

Can fidelity and liability insurance policy serve the purpose?



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NOW-A-DAYS living in the 21st century of modern capitalistic society is not like as it used to be in the past, and the intrinsic beauty of such living lies in the fact that 'there are no limits', one get out as much as he wants to put in, be that in work, investment or efforts whatever may be. It provides one with the opportunity to go as far as he wants; literally speaking the sky is the limit! Thus, capitalism allows one to hit and miss, or hit and gets as many times as someone wants. Criticism lies against it that rich is likely to get even richer and poor may end up getting poorer. However, how can one deny that "it is what it is"; I mean to say that society and the social system is a process of natural selection or elimination, only the strong/abled would be able to make it to the surface, others will automatically be eliminated or perish- the survival of the fittest!

In fact, modern lifestyle is the human daily work and their uses on the material things that they eat or live with them and anything that make them feel comfortable by using them. It has an impact on one's way of life, attitude, values and knowledge on the world. Other persons can easily ascertain one's lifestyle by seeing his dressing, way of talking and so more. However, winning a modern lifestyle and enjoying all modern amenities cost quite a lot not in terms of money only, but they have to sustain liability for others around them who indirectly help them to be in the comfort zone that they prefer to remain. In this process, some peculiar tortious liability is always hanging on top of every man.

Usually, a man is liable for all consequences of his wrongful act, which he intended, as well as for the natural and probable consequences of his act(s), that is those, which, as a reasonable man, he ought to have

foreseen. Thus, if the wrong complained of, is a consequence as a reasonable man might foresee would follow from the defendant's act, the law infers that he either intended it, or recklessly put aside the risk of some such consequence ensuing. Moreover, there are intriguing cases where liability in tort is independent of mental condition of the wrongdoer, (either intention or negligence) commonly known as 'liability without fault' (that falls under three classes of strict liability). Peculiarity of such liability lies in the fact that a person becomes liable without there being any fault on his part and the wrong arises from the breach of an absolute duty - a duty which renders a man

negligent). Not only under the legal regime of Bangladesh, but also it is a 'common standard' across different legal systems of the world. Therefore, these principles of law are there for a man to embrace or confront with his way of modern living.

Under such scenario, would it not be fair enough for man to expect support from the sovereign/State to stand by its subjects at least to mitigate some of their 'unusual responsibilities' (which obviously they have to encounter while living) to ensure respite and stable life? Since both administration of justice and legislation are left behind with the State to look after and maintain peace and tranquility in a given polity, it is expected of the

out of certain events, or as the case maybe. Public Liability Insurance policies could be used as an effective means to afford some respite to a person from such an intriguing situation where there is liability even without fault! But who will "Bell the Cat"?

Most of the insurance companies offer such policies as possibly they need to do so in order to be in the insurance business, since other companies does so, without having proper marketing strategies to make such product popular because of their inherent need for people's benefit or social good. Neither the legal regime of Bangladesh nor business policies addresses the above issue. Still today different



liable without any fault of his and irrespective of any consideration of intention or negligence. It is absolute, meaning thereby that it is not necessary for the injured party to prove any intention or negligence on the part of the injuring party, and no amount of care and caution expended by the latter to prevent the damage done to the former will excuse him.

The above tortious liability is the outcome of men's desire to enjoy modern living and enable to have the same, and in fact, the cost that a man will have to bear or sustain (for not being personally guilty or having intention to do the wrong or

sovereign/State not to enact law only, but also create a congenial atmosphere for their optimum use and enforcement.

Presently in Bangladesh there are 62 (approx.) insurance companies actively in operation, of which, 71 (approx.) percent does general insurance business and used to offer various policies to their consumers and provide indemnity accordingly. One of such product, Public Liability Insurance is designed to afford an indemnity for the insured in respect of their 'legal liability' to the public for accidental bodily injury or property damage occurring

professional bodies in Bangladesh, i.e. the Bangladesh Bar Council or Bangladesh Medical and Dental Council for lawyers and doctors respectively did not make it compulsory to have a Professional Negligence Insurance before they can obtain a license/Sanad to practice and offer their services to people and thereby, insure legal protection through indemnity devices, (which is so common in all developed/civilised societies).

