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## **Emerging Trend of Constitutional Tort in Bangladesh**

**Submitted by:**

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**A thesis paper is submitted in partial fulfillment of the requirements of the LL.B (Hon's),  
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**Legal Research on  
Emerging Trend of Constitutional Tort in Bangladesh**

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## Letter of Transmittal

To  
Md. Safiullah  
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***Subject: Emerging Trend of Constitutional Tort in Bangladesh***

**Respected Sir,**

It's a great pleasure for me to submit a legal research on Emerging Trend of Constitutional Tort in Bangladesh. I have given my best efforts to finish the thesis with relevant information's that I have collected from various sources. I have, tried my level best to maintain the required Standard and concentrated my efforts to achieve the objectives of the work and hope that my endeavor will serve the purpose.

I, therefore, pray and Hope that you would be kind enough to this research paper for evolution.

I always available for any further clarification for any part of this research paper at your convenience.

Sincerely Yours,

.....

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## DECLARATION

I'm Md.Saiful Islam the student of LL.B. (Hon's) hereby do solemnly declare that the work presented in thesis have been carried out by me and have not been previously submitted to any other institution. The work I have presented does not breach any copyright. The presented work has been performed by me and has been submitted in the fulfillment of the requirement for the degree of LL.B. (Hon's). I further undertake to indemnify the University against any loss or damage arising from breach of the forgoing obligations.

I declare that this thesis has been prepared by me and has not previously submitted to any other university / college / organization for any academic qualification / certificate / diploma degree.

The work is presented by me is original work and it's not submitted before.

.....

Md. Saiful Islam

## CERTIFICATION

This is to certify that the thesis on “**Emerging Trend of Constitutional Tort in Bangladesh**” is done by Md.Saiful Islam, in the partial fulfillment of the requirement for the degree of LL.B (Hon’s) from Daffodil International University of Bangladesh. The Thesis has been carried out under my guidance and is a record of research which carried out successfully.

.....

Md. Safiullah  
Senior Lecturer  
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Finally I express thanks to my friends and well-wishers.

.....

**Md. Saiful Islam**

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## List of Abbreviation

<b>DLR</b>	<b>Dhaka Law Report</b>
<b>BLD</b>	<b>Bangladesh legal Decisions</b>
<b>BLT</b>	<b>Bangladesh Law times</b>
<b>AIR</b>	<b>All Indian Reporter</b>
<b>SC</b>	<b>Supreme Court</b>

## **Abstract**

In the legal system of Bangladesh, the demand of tort law is increasing day by day. Many of us know about tort existing in common law. Besides that, there are other types of tort law that is called constitutional tort. Because of the lack of knowledge regarding constitutional tort law, people cannot claim compensation being harmed by the governments or public officials. This work will focus on the necessity of the compensatory remedy when the fundamental rights of the citizens are violated by the government servant or public authority. The possibility of getting compensation under the constitutional tort is to be enlightened by clarifying various constitutional tort cases in Bangladesh. For completing this research Traditional research methodology will be followed as well as various case laws are to be discussed for creating the awareness of the people regarding the constitutional tort law. This research is to be done by considering historical, analytical and socio-legal approaches. The vicarious liability is to be enlightened in the shed of the constitutional tort. By this work, people can get aware of the constitutional tort and can able to know the way how to get compensations. In this research, the mechanism is to be discussed that should be followed to measure the compensation. Moreover, the emerging trend of constitutional tort should be emphasized for a developing country like Bangladesh.

# CHAPTER ONE

## INTRODUCTORY

### Introduction

The term ‘constitutional tort’ is considered the violation of constitutional rights of an individual by the government or government officials. The person may be harmed by the government officers in several ways. Generally, when a person faces physical injury, emotional misery, a defamatory statement by someone, there is a scope to bring a suit under tort existing in common law or statutory principles exist in Bangladesh. But an alternative tort named constitutional tort also exists.<sup>1</sup> By following due process of constitutional tort a person can take legal action to recover the damages for constitutional rights.

