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# **AN ANALYSIS OF JUSTICE RADHABINOD PAL'S DISSENT IN THE TOKYO TRIALS AND ITS INFLUENCE ON INTERNATIONAL LAW**

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## **ABSTRACT**

This paper attempts to analyse the dissenting opinion of Justice Radhabinod Pal's during the Tokyo Trials. The analysis will look into aspects of jurisdiction, sovereignty, and the Pan-Asian aspect of Justice Pal's dissent. Furthermore, it will attempt to gauge the dissent opinion's impact on the rise of the TWAIL branch of International Law.

Keywords; Dissent, International Law; Justice Pal; Imperialism; Japan

## Introduction

The essence of the concept of International Criminal Law is to ensure that the Global community has a system, wherein perpetrators of the worst sort of crimes, crimes that not only affect certain communities but have widespread, global-repercussions, are investigated, prosecuted, and if necessary, punished. It is to be understood, that unlike criminal law that prevails in sovereign jurisdiction, International Criminal Law may prosecute acts that might have been, in the strictest sense “legal” or “lawful” according to the policies a certain country. International Criminal Law treats individual leaders, actors, or as it may be, perpetrators as “moral agents” where they hold “personal responsibility” for said acts. Unlike Municipal Criminal Law, the essence of International Criminal Law is predicated at what the global community believes is “right or wrong”.<sup>1</sup>

One of the first two forums wherein the mere concept of International Criminal Law was discussed, and conceptualised were the International Military Tribunal at Nuremberg (Better know as the Nuremberg Trials) and the International Military Tribunal for the Far East. (Better known as the Tokyo Trials) This paper will focus on the latter Tribunal, especially focusing on the Tribunal’s overall impact on International Law in the Asian impact in the context of Justice Pal’s 1,200+ page dissent.

The International Military Tribunal for the Far East (henceforth, will be referred to as the Tokyo Trial) was established at the direction of the Supreme Commander of the Allied Forces, General Douglas MacArthur, with a mandate to – “*charge individually, or as members of organisations, or in both capacities, with offenses which include crimes against peace.*” The basis for the establishment were elucidated in the Postdam Declaration of July 26<sup>th</sup>, 1945 and the Instrument of Surrender of September 2<sup>nd</sup>, 1945.<sup>2</sup>

The tribunal was composed of legal experts and jurists from 11 countries, namely, - Australia, Canada, the Republic of China (distinguished from the current PRC), Great Britain, the Netherlands, New Zealand, The USSR, and added later on, - The (at the time) Colony of India, and the Philippines; 7 more than were present in the Nuremberg Trials. However, that wasn’t the only significant difference between the Nuremberg and Tokyo Trials; at the Nuremberg Trial, there was one, unanimous opinion, however at the Tokyo Trial there were 5 separate

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<sup>1</sup> Hemi Mistry, 'The Paradox of Dissent' (2015) 4 Journal of International Criminal Justice.

<sup>2</sup> CHO, SUNG YOON. "The Tokyo War Crimes Trial." (1967) The Quarterly Journal of the Library of Congress 24, no. 4

opinion, including a dissenting opinion. The judge from the Netherlands argued that there was no evidence of conspiracy among the defendants, and even held 5 defendants to be innocent; the Filipino judge, however, took a completely opposite stand and opined that the sentences handed down were too lenient, and not enough of a deterrent for the future. The French Judge argued that there were significant procedural hurdles, which were detrimental to the cause of the trial. Finally, Justice Pal delivered the scathing dissent, listing over 1,200 pages was longer than the text of the majority opinion, wherein he held all defendants to be innocent.<sup>3</sup>

