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Rwanda, and Lebanon. The International Criminal Court statute, in contrast, provides that superior orders may be a defense where three criteria are met: (a) The person was under a legal obligation to obey orders of the government or the superior in question, (b) the person did not know that the order was unlawful; and (c) the order was not manifestly unlawful. In the case of Bangladesh, it is unlikely that the perpetrators will have the benefit of this defense.

Challenges ahead

It is obvious that in an enfeebled democratic polity like Bangladesh, there will be many challenges to the prosecution of the international crimes suspects. Perhaps the Bosnia and Herzegovina experience can be an example. The problems faced by the Bosnian domestic courts in prosecuting the war crimes were manifold. Some may perceivably be identical to the Bangladesh situation: (a) political indifference of biased or uncommitted authorities. (b) fear of judges and prosecutors for their personal security, (c) difficulties in locating and securing the attendance of witnesses and defendants, (d) inadequate commitments, structures and procedures, (e) processing of war crimes cases, i.e. problems caused by reluctant, fearful or forgetful witnesses, (f) inadequate witness protection mechanisms, (g) large case loads, (h) inadequate legal resources and poor dissemination of law reports and legal texts and (i) insufficient training on humanitarian law and on necessary skills, such as cross-examination, indictment drafting and witness selection. These are questions of standards as well.

How can we tackle all these problems? The way of avoiding heavy case loads is to choose the cases and charges strategically and constitute more tribunals with proper equipments. The other points are more a question of commitment than law. Failure of the authorities to address impunity would seriously undermine the rule of law and negatively impact public confidence in the legal system. So, conscientious efforts are to be made to face these challenges and bring those responsible for war crimes to justice. Bangladesh has waited far too long to bring the perpetrators of the 1971 crimes to justice. But one advantage of that wait is that many other international tribunals have sprung up in the meantime and gone about their work. Their experience will make the work of the International Crimes Tribunals of Bangladesh easier. International criminal law says that effective prosecution must be ensured by taking measures at the national level and by enhancing international support and cooperation. The submission of the suspects of Bangladesh genocide and crimes against humanity to the "judgment of law" has been a significant tribute of "Power" to the "Reason".

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