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Origin and Growth of the Jury System in India

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A jury is a panel of people (jurors) that the court has called to give an objective verdict (a factual finding regarding a subject) or to inflict a penalty or judgement. Every jury member has sworn to uphold the law. The Anglo common law legal system is founded on the jury system that was created in England during the middle ages. This is an article based on how the jury system evolved in India and how it worked. Later, the downfall of the jury system is also discussed with relevant cases. The system of jury originated in the United Kingdom, Athens, Egypt, Italy, and Greece. Colonial expansion played a crucial impact in the global growth of the jury system during the 18th and 19th centuries. There are 2 types of juries: criminal jury and civil jury. As the name suggests, the civil cases were heard by the civil jury and the criminal cases were heard by the criminal jury. There are also 2 relevant cases in regard to this topic.

Keywords: *jury, trial, panel, verdict, group.*

INTRODUCTION

The use of a jury system during trials is not new in India; it was used here until 1973 when the British were still in power. Before the British came to power, the original Panchayati Raj system was supplanted by a jury system, which was more of a foreign invention. Juries were made up of a group of persons, usually, 12, who was charged with making decisions based on the evidence and testimony presented to them. However, such a system was troubled by difficulties,

which eventually contributed to the demise of the jury system around the world, not only in India.

The jury system is made up of a group of people who are legal experts and who are entrusted with rendering a decision after hearing relevant evidence and facts in a case trial. In this method, the judge briefs the jury on the pertinent legal principles in a particular case, and the jury is then required to consider those principles considering the evidence and render a conclusion. Although the legislation permitted up to two jurors to be dismissed throughout the course of the trial, a court hearing always consisted of 12 jurors. The panel adjourns for deliberation after hearing the testimony and, frequently, receiving grand jury testimony from the judge. The number of votes needed to reach a decision varies. In some situations, it must be unanimous, but in others, a majority or supermajority may suffice. The term "hung jury" refers to a jury that is unable to reach a decision.

ABOUT THE JURY SYSTEM

A jury is a group of individuals (jurors) summoned by the court to render an unbiased verdict (a factual result about a subject) or to impose a punishment or judgement. Each juror has sworn to follow the law. The jury system that was established in England during the Middle Ages provides the basis for the Anglo common law legal system. They are still widely employed in nations like Canada, Australia, the United Kingdom, the United States of America, and other nations with legal systems based on English legal traditions.

The Jury is made up of twelve unbiased individuals who are chosen from among their fellow citizens on a temporary basis, and the judge is in charge of the proceedings. They would also have to take an oath next to the bishop to tell us the truth about a specific subject. Their main task is to determine whether the accused is guilty or innocent in civil cases by a "unanimous" verdict, in criminal trials, a general finding of "guilty" or "not guilty" is used to determine the accused's guilt or innocence. Twelve-person "petit juries" make up the bulk of trial juries. Grand juries, which were used to look into potential crimes and issue charges against suspects, have been abolished in all common law nations with the exception of the United States and Liberia. The old English system of the jury was the ancestor of the jury system used today in criminal

courts. It was expected of the participants to first learn about atrocities and then the details of such crimes. As a result, rather than serving as a jury in a case, they served more like a grand jury.

Originally, the jury was constituted of 12 members and was needed to attain a brief ruling. Some changes have occurred throughout time. In small or petty prosecutions of crime, jurisdictions allowed six jury members. In civil matters, federal courts used to have a six-person jury, and also many jurisdictions allow for decisions that aren't unanimous. When the said number of jurors or jury cannot agree on a decision (known in the United States as a hung jury), the court declares a mistrial, which means the case must be tried again unless it is dropped. Surprisingly, even when unanimity is essential, hung juries occur infrequently. In Europe, juries often follow a separate set of rules. Though at least two-thirds of the jurors vote guilty, the defendant must be found not guilty on all counts.