Although not considered significant at the time, (or at least, when compared to the Nuremberg Trials) the trial and indeed, Justice Pal's dissent, in contemporary times have been subject to extensive analysis and scrutiny because it represented the quintessential definition of what can be understood as – "Victor's Justice." Furthermore, according to the words of the International Relations Scholar, Edward Said, the Trial was an exercise in *Orientalism*. It represented a, - "A Western style for dominating, restructuring, and having authority over" Japan, and for a long time, the world and even the academic community accepted the version the majority opinion of the Tribunal decided to tell.<sup>4</sup>

It is well understood that the experience of being brought up in an increasingly Communist-leaning Bengal, and having the distinct experience of being a citizen in Colonised country gave Justice Pal a unique insight that perhaps, the other judges of the Tribunal lacked. Justice Pal believed that before handing down judgement on Japanese leaders, it was extremely necessary to consider the actions of the largely Western Allied forces as well. Actions such as overall effects of rampant colonialism, the dropping of what we now understand as Weapons of Mass Destructions on innocent citizens of Japan, and the inception of Intermittent Camps for the Japanese were subjects that need academic and judicial analysis as well, as was argued by Justice Pal.<sup>5</sup>

Throughout the 12,000-word dissent of Justice Pal, he had argued for Japan's overall innocence and called for the defendants to be held not-guilty; however, as many scholars will contend, he

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<sup>3</sup> K Ushimura (2007). Pal's "Dissentient Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion. *Japan Review*, (19), 215-223. Retrieved November 9, 2020, from <http://www.jstor.org/stable/25791314>

<sup>4</sup> Latha Varadarajan, 'The Trials Of Imperialism: Radhabinod Pal'S Dissent At The Tokyo Tribunal' (2014) 23 *European Journal of International Relations*.

<sup>5</sup> K Ushimura (2007). Pal's "Dissentient Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion. *Japan Review*, (19), 215-223. Retrieved November 9, 2020, from <http://www.jstor.org/stable/25791314>

meant such innocence only in a purely indictable sense, in the legal system to prosecute the acts did not currently exist in the world at the time.<sup>6</sup>

This paper will analyse the dissenting opinion, the varying facets of the same, and at the end attempt to analyse the Trial's and the dissenting opinion's overall impact on the development of International Criminal Law.

## **STATEMENT OF THE PROBLEM**

Given the evident hegemonic stronghold of the Western Powers on International Organisations such as the United Nations Organisation, on the basis of the dissenting opinion of Justice Radhabinod Pal during the Tokyo Trial's, is there an imminent need for reforms in the International Political and Legal System?

### **Research Questions.**

1. What were the basis on which Justice Pal dissenting during the Tokyo Trials?
2. Was there an influence of Indian Colonisation and Hindu Law on the dissent of Justice Pal's dissent?
3. Has Justice Pal's dissenting opinion influenced the International Legal system?

### **Hypothesis**

Yes, after an analysis of Justice Pal's dissenting opinion during the Tokyo Trials, there is an imminent need for reforms in the International System.

## **REVIEW OF LITERATURE**

- **Latha Varadarajan, 'The Trials Of Imperialism: Radhabinod Pal's Dissent At The Tokyo Tribunal' (2014) 23 European Journal of International Relations.**

This research journal published in the European Journal of International Relations elucidates the importance of Justice Pal's dissent on the backdrop of American and European Imperialism. While this paper provides a base for the entire trial, it specifically focuses on the Pan-Asian

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<sup>6</sup> Latha Varadarajan, 'The Trials Of Imperialism: Radhabinod Pal'S Dissent At The Tokyo Tribunal' (2014) 23 European Journal of International Relations.

aspect of Justice Pal's dissent and its overall influence on Asiatic and African perspective towards International Law.

- **K Ushimura (2007). Pal's "Dissentient Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion. *Japan Review*, (19), 215-223. Retrieved November 9, 2020, from <http://www.jstor.org/stable/25791314>**

This research paper gives us a deep-insight into the procedural and historical aspects of the Tokyo Trial, while examining the long-term political and social impact of Justice Pal's dissenting opinion. Paper attempts to analyse the judgement on the backdrop of Justice Pal's history of living in a colonised state, and further criticises the judgement for being vague in terms of solutions.

