



SUPERVISED DISSERTATION

ON

**Analysis of Negligence in Motor Vehicle Accidents under Constitutional
Torts in Bangladesh: A Critical Examination of Liabilities and Remedies**

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Consent Form

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A handwritten signature in black ink, appearing to read 'Shikha', is written over a horizontal dotted line.

Signature of the Supervisor

Date: 09/01/2024

Acknowledgment

To begin with, I want to express my gratitude to all of my law department faculty members who assisted me in overcoming my flaws throughout my journey of studying law. I want to express my gratitude and appreciation to my supervisor, Mridul Bepari (Senior Lecturer, Department of Law, East West University). This Dissertation would not have been completed without his support and suggestions. Lastly, I want to express my gratitude to my family and friends who encouraged and prayed for me.

Declaration

I, Tasnima Azad Surovi, Student ID: 2019-2-66-025, declare that I am the author of the dissertation “Analysis of Negligence in Motor Vehicle Accidents under Constitutional tort in Bangladesh: A Critical Examination of Liability and Remedies” This is my original work, and all sources of information used in this paper have been properly cited. This work has not been published in any journal, newspaper, or article.

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ABSTRACT

Road accidents are therefore an unexpected phenomenon that occurs as a result of the operation of vehicles and which causes major harm to the people. The number of road accidents is increasing day by day. The objective of this paper is to examine the existing legal framework in Bangladesh concerning road safety and identify potential areas that could be developed. The study revealed that the existing legal system in Bangladesh incorporates multiple provisions with the objective of enhancing road safety. However, these laws lack efficient enforcement methods and there are limited penalties for those who violate traffic rules. This paper also briefly discusses a concise analysis of the factors that contribute to the occurrence of accidents in relation with the road environment, road users, and vehicles. It also outlines specific actions that should be prioritized to prevent these recurring losses. It is also suggested to ensure effective execution of road safety measures.

Chapter 1

Introduction

1.1 Background of the Study

The significant number of injuries and fatalities resulting from motor vehicle accidents highlights the global road safety crisis. The significant factors contributing to motor vehicle accidents in Bangladesh include the rapid increase in population, motorization, urbanization, as well as the prevalence of reckless driving, speeding, and insufficient investment in road safety measures. Despite the efforts of the Government and non-government organizations to implement precautionary measures, the current statistics on road accidents and injuries indicate a worsening situation in Bangladesh. Although it is challenging and deemed impossible by some, the objective of achieving zero causality can be realized through the utilization of modern technology and advancements in the field. This can result in a significant reduction in the number of casualties per 100,000 population. According to the statistics, Bangladesh has a significantly high fatality rate in road accidents, with more than 50 fatalities per 10,000 motor vehicles on the road.¹

Bangladesh has recently transitioned into the status of a developing nation. The sustainable development of a country necessitates the implementation of appropriate initiatives and the adoption of forward-thinking strategies. If road accidents are prevented, there will be a significant increase automatically in personal, social, and economic development, leading to overall growth. This paper aims to identify road accidents in Bangladesh. The study also analyzes the enforcement mechanisms implemented to guarantee adherence to these laws and the liability of those people who break traffic regulations. It also clearly illustrates the gravity of the current problem and will indicate the direction it is heading if immediate action is not taken. The objective of this study is to offer a thorough analysis of the existing legal structure concerning road safety in Bangladesh and to pinpoint potential areas that require enhancement. However, the resolution of these problems is still a matter of hope. This study has been designed to explore the actual causes and propose improved solutions. This paper also provided a concise discussion on the determining

¹ S.M. Sohel Mahmud, Md. Shamsul Hoque and Abdus Shakur Qazi, 'Road safety problems in Bangladesh: Some major initiatives, constraints and requirements' [2009] ESCAP 62 <<https://www.unescap.org>> accessed on 1 November, 2023

factors of traffic accidents and the subsequent harm also inflicted. Finally, the paper identified specific priority actions aimed at achieving tangible and sustainable benefits, while also preventing the occurrence of these recurring losses. By implementing effective traffic engineering and management strategies, the accident rate can be decreased despite limited resources. Therefore, it is necessary to conduct a systematic investigation of traffic accidents.

1.2 Hypothesis

The existing legal framework of Bangladesh is inadequate and complex to ensure the road safety to citizens, there is a lack of effective enforcement mechanisms of legislation and the state is bound to overcome the situation.

1.3 Research Questions

The study's primary research question is as follows:

- What are the main causes of motor vehicle accidents in Bangladesh and what strategies can be devised to enhance overall road safety?
- Are the existing laws of Bangladesh sufficient to prevent such accidents? What are the legal provisions of the necessity of reforms and proper execution of the law concerning road accidents in Bangladesh?

1.4 Research Objectives

1. Critically analyzing the main issues regarding road accidents in Bangladesh, determining the actual reasons for the problems and providing the proper recommendations to overcome those obstacles.
2. To find out road safety is a major concern and main cause of motor vehicle accident.
3. To determine the causes of motor vehicle accident and find out the ways for fighting against this issue

4. Make recommendations to improve road safety and reduction of traffic accidents and death rates and to assess the impact of road accidents on society, to find out a realistic plan for reducing road accidents.
5. To know the application of these laws in the legal system of Bangladesh and the role of Judiciary.

1.5 Research Methodology

This study is qualitative in nature and secondary data analysis. I used secondary sources like academic journals, statutory law, government reports, case law, web references, legal documents, newspaper reports, blogs, articles as well as other internet sites and so on instead of primary data. The research objectives and credibility of these sources determined their selection. Journals and Digital sources pursued and used for this purpose too. Information from newspapers has been extensively used in this paper though the number of references collected from journals. This research paper examines various issues to seek the remedy of identical legislative methods in civil action under Tort law. The footnote and bibliography have been referred to in the **OSCOLA** referencing system.

1.6 Scope of the Study

This research focuses on motor vehicle accidents in Bangladesh. This can be used as a secondary source for others, but the information and data presented cannot rationally or ethically be used under a different company's name. All the topics discussed here are only in the perspective of Bangladesh; no other country is taken into the consideration. Here the real scenario of causes of motor vehicle accidents in Bangladesh, the process of wiping out its problem I have discussed and tried best to analyze.

1.7 Limitations

The limitations of the study include the shortfall in time, unavailability of up-to-date data, non-availability of practical resources, stakeholders' unwillingness to disclose information, limited access to online resources and the lack of access to relevant materials was a constraint on this work. Since it is a gray area of law in the context of Bangladesh, it is difficult for me to collect all

the information together and pursue all these laws. There are not many articles written on this topic and it is very difficult to assemble all the things together. This research may be more informative and well-organized without these constraints.

Chapter 2

Concept of Negligence in Motor Vehicle Accidents

2.1 Introduction

Negligence stands as a prevalent basis for claims asserted in civil litigation. Negligence is a foundational concept of tort law and the concept of negligence is a legal principle that establishes whether a defendant can be held liable for the injuries suffered by the plaintiff.² Negligence arises when a motor vehicle driver fails to operate the vehicle in a safe manner, resulting in harm to another individual. Cases involving personal injury, the most prevalent ground for compensation is negligence. When an injured party initiates a legal action for negligence, they are essentially asserting a cause of action for negligence in their primary complaint. Negligence encompasses a range of potential actions such as simple mistakes in driving like failing to indicate when changing lanes on the highway or engaging in reckless behaviors such as exceeding the speed limit.

