

**DISSERTATION
ON**

**Analysis of Tort Law's Right and Liabilities:
In The Light of Recent Incident of
Sitakunda Fire Blast**

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DECLARATION

I sincerely declare that all of this research is my own research, except for primary for secondary information found on the internet. All such primary and secondary information have been created to the authors in reference section.

Sharmin Akter.



Consent Form

The dissertation titled- “Analysis of Tort Law’s Right and Liabilities: in the light of recent incident of Sitakunda Fire Blast”, prepared by Sharmin Akter ID: 2016-3-66-038 submitted to Supervisor Ali Mashraf for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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ABSTRACT

Tort law is a law where people can get remedy for the civil wrong and damages. Negligence is a main subject matter of tort law. For negligence there are many incidents happened in Bangladesh. In tort law there have remedies for the damages. But this law is not codified law in Bangladesh. As a fundamental right many countries codified the tort law. Although in our country tort law is not codified but the essence is still available in other existing statutory laws. By using tort law many incident can be reduced. In this article I try to find out the loopholes of existing laws and also recommended some remedies which can be prevent future incident as like Sitakunda Fire Blast.

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Chapter -1

INTRODUCTION

Economically Bangladesh is a developing country. For this economic development industries play a vital role in our country. There have so many industries in Bangladesh. In those industries there are so many workers work daily. But still now as a developing country Bangladesh cannot ensure the health and safety of the workers. Occupational Hazard is happening day by day. For the negligence and lack of safety in work place causes occupational hazard. Physical hazard, Biological hazard, Chemical hazard these are the types of occupational hazard which causes risk of workers health and safety. In Bangladesh this hazard or accidents are happening regularly for that reason workers and their families suffering economically. Collapse of the Rana Plaza, Fire Blast in Banani, Narayanganj Fire, Sitakunda Fire Blast, Tazreen garments fire these were the most deadly industrial accident occurred in Bangladesh. Thousands of workers have died and injured in those incidents. Most of the incidents occurred for the negligence of employers, mismanagement and so on. In those accidents workers are main victim they are injured or died. But the compensation which is fixed by the Labour Act 2006 is not sufficient for damages occurred in those accidents. Also so many workers are not compensating the full amount because of lack of knowledge. Employers also misused there knowledge and power. They are not paying the full damages to their employees which occurred during the work.¹

Tort law deals to reduce the damage and loss which occurred by negligence. This is the law, which is trying to protect people from wrong-doing. Tort law ensures to pay the damages to the victim this is the purpose of this law.

1.1 Aims and Objectives of the Research

There has some aims and objective in every study. By doing this research its actually help to find out the loopholes of the existing laws of Bangladesh. Most importantly the remedy which can be availing the victims and their family for the incident, this can be also found out by this research. The aim of the study is to put forward some reform proposals to make life easier for victims and to make their lives easier. Further, this study will give a clear view about the sufficient remedy for damages under tort law which victim can get in Sitakunda Fire Blast incident.

¹ Taqbir Huda, 'why are Bangladeshi workers still dying preventable deaths?' *The Daily Star* (Bangladesh, 25 April 2021) <<https://www.thedailystar.net/opinion/justice-practice/news/why-are-bangladeshi-workers-still-dying-preventable-deaths-2082621>> accessed 8 September 2022.

1.2 Research Methodology

This study was conducted by using qualitative method for finding out the actual legal protections that has given to victims for the damages. This data has been collected from the secondary sources. I include the journals, laws, newspaper articles in my research paper.

1.3 Research Question

For conducting the study following research question is set-

1. Whether the existing tort law mechanism is sufficient for ensuring proper justice for this kind of incident like, Sitakunda Fire Blast?

Chapter -2-

Tort laws principles generally and there applicability in Bangladesh particularly-

2.1 Introduction

Tort law is a law where court provides the remedy for damages of civil wrong or injury by lawsuit. Tort law try to protect everyone's civil right by giving lawful remedy. There is an old maxim 'ubi jus ibi remedium' – Every right needs a remedy. This old maxim developed by the tort law theory. Civil wrong or wrongful act which occurred intentionally or accidentally may arise injury or damages by one person to another, for those damages tort law give remedy. In tort law there must be wrongful Act and Omission for constitute the law.²

Salmond and Hueston defined that - “A tort is a civil wrong for which the remedy is a common action for unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other mere equitable obligation”.³ The main subject matters of tort law are – negligence, nuisance, defamation, trespass to land etc. These are the main subject matter of tort.

In my research paper mainly discussed about the negligence in tort law which is the breach of legal duty of care.

2.2 General Principle

Negligence: negligence is wrong or legal wrong which is suffered by another person who fails to take the necessary precaution to avoid what a reasonable person would consider a possible risk.