There are some basic differences between constitutional tort and common law tort. Actually in case of constitutional tort the victim whose constitutional rights are violated can bring a suit against the servant of government or others public authorities. This precedents is not practiced in common law but by following the Article 102 of the constitution of Bangladesh the victim can invoke damage for violation of the constitutional rights.<sup>2</sup>

### 1.1 Historical Background

Tort is that the space of law wherever in response to a non-public or wrongful conduct or injury the courts give the remedy of permitting a proceeding for (usually monetary) damages. Thus, the objective is to revive the victim to his or her previous condition. Tort law is claimed to be an improvement of the previous *maxim ubi jus ibi remedium* (Every right desires a remedy). The term tort comes from the Latin “*tortus*”, which means “*crooked*” or “*twisted*”. Derived from French for “wrong”, a wrongful conduct or wrongful act, whether or not intentional or accidental, from that injury happens to a different. Torts embody all negligence cases yet as intentional wrongs that lead to hurt. Moreover Tort law is one amongst the most important areas of law (along with contract, property and criminal law) and ends up in a lot of civil legal proceeding than the

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<sup>1</sup> Michael L. Wells, *Constitutional Torts, Common Law Torts, and Due Process of Law* (1997),

<sup>2</sup> *Judicial activism for constitutional torts* <<https://www.thedailystar.net/news/law-our-rights/judicial-activism-constitutional-torts-1616731>> last access on 28 September 2018

other class.<sup>3</sup> The principle of sovereign immunity was created from the English saying ‘King can do no wrong’ and the convention was conveyed to the United States where it was connected to deny tort claims. But the principle was gradually changed and finally by the *Dorset Yacht Co Vs. The Home Office* House of Lords said the Crown would be responsible for damaging a yacht by the boys escaped from open borstal when found in negligence.

The demands of civil wrong law being enclosed into our system area unit so much and wide demands that have however to be met, unfortunately. Some aspects of civil wrong law, however, area unit being incorporated in judgments gone along the court, paving the legal means for civil wrong law in People's Republic of Bangladesh to become totally applicable. In recent years, the judiciary has taken a position in applying common civil wrong law principles in road accident cases and problems involving negligence. The idea of civil wrong liability, vicarious liability, and different ideas borrowed from civil wrong law area unit slowly being place to use within the system in People's Republic of Bangladesh.<sup>4</sup>

## **1.2 Statement of the problem**

The research is to be completed by considering the necessity of the constitutional tort and its scope in line with the common law statutes. On the other hand, what will be the ultimate benefit by getting the compensatory remedy to the victim is to be enlightened in this research.

## **1.3 Importance of the Study**

The research is necessary to know about the doctrine of vicarious liability and to find out the basic comparison between Common law tort and Constitutional Tort Law. The constitutional tort law is increasing day by day. So Bangladesh should emphasized on the raising issues to create awareness among person and government authorities.

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<sup>3</sup> Ars Khan, *Introducing tort Law in Bangladesh* <<https://www.scribd.com/document/265167479/Introducing-tort-Law-in-Bangladesh>> last access on 01 October, 2018

<sup>4</sup> When negligence costs lives <<https://www.dhakatribune.com/opinion/op-ed/2018/01/07/negligence-costs-lives>> last access on 2 October, 2018

## **1.4 Research questions**

- What are the proper scopes for applying the constitutional tort law in Bangladesh?
- Whether the constitutional tort remedy keeps a major part for getting remedy to the victim or not?
- What is the present scenario of Bangladesh for getting compensation for violation of fundamental rights?

## **1.5 Objectives of the Study**

The objective of this analysis is to search out the need of the offsetting remedy in cases of violation of elementary rights of the national underneath the constitution. During this analysis, illuminations are outbuilding on the chance of providing compensation in cases of “Constitutional Torts” and conjointly the money constraint with relation to providing compensation.

- To ensure the constitutional tort in Bangladesh.
- To review the vicarious liability along with constitutional tort.
- To create awareness among the people regarding constitutional tort issues.

## **1.6 Methodology**

The analysis is to be completed by adopting reasonable and rational ordering of the legal doctrine on the premise of the qualitative analysis and data is to be collected from varied primary and secondary sources like Statues, journals, commonplace textbook, and reference books and explaining judgment also as case laws etc. So, Traditional research methodology is to be maintained during this analysis. Historical, Analytical and Socio-legal approaches is to be followed in my legal analysis to explore new innovation.

