

Adaptability of the Law of Tort in Bangladesh: An Interpretative Approach

A.S.M.Tariq Iqbal*

Abstract

The law of tort is fashioned as an instrument for making people adhere to the standards of reasonable behaviour and respect the rights and interests of one another. This is done by protecting interests and by providing for situations when a person whose protected interest is violated can be compensated for the loss suffered by him from the person who has violated the same. By interest here is meant a claim, want or desire of a human being or group of human beings seek to satisfy, and of which, therefore the order of human relations in civilized society must take account. It is however, obvious that every want or desire of a person cannot be protected nor can a person claim that whenever he suffers loss he should be compensated by the person who is the author of the loss. Thus, law of tort is a branch of law which resembles most of the other branches in certain aspects, but is essentially different from them in other respects. Although there are differences in opinion among the different jurists regarding the liability in tort, the law has been developed and has made firm roots in the legal showground. There are well defined elements and conditions of liability in tort law in many countries. This article focuses on the law of tort, therefore, determines what interests need protection. Here the necessity of enacting the tort law in Bangladesh is well explained too.

Keywords: Law of tort, justice, negligence, defamation, nuisance, consumer rights.

Introduction

Tort is the area of law where in response to a private or civil wrong or injury the courts provide the remedy of allowing a lawsuit for (usually monetary) damages. Thus, the goal is to restore the victim to his or her former condition. Tort law is said to be a development of the old maxim *ubi jus ibi remedium* (Every right needs a remedy). The term tort comes from the Latin "tortus", meaning "crooked" or "twisted". Derived from French for "wrong," a civil wrong or wrongful act, whether intentional or accidental, from which injury occurs to another. Torts include all negligence cases as well as intentional wrongs which result in harm. Therefore tort law is one of the major areas of law (along with contract, real property and criminal law) and results in more assaults, battery, wrongful death, fraud, conversion (a euphemism for theft) and trespass on property and form the basis for a lawsuit for damages by the injured party. Defamation, including intentionally telling harmful untruths about another-either by print or broadcast (libel) or orally (slander)-is a tort and used to be a crime as well.

* Assistant Professor, Department of Law at Bangladesh Islami University (BIU), Dhaka-1203.
E-mail: tariqiqbal.shakil@gmail.com

Definition of Tort

Tort is a civil wrong for which the remedy is an action for unliquidated damages and which is not exclusively the breach of a contract, or the breach of a trust, or the breach of other merely equitable obligation"- Salmond. The first reported case where the court used the word "tort" is an old (1597) English case, *Boulton v. Hardy* (1597, cro. Elz. 547). The term tort is the French equivalent of the English word 'wrong' and of the Roman law term 'delict'. The word tort is derived from the Latin word *tortum* which means twisted or crooked or wrong and is in contrast to the word *rectum* which means straight. Everyone is expected to behave in a straightforward manner and when one deviates from this straight path into crooked ways he has committed a tort. Hence tort is a conduct which is twisted or crooked and not straight. As a technical term of English law, tort has acquired a special meaning as a species of civil injury or wrong. It was introduced into the English law by the Norman jurists. Tort now means a breach of some duty independent of contract giving rise to a civil cause of action and for which compensation is recoverable. In spite of various attempts an entirely satisfactory definition of tort still awaits its master. In general terms, a tort may be defined as a civil wrong independent of contract for which the appropriate remedy is an action for unliquidated damages. Some other definitions for tort are given below:

Winfield and Jolowicz- "Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is repressible by an action for unliquidated damages."

Salmond and Hueston- "A tort is a civil wrong for which the remedy is a common action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other mere equitable obligation."

Sir Frederick Pollock- "Every tort is an act or omission (not being merely the breach of a duty arising out of a personal relation, or undertaken by contract) which is related in one of the following ways to harm (including reference with an absolute right, whether there be measurable actual damage or not), suffered by a determinate person:-

- a) It may be an act which, without lawful justification or excuse, is intended by the agent to cause harm, and does cause the harm complained of.
- b) It may be an act in itself contrary to law, or an omission of specific legal duty, which causes harm not intended by the person so acting or omitting.
- c) It may be an act of violation the absolute right (especially rights of possession or property), and treated as wrongful without regard to the actor's intention or knowledge. This, as we have seen is an artificial extension of the general conceptions which are common to English and Roman law.
- d) It may be an act or omission causing harm which the person so acting or omitting to act did not intend to cause, but might and should with due diligence have foreseen and prevented.
- e) It may, in special cases, consist merely in not avoiding or preventing harm which the party was bound absolutely or within limits, to avoid or prevent."