² Cyrus A Faizi, “Adaptability of the Law of Tort in Bangladesh: An Interpretative Approach’ (2014) <https://www.academia.edu/32044022/Adaptability_of_the_Law_of_Tort_in_Bangladesh_An_Interpretative_Approach> accessed 3 September 2022.

³Mahmudul Hasan, “The Necessity of the application law of torts in Bangladesh’ (2014) <https://www.academia.edu/44982794/The_Necessity_of_the_application_law_of_torts_in_Bangladesh> accessed 2 September 2022.

However civil law relating to negligence has evolved and expanded to cover situation that arise even in the absence of a written or implied contract between two or more parties.⁴

According to Winfield and Jolowicz -“Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.”⁵ For the negligence people are suffered damages by some many incidents like accidents, fire blast, collapse, occupational and industrial hazard and many more.

2.3 Essential elements of negligence in tort law

1. Legal duty to care: The many things are identifying the liabilities for negligence which is owed by the defendant to the plaintiff during in the legal duty of care.
2. Breach of Duty to take care: One of the very important conditions of liability for negligence is that the plaintiff must prove that the defendant was unable to perform their duties due to negligence.
3. Damages: Damage is an essential element for proving the liability in negligence. If there is no damage then there is no cause of action occurred and suit for negligence to be rejected.⁶

So these are the element which is burden of proof in negligence for the plaintiff who wants remedy for damages or breach of contract. These negligence elements are reflected in the Sitakunda incident. For that reason this types of occurrence occurred frequently.

2.4 Tort law in Bangladesh

In Bangladesh tort law is not used that much. People are not aware about tort law in Bangladesh. In The Penal Code, 1860, Code of Civil Procedure, 1908, The Code of Criminal Procedure, 1898 there are few provisions regarding tort law in our country. Many people are don't know that if there civil right wrongfully damage or injured by other person then they can get remedy or proper justice by using tort law. In Bangladesh many occurrence occurred for negligence. By using tort law people can seek protection against the negligence which occurred by other people. Tort law also protects the individual privacy of peoples. If people are aware about tort law then in many situation can be protected by enforcing tort law in Bangladesh.

In so many incidents tort law can be enforced in Bangladesh which are –

1. Consumer's Right Protection Act 2009⁷: There is an act which is Consumer Rights Protection Act 2009, where defined that promote and protection of consumer interest. But this act is not develop the prevailing system and cannot ensure the consumer right. By establishing tort law can be improve the system
2. Fatal Accident Act 1885⁸: The act of compensating for damage suffered by a family member due to the death of person due to the fault of another. Such actions are carried out for the benefit of the deceased's wife, husband, parents and children. The category of

⁴All Answers ltd, 'The Tort of Negligence' (Lawteacher.net, September 2022) <<https://www.lawteacher.net/free-law-essays/tort-law/tort-of-negligence.php?vref=1>> accessed 3 September 2022.

⁵“Negligence Tort Law” <<https://www.toppr.com/guides/legal-aptitude/law-of-torts/negligence-tort-law/>> accessed 15 August 2022.

⁶G.S.PANDE, *Law of Torts* (Allahabad Law Agency, 4 edition 2016).

⁷The Consumers' Right Protection Act, 2009.

⁸The Fatal Accidents Act, 1855, s 1.

dependents was expanded by the Fatal Accidents Act of 1885 to include those who are descendants of a deceased person's brother, sister, aunty, uncle. This act is not that much use in Bangladesh. So for adequate remedy tort law can be enforced by this act.

3. Road Transport Act, 2018⁹: Parliament has adopted a new law on road transport. This law ensures road safety for all civil crimes committed. This new law is called Road Transport Act 2018. Also this law was enacted on 1st November, 2019. Transportation is a big problem for everyone in Bangladesh. New laws are being introduced to reduce road accidents. But this law is not followed strictly road accident increase day by day in Bangladesh. Also victims are not getting proper compensation for those accidents. In the Road Transportation Act 2018, under section- 52 and 53 deals with compensation for victim, but the process of getting compensation is very difficult and also not sufficient. So, by enforcing tort law sufferer can get proper compensation for their damages.
4. Writ Petition: An aggrieved person can file a petition for seeking fundamental right under section 102 of The Constitution of the People's Republic of Bangladesh¹⁰. In the case of CCB Foundation¹¹, for violation of fundamental right and for the damages writ petition was filed and get full compensation. So victim also can enforce tort law by writ petition for their damages which violate their fundamental rights.

This law can be enforced in tort law. By enforcing this law in Shitakundo incident victim's rights could be ensured.