2.2 Definition of Negligence Under Law of Torts

In our daily lives, the term “negligence” refers to the act of being careless or the state of being negligent but in the legal sense, it is the failure to exercise the basic care that a reasonable person would exercise the same under the similar circumstances.³ It is generally a legal obligation to take care where it was reasonably anticipated that failing to do so would cause harm. So, Negligence is a mode in which several types of injury might happen because of failure to take sufficient measures. Winfield and Jolowicz states that “Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.”⁴

² Nichole McCarthy, ‘negligence’ [2023] LII <<https://www.law.cornell.edu/wex/negligence>> accessed on 2 November, 2023

³ ibid

⁴ ‘Negligence Tort Law’ <<https://www.toppr.com/guides/legal-aptitude/law-of-torts/negligence-tort-law/>> accessed on 2 November, 2023

Negligence under the Law of Torts was defined in *Blyth v Birmingham Waterworks Company*, that the omission to do something which a reasonable person would do or doing something which a prudent or reasonable person would not do.⁵

2.3 Essential Elements to Prove Negligence

To prove negligence, the victim has to establish four distinct elements, 1. Duty of care 2. Breach of that duty 3. Causation 4. Damages.⁶ These four elements are discussed below:

- 1. Duty of care:** It is one of the Inevitable conditions for establishing negligence to make the person held liable. A duty of care is established when the law acknowledges the existence of a relationship between two parties and due to this relationship one party has to show the similar amount of reasonable care that someone else in the same position would show.⁷ For example, it is expected that all drivers are required to obey the traffic signals such as a red light. If they do not stop at a red light, they have breached their duty to care. In *Stansbie vs Troman*, where an architect was hired to make some changes to a house's decor. The decorator soon after left the house without shutting the doors or alerting anyone. While he was away, someone broke into the house and stole some things that the house owner later claimed were stolen from the architect. The decorator was found to be responsible because he didn't take enough care when he left the house open.⁸
- 2. Breach of that duty:** A breach happens when someone fails to maintain the degree of care that is necessary in that specific circumstance. So, Negligence can only occur when a defendant violates their duty of care. For instance, If a driver exceeds the speed limit, operates a vehicle under the influence of alcohol, or neglects to give right of way to pedestrians, then they have not maintained the same level of caution as a prudent driver would have in similar situations. That driver can be considered to have breached the duty

⁵ *Blyth v Birmingham Waterworks Company* [1856] 11 Ex Ch 781

⁶ Ty McDuffey, 'Elements of a Negligence Case' [2023] FL <<https://www.findlaw.com/injury/accident-injury-law/elements-of-a-negligence-case.html>> accessed on 2 November, 2023

⁷ 'How to Prove the Four Elements of Negligence' <<https://www.google.com/amp/s/www.carlsonattorneys.com/news-and-update/four-elements-negligence/amp>> accessed 2 November, 2023

⁸ *Stansbie v Troman* [1948] 2 KB 48

of care to others. In the case of *Municipal Corporation of Delhi v. Subhagwanti*⁹ Many people died when an old clock tower in the middle of a busy area of Chandni Chowk collapsed unexpectedly. It had been 80 years since the clock tower was built; it should have only been 40 to 45 years old. There was a duty of care on the part of the Municipal Corporation of Delhi, was in charge of the clock tower. They breach their duty of care to the public when they didn't fix the clock tower. Hence, they were thereby liable for it.¹⁰

- 3. Causation:** In order to establish causation, the plaintiff must establish that the defendant's failure to fulfill their obligation which directly resulted in the plaintiff's injury and subsequent damages. However, if it weren't for the defendant's activities, the injury may not have happened. Furthermore, the breach must be the direct cause of the injury, meaning that the law acknowledges the breach as closely enough connected to the injury to hold the defendant legally responsible.¹¹

For instance, If a bus collides with a car and that accident was caused by the bus driver's actions then the driver shall be responsible for that.¹²

- 4. Damages:** The last element is that the plaintiff has to establish that he has suffered damages because of the defendant's breach of duty. In a negligence claim, the plaintiff has to prove a legally recognized harm. But It's not enough that the defendant didn't take reasonable care, the plaintiff must suffer actual damages because of the defendant's negligence. For example, After the accident, the victim needed medical intervention for their injuries, had to take a leave of absence from work, and endured physical and emotional distress. These several causes all contributed to the extent of their damages. Their vehicle also may be damaged, needed to be repaired or replaced and the medical expenses also cover the damages element in the negligence claim.

⁹ *Municipal Corporation of Delhi v. Subhagwanti* [1966] AIR 1750, 1966 SCR (3) 649

¹⁰ *ibid*

¹¹ 'Proving the Four Elements of Negligence' <<https://www.politolaw.com/proving-the-four-elements-of-negligence/>> accessed 3 November,2023

¹² *ibid*

2.4 Res Ipsa Loquitur

Res ipsa loquitur is a Latin term that signifies “the thing speaks for itself.”¹³ It is a form of circumstantial evidence that enables the court to establish that the defendant's negligence caused an unusual event that injured the plaintiff.¹⁴ Res ipsa loquitur doctrine originally comes from the case of *Byrne vs Boadle(1863)*.¹⁵ Where the plaintiff was injured when a barrel of flour fell from a second-floor window of a warehouse while they were strolling by. Plaintiff contended that the facts spoke for themselves and clearly indicated the warehouse’s negligence since no other reason could have contributed to the cause of the plaintiff’s injuries.¹⁶

To use Res ipsa loquitur doctrine in a motor vehicles accident case instead of proving the driver’s negligence directly, the plaintiff needs to show three elements to conclude that the driver was negligent and those are given below -

1. Normally, that kind of accident wouldn't occur unless there was negligence.¹⁷
2. The plaintiff didn’t cause the accident and neither did a third party¹⁸
3. The defendant was legally obligated to exercise due care and avoid negligence in that particular circumstance.¹⁹

If the defendant fails to prove that any of the elements are false, then the court shall presume that the defendant acted negligently.²⁰

2.5 Causes and Consequences of Motor Vehicle Accidents

Motor vehicle accidents are a regular but unfortunate thing that can happen and the most common personal injury cases. Motor vehicle accidents can have catastrophic consequences, resulting in property damage, health complications, and even fatalities. Regardless of whether it is caused by

¹³ Srishti Chawla, ‘Negligence In Law Of Torts’ [April 4,2019] ipleaders <<https://blog.ipleaders.in/negligence-in-the-law-of-torts/>> accessed 4 November, 2023

¹⁴ ibid

¹⁵ ibid

¹⁶ ibid

¹⁷ Raynes and Lawn, ‘in Car Accidents, Personal Injury What Is Res Ipsa Loquitur?’ <<https://rayneslaw.com/what-is-res-ipsa-loquitur/>> accessed 4 November, 2023

¹⁸ ibid

¹⁹ ibid

²⁰ ibid

driver's mistake, negligence, manufacturing defects, or severe weather conditions, a vehicle, truck, or motorbike collision has a chance to significantly change one's life. Thousands of people suffer severe injuries in motor vehicle accidents every year. When there are injuries involved, an already stressful situation can get considerably worse.

