

Application of Tort law in Bangladesh And its Future

Forhad Hossain

LLB, LL.M, Bangladesh; LL.M (Int. Law) (thesis) (2 years), New Delhi, India. Fellow, Commonwealth Future Leadership program (UK).

Lecturer , Department of Law and Human Rights.

University of Asia Pacific (UAP).

Advocate , Dhaka Bar Association.

Email: forhad@uap-bd.edu

Application of Tort Law in Bangladesh

Our constitution have kept a window open under Article 102 in a limited extent for the aggrieved party to seek remedy from the Honourable HCD of the supreme court. Recently few decision of the HCD has made clear that application in tort law in Bangladesh is quite important.

In a reported case of Green line Bus where the AD upheld the orders of the High Court Division directing the bus company to pay 50 Lakhs Tk as compensation to Russell who lost his leg being hit by a Green line bus paribahan. Here the principle applied was Vicarious liability principle where the owner of the bus also held liable for the act of the employer.

In Bangladesh, important laws under which legal action for tortious acts lies are

- **Fatal Accident Act, 1885-** The Act which provides remedies to family of that person who's death is caused by a wrong of another person.
- **The Code Of Civil Procedure, 1908** - This code regulates proceedings in civil cases. Section 91 of the code provides that in cases of public nuisance or other wrongful act affecting the public. Tort law can be enforced under the Code Of Civil Procedure, 1908 under section 9 and 151 of the Code of Civil Procedure.
- **Penal Code, 1860:** In this code there is a lot of provisions which can be enforced by Tort law Example: Section 44 of the Penal Code, 1860 which describes “Injury”. Section 268 which describes guilty of a public nuisance. Section 499 which describes defamation and there are many other relevant sections which enforces tort law.
- **Transfer of Property Act, 1882:** Under this Act, the Sections 67 and 106 of the Transfer Of Property Act, 1882 law of Torts Can be applied. In the case of **Hasina Vs Haji Md. Ekramul Hoque** where two section s of Transfer Of Property was applied. The plaintiff had also the option for claiming torts in that case.
- **Constitution:** Under Article 37, 38, 44 and 102 of the Constitution of the People's Republic of Bangladesh law of torts can be applied easily. We can also apply tort law by following public interest litigation under Article 102 of the constitution of the People's Republic Of Bangladesh

Situation where we can enforce Tort Law in Bangladesh

- a) **Road Accidents-** Road accidents are the major issue to concern. Most of the accidents happen because of the negligence of the driver and unfit vehicles running in the road. In those cases the driver or the owner are exempted from the liability. So by applying the tort law, victim can be compensated by the defendant.
- **Unlawful arrest-** Clause 1 of Article 33 of the Constitution of the People's Republic of Bangladesh states that no person who is arrested shall be detained in custody without being informed, in clause 2 of Article 33 states that every person who is arrested and detained shall be produce before the nearest magistrate court within 24 hours of arrest. We can prevent the unlawful arrest by applying the law of torts.
- c) **Hartal and Blockades-** In Hartal and Blockades many wrongful confinement happens. In our country there is no such law which can prevent us from wrongful confinement. So we can claim for tort law where any wrongful confinement happens.

Situation where we can enforce Tort Law in Bangladesh

- **d) The Workmen Compensation Act, 1991-** A workmen's death resulting in the course of employment out of course of employment. But this act is not implemented properly. So applying tort laws the compensation can be recovered.
- **e) Consumer's Right-** The purpose of the Consumer's Right Production Act 2009 is to define standards and to formulate procedures to promote Consumers right and interest. But we can see that this act failed to develop the prevailing system. So, by improving tort laws, we can improve the existing system.
- **f) Wrong done by bureaucrats and Autonomous bodies:** As per law of Bangladesh, nobody has the right to injure others intentionally or innocently. However, nowadays people are getting injured by the wrongful act of the bureaucracy and their instrumentalities. By enforcing tort laws, people can get rid by the bureaucrats and autonomous bodies.
- **g) Gas leaking Incidents:** In Bangladesh, people suffer because of gas leak. Bangladesh people suffers many problems because of gas leak several times. In 2006 incident took place because of the gas leak in Tangail company named Naiko (Canadian gas exploration company). The victim of this incident could claim for Tort. To reduce this kind of incident the implementation of tort law is essential for our country.

- **1. Increased Awareness and Legal Reforms**

As awareness about individual rights and remedies for wrongs continues to grow, more citizens may seek legal redress through tort actions. The courts will likely see a rise in personal injury claims, defamation cases, and other torts related to negligence and breach of duty. This could push for reforms to streamline and modernize tort law in line with contemporary needs, such as the inclusion of digital and online defamation.

- **2. Adaptation to Technological Advancements**

With the increasing use of technology, new challenges in tort law may emerge, particularly regarding cybercrimes, online defamation, and data privacy breaches. There will likely be a need for the tort law to address issues related to technology, such as liability for AI-driven decisions, social media defamation, and the responsibilities of tech companies in protecting user data.

- **3. Environmental Protection**

As environmental awareness grows, tort law in Bangladesh may begin to incorporate more robust provisions related to environmental protection. This includes claims related to pollution, resource depletion, and climate change, where individuals or communities can seek compensation for damages caused by businesses or individuals failing to uphold environmental standards.

Future of Tort law

- **4. Judicial Activism and Expansion of Tort Rights**

Bangladesh's judiciary has increasingly taken an active role in shaping the law. Courts may expand the scope of tort law to address emerging issues such as discrimination, consumer protection, and medical malpractice, providing greater avenues for individuals to seek justice.

- **5. Alignment with International Standards**

To keep pace with global legal trends, Bangladesh may align its tort laws with international standards, especially in areas such as human rights violations, wrongful deaths, and corporate negligence. This alignment could also foster better legal cooperation and foreign investments.

- **6. Consumer Protection and Corporate Accountability**

As consumer protection laws gain importance, tort law may develop stronger mechanisms to hold businesses accountable for harm caused to consumers. This could include stricter regulations around product safety, advertising, and corporate negligence, making it easier for consumers to seek damages.

- **7. Compensation and Damages**

The issue of compensation for harm in tort cases, including punitive damages, could become a focal point in the future. There may be more emphasis on compensating victims fairly, and on establishing clearer guidelines for calculating damages, especially in cases of personal injury or wrongful death.

Thank You