

A HANDBOOK FOR PRACTITIONERS | BANGLADESH

# Civil Liability for Human Rights Violations



## AUTHORS

### Taqbir Huda

Coordinator, Tort Law Project Bangladesh

[PROFILE](#)

**Legal Disclaimer:** The information materials and opinions contained in this publication are for general information purposes only, are not intended to constitute legal or other professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. We do not accept any responsibility for any loss which may arise from reliance on information or materials contained in this publication. You should consult a suitably qualified lawyer on any specific legal problem or matter.

**Publication Information:** This country report is one of the 19 reports prepared for a [comparative project on civil liability for human rights violations](#) led by the Bonaverio Institute of Human Rights. It follows a unified template, and some terms in this report were defined consistently for the purposes of the project. To access other country reports and introduction from the project team, please [click here](#).

**All online resources cited and/or referenced in this report were accessed on 1 April 2022. Publication Date: October 2022**

Cover photo by Milosk50 (courtesy of Shutterstock).



# CONTENTS



RETURN TO THIS  
TABLE OF CONTENTS




VIEW THE START OF  
THE CURRENT SECTION



INTERACTIVE

## TABLE OF CONTENTS

Page	Content	Average Read Time
P4	Overview of Jurisdiction	1 minute 
P5	Introduction	2 minutes
P7	General Questions	1 minute
P8	Question 1	11 minutes
P13	Question 2	2 minutes
P14	Question 3	1 minute
P14	Question 4	6 minutes
P18	Question 5	2 minutes
P19	Question 6	2 minutes
P20	Question 7	4 minutes
P22	Question 8	2 minutes
P25	Case Scenarios	1 minute
P26	Case Scenario 1	2 minutes
P27	Case Scenario 2	1 minute
P28	Case Scenario 3	3 minutes



# BANGLADESH



Criminal prosecution has been the primary avenue within which victims of human rights violations have sought justice in Bangladesh. Claims in tort can be made for human rights violations even where there is no express statutory right to seek remedies. Yet this possibility has largely remained a theoretical one, without much practical enforcement, causing a severe tort law deficit. Notably, however, the enforcement of fundamental rights under Article 102(1) of the Constitution has emerged as a solution for the tort law deficit in Bangladesh, making it the primary basis through which civil remedies for human rights violations have been sought from not only the State but, increasingly, also corporations and individuals. The only exception to this general trend is where rights violations occur in the context of harmful labour conditions, where compensation has been more commonly sought through the statutory tort of employer's liability.

4

## INDICES

**75/167**

Democracy Index  
2021 Ranking

**39/100**

Freedom House  
2022 Score

**147/180**

Transparency International  
Corruption Index 2021 Ranking

The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development. The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: [Democracy Index](#) by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); [Freedom House](#) (rates people's access to political rights and civil liberties with 100 being an optimal score); and [Transparency International Corruption Index](#) (ranks 180 countries by their perceived levels of public sector corruption).



## Introduction

1. There are three avenues through which victims of human rights violations may seek civil remedies in Bangladesh: statutory law, common law of tort and public law. Because these avenues are distinct, yet overlapping, victims of human rights violations who seek remedies need to weigh up the relative merits of the options, as they may be supplementary or mutually exclusive. Certain statutory laws have been enacted which grant some specific civil remedies, such as the right to sue for compensation for unlawful arrest under the [Code of Civil Procedure 1908](#) (Code of Civil Procedure), environmental harm under the [Bangladesh Environment Conservation Act 1995 \(Environmental Conservation Act\)](#) and occupational injuries under the [Bangladesh Labour Act 2006 \(Labour Act\)](#). But as Bangladesh has a common law system, victims of human rights violations may claim civil remedies in tort law even in the absence of any express statutory right to do so. Even though this is so, the enforcement of tort law remedies using either common law or statutory law has been limited, causing a severe tort law deficit in Bangladesh.<sup>1</sup>
2. On the other hand, Part III of the [Constitution of Bangladesh](#) guarantees a variety of civil and political rights as ‘fundamental rights’, which are directly enforceable before the Supreme Court of Bangladesh under Article 102(1) of the Constitution (Article 102(1)).<sup>2</sup> The Supreme Court of Bangladesh is comprised of two branches: the High Court Division and the Appellate Division.<sup>3</sup> The High Court Division has special original jurisdiction to address all applications made under Article 102(1), while the Appellate Division acts as an appellate court to challenge decisions made by the former.
3. Human rights lawyers have increasingly favoured public interest litigation under [Article 102\(1\)](#) to seek redress for breaches of fundamental rights, causing it to emerge as the most significant of the three avenues for civil remedies for violations, including for unlawful detention and environmental harm. In particular, the use of Article 102(1) to claim compensation before the High Court Division has led to a significant, if emerging, body of jurisprudence on public law compensation.<sup>4</sup> Claims under Article 102(1) appear to have become more common than compensation claims under private law, possibly because they have more often been the subject of Supreme Court jurisprudence.

1 Taqbir Huda ‘[Bangladesh: A Constitutional Solution for a Tort Law Deficit?](#)’ in Ekaterina Aristova and Uglješa Grušić (eds), *Civil Remedies and Human Rights in Flux: Key Legal Developments in Selected Jurisdiction* (Hart Publishing 2022).

2 Constitution of the People’s Republic of Bangladesh 1972 (Constitution).

3 *ibid* art 94.

4 Ridwanul Hoque, ‘Public Law Compensation in Bangladesh: Looking Within and Beyond’ (2010) 1(2) *Journal of Law and Development* 1; Taqbir Huda ‘[Fundamental Rights in Search of Constitutional Remedies: The Emergence of Public Law Compensation in Bangladesh](#)’ (2021) 21(2) *Australian Journal of Asian Law* 27.

Law reports and case law databases in Bangladesh typically only publish decisions of the Supreme Court, resulting in trial court decisions having little to no public access or jurisprudential value. However, an exception to this trend is in litigation for compensation for occupational injuries caused by unfair labour conditions. This has been sought more successfully through enforcing the statutory tort of employer's liability prescribed in the Labour Act, rather than under Article 102(1).

4. While compensation claims under Article 102(1) were initially made only for human rights violations by state officials, more recently such claims have also been made against corporations and individuals. The use of judicial review of fundamental rights to claim civil remedies for human rights violations, even against non-state actors, complicates doctrinal boundaries between private and public law and has been somewhat controversial in Bangladesh. However, for now, Article 102(1) remains the dominant avenue through which victims of human rights violations seek civil remedies, and it is likely to remain so well into the foreseeable future.



# General Questions



Q1

## Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

5. A claim under the law of civil remedies in Bangladesh can be brought against public bodies, corporations and/or individuals for each of the three defined harms, using **three distinct options: statutory remedies, common law of tort, and judicial review of constitutionally guaranteed fundamental rights under Article 102(1).**

### Statutory remedies

There are express statutory rights to seek remedies, such as compensation, for all three of the defined harms.