There are so many things that can lead to motor vehicle accidents, which can be categorized into three groups as road environment factors, vehicular factors, and human factors.²¹ Those are discussed below -

1. Road Environment Factors in accidents: These accidents are often caused by careless or negligent drivers. Sometimes environmental factors can lead to accidents on our roads. Which also includes weather conditions, hazardous bends, vehicles that are broken down or abandoned, uncontrolled animals, speed breakers, ongoing construction works, poor lighting, lack of adequate road signs etc.
2. Vehicular Factors in accidents: The main vehicle factors are arising from poor maintenance of the vehicle. Which also includes over-age vehicles, brake failure, burst tyres, engine failure, defective lights, use of fake spare parts, overloading etc.
3. Human Factors in accidents: About 80% of vehicle accidents in the country are caused by humans. Which also includes lack of proper training of drivers, inexperience and unskilled drivers, excessive speeding, impatience and negligence, overloading of vehicles, non-use of helmets and seat belts, violation of traffic Rules, invalid driving license etc.

The consequences of such accidents are significant and extensive, ranging from acute bodily injuries to long-lasting emotional trauma. These tragedies have profound effects not only on the victims directly affected but also on the surrounding communities, causing wider social and economic consequences. However direct consequences of such accidents are death, injury and

²¹ 'The Elements of a Road Accident - Person, Vehicle, Environment' [December 29, 2022] <<https://www.safetyconnect.io/post/the-elements-of-a-road-accident-person-vehicle-environment>> accessed 5 November, 2023

property damages.²² Which also can lead to a diverse range of physical injuries, fractures, spinal cord damage, traumatic brain injuries etc. Sometimes a person's health and well-being may be affected by these injuries, which may also result in permanent disabilities.

2.6 Conclusion

Thus, when an accident occurs, it can have devastating effects on everyone involved. The primary factors contributing to motor vehicle accidents are operating a vehicle while intoxicated, the lack of driving experience or excessive self-assurance, and exceeding the speed limit. The consequences of an accident can be extremely severe, impacting not just the drivers but also anyone in their vicinity. Accidents can be avoided and lives can be saved if drivers follow the rules of the road.

²² 'Causes of Road Accidents' <<https://jhtransport.gov.in/causes-of-road-accidents.html>> accessed 7 November, 2023

Chapter 3

Concerns Relating to Motor Vehicle Accidents in Bangladesh

3.1 Introduction

Due to the continuous growth in population and corresponding increase in the number of motor vehicles, the incidence of road accidents has significantly escalated in Bangladesh. Annually, motor vehicle accidents in Bangladesh result in a significant loss of life. Motor vehicle accident situation in Bangladesh has become hazardous due to reckless driving, driver's lack of proper knowledge, lack of awareness on the part of heavy vehicles operators and inadequate traffic control and management by the concerned authorities.

3.2 Current Scenario of the Motor Vehicle Accidents in Bangladesh

Sustainable, safe, and sound transportation is considered to be an essential human necessity. Regrettably, transport or mobility has evolved into a "global tragedy" due to the increasing accident rate and it is the leading cause of premature fatalities and disabilities on a global scale. Road trauma is increasingly acknowledged as a prominent disease in industrialized society and also a growing concern for public health and the economy in developing nations such as Bangladesh. Nearly half of the people who are victims of road accidents on a global scale are those who are pedestrians, cyclists and motorcyclists and they are the vulnerable road users.²³ Every year more than 1.17 million people die in road accidents worldwide and among them 65% of these accidents belong to pedestrians, 35% correspond to individuals who are children.²⁴ According to the statistics more than 3,000 people worldwide succumb to death daily due to injuries sustained in motor vehicle accidents.²⁵ Bangladesh ranks 106th for the highest number of deaths caused by

²³ 'World Day of Remembrance for Road Traffic Victims' [2023] UN <<https://www.un.org/en/observances/road-traffic-victims-day>> accessed on 7 November, 2023

²⁴ Abdul Kareem, 'Review of Global Menace of Road Accidents with Special Reference to Malaysia- A Social Perspective' [2003] PMC <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3561885/>> accessed on 8 November, 2023

²⁵ World report - world health organization (WHO). (n.d.) [2019] <https://www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf> accessed on 8 November, 2023

vehicle accidents, according to statistics by the World Life Expectancy Report that is based on data from 183 countries.²⁶ In Bangladesh, the fatality rate from road accidents is extremely high, ranging from 30 to 60 per 10,000 motor vehicles as mentioned in different literature. Approximately 3000 vehicle accidents on roads are recorded by the police in Bangladesh every year, leading to an equivalent number of fatalities. It is estimated that more than 20,000 people are killed every year on the roads. Approximately 61% of all vehicle accidents in Bangladesh occur on national and regional highways, resulting in 66% of all deaths on the road.²⁷ Half of those deaths are caused by vulnerable road users such as pedestrians, bicyclists, motorcycle riders and those who use dangerous and unsafe motorized and non-motorized transportation.²⁸ Up to 77% of these vulnerable road users die in accidents, with pedestrians being the most common type.²⁹ As Bangladesh's population, road length, and road transport modal share continues to increase, it is expected that the number of fatalities and injuries in vehicle accidents would also rise.³⁰ Heavy vehicles, especially buses and trucks are most of the time involved in these accidents. Enhancing the safety of roads and road environments is now a significant priority, focusing on implementing well-established road engineering measures at specific areas identified by systematic crash investigation and research. It does not establish any new substantive rights but it provides a victim or affected party who has been denied the fundamental rights guaranteed by the Constitution with legal recourse in the form of exemplary compensation.

3.3 Concept of Constitutional Tort in Bangladesh

In Bangladesh, the concept of constitutional tort refers to civil wrongs or violations of constitutional rights that individuals can seek remedy for through legal action. Constitutional tort

²⁶ Mamunur Rashid, 'BD ranks 106 among 183 most accident prone nations' Daily Observer (Bangladesh, 10 April, 2022) <<https://www.observerbd.com/news.php?id=361079>>

²⁷ S. Pervaz, A. Al & N. Ashek, 'Overview of the Highway Crashes in Bangladesh' [2020] Procs. of the 5th International Conference on Civil Engineering for Sustainable Development, 0–10 <https://www.researchgate.net/publication/348862376_overview_of_the_highway_crashes_in_Bangladesh> accessed on, 8 November, 2023

²⁸ Abdullah Al Nur Ashek, Shahriar Pervaz, Md Mazharul Hoque, 'Overview of The Highway Crashes in Bangladesh' [2020] ResearchGate <<https://www.researchgate.net/publication/348862376>> accessed on 8 November, 2023

²⁹ *ibid*

³⁰ K. M. Maniruzzaman & R. Mitra, 'Road Accidents in Bangladesh' [2005] ResearchGate, 71–73 <https://www.researchgate.net/publication/242408144_road_accidents_in_bangladesh> accessed on 9 November, 2023

is a modern legal mechanism applied by the higher judiciary to impose vicarious liability on the State. The concept of Constitutional tort implicitly acknowledges that Constitutional rights and liberties are particular restraints on government and they must be enforced.³¹ Unlike traditional tort law, constitutional tort specifically involves infringement of constitutional rights guaranteed in the Constitution. Government and its employees' tort liability is an extensive and vital area of the law.³² As the government's role extended over time, so there are the possibilities for official misconduct too.³³ In the context of Bangladesh, people may bring a constitutional tort claim when their fundamental rights enshrined in the Constitution are violated by government authorities or entities. This precedent is not observed in common law but the victim can seek compensation for the violation of constitutional rights by using 'Article 102' of the Constitution of Bangladesh.³⁴ A person may file a lawsuit in Bangladesh using common law tort principles or statutory principles when they are the victim of physical injury, mental distress, or defamatory remarks made by another person. However, there are also other types of tort named constitutional tort.³⁵ The recognition of constitutional tort allows individuals to hold public officials accountable for actions that breach constitutional protections. Constitutional tort litigation refers to a type of legal action in which the aggrieved person has the right to seek remedy in the form of monetary compensation if any of their constitutional rights are infringed upon. It provides a victim or affected party who has been denied the fundamental rights guaranteed by the Constitution with legal recourse in the form of exemplary compensation.³⁶

