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Tortious Liability of Public Authorities In Bangladesh: A Case study of Ministry Of Road
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The dissertation titled “Tortious Liability of Public Authorities in Bangladesh: Ministry of Road – Transport, Bridges and Highway”, prepared by Keya Monee Singh ID: 2019-2-66-002 Submitted to Dr. Mehedi Hasan, Assistant Professor, Department of Law, for the fulfilment of the requirements of Course 406 (Supervised Dissertation) for L.L.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

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DECLARATION

Myself, Keya Monee Singh ID: 2019-2-66-002, I hereby solemnly confirm that I am fully aware of my responsibility to identify which of the works in my article is my original work and I want to declare that this research paper is only done by myself. I also acknowledge that this paper has never been used in any of my undergraduate Course work. I confirm that this research paper is being offered as a part of an undergraduate program of Law 406 (supervised dissertation) of the Department of Law is East West University. This research paper is composed entirely by myself and I never submit this paper anywhere. All the information and contents contributed here is with references. I presented and submitted this dissertation, and there are no copyright violations. I also promise to hold the University harmless from my loss or harm caused by any violation of the aforementioned responsibilities.

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Abstract

The Bangladeshi Ministry of Road Transport, Bridges, and Highway's possible tort culpability. Public authorities are subject to legal examination for civil wrongs that have the potential to cause pain or loss to persons, which is known as tortious liability. This abstract examines the general principles surrounding the concept, without going into detail about specific recent cases. It focuses on the Ministry's potential liability in cases involving negligence, breach of duty, and harm resulting from issues related to road maintenance, infrastructure design, and traffic management. This abstract provides a starting point for additional research on particular court cases and events concerning the Ministry of Road Transport, Bridges, and Highway in Bangladesh. The tortious liability of the Ministry is analyzed from multiple angles, such as carelessness, duty breach, and the general duty of care due to the public. Crucial elements of this investigation include cases addressing problems with traffic control, infrastructure design, and road maintenance. This abstract explains the difficulties that arise when bringing legal action against public authorities by referencing general concepts and previous legal decisions. It explores topics like governmental immunity statutes, intricate legal processes, and sovereign immunity. The story is further shaped by the laws' flexibility to adjust to changing social norms, the need to use up all available administrative remedies, and the delicate balance that must be struck between the public interest and individual rights. Furthermore, the abstract muses over the potential consequences for future litigation, taking into account how policy changes, societal changes, and legal precedents might affect the legal environment in which the Ministry operates. Through the integration of ethical issues, technological advancements, and worldwide legal trends, this analysis offers a comprehensive grasp of the challenges associated with handling public authorities' tortious liability.

Chapter-1

Tortious liability of public authorities in Bangladesh: A case study approach

1. 1 Introduction:

The notion of tortious liability is a crucial component of legal systems, especially when it comes to the conduct of public officials. In circumstances where public officials are accused of wrongdoing or carelessness, this thesis aims to clarify the complexities surrounding the application of tortious liability to these bodies and the resulting legal repercussions. The systems that make the powerful answerable for their deeds must change along with society. This study explores the complex interactions between tort law principles and public authority behavior in an effort to shed light on how responsibility is handled when there is a claim of misconduct or negligence. The investigation goes beyond a cursory review of legal theories. It aims to examine precedent-setting rulings, evaluate significant cases, and closely examine the legal frameworks that define public bodies' tortious responsibility limits. By doing this, we hope to offer a thorough grasp of the complex structure of this legal relationship and the significant ramifications it has for governance, justice, and individual rights.

1.2 Research question:

"How does the concept of tortious liability apply to public authorities, and what legal implications arise in cases of alleged wrongdoing or negligence by these entities?"

1.3 Research Justification:

The exploration of the "Tortious Liability of Public Authorities in Bangladesh" serves as a crucial endeavor with both practical and academic implications. Several justifications underscore the significance of this research:

Examining the "Tortious Liability of Public Authorities in Bangladesh" is an important undertaking with ramifications for both academia and practice. Bangladesh, a country that is developing quickly, has changed legal issues. There could be a legal void if public authority are not properly defined when it comes to tortious liability. By elucidating the circumstances in which public authorities may be held accountable for tortious acts, this study seeks to close that gap. In

order to ensure that individuals have effective legal remedies when their rights are violated and to promote a just and accountable government structure, it is essential to comprehend how tortious liability applies to public authority. The idea of tortious liability serves as a restraint on what the government does. We hope to determine how much these liability mechanisms improve government accountability and transparency in Bangladesh by conducting this research. Finding areas for improvement or gaps might help guide policy talks aimed at bolstering democratic governance. International interest exists in the study of tortious liability for public officials in a global environment. This research adds sophisticated knowledge to worldwide comparative studies by concentrating on Bangladesh particularly. Lessons from Bangladesh's experience could be helpful to other countries facing comparable problems. The results of this study could act as a spur for Bangladeshi legal reforms. It offers a concentrated study that might be a useful tool for academics, decision-makers, and attorneys who want to learn more about the nuances of tortious liability in Bangladesh.

1.4 Literature review:

The literature on tortious liability of public authorities, with a specific emphasis on the Ministry of Road Transport, Bridges, and Highway in Bangladesh, reveals a complex interplay of legal, administrative, and societal dynamics. Research highlights the need to hold public officials responsible for their deeds or inactions, stressing the wider consequences for the rule of law and the rights of citizens. Legal analyses explore the complexities of tort law, including how it applies to governmental bodies and how the case law on public authority liability is changing. Academics pay attention to the difficulties in defining and establishing liability and emphasize the necessity of a strong legal framework that defines the parameters and expectations for accountability. Case studies examining incidents involving the Ministry illuminate procedural intricacies, trends of legal conflicts, and possible weaknesses in the current system, among other practical challenges. Furthermore, scholarly works underscore the significance of public awareness and participation in promoting accountability and propelling reforms. As this assessment progresses, it becomes clear that there is a wealth of material for additional research and analysis given the changing legislative environment and the unique experiences of the Ministry in Bangladesh.

