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# NEWS LETTER

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# UN Projects Robust Growth for Bangladesh

## - Despite Downward Projection of Global Economy

The United Nations has projected a continued momentum in Bangladesh's economic growth despite a downward projection for the global economy.

Bangladesh's economy is projected to see a 5.8% growth in 2022, up from 5.5% in 2021, and is expected to reach 6.4% in 2023, according to the UN's yearly report "**World Economic Situation and Prospects**".

The UN's positive forecast for Bangladesh's economy comes just days after the World Bank projected an upward growth trend jumping from 5% in FY21 to 6.4% in the fiscal 2021-22. The global lender also projected the Bangladesh economy to reach as high as 6.9% in FY23.

The UN report lauded Bangladesh's "sound macroeconomic policies", saying the country has navigated the Covid-19 pandemic well. It added that the country's economic activity rides on export growth and the rising demand for apparel, robust remittance inflows, and accommodative fiscal and monetary policies.

For neighboring India, the UN report projected a 6.5% growth in 2022, and 5.9% in 2023. For Pakistan, it was 4.2% in 2022, and 3.8% in 2023. The global economy is projected to grow 4% in 2022, down from 5.5% last year, contracting to 3.5% in 2023 amid new waves of Covid-19 infections, labour market challenges, supply-chain constraints, and rising inflation. Last year's global economic growth – following a contraction of 3.4% in 2020 – began to slow by the end of the year, including in big economies like China, the European Union and the United



States, as the effects of fiscal and monetary stimuli faded and major supply-chain disruptions surfaced, the report added. Along with the ongoing pandemic, rising inflationary pressures in major developed economies and a number of large developing countries, present additional risks to recovery.

The report added that global headline inflation rose to an estimated 5.2% in 2021, more than 2% percentage points above its trend rate in the past 10 years. The report also warned that an emerging longer-term consequence of the coronavirus pandemic was higher levels of inequality within and between countries.

The report also projected that for the vast majority of developing countries, a full recovery of GDP per capita will remain elusive. The gap between what they will achieve and what they would have achieved without the pandemic will persist well into 2023. In contrast, GDP per capita in the developed economies is expected to almost fully recover by 2023 relative to pre-pandemic projections.

# CASE LAW UPDATE

## ERIKO NAKANO VS. BANGLADESH AND OTHERS

*Writ Petition No.6592 of 2021*

### **Background Facts:**

The Petitioner Eriko Nakano is a Japanese citizen and Respondent No. 05 is a Bangladeshi citizen. They both got married in Japan in 2008. During their wedlock three daughters were born. Nakano Jasmine Malika alias Jasmine Malika Sharif is the eldest daughter who was born on 08.02.2010, Nakano Laila Lina alias Laila Lina Sharif is the second daughter who was born on 12.10.2011. The youngest daughter is Nakano Sonia Hana who was born on 25.06.2014.

The daughters went to a primary school in Tokyo and for a short period was enrolled in a primary school in the petitioner's ancestral village. Due to spousal conflict starting from 2020, their relationship had become estranged. On 21.01.2021 the father picked up two of the minor daughters, Jasmine Malika Sharif and Laila Lina Sharif (hereinafter mentioned as "minors") while they were returning from school and kept them in his custody.

On 28.01.2021, the petitioner filed a complaint before the Family Court, Tokyo, Japan for the custody of the said two minor daughters. The father later on in late February brought the daughters with him to Bangladesh. On 31.05.2021, the Family Court, Tokyo, Japan pronounced the judgment and granted custody of the minor daughters to the petitioner and further ordered to hand over the minor daughters to the petitioner. On late August, 2021 the petitioner arrived in Bangladesh to meet her daughters.

After several failed attempts in amicable solution of the dispute regarding custody of the minors, the petitioner brought the instant writ of habeus corpus to the attention of this court.

Custody battle norm and discrimination on foreign parents in Japan regarding custody of child in separation was widely discussed as well as the rights of children in cross-border custody disputes and difference in domestic courts' judgments in regards to their enforceability and persuasiveness in another jurisdiction.