- **Mutua, Makau, and Antony Anghie. "What Is TWAIL?" *Proceedings of the Annual Meeting (American Society of International Law)* 94 (2000): 31-40. Accessed November 15, 2020. <http://www.jstor.org/stable/25659346>.**

This paper published by Professors Makau and Anghie introduce us to the concept of the Third World Perspective on International Law; analysing the inception, the need, and the reasons for the branch of International Law to emerge.

- **Nandy, Ashis. "The Other Within: The Strange Case of Radhabinod Pal's Judgment on Culpability." *New Literary History* 23, no. 1 (1992): 45-67. Accessed November 15, 2020. doi:10.2307/469157.**

This paper gives the reader a unique insight into the legal psyche of Justice Pal, and analyses how his perspective of International Law is shaped by the basic principles of Hindu Laws of Dharma, Karma, and Nyay.

- **Elizabeth S Kopelman, 'Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial' (1991) 23 NYU J Int'l L & Pol 373**

Perhaps one of the most significant analysis done of the Tokyo dissent, Prof Elizabeth Kopelman attempts to analyse Justice Pal's dissent through several factors, such as – Issues relating to Jurisdiction, Positivist Approach, the Pan-Asian Approach, and even gives an insight into the Third World perspective Justice Pal invigorated through his dissenting dialogue.

- **Milinda Banerjee, "Does International Criminal Justice Require A Sovereign? Historicising Radhabinod Pal'S Tokyo Judgment In Light Of His 'Indian' Legal Philosophy" (2017) 2 Torkel Opsahl**

This paper analyses the pertinent question of sovereignty and the Tokyo Tribunal, and how Justice Pal opined that a conqueror state cannot act as a sovereign to the conquered state. Furthermore, it analyses the upbringing of Justice Pal and how it may have influenced his decision to dissent during the Trial.

### **Scope**

The scope of this research paper is limited to analysing the dissenting opinion of Justice Pal during the Tokyo Trials, and its overall impact and influence on the International System.

### **Objectives**

1. To ascertain the reasons behind Justice Pal's dissent during the Tokyo Trials;
2. To analyse the impact of the dissenting opinion on the International Legal System.

### **Methodology**

The researcher in the present research has adopted doctrinal or nonempirical method for collecting required data. This research will base its findings, inter alia, on analytical and critical studies.

### **Sources of Data –**

1. Governmental Reports;
2. Legal Textbook;
3. Judicial Decisions;

4. Analysis of Judicial Precedents;
5. Online Journals;
6. Online Articles;
7. Other online resources.

## Justice Pal's Dissenting Opinion – Analysis

The addition of Justice Pal to the IMTFE was a result of an amendment made to the Charter of the memorandum that established the Tribunal, perhaps as a way to increase the diversity of the group of judges, and to downplay the presumption of 'victor's justice' in the proceedings. However, since arriving to Tokyo almost two weeks into proceedings, Justice Pal challenged all norms of the Tribunal. Before his arrival, the original 9 judges of the Tribunal had come to a consensus to deliver a unanimous judgement, leaving no space or option for a separate, or dissenting opinion. Justice Pal, however, made it clear that since he wasn't part of the deliberations for the same, he would not be bound by the agreement.<sup>7</sup> Justice Pal realised the possible repercussions, and overall affect of his non-conformity, starting his 12,000+ word dissent with the following paragraph, -

*"I sincerely regret my inability to concur in the judgment and decision of my learned brothers. Having regard to the gravity of the case and of the questions of law and of fact involved in it, I feel it my duty to indicate my view of the questions that arise for the decision of this Tribunal"*<sup>8</sup>

While there can be several methods of interpreting Justice Pal's dissenting opinion in the Tokyo Trials, this paper will attempt to analyse the same within a few sub-headings, allowing the reader to gain insight into the varying facets Justice Pal considered in his landmark dissenting opinion.