Tort is an interesting field of law that often offers cash compensation for damages that cannot be measured by a fixed formula. Therefore, the decision on the best compensation plan is left to the courts in each case. The amount of wrong for which tort law provides remedies is as interesting as it is diverse. You could be sued for serving unsanitary food in a restaurant, causing diarrhea, entering your home without permission, slaps you in anger, or spread rumors about yourself. Incidents like this are common in our society, but if you look at all the information on laws that have been issued since the independence of Bangladesh, this is unlikely to be the case. Since Bangladesh gained independence more than 40 years ago, we have seen a small number of tort cases brought to trial, and surprisingly few cases have been successfully completed. Although many major legislative acts, including The Code of Civil Procedure, 1908 and The Code of Criminal Procedure, 1898 codified the principles of the tort law, but still there is a legal black hole and we are often disappointed with the limitation or non-applicable tort law. If an accident happened by a car which ran over a rickshaw and also nearly killing 13 years old child and the reason behind the accident was negligence of car driver. For that rickshaw puller asking for compensation but the driver denied to pay anything. Instead of paying compensation the rickshaw-puller was blamed and beaten for the whole incident. It is a hypothetical incident, but these things are happening every day in our streets. If this happened in the UK or the US

Wouldn't the car owner be punished and the rickshaw driver not compensated? Even a minor accident, the answer is no. So why are their systems so responsive and ours not?¹²

⁹ Road Transport Act, 2018, ss 52,53.

¹⁰ The Constitution of the People's Republic of Bangladesh art 102.

¹¹ *Children's Charity Bangladesh Foundation v Bangladesh and others* [2017] 5 CLR 278 (HCD).

¹² Mahmudul Hasan, 'The Necessity of the application law of torts in Bangladesh' (2014)

<https://www.academia.edu/44982794/The_Necessity_of_the_application_law_of_torts_in_Bangladesh> accessed 2 September 2022.

Chapter-3-Comparative analysis from others jurisdictions

3.1 Tort Law in England

The legal system of England is a common law system. The fundamental difference between the common law system and the civil law system is that in the former case the judgment is binding on both the lower court and the court that made the judgment. This is called the antecedent system. There is no formal distinction in British law, but a rough distinction can be made between public and judicial. Within the judiciary, again there is a rough distinction between the laws of ownership and obligations. Mandatory law consists of contract, tort and indemnity. In the context of a reward culture, we are primarily concerned with tort law. Tort law deals with civil wrongdoing. The largest and most dynamic area of tort law is negligence. In the personal injury which claims, an injured person is more likely to sue for negligence, but other arrangements are important as well. Negligence is a relatively new civil offense and has been developed primarily by the judiciary. The rise of these institutions in the late 19th and 20th centuries reflects the pressure exerted on traditional categories of protection to thwart protected interests due to the rise of industry and urban society.¹³ There are many incidents which occurred for negligence in England like as – Grenfell Tower Fire, 2017¹⁴- On 14 June 2017, a fire has broken out in the 24-stored Grenfell Tower residential building in North Kensington, West London. For electrical fault the fire was occurred and fire spread rapidly. Almost 72 persons were death in this fire. It was the deadliest building fire in the UK. This fire incident happened for the negligence and victim and there family got remedy very quickly for the damages because in England tort law is codified law.

3.2 Tort Law in India

Tort Law in India is a body of law that deals with and provides remedies for extra-contractual civil wrongdoing. A person who has suffered legal damage can use the law of torture to obtain compensation for such injuries from the person who is legally responsible or liable. India's tort law is a relatively new development of common law supplemented by a legal system, including tort law. While India has generally followed the British approach, there are some differences that may indicate judicial activity, thus creating controversy. In Hindu and Muslim law, tort was a much narrower concept than tort in English law. Punishment for crime was more prominent in these systems than compensation for wrongdoing. Indian tort laws are basically UK tort laws based on UK common law principles. This was done in accordance with the principles of fairness and good faith and the terms of delivery as amended by statute. Its origins relate to the establishment of the British courts in India.

¹³ b.kolerski, 'introduction to English tort law'(17 July 2006)
<https://www.biiicl.org/files/763_introduction_to_english_tort_law.pdf?fbclid=IwAR3fHqA1giwM6mZGO3i_2SlbFDWixsV0Rtw4ls-Hx5kAX67GIRRAYSc0ULo> accessed 2th September 2022.

¹⁴ 'Grenfell Tower: What happened' *BBC* (29 October 2022)< <https://www.bbc.com/news/uk-40301289>> accessed 9 September 2022.

