



TORTS CAN BE THE PERFECT SOLUTION FOR REDRESSING THE NEGLIGENCE COMMITTED BY PUBLIC AUTHORITIES IN PAKISTAN

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Abstract

This study is an attempt to argue a case for establishing significance of torts, particularly tort of negligence, in the redressal of civil offenses committed by public authorities in Pakistan. In the legal domain, the law of torts carries great significance in fortifying the constitutional rights of the downtrodden in most common-law states, and the tort of negligence is said to be the backbone of the law of torts. The law of torts is established on morality and enshrines that no one has the right to injure or harm another entity intentionally or unknowingly. As one of the most important torts, negligence tort arises from the tortfeasor's unsafe actions, without any moral regard for others' safety, wrecking unwarranted damage. It is recognized in Pakistan under both civil and criminal laws and is the biggest cause of accidental deaths and common civil wrongs in Pakistan, but unfortunately, it's operationally least active. Tort laws are made by judges and the innovative case laws of the common law jurisdiction and Pakistani tort laws have been borrowing the principles and precedence set by other jurisdictions of common law over the years. The general understanding of negligence tort in western and Indian jurisdictions will assist Pakistani policy-making in the domain. It will help to establish the significance of negligence tort as a heralding legal compensation mechanism for the plaintiff by providing adequate compensation through the due process of law.



Keywords: *Torts, Negligence, Public Authorities, Compensation, Common Law, Duty of Care, Breach of Duty, Damage, Welfare State Principle*

Introduction

The law of torts is of great significance in fortifying the constitutional rights of the people in most common-law states. Pakistan's legal system is entrenched in English common law, like many of its ex-British colonies, helping to regulate the legal issues arising from state-to-citizen and citizen-citizen interactions among many others. There are two major categories of legal systems globally, the common law system and the civil law system. Common law states primarily use case laws available as judicial opinions for reference to address the lack of codification, while civil law systems give precedence to codified laws (Mitchell, 2015). It is observed that in Pakistan there is a mechanism to determine the tortfeasor's liability for the torts or offenses committed, however very seldom the civil wrongs originating from public officials are taken to a satisfactory conclusion in the court of law. This study is therefore primarily associated with establishing the significance of tort of negligence, among other torts, in bringing solace and justice to the bereaved citizens in Pakistan who have suffered injury at the hands of certain public authorities. Unveiling the prevalent concept of law of negligence tort in major common law states, the article reviews the state of civil rights in Pakistan and the complications, citizens encounter owing to the misuse of executive powers by the public authorities.

The term tort is derived from the Latin term *tortum*, connoting “*something twisted, wrung, or crooked*” (Mitchell, 2015). The tort laws generally seek compensation or redressal for the aggrieved party by establishing liability on the culprit or the offender as the case implies. This helps to discourage a common reoccurrence of such harmful acts, which can ultimately change the society from developing to developed one.

Torts are generally categorised as intentional, negligent, and strict liability torts. Intentional torts arise from the wrongs that the offender most probably committed knowingly or unknowingly due to carelessness. Negligent torts occur in instances where the tortfeasor's activities were fraught with risks of incurring an injury that could have been avoided. Lastly, the strict liability tort refers to the principle whereby even if the defendant is not negligent, did not intentionally cause harm, or was careful, he could be liable under strict liability. Notwithstanding the situation, each of them has a potential for harm that gives rise to the need for their redressal. In addition, there are a number of distinct torts, such as assault, battery, trespassing, negligence, product liability, and intentional infliction of emotional distress (Ronquillo, Pesce, and Varacallo, 2022).

Negligence

The law of torts serves as an important means of safeguarding rights, particularly the civil rights of the commoners, who often lack the resources to pursue justice. The Halsbury's Laws of England



