) 138, the petitioner was a student of Rajshahi University. Being aggrieved of the arbitrary marking decision of two examiners of Department of Law & Justice, filed a writ petition where respondent was the Rajshahi University. Here, Rajshahi University was directed to re-examine the examination paper of Md. Abdul Mannan Bhuiyan. It was the 13th Paper of LLB (Hons.) Part-IV of 1999. Direction was further given to re-examine the paper impartially, in accordance with relevant provisions of re-examination and in accordance with law. Finally, in 2004, the petitioner got the verdict of the High Court Division directing the University of Rajshahi to provide new result of First class instead of Second class and punishing the teachers with fine as well as prohibition of participation in exam related duties. (25 BLD 2005 HCD 138)

5.0. Recommendation

- a. Academic expressions should be included within the definition of intellectual property.
- b. Specific law is needed to protect academic freedom and fix limitations for exercising this right.
- c. Job security for academicians must be ensured in case of academic expression and research.
- d. The financial, social, professional academic environment should be reviewed with a positive focus to upgrade for the academicians.
- e. The Government should read the relevant laws thoroughly and take the criticism of researchers with a positive view.

6.0. Conclusion

The researchers strongly believe that academic freedom is must to upgrade professionalism of Bangladeshi academicians. This is also believed that, such professionalism shall result positively not only to the academicians, but also to all other professionals, as teaching plays a guardian role over the other professions.

References

- "Academic Values and the Jensen-Shockley Controversy". Journal of General Education.
- "Exhibits". Retrieved 3 May 2015.
- "Rights for some people". Inside Higher Ed. 8 June 2009. Retrieved 11 June 2009.
- "Summers' remarks on women draw fire". Boston.com. Retrieved 3 May 2015.

Barenblat V. United States. 360 U.S. 109 (1959) available at

<https://supreme.justia.com/cases/federal/us/360/109/case.html> accessed on 08/01/2016

Carey, B. (21 August 2007) Criticism of a Gender Theory, and a Scientist Under Siege, *The New York Times*.

Carlson, A.J. (1930) Report on the Dismissal of Professor De Graff and the Suspension of Professor Meyer, *Bulletin of the American Association of University Professors*, XVI (2): 2–35. doi: 10.2307/40218216.

Dana L. C. (April 30, 2009) The McCarthyism That Horowitz Built: The Cases of Margo Ramlal Nankoe, William Robinson, Nagesh Rao and Loretta Cape heart, *Counter Punch*.

Dredger A.D. (June 2008) The controversy surrounding "The man who would be queen": a case history of the politics of science, identity, and sex in the Internet age, *Arch Sex Behave* 37 (3): 366–421. doi: 10.1007/s10508-007-9301-1. PMC 3170124 .PMID 18431641.

Fight for Fazel Khan – An archive of documents on the dismissal of Fazel Khan

Helfand, Duke (30 April 2009). "Professor's comparison of Israelis to Nazis stirs furor". *Los Angeles Times*.

<http://www.yourdictionary.com/academic-freedom>, accessed on 15/11/2015

International Covenant on Civil and Political Rights, 1966

Kilgore, William J.; Sullivan, Barbara (1975).

Letter from foreign academics to Mac Mia, Chair of Council, and Malegapuru Makgoba, Vice Chancellor Letter from David William Cohen and 35 others

Mary Seymour, "The Ghosts of Rollins (and Other Skeletons in the Closet)", *Rollins Magazine*, fall 2011, available at

<http://www.rollins.edu/magazine/fall2011/ghostsofrollins2.html><http://www.jstor.org/stable/40218822>

Nelson, L.J. (2003) *Rumors of Indiscretion: The University of Missouri "Sex Questionnaire" Scandal in the Jazz Age*. Columbia, MO: University of Missouri Press. ISBN 0-8262-1449-5

Paulson, Steven K. (September 10, 2012). "Ward Churchill loses appeal to win back CU job".

Denver Post Retrieved 2012-09-10.

Robert P. Ludlum, *Academic Freedom and Tenure: A History*: *The Antioch Review*, Vol. 10, No. 1

(Spring, 1950), pp. 3-34 Published by: Antioch Review Inc. DOI: 10.2307/4609390 available at

<http://www.jstor.org/stable/4609390>

Stephan Thernstrom. "In Defense of Academic Freedom at Harvard". History News Network, George Mason University.

Sweezy Vs New Hampshire. 354. U.S. 234 (1957) available at

<https://supreme.justia.com/cases/federal/us/354/234/case.html> accessed on 12/12/2015

Tay Shi'an (22 July 2009). "She's not against gay people, just against gay agenda. The New Paper, Retrieved 24 July 2009.

The Constitution of the People's Republic of Bangladesh.

William B. Shockley, 79, Creator of Transistor and Theory on Race.