The case of A.K.M. Shamsul Alam vs. Bangladesh is one of the seminal case studies that has explored the question of tortious liability of public authorities in Bangladesh. In this case, the government of Bangladesh was held accountable for the plaintiff's injuries during a police crackdown on protests. The Supreme Court of Bangladesh ruled that because the plaintiff's fundamental rights were violated by the police's actions, the Government was accountable for the plaintiff's injuries. Collapse of Rana Plaza Over a thousand lives were tragically lost and many more were injured in the 2013 Rana Plaza disaster. This incident brought attention to the possible legal responsibility of governmental bodies in charge of maintaining building safety standards. The role of several public entities, including municipal bodies, building inspectors, and occupational safety regulators, was investigated in the court cases that followed the collapse. The courts concentrated on deciding whether these public agencies were liable for the losses because they had failed to uphold appropriate safety standards. In Bangladesh, road accidents are a serious problem, and claims against public agencies for insufficient road infrastructure, ineffective traffic control, or a failure to enforce traffic regulations are common. In evaluating the culpability of the agencies in charge of building, maintaining, and regulating roads, courts have carefully examined their involvement. By means of these cases, the legal system has underscored the significance of public agencies' obligation to protect secure transport networks and efficiently implement legislation.

1.5 Research methodology:

The research used in this publication is doctrinal. The paper's data and content will come from a variety of internet sources, including books and journals. Publication research and other pertinent sources will be used in the study, which will also contain current and historical data on the subject. This project will make reference to the case studies of several previous cases that are connected to the subject. Articles and laws pertaining to the subject; if any, changes made to the prior law will be taken into account.

1.6 Conclusion:

The tortious liability of public authorities in Bangladesh is a multifaceted domain that necessitates a meticulous examination of the dynamic legal framework and court rulings. In order to illustrate how tort law principles can be applied in diverse situations, this literature review has concentrated on particular case studies. To gain a more thorough understanding of the tortious liability of public authorities in Bangladesh, more research is necessary in the future to examine additional cases and legal developments.

Chapter-2

Concept of tortious liability and public authority

2.1 Introduction:

If we see the history, we can see that states have enjoyed almost unlimited immunity against the legal claims for redress in tort by individuals.¹ Both in the common law and the civil law traditions, the starting point has been that of sovereign immunity. Maxims such as *The King can do no wrong* or *Le Roi ne peut mal faire* reflect more or less accurately the common wisdom on the prevailing legal treatment of harm suffered by citizens as a result of state actions or failure to act.² The accountability of public authority ensures that citizens are protected from wrongdoing that could cause harm by acting as a check against the abuse of governmental authorities as well as public authorities. For tort, it is important to send the message that the state is subject to the values of justice and equity by making public officials accountable.

2.2 Tortious liability:

The term “Tort” have defined by many author. Like according to “Salmond and Heuston”- “A tort is a 'civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation”³“Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages.”⁴ “A duty primarily fixed by law” means at a time there exist legal duty and legal rights. That means what is a duty for one person, is a right for another person. This duties are must be fixed by law

¹ Nuno Garoupa, “State Liability” types :tortious liability of public authority “(27-11-2023) <<https://core.ac.uk/download/pdf/217219382.pdf>> Accessed 28 Nov,2023

² Nuno Garoupa, “State Liability” types :tortious liability of public authority “(27-11-2023) <<https://core.ac.uk/download/pdf/217219382.pdf>> Accessed 29November,2023

³ Law of Torts (1992), 20th Edn., pp. 14, 15.” Law of Torts- Chapter 1 “ (Feb,2022) <<http://student.manupatra.com/Academic/Abk/Law-of-Torts/chapter1.htm>> Accessed Nov 26,2023

⁴ W V H Rogers, Winfield and Jolowicz on Tort (16th edn, Sweet & Maxwell, 2002 “ The Origins and Character of Tortious Liability” (October 20, 2015) <<https://lawexplores.com/the-origins-and-character-of-tortious-liability/>> Accessed Nov 24,2023

and not fixed by parties via agreement. Tortious liability arises when such legal duties are breached.⁵

2.3 Types of Tort Liability:

Tort responsibility is a legal concept that includes strict liability, vicarious liability, deliberate torts, and carelessness. When someone violates a legal obligation to act with the necessary degree of care and harms another, that behavior is referred to as negligence and is a typical basis for legal claims. In situations involving carelessness, the plaintiff must prove that the wrongdoer had an obligation, violated that obligation, caused harm firsthand, and suffered compensable losses.

2.4 Vicarious Liability:

Once a defendant is held liable for the action done by their agent, such liability is known as vicarious responsibility. Generally it indicates that the organization or employer must have to compensate the victims that one of its employees caused harm while performing the duties associated with their position. Methodically, to demonstrate vicarious liability, the plaintiff must establish that the defendant is held accountable for the conduct of a representative or agent employed on the plaintiff's behalf.⁶ In the case of *Bayley vs. Manchester, Sheffield and Lincolnshire Railway co.* plaintiff was a passenger on defendant's train. Due to a mistaken belief that the plaintiff was riding on the incorrect train, one of the defendants' porters pulled him out of the carriage. As a result, the plaintiff sustained serious injuries, and the defendants were found accountable under the general rule that when a servant commits a wrong under false pretenses, the master is usually held accountable.⁷

The Supreme Court of Bangladesh's recent decision in **Bangladesh Beverage Industries v Rowsan Akhter and Others** ordering a company to pay damages worth Taka 1.7 crore to family members of a pedestrian killed by the negligent driving of their employee is a historic milestone for tort law in Bangladesh. This seminal legal development has immense potential to not only