### I. Issues Relating to Jurisdiction.

The base of Justice Pal's dissent is built upon the argument that the Tokyo Charter established under the directions of the Supreme Commander of Allied Forces, did not have the authority or the ability to prosecute any so called "crime" except for what had the binding consensus of the International Community.<sup>9</sup>

According to Article 5 of the Charter, the Tribunal had the power to prosecute the accused on the following charges, -

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<sup>7</sup> Latha Varadarajan, 'The Trials Of Imperialism: Radhabinod Pal'S Dissent At The Tokyo Tribunal' (2014) 23 European Journal of International Relations.

<sup>8</sup> Justice Radhabinod Pal, 'Dissenting Opinion of Justice Radhabinod Pal' (1948) International Military Tribunal for the Far East

<sup>9</sup> Elizabeth S Kopelman, 'Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial' (1991) 23 NYU J Int'l L & Pol 373



*“a) Crimes against Peace: the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;*

*b) Conventional War Crimes: violations of the laws or customs of war;*

*c) Crimes Against Humanity: murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war .... Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.”<sup>10</sup>*

Justice Pal argued that the problem with prosecuting on the basis of Article 5 of the Charter was that no-such Internationally defined law existed at the time; however, even if one decides to ignore such an important and salient argument, according to the definitions of the Crimes elucidated in the Charter, even the Allied Forces ought to be held accountable for the same, as in the interest of conducting war and protecting their national interest, they have also committed Crimes under the A, B, and C category. Justice Pal argued that to hold an entire nation accountable for actions that were meant for self-defence, while ignoring the actions of another nation for similar actions was against the principles of rule of law, and could not pass the test of reasonability.<sup>11</sup>

To back his argument, Justice Pal used the text of the Potsdam Declaration of 1946, which laid down the policy and eventual charter for punishing individual Japanese for supposed ‘war crimes’. The Potsdam Declaration declared that – *“we do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice will be meted out to all war criminals, including those who have visited cruelties upon our prisoners.”*

Justice Pal argued that according to the Potsdam Declaration, the only kinds of crimes the Tribunal could prosecute were conventional war crimes, as the declaration does not mention either Crimes against Humanity, or Crimes Against Peace. Neither does the declaration or the

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<sup>10</sup> Section II, Article 5 of the Charter for the INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST (1946)

<sup>11</sup> Elizabeth S Kopelman, 'Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial' (1991) 23 NYU J Int'l L & Pol 373

Tribunal Charter for that matter, recognise the crimes prosecuted during the Nuremberg Trials. Furthermore, to invigorate entirely new forms of crimes or law required the authority of a sovereign force, which the Tribunal was not, and it was dangerous to assume it was.<sup>12</sup>

## II. Issues Relating to Sovereignty.

Adding to the issues relating to jurisdiction, a huge and perhaps the most important aspect of Justice Pal's dissent in the Tokyo Trials was the issue he took with sovereignty and its implication in the conviction of Japanese Leaders. To fully understand Justice Pal's position on sovereignty, one has to understand the historical context of his upbringing, and the nation he comes from. Although towards the end of the oppressive British Colonisation, Justice Pal had never lived in a country that was, in its true sense, sovereign.

Justice Pal argued that the mere imposition of a newer concept of law without having sovereign authority is an example of "victor's justice" and should be avoided at all cost. He further argued that the Tribunal had no right to claim themselves as the sovereign authority, and legislate on matters relating to the same. He opined, -

*"A victor state, as sovereign legislative power of its own state, might have right to try prisoners of war within its custody for war crimes as defined and determined by the international law. But neither the international law nor the civilized world recognizes any right in it to legislate defining the law in this respect to be administered by any court set up by it for the purpose of such trial. I am further inclined to the view that this right which such a state may have over its prisoners of war is not a right derivative of its sovereignty but is a right conferred on it as a member of the international society by the international law. A victor nation promulgating such a Charter is only exercising an authority conferred on it by international law. Certainly, such a nation is not yet a sovereign of the international community. It is not the sovereign of that much desired super-state."*<sup>13</sup>

