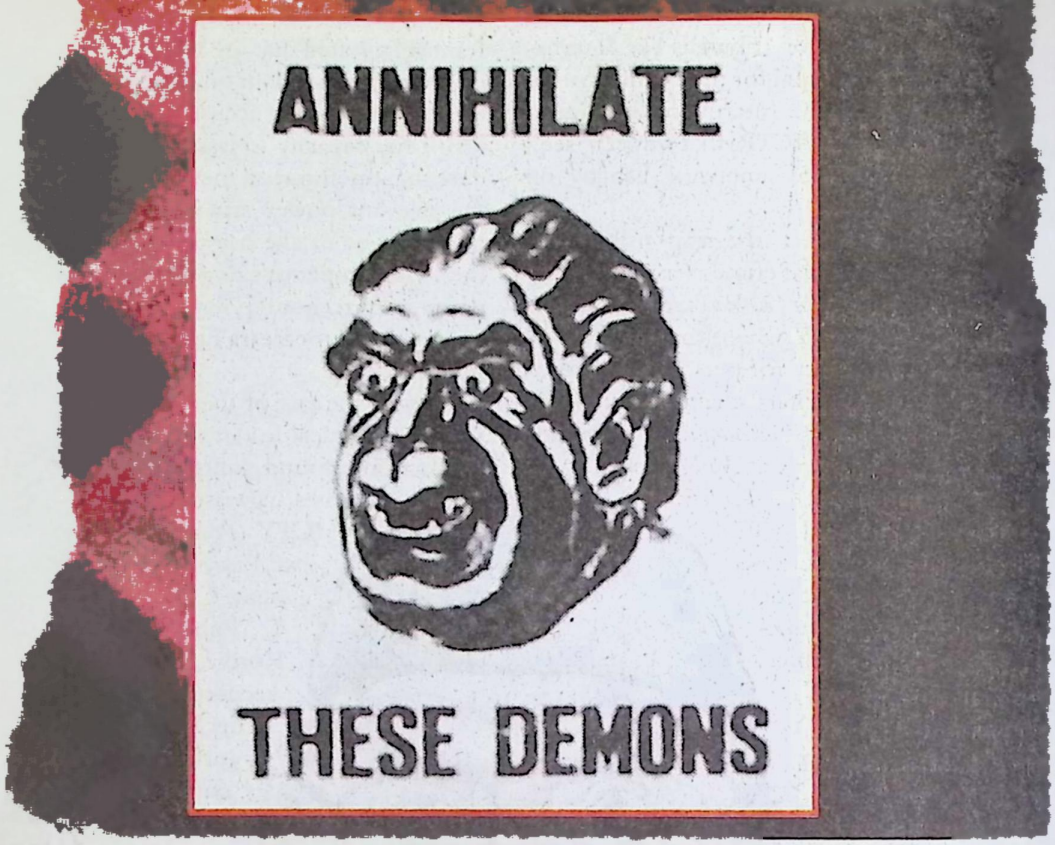


the International Criminal Court (ICC) and the Article 86 of the 1977 Protocol I additional to the Geneva Conventions.

In Bangladesh, the relevant legal provision for the superior responsibility can be found at Section 4(2), *International Crimes (Tribunals) Act*, 1973 (as amended in 2009). Section 4(2) reads as follows:

'Liability for Crimes: Any commander or superior officer who orders, permits, acquiesces or participates in the commission of any of the crimes specified in section 3 or is connected with any plans and activities involving the commission of such crimes or who fails or omits to discharge his duty to maintain discipline, or to control or supervise the actions of the persons under his command or his subordinates, whereby such persons or subordinates or any of them commit any such crimes, or who fails to take necessary measures to prevent the commission of such crimes, is guilty of such crimes.'

Many argue that section 4 of the 1973 Act only provides for *military commanders* and *superiors* to be held responsible for criminal conduct of subordinates; and it does not provide for civilian superiors to be held similarly accountable.

It must be mentioned that the 2009 *International Crimes (Tribunals) (Amendment) Act*, by its amendments to section 3 of the 1973 Act, now extends the tribunal's jurisdiction to civilian as well as military commanders. As per the amended section 3, tribunal now has jurisdiction to try and punish any non-military person, *whether superior or subordinate*, who has direct or indirect involvement with the relevant crimes. In other words, the tribunal now has jurisdiction to try any accused non-military person, including a civilian superior.

In this mosaic, it is stated that section 4 of the 1973 Act generally asserts the superior liability for crimes. The above section uses the terms *commander or superior officer* in general. It does not specify whether the said section would only refer to military commanders and/or military superiors. In other words, the said section does not preclude the liability of the civilian superiors. If the amended section 3 and the section 4 of the 1973 Act are read together it would affirm that liability for crimes under section 4 would also entail the liability of the civilian superior.

It is further argued that the texts of the 1973 Act under section 4 should be interpreted literally.