Some General Conditions in Tort

Act and Omission

To constitute a tort there must be a wrongful act, whether of omission or commission, but not such acts as are beyond human control and as are entertained only in thoughts. An omission is generally not actionable but it is so exceptionally. Where there is a duty to act an omission may create liability. A failure to rescue a drowning child is not actionable, but it is so where

the child is one's own. A person who voluntarily commences rescue cannot leave it half the way. A person may be under duty to control natural happenings to his own land so as to prevent them from encroaching others' land.

Voluntary and Involuntary Acts

A voluntary act has to be distinguished from an involuntary act because the former may involve liability and the latter may not. A self-willed act like an encroachment for business, is voluntary, but an encroachment for survival may be involuntary. The wrongfulness of the act and the liability for it depends upon legal appreciation of the surrounding circumstances.

Malice

Malice is not essential to the maintenance of an action for tort. It is of two kinds, 'express malice' (or malice in fact or actual malice) and 'malice in law' (or implied malice). The first is called malice in common acceptance and means ill will against a person; the second means a wrongful act done intentionally without just cause or excuse. Where a man has a right to do an act, it is not possible to make his exercise of such right actionable by alleging or proving that his motive in the exercise was spite or malice in the popular sense. An act, not otherwise unlawful, cannot generally be made actionable by an averment that it was done with evil motive. A malicious motive per se does not amount to injuria or legal wrong.

Development of the Concept of the Law of Tort

Historical Background

The subject of torts originates in the idea of hurt or damage done by force. The early history of the law of torts, after its separation from criminal law, is embraced in the history of the action of trespass. Trespasses early were divided into several distinct actions, or perhaps it would be more accurate to say that trespass was the combination of these several actions. In all of these branches of the action, however, we see present the element of force or violence. In trespass quare clausium fregit, there is the forcible entry upon or damage to the land; in trespass de bonis asportatis, there is the forcible taking and carrying away of the goods of another; while in trespass to the person the violence is directed against the person of the injured party. For indirect damages or for damages unaccompanied with violence to a person's body, land or personal property, or for such damages as those to his reputation there could be no relief under the action of trespass, and there was no relief under any form of action until near the close of the thirteenth century. Right of action for injuries which cannot be brought within the scope of trespass owe their origin to the famous Statute of Westminster II 36 passed in 1285. Under the authority of this statute there was created the new action of Case, or of Trespass on the Case which with trespass covers the whole field of torts. The most common view of the history of (common) tort law is that it grew from those duties imposed upon actions that caused physical harm, regardless of fault, and expanded from there to determine more refined moral standards of general liability, but not everyone would agree. Some early quotes are "the thought of man shall not be tried for the devil himself knoweth not the thought of man" (Chief Justice Brian, 1468), and "in all civil acts, the law doth not so much regard the intent of the actor, as the loss and damage of the party suffering". Early post-Norman England required writs, which cost money, in order to bring a defendant to court. There were a limited number of very specific writs. Local aristocracy would limit the writs that could be issued to bring people to the King's court, largely because they wanted to increase the power of the local courts. Two writs of specific historic interest are the writ of trespass, and the writ of action on the case.

The Origin of Law of Tort

Tort law arises largely out of common law. Different states and different municipalities have their own tort standards, although there are some unifying concepts. Torts are made up of elements. The general four elements for any cause of action in tort are:

- (a) Duty (frequently encountered viz. standard of care analyses)
- (b) Breach of duty
- (c) Causation
- (d) Damages

The Possible Functions of the Law of Tort**Corrective Justice**

- a) Tort law can restore the "moral" (occasionally) and "financial" balance offset by the wrong.
- b) The above functions best on an individualist level; when several parties are involved, the rationale begins to get diluted.