### **Issues before the Court:**

While adjudicating the matter, following were the fundamental questions before the court:

1. Whether bringing the minors in Bangladesh was an International Parental Abduction?
2. Whether enforcement of Tokyo Family Court Judgment was possible in Bangladesh or what value does that judgment hold in deciding the instant case?
3. Whether opinion of minors be taken into consideration regarding custody matters?
4. Under whose custody the minors' welfare will be ensured?

### **Reasoning of the court:**

On issue deciding whether the respondent committed International Parental Abduction by bringing the minors with him in Bangladesh, the Court depended on the Respondent's lawyer's argument that the father was in lawful custody of the minors while bringing them to Bangladesh and under Japanese Law, prior permission or NOC of the spouse is not necessary to travel with own children for parents. Therefore the court concluded that, there was no abduction committed by the respondent.

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# CASE LAW UPDATE

The court also relied on section 2 of Bangladesh Citizenship (temporary provisions) Order, 1972 which makes the minors citizens of Bangladesh for the respondent being a citizen and section 7 of the Guardians and Wards Act, 1890 where no person, other than a citizen of Bangladesh shall be appointed, or declared to be a guardian of a minor who is a citizen of Bangladesh

On enforcement of foreign court judgment and principal of “Comity of Courts”, the High Court observed that it will consider the case on merit bearing the welfare of the child as of paramount importance and consider the order of foreign court as only a factor to be taken into consideration. The welfare of the child is the paramount consideration. Simply because a foreign court has taken a particular view on any aspect concerning the welfare of a child is not enough for the courts in this country to shut out an independent consideration of the matter. The principle of comity of courts simply demands consideration of an order passed by a foreign court and not necessarily its enforcement.

While taking into consideration the opinion of the minors in this case, the HCD observed and applied the principle enshrined in article 12 of the CRC (Convention on Rights of Children) that the child should be permitted to express her/his views freely in matters affecting her/him. In this regard the court heard the children as well as the assessment of Deputy Director, Social Welfare Office. The minors expressly communicated their willingness to stay with their father (the respondent) while the assessment of Deputy Director of Social Welfare Office, Dhaka painted a clear psychological picture of the children’s frightened and artificial attitude towards the petitioner as opposed to heartfelt connection to the respondent.

Finally after taking into consideration the overall circumstance surrounding the wellbeing of the minors and taking into consideration their opinion, the Court passed several directives to the nature of custody of the minors and duties of the custody holder. It also stated that, in a proceeding for Guardianship under the Guardians and Wards Act, 1890 the paramount consideration before the court is the welfare of the minor and not the legal rights of parties under the rules of personal law or statutory provisions

### **Decision:**

The respondent was awarded custody of the minors with some specific conditions relating to visiting rights and monetary consideration with regard to the visiting cost of the petitioner. As per the directives, the petitioner has right to visit the minors in Bangladesh and the respondent has to pay for a 10 days visitation period in every 4 months in favour the petitioner.

# LEGISLATIVE UPDATES

## Bangladesh Bank

Banking Regulation & Policy Department

Circular No. 02 - *Unofficial English Translation*

Date: 20 January 2022

### Regarding Salary of Entry Level Officers and Employees of Bank-Company

1. Bank officers and employees play a pivotal role in the management and administration of bank companies. Bank officers and employees have provided uninterrupted banking services and contributed towards the smooth running of the economy. Therefore, to ensure best performance of the bank officers and employees, and proper management of bank companies, Bangladesh Bank considers it necessary to give guidance on the subject matter.

2. To ensure effective dedication, morale and work ethic of the officers and employees of the Banks, it is necessary to pay them proper salaries and allowances. However, it is noticed that Bank-companies do not provide proper salaries-allowances to entry level officers and employees in comparison to the high-level officers, and that remunerations are determined arbitrarily. Further, it is noticed that same level officers and employees are provided with different pay-grades. Moreover, bank-companies show various reasons including failure to meet target or incompatibility to justify difference in pay-grade. These issues are affecting the morale and work standard, including inefficiency, unequal competition and moral decay, which are barriers to proper human resource management and good governance and detrimental to banking companies, which is by no means desirable.

