



DISSERTATION

ON

**“Effect of Sexual Assault & Stalking on Victims: In Search of Legal
Remedy Under the Tort Law in Bangladesh”**

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Submitted To:

Mridul Bepari

Lecturer

Department of Law

East West University

Submitted By:

Mehedi Hasan Nayeem

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Consent form



The dissertation titled “Sexual Assault & Stalking on Victim: In Search of Legal Remedy under Tort Law in Bangladesh” Prepared by Mehedi Hasan Nayeem; ID: 2017-2-66-009, Submitted to Mridul Bepari, Lecturer, East West University 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.

Signature of the Supervisor

Date:

DECLARATION

I, Mehedi Hasan Nayeem, bearing Student ID: 2018-2-66-006, do hereby solemnly declare and affirm that this research paper is original and my own work and is not copied from anywhere or from anyone's view and has neither been published in any journal, newspaper or article nor been submitted to any of such publications. It is completed during my academic education as a requirement for my academic degree of LL.B. Information from works of others used in this research is duly acknowledged and referred to accordingly, and a list of references has also been included.

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ABSTRACT

Sexual assault, rape, indecent behavior, sexual molestation, incest, child sexual abuse, touching, "feeling up," and sexual harassment are all forms of sexual misconduct. In this research paper elaborated the form of sexual assault & victim stalking with effect of its victim and consequence for claiming remedies under the Tort Law. Chapter two and three has written down about sexual assault and victim stalking on the basis of method of victimize and effect of mental and physical occasion. Chapter four has described about the existing laws in Bangladesh regarding the sexual abuse. Where finding that, inadequacy and obstacle of legal remedy under criminal action basis. Chapter five of this research paper described about the dilemma of legal action for male victim where the remedy & specific law is not clear in the prospective for male actor. In this research paper chapter six has broadly elaborated about the civil action and remedy under the tort law. The concluding chapter seven is about the finding and recommendation apart from this paper.

LIST OF ABBREVIATIONS

BAT	British American Tobacco
BNWLA	Bangladesh National Women Lawyers Association
CrPC	Code of Criminal Procedure
CPC	Code of Civil Procedure
DMP	Dhaka Metropolitan Police
HCD	High Court Division
UNHCR	United Nations High Commissioner for Refugees
PTSD	Post Traumatic Stress Disorder

Chapter – 1

1.1 Introduction

Sexual assault victims can assess and receive damages in civil cases under tort law. A method for victims of sexual assault to seek justice is through civil claims for damages. Criminal prosecution, financial compensation for criminal injuries, human rights complaints, negotiated or unilateral compensation packages, and public and private inspections are further remedies that may be available. As the civil justice system is playing a major role in establishing how our society will compensate claims of sexual assault, in framing the issues, in developing compensatory principles, and in influencing other procedures for dealing with sexual assault, actions for damages are a particularly significant means of pursuing redress in this context. Tort lawsuits made by sexual assault victims have been growing exponentially in this era. These claims may be brought against both the offenders and additional defendants, also referred to as third parties. Whether there was a successful or unsuccessful criminal case, or no criminal prosecution at all, a tort claim might be brought against a perpetrator. The advantages of tort actions include the victim's influence over a variety of important litigation options.

1.2 Methodology

To achieve the purpose of the dissertation, the research will be conducted using the qualitative research approach. Books, statutory law and case law are the main source of this paper and article, journal, newspaper, blog are utilized as the secondary sources. Referencing system is conducted by the OSCOLA referencing style. This research paper examines a variety of issues to seek the remedy of identical legislative method in civil action under tort law.

1.3 Objectives of the Study

- To develop a legal framework and avail remedies in the terms of sexual assault under the tort law in Bangladesh
- To find out the flaws in existing criminal justice system on the basis of sexual misconduct
- To find the procedural safeguards for decisions involving sexual assault.

- To develop the sufficient compensation for the victims.
- To develop the variety of litigation options for seeking remedy.

1.4 Research Questions

- Is there any specific law on sexual assault?
- Can tort law provided adequate compensation for sexual victims?
- Whether the tort laws provide any compensation for emotional distress?
- Whether the tort law can provide any assistance for male victim?

1.5 Limitations

The non-availability of practical resources is the primary constraint of this study. There are not enough current assets available, as well as insufficient of time. More importantly there is insufficient data on this subject from Bangladesh's standpoint. The research may be more informative and well-organized without this constraints.