#### **Assault or unlawful arrest and detention**

6. [Section 94\(a\) of the Code of Civil Procedure](#) allows civil courts to issue a warrant for the arrest of a defendant and commit them to civil prison if they fail to comply with an order requiring them to furnish security for their appearance, such as a bond. [Section 95 of the Code of Civil Procedure](#) allows those who are arrested and committed to civil prison under Section 94(a) 'on insufficient grounds' to sue for compensation for the harm suffered.<sup>5</sup> They may also sue for compensation if the suit in relation to which the arrest was made fails, and it appears to the Court that there was no reasonable or probable ground for instituting it. The words 'on insufficient grounds' has been taken to mean 'without reasonable or probable cause' by the Supreme Court of Bangladesh.<sup>6</sup> The Supreme Court has also clarified that a claimant seeking compensation under Section 95 is only 'required to establish the ingredients referred to in the section and no more'.<sup>7</sup> However, if an order of compensation is made under Section 95, the victim of the unlawful arrest would lose the right to sue for compensation through a money suit (ie through common law of tort).<sup>8</sup>
7. A civil prisoner is defined as 'any prisoner who is not a criminal prisoner' under [Section 3\(4\) of the Prisons Act 1894](#) (Prisons Act). Section 3(2) of the Prisons Act defines a criminal prisoner as 'any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court martial'. Therefore, a civil prisoner would be any prisoner who falls outside this definition. The Prisons Act requires civil prisoners to be kept separate from criminal prisoners. Unlike criminal prisoners, civil prisoners are generally not kept in prison at the expense of the State but at their own expense, or at the expense of a private person (where the civil prisoner has been committed to prison in execution of a decree in favour of that private person). This rule is set out in [Section 33\(2\) of the Prisons Act](#).

<sup>5</sup> Code of Civil Procedure s 95.

<sup>6</sup> *Loreeto v Nasreen Sobhan and Ors.* 15 ADC (2018) 1 [11].

<sup>7</sup> *ibid.*

<sup>8</sup> Code of Civil Procedure s 95(2).



## Environmental harm

8. In cases of environmental harm, victims have statutory rights to seek remedies under the Environment Conservation Act and Code of Civil Procedure.

### *The Environment Conservation Act*

9. If any individual or group of people suffers harm due to the violation of any provision(s) of the Environment Conservation Act or the [Bangladesh Environment Conservation Rules 1997](#), they can file a compensation case before the Environment Court, or the Director General of the Department of Environment may file the case on their behalf.<sup>9</sup> Additionally, any person affected or likely to be affected by environmental pollution or degradation can apply to the Director General seeking their assistance to secure a remedy for the harm suffered or for the apprehended harm.<sup>10</sup>
10. The Environment Conservation Act grants the Director General of the Department of Environment wide powers to fulfil the objectives of the Act.<sup>11</sup> Section 7 of the Act allows the Director General of the Department to order remedial measures for environmental harm by filing both a civil suit as well as a criminal case. The Director General has the power to determine necessary compensation for the harm caused and direct the concerned 'person' to pay the sum.<sup>12</sup> Section 2(h) of the Act defines 'person' as including 'a group of persons, and includes any company, association or corporation, whether incorporated or not'. Therefore, the power of the Director General to order compensation for environmental harm extends to a wide group of potential transgressors. It is unclear, however, whether public bodies are included within the definition of 'person'.
11. If the concerned party fails to pay compensation after being ordered to do so, the Director General has the option to file a compensation case before the Environment Court.<sup>13</sup> According to annual reports published by the Department of Environment, it used its remedial powers under section 7 of the Environment Conservation Act to recover over BDT 123,000,000 (USD 1,423,535) as 'compensation' from polluters between 2012 and 2018.<sup>14</sup> While the Department of Environment refers to this sum as 'compensation' and has described the exercise of its powers under Section 7 as the 'polluter pays principle', one may argue it would be more appropriate to label it a fine. This is especially so since there is no indication whether the recovered money is handed to those harmed by the pollution or used to redress their injuries. Instead, the Department of Environment mentions compensation collected from polluters as one of the ways it contributes to the revenue of the government, despite not being a revenue-collecting authority.<sup>15</sup> Thus it is unclear whether this can be considered to be a civil remedy. And while the Department has the authority to determine and collect compensation for harm caused, there is scant evidence of cases actually

---

9 Environment Conservation Act ss 15A and 17. Previously, compensation cases before the Environment Court could only be filed after first obtaining a written report from the Department of Environment. However, this requirement was removed by an amendment to the Environment Conservation Act in 2010.

10 *ibid* s 8.

11 *ibid* ss 3 and 4.

12 *ibid* s 7.

13 *ibid* s 7(1). The Environment Court was initially established by the Environment Court Act 2000, which was then replaced by the Bangladesh Environment Court Act 2010. The compensation provisions in the Environment Conservation Act were also introduced in 2000 through amendments made alongside the enactment of the Environment Court Act 2000.

14 Department of Environment, Ministry of Environment and Forests, 'Annual Report 2017-18' (Government of Bangladesh, 2018) s 9.1 (Table 9) read with DOE, Ministry of Environment and Forests, 'Annual Report 2014-15' (Government of Bangladesh, 2015) 30.

15 Department of Environment, Ministry of Environment and Forests, 'Annual Report 2016-17' (Government of Bangladesh, 2018) 37.

being filed in Environment Courts, for compensation or otherwise,<sup>16</sup> although an article published in 2005 listed ten (unreported) cases filed under the Environment Conservation Act before the Environment Court of Dhaka as of July 2003, three of which related to compensation.<sup>17</sup>

### *The Code of Civil Procedure*

12. Section 91 of the Code of Civil Procedure permits the Attorney General, or two or more individuals who have obtained the consent of the Attorney General, to institute a suit for public nuisance.<sup>18</sup> As the Code does not include a definition of public nuisance, the Supreme Court of Bangladesh in *Abdul Karim v Md Mafizar Rahman*<sup>19</sup> accepted the definition of public nuisance in Section 268 of the Penal Code 1860 for the purposes of claims under Section 91. Thus, public nuisance can be defined as any act or 'illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, dangers or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage'.<sup>20</sup> The law expressly states that exercising this right will not be 'deemed to limit or otherwise affect any right of suit which may exist independently' of Section 91, such as actions under Environment Conservation Act, common law of tort or under Article 102(1).<sup>21</sup>

### **Harmful or unfair labour conditions**

13. If harmful or unfair labour conditions lead to loss of life or disability of a worker by way of an 'accident arising out of the course of his employment', [Chapter XII of the Labour Act](#) grants injured workers and the dependants of deceased workers the right to sue the employer for compensation.<sup>22</sup> For the purposes of recovering compensation under Chapter XII, the legal definition of 'worker' only includes workers from a closed list of 32 industrial occupations.<sup>23</sup> Only workers and dependants of workers in these occupations would be able to sue for compensation under the Labour Act in the event of workplace injury or death. By contrast, the general definition of 'worker' in Section 2(65) of the Labour Act (which is applicable for the rest of the Act), is not limited to a closed list of specific occupations. This limitation aside, the definition of worker in Chapter XII of the Act covers those employed not only under written or express contracts, but also oral or implied contracts.<sup>24</sup>

14. If death ensues from the environmental harm, or harmful or unfair labour conditions, then victims (ie dependants of the individual killed) may also have the option to file a compensation claim under the [Fatal Accidents Act 1855 \(Fatal Accidents Act\)](#). This Act is worded broadly enough to establish liability on public bodies, corporations and/or individuals to pay compensation when their negligence leads to a wrongful death. However, if dependants of a worker killed in

16 Asaduzzaman and Ahmed Deepto, 'Environment laws and courts exist, but no cases' *Prothom Alo* (13 March 2021).

17 Syeda Rizwana Hasan, 'Application and Reform Needs of the Environmental Laws in Bangladesh' (2005) 9(1&2) *Bangladesh Journal of Law* 85, 95.