define the term "negligence" as follows: "Where there is a duty to exercise care, reasonable care must be taken to avoid acts." Nevertheless, in Pakistan, there is no rigorous applicability of the tort law, resulting in a limited number of tort cases turning up in the courts. The key deficiencies are a lack of tort law codification, ignorance, and non-upgradation. Pakistan's tort law is mostly unchanged since its foundation under the British, which is one of the important reasons for the underdevelopment of this law. Ignorance about existing tort laws is another factor that further reduces their efficacy, leading the Supreme Court of Pakistan to emphasise the promotion of the law of torts in its reported verdict, 2006 SCMR 207, by holding that simply passing laws does not produce positive outcomes unless they are strictly adhered to by all social classes, in accordance with Sura-e-Baqra, the second chapter of the Holy Quran, without favouritism, fear, or nepotism. The nation as a whole must uphold its commitment in accordance with the Constitution and the law in order to achieve the objective of placing every citizen and state organ on the correct course. One way to accomplish this is for the parties who have been wronged to bring a lawsuit for damages against the wrongdoers. The bar associations and bar council have a responsibility to inform the public and bring civil law suits against offenders in addition to criminal cases. The media also has a responsibility and obligation to raise public understanding of rights, particularly the law of torts, which will ultimately compel all authorities and officials, including the country's chief executive, to operate within the bounds of the law and the constitution.

Negligence is the main pillar of the law of torts (Johnson, 2015). Generally, the term "negligence" in law accounts for carelessness and is treated as distinct torts. Distinct tort pertains to the conduct that constitutes a risk of causing damage, whether physical, mental, or emotional. The existence of a legal duty to take care where it has been reasonably foreseeable that failure to adhere to such duty can result in causing injury constitutes negligence. As a result of negligence, there can be various kinds of harm that befall the said party which could have been avoided by taking adequate precautions and adhering to the duty of foreseeability. As a tort, negligence refers to either failing to behave in a cautious and reasonable manner or refraining from acting in a prudent and reasonable way as determined by the criteria that generally regulate how human affairs are conducted. The Lahore High Court also in its reported judgment i.e. PLD 2022 Lhr 18 elaborated the same as, Actionable Negligence is the failure to exercise ordinary care or skill with respect to a person to whom the defendant has the responsibility to exercise ordinary care and skill, such failure resulted in damage to the plaintiff's person or property. Definition of negligence contains three elements: (1) The party being complained of has a legal duty to act reasonably towards the party accusing the former's conduct; (2) a breach of the said obligation; and (3) incidental damages. Damage is a required component of this tort, hence a cause of action for negligence only emerges when it does.

Components of Negligence

Tort law is based on the premise that individuals' liability ensues from the consequences of their unpardonable and negligent actions. Most tort laws do not limit injury suffered by the plaintiff to its physical manifestations or implications but rather apply to emotional and mental distress too. Torts



may take into account the emotional suffering or abuse of private rights e.g., the “right to privacy”. However, certain acts of gross negligence that pose threat to lives are categorized both as a tort and a crime. Thus, the Lahore High Court’s explication of negligence determines three mandatory components including duty of care, breach of duty, damage or loss to be proved for ascertaining the guilt of the defendant.

I. Duty of care

To establish the negligence of the defendant based on the consequence of his, the plaintiff has to first prove the defendant’s obligation necessitating duty of care to the plaintiff. Owing to the lack of a general definition for the duty of a landmark judgment in a Scottish case titled *Donoghue versus Stevenson* (1932) A.C.562. from the British law of torts is also used to establish the principle of duty of care, thus establishing the foundation of the negligence law across the civil law-abiding states (Johnson, 2015). In Pakistani jurisdiction, the Sindh High Court while relying upon the principles formulated in *Donoghue’s Case* analysed this principles as an essential ingredient of negligence in its judgement reported (1994 CLC 1903) in the following manner:

“Negligence in the sense of mere carelessness does not, of course, give rise to any cause of action; but carelessness assumes the legal quality of negligence where there is a duty to take care and where failure in that duty has caused damage.

As held by Lord Macmillan in *Donoghue v. Stevenson* ((1932) AC 562): --

"The cardinal principle of liability is that the defendant party should owe to the party complaining a duty to take care and that the party complaining should be able to prove that he has suffered damage in consequence of a breach of that duty."

The duty of care is thus the foundation on which the edifice of the tort of negligence is erected and standing firm. "Duty" therefore implies the association between and among persons, who are bound by an obligation, to be careful in dispensing services in all conditions. Lord Atkin in the innovative *Donoghue v. Stevenson* case devised the principle for determining whether the duty to take care exists in a certain situation or not by founding a rule of law that you should love your neighbour and might not harm him; and the lawyer's query that who is my neighbour receives a restricted reply. You must exercise reasonable prudence to avoid doing anything that could likely to injure your neighbour. The question, Who, then, is my neighbour in law? can be replied as the persons who are so significantly and immediately impacted by my actions that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the actions or inactions which are called in question.