Chapter – 2

Impact of Sexual Assault

2.1 Introduction

The act of forcing or physically coercing someone to do a sexual act against their will is known as sexual assault. It involves purposely touching someone physically without getting their consent. This is an instance of sexual violence. Every community suffers sexual violence, which affects people of all gender and ages.

2.2 Form of Sexual Assault

Numerous long-term and institutional effects of sexual assault include substantial negative effects on victim's health, education, job, and the financial well-being of their families, communities, and society. Survivors of sexual assault may experience extremely challenging and traumatic emotions after the incident. Sexual assault occurs in a variety of forms. The different types of assault and sexual abuse are listed here. Some sorts of sexual assault consist:

- Unpleasant or unwelcome sexual contact
- Intent to rape
- forcing the victim to engage in sexual activity, such as oral sex or body penetration
- whether it is consenting or not any kind of sexual activity with minors
- sending someone to pornographic images or messages
- The act of raping a victim by penetrating their organs.¹

2.3 Effect on Physical Health

Forced sexual assault and other types of rape that don't involve forcible submission, including date rapes helped by drugs, can also have physical impacts. As a result of coercive violence, forced sexual assault frequently results in obvious bruising or bleeding in the vaginal or anal area as well

¹ “Sexual Assault | RAINN” (Sexual Assault | RAINN) <<https://www.rainn.org/articles/sexual-assault>> accessed August 29, 2022

as bruises on other parts of the body. However, there are a number of other bodily effects that can occur from rape, including pregnancy, urinary infections, and sexually transmitted diseases.

2.4 Effect on Mental Health

When this type of incident happened the victim may experience negative and delayed impacts on their mental health as a result of the traumatic event's memories. Even as shame, guilt, or terror are among the numerous psychological symptoms of sexual assault that are frequently experienced, these feelings may be transient and improve over time. The impacts are more severe in many other instances.

2.5 Conclusion

The contentious debate is still in progress. But, a new study warns that sexual assault and harassment frequently have a lasting negative impact on a victim's physical and mental health, raising their risk for conditions like post-traumatic stress disorder, anxiety, and depression.

Chapter – 3

Impact of Victim Stalking

3.1 Introduction

Stalking is a pattern of conduct that focuses on a particular person and would cause a reasonable person scared. Stalking is characterized by a person's repeated course of behavior or acts that are meant to keep in contact with or impose authority and control over another person. Even though a lot of people believe that stalking just happens to celebrities but it actually effects on anyone. Stalking is regarded as constant, unwelcome attention that makes you feel bothered and irritated. It involves behavior that another person engages in twice or more that makes you feel scared, upset, or as though violence may be used against individual.

3.2 Form of Victim Stalking

A stalker may stalk both males and women. But general terms, women feel more terror than men do. Even after a stalker has made advances, that can persist. Stalking victims are impacted in a variety of ways. After a stalking incident, the victim's social lives, physical health, and mental health are typically all negatively damaged.²

There are a several type of method that is define by Stalking –

- Rejected Stalker: Some stalkers have just gone through a breakup or have been rejected by someone they wanted to be in a relationship with. The stalker can be trying to patch up their relationship or just want to hang around the victim as much as they can. In other cases, they are angry and seek revenge after being refused.
- Predatory Stalker: Predators frequently have aberrant sexual fantasies or are sexually fixated. Usually male, these stalkers target women who are strangers to them but who they have feelings for. Voyeurism can be the beginning, which sets the stage for a sexual assault.

² Feiter T, "How Stalking Impacts Victims' Lives | Protection Against Stalking" (Fighter Law, April 20, 2020)

<<https://www.fighterlaw.com/how-stalking-impacts-victims-lives/>> accessed August 30, 2022

- Intimacy Seeker: The stalker who seeks intimacy desires a close, passionate relationship with the victim. When the victim rejects the stalker, he or she will repeatedly call the victim, write the victim notes, and, if the victim starts dating someone else, become envious and violent.
- Incompetent Suitor: The incompetent suitor stalker typically has inadequate social abilities. They want to be friends with the victim but lack the maturity to understand that they are not meant to be together.
- Hitman: The most dangerous, victims are those who are stalked by a hired murderer with instructions to seriously hurt or kill them.