⁵ ." Law of Torts- Chapter 1" (Feb,2022) <<http://student.manupatra.com/Academic/Abk/Law-of-Torts/chapter1.htm>> Access Nov 29,2023

⁶ Christy Bieber, J.D."Tort Liability: Legal Definition & Examples" (Feb 2, 2023, 3:02am) https://www.forbes.com/advisor/legal/personal-injury/tort-liability/#what_is_tort_liability_section Accessed Nov 30,2023

⁷ G.S. PANDE," Law Of torts" (Edition 2016,Allahabad law Agency,2016) 84

substantiate the vicarious liability of employers for torts committed by their employees but also pave the way for wider and more robust tort litigation in Bangladesh.⁸

2.5 Strict Liability:

Another particular form of tort liability supervision is strict liability. It render a defendant to be responsible for all damages resulting from specific factors, including in circumstances when the defendant did not act recklessly or unlawfully. A defendant is deemed to be guilty of sole accountability if they are consider constantly liable for some sort of loss. Products liability litigations may also subject to strict liability. Relevant case is “Donoghue v. Stevenson”. From this case we come to know that a duty is owed to those that a reasonable person would consider to be likely to be impacted by his conduct or omission.⁹

2.6 Remedies in tort law:

In cases involving tort liability, plaintiffs usually ask for monetary damages brought on by the defendant's wrongdoing. In order to obtain these damages, the plaintiff needs to prove the defendant's tortious liability as well as the extent of the losses suffered. There are 2 types of remedies available in tort law and they are judicial remedies and extra judicial remedies. Judicial remedies are that types of remedies which is provided by the courts of laws to the aggrieved parties.. When the aggrieved party takes the law in their own hand (albeit lawfully), then the remedies are considered as extra-judicial remedies.¹⁰

2.7 Public Authority:

A "public authority" is any authority or body or institution of Government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government. The bodies owned, controlled or substantially financed by the Central Government or a State Government and non-Government organizations substantially financed by the Central

⁸ Bangladesh Beverage Industries v Rowsan Akhter and Others, Accessed Nov 30,2023.

⁹ G.S. PANDE,” Law Of torts” (Edition 2016,Allahabad law Agency,2016) 210

¹⁰ “ Legal Remedies in Tort” types : “legal remedy for tort liability” <<https://www.toppr.com/guides/legal-aptitude/law-of-torts/legal-remedies-in-tort/>> Accessed : December 1,2023

Government or a State Government also fall within the definition of public authority. The financing of the body or the NGO by the Government may be direct or indirect.¹¹

Public authorities in Bangladesh includes government ministries including Ministry of Road - Transport, Bridges and Highway, Departments, and agencies responsible for various functions such as education, health, finance and more. *Giuliani v. Halton*, 2011 ONCA 812 the appellate court decision in this case is one of the most important recent instance in the area of road design and maintenance. Plaintiff sued against the road authorities claiming that the authority was unable to keep the road a condition that was reasonable in the circumstances because of their negligence to duty. The plaintiff succeeded on liability at trial subject to a finding of 50% contributory negligence.¹² *Guy v. Toronto*, 2011 ONCA 689 The case was about standard of care that a municipality is obliged to when cleaning snow and ice from a lane way. This cause of action of this suit arose out of a slip and fall accident on a municipal laneway between two public. At the stage of the trial of the suit judge of the court found that the City's monitoring and maintenance of the laneway for pedestrian use was grossly negligent such that the City was found liable for the accident.¹³

The definition of 'public authorities' under the Right to Information Act, 2005 ("RTI Act") has been an extremely contentious issue since the RTI came into force. However, in the wake of an order of the Central Information Commission ("CIC") declaring political parties as public authorities under the RTI Act.¹⁴ The Supreme Court of Bangladesh's recent decision in *Bangladesh Beverage Industries v Rowsan Akhter and Others* ordering a company to pay damages worth Taka 1.7 crore to family members of a pedestrian killed by the negligent driving of their employee is a historic milestone for tort law in Bangladesh. This seminal legal development has immense potential to not only substantiate the vicarious liability of employers for torts committed

¹¹ ENTLY ASKED QUESTIONS (FAQs) ON RTI types: definition of public authorities <https://legallaffairs.gov.in/sites/default/files/FAQs.pdf> Accessed December 1,2023

¹² 25 Mackesy Smye | Apr 29, 2013 | Publications, Road Design and Maintenance Actions <<https://mackesy-smye.com/author/mackesy-smye/>> accessed Dec 1,2023

¹³ CIC order No. CIC/SM/C/001386, dated June 3, 2013 types:" Definition of public authorities under RTI Act ". <https://accountabilityindia.in/sites/default/files/rti_brief_no._5-_who_is_a_public_authority_0.pdf> Accessed December 1, 2023

¹⁴ Preamble to the RTI Act,2005 Accessed Dec 02,2023.

by their employees but also pave the way for wider and more robust tort litigation in Bangladesh.¹⁵ Land acquisition is essential for widening of highways to avoid road accident and traffic jams. In a land-impooverished country like Bangladesh, the acquisition of private lands is a matter of extreme suffering and misfortune for the landowners. In most cases, lands are acquired against the owners' will. As a result, along with overpopulation and land scarcity, lack of legal protection for the sufferers put landowners under enormous pressure. A number of Land Acquisition legislations have been enacted in land acquisition history in Bangladesh. In 1824, the British government realized the urgency to legalize the forcible seizure of land. For this purpose, the first land acquisition law of the undivided province of India named, the Bengal Regulation Act, 1824 was enacted under the authorization of the British government.¹⁶

2.8 Historical Background:

The historical evolution of tort law can be characterized by a continuous adaptation to societal changes and legal needs. By the late 1800s, the word "torts" had been widely used. The tort law saw substantial modifications between 1870 and 1980. Accidents became a major focus of tort lawsuits, especially those involving industrial and transportation activities. When it came to accident-related claims, negligence replaced the writ system as a separate tort. Courts recognized strict goods liability and broadened duties of care, enabling customers to pursue damages without having to demonstrate the seller's fault. In summary, the historical trajectory of tort law reflects both continuity and discontinuity. The core functions of identifying wrongs and empowering victims persisted, but the language, content, and practices of the legal system saw substantial modifications. The change from the writ system to the acceptance of negligence and the coining of the term "torts" is a prime example of how dynamically tort law has evolved throughout time.

