

LAW VISION

Challenges and prospects of enforcing foreign decrees in Bangladesh

SHISHIR MANIR

The recognition of foreign decree is essential for fostering cross-border trade and investment and protecting the rights of foreign investors in Bangladesh. Recognition of foreign decree contributes to building confidence in foreign traders and acts as a deterrent to borrowers who attempt to dishonor their obligations towards the creditors or evade the jurisdiction upon default.



In today's globalised world order, cross-border transactions and consequent disputes have been a common phenomenon. Bangladesh as a developing country has witnessed the same in recent years. The disputes that ensue from cross-border transactions are dealt with in foreign courts. The decree thus awarded can then be executed in the native country of the parties. The Code of Civil Procedure 1908 (CPC) defines foreign court and foreign decree in sections 2(5) and 2(6), respectively. Essentially, foreign decree means a decree of a foreign court and a foreign court means a court established outside the jurisdiction of Bangladesh. This article delves into the challenges and prospects of enforcing foreign court decrees in Bangladesh taking into account the legal framework and the practical realities of the country.

Bangladesh lacks an exhaustive legislation on the enforcement of foreign decrees. At present the process is governed by the CPC. Sections 13, 14, and 44A of the CPC deal with the process of execution of foreign decrees in Bangladesh. Section 13 points out six exceptions when foreign decrees will not be conclusive. Additionally, section 14 ensures the presumption of competency of the foreign courts unless the contrary appears on the records. Section 44A stipulates the process of executing a decree of a reciprocating country in Bangladesh if it does not fall within the exceptions specified in section 13.

The rule of conclusiveness of foreign decree is founded upon the principle of sanctity of decrees. Where a foreign court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim in the country where the

decree needs to be enforced. The general rule is that the native court shall presume that the decree is awarded by a court of competent jurisdiction upon the production of a certified copy of a foreign decree. However, this presumption must follow two pre-conditions. First, the decree is pronounced by a superior court of the reciprocating countries of Bangladesh. Hence, the foreign decree of non-reciprocating countries is not executable in Bangladesh. Before enforcing a foreign decree, a reciprocating agreement with that country is required. Next, the judgment must survive the exceptions outlined in section 13 of the Code. If the judgment fulfills these two preconditions, then the executing court shall presume that the judgment is given by a court of competent jurisdiction and it shall be executable in Bangladesh. The foreign decree will fall into *res judicata* under section 11 of CPC if the decree has been previously awarded by a Bangladeshi court.

Generally, the recognition and enforcement of foreign decrees takes place in two ways. First, by instituting an execution proceeding as mentioned in section 44A of the CPC. The party enforcing the foreign decree has to file suit in line with the subject matter in the Court of District Judge for the execution of the foreign decree and submit a certified copy of the decree in support of an application for recognition and enforcement of a foreign decree. Second, by instituting a fresh suit on such foreign decree. Where a decree is not of a superior court of a reciprocating territory, a suit has to be instituted in a court of competent jurisdiction in Bangladesh.

The general principle of law is that any decision of a foreign court, tribunal, or any other quasi-judicial authority is not enforceable in a country unless such decision is embodied in a decree of a court of that country. Moreover, the limitation period for enforcing the foreign

judgment has been specified in the Limitation Act 1908. Article 117 of the First Schedule of the Act stipulates that an action to enforce a foreign decree shall commence within six years of the date on which the foreign decree was pronounced. The decree will be executed per section 51 of the Code.

Inadequate legal framework and lack of clarity pose a great challenge towards enforcing foreign decrees in Bangladesh. Bangladesh should enact a specific legislation on this matter similar to the Foreign Judgment Enforcement Act 1933 of the UK. There are some practical difficulties too. Excessive delays, bureaucratic red tapism, and corruption beat the process and hinder efficient and timely enforcement of foreign decrees. Moreover, no specialised courts or tribunals exist on this matter in Bangladesh. The unavailability of the list of reciprocating countries of Bangladesh is another glaring example of complete disregard of the responsible authority.