3.3 Effects on Physical health

The panic and anxiety a stalker might cause may have an adverse effect on a victim's physical health. The following are some of the most typical physical consequences of being stalked:

- fatigue brought on by difficulties sleeping, being on high alert all the time, and depressive feelings
- chronic stress's side effects, such as headaches and high blood pressure
- changes in weight caused by comfort eating or not eating
- Alcohol, tobacco, and drug usage have a negative impact on health.³

3.4 Effects on mental health

The stress and worry that come with having a stalker can have a serious impact on a victim's mental health. Being stalked can have a variety of psychological impacts. The effects of stalking include some of the following, which are more frequently experienced by victims:

- Consciousness and perplexity as they wonder if they're overreacting
- Have flashbacks, disturbing thoughts, feelings, or memories

³ “Impact of Stalking on Victims | Stalking Risk Profile” (Impact of stalking on victims | Stalking Risk Profile) <<https://www.stalkingriskprofile.com/victim-support/impact-of-stalking-on-victims>> accessed September 1, 2022

- Fear of being left alone
- Feeling isolated and helpless
- feeling nervous and gloomy
- Deteriorating performance
- Suicidal thoughts or attempts.

3.5 Conclusion

The social phenomena of stalking is regarded as having a significant negative psychological and physical impact on victims. A great amount of people are victims of the destructive and disturbingly prevalent crime of stalking.

Chapter – 4

Legal Remedy under the Existing Laws of Bangladesh

4.1 Introduction

According to the UNHCR, sexual harassment is physical abuse, including the use of an explicit or implied sexual contraption, whether by force or coercive situations. Sexual harassment is a frequent issue today. It can happen to both men and women. Sexual harassment has recently emerged as a significant problem in Bangladesh, where a number of relevant laws and regulations have been implemented. As a result, the problem of sexual harassment as well as related legal viewpoints in the context of Bangladesh will be covered in this chapter.

4.2 Current Laws Relating to Sexual Assault & stalking

It is extremely unfortunate that Bangladeshi citizens do not have access to sufficient legal protections against sexual harassment. Sections 354 and 509 of the Penal Code, 1860, which do not cover all forms of sexual harassment, are among the fewer sections they have, while the Women and Children Repression Act, 2000, is among the fewer acts they have. Sexual harassment is primarily covered by two penal law clauses.

According to Section 69 of the Bangladesh Telecommunication Act of 2001, sexual harassment offenses include sending obscene, indecent, threatening, or grossly insulting messages to another person with the intent or knowledge of doing so. Offenders who commit these crimes are subject to up to a six-month prison sentence, a fine of up to fifty thousand taka, or both According to section 69 of Bangladesh Telecommunication Act, 2001.

Sexual harassment is described in section 76 of the Dhaka Metropolitan Police Ordinance 1976 as insulting or disturbing a woman in a public setting while using indecent language and gestures. The same Ordinance specified that such infractions might result in imprisonment for a term that could last up to a year, a fine that could amount to 2,000 Takas, or both According to section 76 of The DMP Ordinance, 1976.

Here some other law describe about sexual harassment in the occasion of occurring violence.

4.2.1 The Constitution of Bangladesh

According to Article 31, every citizen has the life and liberty right to the protection of the law, to be treated fairly, and to have their rights upheld only in accordance with the law.⁴ In particular, Article 31 states that no action that could endanger a person's life, liberty, physical integrity, good reputation, or property may be taken unless it is authorized by the law.

Furthermore Article 32, no one may be deprived of their life or their personal freedom unless it is done so legally.⁵ Thus, all aspects of gender equality, including the prohibition of sexual harassment or abuse, are covered by the Fundamental Rights specified in Chapter III of the Constitution.