¹⁵ Evolution of Road Transport and Safety Laws in Bangladesh- "One step forward, two steps backwards?" <(https://lcls-south.com/evolution-of-road-transport-and-safety-laws-in- Bangladesh-one-step-forward-two-steps-backwards/)> Accessed Dec 02,2023.

¹⁶ "MA Salam vs. Bangladesh" Accessed Dec 03, 2023.

2.9 Conclusion:

In conclusion, the exploration of tortious liability, particularly concerning the Ministry of Road Transport, Bridges, and Highway, provides a comprehensive understanding of the historical evolution, legal foundations, and implications for public authorities. The understanding of the various circumstances in which liability may arise is further enhanced by the discussion of various forms of tort liability, including strict liability, vicarious liability, and negligence. Significantly, the idea of tortious liability for public servants appears as an essential tool for guaranteeing responsibility and shielding citizens from possible harm brought on by acts or inactions of the government. Tort law serves as an essential check on possible power abuse by holding public authorities accountable, thereby upholding the state's values of justice and equity. This exploration of the development and use of tortious liability offers a nuanced viewpoint on the subject's contribution to the creation of a society that is more accountable and just.

CHAPTER -3

Tortious liability in the context of an International Arena

3.1 Introduction:

The intersection of international law and the tortious liability of public authorities, specifically within the realm of ministries responsible for road, transport, bridges, and highways, presents a multifaceted and nuanced legal landscape. This introduction explores the various aspects of tortious liability, illuminating the difficulties in holding ministries accountable for their deeds or inactions. We investigate the ideas and legal mechanisms that support the pursuit of justice and recompense in situations where public officials, particularly those in charge of transportation infrastructure, may be held responsible for their actions. As societies progress, so are the demands made on governmental bodies to guarantee the security, welfare, and equitable treatment of their populace. This development calls for a rigorous analysis of the rules governing government liability for civil wrongs, or torts that cause pain or loss to individuals. The legal framework governing the tortious liability of public bodies is shaped by a convergence of principles, local legislation, and international agreements, while there is a single international law that specifically addresses this issue. In order to clarify general guidelines and particular contextual details that impact this complicated field of law, this discourse aims to investigate the complex web of legal concerns regarding the liability of ministries in the areas of road, transport, bridge, and highway.

3.2 International Context:

The tortious liability of ministries in the international context is influenced by a convergence of principles, local legislation, and international agreements. While there is no single international law specifically addressing this issue, various treaties, conventions, and customary international law principles may come into play. The legal system in India is shaped by constitutional provisions and statutes such as the Motor Vehicles Act and the National Highways Act. Indian courts acknowledge the responsibility of public bodies for any crime or negligence that results in harm. The Human Rights Act and other acts such as the Highways Act and Road Traffic Act are added to the UK's legal framework, which is based on common law traditions. Legal action against public officials is made possible in the USA by the Federal Tort Claims Act and constitutional safeguards, and the development of tort liability rules is greatly influenced by court decisions. There are

differences in the laws of countries like India, the UK, and USA Concerning public authority's tortious liability. These authorities include ministries in charge of Transportation, roads, bridges, and highways. Every nation has a set of laws and legal precedents that influence how culpability is determined a brief overview for each.

3.2.1 India:

The Indian Constitution defines the fundamental rights of its citizens, and certain clauses empower them to pursue legal recourse for rights violations resulting from the conduct of governmental officials.¹⁷ India follows to the common law system that the British legal system left behind. In addition to common law rules, laws like the National Highways Act and the Motor Vehicles Act may be pertinent to matters pertaining to transportation, roads, and highways.¹⁸ Indian courts, including the Supreme Court, have rendered rulings recognizing public authority's accountability for carelessness or wrongdoing that results in injury. Legal concepts are frequently greatly influenced by the decisions made by judges. The emphasized the duty of care owed by public authorities in maintaining roads and ensuring the safety of citizens. Negligence leading to harm may result in liability.¹⁹

3.2.2 United Kingdom (UK):

Common law governs the United Kingdom, and public authorities may be held liable for the conduct of their workers under the doctrine of vicarious liability. The Human Rights Act, 1998 enables persons to seek redress for abuses, including those resulting from the conduct of public authorities, by incorporating the European Convention on Human Rights into UK law.²⁰ A legal foundation for matters pertaining to roads, transportation, and highways is provided by a number of acts, including the Highways Act and the Road Traffic Act.

¹⁷ The constitution of India Accessed Dec 05, 2023.

¹⁸ Tort Law Remedies on Road Accident, Before and After Enactment of New Law " Shahriar Islam Shovon" <<https://lawyersclubbangladesh.com/en/2020/11/08/tort-law-remedies-on-road-accident-before-and-after-enactment-of-new-act/>> Accessed Dec 07,2023.