The use of a jury system during trials is not new in India; it was used here until 1973 when the British were still in power. Before the British came to power, the original Panchayati Raj system was supplanted by a jury system, which was more of a western innovation. Juries were made up of a group of persons, usually, 12, who was charged with making decisions based on the evidence and testimony presented to them. However, such a system was beset with controversies, leading to the demise of the jury system not just in India, but also globally.[1]

BASIC CONCEPT OF THE JURY SYSTEM

As was earlier stated, the jury system is composed of a group of individuals who are legal professionals and who are responsible for rendering a decision based on the presentation of significant data and evidence in a case trial. In this method, the judge tells the jury of the pertinent legal principles in a case specifically, and the jury is then required to consider those principles in the context of the evidence and render a verdict. Although the law permitted up to two jurors to be dismissed along the course of the trial, a criminal trial all had 12 jurors.

[1] Soubhratra Bhattacharjee, 'The Jury System in India and its decline' (*iPleaders*, 7 November 2021) <https://blog.ipleaders.in/the-jury-system-in-india-and-its-decline/> accessed 10 November 2022

Underneath the direction of a judge, a court hearing is held. It is a complicated method for dividing power between such a judge and a jury. Under the law of evidence, the judge first determines what the jury may or may not examine. Second, if the judge determines that the evidence which is present in the court, leaves no actual issue for the jury to decide, he may order the jury to release a defendant or, in a civil trial, decide for either plaintiff or defendant; however, in a criminal prosecution, he cannot order a guilty result. Third, the judge might, and frequently does, summarize the information or even debate its significance in some jurisdictions. Fourth, the judge informs the jury on how to reach a decision based on the law. Lastly, if the judge judges the jury's decision to be obviously contrary to the strength of the concrete evidence, he may put it on hold and order a new hearing, with one limitation. The sole limitation is when the jury returns a verdict in a criminal case; in Anglo-American law (but not European region law), the jury's verdict is always final.

The jury usually returns a generic judgment (a "yes" or "no" answer to the question of liability or guilt) with no explanation. Nevertheless, courts have used "special verdicts" or "special interrogatories" in the past, wherein the jurors were expected to vote on a number of specific factual matters that had an impact on the overall result. A Judge and a Jury, on the other hand, cannot be compared. A judge is a person who is in charge of presiding over a case, whereas a jury is a group of persons who have sworn in to render a judgement in a case that has been presented to them by the court. A jury trial is preferable, especially in the United States, since counsel can utilise emotive arguments to sway the jurors. Ironically, this is also one of the reasons for the decrease in jury trials around the world, including in the United States, because jurors are frequently biased and partial.[2]

ORIGIN OF THE JURY SYSTEM

The system of jury originated in the United Kingdom, Athens, Egypt, Italy, and Greece. Colonial expansion played a crucial impact in the global growth of the jury system during the 18th and 19th centuries. Regardless of the colonial impact, judicial systems around the world operate in their own unique ways. The facts, the accuracy of the testimony, the guilt or innocence of

[2] *Ibid*

criminal defendants, and the liabilities of civil defendants are all examined and decided by jurors in a jury trial. The United Kingdom, Canada, the United States, Australia, Brazil, Germany, France, South Korea, and Japan are among the countries that use this system.[3]

The history of the jury is a topic of discussion. It might have been a native of the UK or was introduced there by the Norman conquistadors in 1066. Originally, the jury was composed of regular residents who decided cases based on their actual knowledge. The jury's role changed as a result of the urbanisation of society and the demise of medieval civilization; it was now expected to reach a verdict on the evidence presented in court. The common law was founded and the country's courts were centralised under the king thanks in large part to the jury's participation in the king's courts.[4] Non-rational ways of trials, just like torture, where, the defendant was exposed to various abuse and torture, were substituted by the trial of the jury in the 15th century that became the standard method of court hearing for both civil and criminal disputes at common law.