In *M.C. Mehta v. Union of India*, Justice Bhagwati said, new principles and new norms must be developed to adequately address the new challenges arising in a highly industrialized economy. We cannot allow our legal thinking to be based on the laws prevailing in the UK or in any other country with respect to that matter. Of course, we are ready to receive light from any source, but we have to build our own jurisprudence. Indian tort law came through the UK. After the Norman Conquest, French became the mother tongue of the British judicial system, and thus many technical terms in British law were derived from French, and tort is one of them. The term "illegal activity" is based on the notion that everyone in society has certain rights. The purpose of this tort law was to enforce its rights and obligations.¹⁵ In India there were many incident occurred just because of negligence as example- Delhi Fire: Mundka Tragedy¹⁶- On May 13, 2022, a fire broke out around 4.30pm in the showroom where 250 employs work. At least 29people were dead, 17 injured and 29 others were missing. The fire blaze occurred by generator and on this showroom there was no safety measure for fire. Also the whole building was illegal according to police. So here for the negligence of authority this incident was happened.

3.3Tort Law in Pakistan

Tort law is important because it means securing rights, mainly for ordinary people who do not always have sufficient resources to pursue justice. However, tort laws are not that much enforced in Pakistan. There are several factors that make tort laws not applicable in Pakistan. Cost litigation which prevents the poor public from seeking relief under tort laws. Higher court fees deter tort which claims by deterring the poor from accessing all possible legal remedies. For the excessive litigation, people, especially in rural areas, prefer to settle their torts through panchayat instead of going to court. Also there is no legal code for torts. This is the important reasons for the underdevelopment of this law. Since this law has not been codified, it will be difficult for general public to know. But People are less interested in this law because it does not fall under any fixed law. Also lawyers have less interest on the part of in this law. People in this filed are not educated enough to understand this law. Lawyers are equally responsible for the underdevelopment of tort law. For that reason in Pakistan there have not use tort law as other countries.¹⁷ So, I explain few countries tort laws jurisdiction. England and India is almost similar they are follow tort law strictly. And Pakistan has some similarities with Bangladesh tort law. In Bangladesh there are few cases where tort law actual applied.

¹⁵ 'Law of Torts in India' (2021) <https://www.lawentrance.com/article/law-of-torts-in-india.html?fbclid=IwAR2w0Dn_-iZEkFnC5wbfxgdp8XT5u28GMutNI1X5WGNiYiJMpQGySAHpsos> accessed 3 August 2022.

¹⁶ Hrish Raj Anand, 'Delhi fire: Mundka tragedy could have been averted if owners weren't negligent 8 months ago, allege staff' *News Nine* (14 May 2022) <<https://www.news9live.com/india/delhi-fire-mundka-tragedy-could-have-been-averted-if-owners-werent-negligent-8-months-ago-allege-staff-170334>> accessed 9 September 2022.

¹⁷ Faiza Iqbal, 'Why Tort Law needs to be implemented in Pakistan' *The Express Tribune* (8 December 2015) <<https://tribune.com.pk/article/28814/why-tort-law-needs-to-be-implemented-in-pakistan>> accessed 8 September 2022.

Chapter-4-Application in certain case studies in Bangladesh

In Bangladesh there are many incident or accident occurred for negligence or lack of awareness. In some cases we can see the enforcement of tort law.

4.1 Case analysis where tort law applied

Bangladesh Beverage Industries Ltd vs. Rowsan Akter¹⁸: Mozammel Hossain Montu was a news reporter while has was passing the road a car hit he from the wrong side and fled away. After the accident he was taken to hospital but he was not survived. In this case “Vicarious Liability of Employers in Tort Law” is reflected. This is the one of principle of tort law. Which means master liable for the wrongs which committed by his servant. The accident occurred while driver was on duty of Bangladesh Beverage Company so the company also vicariously liable. Here mainly servant acts on behalf of the master. The company held liable for negligence of driver while employed. In this case judgment was taken by applying Tort law.

Catherine Masud Case¹⁹: In this case an accident occurred by the bus driver because of driving recklessly and negligently. Catherine Masud wife of the death Tareque Masud’s claiming damages for her family. In the landmark case tort law has been highlighted. Here also reflected the principle of Vicarious Liability in tort law. This case also can be considered as a starting point of application of tort law in Bangladesh. In this case finally offender penalized for his negligence under tort law.

Children’s Charity Bangladesh Foundation vs. Bangladesh and others²⁰: In this case a four year old child name Jihad who fell down an uncovered shaft. After that fire service failed to rescue the body on time. Few hours of effort pulled the death body of jihad. Court declared that there was negligence of fire service and Civil defense in their duty. Here the strict liability and breach of duty to care was founded which is determine tort law principle. For the negligence part tort law is applied in this case. Court also compensated victim family for this issue.

