the right to fair trial in the above international instruments, particularly in the ICCPR, shows that the right of an accused to a fair trial is a norm of customary international law, which is also evident in the incorporation of fair trial obligations into the legal regimes of international criminal tribunals including the International Criminal Court (ICC) and the International Criminal Tribunal for the former Yugoslavia (ICTY). For example, the ICTY Statute (Articles 20 and 21) guarantees the accused his right to a fair trial with several component rights and obligates the trial chamber to ensure that the fair trial rights are maintained throughout the proceedings.

Despite the customary law status of he right to fair trial, there are debates regarding whether the fair trial right has turned out to be an inviolable norm (*jus cogens*). What is important for our purpose is that irrespective of the debate whether the right to fair trial is an inviolable international legal norm, Bangladesh has an obligation under the ICCPR to protect and preserve the accused person's right to fair trial. This is an existing obligation notwithstanding the fact that Bangladesh has not specifically incorporated the ICCPR into its national laws. The obligation to comply with fair trial standards concerns domestic and international courts alike. It is inconceivable that domestic courts and legal systems should have the leverage of relaxing or not following the fair trial standards that have grown at the international level.

The Constitution of Bangladesh has not directly used the phrase 'fair trial', but has incorporated the idea in several of its provisions. The Constitution has specifically guaranteed one's rights to equality before the law, to enjoy the protection of the law and to be treated 'in accordance with law' and the right to life and liberty. Importantly, in Article 35 it has categorically guaranteed certain rights, such as the right to 'a speedy and public trial by an independent and impartial court or tribunal', which are in effect core components of the right to a fair trial. Apart from these constitutional guarantees, the ordinary laws of the country including certain common law principles have supplemented the Constitution on the point of fair trial obligations. For example, a corollary of the constitutional prohibition of torture is that, evidences that are the outcomes of torture inflicted on the accused cannot be used in the trial. The rule of exclusion of unlawfully obtained evidence is also provided in the Evidence Act 1872. On the other hand, a common law principle prescribes that the accused is to be presumed innocent until proven guilty according to law beyond reasonable doubt. An essential part of this doctrine is that the accused does not bear the onus of proving himself innocent, but rather it is the prosecution that has to prove the charge brought against him.

The top courts in Bangladesh are largely vigilant on the need of maintaining fair trial standards. For example, *in State v. Zahir* (1993) the Appellate Division of the Supreme Court of Bangladesh held that a writ will lie against an unlawfully awarded conviction such as the one arising from a trial vitiated by procedural irregularities causing prejudice to the accused. In this case the defendant was not given a chance to cross-examine previous statements of prosecution witnesses, which the Court considered a "valuable right" of the accused. Also, in the case of *Alam Hossain (Md.) v. Bangladesh* (2003) involving a more substantial issue, the High Court Division held that a criminal conviction based not on evidence on record is amenable to judicial review, and that 'the principle of law' necessitates the issuance of a constitutional remedy vis-à-vis an unsafe conviction. In the same vein, in *BLAST v. Bangladesh* (2005), involving prolonged incarceration of the accused persons pending their trials, the Court in effect held for the accused persons' constitutional right to speedy trial.

Even despite constitutionalisation of the fair trial rights, ordinary criminal laws often tend to adhere to the crime control model, where focus is given on punishing offenders or getting convictions. In almost every jurisdiction, there is often a tension between the constitutional principles concerning the criminal law and ordinary criminal laws and practices, i.e., between the goal of 'justice' and the goal of efficient and expedient enforcement of criminal law. Therefore, the challenge for any given legal system, including the War Crimes Trial in Bangladesh, is to ensure justice or protect the fundamental rights of the accused and at the same time to respect the concerned government's prerogative to punish the offenders.

III

Defying objections from the probable suspects, Bangladesh has recently assumed jurisdiction over international crimes committed during 1971. It is one of the imperatives