18 Code of Civil Procedure s 91(1).

19 (1997) 5 BLT (HCD) 86.

20 Penal Code 1860, s 268. The Supreme Court noted in *Abdul Karim v Md Mafizar Rahman* (n 19) that the CPC lacks a definition for public nuisance and therefore accepted the definition supplied by the Penal Code 1860.

21 Code of Civil Procedure s 91(2).

22 Labour Act s 150.

23 *ibid* s 150(8). These 32 industrial occupations include the 31 occupations listed in the Fourth Schedule to the Act along with a railway servant (as defined in Section 3 of the Railways Act, 1980).

24 *ibid*.

an industrial accident exercise the right to sue for compensation under the Fatal Accidents Act, their right to compensation under the Labour Act will fall away.<sup>25</sup>

## Common law of tort

15. Since Bangladesh has a common law system, claims can be made in the common law of tort for the three defined harms in the form of what are termed 'money suits' in Bangladesh. These claims for monetary compensation are heard before civil courts. However, litigation enforcing the common law of tort is even more rare than the enforcement of statutory torts, and there is very little accessible case law in this regard.
16. The **lack of enforcement of common law tort** can be attributed to several reasons. First, as tort claims usually need to be filed as money suits before civil courts, claimants need to deposit a proportion of the total suit value as *ad valorem* court fees. Until 2010, the rate of the *ad valorem* court fees was 15 per cent of the total amount of compensation being claimed – a very high cost for many in a lower income country, especially when coupled with other costs of civil litigation which tends to be lengthy.<sup>26</sup> In 2010, the calculation of *ad valorem* court fees was reduced to 2.5 per cent with a maximum cap of BDT 50,000 (USD 580) also being introduced.<sup>27</sup> It is likely that the legal requirement to pay excessive court fees in the first four decades of Bangladesh's existence had a lasting deterrent effect on common law tort litigation.

### SPOTLIGHT: TORT LITIGATION

The low occurrence of tort litigation in turn has meant that the few tort cases that are filed are subject to inordinate delays not only due to the protracted nature of civil procedures, but also because judges lack a working knowledge of the legal questions at hand. For instance, the trial court decision remains pending in the case of *British American Tobacco Bangladesh v Begum Shamsun Nahar*,<sup>28</sup> despite the claim being filed almost twenty years ago, in 2003. In this case, a woman argued that her former employer was vicariously liable for sexual harassment at the workplace by two managers. It took over ten years for the claimant to establish that her case was maintainable. Additionally, in *Bangladesh Beverage Industries Ltd v Rowshan Akhter*,<sup>29</sup> which is possibly the best-known tort case in the country, litigation lasted 26 years. Even after success at the trial court and two appellate courts in 2016, the claimants are yet to receive compensation from the company. This case is now cited as an example of how difficult it is to seek compensation in tort law by those who argue the need to expand compensation claims under Article 102(1) to remedy human rights violations.<sup>30</sup>

25 Labour Act ss 150(7) and 150(6).

26 Court Fees Act 1870 s 7 sch I(B).

27 SRO No 326-Law/2010.

28 *BATB v Begum Shamsun Nahar* (2014) 66 DLR (AD) 80.

29 *Bangladesh Beverage Industries Ltd v Rowshan Akhter* (2010) 62 DLR (HCD) 483 [23].

30 *CCB Foundation v Bangladesh* (2018) 70 DLR (HCD) 491 [72]-[73].

## Judicial review of constitutionally guaranteed fundamental rights

17. The Constitution of Bangladesh guarantees a list of 18 human rights, which are known as 'fundamental rights', by making them judicially enforceable.<sup>31</sup> Many of these fundamental rights would cover the three defined harms, such as the fundamental rights to life and personal liberty,<sup>32</sup> safeguards as to arrest and detention,<sup>33</sup> protection of law and prohibition of forced labour.<sup>34</sup>
18. Although environmental harm is not expressly covered by the wording of any of these rights, case law has established that the fundamental right to life 'encompasses within its ambit, the protection and preservation of environment'.<sup>35</sup> Remedies for the breach of any of these fundamental rights can be sought through **judicial review under Article 102(1)** through the filing of writ petitions before the Supreme Court of Bangladesh. Upon the application of 'any person aggrieved', the High Court Division of the Supreme Court of Bangladesh 'may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any of the fundamental rights'.<sup>36</sup>

### SPOTLIGHT: HORIZONTAL APPLICATION OF ARTICLE 102(1).

Since an order or direction can be made against 'any person or authority', claims under Article 102(1) can be brought against not only public actors but also private corporations and individuals. Therefore, the horizontal enforcement of fundamental rights through Article 102(1) is possible, although it is still an emerging trend with unsettled direction. For instance, in *Banu v Bangladesh*,<sup>37</sup> the Supreme Court ordered the state to pay BDT 2 million (USD 23,150) as compensation under Article 102(1) for the unlawful detention of a man who was imprisoned for more than five years after being mistaken for an absconding convict. Case law has established that the existence of a cause of action in private law is not in itself a bar to bringing the same under public law.<sup>38</sup> Case law has also established that an order of compensation under Article 102(1) will not 'affect other liabilities of the respondents concerned or its officials resulting from the [wrongful] death'.<sup>39</sup>

19. No special conditions apply in the case of a civil claim against a public body using any of the three options mentioned in this section (ie statutory remedies, common law of tort, and claims under Article 102(1)). However, even where private actors are being sued for compensation under Article 102(1), relevant public actors are nevertheless impleaded in the same writ petition as co-respondents, for compliance purposes.

31 Constitution, Part III (Fundamental Rights) arts 26 to 47A.

32 *ibid* art 32.

33 *ibid* art 33.

34 *ibid* art 34.

35 *Dr Mohiuddin Farooque v Bangladesh* (1997) 49 DLR (AD) [101].

36 Constitution art 102(1).

37 *Banu v Bangladesh* Writ Petition No 7297 of 2019.

38 *Bangladesh v Md Abdus Satter* (2015) 1 SCOB (AD) 17 [65].

39 *CCB Foundation v Bangladesh* (n 30) [108].

## Q2

## What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

### Statutory remedies

20. For compensation claims for **wrongful arrest** under Section 95 of the Code of Civil Procedure, the claimant would have to prove that they were in fact arrested on insufficient grounds.<sup>40</sup>
21. For **public nuisance** claims under Section 91 of the Code of Civil Procedure, the Attorney General's consent has to be obtained in writing by two or more claimants, but they do not have to prove special damage, as would be the case in English common law.<sup>41</sup>
22. For compensation claims for **occupational injury** under the Labour Act, the claimants would need to prove that the party being sued for compensation was an employer as defined by the Act, and that the 'accident' took place in the course of employment.<sup>42</sup> Furthermore, the injury must cause the worker to lose their ability to work for more than three days.<sup>43</sup> There are three factual scenarios in which the employer is exempted from paying compensation for occupational injuries: if the accident is 'directly attributable to'(a) the worker being 'under the influence of drink or drugs' at the time; (b) the worker's 'wilful disobedience' of rules and orders intended to ensure their safety; and (c) the worker's 'wilful removal or disregard' of safety equipment or devices they knew to have been provided as a protective measure.<sup>44</sup>

### Common law of tort

23. Due to the lack of tort jurisprudence in Bangladesh, there is little judicial insight on the elements of liability that need to be established for a successful cause of action. This is why the Supreme Court of Bangladesh stated in a judgment relating to a rare private nuisance claim that:

*'In the case of torts, there being no statutory law in this sub-continent, the courts of this sub-continent have always adopted the English Common Law as being consonant to justice, equity, and good conscience; they have departed from the English Law only when a particular rule was unsuitable to local conditions'.<sup>45</sup>*

Therefore, based on this pronouncement it is clear that elements of liability under the English common law (such as the establishment of duty of care, breach of duty and causation for negligence claims),<sup>46</sup> would also generally be applicable for tort actions in Bangladesh.