Mohammad Jahirul Islam vs. Bangladesh and others²¹: In the most recent case here writ petition was filed because negligence. In this case for the negligence 23 people including child dead and many others were injured. They didn’t ensure the safety of the victims. This is also violation of fundamental right. So here under section 102 of The Constitution of the People’s Republic of Bangladesh violation of fundamental right and for negligence under tort law writ petition was filed. After that judgment was given for compensate the victim family for the damages which occurred for the negligence. So here under tort law judgment given by the writ petition.

So these are the few cases where tort law is applied. But in Bangladesh there are many incident occurred where people cannot claimed tort remedy for their damages.

¹⁸ *Bangladesh Beverage Industries Ltd v Rowsan Akter and others* [2010] 39 CLC (HCD).

¹⁹ *Catherine Masud v Kashed Mia and others*, [2017] 67 DLR 527 (HCD).

²⁰ *Children’s Charity Bangladesh Foundation v Bangladesh and others* [2017] 5 CLR 278 (HCD).

²¹ *Mohammad Jahirul Islam vs. Bangladesh and others* [2017] 5508 WR (HCD).

4.2 Specific instance which demand application of tort law

Now I discuss about the major industrial tragedy where thousands of people suffered, which are-

1. **Tazreen Fire Tragedy:** On November 24, 2012, at least 112 people were killed and more than 200 were injured in the deadliest factory fire in the country's history in Ashuliya on the outskirts of Dhaka. The fire is believed to have been caused by a short circuit. All escape routes were blocked, leaving workers trapped inside the building. There was one way through the windows upstairs of this nine-story building. Because the windows on the lower floors were blocked. Workers trapped inside and unable to get out were killed by fire and smoke. Families of the dead and injured have been fighting for compensation for the past eight years. Many of the injured survivors are unable to work because of their physical condition and are not employed in other garment²². MD Asaduzzaman, a former worker at Tazreen Fashion state that, now we are not suitable for any job because we don't have proper treatment. Whenever I go to another factory in search of work, the authorities refused because I work in Tazreen. They literally insulted us after they know of our experience at the Tazreen Fashion factory. He also added that – the government wanted to give us the compensation but we have yet to receive anything. The factory owners cannot be compensated for the deaths of many workers in these fires,” said Main Uddin Khandaker, the official who led the investigation, in an interview. "The inexcusable negligence of the master is responsible for the death of the worker." On Monday, Mr. Khandaker filed a 214-page report to the Bangladesh's Home Ministry, accusing factory owner Delovar Hossain of negligence, alleging that nine of his managers and supervisors did not allow employees to leave the machine after the fire alarm went off.²³
2. **Rana Plaza Collapse:** On 24 April 2013, at least 1,132 people were killed and more than 2,500 were injured when Rana Plaza, home to five garment factories, collapsed in Dhaka, Bangladesh. On April 23, 2013, a large structural crack was discovered in the Rana Plaza building. The shops and banks on the lower floors were immediately closed. However, warnings to not use the building after cracks were ignored by the owners of the clothing factory upstairs. Garment workers were ordered to return to work the next day. On Wednesday, April 24, under pressure from management, thousands of workers returned to the clothing factory located in the Rana Plaza building, which had been cracked. Few hours later the hold building collapse. This horrific tragedy claimed the lives of thousands of workers and the families of the dead and wounded. Their suffering is horrendous and requires immediate and long-term treatment and compensation. Just five months ago, at least 112 workers were killed in another tragic accident where at least 112 workers were trapped inside a burning Tazreen fashion factory on the outskirts of Dhaka. One of the

²² 'Bangladesh Finds Gross Negligence in Factory Fire' *The New Works Times* (2022)

<<https://www.nytimes.com/2012/12/18/world/asia/bangladesh-factory-fire-caused-by-gross-negligence.html>>
accessed 7 September 2022.

²³ Fahim Reza Shovon, 'Tazreen Fire Tragedy: 8 years on, workers of the garment factory still refused jobs' *Dhaka Tribune* (23 November 2020) <<https://archive.dhakatribune.com/bangladesh/2020/11/23/tazreen-fire-tragedy-8-yrs-on-garment-workers-refused-jobs#:~:text=Bangladesh-,Tazreen%20Fire%20Tragedy%3A%208%20years%20on%2C%20workers%20of%20the,garment%20factory%20still%20refused%20jobs&text=While%20some%20of%20the%20Tazreen,and%20are%20still%20without%20jobs>>
accessed 7 September 2022.