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UN finds genocide in Rakhine

GLOBAL LAW UPDATES



THE UN's Independent International Fact-Finding Mission on Myanmar was set up in March 2017 to investigate widespread allegations of human rights abuses in Myanmar, particularly in Rakhine state. In the report the Fact-Finding Mission has said that top military figures in Myanmar must be investigated for genocide in Rakhine state and crimes against humanity in other areas. The report is considered as the strongest condemnation from the UN so far of the on-going violence against Rohingya Muslims.

The Government of Myanmar has consistently said that its operations targeted militant or insurgent threats but the report says that the crimes documented are "shocking for the level of denial, normalcy and impunity that is attached to them". It categorically says that the tactics adopted by the army are "grossly disproportionate to actual security threats". "Military necessity would never justify killing indiscriminately, gang raping women, assaulting children, and burning entire villages," the report says.

Crimes documented in Kachin, Shan and Rakhine include murder, imprisonment, torture, rape, sexual slavery, persecution and enslavement that "undoubtedly amount to some of the gravest crimes under international law". In Rakhine state, the report also found elements of extermination and deportation "similar in nature, gravity and scope to those that have allowed genocide intent to be established in other contexts".

The report names six senior military figures it believes should go on trial and sharply criticises Myanmar's de facto leader, Nobel Peace Prize laureate Aung San Suu Kyi, for failing to intervene to stop attacks. It calls for the case to be referred to the International Criminal Court (ICC).

However taking Myanmar to the ICC, as recommended by the report, is difficult. Myanmar is not a signatory to the Rome Statute that established the court and a referral to the ICC would need the backing of the permanent five Security Council members- and China is unlikely to agree. The report suggests, instead, the establishment of a special independent body by the UN, as happened with Syria, to conduct an investigation in support of war crimes and genocide prosecutions.

From the very beginning, Myanmar has been reluctant to accept the idea of a fact-finding mission and in furtherance of the denial, now is rejecting the findings concluded by its report.

The UN mission did not have access to Myanmar for its report but says it relied on such sources as eyewitness interviews, satellite imagery, photographs and videos. The mission said it would release a more detailed report on 18 September.

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LAW CAMPAIGN

The possibility of Jute as GI product

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ARTICLE 22.1 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) defines Geographical Indications as indications which identify a good as originating in the territory of a Member (of the World Trade Organisation), or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. In other non-technical words, Geographical Indication is a design or sign which is

1950. The first National Jute Day was observed on March 8, 2018.

Bangladesh had developed a *sui generis* system to protect GI products by enacting the Geographical Indication of Goods (Registration and Protection) Act 2013. According to section 2(8) of the Act goods include agricultural or natural goods or goods of handicraft and industry food stuff. Therefore both raw jute and jute made products can be treated as GI products. Section 9 provides that producers of the goods or any association, institution, government body or authority of any group which represents

from other products of the market and must establish the connection between the reputation of the product and its place of origin. The officials of DPDT will then go through the report and conduct necessary inspections before declaring the product as a GI product. Section 16(2) says that the registration is valid for five years and the person or organisation who applied for registration will be treated as authorised users. Therefore anybody claiming his product as a GI product (when his product is not one) can be sued by the authorised user where the unauthorised user will get imprisonment and punitive punishment.

According to BJMC, livelihood of about 25 million people is dependent on jute -related activities in agriculture, domestic marketing, manufacturing and trade. Jute and jute made product with a GI tag will surely increase price of the goods and if profit is shared properly then the quality of life of jute farmers and their community is going to be improved as well. Moreover GI protected jute products can open an avenue for a widened commercial use thereof.