3. Therefore, to ensure that young and educated bank officers and employees become trained and skilled and be integrated into the banks vision and mission, thus, play an important role in the economy of the country by providing uninterrupted banking services, and that the sector may attract talented people to pursue banking as an attractive career in future, it is necessary to ensure that the following guidelines are strictly followed and maintained properly from now on –

3.1. Assistant Officer/Trainee Assistant Officer/Trainee Assistant Cash Officer or equivalent officer, whatever the name may be, the minimum salary and allowance for such officers at the entry level (probation period) of the Bank will be BDT 28,000.00;

3.2. At the end of the probation period mentioned above, the minimum total salary including allowances shall be BDT 39,000.00. After the implementation of the newly fixed salaries and allowances, the salaries and allowance of the officers working in the same position will have to be increased pro-rated;

3.3. The difference between the salaries and allowances of the officers working in the immediate lower posts of the Chief Executive Officer (CEO) and officers and employees working in the lowest posts in the bank must be logical. Similarly, salaries and allowances should be fixed proportionately for all levels of officers;

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# LEGISLATIVE UPDATES

3.4. In no case shall the salary-allowance of any officer / employee be less than the present salary-allowance. If such a situation arises, the salary / allowance should be fixed by giving the required number of increments to the concerned officer / employee. In addition, the officers / employees will be entitled to other allowances and benefits as per the Bank's service rules;

3.5. No condition can be imposed on the officers employed by the banking company to achieve the goal of securing deposits for job stabilization or increase of annual salary;

3.6. Bank-company employees cannot be deprived of the promotions they deserve simply on the pretext of failing to achieve the set targets or incompetence. Officers and employees cannot be dismissed on similar grounds, i.e. officers and employees cannot be dismissed or forced to resign unless there is specific complaint and proof against the allegation;

[BPRD Circular No. 04 dated 25 January 2022 clarified that the above clause 3.6 did not mention that incompetent employees cannot be dismissed or must be given promotion, and that bank can take actions according to its own policy/service rules against officers-employees based on specific complaint and proof against the allegation. However, officers-employees cannot be dismissed or deprived of promotion only due to failure to meet deposit target or showing incompetence without any specific allegation.]

3.7. Messenger / Cleaner / Security Guard / Office Assistant (Support Staff) or employees having similar posts will be employed with a minimum starting salary of BDT 24,000.00;

3.8. If the support-staff is employed on contractual basis or on daily basis or through outsourcing or any other process, then the salaries and allowances structure of such employees should be on par with clause 3.7 above;

3.9. This guideline does not apply to personnel employed at the outlets by Banks agent banking or mobile banking or other mechanism of banking services, or to agents or personnel employed by the agents.

3.10. This guideline will not apply to the state-owned banks as their pay structure is determined by the national pay scales issued by the government or as determined by the government from time to time.

4. In order to ensure compliance with the stated instructions, the Managing Director(s) shall present the necessary amendments in the policy of the bank on par with this guideline at the next meeting of the Board of Directors of their respective banks.

5. In the light of the above-mentioned instructions, the newly fixed salary-allowances shall be effective from 01st March, 2022. The instructions given in this circular will remain in force till further instructions.

In order to ensure discipline, good governance and proper management in the banking sector, this circular is issued under the powers conferred by sub-section (d) of section 45 of the Banking Companies Act, 1991.

# The Concept of Remote or Indirect Loss in Breach of Contract



When a breach of contract occurs between parties, it generally terminates the contract whilst the party injured by such breach becomes liable for compensation. While awarding damages for the loss sustained by the injured party, the court has to determine two things according to Section 73 of the Contract Act, 1872. The first is whether the loss suffered by the injured party was something that naturally arose or likely to arise as a result of the breach or was the loss too remote or indirect to be sustained. The other issue for the court to determine is the amount for the compensation which will be provided.