II. Breach of duty

A breach of duty is the failure to do anything for which you are legally accountable (Cambridge Dictionary). In tort laws, breach of duty is one of the four elements constituting negligence and is



said to have occurred due to the defendant's failure to deliver standard care (Rebecca, 2020). The breach of duty refers to the lack of proper care that should have been ensured during the execution of duty. As a result of the defendant's failure to meet a reasonable standard of care, the plaintiff may be entitled to compensation.

III. Damage

It is important to establish the breach in the performance of duty, and it is even more important to assess the level of foreseeability of the injury that the culprit's breach of duty must have caused to the plaintiff. The plaintiff has to prove the reasonableness of pinning the liability of the incurred damage on the defendant's negligence and ascertain that it is not too far-flung a consequence of the breach. When both the direct and circumstantial events fail to prove prima facie evidence about the defendant's negligence, the plaintiff's appeal fails.

Types of Negligence

By way of causation, negligence is classified as *composite negligence* and *contributory negligence*.

- **Composite Negligence** is the instance where the negligent damage is caused by the wrongful actions of two or more persons, it is said to be "Composite Negligence" and the persons involved the "composite tortfeasors." In any given situation, the doctrine of composite negligence is founded that makes the composite tortfeasors jointly and severally liable for compensation up to the satisfaction of the plaintiff or level of injury, without burdening the latter with establishing separate liability against each of the tortfeasors. This doctrine was upheld by the Supreme Court of Pakistan in its verdict. (2015 SCMR 1406) If a public bus carrying passengers meets a road accident involving another public automobile incurring injuries on both sides, the case can be registered by affected passengers against both the driving parties and bus owners under the Doctrine of Composite Negligence. Correspondingly, if the accident is a result of unkempt infrastructure of a public road, the injured commuters can claim compensation from the owner of the transport as well as the concerned public authority who was responsible for maintaining or making the infrastructure.
- **Contributory negligence** The Corpus Juris Secundum Volume, 65-A defines the Contributory negligence is essentially another form of negligence; it is conduct on the part of the plaintiff that constitutes a breach of the legal obligation to protect oneself from harm, and which, concurring and cooperating with actionable negligence on the part of the defendant, contributes to the injury. It is though the type of negligence but in most of cases such plea is taken by defendant to defend or refute the claim of plaintiff. The Supreme Court of Pakistan while adjudicating such plea held that the defence of contributory negligence arises where damage is caused partly by the negligence of the person who suffers and partly by the fault of the alleged wrong doer. This is a delicate issue but the legal principle that if contributory negligence is established the plaintiff's claim for damages shall not be defeated but the damage shall be reduced as the court may think just and equitable considering the plaintiff's



“share in the responsibility for the damage” and circumstance of the case.(1996 SCMR 406) In another case of accident wherein three person died on railway track by collusion with railway engine, the railway authorities in order to defend the claim of plaintiffs adopted the plea of contributory negligence on part of the deceased persons but the Honourable Supreme Court in its Judgment (2011 SCMR 1836) held that if due to the failure of the Railways to safeguard against the hazard, if any accident occurs, the Railways cannot avoid the consequence of its negligence on the pretext that the victim of the accident should have taken due care to save himself, and that the rule of 'contributory negligence' should so be applied to absolve it from its liability. The Supreme Court held that in such cases, the plea of 'contributory negligence' is not available to the defence at all, until and unless through positive and cogent evidence it is established by the Railways that all the safety measures were fully secured and intact, but it is the victim who being aware of the peril breached those measures, such as having opened the closed gate or by scaling over or breaking through the fence he/she has met the accident. Therefore, the Supreme Court while dilating upon the principle of Contributory Negligence toughened to defend the case of negligence solely on ground of contributory negligence and also emphasized that it cannot defeat the case of plaintiff but in case defendant succeeds to establish his such plea it can at most mitigate the quantum of compensation only and cannot be reason to reject entire claim of plaintiff.

