to have a legal interest in its suppression: they become bound by what the International Court of Justice (ICJ) later in *Barcelona Traction Case* (1970) termed "an obligation *erga omnes*" once treaties on the subject and the decisions of important courts are virtually unanimous. Crimes against humanity get extra momentum once they are proved to be widespread and systematic emanations of a policy approved by the perpetrators and their allies.

Genocide

The 1948 Genocide Convention was the first attempt to comprehensively condemn the act of genocide when the Nuremburg judgment still reverberated. Article 1 of the Convention simply states that "genocide, whether committed in time of peace or of war, is a crime under international law." This treaty has been ratified by so many states (including Bangladesh) that it can now be considered a rule of modern customary international law, binding on all states (whether they have ratified the Convention or not) and requiring them to prosecute as genocide. Bangladesh's responsibility necessarily emanates from this conviction and the 1973 International Crimes Tribunal Act is a manifestation of that obligation. As the ICJ explained in its decision in the *Reservations to the Convention on Genocide Case (1951)*: "The origins of the Convention show that it was the intention of the UN to condemn and punish genocide as 'a crime under international law ... involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the UN.' As of now, the only acid test of proving an offence of genocide is the intention of the perpetrators to destroy in whole or in part a national ethnical or racial or religious group as such."

International Crimes and Rules against Retrospectivity

The Latin phrase *nullen crimen sine lege*, meaning conduct however awful is not unlawful unless there is a criminal law against it in force at the time it was committed, is an accepted norm of criminal law. The rationality of the phrase is well established in criminal jurisprudence to protect extraneously motivated prosecutions. Allegation of violation of *nullen crimen* principle has to be taken cautiously. It appears that the allegation has also been made against the 1973 Act of Bangladesh, but is devoid of substantiality. Exceptions to the *nullen crimen* principle are accepted in international practice if three conditions are satisfied (i) elements of offences are clear and in line with fundamental principles of criminal justice, (ii) the conduct amounting to offence must be reasonably ascertained and (iii) there must be evidence or at least inference that international community entails a criminal liability for individual perpetrators. These tests are all satisfied in relation to the crimes usually prosecuted in international courts -- genocide, mass murder, widespread and systematic torture, grave breaches of the Geneva Conventions and so on (Geoffrey Robertson QC: 2006). The practice has reached such a stage that the Special Court of Sierra Leone in *Child Soldiers Case* 1996 approved the retrospectivity of a criminal law punishing recruitment of child soldiers under one's command.

On the same allegation, the constitutionality of the International Crimes (Tribunal) Act 1973 has been raised from different quarters. It needs to be noted that the International Crimes Tribunal Act, 1973 Act is a constitutionally protected legislation (Article 47(3) of Bangladesh Constitution). The constitution derives its validity from the solemn will of the people themselves. Bangladesh secured independence through a liberation war (the war was unjustly imposed) and the proclamation of Bangladesh's independence forms the genesis of the Bangladesh Constitution (B. H. Chowdhury J. in *8th Amendment Case*, 1989). So, it is obvious that such a constitution should dedicate provisions to prosecute and punish the international crimes committed during its emergence.

On a plain reading of the combined articles the constitutionality of the 1973 law is upheld. The apex court of the country has rejected a petition challenging the constitutionality of Article 47A. The simple reason is that the language of Article 35 (1) is not attracted by the 1973 Act. Article 35 (1) says that "no person shall be convicted for any offence except for violation of a law in force at the time of the commission of the act charged as an offence." Genocide, arson, murder, rape, extermination were always crimes, and are universally condemned by international law and our national law prevailing prior to 1973. It is not that a new category of crime has been created by the 1973 Act. Nonetheless, the framers of the constitution, as has been asserted by one of them, Barrister M Amir-ul Islam, by way of abundant caution inserted the protective provision of Article 47A. Hence, it is argued that the 1973 Act has not created any new criminal responsibility, rather it has merely criminalised acts already recognised as "crimes" under existing "other legal instruments or any custom or usage having