Optimal Deterrence

- a) We want to deter excessively risky activity.
- b) Avoid losses that are worth avoiding.
- c) This justifies the imposition of a negligence standard in most cases.
- d) Naturally, "worth avoiding" is very subjective.

Loss Distribution

- a) Promote the broad distribution of potential losses
- b) "Having a large number of people bear a small loss" is better than the converse.
- c) Calabresi: Tort law should aspire to assign liability to the cheapest cost avoider.
- d) Problem: A lawsuit is an inefficient way of achieving an equitable distribution of loss.

Compensation

- a) Promote the compensation of those who have suffered injury.
- b) The above has many problems, especially as tort law becomes more sophisticated and broad-spectrum.
- c) Consequently, it is easier to say that compensation under certain circumstances promotes the other goals of tort law.

Redress of Social Grievances

- a) Tort law permits the triumph of "small" actors against large.
- b) Populism and anti-institutionalism.
- c) As with compensation, functions best in tandem with other tort rationales.

Basic Subject-matter of the Law of Tort**Negligence**

In the modern law of tort, the word negligence has two meanings: Firstly, it indicates the state of mind of a party in doing an act and secondly, it means a conduct which the law deems wrongful. The tort of negligence is a tort which can be committed both, person and property. Negligence in the sense of conduct refers to the behavior of a person who, although

innocent of any intention to bring about the result in question, has failed nevertheless to act up to the standard set by law, which is usually that of a reasonable man. Recklessness is serious failure to act reasonably. When a statute prescribes a certain standard of behavior with a view to avoiding injury to persons, it has been said that the failure to come up to the standard is statutorily equivalent to negligence, without proof of carelessness. Now as a result of the development of law, (in England mainly in the nineteenth century), negligence has become an independent, specific tort in itself. Although it is clearly a mental element, still judges in deciding whether a man is guilty of negligent conduct or not apply an external standard and do not take into consideration his real mental attitude at the moment of the act. Thus to determine whether a particular driver has been negligent in driving his car alone the public road, or whether a doctor has been negligent in performing a particular operation, they apply an external standard of a reasonable man placed in similar circumstances. If the judge is of opinion that a reasonable man in similar circumstances as the defendant would not have acted in that way and caused damage to the plaintiff, then the defendant is liable. Thus a purely standard was applied in such cases and wrongdoers were not permitted to aver that in fact and in truth they were not in negligent or careless.

The reason for the application of this external standard by the judges in England was due to the increase of the railway accidents and other injuries from industrial machinery in that country during the nineteenth century. The judges found that no justice could be done to the injured individuals or their relatives if the wrongdoers were permitted to set up their individual state of mind as a defense. Then it will be easy for even willful wrongdoers to say that they never intended to do any harm to any person, much less to the particular plaintiff, and it will really be very difficult for the latter to prove the mental state of such defendant. The conduct of reasonable man as envisaged in English common law could be seen from a decision of *Vaughan v. Menlove*, the plaintiff had some interest in certain cottages on land adjoining that on which the defendant had erected a haystack. The plaintiff's cottages were damaged by a fire which had spread from the haystack which was insured. When the condition of the stack and the probable and almost inevitable consequence of permitting it to remain in its then state were pointed out to him, he abstained from the exercise of the precautionary measures that common prudence and foresight would naturally suggest and very coolly observed that he would chance it. It was manifested that he adverted to his interest in the insurance office. The defendant was held liable. Tindal, C.J. while rejecting the argument of the defendant that he had would bona fide to the best of his judgment and that should be accepted, said thus: "instead, therefore, of saying that the liability for negligence should be coextensive with the judgment of each individual, which would be as variable as the length of the foot of each individual, we ought rather to adhere to the rule which requires in all cases a regard to caution such as a man of ordinary prudence would observe.

Defamation

The right of each man during his lifetime to the unimpaired possession of his reputation and good name is recognized by law reputation depends upon opinion and opinion in the main on the communication of thought and information from one individual to another. The law of defamation based upon the fundamental principal that the reputation of the member of the society, the esteem in which he is held by it, the credit and trust it reposes on his intelligence, honor and integrity, all these constitute a valuable asset for him and it deserve protection at the hands of law. A defamatory statement is a statement calculated to expose a person to

hatred, contempt or, ridicule, or to injure him in his trade, business profession, calling or office, or to cause him to be shunned or avoided in society. Defamation is the publication of statement which makes lower a person in the estimation of right thinking members of society generally or which tends to make them avoid that person (Winfield) defamation is a false accusation of an offense or a malicious misrepresentation of someone's words or actions aspersion: an abusive attack on a person's character or good name. Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person. Defamation may be a criminal or civil charge. It encompasses both written statements, known as libel, and spoken statements, called slander.