Justice Pal said that while he is – "not in love with this national sovereignty" he argued that it should be obvious to the International Political and Legal community that conquest, defeat, or surrender (whether conditional or unconditional) cannot vest the conqueror with sovereign

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<sup>12</sup> K Ushimura (2007). Pal's "Dissentient Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion. *Japan Review*, (19), 215-223. Retrieved November 9, 2020, from <http://www.jstor.org/stable/25791314>

<sup>13</sup> Justice Radhabinod Pal, 'Dissenting Opinion of Justice Radhabinod Pal' (1948) International Military Tribunal for the Far East

rights over the State. Such rights should and must always vest with the people or the customary authority of the State.<sup>14</sup> (The people for a democracy; the monarch for a monarchy)

### III. The Issues relating to Race and Imperialism.

Many argue that the reason Justice Pal and India were included in the Trials was to give it more “Asiatic” representation as the Tribunal intended to prosecute Asian War Criminals. It was understood that Pal carried a little bit of cynicism, some might even say disdain for imperialism by the West; which may be attributed to the oppressive British Colonial history.

His fellow judge, Justice Rolling of Netherlands, answering a question on Justice Pal’s dissent and the effect on imperialism on the overall judgement, opined that –

*“Justice Pal's attitude, from the very beginning, was that the war fought by Japan was a war for the liberation of Asia and that therefore it should not be regarded as an aggressive war. It was a more or less belated reaction against the [Western] aggressive wars by which the [Western] colonial system was established centuries ago.... I think Pal's judgment is understandable if we look at the past, but not when we look at the future.”<sup>15</sup>*

He argued that the entire concept of ‘victor’s justice’ was a bi-product of imperialism and opined that before passing judgement on Japan’s alleged actions, the actions of the Western Powers should be considered as well. Justice Pal stirred up quite the controversy when he opined in his dissenting judgement the following, -

*“It would be sufficient for my present purpose to say that if any indiscriminate destruction of civilian life and property is still illegitimate in warfare, then, in the Pacific war, this decision to use the atom bomb is the only near approach to the directives of the German Emperor during the first world war and of the Nazi leaders during the second World War”<sup>16</sup>*

Furthermore, in holding all of the defendants not-guilty for their actions, some contend that Justice Pal saw it as a way of liberating the East from the shackles and control of the West. It is important to note that he did not think that the Japanese defendants were innocent in their

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<sup>14</sup> Milinda Banerjee, “Does International Criminal Justice Require A Sovereign? Historicising Radhabinod Pal’S Tokyo Judgment In Light Of His ‘Indian’ Legal Philosophy” (2017) 2 Torkel Opsahl Academic EPublisher.

<sup>15</sup> Rolling, Question-and-Answer Period, in INTERNATIONAL SYMPOSIUM, supra note 176, at 152-53.

<sup>16</sup> Justice Radhabinod Pal, ‘Dissenting Opinion of Justice Radhabinod Pal’ (1948) International Military Tribunal for the Far East

actions, rather just affirmed that the Tribunal was not the appropriate body to hand out such a verdict, which would be a definition version of ‘victor’s justice’.<sup>17</sup>

In further galvanising his argument, Justice Pal relied on a quote from Edward W. Said’s work, the – Orientalism, wherein he wrote –

*“It is therefore correct that every European, in what he could say about the Orient, was consequently a racist, an imperialist, and almost totally ethnocentric . . . human societies, at least the most advanced cultures, have rarely offered the individual anything but imperialism, racism, and ethnocentrism for dealing with other’ cultures”*<sup>18</sup>

If one attempts to sum-up Justice Pal’s dissenting opinion, it could be done in the following manner, -