4.2.2 The Penal Code, 1860

The Penal Code's section 354, which addresses the crime of "sexual assault," states that anybody who assaults or uses illegal force against a woman with the knowledge or intent to offend her modesty faces a maximum sentence of two years in jail and a fine.⁶

According to the penal code, committing sex with a woman against her will and without her consent is the central element of rape.⁷ In addition, Section 509, anyone convicted of intentionally invading a woman's privacy or insulting her modesty through speech, gesture, or the display of objects with the intent that the woman will hear, see, or be exposed to the word, gesture, or object in question, will face up to a year in prison, a fine, or both.⁸

4.2.3 The Prevention of Women and Children repression Act, 2000

In addition to the laws already listed and in effect in Bangladesh, The Penal Code was the first to specify Sexual Offence. The Cruelty to Women Ordinance, 1983 was designed solely to give women more protection against criminal offenses like sexual harassment. The Prevention of Cruelty against Women (Special Provision) Act of 1995 was enacted as a result of the significant

⁴ The Constitution of People's Republic of Bangladesh, Art. 31

⁵ Ibid, Art. 32

⁶ The Penal Code, 1860, Section 354

⁷ Ibid, Section 375

⁸ Ibid, Section 509

increase in violence against women. The Prevention of Oppression against Women and Children Act, 2000 was finally passed by the Parliament and featured a few provisions, such as harsh punishment for rape⁹ and provisions relating to medical examination of the victims.¹⁰

4.2.4 Domestic Violence (Prevention and Protection) Act, 2010

The Domestic Violence Act covers provisions for sexual, psychological, or physical abuse of a woman or a child. Where in this scenario "Sexual abuse" refers to any sexual behavior that violates the victim's dignity in any other way, including by abusing, humiliating, or humiliating them.¹¹

4.2.5 The Code of Criminal Procedure, 1898

Throughout practically all criminal cases, the Code of Criminal Procedure contains the fundamental laws of procedure. It lays out the full process, including the first report, the investigation and arrest of suspects, and all trial phases up to the conviction, sentencing, and appeal. Additionally, it states that a sexual offense is Non Compoundable offense and that police can make an arrest without a warrant. These offenses are also non-bailable under the CrPC.¹²

4.3 Directives of the High Court Division's Guideline

A significant ruling was handed down by the High Court Division of the Supreme Court of Bangladesh in 2009¹³. The first is BNWLA v. Bangladesh & Ors¹⁴, which addressed the lack of sexual sexual assault legislation in Bangladesh and issued directives aimed at all workplaces and educational institutions in both the public and private sectors. These directives provided a comprehensive definition of sexual harassment as well as the steps that these organizations must take to prevent it.

Recognizing the necessity for a legal system to deal with sexual harassment. This decision provides specific instructions for all workplaces and academic institutions, and it categorically states that these recommendations must be followed up until appropriate and efficient legislation is

⁹ The Prevention of Oppression against Women and Children Act 2000, Section 9

¹⁰ Ibid, Section 32

¹¹ The Domestic Violence Act 2010, Section 3

¹² The Code of Criminal Procedure, 1898, Schedule II

¹³ Supreme Court of Bangladesh, High Court Division, Bangladesh National Women Lawyers' Association (BNWLA) vs. Government of Bangladesh and Others, 29 BLD 415, 2009

¹⁴ 29 BLD (HCD) (2009) 415

implemented. Significantly, the rules provide a rather extensive list of actions or behaviors that equate to regarding sexual harassment, including "quid pro quo" behavior and actions that foster a "hostile working environment," environment.

According to the rules, sexual harassment includes:

- A. Unwelcome sexually determined behavior (directly or by implication) as physical contact and advances;
- B. attempts or efforts to develop a physical relationship with the intent to engage in sexual activity by the misuse of official, clerical, or professional authority ;
- C. Verbalization with sexual overtones
- D. Demand or request for sexual favors;
- E. Showing pornography;
- F. Sexually colored remark or gesture;
- G. Indecent gesture, teasing through abusive language, stalking, joking having sexual implication;
- H. insults that have a sexual undertone in letters, phone calls, texts, potshots, cartoons, writing on benches, tables, notice boards, office walls, factories, classroom walls, or restroom walls;
- I. Blackmailing or character assassination through the use of still or moving images
- J. preventing participation in academic, athletic, cultural, and organizational activities because of a person's sexual orientation or for the purpose of sexual harassment;
- K. Making love proposal and exerting pressure or posing threats in case of refusal to love proposal;
- L. Attempt to establish sexual relation by intimidation, deception or false assurance

4.4 Conclusion

To sum up the reasons, it can be noted that Bangladesh needs specific legal consequences and targeted legal measures to be able to regulate the crime of sexual harassment. In the report, certain recommendations have also been made that might be useful if the appropriate actions are taken by the relevant authority.