The jury was extended outside of England by two troops. The British Empire's growth took the jury to the American continent, Africa, and Asia while the French Revolution as well as its consequences introduced the jury to Europe as a sign of democratic government. The jury was initially created in France, then Belgium and Rhineland, and lastly in the remaining parts of the German empire, Russia, the Hungarian empire, Switzerland, Italy, and Holland, owing to Napoleon. But, after Napoleon's defeat, the remaining two countries repealed it. The jury was only used in big crimes and political crimes against the state proceedings in each of these countries.

ORIGIN OF THE JURY SYSTEM IN INDIA

The East India Company Charter of 1661 provided for a jury trial for European colonizers, while native Bengal Presidency citizens were subjected to competent jurisdiction by the Collector, or *Zamindar*, an English officer with the ability to enforce punishments such as beating and death.

[3] 'The Jury System' (*Law Teacher*, 21 September 2021) <https://www.lawteacher.net/free-law-essays/criminal-law/the-jury-system.php> accessed 12 November 2022

[4] 'Size and Unanimity' (*Britannica*) <https://www.britannica.com/topic/jury/Size-and-unanimity> accessed 12 November 2022

Although the universal trial of jury first came in India in 1774, Bengal already had well-developed Islamic and native justice systems. In order to respond to European requests for jury trials, some effort had to be made to capitalize on the validity of these proceedings. In most cases, European judges had limited comprehension of local traditions or cultures and relied on the authority of local religious authorities, primarily Moslem Imams, to verify their *Fatwa* judgments. A fatwa is an official ruling or explanation of Islamic law made by a recognised legal expert (known as a mufti). Fatwas are frequently requested by people or Islamic courts, and they are frequently awarded in return. Even though they are respected authorities, fatwas are typically not regarded as final decisions; applicants who find a fatwa to be unacceptable are entitled to seek a different viewpoint. As a result, the 1774 act limited jury trials to the administrative city of Calcutta, the heart of British power, and it was not until 1832 that there was enough trust to extend this to the rest of Bengal, even in a weakened version.[5]

Bengal Regulation VI, issued that year by Lord Bentinck, is significant because it established imperial doctrine on criminal trials not just in India, but as well as in British Africa and other territories across the world. It was no longer necessary for a Fatwa to confirm an East India Company court's verdict. The statute allowed European judges to depend on three different types of lay aid of their choice. The first was the establishment of a Panchayat (custom assembly of five appointed counsellors), and the other was the nomination of two "local" evaluators (usually local social or spiritual leaders) to sit alongside the judge. The last option was to appoint an undefined number or composition of the jury. The judge had complete discretion over the process to be followed in each case, and he might dismiss a jury or other advisers' verdict at any time.[6]

Several failed attempts to create a more regular kind of jury trial were made in order to induce European British subjects to recognize the District Courts' jurisdiction. Finally, the Legislative Council adopted a basic structure of jury trial in Sessions Courts across Bengal in 1861, but only with the agreement of the State Government, which would determine the kind of offences that

[5] Richard Vogler, 'The international development of the jury : the role of the British empire' (2001) 72 <https://www.cairn.info/revue-internationale-de-droit-penal-2001-1-page-525.htm> accessed 10 November 2022
[6] *Ibid*

might qualify. This allowed the courts to grant Europeans a jury trial in the Calcutta Supreme Court for major crimes while refusing Indians the same opportunity. The Indian Criminal Procedure Code of 1882 reaffirmed this position. Even after Act XII of 1923 put all suspects, regardless of race, on an equal basis, anyone charged with a severe crime that resulted in a conflict between a European British subject and an Indian British subject could demand a jury trial before a panel made up of a majority of their own ethnic background.

TRIAL BY JURY IN INDIA

In India, jury trials arose as a result of British control. The Panchayat raj system was widely used by Indians in their communities, although it was not the same as a jury trial. Initially, the East India Company abstained from imposing English law's jury system. The jury system was established in a dual system of courts by the Britishers:

- The trial by jury was instituted in the Presidency Towns of Calcutta, Bombay, and Madras. For criminal proceedings, enforcing the jury system was required, but there was no such requirement for civil matters. A jury tried the Europeans, British, and, in some cases, Indians.
- There was no requirement to implement jury trials in Mofussils, the districts beyond the Presidency Towns. Company Courts were established, and Company executives adjudicated over native-related cases. Mofussil refers to any rural area or any rural district. For Britishers, the area outside of three East India Company capitals Madras, Bombay, and Calcutta.

