the Appellate Division of the Supreme Court but also incorporates rights of the accused during trial. The accused may give explanations relevant to the charge, can conduct his own defense or have assistance of counsel, shall have the right to present evidence in support of his defense and to cross-examine any prosecution witness. These are the manifestations of the "due process of law" and "fair trial" and make the 1973 Act more humane, jurisprudentially sound and legally valid and, therefore, an improvement over the Nuremberg Charter -- the foundation stone of modern international criminal justice administration.

Procedural fairness is a much-talked about concern in the ongoing international crimes trial. It is to be remembered that there is no theory of procedural fairness that is universal in its application. Because of the mandate, and political and historical context, each tribunal is distinctive and unique. There is no pretense that the tribunal for international crimes in Bangladesh should apply procedural standards identical to other tribunals. Procedural fairness should not be considered as a rigid benchmark, but as a constructive framework upon which the tribunal can deliver the justice. What is expected is that the international crimes tribunal established in Bangladesh should conform to minimum international standards of procedural fairness to make its credibility visible. It is expected that justice, once there is a procedoure for its delivery, will have its own momentum.

The question of death penalty

The ICC Statute (to which Bangladesh is a party) virtually excludes death penalty from the list of penalties that can be imposed. The most severe penalty, under Article 77, is imprisonment for a maximum of 30 years, while a term for life is designated only when justified by the extreme gravity of the crime and on the individual circumstances of the convicted person. However, the ICC Statute has not totally discarded national practices and contains in Article 80 a provision titled "Non-prejudice to national application of penalties and national laws" and states that "nothing in this Part affects the application by states of penalties prescribed by their national law, nor the law of states which do not provide for penalties prescribed in this Part." In other words, the ICC will not impose the death penalty, but recognises rights of the state parties to provide penalties different from the Statute. This is, argues Dr. Ahmed Ziauddin, an eminent international lawyer of Bangladesh, an example of the pre-eminence of national laws and procedures over the ICC.

It seems that the role of international law, at this stage of development, is to play Portia -- the state may have its pound of flesh, on the condition that it sheds no drop of blood. The trend of the national and international judges is to make executions as difficult as possible. Safeguards have been developed, which limit the applicability of the death penalty in the countries that retain right of appeal, fair trial, mercy petitions, non-mandatory death penalty provisions of law, etc. What is emerging, however, is a rule that executions should not take place in any period during which there is a real political prospect that the death penalty will be abolished. Given the Bangladeshi criminal jurisprudence such will is too remote a possibility. The attitude of the Bangladesh apex court, however, can be deduced from the fact that the court has refused to uphold the constitutionality of a domestic penal law retaining mandatory provisions of death penalty. In contrast, the 1973 Act retains a non-mandatory death penalty provision.

Response to some other concerns

The International Bar Association (IBA) Committee, in a report to the UK Parliament's Human Right Group, has raised some concerns and the segments opposing the Bangladesh Act seem to have heavily relied upon their observation, bypassing the opening remarks of the Committee: "The 1973 legislation, together with the 2009 amending text, provides a system which is broadly compatible with current international standards." It has then commented that the legislation (1973 Act) "appears out of date and behind the more recent practice in international tribunals." Dr. Ahmed Ziauddin has rightly responded to some of the concerns in *The Daily Star* (April 3), and there is no reason why one would differ with him. The fact that the IBA Committee has found that the 1973 Act is broadly consistent with international standards should alone suffice, as far as the minimum standard required by the international law is concerned. The ICC Statute never denies the primacy of the national law. Article 10 of the Statute explicitly recognises that "nothing in this part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute." The Rome Statute itself envisages that it is not there to limit or prejudice "existing" international law and it has to be noted that the 1973 Act was entirely based on the law that