Chapter – 5

Sexual Violence against Male

5.1 Introduction

Sexual assault of males is still a taboo. Regardless of age, sexual preference, or gender identity, anyone can experience sexual assault. Many of the emotions and behaviors experienced by survivors of sexual assault are also experienced by men and boys who have been sexually attacked or abused, but because of social attitudes and expectations about males and manhood, they may also face many additional difficulties.

5.2 Myths & Reality about Sexual Assault against Men

Contrary to popular belief, males must specifically consent to sexual engagement, just like women do. The misconception is that men are constantly seeking or willing to engage in sexual intervention. Someone is still a man even if he doesn't want to engage.

Another vital presumption is that only men will sexually assaulted by others men. Nevertheless, sexual assault can include any unwelcome sexual contact, not simply by penetration. Therefore, a woman can sexually assault a man.

Additionally, homosexual males are more able to assault other men, and all homosexual men who commit sexual assault are homosexual, but in reality, sexual assault is about taking control over a victim rather than desire or sexual attraction. Guys who identify as heterosexual can and do abuse other men.

Furthermore, sexual assault is not about sexuality or sexual attraction; it is about imposing authority or control over another person. Contrary to popular belief, heterosexual men can and do sexually abuse other men, but just like with women, they have the ability to freeze in the process.

A man may be unable to defend himself if they are under the influence of drugs, alcohol, the threat of violence, or there is a weapon around.¹⁵

5.3 Legal dilemma for Male Victim

Considering the social and cultural distinctions and, most crucially, the people's mentalities, maintaining Law and Order among the majority of the population will be challenging work for the government and the judiciary given the current circumstances in Bangladesh.

Only women in Bangladesh are protected from sexual harassment by law. Men are not shielded from the terrible conduct of sexual harassment by laws or statutes. The sole section of The Penal Code, 1860 that discusses "sodomy" is Section 377. The remaining portions are all oriented to women.

The Judiciary system of Bangladesh discuss equal rights for men and women. These appalling dismissals of the need to pass laws against rape or sexual harassment as gender neutral reveal how the right to equality is being violated. The Bangladeshi judicial system puts a lot of effort into defending women against sexual assault, and while it is a fantastic accomplishment, it is unfair to ignore the misery of men who are the victims of sexual assault.

5.4 Conclusion

It's time to update the law to include a gender-neutral sexual assault definition. Furthermore, legislation must be passed by the Parliament to ensure that male rape victims, particularly young men, receive justice. Under the current Penal Code and specific penal law, a man or a male child rape victim has the right to seek out legal shelter. Around the world, there is a lot of research being done on sexual assault of men, and numerous nations have passed laws addressing the issue. It is time for our Bangladeshi courts to begin treating crimes of sexual assault against males seriously and for laws to be passed to safeguard men from such crimes.

¹⁵ "Men and Sexual Assault - AAIT Prod Let's Be Clear" (AAIT Prod Let's Be Clear, November 1, 2017) <<https://letsbeclear.ucf.edu/more-information/sexual-assault-and-consent/men-and-sexual-assault/>> accessed September 5, 2022

Chapter – 6

Civil Actions under Tort Law for Sexual Assault & Stalking

6.1 Introduction

A civil legal remedy is a legal remedy that does not include the criminal courts. Comparing increasing incidence of rape, sexual assault, and harassment of man & women with falling conviction rates demonstrates the criminal justice system's inefficiency in containing the sexual violence epidemic in Bangladesh and the necessity to look for an alternative remedy. This chapter's main concern is that tort law remedies should be used instead of criminal law's ancillary provisions to compensate and redress sexual assault victims because they are arguably more suited to address the wide range of losses and injuries suffered by victims of sexual assault.

6.2 Inadequacy of Existing Criminal Provisions

According to Bangladesh's current laws namely; The Prevention of Women and Children Repression Act, 2000 Act, and the Penal Code, 1860, sexual assault victims do not automatically have the right to compensation; instead, they can only get it if three requirements are satisfied: the crime was proven to have been committed, a fine was imposed as punishment, and the court used its discretion to treat the fine as compensation. As we've seen, this significantly lowers the likelihood that victims will receive compensation because, even when a conviction is upheld, judges rarely use their discretion to convert a fine or other penalty into an award of compensation because there is no functioning legal framework for compensation.