<sup>40</sup> Code of Civil Procedure s 95(1)(b).

<sup>41</sup> *Ricket v Metropolitan Railway* (1867) LR 2 HL 175 (House of Lords).

<sup>42</sup> Labour Act s 2(49) read with s 150. See also s 2(31) (definition of establishment) and s 2(60) (definition of industry).

<sup>43</sup> *ibid* s 150(2)(a).

<sup>44</sup> *ibid* s 150(2)(b).

<sup>45</sup> *Wahid Mia v Dr Rafiqul Islam* (1996) 16 BLD (HCD) 255 [16].

<sup>46</sup> Please refer to [26]-[28] in the English report. To access all country reports, please [click here](#).

## Judicial review of constitutionally guaranteed fundamental rights

24. The burden of proof is less onerous in claims under Article 102(1). At the preliminary stage, claimants need only show in their writ petition that the action or inaction of a public body, corporation and/or individual has resulted in harm that has breached one or more of the 18 constitutionally guaranteed fundamental rights in a way that requires remedy. Afterwards, the Supreme Court typically issues a *rule nisi*, which is a preliminary rule whereby the onus falls on the defendant to literally 'show cause' as to why they should not be held liable for the remedy, such as payment of compensation. Increasingly, in compensation claims under Article 102(1) relating to loss of life or injury, the Supreme Court has either ordered the formation of independent inquiry committees (or accepted reports of such committees as sufficient evidence) to determine whether the parties being sued are in fact at fault and the extent to which they are at fault.

Q3

**Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?**

25. There is **no statutory provision or case law recognising civil liability for complicit or accessory conduct** in relation to the three defined harms. However, in the case of *Ruhul Quddus v Government and Others*,<sup>47</sup> the Bangladesh Road Transport Corporation (a public body) and a private bus company were both held vicariously liable for the negligence of two bus drivers who raced their buses against each other, causing a passenger to lose his hand and then die. The private bus company was held vicariously liable although the driver in question was the employee of a businessman to whom the bus had been leased.<sup>48</sup> The Court held that the private bus company had retained control of the bus and, therefore, of the negligent bus driver.<sup>49</sup> Although there is no direct case law on accessory liability, this judgment comes closest in illustrating the willingness of the Court to impose vicarious liability across complex business structures. It is also an example of the vicarious liability test being modified (whether willingly or unwillingly) to one that measures 'control' rather than a formal employment relationship between a negligent actor and a party being sued for compensation.

Q4

**When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or an independent contractor in a supply chain?**

## Liability under Article 102(1)

26. Recent case law suggests that a body can be held **vicariously liable** to pay compensation under Article 102(1) for the negligence of its independent contractor.

<sup>47</sup> *Ruhul Quddus v Government and Others* (2019) 7 CLR (HCD) 665.

<sup>48</sup> *ibid* [14], [19], [28].

<sup>49</sup> *ibid*.

For instance, in the case of *CCB Foundation v Bangladesh*,<sup>50</sup> the Bangladesh Railway (a public body) was held vicariously liable to pay compensation to the parents of a child who died as a result of the negligence of an independent contractor hired by the railway. The independent contractor had negligently left a wide pipe uncovered near a children's playground, and a child had fallen into the pipe and eventually died. Although the Bangladesh Railway argued that they should not be held liable for the negligence of an independent contractor, the Court held that Bangladesh Railway 'cannot avoid its liability' for the admitted negligence of its contractor.<sup>51</sup> In so doing, the Court did not apply the legal test for vicarious liability. Rather, such liability was assumed. In the earlier landmark tort case *Bangladesh Beverage v Rowshan Akhter*,<sup>52</sup> the Court adopted and applied the classic two-fold test of vicarious liability: that the tortfeasor was an employee of the defendant, and that the tort was committed in the course of their employment.

## **Liability under the Labour Act**

27. The Labour Act makes it clear that even if a company hires workers through a **contracting agency** (as is common practice in many industries in Bangladesh), it would still be liable to pay compensation to a worker in the event of an industrial accident as the 'principal and original employer'.<sup>53</sup>
28. Additionally, under the Labour Act it may be possible to hold a parent company liable for the actions of its subsidiary, such as when occupational injuries are caused by unfair labour conditions. This is because the broad definitions of an 'employer' and 'establishment' are not territorially limited to Bangladesh under the Act.<sup>54</sup> The definition of employer includes five different categories of individuals or bodies:<sup>55</sup>
- (a) an heir, guardian, or successor in assignment or legal representative of such person;
  - (b) a manager or any person responsible for the management or control of the establishment;
  - (c) in the case of an establishment run by or under the authority of the Government, an authority appointed in this behalf or where no such authority exists, the head of the Ministry or Division concerned;
  - (d) in the case of an establishment run by or on behalf of a local authority, an officer appointed in this behalf or where no such officer exists, the Chief Executive Officer of that authority;
  - (e) in the case of any other establishment, the owner of such establishment and every Director, Manager, Secretary, agent or any officer or person concerned with the management of the affairs of such establishment;
  - (f) in the case of an establishment under the possession of any person other than the owner, the person in possession of that establishment or the person who is in ultimate control over the affairs of the establishment or the manager or any competent officer who is connected with the management of such activities.

<sup>50</sup> *CCB Foundation v Bangladesh* (n30).

<sup>51</sup> *ibid* [24], [64]-[69].

<sup>52</sup> *Bangladesh Beverage v Rowshan Akhter* (n 29) [27]-[36], [51]-[57].

<sup>53</sup> Labour Act s 2(65).

<sup>54</sup> *ibid* s 2.

<sup>55</sup> *ibid* s 2(49).

29. Due to such a broad definition of employer, there may be scope to hold a parent company liable if they are found to be 'responsible for the management or control of the establishment' or 'the owner of such establishment'.<sup>56</sup> Existing case law on **piercing the corporate veil** to hold the parent company liable for the conduct of its subsidiary is to be found in the context of voluntary creditors rather than involuntary creditors. The Supreme Court of Bangladesh has held that while courts have 'always been reluctant' to pierce the corporate veil of limited companies, there have been exceptions to this general rule, including to prevent fraud from being committed.<sup>57</sup> It has also cited with approval Indian Supreme Court jurisprudence on piercing the corporate veil 'to pay regard to the economic realities behind the legal façade' in exceptional circumstances such as tax evasion or other circumvention of tax obligations.<sup>58</sup>
30. Section 167 of the Labour Act states that the venue of proceedings for matters under Chapter XII (which deals with compensation for occupational injuries) must be the Labour Court that has jurisdiction over the area in which the occupational injury took place. This could therefore mean that a Labour Court in Bangladesh may order parent companies based outside the country to pay compensation for the employees of its subsidiaries who are killed or injured due to an industrial accident within Bangladesh. However, this may not apply for employees of foreign-based subsidiaries of parent companies located in Bangladesh as their injury would take place outside the territorial limits of the jurisdiction of Labour Courts in Bangladesh.

