



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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The Decline of Jury Trials in India

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Received 29 November 2021; Accepted 23 December 2021; Published 27 December 2021

Criminal trials in today's time mean a case being presented by two sets of lawyers – one from the state's side known as the prosecution and the other from the defendant's side known as the defense who try to argue the case with the facts and evidence and in the end the verdict is given the judge or a bench of judges, depending on case to case. But earlier and even today in some western countries the process of jury trial still exists wherein a set of common people are selected through a process and all the facts and evidence are presented in front of them in the courtroom and it is up to the jury to decide the fate of the case. Trials by jury have been heavily scrutinized in India especially after the very famous case of K.M. Nanavati, eventually leading to its abolishment in 1973. This paper will give an insight as to what jury trials mean, the first and last trials by the jury in India, the Nanavati case which led to the establishment of disadvantages of jury trials eventually leading to its downfall.

Keywords: *jury system, trials, criminal cases, bias.*

INTRODUCTION

Most of the common law countries used to practice trials by the jury but a lot of them have abolished it due to several reasons, one being the believed biasedness of the jurors towards either the prosecution or the defendant. The jury system is a western innovation and followed its way to India during the British Raj replacing the older version of the Panchayati decision-

making technique. If juries disagree when the evidence is sufficient to justify a conviction, the prosecution is seriously hampered. If they refuse to convict, all other efforts are rendered abortive. Hence, jury trials were sometimes seen as heavily ineffective and all of these defects eventually led to the abolishment of the Jury system in India. Historically, the start of jury trials can be traced back to the 8th century in Wales and the first case which was ever tried with this system had 12 jurors to decide on a verdict. By the 12th century, this system started to be followed by the whole nation of the United Kingdom and eventually it spread to a lot of countries, mostly following the common law. At the end of the 18th century, most of the common law countries were following the system of trials by the jury. In India, the first jury trial was held in Madras in the year 1665 and eventually a lot of countries, including India abolished the same.

THE PROCESS OF A JURY TRIAL

When the decision of whether the accused is guilty or not is taken by a group of jurors, the case is called to be a jury trial whereas if the verdict is being given by the judge it is called a bench trial. Jury Trials refer to a trial where members of the Jury after listening to all the arguments given by the prosecution and the defence in a case, analysing all the evidence and facts presented before them, deliberate among themselves and hence determine the guilt of an accused. Usually, general citizens from that district are called in who are applicable to take on the role of a juror, and the judge, as well as the advocates on both sides, cross-examine the potential candidates with questions to see whether they are capable of becoming a juror in that particular case or not. This process of choosing capable jurors for the purpose of the trial amongst the general public of the district is called *voir dire* which is a Latin term which means to speak the truth.

There are two types of Juries: **Grand Jury and Petit Jury**¹

¹ United States Court, 'Types of Jury' <<https://www.uscourts.gov/services-forms/jury-service/types-juries>> accessed 28 nOVember 2021

Grand Jury consists of 16-23 people who determine the probable cause against the accused and decide if the case should go for trial or not. It is not a matter of public record since the general public cannot see or listen to this. This group of people decides whether the person accused of the crime should be acquitted of the charge and should be released or whether proper legal proceedings should be taken against him and there should be a proper trial for the crime he has committed. Hence, a grand jury does not appear in the trial.

Petit Jury refers to the jurors who during a trial, listen to both sides of the arguments, analyse evidence and determine the guilt of the accused person. This trial is a matter of public record and a lot of the general public show up to watch the famous cases take place and eagerly wait for the verdict which is decided by the jury. The petit jury consists of 6-12 members. These trials are generally public but the deliberations between the jurors is a very private affair. A lot of countries do not have the concept of a grand jury and hence that role is fulfilled by a judge wherein the judge is obliged to determine the probable cause against the accused and decide whether the case should be taken up for a trial or not. Grand jury has never operated in India and hence it was always the judge's role to decide which case would go for trial and which accused should be let go of for reasons like lack of evidence etc.

The powers of the Petit Jury is limited just to look at the facts and evidence provided by both the prosecution and the defendant and to determine the guilt of the accused in the case and they hence do not have the power to determine the punishment which should be given to the perpetrator and the punishment is henceforth decided by the judges. The jurors have abundant power to decide the guilt of the accused and they are not bound by law per se, unlike judges. The concept of "Jury Nullification" or "Perverse Verdict" states that even if it occurs to the jurors that the accused is guilty according to the law, they may choose to acquit the accused because the law might seem unjust to them. Whereas, in a bench trial if a person is guilty according to the law, the judge who is bound by the law has to convict the person even if they feel like the law is unjust. If in a case there is a panel of even number of jurors and half of them conclude that the accused is guilty and half of them say otherwise, the whole trial is

dismissed, and this is called a hung jury. Another trial is conducted till a proper majority can be reached to the final decision determining the guilt of the accused.