## Chapter Two

### Conceptual Framework: Interpretation of Constitutional Tort

#### 2.1 Definitions of major concepts

- **Tort:** A tort, in common law jurisdictions, could be a wrongdoing that causes an applicant to suffer loss or damage leading to legal liability for the one who commits the misconduct act.
- **Constitutional Tort:** Constitutional tort means the damage of one's constitutional rights by a government servant or authority where the compensatory remedy is to be given to the claimant person.<sup>5</sup>
- **Vicarious Liability** The logical term "Vicarious liability", which is logically known by the "reactionary superior" is a person or entity responsible for the loss or damage caused by another. Most of the employee-employed relationships are generally considered, it is applicable to alternative things, in which a person or organization has a higher position to add a degree agent. For example, a hospital is responsible for the actions of his doctor. <sup>6</sup>

#### 2.2 Constitutional Remedy

The term remedy means that to attain justice in any matter during which legal rights are concerned. Remedies is also ordered by the court, established by judgment once trial or hearing, by agreement (settlement) between the person claiming damage and therefore the person he/she believes has caused it, and by the automated operation of law. Some remedies need that bound acts be performed or prohibited (originally known as "equity"), others involve payment of cash to hide loss thanks to injury or breach of contract, associated still others need a court's declaration of the rights of the parties and an order to honor them. 'Compensation is accessible as a remedy against governmental institutions'.

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<sup>5</sup> Constitutional Tort < <https://definitions.uslegal.com/c/constitutional-tort/>> last access on 5 October 2018

<sup>6</sup> Vicarious liability < [legaldictionary.net/vicarious-liability/](http://legaldictionary.net/vicarious-liability/)> last access on 7 October , 2018

**Constitutional Remedy** means the right to get compensation by the state when any constitutionally guaranteed right of a citizen violated by the government.

In a renowned case of *Khatri vs. State of Bihar*,<sup>7</sup> The court involved supplying compensation to whom are the victim of the violation of the fundamental rights. In this manner, it creates a brand new facet of the right to life and personal liberty.

### 2.3 Tortious Liability and its Scope

To determine whether or not the tort law ought to be de jure accountable for any damage against another person and what compensation ought to run to the victim. "Initially, because of the violation of the duty to be amended by the law, there's irresponsible liability; this responsibility is reserved by a step towards unauthorized damages to people and their infringement."<sup>8</sup>

A tort occurs when a citizen violates the general responsibility prescribed by law. When someone or some person (including natural person and legal person) is committed a tort, the law compensates the commission of tort for the loss of money in the name of compensation or loss.<sup>9</sup>

**According to sir Frederick Pollock-** Every tort law may be a law or termination (is not a violation of a obligation arising from personal relationships, or is ruled by the contract), that is expounded to at least one of the subsequent losses (whether with respect to full rights, whether or not there's a considerable right or not, is measurable, actual loss or not), a Suffer from the regular person:

- a) It can be a law that causes the agent to cause damage and complains of loss without legal reason or excuse.
- b) It may be a law of legal reverse, or the abolition of certain legal duties, which is not the cause of loss due to the person being adapted or excluded.
- c) It may be an act of violation of the right (especially occupation or right of property), and is considered as wrong without the intent or intention of the actor. As we have seen, an artificial extension of common ideas that are common in English and Roman law.

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<sup>7</sup> *Khatri vs. State of Bihar* [1981] AIR 930,931

<sup>8</sup> *Winfield and Jolowicz on Tort Edwin Peel*, James Goudkamp, *Percy Henry Winfield* (associated with work), J. A Jolowicz (associated with work) Nineteenth edition, 2014

<sup>9</sup> Catherine Elliott and Frances Quinn, *Tort Law* (4thEdition, Longman) 1

- d) It is a work or a mistake that the person can act or act on is the reason for not doing purpose but should be done with due diligence and should be done and resist it.
- e) It does not prevent it from avoiding or interrupting the special case, which may prevent or prevent the party from completing or limiting.

