pertaining to international crimes that they must be prosecuted and punished under the international law even if the relevant law fails to criminalise them. Seen in this legal background, the enactment of ICT Act 1973, although in the face of certain ordinary laws that could try some if not all heinous crimes committed during the 1971 liberation war, was a major breakthrough in the world history of prosecuting war crimes.

The international crimes include the crimes of genocide, crimes against humanity, crimes against peace and war crimes. Bangladesh's 1973 Act has incorporated all these facets of international crimes. A perceived challenge for Bangladesh is the trial itself after a long 38 years' time, which may pose obstacles to the gathering of evidence. This does not mean that these challenges are insurmountable. For example, evidential rules work leniently in the trial of international crimes; oral evidence or narrations at a much later time than the times of incidents may well prove sufficient. The 1973 Act has incorporated this phenomenon in section 19 that allows the Tribunal to admit all reports, photographs, films and other materials having probative value as evidence. This is supplemented by rule 44 of the Rules of Procedure that empowers the Tribunal to admit the abovementioned materials including any electronic material as evidence, also giving the Tribunal authority to reject any evidence. The prosecution, therefore, can gather evidence from numerous sources scattered nationally and internationally, and this practice would be in consonant with international legal practices. Moreover, regarding the challenges of time-gap and the collection of evidence, Bangladesh has before it the precedent of the trial of genocide committed in Cambodia by the Khmer Rouge regime in the 1970s.

Needless to say, trial of perpetrators of the 1971 crimes under the Act or the process of providing justice to victims must be in line with international legal standards of fairness, which is one of the key factors in securing legitimacy particularly at the international level. The standards in question concern: (i) jurisdiction, including definition of international crimes; (ii) institutional aspects, such as the impartiality and independence of investigating bodies and tribunals vested with jurisdiction; (iii) adherence to general principles, such as presumption of innocence and the protection against double jeopardy (the right not to be punished for the same offence twice); (iv) rights of the defence, including equality of arms; and (v) victims' and witnesses' full protection.

The 1973 Act has given a clear and progressive definition of genocide, and has also defined crimes against humanity, crimes against peace and war crimes. And, as per s. 3 (1) of the 1973 Act, the Tribunal has the power to try any individual who committed any of the crimes as mentioned in the Act before or after its enactment within the territory of Bangladesh.

It appears that the Act of 1973 has been given retrospectivity, which might be misread by both admirers and sceptics if the facts of the 1971 genocide and the birth of Bangladesh are not appreciated in their contexts. Retrospectivity of criminal law, which has been prohibited in the Constitution, is also a serious concern in the international criminal law jurisprudence, but the case of Bangladesh does not quite fit into that. As mentioned, international crimes are subject to prosecution and punishment irrespective of domestic criminalisation of international (war) crimes. The 1973 Act has simply enacted, in a fashion of recognition, the then existing international rules concerning war crimes and crimes against humanity. The duty of the State to locally prosecute international crimes pre-dates the 1973 Act. Moreover, the prosecution of crimes against humanity is a widely acknowledged exception to the principle of non-retrospectivity. More importantly, the Constitution in Article 47A made the

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.