In light of the foregoing, it is quite obvious that compensation is a nearly nonexistent form of justice in Bangladesh for sexual violence. To be altered, victims of sexual assault must have a legal right to financial compensation under civil law rather than criminal law.

6.3 Consequences of Tort Actions

Any civil wrongdoing is a tort. Where there is a violation of a general duty imposed by civil law, tort law applies. Given that information, a breach of tort occurs when the defendant causes harm

or loss to the claimant by failing to uphold a pertinent legal requirement imposed by general law, where the harm caused by the tortfeasor's actions allows the plaintiff to make a financial claim for the harm caused, which is compensated by money¹⁶.

6.4 Basis of Liability

Laying out the grounds on which defendants may be considered accountable is essential before going into how damages are calculated in sexual assault cases. Bases of culpability are significant in general because they must be shown before the plaintiff may get remedies such compensation.¹⁷

6.4.1 Assault and Battery

An assault is defined as an effort or threat to physically harm another person, coupled with the evident capacity and purpose to carry out the threat or conduct¹⁸. The tort of assault and battery is most frequently used to establish the legal responsibility of the actual sexual assaulters. Assault occurs when someone purposefully raises the possibility of harmful or objectionable contact with another person without that person's consent. Battery occurs when this happens. Because assault and battery are intentional torts, the perpetrator must have intended the effects of his actions. These categories definitely include improper sexual interaction¹⁹.

6.4.2 Negligence

The tort of negligence is applicable when injuries are accidentally, or carelessly, caused, in contrast to assault and battery. The primary goals of the law of negligence are to provide financial relief to those harmed as a result of another's "faulty conduct" and to discourage future negligence. The rationale for imposing a duty of care on third parties to stop acts of sexual violence from occurring becomes even stronger in light of the rising prevalence of sexual assault in Bangladesh.²⁰

¹⁶ "Development Of Tort Law In Bangladesh: Recent Case Reviews" (Bangladesh Law Digest (BDLD), May 23, 2018) <<https://bdlawdigest.org/tort-law-in-bangladesh.html>> accessed September 6, 2022

¹⁷ G.S Pande, *Laws of Tort*, published in 1997, edition 2018

¹⁸ "Tort For Sexual Harassment" (Tort For Sexual Harassment) <<https://www.legalserviceindia.com/legal/article-1722-tort-for-sexual-harassment.html>> accessed September 6, 2022

¹⁹ While such cases are most often examples of "battery," as there is non-consensual physical contact, "sexual assault" is the more commonly used term, and will be employed in this Final Report

²⁰ Andaleeb, S. S. (et al.), 'Roads Free from Sexual Harassment and Crash for Women' BRAC Research Report (2017) which found that 94% of women face sexual harassment when commuting in public transport in Bangladesh.

Negligence claims in the context of sexual assault may be made against institutional defendants and individual defendants beyond from the actual offenders. For instance, negligent acts have defeated a landlord who failed to shield its tenants from a violent employee²¹.

6.4.3 Vicarious Liability

One might be held guilty for another person's crimes even though they did not do them themselves under the legal doctrine of vicarious liability. The most typical instance of vicarious liability is when employers are made accountable for the wrongs done by their employees while they were employed. In that someone who is not at fault might be held liable, vicarious liability can be considered as an unfavorable position²². Plaintiffs in cases of sexual assault may rely on the vicarious responsibility doctrine to hold organizations responsible for sexual abuse. British American Tobacco Bangladesh Company Ltd vs Begum Shamsun Nahar is one of the landmark case in tort law. Begum Shamsun Nahar, the claimant, filed a money suit (tort claim) against her former employer BAT, seeking approximately Tk 2.5 crores in damages. She claimed that the Export Manager and Area Manager of the company sexually assaulted her at work and that BATB should be held vicariously liable for the torts committed by its employees at the place of employment. According to Order VII, Rule 11(a) & (d), Schedule 1 to the CPC, 1908, Section 151 of the Code, BATB counter-filed an application for the plaint to be rejected on the grounds that, among other things, the lawsuit was precluded by law. The first instance court rejected BATB's request to have the complaint dismissed. The High Court Division then denied BATB's unsuccessful request for a civil revision and upheld the trial court's ruling. BATB then requested leave to appeal, but the Appellate Division rejected that request as well. Under tort law, sexual assault clearly gives rise to a liability.