Defining A Public Authority

Legally, justice is realised by balancing the individual's rights with the government's duty to protect those rights, a notion denoted as 'due process.' The prevalence of the Welfare State philosophy in modern times has accelerated the frequency of state-to-citizen interactions, highlighting the role of the state as the biggest and the most powerful employer present at the service of its citizens. Sometimes an injury or tort may be caused to private individuals due to certain routine actions or inaction of public authorities. As such, law necessitates the just redressal of all wrongs, torts being no exception. In cases where public servants are guilty of torts, their public office doesn't always immune them from being served justice through liability proceedings. The questions arise as to who can be regarded as a public authority and whether the state being the employer shall be liable for the wrongful acts of its employees or direct responsibility lies with the acting public authority. For this reason, we first consider the definition of "public authority" enunciated by the Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC. (*Official Journal L 041, 14/02/2003 P. 0026 - 0032*). The European Union law defines 'public authority' in Article 3(1)(b) of the above directive as “a natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment”. Article 3(1)(c) describes public authority as “a natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within (a) or (b)”.



Locally, the recent researches revealed that Pakistan ranks first in the Asian region for most fatalities in accidents whereas Karachi ranks fourth among the cities having the highest traffic accident fatalities in the world (Pakistan Rank in Traffic Accident, 2019). Since in most of the accident cases, the involvement of public authorities cannot be denied and the superior courts held such authorities to compensate the victims of their wrongs in a meaningful manner. The attitude of public functionaries in denying or delaying the compensation claims, arise out of the accidents caused due to some negligence of public authorities or its employees is strongly deprecated by the superior courts. The Honourable Supreme Court of Pakistan in its verdict reported as 1993 SCMR 1149 observed that a government department or function is not expected to bring up frivolous pleas with an objective to refute or protract the legitimate claim brought up by the citizens and such practice requires to be denounced. Specifically in cases involving fatal accidents, the officials responsible for the same should be held accountable for their above uncalled for and unjustified approach. The government department's or functionary's approach should be humane and pragmatic, and all efforts should be made to ensure that an aggrieved person receives his or her reasonable, admissible claim promptly and without loss of time.

Case for Assigning Liability to the Public Authority

Issue of public authority's liability has been the major area of concern in modern law. The Ancient Roman law heralded the state as sovereign, hence to uphold this sovereignty, it was not assigned any liability by courts in torts committed against its subjects. Until recently, monarchic England shared the Roman belief of the Crown's unaccountability in tort cases. British common law has been following the maxim "The King Can Do No Wrong" to cover the issues concerning the Crown's liability and tortious actions. The general immunity of the Crown in tort was however abolished in 1947 under the Crown Proceeding Act, which brought the government on the same level as any private individual. Meanwhile, the Indian law never overtly catered to providing absolute immunity to the government functionaries holding it equally liable for torts as the common citizens, with certain exceptions (Kerketta, 2011). Furthermore, the Apex Court of Country while deciding a Tort case abolished such presumptions and held that all wrongdoers including Government and its servants are liable in Torts like an ordinary employer.(PLD 1963 SC 627)

Reimagining Public Authority's Liability in the Modern Welfare State Context

The emergence of the *welfare state principle* in the modern age emphasised the connection between the individual's rights and that of the state's duties, with specially heightened impact of the subjects. In Indian welfare state context, Vivek Kerketta's, "Tortious Liability of Administration in Modern Times" tried to administer the notion of liability on state authorities to sustain social justice and deduced that a welfare state and its functionaries' actions must adhere to the objectives set out in the constitution. It convincingly sheds light on the issue of



state authority's liability in Indian context, but doesn't cover the Pakistani jurisdiction in the area (Kerketta, 2011).

It is to be established whether a tort committed by a public servant during the course of employment is to become the state or the errant official's liability. This matter has frequently captured the attention of various legislatures and is yet to be settled (Bhat, 1983). There has been a growing demand that the state's immunity should not deter the public officer's liability at the expense of the public exchequer, but it avoids direct personal liability and instead the burden on the state (Gellhom & Byse, 1954).

The Concept of Vicarious Liability of the State

This vicarious liability of the government finds support in A. V. Dicey's idea of the 'Rule of Law' that is founded on the same principles that guide such liability affixion on an ordinary employer. State has a duty to defend its inhabitants from internal and external harm and defend their rights, so it is vicariously accountable for the torts committed by its employees (Dicey, 1959).