Firstly, and most foremostly, Justice Pal argues that the essence that a conqueror should not legislate for the conquered or pass judgement on the same; this conceptualisation of ‘victor’s justice’ has traditionally been rejected or lead to disastrous consequences in the sight of history. (The most prominent example of rendering Victor’s Justice would be the Treaty of Versailles, which some argue led to the German Nationalism that led to the rise of Nazism in Germany)

Secondly, Justice Pal argues that neither the charter, neither existing International Legal Treaties allow the tribunal to prosecute the defendants on anything but Conventional War Crimes, as neither Crimes against Peace, or Crimes against Humanity existed in the legal context at the time of the proceedings of the Tokyo Trials.

Thirdly, Justice Pal argued that to hold the Kingdom of Japan for its war crimes, but not assessing the damage the Allied Forces had caused would be against the principles of Rule of Law, and the common law principles of – Justice, Equity, and Good conscience.<sup>19</sup>

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<sup>17</sup> Milinda Banerjee, “Does International Criminal Justice Require A Sovereign? Historicising Radhabinod Pal’S Tokyo Judgment In Light Of His ‘Indian’ Legal Philosophy” (2017) 2 Torkel Opsahl Academic EPublisher.

<sup>18</sup> Justice Radhabinod Pal, ‘Dissenting Opinion of Justice Radhabinod Pal’ (1948) International Military Tribunal for the Far East

<sup>19</sup> Elizabeth S Kopelman, 'Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial' (1991) 23 NYU J Int'l L & Pol 373

## **The influence on Justice Pal's Dissent on Third World Perspectives on International Law**

Many scholars argue that Justice Pal's dissent was one of the first literature ever produced in relation to TWAIL or the Third World Perspectives on International Law, and was precursor for the same.

An entire crux of Justice Pal's dissent was based upon the argument that the so called "international community" that was responsible for prosecuting the Japanese defendants were largely Western-Centric, and had very little representation from the rest of the world; thus, solidifying the very evident Western-bloc bias present in International Law, and International Communities.<sup>20</sup>

Furthermore, Justice Pal deeply disagreed with the Majority-Western opinion on what constituted "aggression" and "self-defence" but completely ignoring the perspective or the culture of the Asian/African ideologies on the same, which is a major-proponent and argument in contemporary TWAIL scholars. Justice Pal argued that that although the Allied forces and the Tribunal had declared itself to be conducting the trial to preserve humanity for the future, such humanity cannot reasonably be achieved whilst one state lives in the domination of another.<sup>21</sup>

To fully understand how Justice Pal helped the cause of TWAIL scholars, one must understand what the Third World Perspective on International Law advocates. The concise and simple argument of TWAIL is that it views the current International system (International Law, and the International Community) as illegitimate, as it was built upon years of imperialism and exploitation conducted by the Global North on the people and resources of the Global South. Moreover, TWAIL scholars argue that the system of International Law was essentially expansion of the Imperialist policies of the Western Bloc under the guise of setting up a New World Order. TWAIL argues that the current system thrives of the exploitation of the Global South, and thus advocates a status-quo of subordination of the Global South, and domination by the Global North; TWAIL intends to break the system of domination by the Global North,

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<sup>20</sup> Milinda Banerjee, "Does International Criminal Justice Require A Sovereign? Historicising Radhabinod Pal'S Tokyo Judgment In Light Of His 'Indian' Legal Philosophy" (2017) 2 Torkel Opsahl

<sup>21</sup> Elizabeth S Kopelman, 'Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial' (1991) 23 NYU J Int'l L & Pol 373

and strive towards a system of International Legal Norms which can help the Global South recover from centuries of colonial and imperialist exploitation.<sup>22</sup>

Remnants of such an argument was also seen in Justice Pal's dissent wherein, while addressing the argument of the prosecution and majority argument that the Tribunal and the Allied forces were aiming towards the creation of a unified and new world order. Justice Pal seemed disgusted at such a take, and opined that –