There is a specific criterion for the selection of the panel of jury members for the specific case:

- The potential juror should be a citizen of the country.
- He/she must have attained the age of maturity.
- He/she can read, understand, and write in the official language of the country.
- He/she has not been previously convicted for any crime and has no criminal history.

Interested candidates are given a fourteen-day notice and they are expected to be presented in front of the court and the judge and advocates from both sides use the process of “voir dire’ to ask questions to the potential jurors to see their capability for this role. This jury-selected is only for one case and after the case is finished, this jury is dismissed. Mostly, it is common for criminal cases to be tried by jurors whereas civil cases are mostly decided by a bench trial by judges. Even in criminal cases, the accused has the right to opt for a bench trial instead of a jury one. In India, jury trials used to be followed only for serious criminal offences, and civil cases were always dealt with by judges in a bench trial. Even though there were more disadvantages to this system than advantages, it is important to understand the pros of the system of jury trials as well. Some of them are:

- The new perspective of every juror as in bench trials there will only be the perspective given by the judge whereas in jury trials there will be a lot of different opinions which might give new insights to the case and would help to determine the final decision.
- It reduces chances of connections between the judge and the advocates or the accused as in jury trial, the jurors are picked randomly after a heavy selection process so finding a nexus between anyone would be a rare occurrence.
- It ensures the participation of society and people can be made more aware of the laws and the crimes which go on in the society where they live, hence making the citizens more self-aware.

- Jury trials are a very democratic method if done right since the verdict is reached by giving a democratic vote and every juror's voice and opinion matters in the final decision which determines the guilt of the accused.

THE EVOLUTION OF JURY TRIALS IN INDIA

The first case of Jury trial in India was held in Madras in 1665 and it was for the murder of a slave girl, and the accused was her master Ascentia Dawes who was a British woman. The petit jury consisted of six Britishers and six Portuguese and the verdict came out to be in favor of the defendant in this case even though she was found guilty at first, due to the mentality of the crime, she was acquitted. Gradually, the jury system shifted to favor the British, ignoring the Indians' merciless persecution. The presidency towns during the British period which were Calcutta, Madras, and Bombay were used to promote jury trials mainly for Britishers, Europeans, and the privileged Indians, and these were held in "crown courts". The towns outside the presidency towns were called "mofussil" and they had several company courts without a jury and a judge used to preside over the matters of cases of local Indians. In 1860, during the British Raj, the Indian Penal Code was adopted and by 1861, The Code of Criminal Procedure was also passed by the British government in India. Under CrPc, it was obliged that the presidency towns will have their own criminal jury who will preside over the criminal cases of their respective jurisdictions and the rest of the towns had an option whether they wanted to opt for a jury trial or not which was based on the judge's discretion.

Section 274 of CrPC²,1861 stated that a Session Court will have a 3-member jury for the petty offences and Section 275 stated that a 9-member jury will be appointed for the serious offences to be tried in high courts.³ Since there was a high rate of illiteracy in India at that time, most of the potential jurors used to be foreigners including Britishers themselves or Europeans from different countries. Jury Trial was finally abolished in the 14th Report given by the Law Commission in 1958 which suggested an abolition based on the verdict getting affected by the biasedness of the panel of jurors in several cases. This biasedness often came because of being

² Code of Criminal Proceedings, 1861, s 274

³ Code of Criminal Proceedings, 1861, s 274, 275

affected by the media and getting influenced by public support, also the lack of illiteracy was giving a pathway to foreigners exploiting innocent Indians and often times falsely convicting them of crimes they didn't commit and hence Indians were getting heavily exploited by the judicial system in this way, hence it would have been very difficult to find actual potential jurors from India and also this method proved to be very time consuming and an expensive medium to conduct trials on.

The famous case of K.M. Nanavati paved the way for the downfall of jury trials in India because the judgement given in that trial was heavily based on the influence of media and public perception. But even after the fateful case, the Jury trial was still being practiced in some parts of the country especially West Bengal and in 1973 with the introduction of the Code of Criminal Procedure, 1973 Jury Trials were completely abolished. But still, to date, Jury trials have not been completely disbarred as according to the Parsi Marriage and Divorce Act, 1936 jury still operates in India to solve the divorce disputes in Parsi communities.⁴ The panel members who decide for a case in the Parsi community are called delegates and there are a total of 5 members in the panel who are selected. The members are appointed for a time duration of 10 years and are selected by the chief justice of the high court of that state. This jury system is essentially a combination of the American system of jury trials as well as the traditional Panchayati raj system which was followed in India.