Article 44 and 102(1) of the Constitution of Bangladesh provides provision regarding constitutional tort. According to Article 102(1) of the Constitution of the People's Republic of Bangladesh provides that any person who is aggrieved can file a writ petition against any individual or authority, including any person performing any function in connection with the

³¹ Mridul Bepari, Constitutional Torts in Bangladesh: In Search of the Application of Due Process in Awarding Compensation, 6 (6) IJLMH Page 4142 - 4157 (2023), DOI: <https://doi.org/10.10000/IJLMH.116488>

³² *ibid*

³³ *ibid*

³⁴ Taqbir Huda, 'Judicial activism for constitutional torts' The Daily Star (Bangladesh, 8 August 2018) <<https://www.thedailystar.net/news/law-our-rights/judicial-activism-constitutional-torts-161673>>

³⁵ Michael L, 'Wells, Constitutional Torts, Common Law Torts, and Due Process of Law' [1997] Chicago-Kent Law Review. <<https://scholarship.kentlaw.iit.edu/cklawreview/vol72/iss3/3/>> accessed on 9 November, 2023

³⁶ Malik Fariha Mehnaz, 'Concept of Constitutional Tort in Bangladesh' [2021] LawLegum <<https://lawlegum.com/constitutional-tort-concept-in-bangladesh/>> accessed on 10 November, 2023

affairs of the Republic to protect their fundamental rights as guaranteed in Part 3 of the constitution.³⁷ Article 102(1) allows the Supreme Court of Bangladesh immense power to provide monetary compensation to the aggrieved party in cases of fundamental rights infringement. The right to enforce a fundamental right is considered a fundamental right in accordance with ‘Article 44’ of the constitution.³⁸ ‘Article 7’ of Constitution of Bangladesh declares the supremacy of the constitution and it is the solemn expression of the will of the public that is embodied and reflected in each provision of the constitution.³⁹ In the case of *Bangladesh Beverage Industries Ltd v. Rowsan Akhter (69 DLR 129)* where in a money suit filed by the family of a journalist who was killed in 1989 due to the reckless driving of a delivery van driver employed by the defendant Corporation, Court ordered the Corporation to pay damages amounting to 1.7 crores.⁴⁰ The deceased’s wife tirelessly fought the legal dispute in court for a continuous period of 24 years. In 2016, the Appellate Division ultimately granted monetary compensation against the corporation by establishing their vicarious liability.⁴¹

3.4 Differences Between Common Law Tort and Constitutional Tort

When an officer hurts someone physically, causes them mental distress, makes a defamatory statement about them, or starts an ornery case, the victim can file a tort case under the general law or statutory policy of states. But there are more options for general abuse also. Constitutional torts are different from common law torts because in case of infringement of any Constitutional right of an individual by any public servant or government officials, unlike common law torts, a suit can be filed by utilizing article 102 under Constitutional torts.⁴² Over the years, the growing number of remedies available for constitutional infringement has raised worries about the potential leakage of sensitive case information. Claims based on personal injuries, which are similar to general law and order lawsuits cannot be initiated unless there are demonstrable losses. In addition, when it comes to the infringement of freedom of expression, constitutional abuse cases do not raise the issues discussed in this context because these cases do not increase battery, false prison,

³⁷ *ibid*

³⁸ *ibid*

³⁹ The Constitution of the People’s Republic of Bangladesh, Art 7

⁴⁰ *Bangladesh Beverage Industries Ltd v. Rowsan Akhter* [2010] 69 DLR 129

⁴¹ *ibid*

⁴² *ibid*

defamation, malicious prosecution, or other allegations. When it comes to constitutional torture, the court confronted a powerful force that is being pulled by the opposite order.⁴³

3.5 Motor Vehicle Accidents under Constitutional Tort

In Bangladesh, Constitutional tort claims related to motor vehicle accidents would typically involve allegations of government negligence or failure to fulfill its constitutional duties in ensuring road safety. The primary factors contributing to road accidents in Bangladesh include reckless or negligent driving, the usage of inappropriate vehicles, overtaking, unethical driving practices, engineering faults on roads and other instances of road mismanagement where victims suffer injuries that cause them to die later, or they are murdered on the streets. To pursue a constitutional tort claim in Bangladesh, we need to demonstrate a violation of constitutional rights, possibly invoking the right to life, which includes the right to a safe environment. Motor vehicle accidents may be addressed under Constitutional tort if there is a violation of constitutional rights resulting from negligence. People may seek legal remedy for damages caused by such violations, emphasizing the protection of fundamental rights guaranteed by the Constitution. For instance, issues like negligent law enforcement, unfair traffic regulations or inadequate emergency response could be seen as constitutional concerns if they affect certain groups more than others. The right to life is a fundamental right that is explicitly stated in Part III of the constitution of Bangladesh. It is the legal and constitutional obligation of the state to ensure people's life and personal liberty. 'Article 32' of the Constitution provides that no person shall be deprived of their life or personal liberty.⁴⁴ Specifically, no individual can be denied the right to life and personal liberty and the state shall ensure these fundamental rights of the citizens and cannot avoid such responsibility. People have the right to get compensation in the event that their right to personal safety is violated when the government is unable to uphold its obligation to protect citizens' lives. The High Court has the authority to impose compensation orders when citizens' fundamental rights are infringed.⁴⁵ It is the primary responsibility of the state to proactively prevent traffic accidents and compensate

⁴³ Michael Wells, 'Constitutional Torts, Common Law Torts, and Due Process of Law' [1997] 72 Chi.-Kent L. Rev., 617 <<https://scholarship.kentlaw.iit.edu/cklawreview/vol72/iss3/3>> accessed on 12 November, 2023

⁴⁴ The Constitution of the People's Republic of Bangladesh, Art 32

⁴⁵ Md. Harisur Rohoman, 'The value of a life' DhakaTribune (Bangladesh, 07 Apr 2022) <<https://www.dhakatribune.com/amp/opinion/op-ed/267518/the-value-of-a-life>>

the injured persons and families of the deceased.⁴⁶ In 2015, the Bombay High Court issued a landmark order stating that well-maintained roadways are a part of fundamental rights including the right to life and the right to personal liberty.⁴⁷ In Bangladesh this is also followed here as our Constitution guaranteed the same fundamental rights to people.⁴⁸ In 2016, the Supreme Court issued a judgment regarding the arbitrary use of powers of the police rightly prioritizing the right to life saying, “No right can be compared with the right to life without which all other rights are meaningless.”⁴⁹

3.6 Conclusion

The right to life is heavily contingent upon the right to livelihood and the presence of secure roadways is essential for free movement in order to maintain one's livelihood. It is high time that everyone involved understood that the right to have properly maintained roadways is a part of fundamental rights which is guaranteed by the Constitution and if this right is violated or for any loss people have the right to seek compensation. So, the government departments need to take necessary actions to maintain appropriate road governance and traffic in order to prevent people's fundamental right so that it doesn't become meaningless.

