existed then and still remains valid. The ICC Statute has given the definitions of genocide, crimes against humanity, etc., with the opening words "for the purpose of the statute" leaving "existing and evolution" of international law intact.

As to the definition of genocide, it can be said that though new dimensions of genocide like genocidal rape, forced pregnancy, etc., are not specifically mentioned in the 1973 Act as constituent elements of genocide, the use of the words "other crimes under international law" and "not limited to" would not debar a competent and prudent tribunal from accommodating those dimensions under this law. What has to be ensured is a fair trial in a competent court based on evidence coming out of an impartial investigation and meeting minimum international standards. Therefore, the concerns raised by the national and international stakeholders may be discarded.

Second line perpetrators

Because the commanding level soldiers have escaped justice so the lower level perpetrators should also escape is an argument untenable in known canons of jurisprudence. Legal definition suggests that the planners and participators are liable to the same extent. International criminal law has discarded the command responsibility, though superior's order can be argued as a mitigating factor in some cases. In 1971, the world witnessed acts of genocide committed by the Pakistani military and their allies against the Bangalees in general and Hindu Bangalees in particular in Bangladesh. The military regime of Pakistan, aided and instigated by their native allies (Razakar, Al-Badr, Al-Shams, etc.), committed unprecedented genocide in Bangladesh. On February 22, 1971 the generals in West Pakistan took a decision to crush the Awami League and its supporters. It was recognised from the beginning that a campaign of genocide would be necessary to eradicate the threat. "Kill three million of them," said President Yahya Khan at the February conference, "and the rest will eat out of our hands." On March 25, the genocide was launched.

Collectively known as Razakars, the paramilitary units spread terror throughout the Bengali population. With their local knowledge, the Razakars were an invaluable weapon in the Pakistani army's arsenal. Through an Ordinance (East Pakistan Razakar Ordinance, June 6th 1971) the Razakar, Al-Badr, Al-Shams were declared to be the auxiliary forces of the Pakistan army. The incumbent trial should first try the commanding level leaders of those forces. From Pakistan Government's Ordinance and surrender document of December 16, 1971, they appear to come within the definition of "auxiliary forces" -- a term which the Constitution of Bangladesh also mentions in Article 47 (3).

There are two principal points of charging the members of the auxiliary forces, one for actual commission and another for planning, abetting and conspiracy to commit genocide, crimes against humanity and other crimes under international law. Actual commission, planning, incitement to genocidal offences are treated in the same line. Rwanda's *Akaeshu Case* (1998) has established that incitement to genocide is equally indictable, like the actual commission of genocide itself. Incitement has been a precursor to, and a catalyst for, modern genocides. It may even be a sine qua non, according to witnesses and the abundant historical and sociological literature on the topic. It seems that without incitement, genocides like the Holocaust, the one in Bangladesh, and the Rwandan one, might not have happened.

The evidence is strongest with respect to Bangladesh genocide, where religious feelings were used to justify the massacre. Incitement seems to play a critical role when intended victims live among the majority group, so that mass killings cannot take place without the participation or at least the tacit acceptance of many members of the majority group. In Nazi Germany and in Rwanda there were well-documented incitement campaigns. In Turkey, there were plans to "excite Muslim opinion by suitable and special means" before the Armenian genocide. By contrast, in Darfur, ethnic cleansing and killings were carried out by paramilitary groups (Janjawiid), mainly in villages inhabited solely by their victims. There is documented evidence of Razakars, Al-Shams, Al-Badr members urging people to "maintain the unity of Pakistan and the sanctity of Islam" and to "exterminate the enemies".

The Bangladesh statute 1973 has a provision on the responsibility of superiors but not of subordinates (this was removed after an amendment casting individual responsibility). Different international tribunals have different provisions dealing with the defense of superior orders. For the Sierra Leone Special Court, a superior order is not a defense to a prosecution but it may be pleaded in mitigation of sentence. There are similar provisions for East Timor, the former Yugoslavia and