Nuisance

Under the common law, persons in possession of real property (land owners, lease holders etc) are entitled to the quiet enjoyment of their lands. However this doesn't include tenants or visitors etc as they aren't considered to have an interest in the land. If a neighbor interferes with that quiet enjoyment, either by creating smells, sounds, pollution or any other hazard that extends past the boundaries of the property, the affected party may make a claim in nuisance. Legally, the term nuisance is traditionally used in three ways:

1. To describe an activity or condition that is harmful or annoying to others (e.g., indecent conduct, a rubbish heap or a smoking chimney)
2. To describe the harm caused by the before-mentioned activity or condition (e.g., loud noises or objectionable odors)
3. To describe a legal liability that arises from the combination of the two. However, the "interference" was not the result of a neighbor stealing land or trespassing on the land. Instead, it arose from activities taking place on another person's land that affected the enjoyment of that land.

The law of nuisance was created to stop such bothersome activities or conduct when they unreasonably interfered either with the rights of other private landowners (i.e., private nuisance) or with the rights of the general public (i.e., public nuisance). A public nuisance is an unreasonable interference with the public's right to property. It includes conduct that interferes with public health, safety, peace or convenience. The unreasonableness may be evidenced by statute, or by the nature of the act, including how long, and how bad, the effects of the activity may be. A private nuisance is simply a violation of one's use of quiet enjoyment of land. It doesn't include trespass. To be a nuisance, the level of interference must rise above the merely aesthetic. For example: if your neighbor paints their house purple, it may offend you; however, it doesn't rise to the level of nuisance. In most cases, normal uses of a property that can constitute quiet enjoyment cannot be restrained in nuisance either. For example, the sound of a crying baby may be annoying, but it is an expected part of quiet enjoyment of property and does not constitute a nuisance. Any affected property owner has standing to sue for a private nuisance. If a nuisance is widespread enough, but yet has a public purpose, it is often treated at law as a public nuisance. Owners of interests in real property (whether owners, lessors, or holders of an easement or other interest) have standing only to bring private nuisance suits.

Trespass to Land

It is a form of infringement on property rights. The tort of trespass to land consist in the act of (1) entering the land in the possession of the plaintiff, or (2) remaining upon such land, or (3) placing or projecting any object upon it- in each cases without lawful justification. Trespass to land is a common law tort that is committed when an individual or the object of an individual intentionally (or in Australia negligently) enters the land of another without a lawful excuse. Trespass to land is actionable per se. Thus, the party whose land is entered upon may sue even if no actual harm is done. In some jurisdictions, this rule may also apply to entry upon public land having restricted access. A court may order payment of damages or an injunction to remedy the tort. By law, Trespass for mesne profits is a suit against someone who has been ejected from property that did not belong to them. The suit is for recovery of damages the trespasser caused to the property and for any profits he or she may have made while in possession of that property. For a trespass to be actionable, the tort doer must voluntarily go to a specific location, but need not be aware that he has entered the property of a particular person. If A forces B against his or her will onto C's land, C will not have action in trespass against B, because B's actions were involuntary. C may instead claim against A. Furthermore, if B is deceived by A as to the ownership or boundaries of C's land, A may be jointly liable with B for B's trespass. In most jurisdictions, if a person were to accidentally enter onto private property, there would be no trespass, because the person did not intend any violation. However, in Australia, negligence may substitute the requirement for intent. Thus in that country, if a person trips and rolls upon the land of another, for want of due care, he or she would likely be found to have committed trespass. Modern law allows landowner to possess, and maintain an action in trespass in relation to, the airspace above the land or the subsurface beneath to the extent that is reasonably necessary for the enjoyment of the land or the extent to which control can be exercised.