Sacred Law Scholar Mahmudul Islam pushed for the utilization of legislative risk if there should be an occurrence of infringement of crucial rights. In this respects, in his book he stated:

"In Bangladesh where the general population are a definitive sovereign and its Constitution broadcasts the standard of law, there is no avocation for sticking to a convention created a very long time before in a nation managed by the rulers. The principle truly does not fill any genuine need. In actuality, it does limitless mischief in that if the administration isn't at risk in tort for impropriety of its workers, the legislature may not trouble much about what its representatives do to the residents and in a definitive investigation there remains no responsibility on which the achievement of vote based system depends."<sup>10</sup>

In Hussain **Muhammad Ershad vs. Bangladesh**<sup>11</sup> demonstrated to us the best approach to apply worldwide commitment in domestic jurisdiction in two circumstances: First, where the domestic law is indistinct or quiet on a point and besides if the local law is in consonance with universal commitments.

## **2.4 Basic differences between common law tort and constitutional tort**

Government officials can harm people in many ways. When an officer hurts physically, gives reasons for emotional distress, publishes a defamatory statement, or starts a malicious case, the victim's traditional tort case brought under the general law or statutory policy of states. But general abuse options can also be found. For decades, due to the increase in remedies for constitutional violation, the concerns of the constitution have caused concern for leaking of their cases.

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<sup>10</sup> Islam, Mahmudul, *Constitutional Law of Bangladesh* (3rd Edition, Mullick Brothers 2012) p1031-32

<sup>11</sup> *Hussain Muhammad Ershad vs. Bangladesh* (2001) 21 BLD (AD) 69



Personal injuries-based claims that are similar to general law and order lawsuits cannot be filed without damages. Furthermore, in the case of violation of the rights of independent speech, constitutional abuse cases do not present the problems described here, because these cases do not increase battery, false prison, defamation, malicious prosecution or similar claims. In the case of constitutional torture, the court faces a strong force, which is pulled by the opposite order.<sup>12</sup>

## **2.5 Existing constitutional tort remedy of Bangladesh**

As John Marshall stressed that there is a need for remedies to violate the rights, constitutional lawmakers have a right to remedy the right to constitutional law and that the victims of constitutional violations should be effective solutions.<sup>13</sup>

The Supreme Court of Bangladesh has as of late chosen to record two instances of tort, which can be the milestone choice because of the irritation of the tort case in Bangladesh. The first is *Bangladesh Beverage Industries Ltd. Rosen Akhter (69 DLR 129*, where an organization was requested to pay 1.7 crores to harm the relatives of a person on foot family slaughtered by their trafficker's careless driving. The second is the remuneration of Rs.20 lakhs to the guardians of the Zihad of High Court Division, which passed on in the wake of being killed in an open profound shaft in the capital.<sup>14</sup> Article 102 of the constitution of Bangladesh has been widely covered in constitutional compensation and has been called by the public interest lawyers and rights organizations for the protection of victims of human rights violations.

The High Court Division embraces judicial activism, analyzes the first negligence and analyzes the constitutional responsibility of government authorities for the first time, because the Zihad case should be considered as a benchmark for increasing public health benefits in the judicial system. The principle of the use of constitutional abuse.

There is no explicit arrangement for remuneration for the constitution of Bangladesh infringing upon major rights. There is no law for obligation for state mistreatment. Be that as it may, Article 44 of the Constitution gives the rights to the privileges of the High Court to expel it as per article 102 (1). This privilege to authorize principal rights is likewise a central right. Article 102 of the Constitution gives that:

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<sup>12</sup> Michael Wells, Constitutional Torts, Common Law Torts, and Due Process of Law, 72 Chi.-Kent L. Rev. 617 (1997)

<sup>13</sup> John C. Jeffries, Jr, 'The Right-Remedy Gap in Constitutional Law', *The Yale Law Journal*, Vol. 109, No. 1 (Oct., 1999), pp. 87-114

<sup>14</sup> Symposium on tort law judgments < <https://www.thedailystar.net/law-our-rights/symposium-recent-tort-law-judgments-held-bilia-1480180> > last access on 10 October, 2018

"The High Court Division on the utilization of any individual abused may give such bearings or requests to any individual or specialist, including any individual playing out any capacity regarding the issues of the Republic, as might be proper for the requirement of any of the key rights given by Part III of this Constitution."