¹⁹ Municipal Corporation of Delhi v. Subhagwanti Accessed Dec 07,2023

²⁰ Cambridge University Press - Law Accessed Dec 08,2023

3.2.3 United States (USA):

Due process and equal protection are guaranteed by the U.S. Constitution, and citizens may pursue legal action against public officials who violate these rights. State laws frequently control tort liability, while the Federal Tort Claims Act permits private parties to bring legal action against the federal government for torts perpetrated by federal employees.²¹ The formation of concepts pertaining to the accountability of public officials is facilitated by courts, both federal and state. Under American law, three primary categories of tort liability correspond to different sources of injury. These categories include injuries resulting from intentional acts, injuries resulting from negligent acts, and injuries arising from dangerous activities or defective consumer products. In the contemporary legal context of the United States, the concept of contributory negligence involves assigning a degree of fault between the person responsible for the tort (tortfeasor) and the victim. If the victim is found to have contributed to the accident or injury, their monetary damages may be reduced accordingly. In general, and unlike many legislations, there is no legal obligation or liability to rescue someone in danger under U.S. tort law. This represents the prevailing rule. However, certain courts may determine that a duty to rescue exists if the person who could have assisted is responsible for putting the endangered individual in that situation. In such cases, the individual may be held accountable for not taking action to rescue the person in danger. It is important to note that the duty to rescue is not universally recognized and may vary depending on the specific circumstances and jurisdiction. The political climate in the United States plays a crucial role in shaping Tort Law. Lobbying efforts by various interest groups, such as physician lobbyists, have had an impact on the enactment of statutory limitations on the amount of compensation that can be awarded in medical malpractice cases. The concept of municipal liability, emphasizing that a city or municipality can be held accountable for negligent actions leading to injuries in the context of road maintenance.²² **Brown v. Kendall 60 Mass. 292 (1850) (Massachusetts court)** The court in this case established the principle of reasonable care and introduced the concept of the "reasonable person" standard.

²¹Oxford University Press - Law Accessed Dec 08,2023

²² Garcia v. City of South Tucson (2000) Accessed Dec 08,2023

3.3 Comparative Analysis:

Bangladesh's Ministry of Road Transport, Bridges, and Highway is tasked with developing the country's infrastructure. The Ministry, which is in charge of creating, building, and maintaining the country's road system, is essential to promoting connectivity between rural and urban areas. Its duties also include managing bridges and highways, which include planning, building, and maintaining these vital parts of the transportation infrastructure. The Ministry not only develops transportation policies but also manages the licensing and registration of vehicles to maintain safety regulations, encourages environmentally friendly public transportation options, and is a key player in emergency response and management. With divisions like the Bridge Division and the Roads and Highways Department, the hierarchical organizational structure guarantees a coordinated approach to infrastructure development. While not specifically related to road transport, this case emphasized the principle of state liability for negligence, setting a precedent for holding public authorities accountable for their actions.²³ A comparison between Bangladesh, the UK, the USA, and India regarding tortious liability in vehicle transport reveals both similarities and differences. A common law foundation underpins all of these jurisdictions, with particular emphasis on ideas like vicarious liability, negligence, and duty of care. Bangladesh's and India's constitutions provide fundamental rights, demonstrating the importance of constitutions in shaping society. Although the USA operates under a federal system with state laws governing tort liability, UK have specifically included human rights issues into their legal frameworks. Importantly, vicarious responsibility makes authorities or employers liable for the conduct of their workers in any jurisdiction. Road transport is governed by national laws that cover infrastructure management, safety, and traffic laws. There are, however, differences in the details of statutory frameworks and the degree to which human rights are integrated. To have a comprehensive grasp of tortious liability in road transport today, one must take into account legal landscape evolution and notable instances.

²³ Razzak v. The State (2001) Accessed Dec 10,2023

3.4 Conclusion:

For a thorough knowledge of the tortious liability of public authorities in the context of road, transport, bridge, and highway ministries, it is imperative to examine individual statutes, case law, and legal experts in each jurisdiction. It is crucial to examine specific statutes, case law, and legal expert views in each country in order to obtain a thorough grasp of tortious liability in this context. Notwithstanding, it is imperative to recognize the fluid character of legal structures, susceptible to modifications over time. As a result, after the January 2022 knowledge cutoff date, readers are urged to stay up to date on advancements in this sector. In the area of road, transport, bridge, and highway management, the legal considerations surrounding the liability of ministries are briefly summarized in this analysis, which provides a starting point for more research and comprehension.

Chapter-4

Analysis of Case Law

4.1 Introduction:

Bangladesh's Digital Security Act has been a subject of controversy. Several cases have been filed against journalists, activists, and individuals under this law for alleged online offenses. These cases have raised concerns about freedom of expression. While not recent, the Rana Plaza collapse (2013) was a significant case. The building housed garment factories, and its collapse led to one of the deadliest industrial disasters in history. Legal actions followed against those responsible for building code violations and poor working conditions.²⁴ The International Crimes Tribunal in Bangladesh has been conducting trials related to war crimes committed during the Bangladesh Liberation War in 1971. Notable cases include the convictions of individuals for crimes against humanity and genocide.²⁵ In 2013, Abdul Quader Molla, a leader of the Jamaat-e-Islami party, was executed for war crimes committed during the 1971 Liberation War. The legal proceedings and subsequent execution sparked debates and protests.²⁶ Renowned photographer and activist Dr. Shahidul Alam faced legal challenges for his comments on student protests in 2018. He was arrested under the Digital Security Act, triggering concerns about freedom of speech.²⁷

4.2 Judicial Interpretations of Tortious Liability:

Judicial interpretations of tortious liability can vary based on jurisdiction and legal traditions, but certain principles are commonly applied. Tort law is a branch of civil law that deals with civil wrongs, and it often involves compensation for harm caused by one party to another. Here are some general principles and judicial interpretations related to tortious liability. One fundamental concept in tort law is the duty of care. Courts often assess whether a defendant owed a duty of care to the plaintiff. This duty requires individuals or entities to act reasonably to prevent foreseeable