⁴⁶ ibid

⁴⁷ Shakhawat Liton, ‘Right to Life: At stake for unsafe road’ The Daily Star (Bangladesh, 19 April 2018) <<https://www.thedailystar.net/frontpage/right-life-stake-unsafe-road-1564525?amp>>

⁴⁸ ibid

⁴⁹ ibid

Chapter 4

Legal Framework of the Motor Vehicle Accidents in Bangladesh

4.1 Introduction

The entire system of street movement control framework is haphazard and disorganized in our country. In order to efficiently manage and communicate the regulations governing the street traffic control system, it is imperative to establish specific legal provisions outlining the types of offenses and the corresponding penalties for infringement of those lawful arrangements. Overpopulation is a significant drawback when it comes to effectively enforcing the traffic law. In Bangladesh, the legal framework for motor vehicle accidents is primarily governed by the Motor Vehicles Ordinance, 1983. This legislation outlines rules and regulations related to road traffic, road safety, licenses, and penalties for offenses and also sets rules for road traffic, driver conduct, and vehicle standards. The Road Transport Act of 2018 also addresses issues related to road safety measures, defining offenses, penalties, and procedures for compensation. The Bangladesh Road Transport Authority (BRTA) plays a vital role in enforcing these laws, overseeing licensing, vehicle registration, and overall road safety. This integrated legal approach aims to mitigate road accidents and promote safer transportation across the nation.

4.2 Development of Road Transport and Safety Laws in Bangladesh

The Motor Vehicle Ordinance of 1983 has been replaced by the Road Transport Act of 2018. Consequently, despite the implementation of the new legislation, road transportation and law enforcement agencies still have to depend on the established and tested Motor Vehicle Ordinance of 1983. The landmark case of Catherine Masud vs. Md Kashed Miah⁵⁰ has established a precedent for future successful claims under the Law of Tort in the Court of Bangladesh. This case has significantly contributed to the development of Road Transport Safety Laws, including interpretation of case laws. After more than three decades since 1983, it was recognized by the law enforcers that the aforementioned Act had become outdated and therefore needed to be

⁵⁰ *Catherine Masud vs. Md Kashed Miah* 67 DLR 527

substituted with a new legislation, namely the Motor Vehicle Act of 1939.⁵¹ In the following 70 years since the Motor Vehicles Act 1939⁵² came into force, it had its name changed thrice to East Pakistan Motor Vehicles Act 1939 (1947), The Motor Vehicles Act 1939 (1972) and finally Motor Vehicle Ordinance 1983⁵³ (MVO 1983) which is the current law in effect.⁵⁴ After that a new Road Transport Act 2018 bill has been enacted.

4.3 Legal Provisions and Authorities

The Penal Code:

‘Section 304B’ of the Penal Code, 1860 provides that, If any person committing the death of another person due to reckless or negligent driving of any vehicle or riding on any public road and if he is not intentionally killed that person then he shall be punished with imprisonment for a term which may extend to three years or with a fine or with both.⁵⁵

Road Transport Act, 2018 at a Glance and Criticism:

The Road Transport Act, 2018 is an extensive legislative measure intended to promote road safety in Bangladesh. The purpose of this Act is to reduce the amount of accident cases on the roads and ensure accountability for those people who violate traffic regulations. The Road Transport Act, 2018 encompasses several important features such as strict punishments for traffic rules violations, such as fines, imprisonment, and suspension of license. A complete licensing system for drivers that includes the prerequisites for a valid license and regular renewals.⁵⁶ The duty of the Road Transport Authority (RTA) will be enforcing traffic rules and regulations as well as investigating

⁵¹ Shafqat Aziz, ‘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/#_ftn1> accessed on 1 December, 2023

⁵² The Motor Vehicles Act, 1939 (Act No. 4 of 1939) <http://www.commonlii.org/in/legis/cen/num_act/mva1939172/> accessed on 5 December, 2023

⁵³ The Motor Vehicles Ordinance, 1983 (Ordinance NO. LV OF 1983) <<http://bdlaws.minlaw.gov.bd/act-654.html>> accessed on 6 December, 2023

⁵⁴ ibid

⁵⁵ The Penal Code 1860, s 304B

⁵⁶ Ahmed, N, ‘Promoting a culture of road safety in Bangladesh’ [2021] Journal of Traffic and Transportation Engineering, 10(6), 389-393. <www.iiste.org> accessed on 7 December, 2023

road accidents. The implementation of new technologies, such as digital licensing and electronic monitoring systems, with the aim of enhancing the enforcement of traffic rules and regulations.⁵⁷ Vehicle Registration and Inspection Authority (VRIA) established to ensure the safety so that all vehicles on the roads are safe and fit for use.⁵⁸ This Act also ensures financial protection for victims of road accidents and promotes safe driving behavior and road safety awareness.

There are some other incorporations of this Act and its drawbacks:

1. Each license will have a total of 12 points. There are a total of nine distinct violations that can be identified, such as speeding and excessive honking and so on. Every violation will result in the addition of one point to the driver's license. When a license accumulates 12 points, it will be revoked.⁵⁹

Observation:

The law itself is highly ambitious, however, there is significant uncertainty regarding its execution. This measure is currently impossible to implement. Currently, the majority of drivers do not possess a digital license, making it impractical to monitor their violations. So, proper execution of this regulation is time consuming and difficult.⁶⁰

2. Before applying for a license, an applicant must have to pass at least class eight. Not having the proof means no one can get a license.⁶¹

Observation:

This law is really surprising and unexpected because it did not stipulate a minimum educational qualification required for obtaining a license. Even with this development, a person can operate a vehicle without even possessing a Secondary School Certificate.

⁵⁷ ibid

⁵⁸ Islam, M, 'Road safety education and training in Bangladesh: A review of current practices and recommendations for improvement' [2021] International Journal of Transportation and Traffic Engineering, 11(2), 107-115. <<https://www.researchgate.net>> accessed on, 10 December, 2023

⁵⁹ Tasnuva Sharmin, Iren Sultana 'Road Safety in Bangladesh: Challenges and Obstacles to the Implementation of Law' [2022] Quest Journals, Volume 10 ~ Issue 5 pp: 54-60 <www.questjournals.org> accessed on 15 December, 2023

⁶⁰ ibid

⁶¹ ibid

3. There has been an enormous change in the fine amount.⁶² Under the previous law, driving without a license incurred a fine of 500 tk. However, under the current law, the fine for the same offense has been increased to Tk 25,000. The cost of obtaining a counterfeit license has also undergone a significant change. Previously, it was priced at Tk 500, but under the new legislation, the price has escalated to Tk 1 to 5 lakhs which is a huge amount. The fine for driving without a seatbelt and parking illegally increased from TK 200 to TK 5,000.

Observation:

From the above discussions, it can be said that there is a huge change in the fine amount which is more costly and not possible to afford for all classes of people. Vehicle owners have to be more careful with their vehicles and most importantly when hiring a driver, whose driving license may or may not be real.

On the other hand, as per the new legislation Section 105 of the 11th chapter provides that no matter what any instances of severe injury or death resulting from a motor vehicle accident it would be considered as an offense and shall be deemed a violation under the relevant provisions of the Penal Code, 1860.⁶³ The offenses that fall under section 105 of the act are ineligible for bail.⁶⁴

But these changes are still controversial. Some people think that this Act is a step in the wrong direction as higher fines will not remove uneducated or untrained drivers from the road.⁶⁵ Although these new laws have been implemented, there is significant doubt among individuals in different areas regarding their successful implementation. There are some people who believe that the laws will be applied in a biased manner, while others anticipate a significant increase in bribery rates.⁶⁶ Mobile courts run by BRTA apparently could not enforce the new laws as they were not incorporated in the schedule of the Mobile Court Act, 2009.⁶⁷ So, In my opinion, there should have been initiatives to educate and train the drivers on standard traffic laws and procedures.