Necessitate for Introducing the Law of Tort in Bangladesh

In Bangladesh tort law is not introduced yet. In Bangladesh penal code, civil procedure code, criminal procedure code there are short application of tort law. From the above case studies it is clear that it is very essential for a country to adopt tort law, country like India, Sri Lanka, Nepal, USA, and UK adopted tort law. The context of the law of tort in particular one tort, has dominated the development of the common law of torts in the twentieth and twenty-first centuries, namely, the tort of negligence and its specific off-shoots relating to Employer's liability, Occupiers' liability, Liability for animals and Product liability. The key feature of the tort of negligence is that it attributes responsibility on the basis of principles of personal fault that require individuals to adhere to a standard of reasonable care. A general feature of the tort of negligence is that, for the most part, it is concerned with actions that cause physical harm, although there is a growing body of case law that also attributes responsibility for acts that cause foreseeable economic harm. Despite the dominance of the tort of negligence, there are other torts, which seek to protect other interests. There is group of torts, as trespass to the person, which focuses on personal integrity and may, to an extent, be relevant to the issue of individual privacy. Tort law also recognizes the interests and responsibilities of land owners, seeking to balance the right of a landowner to use his land as he wishes, against the right of neighbors to expect landowners to operate and maintain their land in a reasonable manner. Other torts protect both personal and business reputations. Thus,

it is a tort to defame a person by seeking, intentionally, to lower that person's reputation in the mind of right-thinking persons generally. In relation to chattels and business interests, there is a range of diverse torts, broadly based on intentional conduct that protects the interests of a person who owns or is in possession against deliberate interference by others and torts that guard against conspiracy and inducement of another to commit a breach of contract.

Compensation for Accident Case

Bangladesh Bureau of Statistics (BBS) in its annual publications provides data relating to road accidents. The Statistical Year Book (2000) contains figures from 1987 to 2000. The total number of accidents during the above period ranged from 1,521 in 1987 to 3,419 in 2000, a rise of 125 percent. Of these, the casualties' in 1987 was 1,156, which rose by 164 percent in 2000, thus increasing the number to 3,050. The number injured was 1,988 in 1987, which rose to 2,653, a rise of 33 percent. This is an issue of major concern. Since 1977 there have been 248 motor launch accident records by BIWTA with a loss of 2309 lives, 374 persons are injured and 208 persons are missing. Most of the accidents happened because of the negligence of the Launch operator and their owner. Whenever any launch accident occurs basically the government pays minimum amount as compensation to the victim in case of death. The owner is exempted from giving compensation the individual victim. In practice, much of the law of tort is concerned with compensating the victim of the defendant's accidental wrongdoing. Accordingly, at a general level, the function of a remedy in the law of tort is to relieve the claimant in respect of the loss or damage he has suffered rather than to punish the defendant. There is a range of means by which the compensation objective is sought to be achieved. Generally, the tort system is concerned with wrongs in the sense that the defendant is required to compensate the claimant in respect of damage caused by some fault-based or culpable conduct on his (the defendant's) part. In this sense, tort liability rules are concerned with loss shifting in that they make the defendant responsible for the loss suffered by the claimant because he (the defendant) is in some way to blame for that loss. In a study (2003) referred to earlier has also drawn attention to the economic impact on the poor caused by road accidents. It is said that the heads of households or their spouses are often the fatal victims of road accidents. This has an adverse economic impact on other members of the families. It is estimated by the study that about 32 percent of road deaths occurred to poor heads of households or spouses compared to 21 percent for the non-poor. The study findings indicated that for the 70 percent poor, the household income, food consumption and food production decreased following road deaths. For the non-poor, the impacts were less with 54 percent reporting loss of income. If there was application of the law of Tort in Bangladesh then the owner of the launch had to pay compensation to each of the victims of the accident.

The Law of Tort as a Deterrent to Harm-causing Activities

In the law of Tort, the desire to deter a person from engaging in activities which cause harm to others is seen as a primary objective. If the law imposes liability in damages for certain acts, this would appear to serve a deterrent purpose, since few people will wish to engage in conduct which they realize is likely to result in them having to pay another in respect of the harm which has been caused. Even in professional negligence cases where tort rules might conceivably have a deterrent effect, the inadvertence argument once more becomes relevant.