In sum, the recognition of foreign decree is essential for fostering cross-border trade and investment and protecting the rights of foreign investors in Bangladesh. Recognition of foreign decree contributes to building confidence in foreign traders and acts as a deterrent to borrowers who attempt to dishonor their obligations towards the creditors or evade the jurisdiction upon default. Despite the challenges, there is still room for improvement. By reforming the legal framework, establishing specialised courts, and advancing international cooperation, Bangladesh can overcome the obstacles and create an effective and efficient system for enforcing foreign decrees.

The writer is Advocate, Supreme Court of Bangladesh.

LAW IN DENIAL

Genocide, denial, and Gaza

SADIKA NOUSHEEN

Genocide denial is deeply rooted in socio-political, and historical complexities and manifests in many forms across instances like the Armenian, Holocaust, Roman, Rwandan, Bangladesh, and Rohingya genocides, to name a few. The genocide unfolding in Gaza is live streamed before the world and yet its continuance is being vehemently denied by Israel and its allies.

Gregory Stanton, founder and President of Genocide Watch, argues that genocide is a complex process that unfolds across ten predictable but non-linear stages (often occurring simultaneously), where preventive actions at any stage can halt its progression. Even though argued as "the final stage" of genocide, "denial" is a continuous process that happens before, during, and after persecution. Understanding it is essential as it indicates that more atrocities will continue.

Genocide denialism has a deep-rooted connection with the narratives of groups that justify harmful beliefs, perpetuates prejudices, distorts historical facts, and misrepresents social realities. Stanley Cohen, sociologist and criminologist, argues that "*the social conditions that give rise to atrocities merge into the official techniques for denying these realities—not just to observers, but even to the perpetrators themselves.*" This denial includes outright rejection of information, disputing the significance of events, minimising responsibility, shifting blame to victims, moral disengagement to justify dehumanisation, and fostering belligerent violence in disguise of defense.

The textbook example of the above is unfolding in the context of Gaza. Denial is exhibited in the Israeli government's use of jargon of International Humanitarian Law to justify genocide, as identified by Special



Rapporteur Francesca Albanese. Concepts such as "human shields", "collateral damage" and "proportionality" are distorted and misused to justify actions in Gaza. Articles 48 and 52 of Additional Protocol I to the Geneva Conventions mandate attacks to be limited to military targets. Specific military advantage must be weighed against foreseeable civilian harms. Article 51(5) (b) emphasises proportionality, disallowing attacks where civilian harm is excessive relative to military advantage. By accusing Palestinian armed groups of using civilians as human shields, Israel justified disproportionate killings and infrastructure destruction. The concept of collateral damage was misused to justify indiscriminate attacks as intentional harms. By twisting legal language, Israel blurred the distinction between civilians and combatants, portraying the entire population as legitimate military targets, and proceeded to obliterate the people of Gaza.

Following the US university protests, the US House of Representatives has gone on to pass a bill that would expand the federal definition of antisemitism potentially curtailing freedom of speech. The recent amendment to the State Department Foreign Operations and Related Programs Appropriations Act of 2025 prohibits US officials from using agency funding to cite any casualty figures provided by the Gaza Ministry of Health, which is often the sole source of information about the situation on the ground in Gaza. Hence, it can be argued that Israel's biggest ally, the US, has further institutionalised the genocide denial in the context of Gaza.

While the internet makes literal denial tough, in many instances, it intensifies the process. Big data regimes create filter bubbles, isolating individuals in ideological echo chambers, and reinforcing biases, particularly evident in narratives about Palestine. Tech companies wield immense control over content dissemination, potentially prioritising propaganda aligned with certain ideologies, leading to censorship of dissenting opinions and news, threatening freedom of speech. Among tech giants, Meta has been accused of censoring Palestinian voices through arbitrary content removal, suspension of accounts, and restriction of certain accounts' reaches and visibilities, without explanation or notification (i.e., shadow banning).

Genocide denialism constitutes a form of dehumanisation and oppression by creating conditions that coerce the narratives into silence. Questioning genocide denialism is crucial as it upholds the dominant group's narrative, affects the oppressed, and hinders both genocide prevention and justice for the victims. In Palestine, denial of genocide perpetuates systematic inequality and historical oppression through settler colonialism, continuing intergenerational discrimination since 1948.

The writer is an LLM candidate, University of Dhaka.