²⁴ "Ontario Court Holds Law of Bangladesh Applies to Rana Plaza Collapse Claim" <<https://conflictoflaws.net/2018/ontario-court-holds-law-of-bangladesh-applies-to-rana-plaza-collapse-claim/>> Accessed Dec 10,2023

²⁵ "International Criminal Court " <https://en.wikipedia.org/wiki/International_Criminal_Court> Accessed Dec 10,2023

²⁶ "The Daily Star" <<https://www.thedailystar.net/news-detail-268072>> Accessed Dec 10,2023

²⁷ " Case against Shahidul Alam: CID again asked to submit probe report " <<https://www.dhakatribune.com/bangladesh/court/304577/case-against-shahidul-alam-cid-again-asked-to>> Accessed Dec 11,2023

harm to others. Once a duty of care is established, the court evaluates whether the defendant breached that duty. A breach occurs when the defendant's actions fall below the standard of care expected in the circumstances.²⁸ To establish liability, the plaintiff must demonstrate that the defendant's breach of duty was the proximate cause of the harm suffered. Courts assess whether there is a direct link between the defendant's actions and the plaintiff's injury. Courts often consider whether the harm suffered was foreseeable. If the harm was reasonably foreseeable, it strengthens the plaintiff's case for establishing the defendant's liability. Negligence is a common basis for tortious liability. Courts analyze whether the defendant failed to exercise reasonable care, resulting in harm to the plaintiff. This includes evaluating the standard of care, the defendant's conduct, and the foreseeability of harm. In certain situations, tort liability may be imposed regardless of fault. Strict liability is often applied in cases involving dangerous activities or defective products, where the focus is on the nature of the activity or product rather than the defendant's conduct. Defendants may raise various defenses, such as contributory negligence (plaintiff's own negligence contributed to the harm) or assumption of risk (plaintiff voluntarily assumed the risk of harm). Courts determine the appropriate compensation or damages to be awarded based on the harm suffered by the plaintiff. Damages may include compensation for medical expenses, loss of income, pain and suffering, and other losses.²⁹

4.3 Precedents in Establishing Causation and Negligence:

In tort law, the establishment of causation and negligence often relies on legal precedents that have shaped the interpretation of these principles. When deciding whether a defendant was negligent or whether their acts caused harm, courts commonly consult well-established instances. The "but for" test, which determines whether the injury would not have happened "but for" the defendant's acts, is frequently used to determine causation. It is also possible to utilize the considerable factor test, particularly when there are several contributing factors. When assessing whether the harm was a reasonably foreseeable result of the defendant's behavior, courts consider foreseeability.

²⁸ "Liability in Tort of Judicial Officers" "Amnon Rubinstein" "The University of Toronto Law Journal" Vol. 15, No. 2 (1964), pp. 317-335 (19 pages) Accessed Dec 12,2023

²⁹ "Liability in Tort of Judicial Officers" " Amnon Rubinstein "The University of Toronto Law Journal" Vol. 15, No. 2 (1964), pp. 317-335 (19 pages) Accessed Dec 12,2023

Negligence, on the other hand, involves assessing whether the defendant's conduct met the standard of care expected of a reasonable person. In circumstances involving people with particular knowledge, precedents may take professional standards into account in addition to the reasonable person test. When the evidence is clear, the defendant has the burden of proof, according to the *res ipsa loquitur* doctrine. In order to prove negligence, a defendant must have a duty of care, and courts look to prior rulings to ascertain whether the defendant owed the plaintiff a duty. The standard of care may be established by custom and practice within a specific business or community, and deviating from these traditions may be considered irresponsible..

4.4 Challenges in Litigation against Public Authorities:

Litigating against public authorities poses several challenges due to the unique legal and procedural aspects involved. While these challenges can vary by jurisdiction, some common issues include: Many jurisdictions grant sovereign immunity to public authorities, protecting them from certain lawsuits. This immunity can limit the ability of individuals to sue government entities, and even when waivers exist, they may be subject to strict conditions. Litigating against public authorities often involves navigating complex and bureaucratic legal procedures. This can include specific notice requirements, shorter limitation periods, and procedural hurdles that are not present in private litigation. Some jurisdictions have laws that grant immunity to public authorities for certain acts, decisions, or omissions. These statutes may limit the scope of liability for government entities, making it challenging for plaintiffs to establish negligence or other claims.³⁰ Before pursuing litigation, individuals may be required to exhaust administrative remedies, such as filing complaints with specific government agencies. Courts may be cautious when adjudicating cases against public authorities, taking into account broader public interest and policy considerations. Balancing the interests of individuals with the needs of the government can be challenging. Public authorities are often funded by taxpayers, and large damage awards could impact public resources. Courts may be mindful of this when determining remedies, and budgetary considerations may limit the compensation available to successful plaintiffs. Cases involving public authorities can be politically sensitive. The potential impact on public opinion or the reputation of government officials may influence legal proceedings. This can sometimes lead to political pressure or

³⁰ " Public Law Challenges" <<https://www.hickmanandrose.co.uk/legal-service/public-law-judicial-review/public-law-challenges/>> Accessed Dec 15,2023

interference. Gathering evidence against public authorities can be challenging, especially when dealing with internal documents or confidential information. Public authorities may assert privileges to limit the disclosure of certain documents or information. Legal actions against public authorities may take longer to resolve due to factors such as bureaucratic processes, procedural complexities, and the potential for appeals. This can result in delays and increased costs for litigants.³¹ Individuals within public authorities, such as government officials, may enjoy qualified immunity, which protects them from personal liability for discretionary actions taken in their official capacity. This immunity can make it challenging to hold individual officials accountable.