#### SPOTLIGHT: THE RANA PLAZA COLLAPSE

On 24 April 2013, 1,132 workers were killed and over 2,500 more injured after an eight-storey building named [Rana Plaza](#) collapsed in Savar, just outside Dhaka, in what is believed to be the deadliest industrial disaster in modern human [history](#). Just the day before, people inside the building, including garment workers, had noticed large structural cracks that appeared in the building. Staff at shops and the bank situated in the lower floors perceived the risk and these were immediately shut down. However, garment factory owners whose premises were on the upper floors ignored warnings and forced thousands of workers to come to work in the cracked building. For workers whose livelihoods depended on this lowly paid job, refusal was simply a luxury they could not afford. In the early hours of the morning shift, the entire building collapsed.

<sup>56</sup> *ibid* ss 2(49)(b) and 2(49)(e).

<sup>57</sup> *Polymer Knitwear Industries Ltd v National Board of Revenue and Others* (2016) 4 CLR (HCD) 299 [8].

<sup>58</sup> *Reliance Finance Limited v Judge Artha Rin Adalat No 4 Dhaka and Others* (2018) 6 CLR (HCD) 497 [23]-[24] citing *Commissioner Income Tax v Sri Meenakshi Mills Ltd and Others* 63 ITR (SC) 609.



Those who were fortunate enough to make it out alive gave horrifying accounts of survival, including how some had no choice but to amputate their own limbs in order to be freed from the rubble. According to a [fact sheet](#) published by the Bangladesh Legal Aid and Services Trust and Clean Clothes Campaign, at least seventeen cases were filed seeking justice and remedies for victims of the Rana Plaza collapse, of which thirteen were criminal cases (one under the Penal Code 1860, one under the Building Construction Act 1952 and eleven under the Labour Act).<sup>59</sup> The remaining four cases were writ petitions under Article 102(1) seeking accountability (including payment of compensation) filed by NGOs and activists.

Attempts have been made to hold Western buyer brands accountable in American<sup>60</sup> and Canadian<sup>61</sup> courts. One of the major reasons why these attempts were unsuccessful in both countries is because the limitation period in Bangladeshi law was held to apply. Of relevance here is that the Appellate Division of Supreme Court of Bangladesh's judgment in the *Bangladesh Beverage* case was interpreted as affirming that tort actions were subject to a one-year limitation period in Bangladesh, not six years, as had been held in the High Court Division judgment.<sup>62</sup> Article 21 of Schedule I to the Limitation Act 1908 prescribes a one-year limitation period for compensation claims under the Fatal Accidents Act 1855 while Article 22 also prescribes a one-year limitation period for compensation claims relating to 'any other injury to the person'.<sup>63</sup> The High Court Division of the Supreme Court of Bangladesh had earlier held in the *Bangladesh Beverage* case that since there is no specific limitation period prescribed for tort claims, Article 120 of Schedule I to the Limitation Act 1908 ought to apply. This prescribes a six-year limitation period for suits for which 'no period of limitation is prescribed elsewhere'. However, the Appellate Division later concluded that the claim in *Bangladesh Beverage* case was made under the Fatal Accidents Act 1855 and not the common law of tort, and hence applied the one-year limitation period. The Appellate Division did not address the broader question of what the applicable limitation period is for tort actions in Bangladesh: one year (as prescribed by Article 22) or six years (as prescribed by Article 120, and as the High Court Division had held). Nevertheless, the American and Canadian courts appeared content to ignore this lack of clarity in the law, and considered a one-year limitation period for tort actions in Bangladesh to be a settled question of law, thereby striking out the claims.

59 Nine of the labour court cases were filed under s 290 of the Labour Act (penalty for failure to give notice of accidents), while two of them were filed under Section 301 of the Act (penalty for non-compliance with the provisions of s 210 (7), which deals with settlement of industrial disputes).

60 *Rahaman v JC Penney Corp* (2016) CA No N15C-07-174 MMJ (Delaware Superior Court, 2016).

61 *Das v George Weston Limited* 2017 ONSC 4129 (Superior Court of Justice, Ontario).

62 Taqbir Huda, 'Vicarious Liability of Employers in the Law of Tort: Deciphering Bangladesh Beverage Industries vs. Rowsan Akhter and Others' (2016) 16(2) *Bangladesh Journal of Law* 119, 131-33.

63 Limitation Act 1908 sch 1 and arts 21 and 22.

Q5

## What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

### Statutory remedies

31. For compensation claims under Section 95 of the Code of Civil Procedure, the court has the discretion to award compensation, but the amount is capped at BDT 10,000 (USD 115).<sup>64</sup>
32. For **public nuisance** claims under Section 91 of the Code of Civil Procedure, the claimants can seek a declaration and injunction to stop the public nuisance, or any 'such other relief as may be appropriate to the circumstances of the case'.<sup>65</sup>
33. For an application to the Director General of the Department of Environment seeking a remedy for **environmental harm** under the Environmental Conservation Act, the Director General may hold a public hearing and take any other measures to secure remedies for harms that have been suffered.<sup>66</sup>
34. The amount of compensation under the Labour Act is fixed and does not reflect the extent of personal loss, as the quantum of damages in a tort claim would. This is because fixed amounts of compensation are prescribed for scheduled injuries: BDT 200,000 (USD 2,315) for deaths; BDT 250,000 (USD 2,890) for permanent total disablement; and a suitable proportion of the amount set for total disablement for permanent partial disablement.<sup>67</sup> Occasionally, however, Labour Courts are willing to award compensations that are higher than these prescribed sums, where claimants include additional heads of recovery in the plaint, such as litigations costs, medical costs and the imposition of a 25 per cent excess for the employer's late payment of compensation.<sup>68</sup> In *Md Afaz Sheikh v Hashem Professor*,<sup>69</sup> the Labour Court ordered the employer to pay BDT 176,250 (USD 2,040) for permanent total disablement suffered by a worker due to a workplace injury, instead of the then-prescribed BDT 125,000 (USD 1,450) (this was the amount applicable under the Labour Act before a 2018 amendment doubled the sum). In this case, the Labour Court accepted the claimant's prayer for litigation costs (BDT 20,000) as well as 25 per cent excess for late payment by the employer (an additional BDT 31,250 / USD 360).

### Remedies under Article 102(1)

35. Since Article 102(1) allows the Supreme Court of Bangladesh to 'give such directions or orders' as 'may be appropriate for the enforcement of any of the fundamental rights', the type of remedy that can be awarded remains broad in scope. Therefore, it is up to the claimant and the Court to fashion any remedy that may be seen as 'appropriate' for the enforcement of the fundamental rights. This may arguably include less-commonly sought, non-monetary remedies such as restitution,

<sup>64</sup> Code of Civil Procedure s 95(1)(b).

<sup>65</sup> *ibid* s 91.

<sup>66</sup> BECA s 8(2).

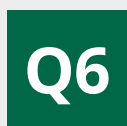
<sup>67</sup> Labour Act sch V.

<sup>68</sup> Taqbir Huda 'Tire Them Out': Challenges of Litigating Compensation Claims under the Labour Act, Bangladesh Legal Aid and Services Trust, 18.