The Supreme Court of UK laid down five factors to consider if a relationship that isn't an employment relationship could result in vicarious liability; first, the defendant was more likely to have the resources to pay the victim compensation than the wrongdoer; second, The tort would have been committed because of the tortfeasor's actions on behalf of the defendant; third, The tortfeasor's conduct was probably connected to the defendant's business; fourth, By employing the tortfeasor to carry out the conduct, the defendant would have created the risk that the tortfeasor would commit the tort., and fifth, The employee would have been subject to the employer's control to varying degree. (2013 SCMR 787). In another case of Indian Jurisdiction wherein the Indian Supreme Court granted adequate compensation to a victim whose minor son died due to tortuous act of Police Officials. It was held, inter alia held by Supreme Court of India *viz* AIR 1990 Supreme Court 513 that the State should be held to be just as accountable for tort in respect to a tortious act performed by its servant while acting in his official capacity as any other employer. In another landmark reported Judgment of Sindh High Court(2014 MLD 1651) which was further upheld by Supreme Court of Pakistan, The Government of Sindh was held responsible for compensating the legal heirs of the dead, who died of wrongful act of employee of Sindh Police during course of employment, while driving Police Mobile in careless and reckless manner dashed into motorcyclist, which resulted in ultimate death of motorcyclist and resultantly under vicarious liability the driver, employer(Sindh Police & Sindh Government) were held responsible to adequately compensate the legal heirs of deceased despite of the fact that driver of Police Mobile was acquitted in criminal case lodged against him but principles of Torts saddled the driver and its employers with liability to pay compensation to legal heirs of deceased motorcyclist. The government functions are often classified into the governmental and proprietary categories as



a pretext to deny compensation for negligent injury, however the distinction has been widely dropped now on moral grounds. The distinction proves particularly useful in cases where private law was applied to the recovery of a handsome compensation from the defendants holding a governmental position. Many believe that 'negligence tort' is the most effective context to apply tort laws for redressal of public injury from welfare state perspective. From religious perspective, as an Islamic state, Pakistan is constitutionally bound to ensure the unhindered support for justice with equality and public servants as custodians of law must abet justice not hinder it. If a truthful claim comes up against a public authority for its negligence in resultant injury, the claimant would be provided the due compensation(2000 CLC 221).

Pakistani Jurisprudence on Liability of Public Authority

Pakistani jurisprudence upholds the cases wherein a person loses his life as a result of any negligent act of the public official. Once the legal successors of the deceased have proved their claim, the responsibility automatically shifts to the defence to disburden themselves from the negligence claim. (2006 SCMR 207) In Pakistani courts, all forms of negligence-based accidents like those as transport accidents, accidents occurring in factories or ones caused by electrocution in public places, cases of clinical negligence, building collapse cases, incomplete or malfunctioning infrastructure induced accidents and all such instances where negligence of public authorities or government officials has caused an injury, the plaintiff has often been generously redressed. It often came with a public denouncement of the tortfeasors irrespective of their official stature, but it is pointed out that most of such implications have befallen the lower tier officials barring them from immunity. The defendants from top ranked officials often escape the consequences of their negligent torts or otherwise prolong the trial to the frustration of the plaintiff and such acts are in contravention of the verdict of Supreme Court of Pakistan and august Supreme Court its judgment reported *viz* 1993 SCMR deprecated such practices in strongest terms and emphasized the government department/functionaries to be humane and pragmatic in cases arising out of fatal accidents and all efforts should be directed to ensure that an aggrieved person gets his reasonable, admissible claim promptly, without loss of time.

The Pakistani Courts also played vital role in development of Torts and holding the public authorities liable for their wrongful acts but a very advancement is required in Torts jurisprudence for meeting a standard of developed society. The credit for development of law of torts and dragging the public authorities before court for their wrongful act primarily goes to renown advocate of Pakistan Mr. Nasir Maqsood, who mostly represented such weeping class of society before the courts of law against the public authorities, for redressal of grievances of such aggrieved persons and fixing the responsibility of the wrongful acts of such authorities or employees thereof. In such cases, Pakistani Courts held the government liable to pay compensation to legal heirs of deceased who died in accident wherein government logistics' company's vehicle involved and such verdict also