⁶² ibid

⁶³ Road Transport Act 2018, s 105

⁶⁴ ibid

⁶⁵ Rahbar Al Haq, 'Road Transport Act 2018 – details, repercussions, reactions' The Daily Star (Bangladesh, 6 November 2019) <<https://www.thedailystar.net/shift/news/road-transport-act-2018-details-repercussions-reactions-1823818>>

⁶⁶ ibid

⁶⁷ ibid

4.4 Case Laws Regarding Road Accident and the Role of Judiciary

These accidents result in fatalities and injuries to numerous individuals who are not at fault. Most of the time, the victims choose not to speak out, and their suffering goes unnoticed. The Supreme Court of Bangladesh has endeavored to establish a legal framework that promotes compensatory justice for the victims affected by road accidents. Some notable cases are given below:

Catherine Masud vs Md. Kashed Miah and others

Catherine Masud Case⁶⁸ is the first of its kind that is decided directly in the HCD. Tareque Masud, a renowned filmmaker, passed away in a fatal road accident on 13 August 2011. A case was lodged with the District Judge and the Motor Car Accident Claim Tribunal in Manikganj on 13 February 2012. After that on 3 December, 2017 the HCD was ordered to provide a compensation of TK 4.61 crore to the family of Tareque Masud for his premature death in the accident. This case holds immense significance, not only due to the scarcity of grievance litigation in Bangladesh, but also because it establishes a precedent for imposing responsibility on a group of people who have long enjoyed absolute impunity. This case is an innovative attempt neglected so that in the future, the victims of road accidents and their families may have the means to be legally compensated for their losses. It allows them to pursue legal action in both criminal and civil law (tort) concurrently.

Bangladesh Beverage Industries Ltd v. Rowsan Akhter and others

The case of Bangladesh Beverage Industries Ltd v Rowsan Akhter⁶⁹ is seminal for evaluating damages and granting compensation for the non-calculable losses. In this case, a journalist died in a hit and run. A mini van that came from the wrong side and shattered his skull. The Joint District Judge, Dhaka awarded TK 3,52,97,000 as compensation to the victim's family. But it was reduced to TK 2,01,47,008 in the High Court Division (HCD) and the Appellate Division (AD) finally decreed the compensation amount to be TK 1,71,47,008. In this case the Court observed that the

⁶⁸ *Catherine Masud vs Md. Kashed Miah and others* [2018] 70 DLR 349

⁶⁹ *Bangladesh Beverage Industries Ltd v. Rowsan Akhter and others* [2016] 69 DLR 129

assessment of damages must necessarily be, to a certain extent, approximate in nature, more or less based on the work of divination, since it may be impossible to specify. The court finally ordered the beverage company to pay the compensation amount by auctioning off its property at Tejgaon but unfortunately, the matter is yet to progress.⁷⁰ Even though the Court ordered that Abrar Ahmed Chowdhury, a university student killed in a bus crash in Dhaka's Kuril area, did not receive any compensation.⁷¹

Nurul Amin Chowdhury Case

On 17 May, 2018 Nurul Amin Chowdhury's right leg was damaged by the wheels of a bus.⁷² His leg had to be cut off later. Following a writ petition filed by Amnesty Bengal, the HCD issued a rule explaining the authorities concerned to explain why they should not be directed to give TK 1.5 crore as compensation.⁷³

Nazim Uddin Case

Md Nazim Uddin was killed in a road accident in the Dhaka Jatrabari area.⁷⁴ A bus knocked down his bike and ran over him on 17 May, 2018. The Court issued a suo moto rule on 22 May in response to the newspaper reports about the accident. The respondents were asked to show cause as to why TK 1 crore compensation would not be given to the Nazim's family.

Rajib Hossain Case

Rajib Hossain lost his right hand between two buses on 3 April, 2018. He died subsequently after succumbing to the injuries. After a writ petition filed over the incident, the HCD ordered BRTC and the bus owner to pay TK 10 million as compensation to Rajib's family.⁷⁵ This case shows the

⁷⁰ P.P Chowdhury, 'ROAD SAFETY, Right to redress' The Daily Star (Bangladesh, 15 March 2019) <<https://www.thedailystar.net/star-weekend/news/right-redress-1714576>>

⁷¹ A.R Rabbi, 'Suprovat bus driver killed Abrar while fleeing accident spot' Dhaka tribune (Bangladesh, 21 March 2019) <<https://www.dhakatribune.com/bangladesh/dhaka/2019/03/21/suprovat-bus-driver-killed-abrar-while-fleeing-accident-spot>>

⁷² Raihan Rahman Rafid, 'SC on road accident cases' The Daily Star (Bangladesh, 14 August 2018) <<https://www.thedailystar.net/news/law-our-rights/sc-road-accident-cases-1620232>>

⁷³ ibid

⁷⁴ ibid

⁷⁵ ibid

pure negligence of drivers as well as their competition for going faster than another bus, which is totally against the road safety rule.⁷⁶

Airport Road Bus Accident Case

On 29 July, 2018 two students died in a road accident in the Airport Road area. The HCD ordered the owners to pay TK 5 lakh to each of their families within a week.⁷⁷ The Court also ordered the bus operators to bear all costs of the treatment of them. The Court further issued a rule asking the authorities to explain why directives should not be given to provide TK 2 crore to each of the families as compensation.⁷⁸

The HCD has instructed the BRTA chairman to submit a report ensuring that the bus owners compensate for the damages. In addition, the report should outline the measures taken to ensure the safety of commuters on roads and the criteria used for granting driving licenses to public transport drivers.

4.5 Conclusion

We know Bangladesh has one of the highest rates of traffic accident deaths in the world. The enactment of the Road Transport Act, 2018 represents a notable advancement in the improvement of road safety in Bangladesh, with anticipated outcome of a favorable reduction in the occurrence of road accidents within the nation. The successful execution and application of this legislation, along with complementary initiatives such as educating and training road users, enhancing road infrastructure, and developing a culture of responsible driving will be pivotal in attaining the objective of a more secure road environment for everyone. If the concerned drivers follow these instructions, then the accidents on the road will be reduced to a great extent. Lastly, everyone must follow the rules and regulations of the road and safety laws.

⁷⁶ ibid

⁷⁷ ibid

⁷⁸ ibid

Chapter 5

Liabilities in Case of Motor Vehicle Accidents

5.1 Introduction

It is not easy to determine who is liable for the accident and the damage it caused. There are many things that could affect this issue and make it challenging to decide who is actually responsible for the accident. Understanding these liabilities is crucial in comprehending the complexities that arise when accidents occur on our roads. From personal injury claims to property damage, legal penalties, and beyond, the repercussions of road accidents extend into multiple domains, shaping the way we address and mitigate the aftermath of these unforeseen events.