LAW UPDATE



Barrister Moin Ghani, Advocate, Supreme Court of Bangladesh, has been appointed as member of the International Chamber of Commerce (ICC) International Court of Arbitration for its 2024-2027 mandate. The ICC Court of Arbitration is widely considered to be the world's leading arbitral institution. Since 1923, it has been helping to resolve international commercial and investment disputes. Members of the ICC Court are appointed by the ICC's supreme governing body, the World Council, on the recommendation of ICC national committees.

DETANGLING LAWS

Navigating jurisdictional complexities in the Anwarul Azim murder case

FARJANA YESMIN

Recently, there has been significant press coverage in Bangladesh and India regarding the heinous murder of Bangladeshi Member of Parliament Anwarul Azim in India. The majority of the accused individuals are of Bangladeshi origin and have been apprehended in Bangladesh. However, the primary culprit, who happens to be a Bangladeshi American, escaped to the United States. Therefore, three countries are now involved with this case, prompting a discussion on jurisdiction over crimes in international context.

Section 3 of the Penal Code of Bangladesh establishes the principle of extraterritorial jurisdiction, asserting that the Code applies to any person liable, by any Bangladeshi law, who commits an offence outside the country as if the act had been committed within Bangladesh. This provision allows Bangladeshi authorities to prosecute its nationals for offences committed abroad. Moreover, the Passive Nationality principle is a doctrine that confers a state with the authority to prosecute specific crimes committed beyond its borders against its citizens by individuals who are not citizens of that state. Essentially, it grants a country the authority to pursue

legal action for offences committed against its citizens, even if such offences took place beyond its borders. Bangladesh can invoke this doctrine to assert jurisdiction over the offender since the victim is Bangladeshi.

India would likely have primary jurisdiction because the crimes were committed within its territory. According to section 2 of the Indian Penal Code, anyone who performs an action or fails to perform an action that is against the rules of the code will be subject to penalty. In this context, any individual who commits an offence is held accountable for punishment regardless of their nationality, social status, caste, or religious beliefs. The sole prerequisite for incriminating an individual under this section is that they must engage in the act or omission within the geographical boundaries of India. Therefore, a non-native individual who commits an offence within the borders of the country cannot claim unfamiliarity with the legal system of India.

Again, the principle of territoriality is the dominant principle of criminal jurisdiction that allows states to exercise jurisdiction over crimes committed on their territory. Moreover, the principle of subjective territorial jurisdiction

allows states to exercise legal authority over actions initiated within their territory but completed or having effects elsewhere.

The *United States v Yousef* (1996) is a pivotal case demonstrating the application of the subjective territorial principle in criminal law. The court upheld the conviction of Ramzi Ahmed Yousef, a mastermind behind the 1993 World Trade Center bombing and the Bojinka plot. Despite Yousef's argument that much of his planning and preparatory actions occurred outside the United States, the court affirmed US jurisdiction based on the principle of subjective territorial jurisdiction. This case is significant as it reinforced the ability of the United States to prosecute international terrorists whose actions, though initiated abroad, have direct and harmful consequences within the US borders.

Therefore, while India has clear territorial jurisdiction over crimes committed within its borders, Bangladesh may also have an interest based on the nationality of the principal accused and the victim. On the other hand, the primary assailant and alleged mastermind of the crime escaped to the United States. It is imperative to bring him and ensure his presence for trial to

conduct a thorough investigation and uphold justice. Obtaining custody of him in Bangladesh will be challenging since there is no extradition treaty between Bangladesh and the USA. However, the current extradition relationship between India and the USA gives them an advantageous position in apprehending the culprit. Even if the offender flees to Bangladesh, India may request extradition under the extradition treaty between India and Bangladesh. Bangladesh would then need to decide whether to extradite or prosecute the accused under its laws.

In conclusion, the complex case surrounding the murder of Anwarul Azim in India has brought to light intricate jurisdictional challenges involving multiple countries. While Bangladesh asserts extraterritorial jurisdiction over offences committed by its citizens abroad, India maintains primary jurisdiction due to the location of the crimes. The application of principles such as the Passive Nationality principle and Subjective Territorial Jurisdiction further complicates the matter, highlighting the need for careful analysis and diplomatic cooperation.

The writer teaches law at the University of Chittagong.