<sup>69</sup> BLL (Compensation) Case No 55/2010, Labour Court, Rajshahi.

injunctive relief, mandatory orders to implement programmes to ensure justice or provide redress, guarantees of non-repetition, public or private apologies, land restitution, or environmental rehabilitation.<sup>70</sup>

36. In the case of compensation, while case law has established that compensation claims under Article 102(1) will not restrict a claimant's right to seek compensation in private law, the Supreme Court has referred to the existence of this additional right to sue for compensation in private law as a basis to substantially lower the amount of compensation awarded under Article 102(1) when issuing an order.<sup>71</sup>



### What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

37. There are a number of **advantages** to making a case under Article 102(1) compared to a claim under private law (including common law torts and statutory remedies), making this the preferred avenue for seeking civil remedies for human rights violations in Bangladesh.
- First, a compensation claim under Article 102(1) would not be subject to *ad valorem* court fees (ie a proportion of the total value of the suit) as a claim in private law in many other countries, including Bangladesh, would be.<sup>72</sup>
  - Second, the burden of proof can be more favourable for a claimant under Article 102(1) than in a (private) tort case or in the prosecution of a criminal case. This is because once the Supreme Court issues a *rule nisi*, which is a preliminary show-cause rule, the onus is in effect transferred to the defendant to literally 'show cause' as to why they should not be held liable to pay compensation. It is also becoming common for the Supreme Court itself to order the formation of independent inquiry committees or to rely on the findings of a committee already formed, to determine the question of negligence and fault. Together, these have the effect of easing the burden of proof on the claimant.
  - Third, there are no special rules or additional requirements for actions against public bodies, such as satisfying the test for justiciability in tort of negligence claims in England, or the sovereign immunity doctrine applicable to public law compensation claims in India.
  - Fourth, since the Supreme Court of Bangladesh has the power to 'give such directions or orders' as 'may be appropriate for the enforcement of any of the fundamental rights' under Article 102(1), the claimant has the opportunity to seek a wide range of remedies that may go beyond traditional remedies available in tort (eg compensation and injunction etc) as long as they are able to prove that the remedy claimed is appropriate for the enforcement of the fundamental right(s) in question.

<sup>70</sup> See for example *M Samsul Alam v Government of Bangladesh* (2018) 23 BLC 384 [66], which is the only case where restitution was sought as relief under Art 102.

<sup>71</sup> *CCB Foundation v Bangladesh* (n 30) [108].

<sup>72</sup> Some statutory remedies may be expressly exempt from the payment of *ad valorem* court fees, such as those under the Labour Act. See Bangladesh Labour Act s 346 read with Bangladesh Labour Rules 2015, r 365.

38. There are a couple of **disadvantages** to making a claim under Article 102(1) as well, which in turn act as advantages to a claim in private law.
- First, the quantum of compensation awarded under Article 102(1) claims is likely to be much lower than the quantum awarded in private law.<sup>73</sup> For instance, in the *CCB Foundation* case, the Supreme Court has taken into account the victims' additional right to sue for compensation in private law as a basis to award one-third the amount of compensation that was claimed.<sup>74</sup> This reduction suggests that the High Court views compensation under Article 102(1) to be of a palliative nature.
  - Second, as Article 102(1) claims can only be filed before the High Court Division of the Supreme Court of Bangladesh located in the capital city of Dhaka, victims from other parts of the country are likely to face accessibility challenges. This can be contrasted to private law claims which may typically be filed in civil courts at the district level, or in the case of certain statutory remedies (such as under the Labour Act, and the Bangladesh Environmental Conservation Act), in special courts in major cities other than the capital.



### Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

39. [Section 9 of the Code of Civil Procedure](#) states that civil courts shall have jurisdiction to 'try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred'. [Section 19 of the Code of Civil Procedure](#) establishes that for compensation claims (relating to personal injury or harm to movable property) where the harm was done within the local limits of the jurisdiction of one court and the defendants reside or conduct businesses within the local limits of the jurisdiction of another court, the claim may be instituted at the option of the claimant in either of the courts. For all other types of civil suits, [Section 20 of the Code of Civil Procedure](#) establishes that the suit can be instituted either where the defendant resides or where 'the cause of action, wholly or in part, arises'. Section 20 further clarifies that '[a] corporation shall be deemed to carry on business at its sole or principal office in Bangladesh or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place'. Therefore, claims of a civil nature can be brought against a foreign defendant in Bangladesh where the cause of action arises wholly or partly within Bangladesh, or where the foreign defendant could be held to have business in Bangladesh, such as through a subordinate office, unless such claims are expressly or impliedly barred.

<sup>73</sup> Provided that the amount of compensation is not expressly limited in private law, as it is in the case of compensation for workplace injury or death in the Labour Act and civil imprisonment on insufficient grounds under Section 94(a) of the Code of Civil Procedure.

<sup>74</sup> *CCB Foundation* (n 30) [108].

## SPOTLIGHT: THE NIKO CASE

A notable example of a foreign defendant being sued for compensation for personal injury and environmental harm are the cases against a Canadian company, Niko Resources Limited, for the Chhatak gas field blowouts in Northeastern Bangladesh in 2005. Niko Resources Limited was the parent company of Niko Resources Bangladesh Limited (Niko Bangladesh) which was conducting drilling operations in the Chhatak gas field when the explosions took place, causing immense damage to the surrounding areas and its inhabitants. In 2008, the Government of Bangladesh and the Bangladesh Oil, Gas and Mineral Corporation (Petrobangla) filed a compensation case against Niko Bangladesh, seeking damages amounting to BDT 7,465,083,973 (USD 85,379,061) for the blowouts.<sup>75</sup> In 2009, the High Court Division of the Supreme Court of Bangladesh ruled in a writ petition that had been filed by the Bangladesh Environment Lawyers Association (BELA) under Article 102 in 2005, challenging the legality of the Joint Venture Agreement between Niko Bangladesh and Petrobangla's subsidiary, Bangladesh Petroleum Exploration and Production Company (Bapex), under which Niko was conducting the drilling operations. This petition sought adequate compensation for the harm caused by the blowouts.<sup>76</sup> The Court stated that 'Niko cannot avoid its responsibility of giving adequate compensation for the losses caused by two successive blowouts' and directed Niko to 'pay compensation money as per the decision taken in the money suit now pending in the Court of the Joint District Judge or as per mutual agreement among the parties'.<sup>77</sup> The Court also restrained Petrobangla and Bapex, by an order of injunction, from making any payment to Niko Bangladesh. This order of injunction was to remain in force 'till disposal of the money suit or till amicable settlement amongst the parties, whichever is earlier'.<sup>78</sup>

40. Afterwards, in 2010, Niko Bangladesh in turn filed two arbitration cases against Petrobangla and Bapex before the World Bank's International Centre for Settlement of Investment Disputes (ICSID), seeking payment for gas supplied from a gas field in Feni and a declaration of non-liability of Niko Bangladesh for the 2005 blowouts at the Chhatak gas fields.<sup>79</sup> In 2016, an energy expert filed another writ petition under Article 102 against parent company Niko Resources Limited and its subsidiary in Bangladesh arguing, inter alia, that their assets should be attached and seized to provide adequate compensation for the 2005 blowouts.<sup>80</sup> The Government of Bangladesh, Petrobangla and Petrobangla's subsidiary were also made co-respondents in the case. When the Court issued a ruling in 2017,

<sup>75</sup> Money Suit No 224/2008 before the 2nd Court of the Joint District Judge, Dhaka (unreported); *M Samsul Alam v Government of Bangladesh and Ors.* (n 70) [29].