5.2 Tortious Liability for Negligence in Motor Vehicle Accidents

Tort law is primarily concerned with compensating victims. It is highly efficient in resolving such cases of this kind by attempting to compensate the victim as much as possible for their losses through financial remedy. Tortious liability arises when a citizen breaches the legal duty imposed upon them. The process of establishing liability usually requires thorough investigation and legal proceedings, and it can vary based on factors such as traffic regulations, negligence, and the particular circumstances of the accident. Tortious liability arises when an individual is injured or suffers a loss as a result of the actions or negligence of another. In road accident cases, tortious liability typically arises from negligence. If a party's carelessness or reckless actions result in harm to others, they may be held legally liable for the damages. Gathering evidence, such as witness statements and accident reports, is crucial in establishing liability. Legal proceedings may follow to seek compensation for injuries, property damage, or other losses incurred due to the accident. When an individual or entity, whether it be a natural person or a legal person, commits a tort, the law provides compensation for the financial damages to the injured party incurred as a result of the tortious act.⁷⁹ Tort law permits the court to assign responsibility to the third parties, such as

⁷⁹ 'General law of torts' <<https://courses.lumenlearning.com/suny-monroe-law101/chapter/general-law-of-torts/>> accessed on 15 December, 2023

bus owners and operators, who should be held liable.⁸⁰ These parties employ unqualified drivers to operate unsuitable buses and directly encourage reckless driving. Additionally, these parties possess sufficient financial resources to provide the required compensation. The Supreme Court of Bangladesh has established two important precedents, namely the Bangladesh Beverage Case and Catherine Masud Case, regarding road fatalities and injuries.⁸¹ In these cases, it was found that the employers were vicariously liable for the reckless driving of their employees and were instructed to compensate the victims with amounts totaling BDT 1.7 crores and 4.6 crores respectively.⁸² The court considered tortious liability in light of the ‘Doctrine of vicarious liability’ in its decision.⁸³ The basis of the doctrine is a maxim that says, “Nam qui facit per alium facit per se” which means he who does an act through another is deemed in law to have done it himself.⁸⁴ Therefore, tortious liability should be invoked more often in these situations to seek remedy from the offenders for the family members of the victim as they are secondary victims of the incidents.

5.3 Criminal Liability for Negligence in Motor Vehicle Accidents

Accidents may happen as a result of someone's negligence or due to the prevailing circumstances in their surroundings. In the event of a road accident, there is typically a financial loss incurred by either an individual or the government. Any person who inflicts harm to another person must be liable to compensate for the loss caused by his actions. Criminal liability for negligence in motor vehicle accidents varies by jurisdiction. In some places, negligence leading to accidents might result in criminal charges, especially if there's evidence of reckless or grossly negligent behavior. Penalties can include fines, license suspension, or even imprisonment. Any act which is done by accident can not constitute an offense. However, in order for an accident to be considered culpable, it is necessary for there to be evidence of criminal negligence. In the criminal justice system, an incident that occurs without any intentional wrongdoing or negligence on the part of the individual involved is not regarded as a culpable act. Because for an accident to be culpable, criminal

⁸⁰ *ibid*

⁸¹ Taqbir Huda, ‘Road deaths and injuries: The role of tort law’ The Daily Star (Bangladesh, 29 May, 2018) <<https://www.thedailystar.net/law-our-rights/road-deaths-and-injuries-the-role-tort-law-1582732>>

⁸² *ibid*

⁸³ *ibid*

⁸⁴ Ayush Shukla, ‘Qui Facit Per Alium Facit Per Se – An Analysis’ [2021] Law Corner <<https://lawcorner.in/qui-facit-per-alium-facit-per-se-an-analysis/>> accessed on 13 December, 2023

negligence must be present. This is a part of the common law principle; “*Actus non facit reum nisi mens sit rea*” which means that an act to be illegal, the person should do it with a guilty mind.⁸⁵ This implies that if proper care had been taken, the accident could have been prevented, indicating negligence on the part of the offender. When someone is responsible for a motor vehicle accident that only causes property damage and no deaths, they are responsible in the form of compensation. If someone causes a road accident resulting in material loss without victims that person is guilty of a crime and will be prosecuted criminally. The person who commits traffic offenses can face penalties such as imprisonment, confinement, or fines. Furthermore, they may also have their driver's license revoked or be required to provide compensation for any damages resulting from their traffic offenses. Government enacted the new Road Transport Act, 2018 with the primary objective of addressing the current demands by establishing a more secure road transport system. Government decided to enforce a maximum punishment of five years imprisonment for committing someone’s death through reckless or negligent driving.⁸⁶ So, the victim's family can initiate criminal proceedings under the Penal Code, as the offenses are of a criminal nature and their primary objective is to ensure that perpetrators are to be punished.⁸⁷ Nevertheless, this assistance does little to support the survival of the families of the victims in society, particularly when the victims of motor vehicle accidents are the sole earning member of their families in certain instances.⁸⁸

5.4 Conclusion

Generally, all misdemeanors are considered torts. Motor vehicle accidents usually constitute a civil wrong. Private matters infringe upon an individual's right to life for such wrong and as a result, the affected person is entitled to receive monetary compensation for the harm caused. These incidents may also involve criminal activity, as they create a threat to society and should therefore be subject to punishment by the state. In specific situations, such as hit and run incidents, reckless

⁸⁵ Oishika Banerji, ‘Actus non facit reum nisi mens sit rea’ [2021] ipleaders <<https://blog.ipleaders.in/actus-non-facit-reum-nisis-mens-sit-rea/>> accessed on 13 December, 2023

⁸⁶ Shakhawat Liton and Tuhin Shubhra Adhikary, ‘Causing Death by Rash Driving: Maximum 5 years jail’ The daily star (Bangladesh, 7 August 2018) <<https://www.thedailystar.net/country/government-okays-new-road-transport-act-2018-maximum-five-years-jail-1616659>>

⁸⁷ Md Shafi Ullah, ‘Tortious liability in road accident cases’ Dhaka Tribune (Bangladesh, 13 August 2014) <<https://www.dhakatribune.com/bangladesh/laws-rights/74991/tortuous-liability-in-road-accident-case>>

⁸⁸ *ibid*

driving, driving under the influence, and driving while intoxicated, the same action can be considered both a tort and a crime.⁸⁹ If an act falls under both categories, the definition of the crime would differ as the same defenses cannot be used for both. The perpetrator may be required to provide restitution for the harm caused as well as compensate the injured party and at the same time, they may also be punished criminally by imposing imprisonment, fines, or both.⁹⁰

⁸⁹ Shreya Tandon, 'Criminal liability which arises from motor accidents' [2020] ipleaders, <<https://blog.ipleaders.in/criminal-liability-which-arises-from-motor-accidents/>> accessed on 14 December, 2023

⁹⁰ *ibid*

Chapter 6

Findings and Recommendations

6.1 Findings

After all discussions and research, I have discovered many findings and causes of motor vehicle accidents that may lead to human death. The road transport infrastructure in this country is not as advanced as that of developed nations, but it is undergoing development. Therefore, the fact that life is insecure is beyond doubt. Anyone can confront road accidents regardless of their age or the time.

The major findings of the study are listed here:

- The major causes of road accidents are rash driving, unfit vehicles, indiscriminate utilization of footpaths, uncontrolled pedestrian crossings, poor movement requirements, broken streets, inexperienced drivers, lack of adequate penalties, absence of road safety awareness and so on.
- Inadequate reporting, inaccurate recording and incorrect transcription of accident reporting forms are some of the main drawbacks of accident data collection.
- When someone dies in an accident, drivers are never punished for committing such accidents. Unqualified and inexperienced drivers get licenses through lobbying by unions.
- The number of registered vehicles in Bangladesh is increasing gradually. Public transport drivers lack formal training and experience excessive workloads.
- Inadequate infrastructure or lack of infrastructure with insufficient maintenance.
- Road accidents occur not across all the roads, but rather in a limited number of "black spots". An examination conducted for this investigation reveals that the cumulative length of accident-prone highways amounts to approximately 57 kilometers. The road safety division of RHD has compiled a list of 209 locations that are considered high-risk areas or "black spots".