Article 146 of the Constitution of Bangladesh provides that:

*"The Government of Bangladesh may sue or be sued by the name of Bangladesh."*

This above-mentioned article clearly says that in Bangladesh the concept of sovereign immunity is not applicable and the government can be sued. In India the courts have taken advantage of the open-textured wording of articles **32** and **226** of the Constitution. These articles give freedom to the courts to mould the remedies and even invent new remedies for the enforcement of the rights.<sup>15</sup>

In Bangladesh, the wording in our constitution is additionally open-finished and along these lines there is no bar in our established plan to make our very own compensatory statute.

In a renowned Case ***BNWLA vs. Bangladesh*** the court moved somewhat further and said decidedly that:

"The worldwide traditions and standards are to be perused into the major rights without any local law possessing the field where there is no irregularity between them. It is presently an acknowledged principle of legal development to translate civil law in congruity with universal law and traditions where there is no irregularity between them or there is a void in the domestic law."<sup>16</sup>

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<sup>15</sup> S P Sathé, *Judicial Activism in India* (1st Edition, Oxford University Press 2002) 232

<sup>16</sup> *BNWLA vs. Bangladesh* (2009) 14 BLC 694

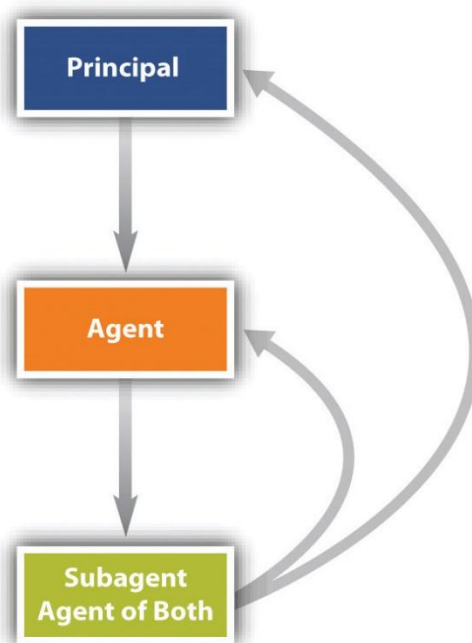
## CHAPTER: THREE

### Vicarious Liability & constitutional Tort

#### 3.1 Elucidation of vicarious liability

The term vicarious liability means the situation that makes one person liable for the activities of another person. By following the vicarious liability it is possible to bring a claim contrary to an employer for the conducts or actions of his employee. Besides that, due to the activities of the third party like clients and customers, an employer can be liable.

The vicarious liability will have arisen where negligence found between the legal relationships. The negligence credited to the legal relationship like parent and child, husband and wife, owner of a vehicle and driver, employer and employee etc. But the exception is that self-regulating negligence of a person is not to be counted as another one.<sup>17</sup>



In the above chart, it has been shown that the principal appoints an agent for conducting his own business. On the other hand, the main agents delegate his duties by appointing subagents.

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<sup>17</sup> Vicarious liability < <https://legal-dictionary.thefreedictionary.com/vicarious+liability>> last access on 01 December 2018

If there any negligence arise by the subagent, then both the principal and main agent will liable for the conducts of the sub-agents.<sup>18</sup>

### 3.2 Scope to Apply for Vicarious Liability

Employer of a company, office or other institution will be held liable for the vicarious liability if any wrongdoer like discrimination, harassment, and damage occurred to the employee of such institutions. If any harassment or discrimination occurs by any employee including employer-sponsored events, seminars, workshop or other training, conference, and business then the term vicarious liability will be raised there.<sup>19</sup> A sexual harassment occurred between two employees of an office in the early hours of the office time in the work place that made liable the employer<sup>20</sup>.

If employers fail to maintain previously mentioned responsibility, they may be vicariously accountable. The Supreme Court of Bangladesh gave a formal ruling on this matter. An example of the court has been presented, "If a person fails to ensure the prevention of sexual harassment and fails to be convicted and against any organization or organization against it, it can be claimed against and for blamed for damages to women."<sup>21</sup>

*The BATB Company Limited vs. Begum Shamsun Nahar's* case has made pay approaches in the event of scandalous behavior of women in the working environment. This is an achievement choice by the Supreme Court which builds the lawful assurance of woman against badgering of them in Bangladesh. Along these lines, there ought to be casualties of torment and additionally criminal inappropriate behavior at work environment.