In this article, the primary focus will be put on how the distinction is made between natural loss and loss which is too remote. Both of these factors play vital roles in determining damages. Since the Contract Act, 1872 takes its roots in English common law, references will be taken from the benchmark cases which have established precedents regarding the issue. Remoteness of loss is a key limitation in awarding damages for breach of contract so this principle has been questioned historically by the courts.

An initial test to determine remoteness was laid down in the landmark case of *Hadley v Baxendale* (1843-60) All ER Rep 461 where the injured party or the plaintiffs ordered a shaft from the defendants for their mills and when the defendants failed to deliver, the mill remained inoperative.

The injured party was unable to recover any loss for breach of contract as it was outside the defendant's knowledge or reasonable contemplation that the breach would cause the mill to shut down. The reasonable contemplation of both parties regarding the loss is one of the questions raised in the case.

This question was categorically addressed in the case of *Victoria Laundry (Windsor) Ltd v Newman Industries* (1949) 2 KB 528 where the plaintiffs (Victoria Laundry) contracted with the defendants for the supply of a boiler which they needed by a certain date so that they could fulfill a number of dyeing contracts obtained from the Royal Navy. The contract was breached by the defendants (Newman Industries). It was held that the plaintiffs could only recover damages for ordinary business loss after the breach of contract but not the damages for the dyeing contracts from the Navy. The knowledge of the dyeing contracts was not provided to the defendants, hence it was not within the knowledge or 'reasonable contemplation' of the defendants. As such, any loss arising out of not being able to provide to the Royal Navy by the plaintiffs, was said to be too remote or indirect within the breach of contract.

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Here, the phrase 'reasonable contemplation' requires some clarification. Otherwise, there remains questions like whether knowledge or awareness of the possibility of a loss is sufficient to say that the breaching party had reasonable contemplation of the loss which might have arisen from the contract. In the Victoria Laundry case, to determine the degree of likelihood or level of knowledge, a test of "reasonable foreseeability" was used. This view was taken in the case *Koufos v C Czarnikow Ltd. (1969) 1 AC 350*, popularly known as the *Heron II* case where a loss of fall in value was recoverable as it should have been foreseen by the parties.



This principle of reasonable foreseeability is seen in tort as well but from the *Heron II* case it was concluded that the test for determining foreseeability in tort differs from the test in contract. A higher degree of likelihood as well as a serious possibility of a loss to be resulted from breach is necessary to be proven to show that the loss was within the reasonable contemplation of the breaching party. So, it can be said that a stricter test of reasonable contemplation is necessary to determine whether a loss is too remote or indirect to the contract.

Another case to mention is *Parsons (Livestock) Ltd v Uttley Ingham & Co Ltd (1978) QB 791* where a relationship between the contractual and tortious tests of remoteness was again considered by the court. Here a large number of pigs of the plaintiffs died because of eating moldy nuts provided by the defendants. The plaintiffs claimed damages for loss of the dead pigs as well as future profits that could have been made by selling the pigs. The first damage was recoverable but the second was considered to be too remote following the strict test of reasonable contemplation. Here, Lord Denning, J put forth the argument that the court should not be distracted by the unnecessary distinction between contract and tort and just seek to compensate the plaintiff for the loss suffered.

In Bangladesh as well the question of remoteness or indirect loss has arisen in the Courts and the dispute has been resolved following the principles established in English Case law. In the case of *Al-Sayar Navigation Co. v Delta International Traders Ltd. and ors. (1982) 2 BLD (AD) 69* references to English cases were made while awarding damages for loss which were not too remote or indirect. Again, in *Trang Ice and Cold Storage Company Limited v Amin Fish Farm and Industries Ltd. and others 46 DLR (1994) 39* it was submitted that if the damage is too remote, the affected person cannot claim any damage. So, Bangladesh courts have taken steps to define such cases as well.

To conclude, Section 73 of the Contract Act, 1872 provides remedies to the injured party in case of breach of contract but also protects the defendant party from providing excess compensation. The court here has to play an active role in determining whether the loss which arose from the contract was within the course of the contract or outside its scope by using discretion and appreciating the facts of the case.





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