4.5 Comparative Analysis with Other Public Authorities:

In conducting a comparative analysis of litigation against public authorities, it is evident that legal systems across jurisdictions exhibit both commonalities and distinct features. Sovereign immunity, a fundamental concept, varies in its application, with some jurisdictions allowing waivers through legislation, such as the Federal Tort Claims Act in the United States or the Crown Proceedings Act in the United Kingdom. The complexities of legal procedures, including notice requirements and limitation periods, differ widely, influencing the ease with which litigants can bring claims against public entities. Governmental immunity statutes and the requirement to exhaust administrative remedies are universal concerns, but the specific conditions and efficiency of these mechanisms vary.³² Public interest considerations, budgetary constraints, and political sensitivity contribute to the nuanced landscape of litigation against public authorities. While evidence challenges and the concept of qualified immunity for officials have parallels in different legal systems, the extent and application of these principles differ. The speed and efficiency of legal proceedings, along with the balance struck between protecting government interests and individual rights, further underscore the importance of a comprehensive comparative approach to understanding the challenges inherent in litigating against public authorities.

³¹"Has a Decision made by a Public Body adversely impacted on you, your family or your Community? How to mount a Challenge " <<https://www.giambronelaw.com/site/news-articles-press/library/articles/how-to-challenge-a-decision-by-a-public-body>> Accessed Dec 15,2023

³² "The Palgrave Handbook of Comparative Public Administration: Concepts and Cases "(pp.51-76) Publisher:" Palgrave Macmillan" Accessed Dec 18,2023

4.6 Implications for Future Litigation:

Legal cases carry implications that resonate beyond the specific circumstances of each case, influencing future litigation and shaping the legal landscape. Here are several key implications for future litigation drawn from past legal cases. Landmark cases establish precedents that serve as authoritative references for similar future disputes. These precedents guide courts, lawyers, and litigants, contributing to the development of consistent legal principles. Cases often provide opportunities for courts to interpret laws, contracts, and constitutional provisions. The interpretations offered become influential in guiding how similar legal issues are understood and resolved in subsequent litigation. Legal decisions can prompt legislative or regulatory changes. Outcomes that reveal gaps or inadequacies in existing laws may stimulate lawmakers to enact reforms, adapting the legal framework to contemporary needs. Cases clarify legal standards and requirements, offering guidance on the elements necessary to establish liability or entitlement. This clarity benefits future litigants and helps streamline legal processes. Lawyers and litigants often study past cases to inform their litigation strategies. Insights gained from successful or unsuccessful arguments can shape the tactics and approaches employed in future legal disputes.³³ Legal cases that address significant social or cultural issues may have broader societal implications. They can contribute to societal awareness, influence public opinion, and catalyze social changes, impacting the context in which future litigation occurs. The outcomes of cases can affect settlement dynamics by signaling the likely results of similar disputes. A precedent-setting case may prompt parties to reassess their positions and consider negotiated resolutions. Cases involving emerging technologies or novel legal questions set important precedents in fields like intellectual property, privacy, and cyber security. These precedents guide future litigation in rapidly evolving areas. Legal cases may reveal challenges related to access to justice, prompting reforms to enhance accessibility, affordability, and fairness in the legal system. Improvements inspired by such cases can benefit future litigants. Cases with international implications or involvement may contribute to the development of global legal trends. Cross-border litigation often involves considerations that shape international legal principles. Cases involving allegations of professional misconduct or ethical breaches can impact the development of ethical and

³³ "Commentary -Comparative Public Administration: A Global Perspective" "Jamil E. Jreisat" Vol. 71, No. 6 (November / December 2011), pp. 834-838 (5 pages) Accessed Dec 19,2023

professional standards. Lessons from such cases may lead to changes in professional regulations and guidelines.

4.7 Lessons Learned from Legal Cases:

Legal cases serve as profound sources of lessons for the legal system and society at large. They emphasize how necessary it is to have precise and unambiguous legal language in order to avoid misunderstandings, how laws should be flexible enough to accommodate changing society demands, and how important precedent and stare decisis are in maintaining consistency and predictability. These instances also highlight how important it is to preserve judicial independence, advance equal protection, and respect individual rights. Legal cases can teach us about the advantages of alternative dispute resolution procedures, the need for corporate responsibility, and the significance of taking on contemporary issues like environmental preservation and digital privacy. Judicial cases also highlight the obstacles to justice access, highlighting the continuous need for inclusive, transparent, and accessible judicial systems. In essence, legal cases are invaluable learning experiences that shape legal principles, inspire reforms, and contribute to the evolution of justice systems worldwide.³⁴

4.8: Conclusion:

To sum up, legal cases are important turning points in the continuing story of the legal system because they teach important lessons and influence the course of future lawsuits. These cases make a substantial contribution to the development of legal concepts by impacting legislative reforms, policy formation, and the setting of precedents that direct subsequent decisions. Legal interpretations have a profound effect outside of the courtroom due to the way they clarify rules and inspire strategic considerations. Cases that deal with social, cultural, and technological challenges can also lead to broader changes in society, highlighting the dynamic interaction between the law and the society it regulates. As the legal system continues to evolve, the collective wisdom gleaned from past litigation remains an indispensable resource, driving progress, promoting justice, and ensuring the adaptability of the law to the dynamic challenges of society

³⁴ "Has a Decision made by a Public Body adversely impacted on you, your family or your Community? How to mount a Challenge " <<https://www.giambronelaw.com/site/news-articles-press/library/articles/how-to-challenge-a-decision-by-a-public-body>> Accessed Dec 18,2023

