



# The Indian Journal for Research in Law and Management

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Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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## THE VICTOR'S TRIAL

### The precedent for the future

#### The Nuremburg Trial, foundation of International Law

***“The most significant tribute that power has ever given to Reason.”***

Trial, refers to a process where the accused is given a chance to prove himself as not guilty. But what really meant by trial is not just to provide the accused with the opportunity to prove himself as not guilty but it is also the duty of the trial holder to provide a free and fair trial.

Nuremberg trial is one such trials where a lot of questions were asked for the first time, of which some were answered and some are yet to be answered.

The world faced some of the most challenging questions that were raised through this trial. Nuremberg trial was one of the first trial that established the basis of International Law, UDHR, Human Rights. Nuremberg trial, deals with the trail that was faced by the High Ranked officials of Germany after WWII. Nuremberg trial happened in August 1945, at Nuremberg, in Palace of Justice. However, the foundation of trial was laid through the London Agreement by signing of the allied powers, deciding to establish the INTERNATIONAL MILITARY TRIBUNAL for deciding the trial.

As per the International Military tribunal section 6, the trial was divided in to four categories of crimes. Crimes against peace, War crimes, Crime against humanity, Conspiracy

There were total of 24 accused who were tried here at Nuremberg, Palace of Justice. Although this was not only Nuremberg trial that happened, there were total of 12 Nuremberg Trial that at different places related to other serious issues like Judges Trials, Doctors Trials.

***“Morality is not a necessary component of law”***

Although criticized by few, people challenged the legitimacy of the Nuremberg Trial. The Nuremberg Trial was held after the London agreement signed by the victors of the war, who decided to make International Military Tribunal to vanquish Germany. But how international laws can have any legal obligations without the consent of the country. How a higher law<sup>1</sup> can govern a sovereign nation without its consent. Does the allied powers had the jurisdiction to

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<sup>1</sup> International law

conduct that trial. The trial rejected the defense of superior order where as John Austine command theory, says it very clear that there should be one supreme authority who shall command and all individuals in the society must follow it. In Germany this is what happened, the sovereign gave command, which was backed by the sanctions. If the officers did not follow it, they would have been subject to the sanctions.

### Ex Post Facto

The defendants took defend of Nullum Crimen Sine Lege<sup>2</sup> Laws that criminalize the conduct that was legal when performed. The Germans had laws that were against the Jews when the war atrocities happened, according to the rule of land, it was legal. It is based on the principle that a man ought not to be punished for an act which was legal when he committed it. The trial used retrospective laws which according to law should be termed as unfair.

Law does not necessary be linked with morality. So according to that, even if Nazi had done Morally Reprehensible crimes, they could not be charged with Guilt because of one reason that MORALITY IS NOT NECESSARY COMPONENT OF LAW.

### Principle of Clean Hands

He who comes into Equity must come clean hand. Can any one of the Allied powers could say that they had not done any atrocities or have not violated the Human rights. If we could have compared the act of Germans with anyone, it would be the US dropping of fat man and Little Boy on Hiroshima and Nagasaki. Why there was no trial held for US, for their troops who followed the orders by their president. The Katyn Mascare, the notorious atrocity ordered by the president of the then USSR, where the Soviet Secret police shot and killed 22,000 soldiers among them, where 14,471 victims were from top polish army. Why soviet did not have any trial for that. Will this be the precedent the world has to follow, where the victors get the chance to be the judges while their own hand are of blood.

### “De Lege ferenda”<sup>3</sup>

Natural law can be best described as the foundation of IMAGO DEI<sup>4</sup>, can be termed as source of Law, pioneered by the St. Thomas Aquinas. He also introduced that the general principal of natural law is same for all, i.e. Do Good and Avoid Evil. But the questions here asked was is natural law always do Good, always supports morality. Nuremberg Trial used some of the Natural law principles to prove the accused guilty.

The prosecutors of Nuremberg argued that according to natural principles the laws already existed, there arguments were based De Lege Ferenda. The defense of Ex Post Facto was rejected by on an assumption that a man who has deliberately slaughtered Millions of his fellow men, ought to be entitled to raise such a plea. Also, it was argued that rights against the violation of the humanity is something that is there since many generations.

### Critics

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<sup>2</sup> No crime without war

<sup>3</sup> What ought to be law

<sup>4</sup> Image of God

The trial violated the most important element of natural law which is *Audi Alteram Partem* which means “listen to the other side,” in Nuremberg trial decision for execution were passed for people who were in *Absentia*, which means, without giving them a chance to be heard, they were executed.

Another principle of natural law which was challenged was *Nemo Judex in Causa Sua* which means, no one should be the Judge of their own case. There were judges from US, France, Soviet and Britain, no judges from German. How can they plead to be as victims and at the same time act as the judge of that same event. How can someone can say it is a fair decision.