



LAW OPINION

The statehood of Palestine

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Much can be said as to the ongoing genocide, war crimes, crimes against humanity in Gaza, and the flagrant violations of International Humanitarian Law as well as International Human Rights Law by the Israeli occupation forces. It is important to understand what drives them to commit these heinous crimes—self-defence, imperialist ideologies, theological rights of the holy land, thirst for more power, thirst for the remaining unoccupied land, or perhaps the false sense of superiority, the sense of looking down upon the Palestinians as lesser human beings.

On that note, what needs to be first discussed is the decades-old question of the statehood of Palestine through the efficacy lens of international law theories and in the eyes of the so-called world leaders. Perhaps a seat as a state, equal to all the other 193 states, at the United Nations (UN) will make the global elites not look down upon the Palestinians as lesser human beings; perhaps the abstract legal fiction of sovereignty and statehood will make Netanyahu and Trump think twice before sending in another barrage of missiles; perhaps settlement of this statehood issue will at least make them stutter before speaking about forced displacements and ethnic cleansing in broad daylight; perhaps, just perhaps, it will provide a much needed lumbar support to the rulers of the Middle East for them to truly stand up against the decades

of oppression and occupation of Israel, in the proper materialisation of 'collective Self-defence' alongside Palestine.

There are two governing theories relating to the role that 'recognition by other states' plays in the determination of statehood in international law, namely the constitutive or recognition theory and the declaratory theory. As per the constitutive theory, a state can enjoy international personality only if it is recognised by the other already existing states of the international community. However, Article 3 of the Montevideo Convention on the Rights and Duties of States 1933 (Montevideo Convention) prescribes that recognition is not required to bring a state into existence. If the existence of statehood were dependent on recognition, the determination would become dependent on the political considerations of other states and may create complex situations where a state is considered a state according to some states but not others. Notably, with regard to Palestine, as of March 2025, 147 countries of the world, almost 75 percent of the UN member states have recognised Palestine as a state.

On the other hand, under the declaratory theory, a state becomes a state by fulfilling the minimum criteria of statehood under the Montevideo Convention (Art. 1). The elements of statehood laid out in Article 1 are—defined territory, permanent population, government, and capacity to enter into relationships with other states. It

is submitted that all of them are satisfied by the state of Palestine. After fulfilling these required elements, in modern times, a state acknowledges itself as a state before the whole world through the Unilateral Declaration of Independence (UDI), as did Bangladesh in 1971 in the exercise of the people's right to self-determination. Palestine also voiced her UDI back in 1988. However, the dependency of statehood on the coloniser and the occupied forces, as well as the hypocrisy of the United States as the all-knowing moral police of the world, have restricted Palestine from gaining a full member status at the UN.

In the context of Palestine, even after fulfilling all these requirements under both the theories, the state of Palestine is yet to be allowed to sit at the negotiating table with Israel regarding ceasefire as equal states and equal sovereign authorities. The centralisation of power within the big five veto-powered nations, their dogmatic self-interests, and the creation of an extra-legal international environment with express patronisation by the US has led to these unimaginable sufferings of the Palestinian people. Nevertheless, hope is what we have right now and the worldwide movement for the statehood and permanent full-member status of the state of Palestine is definitely a step in the right direction.

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LAW VISION

Problems and Prospects of ADR in Bangladesh

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The judiciary is considered the foundational rock of any nation's pursuit of justice and rule of law. But in Bangladesh, this essential institution is facing several challenges to its conduct, including crushing backlogs of cases, soaring costs of litigation and delays stretching for decades. These barriers can lead citizens to become disinterested in the formal legal system as unresponsive and ineffective. Here, Alternative Dispute Resolution (ADR) is a viable solution, providing an efficient and cost-effective approach to resolving disputes.

ADR refers to an informal method for resolving a dispute without resorting to traditional litigation. In contrast with the adversarial nature of court proceedings, ADR encourages cooperation and consensus between the two parties involved. Its methods—arbitration, mediation, conciliation and negotiation, while designed to save time and money, also preserves confidentiality and goodwill between the parties. ADR practices are quite well-known across the globe for resolving commercial, family, and labour disputes.

Dispute resolution has been an informal



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yet important practice among the people of Bangladesh, particularly in rural areas, where the *shalish* dominates as a village-based mechanism for dispute resolution. Yet, ADR received its formal legal treatment only after several pieces of legislature intervened to address the wrongs through methods alternative to traditional litigation.

The Arbitration Act 1940 initially regulated the concept of arbitration. However, subsequently, the *Shalish Ain* 2001 was enacted to modernise arbitration and is one of the latest statutes in harmony with the principles of the UNCITRAL Model Law. The mandatory requirement of mediation in civil matters under Part V of the Code of Civil Procedure 1908 is further proof of formalisation and institutionalisation of ADR processes. For family and labour disputes, ADR mechanisms were established by the Code of Civil Procedure (Amendment) Act 2003, the Family Courts Ordinance 1985 (now replaced with the Family Courts Act 2023), and the Labour Act 2006.

