

NEWSLETTER

2024' Chapter 5

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Bangladesh has overtaken its much-larger neighbour India in terms of per capita GDP in 2020, owing to a respectable performance on the economic front despite slowing growth coupled with a steep contraction in the India economy as a result of their coronavirus lockdown.

Per capita gross domestic product (GDP) is a global measure for gauging the prosperity of nations and is used by economists, along with GDP, to analyze the prosperity of a country, to go with its economic heft. It is calculated by dividing the GDP of a country by its population.

According to the International Monetary Fund (IMF)-World Economic Outlook (WEO) database, Bangladesh is going to pip India as its per capita GDP, in dollar terms, is likely to expand 4.00 per cent in 2020 to \$1,888. Its per capita GDP is growing at a rate faster than its GDP, reports UNB.

Meanwhile, India's per capita GDP is expected to slump 10.5 per cent to \$1,877, which is the lowest in the last four years. Its per capita GDP fell at a faster rate than its GDP. The GDP number for both countries is at current prices.

The IMF's 'World Economic Outlook: A Long and Difficult Ascent' released on Tuesday said like many other emerging economies, Bangladesh's gross domestic product growth decelerated to 3.8 per cent in 2020, by which it meant the 2019-20 fiscal. Growth is projected to rise to 4.4 per cent in the fiscal year 2020-21..



Among other South Asian countries, IMF estimated a 10.3 per cent contraction for India's GDP in 2020, while Bhutan's growth is estimated at 0.6 per cent, Sri-Lanka at -4.6 per cent, Pakistan -0.4 per cent and Nepal's to remain flat.

The WEO database suggests that the Indian economy will be the worst hit from the pandemic in South Asia alongside Sri Lanka, whose per capita GDP is expected to shrink 4 per cent in the current calendar year.

In South Asia, Bhutan, Sri Lanka and the Maldives still lead Bangladesh on GDP per capita, although they are much smaller economies.

India's per capita GDP, up until five years ago, was around 40 per cent higher than Bangladesh's. However, over the last five years, Bangladesh's per capita GDP has increased at a compound annual growth rate (CAGR) of 9.1 per cent, compared to 3.2 per cent growth recorded by India during the said period.

Tort Remedies in Bangladesh



Tortious Claims are those where remedies are sought for loss occurring through a breach of a duty recognised by law. Generally, there can be two types of Tort – the one brought against an individual (i.e. private tort); and the one that is brought against the State or a public body or a govt. employee for failure to protect fundamental rights of the citizens (i.e. constitutional tort).

In Bangladesh even though tort is not a highly practiced area of law, there are some millstone judgments of the Supreme Court that have helped in shaping the law. It is high time people of this country became more aware of their rights regarding tortious claims.

Bangladesh is a country where incidents of fire are nothing new. Despite criminal cases being filed one after another, there has hardly been any change in the scenario as most of these cases haven't even progressed beyond the investigation stage. The investigating officers have pointed to the lack of sufficient advanced tools as the main reason for such delays.

The Chapter-4 of A.S & Associates' Newsletter 2024 contained what obligations the building owners had in securing the safety of the premises they owned with regard to not only avoiding but also handling fire incidents. Violation of those obligations can be a valid ground for bringing tortious claims against these owners. Through a Tort claim, compensations can be claimed for any loss incurred in the fire tragedies caused due to such violations of duties.

Not only fire, but any sort of occurrence caused by negligence can be remedied through a tort claim. In Chapter-3 of A.S & Associates' Newsletter 2024, for example, it was explained how medical negligence can also attract tortious claims if it can be proved that there was a clear violation of the duty of care on the part of the doctor, and that the violation was the reason for injury (fatal or not).

Through tort claims, compensations can be claimed for the loss of income incurring due to an inability to work during the time of injury. In fact future losses can also be claimed if the victim has died (Bangladesh Beverage Industries Ltd. v. Rowshan Akhter and Others (2010)). Medical expenses and even funeral expenses can be recovered too (Catherine Masud v. Kashed Mia (2016)).

The dependants of the deceased can even claim a lump-sum amount for loss of love and affection (Bangladesh Beverage Industries Ltd. v. Rowshan Akhter and Others (2010)).

This, so far, was about private tort claimable against individuals. However, as mentioned in the first paragraph of this article, tort claims can be brought against public bodies too. These are called constitutional torts. This means that the regulatory bodies who are responsible for ensuring that structures are built as per the fire safety rules and that medical practitioners are working with the required licence and skills can also be held responsible for financial losses incurring due to their failure to regulate these issues properly.

Interestingly, the very first case of tortious nature in Bangladesh was a constitutional tort, brought against the State for compensation for failure to prevent unlawful arrest of a citizen (Bilkis Akter Hossain v. Govt. Of Bangladesh (1997)). In that case it was held that as a gesture of balm on the wound, a lump-sum amount can be awarded as remedy for breach of fundamental rights since, "affection, pain, suffering, mental agony, physical incapability and emotion" are all such things that cannot be calculable. Later in 2019, in Banu v. Bangladesh, it was held that a round figure, close to the actual or roughly assumed amount of loss of earning during the period of inability to earn (e.g. during the time of being illegally held captive), can also be claimed through constitutional tort.

However, as per CCB Foundation v. Others (2017) and Md. Ruhul Quddus v. Bangladesh and Ors (2019), any amount will be finalised while taking the socioeconomic condition of the country into account.

In short, any private body for negligently causing injury or loss, and any regulatory/public body responsible for failure to regulate the issues properly and thus leading to violation of fundamental rights of the citizens can be remedied by bring claims under Tort in a Court of Law.

The process here can be a bit faster than those stuck at criminal courts thus appears to be the most appropriate method for the current era.