<sup>76</sup> *BELA v Bangladesh* Writ Petition No 6911 of 2005, Supreme Court of Bangladesh (unreported).

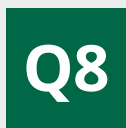
<sup>77</sup> *ibid*; *M Samsul Alam v Government of Bangladesh and Ors.* (n 70) [13].

<sup>78</sup> *ibid*.

<sup>79</sup> *Niko Resources (Bangladesh) Ltd v Bangladesh Oil Gas and Mineral Corporation (Petrobangla), Bangladesh Petroleum Exploration and Production Company Limited (Bapex)*, ICSID Case No ARB/10/18.

<sup>80</sup> *M Samsul Alam v Government of Bangladesh and Ors.* (n 70).

the compensation case filed by the Government and Petrobangla in 2008 was still pending. Therefore the Court directed the Government and Petrobangla 'to expeditiously seek adequate compensation for the damages caused by the 2005 blowouts and also take necessary steps to recover any proceeds of crime that may have already been siphoned off or taken out of Bangladesh' by the respondent No 4 [Niko Bangladesh] and No 5 [Niko Resources Limited].<sup>81</sup> It further directed the Government of Bangladesh 'to effectively and expeditiously pursue the long pending money suit and seek adequate compensation' from Niko and Niko Bangladesh for the damages caused by those 2005 blowouts.<sup>82</sup> In 2016, Bangladesh had also filed a petition to the ICSID claiming over USD 1 billion (made up of USD118 million for Bapex and USD 896 million for the Government of Bangladesh) in compensation for the destruction of properties and gas reserves in the field. In February 2020, the ICSID [concluded](#) that Niko Bangladesh must compensate Bapex and the Government of Bangladesh for direct loss and damage caused by the 2005 blowouts for an amount that would be determined by the ICSID at a later stage.



## Do you have any recommendations for further research on civil liability for human rights violations in your jurisdiction?

### Articles

- Rehan Abeyratne, '[Ordinary Wrongs as Constitutional Rights: The Public Law Model of Torts in South Asia](#)' (2018) 54 *Texas International Law Journal* 1
- Peter J Atkins, M Manzurul Hassan and Christine E Dunn, '[Toxic Torts: Arsenic Poisoning in Bangladesh and the Legal Geographies of Responsibility](#)' (2006) 31(3) *Transactions of the Institute of British Geographers* 272
- Ananyo Basu, 'Torts in India: Dharmic Resignation, Colonial Subjugation, or "Underdevelopment"?' (2001) 100(4) *South Atlantic Quarterly* 1053
- Naima Haider, '[Development of the Laws of Tortious Liability in Bangladesh](#)' (2021) 32(1) *Dhaka University Law Journal* 196
- Syeda Rizwana Hasan, '[Application and Reform Needs of the Environmental Laws in Bangladesh](#)' (2005) 9 (1&2) *Bangladesh Journal of Law* 85
- Ridwanul Hoque, 'Public Law Compensation in Bangladesh: Looking Within and Beyond' (2010) 1(2) *Journal of Law and Development* 1
- Taqbir Huda, '[Vicarious Liability of Employers in the Law of Tort: Deciphering Bangladesh Beverage Industries vs. Rowsan Akhter and Others](#)' (2016) 16(2) *Bangladesh Journal of Law* 119
- Taqbir Huda, '[Beyond Criminal Justice: Toward Tort Liability for Sexual Violence Against Women](#)' (2017) 17 *Bangladesh Journal of Law* 201

81 *ibid.*, [86].

82 *ibid.*

- Taqbir Huda, '[Fundamental Rights in Search of Constitutional Remedies: The Emergence of Public Law Compensation in Bangladesh](#)' (2021) 21(2) Australian Journal of Asian Law 27
- Md Awal Hossain Mollah, Judiciary and Good Governance in Bangladesh (2008) 15(2) South Asian Survey 245
- M Rafiqauzzaman, '[Public Interest Litigation in Bangladesh: A Case Study](#)' 6(1&2) (2002) Bangladesh Journal of Law 128
- Johan Razzque, '[Access to Environmental Justice: Role of the Judiciary in Bangladesh](#)' 4(1&2) (2000) Bangladesh Journal of Law 1
- Liaquat Ali Siddiqui, '[Common Law Tort Principle of Nuisance as Applied in Bangladesh](#)' (1995) 6(1) Dhaka University Law Journal (The Dhaka University Studies Part-F) 55

### **Books and book chapters**

---

- Naim Ahmed, *Public Interest Litigation: Constitutional Issues and Remedies* (Bangladesh Legal Aid and Services Trust (BLAST) 1999)
- Kamal Hossain, '*Interaction of Fundamental Principles of State Policy and Fundamental Rights*', in Shahdeen Malik, Bushra Musa, and Sara Hossain (eds), *Public Interest Litigation in South Asia: Rights in Search of Remedies* (The University Press Limited 1997)
- Justice Md Hamidul Haque, *Trial of Civil Suits and Criminal Cases* (3rd edn, Universal Book House 2015)
- Ridwanul Hoque, *Judicial Activism: A Golden Mean Approach* (Cambridge Scholars Publishing 2011)
- Taqbir Huda, 'Readymade Garment Workers and Inchoate Compensation Rights' in Mohammad Shahabuddin (ed) *Bangladesh and International Law* (Routledge 2021)
- Taqbir Huda, 'Bangladesh: A Constitutional Solution for a Tort Law Deficit?' in Ekaterina Aristova and Uglješa Grušić (eds) in *Civil Remedies and Human Rights in Flux Key Legal Developments in Selected Jurisdiction* (Hart Publishing 2022)
- Mahmudul Islam, *Constitutional Law of Bangladesh* (3rd edn, Mullick Brothers 2012)
- Jona Razzaque, *Public Interest Environmental Litigation in India, Pakistan and Bangladesh* (Kluwer Law International 2004)

### **Reports**

---

- Taqbir Huda, '[Tire Them Out': Challenges of Litigating Compensation Claims under the Bangladesh Labour Act](#) (Bangladesh Legal Aid and Services Trust 2008)
- Rebecca Prentice, [Workers' Right to Compensation after Garment Factory Disasters: Making Rights a Reality](#) (University of Sussex 2018)

## Databases

---

- [Laws of Bangladesh](#): a repository of all national legislation
- [Chancery Law Chronicles](#): a case law database
- [Bangladesh Public Interest Litigation \(PIL\) Repository](#)
- [BDLex](#): a case law database

## Relevant organisations

---

Organisations that actively work on using civil liability as an accountability mechanism for human rights violations in Bangladesh include:

- [Ain o Salish Kendra \(ASK\)](#)
- [Bangladesh Environmental Lawyers Association \(BELA\)](#)
- [Bangladesh Institute of Law and International Affairs \(BILIA\)](#)
- [Bangladesh Institute of Labour Studies \(BILS\)](#)
- [Bangladesh Legal Aid and Services Trust \(BLAST\)](#)
- [Children's Charity Bangladesh \(CCB\) Foundation](#)
- [Tort Law Project Bangladesh \(TLPB\)](#)





# Case Scenarios

## 1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. [READ MORE](#)

## 2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists

and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. [READ MORE](#)

## 3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. [READ MORE](#)



# CaseScenario 1

Q1

Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

## Claims against the police

41. The injured or unlawfully arrested protesters may bring a compensation claim under Article 102(1) against the police for breach of their fundamental rights to liberty and protection of law. However, existing case law on compensation for unlawful arrest under Article 102(1) concerned wrongful imprisonment for much longer periods of time, such as six months to several years.<sup>83</sup>

## Claims against Security Co

42. The claim can also extend to Security Co, since liability under Article 102(1) can and has been [placed](#) on an ad hoc basis on private parties whose conduct could be interpreted as having contributed to the rights violation(s) in question. Therefore, the key elements of liability that the claimants would need to show are breaches of the constitutionally guaranteed fundamental rights to liberty and protection of law, such as in the undue use of force and arrest without lawful grounds having taken place to an extent that rendered a remedy necessary.