The introduction of the Indian Penal Code[7] in 1860 and the Indian Code of Criminal Procedure in 1861 coincided with the establishment of the Crown Raj in 1858. Trial by jury in criminal proceedings was now required in High Courts for Presidency Towns, although it was optional for Moffussils. The majority rule was used to determine whether the defendant should be acquitted or convicted. It stated that the conclusion reached by the majority will take precedence. The jury size was supposed to be between five and nine. Later, a Code was enacted that

[7] Indian Penal Code 1860

stipulated that the number of jurors be three for minor offences and between three and nine for serious offences[8].

A judge determines both the matter of responsibility and the number of damages in civil disputes. The jury's role in criminal proceedings has always been limited to assuming guilt, with punishment being left to the judges. In other states, however, the jury also decides the penalty within a defined legal range. In all jurisdictions which have preserved the death penalty, if a jury finds a person guilty of a capital offence, the jury decides or at least expresses an opinion on whether the death sentence should be inflicted. Several jurisdictions make the decisions on conviction and punishments at the same time, whereas others use a so-called retrial after a guilty verdict in capital cases. The jury then decides the sentence based on the pleas and evidence provided for and against the imposition of the death penalty in the second phase[9].

TYPES OF JURIES

Civil Jury: As such an English legal body, we may explore the roots of the jury in civil proceedings back to Henry II's laws, which allowed groups of neighbours to be called to settle disputes of land ownership or occupation. The Grand Assize, which was created in real life as a replacement to a war trial about the year 1170 by a Council at Windsor, was used in matters of possession. The Petty or Possessory Assizes, which were introduced in 1166, dealt with matters of dispossession.[10]

In deciding cases of land possession or ownership, Henry II made two significant improvements. The first of these changes was implemented through a series of Assizes termed as Petty or Possessory Assizes. The regulations stated that the Chancellor must issue a writ to the Sheriff of the County wherein the land in question was located, directing him to call twelve lawful men to provide a judgment to the judges when they arrived in the county to take the Assize. This ruling was in response to a question posed in the writ, which asked the Assize to

[8] *Ibid*
[9] Size and Unanimity (n 4)
[10] 'Types of Juries' (*Courtroom Figures*, 04 June 2020) <https://azcourthelp.org/topics/in-the-courthouse/courtroom-figures/109-jury-types> accessed 14 November 2022

determine if the contested property had been wrongfully seized. The Grand Assize was the second reform, which had a more complex nature and served as an alternative to "trial by war."

The following were the distinctions between the Petty and Grand Assizes: first, the Petty Assizes only brought up the issue of recent land theft, whereas the Grand Assize was originally meant to settle the question of the genuine owner or land rights in dispute; second, the writ set to begin the court hearing by way of Petty Assizes was the writ set to begin the action; and third, the Grand Assize was only accessible after a writ of right had issued; and finally, the Grand As On a Grand Assize, the Sheriff of the county where the land was located would issue a writ summoning four knights to elect twelve more.

Criminal jury: The concept of the petty jury dates to the 13th and early 14th centuries. It was a mode of trial that replaced the ancient ordeals that were once common when the Lateran Council prohibited the clergy from assisting people. "*The Assizes of Clarendon and Northampton provided that twelve lawful men of every Hundred must present the crimes of which they knew or had heard. They did not speak of their own knowledge but of what was reputed in their neighborhood. This was a really modern Grand Jury*."