affirmed by Supreme Court of Pakistan(2015 SCMR 1406). In a case against electric distribution company, where citizen died of electrocution from electric distribution network of such company, the legal heirs of deceased were declared entitled to get compensation for wrongful death of their bread earner and electric company paid compensation to legal heirs of deceased for their wrongful act (2006 MLD 697). In another case wherein a citizen while using public latrine died by falling of roof of such public latrine, the public/municipal authorities were held negligent in operation and maintenance of public latrine and were held liable to pay compensation to legal heirs of deceased (2001 CLC 719). The Public Authorities like Pakistan Railways was also directed to pay compensation to legal heirs of deceased persons who died by dashing of train on unmanned railway crossing (2011 SCMR 1836). The Public authorities like Water & Sewerage Board was also held negligent and liable to pay compensation to legal heirs of child who died by falling in uncovered manhole (2000 MLD 112). In Pakistan, the Apex Court in its Judgment (1993 SCMR 1149) liberally emphasized the promotion of torts and refrain the Government department/functionaries from raising frivolous pleas in actions brought by citizen(s) for recovery of his/their lawful claim, with the object to deny such claims or to prolong litigation in respect thereof and deprecated such practice in the strongest terms. The Supreme Court also directed to made accountable the officials responsible for their uncalled for and unjustified approach, particularly in the cases arising out of fatal accidents. The Supreme Court also ordered in its above judgment that the approach of the Government Department/Functionaries should be humane and pragmatic, all efforts should be directed to ensure that an aggrieved person gets his reasonable, admissible claim promptly, without loss of time.

Islamic Context for Liability of Public Authority

Since Pakistan is an Islamic republic, therefore, the concept of obedience serves the purpose of maintaining order in Muslim societies, as stated in Quranic chapter An-Nisa, 4/59, “O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination.” It further says, “All those who obey Allah and the apostle are in the company of those on whom is the Grace of Allah...” (An-Nisa, 4/69, 70). The verses stated above emphasize on “*obedience*” among followers for an orderly Muslim society. Here it is to be noted that while obedience to Allah and Apostle are stated mandatory by ordering to “*obey*” both, the phrase *ulul-amr*; “*those charged with authority*” is used without attaching the word “*obey*” to it. This indicates that unlike Allah and the Apostle, fellowship to the ones charged with authority is subjective. This subjectivity stems from the belief that as mundane humans the public authorities are susceptible to erring and hence are required to be followed in true letter and spirit only if they are not transgressing the set dogmatic and societal norms. In accordance with the religious and constitutional obligation, the actions, deeds, and decisions of public authorities should be just, fair, and reasonable, and the subjects for the general public of a Muslim polity should be treated with benevolence, justice, and care, with no wrong left uncorrected.

The Sindh High Court in its recent verdict while deciding first case in Indo-Pak History, wherein



Government and Police were held liable to compensate the legal heirs of a person who wrongfully met with custodial death and the High Court appreciated the principles for affixing liability on public authorities for wrongful acts in following manner;

“In my view, the above principle is further fortified in Surah 38 Verse 26 (of Holy Quran). Fundamentally, the government of a Muslim polity or state is required to execute justice. If a government, its ministers, and high officials are cognizant of the plight of a citizen, particularly where a life has been lost and there is conclusive evidence against government functionaries, but fail to address the citizen's grievance, it is easy to conclude that the government of the day and its senior government officials have failed to carry out their constitutionally mandated duties. In certain occasions, depending on the facts and circumstances, an elected representative of a particular constituency or area where a terrible incident occurs and no action is taken to right a wrong has not legitimately executed his duty or commitment to his people. Since legislation and policy matters rest with Government(s), elected/chosen representatives and Executive Branch of the State, therefore, they are saddled with a bounden duty to dispense the administrative justice in an expeditious manner. In my humble view, the term elected representative includes. a person elected as a Councillor of a Ward right up to a Senator. The Articles 2-A, 27 and the Principle of Policy in fact make our Constitution a unique and pragmatic social contract document of a Muslim Polity. In order to restore the faith of the common man in the state institutions, rulers and those in positions of authority are obligated to treat their subjects and citizens with compassion and justice while concurrently punishing those guilty of misconduct. Thus, a dictator or tyrant cannot rule a Muslim nation or state (PLD 2018 Sindh 360).