Q2

If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.

43. Protesters who were subjected to custodial torture may file a criminal case under the [Torture and Custodial Death \(Prevention\) Act 2013](#), where compensation of BDT 25,000 (USD 290) would be payable by each offender upon conviction.<sup>84</sup>

<sup>83</sup> *Banu v Bangladesh* (n 37). See also *Md Shahanewas v Bangladesh* (1998) 18 BLD (HCD) 337 and *Korban v Bangladesh* (2003) 55 DLR (HCD) 194.

<sup>84</sup> *Torture and Custodial Death (Prevention) Act 2013*, s 15(1).

### Q3 Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?

44. In *Banu v Bangladesh*,<sup>85</sup> the Supreme Court ordered the state to pay BDT 2 million (USD 23,150) as compensation under Article 102(1) for the unlawful detention of a man who was imprisoned for more than five years after being mistaken for an absconding convict.



# CaseScenario 2

### Q1 Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

#### Claims against Subsidiary Co

45. Members of the local community appear to have suffered environmental harm within the meaning of the Environment Conservation Act.<sup>86</sup> Therefore, the Act empowers them to file a compensation case against any person whose act or omission 'directly or indirectly' caused 'injury to the ecosystem or to a person or group of persons' before the Environment Court.<sup>87</sup> The Director General of the Department of Environment is also empowered under the law to file a compensation case on behalf of victims.<sup>88</sup>

#### Claims against Parent Co

46. Since the Act defines 'person' as 'a person or group of persons, and includes any company, association or corporation, whether incorporated or not', this definition is likely to cover both Parent Co and Subsidiary Co.<sup>89</sup>

47. In addition to compensation, the local community can also apply to the Director General of the Department of Environment seeking any other remedy they deem fit from Parent Co and Subsidiary Co, for the harm caused to food and water supplies, and to the health of community members.<sup>90</sup> The Director General can then hold a public hearing or 'take other measures' to dispose the application.<sup>91</sup>

85 *Banu v Bangladesh* (n 37).

86 Environment Conservation Act ss 2(b), 2(e) and 2(j).

87 *ibid* ss 15A and 17.

88 *ibid*.

89 *ibid* s 2(h).

90 *ibid* s 8.

91 *ibid*.

Q2

If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.

48. Not applicable

Q3

Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?

49. Not applicable



# Case Scenario 3

Q1

Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.

## Claims against Factory Co

50. The dependants of the 76 workers killed in the fire and the 58 injured workers would be able to file a compensation claim against Factory Co, as the employer, under the Labour Act. The workers who died would be entitled to compensation of BDT 200,000 (USD 2,315) while those injured would be entitled up to BDT 250,000 (USD 2,890) depending on the extent of their injury. The claimants would need to prove that Factory Co was in fact the employer of the workers killed or injured in the fire (through employment contracts or appointment letters etc) and that the fire took place in the course of their employment.<sup>92</sup> Furthermore, injured workers must show that the burns caused them to lose their ability to work for more than three days.<sup>93</sup> There appears to be no scope to sue Brand Co for compensation under the Labour Act as they would fall outside the definition of employer.<sup>94</sup>

<sup>92</sup> *Labour Act* s 2(65). See also s 2(31) (definition of establishment) and s 2(60) (definition of industry).

<sup>93</sup> *ibid* s 150(2)(a).

<sup>94</sup> *ibid* s 2(49).

51. Alternatively, the dependants of the 58 injured workers may sue Factory Co for compensation under the Fatal Accidents Act, where the amount of compensation payable is not limited (as it is under the Labour Act).<sup>95</sup> However, they would need to pay *ad valorem* court fees at 2.5 per cent of the total compensation being claimed, with an upper limit of BDT 50,000 (USD 580), which would not be payable under the Labour Act. Furthermore, for claims under the Fatal Accidents Act it would not suffice to simply prove the existence of an employment relationship and death within the course of employment, but **negligence** on part of Factory Co must also be proved.

### Claims against Brand Co

52. Arguably, the dependants may also be able to sue Brand Co for compensation under the Fatal Accidents Act alongside Factory Co, if it can be shown that the deaths were 'caused by wrongful act, neglect or default' of Factory Co.<sup>96</sup> As Brand Co does not have any subordinate office in Bangladesh, the condition for suing a foreign defendant in a Bangladeshi civil court would apply and the claimants would have to prove that the cause of action wholly or partially arose within Bangladesh.<sup>97</sup>

53. In addition to seeking compensation under the Labour Act or Fatal Accidents Act, the claimants may also seek additional compensation under Article 102(1) from Factory Co and Brand Co, for breach of the fundamental rights to life and liberty, protection of law and prohibition of forced labour etc. Although there is an emerging trend of enforcing Article 102(1) horizontally against private defendants, typically a relevant state authority is impleaded as a co-respondent for compliance purposes. In this case, the relevant state authority would be the Ministry of Labour and Employment.

Q2

**If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?**

54. Not applicable

Q3

**Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?**

55. There have been a number of high-profile cases under Article 102(1) in response to large-scale industrial disasters in Bangladesh, such as the Spectrum Factory Collapse in 2005,<sup>98</sup> the KTS Factory Fire in 2006,<sup>99</sup> the Tazreen Fashions Fire in

<sup>95</sup> The Fatal Accidents Act is almost identical to the UK's Fatal Accidents Act 1846.

<sup>96</sup> Fatal Accidents Act s 1.

<sup>97</sup> Code of Civil Procedure ss 19 and 20.

<sup>98</sup> *Kamal Hossain v Bangladesh*, Writ Petition No 3566 of 2005, Supreme Court of Bangladesh.

<sup>99</sup> *ASK, BLAST v Bangladesh* Writ Petition No 2019 of 2006, Supreme Court of Bangladesh. No direction for compensation was issued, but the respondents were ordered to submit a report as to how the victims were compensated.

2012,<sup>100</sup> the Rana Plaza Collapse in 2013,<sup>101</sup> and the Tampaco Factory Fire in 2016.<sup>102</sup> However, all of these cases remain pending for hearing with only an initial *rule nisi* being issued. These nevertheless recognise the obligation of the concerned employer companies and their owners to pay compensation to the victims. Notably in the Tampaco case, the Supreme Court directed the Bangladesh Bank to freeze the bank account of the employer so that compensation (along with other dues, such as, allowances and reconstruction costs) could be paid from that account. Afterwards, Tampaco submitted a report to the Supreme Court indicating that they had deposited compensation for the victims to the relevant Labour Court.



---

100 *ASK, BLAST v Bangladesh* Writ Petition No 15693 of 2012, Supreme Court of Bangladesh.

101 *ASK, BLAST v Bangladesh* Writ Petition No 4390 of 2013, Supreme Court of Bangladesh.

102 *BLAST v Bangladesh* Writ Petition No 12182 of 2016, Supreme Court of Bangladesh.