worst occupational accidents on record, this natural disaster informed the world about the harsh working conditions faced by workers in the ready-to-wear sector in Bangladesh. The world's lowest wages expose millions of people, mostly girls and women, to hazardous work environments with high rates of work-related accidents, deaths and occupational diseases every day.²⁴ Most factories do not comply with the requirements of building codes. As a result, there are frequent deaths from fires and building collapses. At least 109 accidents have occurred since the Rana Plaza disaster. Of these, at least 35 accidents occurred at textile factories, resulting in 491 injuries and 27 deaths. In the absence of well-functioning labor supervision systems and adequate enforcement mechanisms, decent work and a decent life are still far from reality for the majority of garment workers and their families. Access to financial compensation or support for dependent family members who have lost their livelihoods can make the difference between living in extreme poverty and living at or above a living level for children and older people who are forced to work to survive. . Currently, the only form of financial protection available to workers and their dependents is provided for in labor laws and requires employers to provide certain benefits to injured workers or survivors where they are liable. Recent amendments to the Labor Code require employers to hold themselves accountable, but there was no such obligation when Tazreen caught fire or Rana Plaza collapsed. The expected amount of compensation is also very small and a lump sum does not adequately protect beneficiaries from disease and poverty in the medium to long term. The system also faces serious real-world problems such as evasion, lack of adequate enforcement, and lack of effective remedies, so that legal rights are rarely realized. Despite the extent of damage suffered by victims and survivors of the Tazrin and Rana Plaza accidents, compensation was not paid under the provisions of the Labor Code on Employer Liability. A small number of global buyers and local players paid some, albeit voluntarily, to the victims in the months following the disaster. The difficulty of ascertaining which brands are produced at Rana Plaza has sparked a vigorous movement to increase transparency in the apparel industry.²⁵

- 3. Hashem factory fire:** An enormous fire broke out at the Hashem food and beverage plant of Sajeeb Group in Rupganj, Narayanganj region, killing 52 workers and injuring 50 others on July 8, 2021. The warehouse was built illegally and therefore factory didn't have a fire extinguishing system. Additionally, the emergency exits were blocked. On the day of the fire, the gates of the building were closed. As a result, workers were trapped inside the building and will not get out. Buildings that collapsed within the fire were built without proper planning and not complying with building codes. On the first day of the fire, workers, the dead and their families gathered to find the missing workers and demand justice. They were attacked by police using tear gas and rubber bullets after clashes with protesters. As a result, many people, including the relatives of the workers, suffered. Despite these incidents and the legal and political framework for eradicating human rights violations, violations and deficiencies in factory construction and factory inspection are widespread due to widespread corruption and poor management of

²⁴ 'The Rana Plaza Accident and its aftermath' <https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm?fbclid=IwAR2ckinV_LxkFKBUmC3OGHXLGfgQ7CbOsOZX4Ndgrsf-kc5FAO7GmOhxZWU> accessed 21 August 2022.

²⁵ 'Clean Clothes Campaign' <https://cleanclothes.org/campaigns/past/rana-plaza?fbclid=IwAR3sO7YdTcXS-BDLPG19ZWTkriM8QBbFamN5XNBwS_sSQGmhtgoO2YcZldg> accessed 2 September .

relevant government agencies. Factory fires have killed and injured many workers, in many cases due to blocked exits, lack of firefighting equipment and other negligence.²⁶

4. **Sitakunda Tragedy:** On the night of June 4, 2022, a fatal fire broke out in a private container warehouse in Sitakunda Upazila, Chittagong region. Firefighters arrived and were caught in a powerful explosion while rescuers put out the fire in the container. It causes many deaths or injuries. Massive fire at BM Container Depot Ltd killed at least 43 people and injured more than 400. The Sonaichari Sithakunda district in Chittagong, Bangladesh has been shut down due to a devastating explosion and fire at a BM container warehouse. There is a smell of burning in the air. Four days have passed since this horrific incident on the night of June 4, 2022, but residents near the BM container base are living in a state of psychological trauma. Residents of the Sonaichari district of Sithakunda were getting ready to go to bed after dinner as usual. The clock shows exactly 11 o'clock. At this time, a loud explosion was heard from the BM container warehouse. The explosion shook the area for several kilometers. Then people on fire were poured out everywhere. The environment of the vast area became heavy at the sound of their shouts. That terrible night is mentioned in eyewitness testimony. The Explosives Department said BM Container Depot Ltd was not licensed to store the hydrogen peroxide that caused the explosion, according to initial reports. Investigators also noted that the storage of such chemicals requires a dedicated temperature control facility far enough away from the nearest population center and none of these conditions have been met by the BM Container Depot authorities. (Source from daily newspaper). The explosions occurred less than a year after a devastating fire at the Hashem Foods plant that killed 52 workers, including at least 17 children, and was the result of fatal corporate negligence, committee Nagarik Tadantya said. For this negligence of owner many innocent workers are suffered, many workers died due to lack of safety. Now the owners of BM Container ltd just pay 2lakh for every worker who killed in the explosion according to Bangladesh Labour Act, 2006. Is the amount is sufficient or justified the damage which workers are suffered for the negligence of authority.²⁷