LEGISLATIVE UPDATES

Offshore Banking Act 2024

Offshore banking laws were introduced in Bangladesh for the first time through a notice issued by Bangladesh Bank back in 1985. By virtue of that notice, offshore banking units (OBU) were provided with the capacity to accept deposits or borrow from overseas entities, including “non-resident Bangladeshis”. OBUs could also lend money to “fully foreign-owned (Type-A) or partially foreign-owned (Type-B) enterprises”.

Local enterprises (Type-C), on the other hand, could only avail such loans from OBU based on approval from the then Board of Investment, which is currently known as BIDA (Bangladesh Investment Development Authority).

The OBUs were exempted from certain provisions of the Banking Company Act 1991 to encourage foreign investment in Bangladesh. These included –

- i. waivers from maintaining cash reserve or liquidity ratios; and
- ii. exemption of interests payable on foreign currency liabilities and payment of income tax

In 2019, Bangladesh Bank introduced a new policy by promulgating a “comprehensive guideline” to have offshore banking operations run within the periphery of a more controlled regulatory framework.

This, however, went through another amendment just about two months after the introduction of the guideline. The purpose of the amendment was to ease the policy a bit. The amended policy allowed local companies to avail foreign currency loans with approval from the Bangladesh Bank. Exporters were also benefitted from the policy as they could now avail short-term financing against shipments. Another noteworthy plus point was that joint venture companies operating in EPZs, economic zones, and hi-tech parks could take short-term loan facilities without prior approval of Bangladesh Bank.

The most recent update in this regard came from the Offshore Banking Act 2024 brought into force in February of this year. Some of the key points regarding this new Act are given –

- non-resident individuals or foreign firms who will invest in Bangladesh can now open offshore bank accounts;
- OBUs can take deposits from 100% foreign-owned companies located in Export Processing Zones (EPZs), economic zones and hi-tech parks
- OBUs can provide short-term loans, open letters of credit, provide guarantees, bill discounting, bill negotiating and other foreign trade-related outsourcing services;
- OBUs will require the Bangladesh Bank's license to operate;
- only scheduled banks working in Bangladesh can provide offshore banking services;
- offshore banking operations can be executed with five currencies — the US Dollar, Pound, Euro, Yen, and the Yuan;
- no income tax or any direct or indirect charges will be imposed on the interest or profit earned by the OBUs;
- no fees or levies will be imposed on the accounts of depositors or foreign lenders;
- OBUs can provide deferred export bill discounting facilities on imports, and direct and indirect exports for Bangladeshi residents' cases;
- medium and long-term loans can also be availed by the locals with Bangladesh Bank's approval.

In conclusion, it appears that the law has kept most of the previous regulations unchanged. However, the act of accommodating the guidelines into a legal framework seems to be a better mechanism as it will ensure that no regulatory bodies can make abrupt changes to the rules as per their will anymore. The aim was to enhance the country's reserves of foreign currency and attract foreign investment by taking steps in increasing investor's confidence in the system. Statutory adaptation of the guideline is expected to have served that purpose to a great extent. This is because, the uncertainties caused by the abrupt changes in policies within the old mechanism can now be successfully prevented as a statute, while can still amendable, will require an extensive parliamentary procedure to bring any changes. The new law is hoped to bring far more certainty than ever before.

CASE UPDATE

Amir Jahan Dilshad Begum and another v. the State and another CRIMINAL MISCELLANEOUS CASE NO.15937 OF 2017

Fact:

The Complainant took a shop on rent from the accused Petitioner for a year for 1000/- BDT per month as rent. Additionally an amount of BDT 1,10,000/- was paid by the Complainant as security money. As per clause no.8 of the tenancy agreement, "it was stipulated that the accused petitioners would return the security deposit to the complainant at the expiry of the tenancy agreement".

However, after the expiry of the tenancy, the petitioner refused to return the security money and therefore, the Complainant initiated criminal proceedings against the accused Petitioner by filling Complainant Case No.809 of 2016 under ss.406, 420, 34 of the Penal Code for criminal breach of trust and cheating.

Now, the Petitioner has come to the High Court Division with an application under s.561A of the Code of Criminal Procedure stating therein that it was a matter of breach of contract, which is civil in nature and that therefore, the criminal proceedings of the instant case should be quashed.

Held:

The Court acknowledged in light of State Vs Iqbal Hossain that "a transaction on its face, though may apparently be of a civil nature, may give and does many a time give rise to criminal liability". However, quoting Awalur Hasan Vs the state, the Court also confirmed that in absence of the elements of the charged offences, "the proceeding of the case if prolonged would be harassment" and therefore, "is liable to be quashed to secure the ends of justice".

The Court further clarified that each case depends on its own particular facts and circumstances and that, "the offence alleged can be established

by the prosecution or complainant on the production of evidence at the time of trial". Therefore, while it is possible for criminal liabilities to be present in a case of civil claim, it will not necessarily always be the case.

In the present case, there was a breach of contract. The Claimant brought charges of criminal breach of trust and cheating. The Court clarified that a case of breach of contract can also amount to cheating and/or a criminal breach of trust, punishable under penal law, if the intention of the accused to deceive or to dishonestly misappropriate the property of the other party can be found at the time of the commission of the offense.

The court after examining the petition of complaint as well as the inquiry report submitted to the Magistrate, concluded that there was nothing in those documents to support the allegation that the accused petitioners had any dishonest intention to deceive or appropriate the money at the time of forming the contract for rent of the shop or while receiving the security deposit. In light of Awalur Hasan Vs The State, the court clarified that the true position in such cases is that:

"Even in a transaction based on a contract, apart from civil liability, there may be elements of an offense or offenses for which a prosecution may be competent against a party to the contract and to find such offence the evidence has to be examined carefully to see whether there is any criminal liability".



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