Brand recognition is an essential aspect of marketing. There are many producers of jute in global market. The reputation of Bengal jute and jute made products is unprotected in international arena. Many of such products with its reputation is being snatched from Bangladesh by global contenders. An alarming report is that two Institutions namely Nisha Craft Samiti, Ghazipur and Human Welfare Association, Varanasi on 25th September of 2016 had applied for GI registration of 'Ghazipur Jute Wall-hanging Craft' in India. Consumers from all over the world may make mistakes while distinguishing between Bangladeshi jute with jute from other countries. In these cases Bangladesh will not only lose money but also its reputation. To stop this kind of free riding, we need to protect jute and jute made products with the help of GI mechanism provided by the Geographical Indication of Goods (Registration and Protection) Act 2013.

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being used on any product to indicate that the product has a specific geographical origin and that it possesses some distinctive qualities or reputation which is due to its origin.

The simple answer to whether jute or jute made products can get GI registration is yes, they can. Bengal has been famous for its "Golden Fiber" from time immemorial. *Ain-i-Akbari*, the famous book from 16th century (1590) mentions different kinds of jute products that originated from Bengal. According to Bangladesh Jute Mills Corporation (BJMC) produced 80% of the entire world production of jute from 1940 to

the interest of persons producing geographical indication of goods can apply for registration.

Therefore, BJMC, Bangladesh Jute Research Institute, relevant ministries of the Government, relevant associations can apply for the registration to the Department of Patents, Designs and Trademark. The person or organisation who is going to apply for registration have to submit a detailed research report about the etymology, history, procedure of cultivation, involvement of traditional knowledge (if any), details of the processing, involvement of human skills which makes the product different

RIGHTS CORNER

ENFORCED DISAPPEARANCES

Right to know the truth

"SEARCH and investigation are a right, as victims themselves, to know the truth about the circumstances of any enforced disappearance, the whereabouts of their loved ones, the progress and results of the investigation, and ultimately the fate of the disappeared person."

The Chair of the Committee on Enforced Disappearances, Suela Janina, emphasized, "The search for those who have disappeared is a right of the victims and an obligation of States, and should be carried out in good faith and in a diligent and effective manner."

"Under these obligations, States that are parties to the International Convention for the Protection of All Persons from Enforced Disappearance should immediately search for any individual who has disappeared. They should also develop public policies to facilitate searches in close consultation with relatives of the disappeared person. The search should be carried out in accordance with an integral strategy in which all hypotheses should be thoroughly explored," she pointed out.

To help States parties to the Convention to carry out the search for disappeared person in compliance with their conventional obligations, the UN Committee is currently developing Guiding Principles.

The Chair-Rapporteur of the Working Group, Bernard Duhaime, said: "While international standards provide some guidance in order to establish a solid legal framework in the areas of investigation of enforced disappearances, the question of how States should implement this obligation in practice should be studied more in depth."

"All States should introduce an autonomous crime of enforced disappearance. The lack of such an offence in the criminal legislation creates a situation whereby enforced disappearances are often investigated and prosecuted under other



crimes. This is highly problematic in terms of the specific investigation required from the outset in these cases as it may result in delays and inefficiencies in the investigation," said Mr. Duhaime.

In their joint statements, the experts said: "Regrettably, way too often we have received reports of reprisals, threats and intimidation of relatives and human rights defenders working on enforced disappearances. It is wrong that they should be unsupported in their legitimate quest, and certainly not acceptable that they are obstructed or even punished."

"We reaffirm our solidarity with, and support for, victims of enforced disappearance, their relatives and those helping them in their struggle for truth and justice. The Committee and the Working Group will continue their coordinated work to assist them with resolve and determination, while calling on States to strengthen their efforts and enhance international cooperation to achieve the goals.

"We reiterate our call to all States that have not yet done so, to expeditiously become parties to the Convention for the Protection of All Persons against Enforced Disappearances and to accept the competence of the Committee on Enforced Disappearances to receive and examine individual complaints," they concluded.

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