Chapter-5

Findings and Recommendations

5.1 Identified Instances of Tortious Conduct:

The research has uncovered several instances of tortious conduct by the Ministry of Road Transport, Bridges, and Highway, contributing to accidents, harm, and inadequate infrastructure development. These findings shed light on the areas requiring immediate attention and remedial action. The Ministry has been found to exhibit negligence in ensuring road safety standards, leading to a higher incidence of accidents. Inadequate traffic management, poorly designed intersections, and insufficient signage were identified as contributing factors to accidents. Instances of poor maintenance of existing road infrastructure were identified, resulting in hazardous conditions for motorists and pedestrians. Neglect of regular maintenance schedules and timely repairs has led to increased road hazards and accidents. The Ministry has been slow in responding to safety concerns raised by the public and relevant stakeholders. Cases were identified where infrastructure projects initiated by the Ministry lacked transparency, accountability, and adherence to established standards. Delays in project completion, budgetary mismanagement, and inadequate quality control were prevalent issues. The enforcement of regulations related to road safety and infrastructure development has been inconsistent and, in some instances, non-existent. Violations of established standards by contractors and sub-contractors were identified, indicating a failure in regulatory oversight. The Ministry has demonstrated limited efforts in engaging with the public and civil society organizations regarding road safety and infrastructure development. Public awareness campaigns and collaborative initiatives were found to be lacking. The instances of tortious conduct have legal implications, with potential liabilities for the Ministry in terms of compensating victims and facing legal consequences. The lack of a robust legal framework has contributed to challenges in holding the Ministry accountable for its actions. The identified instances of tortious conduct have had a tangible impact on public safety, leading to injuries, fatalities, and damage to property. Inadequate infrastructure development has hindered economic progress and the overall well-being of citizens.

5.2 Legal Implications:

The legal implications of the identified instances of tortious conduct by the Ministry of Road Transport, Bridges, and Highway highlight the need for comprehensive reforms in the legal framework governing public authorities. These implications include potential liabilities, challenges in enforcement, and the necessity for clear legal standards to ensure accountability. The legal system must adapt to effectively address the evolving nature of tortious conduct by public authorities.

5.3 Recommendations:

- Public authorities, especially those involved in road transport and infrastructure, should prioritize transparency and accountability. Clear procedures, regular audits, and public reporting can help prevent negligence and wrongdoing.
- Ensure that personnel within public authorities are well-trained and compliant with safety standards. This includes providing adequate training for those involved in licensing, road design, and maintenance to mitigate the risk of negligence.
- Regularly review existing laws and regulations concerning tortious liability for public authorities. Consider reforms that strike a balance between citizens' rights and the efficient functioning of these entities.
- Increase public awareness about their rights and avenues for seeking compensation in case of harm caused by public authorities. This can empower citizens to hold these entities accountable.
- Conduct regular risk assessments to identify potential areas of liability. This proactive approach can help public authorities address issues before they lead to harm or legal consequences.
- Ensure compliance with the Right to Information Act to enhance transparency, allowing citizens access to information about public authorities and their actions.

Introduce clear and specific statutory duties for public authorities, including the Ministry, outlining standards for road safety, maintenance, and infrastructure development. Establish measurable benchmarks and performance indicators to assess compliance with these duties. Amend existing laws to incorporate the principle of strict liability for negligence by public authorities, especially

concerning road safety and infrastructure maintenance. Clearly define the scope of liability, making public authorities accountable for any harm caused due to their negligence. Specify time frames for conducting investigations into incidents involving public authorities, ensuring prompt identification of liability. Mandate the timely reporting of investigation findings to the public and relevant stakeholders to enhance transparency. Increase penalties for non-compliance with statutory duties, providing a stronger deterrent against negligent conduct by public authorities. Implement a progressive penalty system that escalates based on the severity and frequency of non-compliance. Establish a dedicated compensation fund for victims of accidents attributable to the negligence of public authorities. Ensure that the fund is easily accessible to victims and their families, streamlining the compensation process. Integrate mechanisms for public consultation in the legislative process related to road safety and infrastructure development. Seek input from relevant stakeholders, including civil society organizations and the general public, to enhance the effectiveness of legislation. Introduce provisions to protect whistleblowers who disclose information regarding negligence or misconduct within public authorities. Encourage a culture of accountability by safeguarding individuals who come forward with information on malpractices. Implement a system for periodic reviews of existing legislation to ensure its relevance and effectiveness. Enable timely amendments based on emerging challenges and advancements in road transport and infrastructure development. Include provisions mandating ongoing training programs for employees of public authorities, enhancing their understanding of legal obligations and best practices. Strengthen the capacity of the Ministry to adhere to updated standards and regulations. Consider adopting and adapting international best practices in public authority liability to align Bangladesh's legal framework with global standards. Collaborate with international organizations and experts to incorporate proven strategies for minimizing tortious conduct.

5.4 Conclusion:

In conclusion, the analysis of public bodies' tortious liability in Bangladesh, with a particular emphasis on the Ministry of Road Transport, Bridges, and Highway, unveils a multifaceted legal environment. In this thesis, we have examined the basic components of tort liability, specifically carelessness, and how they relate to public bodies tasked with maintaining public safety on the roads. The Ministry of Road Transport, Bridges, and Highway authorities' carelessness, such as in issuing licenses incorrectly or neglecting to uphold traffic safety regulations, can have dire

repercussions, including collisions, injuries, and fatalities. In proposing recommendations for reform, it is crucial to advocate for transparent and accountable practices within public authorities. Essential actions include putting strict procedures in place to maintain road safety standards, making sure staff members are properly trained and supervised, and setting up channels for citizens to report carelessness. Legal changes should also be taken into account in order to resolve issues with sovereign immunity and enable more efficient legal procedures for holding public officials accountable for torts. In summary, the legal system in Bangladesh must develop and adjust to the difficulties presented by public authorities' tortious liability. With these initiatives, we hope to establish a legal system that promotes responsibility, improves public safety, and ultimately advances the welfare of the populace.

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