The grand jury derives from the jury of presentations scheduled for Clarendon assizes, 1166, and Northampton assizes, 1176, to present serious criminal charges or indictments. The original Grand Jury's mission was to draw the attention of judges in criminal cases that justice could be done after proving guilt and not delivering a verdict on the charge. The grand jury hears the testimony in private and, if satisfied that a trial is warranted, they refer the case to a small jury on indictment. The Grand Jury was abolished in 1933 by the Judicial Administration Act. The small jury only decides if the defendant is actually guilty of the alleged conduct.[11]

"The King could not fight, so after the abolition of Ordeal, there was no suitable proof for graver crimes apart from trial by battle in the case of 'private prosecution' by way of the appeal of a felony. As such the judges sought to persuade the alleged criminal to put himself on the county, i.e., to abide by the decision of twelve of his neighbors. At first, the judges were inclined to

[11] *Ibid*

compel the accused to go to trial by jury, but later this gave place to an alternative of either such trial or the peine forte et dure."

Peine Forte et Dure: - No one can be judged by the Jury disagree to be assessed as such. So, Edward III legalized torture as described in the Yearbooks. "What can we force him to agree, can we starve him so he agrees? We can speed up slowly the act of starving him by leaving him naked on the ground dungeon and piling weights on his chest until he said he will acknowledge the judgment of his colleagues. In 1772, this cruelty of the "strong and tough sentence" was replaced with a guilty plea.

CASES

- *Mrs. Ascentia Dawes's case*

The earliest case heard by an English jury date back to 1665, when a woman named Ascentia Dawes was charged with killing her Indian slave. She was found guilty by a jury of six British and six Portuguese, but she was exonerated because of the "severity" of the crime. Jury trials progressively turned into a prejudiced system, frequently siding with the British while tolerating extreme abuse and exploitation of Indians[12].

- *K.M. Nanavati v State of Maharashtra*[13]

This case includes Kavas Manekshaw Nanavati, a navy officer who was convicted for the killing of his wife's boyfriend, Mr. Prem Ahuja. That is one of India's landmark cases that has gained extraordinary media attention. Nanavati was initially found not guilty, but the verdict was overturned on appeal by the Bombay High Court, and the case was retried as a bench trial. This was the final case in India to be heard as a jury trial, as the government abolished jury trials as a result of this case.

[12] Parul Agrawal, 'The Case that Inspired 'Rustom' and Abolished India's Jury System' (*The Quint*, 12 August 2016) <https://www.thequint.com/entertainment/the-case-that-inspired-rustom-and-abolished-indias-jury-system#read-more> accessed 10 November 2022

[13] *K.M. Nanavati v State of Maharashtra* (1962) Supp (1) SCR 567

DECLINE OF THE JURY SYSTEM IN INDIA

Bias and partiality are two major factors that have contributed to the deterioration of the jury system in India and across the world. In such instances, the jury is more likely to rule in support of one party over another, regardless of the relevance of the facts and evidence presented to them. These things can arise owing to the majority of the jury's biases, the emotional bond between the jury and the details of the case, threats or bribes from either party pressuring the members to make a judgement for their benefit, or political and media pressure. Factors that led to the jury's decline are:

1. Jury's biasness.
2. Emotional bond.
3. Bribe and threat offered by a party.

CONCLUSION

The Jury system has its origin in countries like the United Kingdom, Egypt, Italy, etc. The colonial expansion helped the Jury system reach different heights. The jury system is comprised of a group of specialists in law who are charged with making a judgement after hearing pertinent facts and evidence in a case trial. In India, before the Jury system, legal disputes used to be resolved by the Panchayati Raj system where the elected officials known as 'Panchayats' had powers to investigate the matter and give judgement. In India, the Jury system became an essential part but only until 1973. Because of the biasness of the Jury system, Indians were deprived of justice. K.M. Nanavati vs State of Maharashtra was the last case in India. We can observe the decline of the Jury system not only in India but also around the globe. There are many reasons for the decline of the Jury system such as emerging legal remedies that are being established. Thus, the new Criminal Procedure Code of 1973 was capable of successfully replacing the jury system in India after around 30 years of post-independence.