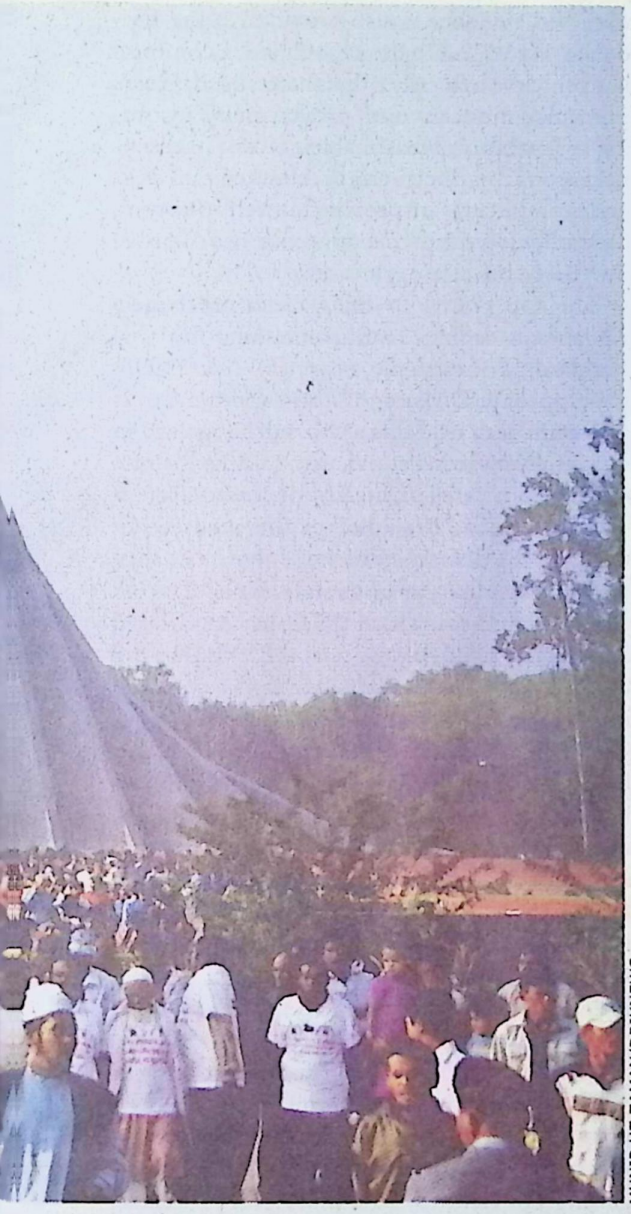


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I

The concept of fair trial has been increasingly attaining a central place in the developing body of international human rights norms. It has also received a special treatment in almost all constitutions across the world. The concept is often interchangeably used with the wider concept of justice that embraces procedural and substantive fairness and legitimacy in criminal proceedings. The demand of justice in criminal processes requires that the criminal trial must be just and fair, because, without the defendant's assent to the process, the legitimacy and moral authority of the conviction become eroded.

Below, we analyse the International Crimes (Tribunals) Act 1973 (ICT Act), as amended in 2009, to see whether and, if at all, to what extent the Act accommodates the principle of fair trial. The trial of war crimes committed during the Liberation War has now begun with the establishment, under the Act, of a special tribunal called the *International Crimes Tribunal.* The three-member Tribunal has recently framed its Rules of Procedure (with effect from March 25, 2010), providing norms and standards for the Tribunal, Prosecution and the Investigation Agency. These initiatives have opened up both opportunities for, and challenges in attaining fairness in the war crimes trial.

II

A given Constitution may provide for the norm of fair trial through a 'due process model' as opposed to a 'crime control model' of criminal justice system. The due process model is best exemplified by the American practice, and is described as constituting such rights of the accused as the right to counsel, the right to be informed of grounds of arrest, the right to be presumed innocent until proved guilty, the right to be tried in an impartial and independent tribunal, the right of freedom from inhuman and degrading punishment, and the right against self-incrimination which includes the rule of exclusion of evidence improperly obtained. These are indeed several tenets of the right to fair trial. There might be some other fair trial rights like the right to adequate preparation for defence and the right to remain present during the trial.

The Universal Declaration of Human Rights 1948 ensures the right of everyone facing trial to have a fair and public hearing by an independent and impartial tribunal. The International Covenant on Civil and Political Rights 1996 (ICCPR), which Bangladesh acceded to in 2000, contains in its Article 14 a series of fair trial rights including the accused's right to be presumed innocent until proved guilty and the right to be tried 'without undue delay'. While every single regional international human rights instrument provides for the right to fair trial, it is fascinating to refer to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 which "entitles an accused to a fair and public hearing..., to confront witnesses testifying on behalf of the prosecution, to order the appearance of witnesses to testify on his behalf, and to legal assistance". The place of