*"The feeling that "we are a unity of humanity, linked to all our fellow human beings, irrespective of race, creed or colour, by bonds which have been fused unbreakably in the diabolical heat of those explosions" might have been a result of these [atomic] blasts. But certainly, these feelings were non-existent AT THE TIME WHEN the bombs were dropped. I, for myself, do not perceive any such feelings of broad humanity in the justifying words of those who were responsible for their use."*<sup>23</sup>

As mentioned in the above arguments, Justice Pal had argued that domination of one nation by another, without the explicit consent of the state ought to be included in the definition of "aggression" under International Law. Using this argument, current TWAIL scholars argue that in fact, the worst perpetrators of crimes against humanity would be the countries that instituted the tribunal, as they are responsible for a distorted world order, a destabilized middle-east, and overall exploitation of the global south due to colonization and imperialistic policies.<sup>24</sup>

TWAIL is viewed as not only a revolutionary or political movement, but also an academic and cultural movement. It aims to address and reconstruct the image the Global North has relating to the Global South. The Global South cannot be continued to be viewed as backward, dirty, or barbaric as this is the image years of oppression has brought about, and thus needs reconstruction. In terms of organisation, TWAIL scholars have long argued against the thought that only a free-market, liberal, capitalistic world order can be sustained; it argues the protection

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<sup>22</sup> Mutua, Makau, and Antony Anghie. "What Is TWAIL.?" *Proceedings of the Annual Meeting (American Society of International Law)* 94 (2000): 31-40. Accessed November 15, 2020. <http://www.jstor.org/stable/25659346>.

<sup>23</sup> Justice Radhabhinod Pal, 'Dissenting Opinion of Justice Radhabhinod Pal' (1948) International Military Tribunal for the Far East

<sup>24</sup> Elizabeth S Kopelman, 'Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial' (1991) 23 NYU J Int'l L & Pol 373

of human values and lives are to be given precedence and priority over private property, and the very first inception of such a thought, can be argued, was seen in Justice Pal's dissent<sup>25</sup>

## Conclusion

Justice Pal was a unique figure in both, Indian and Global history. After his dissenting opinion wherein, he held all defendants non-guilty of all crimes, he attained an almost celebrity like figure in Japan, with even two shrines being constructed in his honour at the Yasukuni Shrine and the Kyoto Ryozen Gokoku Shrine. In the aftermath of his time in Japan, he served as India's first representative to the United Nations Law Commission and served there for over 14 years.

Justice Pal was India's first, and some might say, only significant International Law scholar; however, he found his standing on International Law from his deep knowledge of Hindu Law, wherein he analysed concepts such as *dharma* and *karma*, and applied it to situations he deemed unjust, such as the imposition of victor's justice to the defendants in the Tokyo Trial. He adhered by the strict principle of *nyaya* as is found in the Hindu Sacred Texts, and did not budge nor change his position amidst what one can only imagine would be tremendous social and political pressure.<sup>26</sup>

Is Justice Pal's without its flaws? Absolutely no. There are several flaws that one can see whilst analysing the dissenting opinion; perhaps the most evident one would be that it seems that Justice Pal, in his attempt to hold all defendants not-guilty, overlooked the serious and grave consequences of Japanese Imperialism and Colonisation and the impact it had on the landmark of East-Asian geo-politics. Furthermore, his critics argue that while Justice Pal argued against the imposition of Imperialistic and Colonial rule on dominion states, he gave very little insight into the alternative method of meeting out justice against the Axis forces in the Second World War.<sup>27</sup>

The reason TWAIL scholars find refuge or base their arguments on the basis of Justice Pal's dissent is because it was one of the first instance of challenging what in the future would be an almost unstoppable status-quo in the context of Global Geo-politics. Justice Pal challenged

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<sup>25</sup> Mutua, Makau, and Antony Anghie. "What Is TWAIL?" *Proceedings of the Annual Meeting (American Society of International Law)* 94 (2000): 31-40. Accessed November 15, 2020. <http://www.jstor.org/stable/25659346>.