It is also arguable that the threat of liability based on the notion of fault is likely to result in the adoption of over-defensive practices which might prove detrimental to the interests of the client or patient. A further consideration is that if tort rules do operate in a deterrent fashion, then steps may be taken by potential defendants to guard against being sued which may be out of proportion to what is considered reasonably necessary. The possibility that such disproportionate steps may be taken is often put forward as a reason for not imposing a duty of care. Thus if there is a danger that doctors may engage in 'defensive medicine' this may be a reason for declining to hold that a duty of care exists in particular circumstances. But the concept of defensive practices is not confined to cases of medical malpractice and may extend into other areas such as the exercise of statutory powers by a public authority charged with a responsibility for protecting others.

Wrong Done by Bureaucrats and Autonomous Bodies

As per the Law of Torts nobody including a banker has any right to injure others intentionally or innocently. At present, in most cases, the public is getting injured by the wrongful acts of the bureaucracy and their instrumentalities, agencies and other bodies like banks, financial institutions, other utility service providers etc. The wrong doings of bankers, if any, cause legal damage to the affected person, apart from actual damage, if any. Such damages commence the moment the wrong doings are committed. On the other hand, they owe a duty of care towards the assisted borrowers. If any injury is caused on account of the said wrong doings or violation of the duty of care, the affected person is entitled for compensation for unliquidated damages. If the wrongdoings are willfully caused, knowingly continued and if they are arbitrary, unconstitutional and oppressive, the affected person is entitled for aggravated and exemplary damages. The Bank Nationalization Act of 1972 has given an indemnity to bankers for all of their acts except willful negligence. In case, the acts and omissions of the bank officials are not keeping the above aspects in practice, it would amount to wrongdoings, resulting in compensation for the loss and damages, legal as well as actual which become due the moment the wrongdoings are caused.

Apart from the situation in banks and financial institutions, there is hardly any remedy for tortuous offence in Bangladesh due to lack of awareness in the society and the legal system. There is hardly any case for such offence. We have observed few cases of tort against doctors but in most of the cases we see "compromise" between parties. These trial processes sometimes require expert opinion and in most of the cases, the experts are not willing to give opinion against fellow members of own profession. The bureaucrats and bankers are indemnified from professional liabilities but others are not indemnified so far. But there is hardly any litigation or remarkable judgment for any offence involving tort. We are suffering for wrong treatment, lack of service from local bodies, utility providers, neighbours having administrative and political power connection, local ruffians etc. We consider all these sufferings as part of our life and society. There is very frequent news of arrest and torture of innocent persons but there is no visible remedy in law under the justice system in our country. In the above consideration, we must enact law of Tort to improve the service of government, professionals, service providing agencies both in public and private sectors etc.

Protection of the Consumer's Rights

Another thing, which needs highlighting at this juncture, is the Consumer Protection, in Bangladesh. The demand for a self certain consumer protection legislation began in the early 80's last century. The civil society and various consumer rights promoting organizations raised their voice. The new Chapter began on 6th April 2009 with the adoption of the Consumer Rights Protection Act 2009 (hereinafter CRPA) as a comprehensive legislation in the national assembly. Articles 18 and 15 of our constitution have served as the basement upon which the Act has been formulated. The purpose of the CRPA 2009 is to define standards and to set up procedures to promote and protect consumer interest. In its preamble the Act stipulates: "...it extends well beyond the mere protection of economic interests of the consumers, to become part of a mere general social policy on consumer affairs." But a close analysis shows that the Act has failed to develop the existing system, containing so many loopholes. It is now a big question whether this Act will serve as a protecting shield to the consumers. We shall discern the demerits as we proceed. The Act provides that any complaint concerning defective product resulting in substantial financial or physical damage must be filed within 30 days. If pondered over the fact, we can see there are many long-term effects which cannot be identified readily after using the products. 30 days time span is thus too short a scale. Thus the Act has failed to keep up with reasonableness and medical science. Sec 71(1) of the Act stipulates no individual can make any complaint about violation of consumer rights to the court of a 1st class magistrate or the CMM. So the people are placed at the mercy of the Council for enforcing the rights given to them, which would ultimately prove to be a nugatory. If there was application of the law of Tort these questions would not have arise.