6.4.4 Intentional Infliction of Emotional Distress

Individuals are shielded from harm by the tort law when it comes to actions committed by others that are wrong. Despite the fact that we frequently identify tort claims with damages to people or property, the law also recognizes emotional or psychological suffering as a separate type of injury. This understanding came about gradually when society came to recognize the seriousness and

²¹ Q. v. Minto Management, (1985) 49 O.R. (2d) 531 (H.C.J.)

²² "Vicarious Liability in Tort Law" (Vicarious Liability in Tort Law) <<https://www.lawteacher.net/free-law-essays/tort-law/tort-vicarious-liability.php>> accessed September 6, 2022

lasting effects of mental harm²³. Damages for mental injuries were only recoverable under the conventional common law as part of torts like assault, battery, or false imprisonment. If the plaintiffs had experienced bodily pain or the danger of physical injury, they could additionally claim mental distress as an additional harm. In the end, the courts established psychological injury as a separate cause of action, even in the absence of physical or material damage.

6.5 Advantages of a Compensation Claim in Tort over Criminal Law

A victim of sexual assault has numerous apparent benefits over an action in criminal law by bringing a civil lawsuit in tort.

6.5.1 The Empowered Role in Proceedings of Victim

The victim of sexual assault typically occupies a passive and vulnerable role as a mere witness in a criminal case, subject to unfair and unjustified rules of evidence and practices. This is particularly true in the context of a conservative nation like Bangladesh, where actors in the criminal justice system uphold rape myths and engage in victim blaming due to the predominance of patriarchal society. For instance, section 155(4) of the Evidence Act of 1872 specifies that "it may be established that the prosecutrix was of generally immoral character when a man is prosecuted for rape or an attempt to seduce²⁴. This clause is used by defence lawyers to disgrace the victim in front of an audience during cross-examination by asking her harsh and exceedingly derogatory questions about her sexual history, which experts claim is equivalent to "a second rape." Sexual assault victims find this to be so traumatizing and humiliating that many of them would prefer to drop the case.

In tort law, an attempt by the defense to discredit a victim of sexual assault by attacking her character was considered while establishing damages²⁵. As a result, it is evident that a victim of sexual assault will likely have more authority as a party to the litigation in a tort action than as a just victim in a criminal prosecution.

²³ "Tort Law: Liability for Emotional Distress Torts" (Tort Law: Liability for Emotional Distress Torts, January 1, 105AD) <<https://lawshelf.com/shortvideoscontentview/emotional-distress-torts/>> accessed September 7, 2022

²⁴ The Evidence Act, 1872, Section 155(4); See for example: Aynal Haque vs. The State (2017) 37 BLD (HCD) 577

²⁵ Griffiths v Williams Case Analysis, 1 (1996) Journal of Civil Liberties 69, at p. 70.

6.5.2 Way of Calculating Personalized Compensation

In order to compensate the victim, tort law personalizes the losses and harms that the person suffered as a result of the sexual assault and determines the appropriate amount of damages. This is because the main concern in tort law is how to best handle financially the specific harms resulting from the wrong such as the frequency of sexual assault. When compared to some other types of injury, some individuals may believe that the amount of awards that the courts are considering may not accurately reflect the scope of wrongdoing and the level of misery that rape victims usually experience. So apart from that, under the Law of Tort there are a chance for claiming a personalize compensation for injury and also for emotional distress which is not available in criminal court.

The "Guy v. Ministry of Justice²⁶" case is a wonderful example of how far courts would go to personalize the amount of damages awarded to compensate the victim. A female prison officer successfully sued her employer, the Ministry of Justice, for damages of £104,000 after being attacked and subjected to an attempted rape by a male prisoner. As a result of the Ministry accepting responsibility, the verdict was solely concerned with the amount of damages. Since the attack had caused the woman more severe and long-lasting psychological harm than bodily harm, £60,000 was given for those injuries instead (severe depression and posttraumatic stress disorder). The woman had only received £4,000 for physical injuries. In addition, the court awarded a total of £34,000 for the additional level of care the woman's mother and husband have provided since the incident and will probably continue to provide. The remaining £6,000 was given out for management and future psychiatric care.