The validity of Section 19 and Section 20 of Parsis' Marriage and Divorce Act, 1963 and the apex court held that these sections are constitutionally valid and practice of jury trials for the divorce dispute is the customary religious right of the Parsi community and the judiciary cannot interfere in such religious disputes pertaining to specific communities.

THE MOST FAMOUS JURY TRIAL CASE OF INDIA: K.M. NANAVATI VS. STATE OF MAHARASHTRA

KM Nanavati versus the State of Maharashtra was a 1959 Indian court case in which the accused was accused of killing his wife's boyfriend, Prem Ahuja. This case received a great

⁴ Parsi Marriage and Divorce Act, 1963

deal of media attention, and several books have been published about it. A jury found Nanavati not guilty at first, but the Bombay High Court overturned the conviction, and the case was retried as a bench trial. As a member of the naval forces, the accused was required to leave Bombay on a regular basis for work, leaving his family behind. As a result, Sylvia Nanavati, wife of K.M. Nanavati became lonely and began conversing with Prem Ahuja who was an automobile business owner, which grew into a good friendship over time.

However, their friendship turned into an unlawful connection, for which Sylvia Nanavati felt terrible. So she told her husband about her extramarital affair, which left Nanavati enraged and led to Ahuja's murder. Nanavati went to his ship and used a false excuse to steal a semi-automatic handgun and six rounds from the ship's shop. He then proceeded to Ahuja's house and shot him in the bedroom. He turned himself in to the police and was arrested under section 302 of the Indian Penal Code after doing such an act.⁵ Great biasedness from the media heavily affected the decision taken in this case which eventually led to the decline of the Jury system in India as well. The jury found Commander Nanavati not guilty under section 302, but the verdict was overturned by the Bombay High Court, and the case was retried as a bench trial. This was not, according to popular belief, India's final jury trial. Vijayalakshmi Pandit, Maharashtra's newly appointed Governor, and Prime Minister Jawaharlal Nehru's sister, ultimately pardoned Nanavati.⁶

THE FACTORS FOR THE DECLINE OF JURY TRIALS

Biasness and Partiality of the Jury: This was a major problem faced because of this system during the British raj in India since a lot of the jurors were biased towards their own as well as the privileged Indians and hence they would aid in the further persecution of the already oppressed lower-class Indians by falsely convicting them of crimes they did not commit.⁷

⁵ Indian Penal Code, 1860, s 302

⁶K. M. *Nanavati v State Of Maharashtra* 1962 AIR 605

⁷Diva Rai, 'The Jury System In India And Its Decline' (*Ipleaders*, 07 November 2021)

<<https://blog.ipleaders.in/the-jury-system-in-india-and-its-decline/>> accessed 28 November 2021

Threats and Bribery: The jurors are bought by the more affluent party and are also threatened to vote against their own will which leads to injustice because the verdict has been tampered with. The jurors often greedy get tempted by a large amount of money or sometimes even because of fear of their own life are compelled to give the verdict according to wishes of the more influential party and hence again leading to injustice by the judiciary.

Influence of Media and Public Perception: Media in today's times can influence the minds of people very well and a lot of times jurors who tend to indulge in the perception of media and the outside world cannot form their opinions and cannot go through the facts of the case objectively or analyze the evidence presented in the courtroom properly because of the bias which they have already created inside their head because of emotional attachment and overconsumption of media which again might lead to them giving a wrong verdict.

CONCLUSION

In India, the use of a jury trial was a Western invention that was implemented for a long time. Although widely accepted in the country, this method sparked a slew of debates because it fell short of its goal of delivering fair justice because of a lot of factors.⁸ Even though the literacy rate in India at the present moment is much better, reinstating the Jury system to decide on cases would not be a good idea since this trial system is an extremely time consuming and prolonged process and in a country like India where there are thousands of pending cases every year, it would not be feasible for the jury system to operate here. Also, the trials by jury are an expensive affair which a developing country like India might not be able to afford.

⁸JURY SYSTEM IN INDIA' (*Advocatespedia*, 11 August 2021)

<https://advocatespedia.com/JURY_SYSTEM_IN_INDIA> accessed 28 November 2021