Conclusion

The entire law of tort is founded and structured on morality. Therefore, it would be primitive to close strictly or close finally the ever expanding and growing horizon of tortious liability. Still many laws like the Indian Law Reports furnish in this respect a striking contrast to the number of tort cases before the Courts. In Bangladesh, we have ignored to introduce the law of Tort in our legal spectrum. We need specific codification of the law of Tort which can cover not only 'accesses to justice but also assurance to 'justice'. Undoubtedly a code is useful, but it is well to recognize that this branch of law is still in the process of growth and while it would be difficult to prepare a code, it would not also help a proper development of the law to do so. Following the instances of India where the law is also not codified, the judges and the lawyers can play their contribution for the initial growth of the law of Tort in Bangladesh. Consideration should also pay for the assurance of proper justice. Failure of aggrieved persons to assert their legal rights is perhaps to be ascribed not merely to insufficient appreciation of such rights but to other causes as well, e.g., difficulties in proving claims and obtaining trustworthy testimony, high court fees, delay of courts. The elimination of difficulties which obstruct aggrieved parties in seeking or obtaining remedies which the law provides for them is a matter which is worthy of consideration. It is suggested that the court-fee should be decreased to cause more cases to be entertained in the courts. It has been desired that lawyers must take on themselves the responsibility of educators of litigants from all walks of life, to enable them to start right actions including actions for recovery of damages for the injuries sustained. If these lacunas are removed, Bangladesh would also witness a growth in tort litigation.

References:

- Cane, (1999), *The Anatomy of Tort Law*, 2nd edition, Hart Publishing.
- Ibbetson, (1999), *Historical Introduction to the Law of Obligations*, 4th edition, Oxford University Press.
- Nolan, (2007), 'New Forms of Damage in Negligence' *MLR* 59
- Wright, (2001), *Tort Law and Human Rights*, 5th edition, Hart Publishing.
- Ratanlal and Dhirajlal, *The Law of Torts*, 24th edition (Nagpur: Wadhwa and Company, 2004).
- Durga Das Basu, (1979), *The Law of Torts*, 9th edition, Calcutta: Kamal Law House.
- Noshirvan H. Jhabvala, (2008), *The Law of Torts*, 25th edition (Mumbai: C Jamnadas & Co. M. S. [http://www.indlawnews.com/display.aspx?3529, accessed on 19 March 2010].
- [http://www.legalserviceindia.com/article/1129-Torts-In-India.html, accessed on 19 march 2010].
- [http://www.legalserviceindia.com/articles/torts_s.htm, accessed on 12 January 2010].
- [http://www.law.nyu.edu, accessed on 12 January 2010].
- [www.bu.edu/lawlibrary, accessed on 21 January 2010].
- [http://www.studentatlaw.com/articles/42/1/Tort-Law---Topic10-Defamation/Page1.html, accessed on 27 January 2010].
- [http://en.wikipedia.org/wiki/Nuisance, accessed On 22 February 2010].
- Importance of Tort,
- [http://www.oup.com/uk/orc/bin/qanda/sample_chapters/oughton_chap02.pdf, accessed on 21 January 2010].
- [http://driveandstayalive.com/info%20section/news/individual%20news%20articles/x_040418_economic-cost-of-road-accidents-in-bangladesh.htm, accessed on 12 January 2010].
- [http://eprints.ukm.my/155/1/Vol.%25201%2520Issue%25202%2520-%2520Naznin.pdf, accessed on 18 January 2010].
- [http://eprints.ukm.my/155/1/Vol.%25201%2520Issue%25202%2520-%2520Naznin.pdf, accessed on 18 January 2010].
- M. S. Siddiqui, (2010), 'Importance of Tort Act in restoring justice Importance of Tort Act in restoring justice', [http://www.thefinancialexpress-bd.com/2009/06/10/69257.html, accessed on 30 January 2010].
- [http://www.legalserviceindia.com/articles/torts_s.htm, accessed on 12 March 2010].
- [http://www.scribd.com/doc/28074642/Introduction-to-Tort, accessed on 13 March 2010].
- [http://www.legalserviceindia.com/articles/torts_s.htm, accessed on 12 March 2010].