In fact, court cases in Bangladesh can drag on for years or even decades, whereas, ADR provides resolution in weeks or months, facilitating quicker relief to disputants. ADR processes, such as mediation and arbitration, are far more cost-effective than traditional litigation. Hence, ADR not only ensures justice for people from all walks of life, but also alleviates pressure from the courts, allowing the judiciary to focus on more complex and critical matters.

However, there are challenges towards the effective implementation of ADR in Bangladesh. For example, the awareness level of litigants and even legal practitioners about ADR mechanisms and processes is quite low. Again, almost all ADR facilities *e.g.*, arbitration centers and trained mediators, are largely located in urban areas.

On the other hand, there have been efforts to strengthen institutional support for the promotion of ADR. The Bangladesh International Arbitration Centre (BIAC) has been established as a dedicated platform for arbitration and mediation. The promotion of ADR is also supported through funding and technical assistance of the initiatives from international organisations, such as the World Bank and UNDP.

Finally, ADR must be explained nationally to citizens, especially in rural areas. The quality of ADR services can be increased by a robust training programme for the judges, lawyers, mediators and arbitrators. More ADR facilities in rural and remote geographical areas would improve access and institutional backing. To ensure ADR is effectively integrated into the legal system, courts should actively engage ADR for appropriate cases and track their outcomes.

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LAW VIEWS

Structural reforms to address sexual violence cases

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Every year, Bangladesh witnesses horrifying incidents of sexual violence against women, triggering public outrage. Social media erupts in protests, streets fill with demonstrators, and the collective demand for justice—often in the form of capital punishment—grows louder. We are also staging demonstrations, advocating for the establishment of a separate tribunal dedicated to handling rape cases, while some demand public execution for convicted rapists. However, my core argument is that an overarching reform within the entire criminal justice system is imperative; as indeed, piecemeal reform initiatives will not be sustainable.

The issue is not the absence of laws in our country. Bangladesh has legal provisions to punish perpetrators. *The Nari o Shishu Nirjatan Daman Ain, 2000*, prescribes the death penalty or imprisonment for life as punishments for rape. Special tribunals exist to ensure trials are completed within 180 days.

Strict law does not deter crimes unless they are effectively enforced. Laws exist, but when perpetrators consistently evade punishment, "the fear" of going through the punishment as a legal consequence diminishes. Instead, criminals become more spurred.

However, legal measures alone seem insufficient, as conviction rates remain dismally low generally. The survey reveals the extremely low conviction rate in rape cases (around 3%), which means that in a substantive number of cases, perpetrators potentially walk free. Several factors are involved in this— influence over and threats against the victims' families, negligence in evidence collection by the police resulting in defective investigations, inefficiency of the prosecution in building the case, the misuse of legal provisions, and



prolonged trial proceedings. Strict law does not deter crimes unless they are effectively enforced. Laws exist, but when perpetrators consistently evade punishment, "the fear" of going through the punishment as a legal consequence diminishes. Instead, criminals become more spurred.

Moreover, media coverage significantly impacts public discourse. If a case does not attract media attention, it often goes unnoticed. If the victim does not belong to a well-known institution or a class having social capital and mobility, justice seems even more elusive. Furthermore, if the perpetrator is influential, then often there is no question of justice at all.

Besides, there are societal issues too. In our society, before a victim can even demand justice, they face societal judgment. Questions arise: *Was her clothing appropriate? Why was she outside at night? Was this due to a personal relationship?* Instead of holding perpetrators accountable, we scrutinise the victims. This victim blaming culture not only silences survivors but also allows the perpetrators to repeat the crimes, and a culture of impunity subsists. Religious education is frequently cited as a solution, but does faith truly permit such crimes? Moral teachings exist in all religions, yet sexual abuse cases have surfaced

even in religious institutions. This raises concerns about structural failures rather than the absence of religious teachings.

If Bangladesh is to address the rape crisis, reforms must go beyond demanding harsher punishments. Ending sexual violence is not just about punishment; it is about dismantling the structural barriers and socio-cultural issues that allow it to persist. Unless we address the structural issues, the cycle of violence as well as impunity will continue. To ensure swift and fair justice for rape victims, it is required to establish a separate tribunal for speedy trial and form an independent investigation and prosecution services is crucial to ensure impartiality and build a solid case for justice, which resonates with the reform proposals made by the Police Reform Commission and the Judiciary Reform Commission too. Because the purpose of criminal justice system is to ensure fairness by upholding justice with transparency, accountability and integrity.

As a society, we must ask ourselves—is the person next to me safe? What is my responsibility?

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