Establishing the Significance of the Tort Laws

The courts of Pakistan have contributed to establish the significance of tort laws in the country at several occasions through its landmark judgements. In one such judgment, the Supreme Court of Pakistan(2011 SCMR 1836) elaborated the purpose served by tort laws as follows:

1. A fundamental purpose of tort law in general and tort of negligence in particular is to ensure compensation for the harms suffered by the plaintiff, even if somewhat partially. Financial recompense under the Fatal Accidents Acts seeks to fill the vacuum left by the demise of the accident's victim...(however) Damages can never be a substitute for a deceased father, husband or son....if awarded promptly, damages can lessen the burdens and travails which a family has to bear after losing its bread earner in an abrupt and unexpected manner. Delay in matters such as these, in many ways proves the oft repeated adage that justice delayed is justice denied....

2. Another significance of this tort law is to dampen the occurrence of any potentially detrimental conduct in society on the part of individuals or corporations such as the plaintiff. The said feature is elucidated in Prosser and Keeton on Torts at 25 (W. Page Keeton et al. eds, 5th ed. 1984) as: "The 'prophylactic' factor of preventing future harm has been quite important in the field of torts. The courts



are concerned not only with compensation of the victim, but with the admonition of the wrongdoer. When the decisions of the courts become known, and defendants realize that they may be held liable, there is of course a strong incentive to prevent the occurrence of the harm. Not infrequently one reason for imposing liability is the deliberate purpose of providing that incentive."

3. The principal purpose of torts is compensation to the plaintiff, *exemplary/punitive damages* only serve as a subordinate purpose whereby the society in general, and the potential tort feors in specific, are intended to be deterred. Lord Devlin in an English case [Rookes v. Barnard (1964) AC 1129] stated certain instances that might validate granting exemplary damages as: (1) cases involving oppressive, unjust, or illegal behaviour by government servants; (2) cases where the defendant's behaviour was intended to generate a profit for himself; and (3) cases where a statute expressly authorises such damages.

4. Additionally, most judicatures across world have been using the tort laws as a policy instrument for law enforcement and good governance owing to the deterrent effect of torts against the illicit and negligent activities of the tort feors. Corporations such as the airways, railways etc must firmly follow the safety guidelines stated in numerous constitutional enactments and judicial case-laws, as the negligence in doing so will have legal repercussions such as exemplary damages.

Conclusion

As universally acknowledged, the timely provision of justice is the mainstay for maintaining rule of law in any civilized society. Likewise, it is important to prevent arbitrary exercise of authority as it is detrimental to rule of law, which may cause gross violation of basic human rights. Rights of a citizen, as guaranteed by 1973 Constitution of Pakistan, are often dishonoured by the state and state representatives' abuse of executive authorities, will, and misfeasance, malfeasance, non-feasance resulting in lack public's confidence in the rule of law and prepares ground for defiant violence. The promotion of applicability of torts law can help to restore the faith in the state and rule of law. It can help in redressal of the general litigation grievances through an effective compensation mechanism and also set up an impromptu accountability mechanism for the public officials. The few grey areas of tort laws being that of lack of proper codification, ignorance of tort laws in Pakistan by law practitioners and well as most of Judicial Officials, discretionary use of tort legislation, lack of indigenous growth in this arena, want of promotion of contingent fee structure on pattern of no win no fee basis and last but not least to curb the inordinate delay in adjudication, if cured, can lead to setting up an accountable system for due justice. Further, this article has served to ascertain the efficacy of tort laws and establishes that the liability of public officials in negligent tort related compensation is in line with the constitutional and religious injunctions, and as such a public authority is reasonably accountable to the people. A public office is a public trust entrusted by the state, therefore the public officials and functionaries must, at all occasions, be liable to the subjects of the state. The tort laws are not only instrumental in obtaining compensation for the victims of torts, but ensure exposure of the misconduct and discouragement of malevolent or negligent acts. As per the



general rule public officials can become liable if they directed, engaged in, permitted, attended, or had a prior knowledge of the wrongdoing or if his negligence caused or contributed to the tort. In a country like Pakistan, where a large majority is quietly suffering the remediable tort offences due to ignorance, lack of legal codification or public authorities' criminal complicity to their negligence the possible redressals can only become effective with basic civic education. For every negligence a due compensation is available, the need is to create its awareness for swift access.



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