- The length of highways has remained unchanged, but the number of vehicles increased almost four times in one decade which made drivers aggressive on the free pans of roads.
- Insufficient distribution and maintenance of traffic signals
- Corruption is widespread in the issuance of fitness certificates, as authorities neglect to inspect vehicles.
- There are significant gaps in law and policy. It has not been accompanied by the implementation of modernized laws and regulations. Nevertheless, the implementation of a new legislation is occurring without a thorough consultative process.

6.2 Recommendations

From the analysis or research on motor vehicle accidents I can comprehend the prevalence of motor vehicle accidents in Bangladesh has emerged as a significant issue. In my perspective, in order to decrease fatalities rate resulting from motor vehicle accidents in the country, policy makers should take into account the following recommendations:

- The government and the relevant authorities should implement and enforce traffic laws and regulations, specifically the Road Transport Act of 2018, in order to ensure that road users adhere to traffic rules and regulations which shall impose stricter punishment for the violation of traffic rules.
- Regularly repair roads and expand the roads size/width where it is necessary and allocate adequate funds for repairing roads.
- The government and the authority should promote road safety education and training for drivers, passengers, and pedestrians to increase knowledge and awareness about safe driving practices.
- Government should provide standard training to the drivers & helpers and stop providing illegal licenses and licenses to the unskilled drivers. Process of providing a driving license must be computerized and free from corruption.
- Government should take appropriate steps to remove unauthorized vehicles and inexperienced drivers, encourage safe vehicle maintenance and make sure that all vehicles on the road are suitable for driving.

- The government should allocate funds towards improving road infrastructure, encompassing the enhancement of road markings, signs and effective signal systems; speed controlling devices must be ensured by adequate and proper engineering mechanisms as well as the construction of new roads and highways that adhere to international safety standards. Additionally, the government should make strict legislation for penalties and ensure effective enforcement.
- Implement strict regulations on the use of overloaded and high-speed vehicles. Construct speed-breakers and overpasses at critical and hazardous locations. It is also necessary to remove three-wheeler vehicles from highway
- Arrangement should be made so that vehicles cannot be parked anywhere on the road and prohibition of on road side parking. For this stricter traffic law and enforcement is needed and making everyone aware about such rules is also important.
- Imposing restrictions on the duration of driving for professional drivers and their driving licenses should be checked regularly.
- The speed limit should be fixed based on the design and pattern of the roadways since speed is one of the major contributing factors of road accidents. Thus, it is necessary to develop cautionary signs and speed breakers.
- It is necessary to form stations and check posts on all national highways to control overloading of trucks and pick-ups for the purpose of ensuring safety.
- Periodic health testing system should be mandated for drivers to prevent drug addiction. Before granting and renewing a license, drivers must undergo a series of pathological tests to ensure that they are not consuming narcotic substances.
- To promptly conduct a comprehensive survey across the entire nation to assess the state of national highways and implement appropriate measures for their repair and to prevent the presence of unfit vehicles on the road as they are a significant cause of road accidents.

On the other hand, when I researched which countries have taken good initiatives I saw many countries among them I have chosen 3 countries like Norway, India, Australia because they have taken some safety targets and initiatives with the goal of combating the deteriorating road safety situation. Those are discussed below:

Norway

Norway ranks among the top countries in terms of road safety performance. According to the annual report, the road fatality rate in Norway is 2.02 per 100,000 population.⁹¹ Norway has implemented the 'Vision Zero' strategy which seeks to establish a highway system devoid of any fatalities or severe injuries related to road traffic.⁹² It particularly emphasizes implementing additional safety measures on the most dangerous routes.⁹³ It encompasses the development of alternative financing mechanisms for new roads and imposes greater responsibility on those tasked with designing road traffic systems.⁹⁴ A comprehensive approach is taken to address thirteen priority areas of focus, such as driving behaviors, vehicle technology, and high-risk groups etc.⁹⁵

India

The Indian government has implemented various initiatives to raise public awareness about road safety through electronic media, print media, and NGOs.⁹⁶ They also organize road safety month and week every year to raise awareness.⁹⁷ At significant intersections, the government has placed speed tracking cameras.⁹⁸

Australia

Australia aims to attain its objective by persistently prioritizing established strategies, such as diminishing the occurrence of alcohol consumption and driving, enhancing adherence to speed limits, and augmenting the utilization of seat belts and child restraints. Additional recent initiatives

⁹¹ Sayujya Surjit, 'National Road Safety Week 2022: List Of All Top-Performing Countries In Road Safety' [2022] <<https://thelogicalindian.com/app-lite/trending/national-road-safety-week-top-performing-countries-in-road-safety-33199>> accessed on 15 December, 2023

⁹² ibid

⁹³ ibid

⁹⁴ 'RHD Road User Cost Annual Report for 2002-2003' Department of Roads and Highway, Ministry of Communication, Bangladesh, pp. 12-13 <<https://www.rhd.gov.bd>> accessed on 15 December, 2023

⁹⁵ ibid

⁹⁶ 'Useful insights on road safety initiatives taken by the Indian government' Utkarsh <<https://utkarshindia.in/blog/useful-insights-on-road-safety-initiatives-taken-by-the-indian-government>> accessed on 19 December, 2023

⁹⁷ ibid

⁹⁸ ibid

encompass balancing speed limits with road conditions, promoting driver fatigue management and encouraging the adoption of in-vehicle intelligent transportation systems.⁹⁹

Therefore, from the above discussions it can be said that to reduce the number of road accidents and to develop road safety measures in Bangladesh we may adopt those aforementioned initiatives. For choosing those 3 countries my reasons are those. Based on those points I have chosen those countries. So, we can initiate those measures in our country as well.

⁹⁹ ‘Global Plan for the Decade of Action for Road Safety 2011-2020’ [2011] UN Road Safety Collaboration <<https://www.who.int/groups/united-nations-road-safety-collaboration/decade-of-action-for-road-safety-2011-2020>> accessed on 23 December, 2023

Chapter 7

Conclusion

In conclusion, the achievement of road safety in Bangladesh is heavily reliant on the dedication and endeavors of the government, communities, organizations, families, and individuals. Road accidents are events that are not wanted by everyone but as a person we cannot avoid such incidents. The society has an urgent demand to get full access to justice to be integrated into the daily lives of individuals. But the goal can't just be reached by the government; it needs help from everyone simultaneously. When both sides work together, the problems can be solved quickly. On average, the total number of traffic accidents is reducing by 11% every year.¹⁰⁰ Since it is not a natural disaster, we have the ability to control it. Policy makers and the government should prioritize taking action to address the situation to prevent further loss of life due to road accidents. Such accidents are primarily caused by the drivers who drive dangerously or carelessly and that is why these behaviors should strictly be brought within the control of comprehensive legislation. This paper tried to highlight the current situation of road accidents in Bangladesh by discussing briefly about a lot of different factors, effects, and recommendations involved in the road accidents. The Roads and Highways Department has now made it obligatory to incorporate 'road safety' as a fundamental aspect of all road construction and significant road maintenance endeavors. Increasing public awareness will also be a concurrent concern with road safety. Therefore, by prioritizing road safety and implementing evidence-based strategies, it is possible to decrease the occurrence of road accidents in Bangladesh and establish a safer and more sustainable future for all.

¹⁰⁰ Md Shakhawat Hossain, Md Omor Faruque, 'Road Traffic Accident Scenario, Pattern and Forecasting in Bangladesh' [2019] SR <<https://www.scirp.org/journal/paperinformation?paperid=90929>> accessed on 25 December, 2023

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