Women are the largest part of the total population of Bangladesh. Sadly, women's work in Bangladesh is much lower than most of the countries. The 'Work' honor is considered a right.<sup>22</sup>

Apart from this, the state will ensure equal opportunities and participation in national life. Explaining the term 'all spheres of national life', it can be said that all the spheres must include

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<sup>18</sup> The Legal Environment and Business Law: Executive MBA Edition (v.1.0),2012 *Relationships between Principal and Agent* <2012books.lardbucket.org/books/the-legal-environment-and-business-law-executive-mba-edition/>

<sup>19</sup> Vicarious liability, Australian Human Rights Commission <<https://www.humanrights.gov.au/>> last access on 01 December.

<sup>20</sup> *Leslie v Graham* [2002] FCA

<sup>21</sup> *British American Tobacco Bangladesh (BATB) Company Ltd v. Begum Shamsun Nahar* (66 DLR (AD) 80),2014

<sup>22</sup> The constitution of the People's Republic of Bangladesh, Art 20

'workplace' Therefore, women have the right to work as well as to work with men in the workplace.<sup>23</sup>

### **3.3 The validation process vicarious liability**

The liabilities emerge when a man is considered in charge of the harm of others. This is a type of cruel obligation. The risk emerges due to the genuine tort and the utilization of the relationship of the individual who is awful. There is a general principle of forcing vicarious liabilities in all conditions just about the master and slave relationship. The staying 'acknowledged' segments are just connected in certain outstanding conditions

Dal Pant recognizes three probable categories of agents:

- a) Persons who can create legal relations with the third party on behalf of the Principal;
- b) People who may influence legal relations with the third party on behalf of the Principal; and
- c) A person who has the power to work on behalf of the Principal.<sup>24</sup>

Although the beverage case of Bangladesh is not only significant, it is not only noteworthy in the case of tort in Bangladesh, but due to the country's rising high road death, employers can also inspire their employees to work more responsibly to act responsibly, because consequent failure can result in torture and damage to vicarious liabilities in a massive

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<sup>23</sup> Ibid, Art19(3)

<sup>24</sup> E Dal Pont, *Law of Agency* (Butterworths, 2001) [1.2].

## Chapter: Four

### **The Real Scenario of Constitutional Tort Litigation in Bangladesh**

#### **4.1 Observations of Constitutional Tort Litigation**

Various human rights documents have some rights recognized as a general reflection of mankind's thought. Human rights are inherent and inefficacious in nature, universal form and human rights are essential for living properly.<sup>25</sup> During the legal definition of 'Fundamental Rights', Professor Ekramul said that the right to be rewarded with better protection than those rights recognized by the constitution and other rights is called the basic right. During the definition of 'fundamental rights', Barrister Abdul Halim went along the same lines as well<sup>26</sup> When discussing fundamental rights, TK Top stated:

When discussing fundamental rights, TK Top stated that<sup>27</sup> the point of key rights isn't just to guarantee the insufficiency of specific rights against political change, yet also the accomplishment of another dimension of national certainty on the general population.

The third part of Bangladesh's constitution examines basic rights. There are 18 groups in this segment, some of them have ideological and some understandable settlements. For example, according to article 39, the liberty of freedom and belief is responsible for knowing the limitations. The right to exercise central rights under article 44, but the right to a large majority and the general interest of the society fit the bill. Just a few words are filled.<sup>28</sup>

In a statement in article 44 of the Constitution of Bangladesh, it has been said that "the right to transfer the High Court Division has been guaranteed according to the terms of article 102 (1) for the rights granted by this part."<sup>29</sup> When the rights included in part III of the Constitution of Bangladesh violated by somehow, the aggrieved person<sup>30</sup> can go to Supreme Court to file a writ petition.

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<sup>25</sup> Hague, Muhammad Ekramul, '*Protecting Fundamental Rights through Restricted Legislative Competence: Application of the Doctrine of Eclipse and Severability*' [2006] Dhaka University Studies, Part-F, Vol. XVII(1), p. 49-62, 49

<sup>26</sup> Ibid.p55

<sup>27</sup> Tope, TK, *Constitutional Law of India* (1stEdition, Eastern Book Company1988) 32

<sup>28</sup> Supra note 25 , p 51

<sup>29</sup> Constitution of the People's Republic of Bangladesh Art 44(1), 102(1)

<sup>30</sup> *Kazi Mukhlesur Rahman vs. Bangladesh*26 DLR (SC) 44.