Industrial tragedy increased day by day since 2005, in Bangladesh. As of early 2019, fire data show that there were at least 468 fire accident occurred in old Dhaka. Bangladesh Fire and Building Safety Agreement resulted in over 1, 00,000 safety improvements in 1,500 factories in the first five years. But still there is lack of implementation of the safe exits, fire alarms, poor working condition in many factories where workers are working for big brands. Same problems occurred but still no solution implement for the industrial accident.²⁸

²⁶ 'BANGLADESH: Investigate deadly factory fire, compensate victims', (*Odhikar*) <http://odhikar.org/bangladesh-investigate-deadly-factory-fire-compensate-victims/?fbclid=IwAR2rdz8D1YIhqvaCP2GtSNatIozSCXFnwzkBnDzsmB_NYwuMaI3jYY_TcV8> accessed 5 September 2022.

²⁷ Taqbir Huda, 'A company's negligence killed 44 people. What price will it pay?' *The Daily Star*(7 June 2022).

²⁸ Asif Muztaba Hassan, 'Narayanganj Fire: Same Problems, No Solutions to Industrial Accidents in Bangladesh' (*The Diplomat*, 14 July 2021) <<https://thediplomat.com/2021/07/narayanganj-fire-same-problems-no-solutions-to-industrial-accidents-in-bangladesh/>>accessed 5 September 2022.

Chapter-5

5.1 Findings

In Bangladesh industrial hazard, road accident and many more incidents happened for negligence or by breach of duty to care and others reason. In many way liability can be proved but the main problem is, in those laws have not sufficient remedies or compensation is not fulfilled the damages which is suffered by victim or by their family. As like-

1. In the Penal Code 1860, under section – 304A²⁹- if any offence occurred and causing death by negligence, this is punishable by up to five years imprisonment or fine or both. But the fine money which compensate by penal code 1860, state will get the money. So here victim and their family cannot get any remedies under this act. For the injury or damages victim is entitled to get remedy or compensation as of right. By giving imprisonment to the offender this is not satisfied victim family who are facing losses for the death or injury of victim, also victim family cannot get any compensation from the existing law. So penal code 1860 doesn't have remedies which can fulfill the damages.
2. For the violation of fundamental right people can get remedies by writ petition under Article-102 of The Constitution of the People's Republic of Bangladesh³⁰. Tort law doesn't exercise that much in our country, but in writ petition tort law reflected in many cases. Already we discuss few cases where strong judgment given under tort law. For anyone negligence if any damages occurred then under writ petition tort laws principles can be reflected. The damages which occurred for negligence this also violation of fundamental right. By filling writ petition people can get there desire remedy in the recent incident Sitakunda Tragedy. In this incident there also violate the fundamental right of people who are working there and also for negligence the tragedy occurred. So for the damages victim can take the help from writ petition. Now a day people are too much dependent on writ petition because of the publicity and for easier remedy. But the problem is that the use of existing statutory laws is diminishing for writ petition.
3. The best way to go for best remedy that is eligible for people who suffered from this incident is under The Fatal Accidents Act, 1855. The section-1 of the FAA, 1855³¹- there is no limit of the compensation, which is the good option for the victim to claim their remedy. Also court will be bound for awarding the compensation to the victim which is matter of right under this act. But on the other hand there have a problem which is under the fatal accidents act 1855 whatever the case is made it will be considered as a civil case. And we know that for the civil suit petitioner have to pay the court fee for the dispute. This court fee amount will depend on the civil suit, which is difficult to pay for the labour. Also fatal accident act is a civil law where the issue of execution of decree comes here. For that reason the procedure of the suit become lengthier.
4. In the Labour Act 2006, section 150³² – where labour can get compensation which is 2lakh taka in the case of death and for the permanent disablement will get 2.25lakh take as a compensation, which is fixed by the law. But the amount of compensation is not totally justified for the lost which is suffered by the victim family. Employer also

²⁹ Penal Code 1860, s 304A.

³⁰ The Constitution of the People's Republic of Bangladesh, art 102.

³¹ The Fatal Accidents Act, 1855, s 1.

³² Labour Act 2006, s 150.

preferred to pay the compensation under labour act. Because the amount of compensation is not that much higher. But for the fixed amount of compensation victim family can get there desire amount. Also employer could not pay the full amount, they misused there power and dominate the poor labour who are already suffered for the damages which occurred during their work period. Labour law also cannot give proper justice by fixing the amount of compensation.