<sup>26</sup> Nandy, Ashis. "The Other Within: The Strange Case of Radhabinod Pal's Judgment on Culpability." *New Literary History* 23, no. 1 (1992): 45-67. Accessed November 15, 2020. doi:10.2307/469157.

<sup>27</sup> K Ushimura (2007). Pal's "Dissentient Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion. *Japan Review*, (19), 215-223. Retrieved November 9, 2020, from <http://www.jstor.org/stable/25791314>

European Imperialism, and American military hegemony, and criticised them; even equating their actions equal to the actions of the Axis powers, although some scholars argue that was not his overall intention. Justice Pal's overall intention and warning, through his dissent was to convey that an International System cannot be sustained if the vast colonial legacy of the countries is brushed aside, and not addressed.<sup>28</sup>

On the topic of whether the International System needs revamping, on the basis of the analysis of Justice Pal's dissent, the author would answer in the affirmative. Justice Pal had argued that an International coalition or system cannot be sustained if it decides to ignore the history of oppressed nations and people, however, as has been seen by many instances, whether it be the lack of action of UN in stopping the Rwandan Genocide; or the apathy it has displayed in dealing with humanitarian crisis in Central Europe or the Middle East, the UN has failed to keep in check the imperialistic and hegemonic policies that had defined the period before the inception of the United Nations Organisation.

Furthermore, the existence of policies such as the r2p and the singular inclusion of P5 states in the UN Security Council is proof that domination of the Global North over the Global South still is a real problem that needs to be addressed.

Thus, Justice Radhabinod Pal's dissenting opinion's legacy is not only tied with the Tokyo Trial or the people of Japan, but rather it is significant for the inception of the Third World Perspective on International Relations, and its very critical future implementation.

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<sup>28</sup> Latha Varadarajan, 'The Trials Of Imperialism: Radhabinod Pal'S Dissent At The Tokyo Tribunal' (2014) 23 *European Journal of International Relations*.



## BIBLIOGRAPHY

### Research Journals and Articles –

- Elizabeth S Kopelman, 'Ideology and International Law: The Dissent of the Indian Justice at the Tokyo War Crimes Trial' (1991) 23 NYU J Int'l L & Pol 373
- Latha Varadarajan, 'The Trials Of Imperialism: Radhabinod Pal’S Dissent At The Tokyo Tribunal' (2014) 23 European Journal of International Relations.
- Milinda Banerjee, “Does International Criminal Justice Require A Sovereign? Historicising Radhabinod Pal’S Tokyo Judgment In Light Of His ‘Indian’ Legal Philosophy” (2017) 2 Torkel Opsahl Academic EPublisher..
- Mutua, Makau, and Antony Anghie. "What Is TWAIL?" *Proceedings of the Annual Meeting (American Society of International Law)* 94 (2000): 31-40. Accessed November 15, 2020. <http://www.jstor.org/stable/25659346>.
- Nandy, Ashis. "The Other Within: The Strange Case of Radhabinod Pal's Judgment on Culpability." *New Literary History* 23, no. 1 (1992): 45-67. Accessed November 15, 2020. doi:10.2307/469157.
- Ushimura (2007). Pal's "Dissentient Judgment" Reconsidered: Some Notes on Postwar Japan's Responses to the Opinion. *Japan Review*, (19), 215-223. Retrieved November 9, 2020, from <http://www.jstor.org/stable/25791314>

### Statutes –

- Charter for the INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST (1946)
- The Potsdam Declaration of 1946

### Decisions and Interviews –

- Justice Radhabinod Pal, ‘Dissenting Opinion of Justice Radhabinod Pal’ (1948) International Military Tribunal for the Far East
- Rolling, Question-and-Answer Period, in INTERNATIONAL SYMPOSIUM.