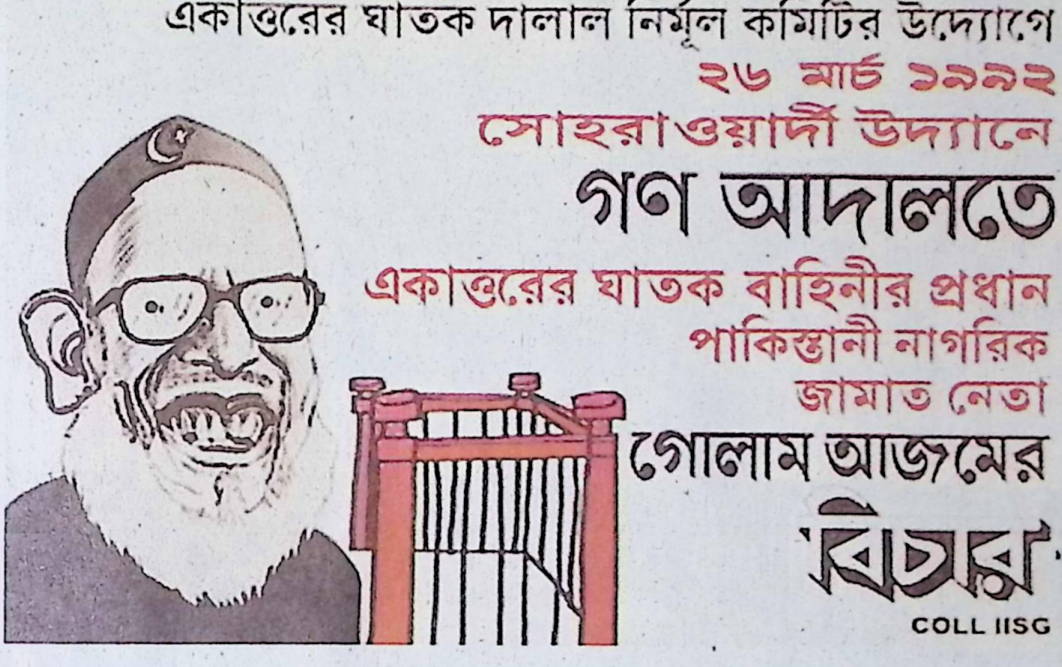


arrest of any person except through the tribunal's processes (rule 9), provides for the appointment of counsels at the state's expense when the accused goes unrepresented by a counsel (rule 43), places the burden of proof on the prosecution (rules 50-54), and provides for the adequate proof of any evidence produced by the Prosecution or the Defence (rule 58). There are some other provisions in the 'Rules' that provide for the transparency and maintenance of records, information, and evidence, ensuring in many ways the accused's right to information.

IV

It thus appears that the ICT Act has met the challenges of fair trial rights. The Act has adequately tied up the due process rights for the accused. There is no denying that in order to be credible and legitimate the trial of war crimes in Bangladesh needs to be compatible with the international standards. Bangladesh has an obligation to that effect both as a member of the world community and as a party to the Rome Statute and the ICCPR. While as a member of the United Nations it has to go by the human rights obligations under the UN Charter, its ratification of the Rome Statute and the ICCPR creates an obligation to adapt its domestic laws to the fair trial requirements of these instruments.

A principal challenge for the war crimes trial is, however, to strike a right balance between protecting fair trial rights of those accused and the enactment of justice for the victims and martyrs of the war of independence. If there is any deficiency in the legal scheme of the 1973 Act in ensuring fairness and justice that can be compensated by the tribunals by relying on other existing laws and the constitutional principle of justice and fairness as well as on prosecutorial and investigative standards of domestic implication set by other international and national tribunals that have tried war crimes and offences against humanity. For example, as seen above, the recently framed 'Rules' of the Tribunal have fed the fair trial obligations prescribed in the Act.

On a final note, it can be said that the ICT Act is predominantly a local law and the trials are also domestic. Thus, while there are requirement and benefits in complying with international standards of fairness, it should be appreciated that the concept of fairness like any other normative concept is not absolute. The degree of fairness enshrined in the Act is to be assessed with reference to the local needs such as, for example, the long denial of justice to the victims of the 1971 war and the nation as a whole.

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