5. Generally everyone can avail one remedy which is a civil suit for compensation under section- 19 Of the Code of Civil Procedure, 1908³³ but the problem is the amount of court fee is almost equal to the compensation value. So many people cannot afford the court fee for this civil suit. Although the remedy exists but for availing the remedy victim has to spend huge amount of money which is not possible for everyone. Even then it is not certain that he will get the remedy. One of the advantages is under civil procedure court there had to do a mandatory mediation under section-89A of the Code of Civil Procedure, 1908³⁴. After the mediation at least some of the amount can get under civil suit but still doesn't ensure the proper justice.

5.2 Recommendation

Due to negligence of authority we can see people are suffering for injuries, death this kind of incidents are now very common. But the toughest thing is getting proper remedy for the damages of injury or death under tort law. As a developing country Bangladesh has some law where people can get actual desire remedy by enforcing those acts under tort law. In the Sitakunda Tragedy some measure should be taken for ensuring proper justice of the victim –

1. The Fatal Accident Act, 1855 is one of the act where people can get there desire remedy. By this act families of the victim can claim compensation for the loss which is suffered by them for the negligence or wrongful act of other person or authority. In this act specifically mention about negligence which is the liabilities of tort law. Also in this act there is no limitation of compensation, any reasonable person can claim for compensation. So for better remedy under tort laws liability like negligence Fatal Accident Act, 1855 is a good option. If victim or victim's family can prove that there is negligence then court will be bound to provide the compensation to the victim under fatal accident act. In the Sitakunda incident we can see that many people died and injured because of the negligence of authority and lack of safety. For the negligence wrongful act occurred in the BM container depot ltd. So victim or there family can claim their desire compensation under fatal accident act as of rights.
2. Another option is writ petition, I already discussed about this part that if there is violation of fundamental right then victim as of right by writ petition can claim compensation. In the Sitakunda incident we can see that many workers and fire service injured and died because of the blast. Here authority didn't disclose that in the container had chemical for their negligence the blast occurred. For this incident authority paid the compensation amount which is 2lakhs taka under Labour Law. But for the victims who are horribly victimized the amount is not justified for their lost. On top of that, the authorities have

³³ Code of Civil Procedure, 1908, s 19.

³⁴ Code of Civil Procedure, 1908, s 89A.

been negligent and are also violating fundamental rights. So worker can writ against authority to get full remedy for victim's family and also for them.

3. From my perspective, the compensation amount which is fixed in the Labour Law Act need to be Amend. If the amount of compensation increases then industrial hazard can be reduced. Also the authority will be more aware about their workers.
4. Under Code of Civil Procedure 1908, if any proceeding file and claiming is successfully proving negligence and claim compensation after that if the court give verdict cost order against respondent then it will be easier for victim and by this people will be more interested for filing civil suit.

As such in those remedy I would prefer the writ petition most. Because, in the Sitakunda Fire incident most of the victim were workers for those workers family writ petition is the good way to get the proper compensation for the damages as a fundamental right. As writ petition there has no fixed amount of compensation so this will be the better option for the victim to claim their desire amount. Normally writ petition is not a substitute from to seek compensation under civil court. Only for the grave fundamental right violation writ petition can be filed. So for the Sitakunda Fire Blast which is a very tragic incident and that type of incident doesn't happen again that the reason I would prefer writ petition. I would like to refer the case - *M.C. Mehta and Anr vs Union of India*³⁵, where the judgment came for the grave issue on fundamental right writ petition can be filed.

The recommendations of this chapter will prove to be helpful to reduce such incident or tragedy in Bangladesh. Also people should be aware and follow the law for prevent this kind of incident. By this we can see a proper implement of tort law.

5.3 Conclusion

In this paper I try to display the overview tort laws principle which is not being codified but there essence is found under other statutory laws for example- Labour Act 2006, Penal Code 1860 and Fatal Accident Act 1855 etc.

I try to address the existing tort law's application regarding the negligence issues in industrial incident in Bangladesh. In my research paper, I also discussed how the existing law helps to get remedy. By this I also identified the reason of failing to give the proper justice to the victim. I also provided the loopholes of the existing law in the findings of my research paper. In our country many people suffered from industrial hazard and this hazard occurred for the negligence. In the Sitakunda incident many people was victimized for the blast just because of the negligence of authority. But people are not getting proper compensation from the authority. If the law could not assist them in that case then a huge amount of lost have to face in industrial sector in Bangladesh. Also the authority is obliged to uphold the right. In my recommendation part I try to present the solution to get through these problems. It will help to provide proper and just remedy to the victims. Along with these our existing laws should be stricter so that people are bound to follow this. In the Sitakunda Fire incident the remedies which I discussed in my recommendation part if can be implemented then in future for the serious incident victims can established there right and also they will get a strong precedent for establishment there rights.

³⁵ *M.C. Mehta and Anr v Union of India & Ors* [1986] 1987 AIR 1086, 1987 SCR (1) 819.

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