## 4.2 Legal Trends in Provisioning Compensation in the Constitutional Tort Case.

In India a number of cases provide constitutional remedies for violation of fundamental rights of an individual. It is a very common scenario for India to give compensation to the direct victims of the fundamental rights.

**Rudul sah v. State of Bihar**<sup>31</sup> and **Sebastian v. Union of India**<sup>32</sup>, the court provides financial compensation to the Member of Parliament. 50,000 taka and J. and K. indicate the state within two months to pay the compensation. The court said that:

"In the right case we are entitled to compensate the victims by providing suitable financial compensation. We consider this a suitable case.

**Nilvati Baira v. Barisal State of Orissa**<sup>33</sup>, out of the blue, the court perceives the remuneration of the cure according to public law against the cases of private laws. This case was identified to death in the public custody. For this situation, the idea of "sovereign mischief" is unsuitably disregarding essential rights. Afterward, erudite people of trustworthiness **Gautam v. Subhara Chakraborty**<sup>34</sup> paid the break pay to the Supreme Court of India. Consistently the casualties of assault are abused by the blamed for the most major basic privileges of life, including the complainant's status.

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<sup>31</sup> *Rudul Sah vs State of Bihar* (1983) AIR SC 1086

<sup>32</sup> *Sebastian vs. Union of India* (1984) AIR SC 1026

<sup>33</sup> *Nilabati Bahera vs. State of Orissa* (1993) SCC 746

<sup>34</sup> *Bodhi Sattwa Gautam vs. Subhra Chakraborty* (1996) 1 SCC 490

### 4.3 The process of giving compensation regarding constitutional Tort & successful tort litigation

In Bangladesh the constitutional tort is not developed yet. But gradually it is increasing day by day .Basically for measuring the compensation the judges applied their judicial discretionary power. Still now after the independence of Bangladesh only six case successfully resolved in our country. ***Bangladesh Beverage Industries vs. Rowshan Akhter (2010*** <sup>35</sup>*case is concerned vicarious liability and negligence that followed some ground for claiming the compensation:*

- By considering the loss of income
- Non-financial loss that causes a great impact on family
- Loss of the reputation of plaintiffs

In this case, the court denied the third ground that is loss of reputation. The court given focus on the first and second point. The family faces very difficulties by the death of a person. So the court considering various issues given the decision.

Recently Supreme Court given judgment of Zihad case. The judgment creates a new dimension on the legal system in Bangladesh. The case proves that the government is not above the law. The government is liable to pay for any of the damages regarding constitutional rights of any individual, if the rights is violated by himself

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<sup>35</sup> Cornford, Tom, *Towards a Public Law of Tort* (1<sup>st</sup> Edition, Ashgate 2008) 223



## **Chapter: 5**

### **Recommendation**

The Constitutional tort is not developed in our country widely. Besides that many people of Bangladesh have no idea what is a constitutional tort and where's going to implement the compensation regarding this. Constitutional rights are to be treated as fundamental rights of a person. People now facing various problem or incident that violates their fundamental rights as well as damage is to be caused. The trend of tort law, however, are being incorporated in judgments passed by the court, paving the legal way for tort law in Bangladesh to become fully applicable. So, this is the high time for people of Bangladesh to aware their fundamental rights and the process of getting compensation for violation of fundamental rights.

## **Chapter: 6**

### **Conclusion**

In the United States, taking into consideration government courts, taking into consideration the right to trade, open accommodation and housing, the right to speak and to gather, to do unreasonable tests and to violate the violation of the violation of the harmful inconsistency and to review the right to systemic violations. . In spite of having a difference in the decision of the Genuine Fair Treatment Foundation, American researcher Shank said that the law of torture should be used as a tool to guarantee the rights of the staff. Because of the structure of the Canadian Congress, it can not respond sensitively to the administration's position, because laws like Catherine Masud case, GI Khan freaky lawsuit and many more prove that to build a tough court, build our own strong guard legal framework and thankfully let us There is no established time to do this, all we have to do is the sophisticated Judge of the Court on behalf of a strong advance progress in the development of solutions. "Protected maltreatment".