6.5.3 Right to sue by other Parties

By using tort law, victims are also empowered to hold responsible third parties accountable who, in the majority of cases, would be exempt from criminal prosecution due to carelessness or the vicarious liability concept. Because they are typically better positioned monetarily to support their claims for damages, victims would find it more advantageous to sue third parties.

²⁶ [2013] EWHC 2819 (QB).

6.6 Conclusion

A civil action under tort law is an alternative and effective solution for getting the remedy of a victim, not only women, but also men, who can claim compensation for emotional distress and other damages. Under Bangladesh's current legal framework, victims of sexual assault do not have a right to compensation; instead, they can only get it if three conditions are satisfied: the crime has been proven to have been committed, a fine has been imposed as punishment, and the court has decided to treat the fine as compensation. Even when a conviction is upheld, judges rarely use their discretion to convert a fine or other penalty into an award of compensation because there isn't even a single functional legal framework for compensation. This is especially true in cases of sexual assault, such as sexual abuse. In addition, this chapter also included a lawsuit for damages under tort law, which gives the victim major advantages over one under criminal law, including their elevated status as a party to the proceedings rather than a mere witness subject to sexist rules of evidence, the lower evidentiary bar in civil law, the customized calculation of damages, and the ability to sue third parties who have a legal obligation and are in the best position to pay compensation but would otherwise escape criminal prosecution.

Chapter – 7

Findings, Recommendations, and Conclusion

7.1 Findings

- In contrast to criminal law, tort law responds to assault differently, generally awarding damages to the victim.
- The ability of the law and law enforcement organizations to address and prevent sexual assault is severely constrained.
- Criminal law's current compensation measures for victims of sexual assault are completely insufficient to provide adequate recompense for these victims.
- By asserting that sexual assault, and sexual harassment are unquestionably actionable torts that give rise to third-party obligation under the tort of negligence or the vicarious liability doctrine, one can claim that sexual violence acts are actionable torts.
- In terms of tort law, sexual assault obviously creates a liability.
- Sexual assault victims must be eligible to compensatory damages under civil law, where criminal law is not adequate.
- The issue of emotional distress has not include by a significant rule in other regulation except the law of tort
- In tort law, an attempt by the defense to disparage a victim of sexual assault on the grounds of her character was a contributing element when determining damages.
- In contrast, the victim in civil law serves a more active and effective role in pursuing a claim against the perpetrator by having full independence and choice throughout the litigation process because they are a participant to the proceedings rather than merely witnesses.
- There may be a better likelihood of establishing civil liability than criminal liability for a claimant. This is due to the fact that the necessary level of proof in civil trials is lower than it is in criminal cases, since the former only requires that cases be proven on the basis of a reasonable probability, while the latter imposes the stricter beyond a reasonable doubt requirement.

- It is easier for the victim when sexual harassment tort regulations are adopted because they may need less proof or bear a lighter burden of proof.

7.2 Recommendations

- Bangladesh needs specific legal consequences and targeted legal measures to be able to regulate the crime of sexual assault
- The concept of using tort law to remedy the harm caused by sexual assault and victim stalking has received in good attention.
- It is asserted that defining a sexual offense restricts not just tolerable sexual behavior but also defines what is considered permissible, normal sexual behavior, making it harder for people to exhibit other sexual orientations.
- Legislators may have adopted a solution that does not respect conventional legal boundaries and will never satisfy all stakeholders by concentrating all of their efforts on changing the criminal law in an effort to obtain justice for victims.
- The myth of male victimization by sexual assault should be rectify.
- There need a legislative framework that directs the application of tort law is obligatory.
- It is important to spread awareness among the general people about the various types of sexual assault that can occur at work, the preventative steps that can be taken, and the legal basis for doing so.
- The proper scope of procedural safeguards for decisions involving sexual assault may determined under tort law.

7.3 Conclusion

Tort law responds to assault by often awarding damages to the victim rather than penalizing the offender. In contrast to criminal law, which punishes the offender, tort law responds to assault by often awarding damages to the victim rather than penalizing the offender. Although gender based injuries that are embedded in and result from interpersonal and societal relationships are difficult for tort law to recognize and address but the outcome of this civil action is significant for receiving proper justice. It is apparent that assault is both a civil and a criminal offense, and case law shows

that victims have successfully filed rape claims. There are a variety of reasons why sexual assault victims would want to file a tort claim. For claimants pursuing tort law claims, the civil law's standard of proof may be advantageous.

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