

CULMINATION OF JURY TRIALS: A CLOSER LOOK

Written by Archit Chakravorty* & Ananya Sharma**

* 2nd Year BBA LLB Student, National Law University Odisha

** 2nd Year BBA LLB Student, National Law University Odisha

Abstract

Trial by Jury in India was a western innovation and was carried out for a significant period. This practice, though accepted in the country, gave rise to various controversies as it failed in fulfilling its purpose of administering justice impartially. Through this paper, the authors have provided a detailed description of the abolition of jury trial system that prevailed in India until late 1960s. To corroborate the author's stance, they have emphasized on the inefficiency of the jury trial referring to numerous infamous cases. The paper also elucidates the reasons furnished by the 14th Law Commission Report that clearly pointed out at the failure of the jury trial system and thus, recommended its abolition. While discussing about the cases which proved that jury trial defeated the entire purpose of delivering justice, special emphasis has been given on the case of *KM Nanavati v State of Maharashtra*. This case hogged the limelight during the trials as it highlighted the discrepancies in the system of jury trial and inflicted a major blow at its roots. The Nanavati case, because of its significant impact on the legal system, is mistakenly termed as the last case where jury trial was practiced. Through this research work, the authors thus aim to clear this misconception and bring to everyone's notice the subsequent instances where jury decided the matter. Furthermore, the paper provides a concrete timeline of all the events that followed the Nanavati case and finally led to the abolition of jury trial system in India. In addition to this, the authors have thrown light on the changes incorporated in the procedural laws following the said abolition. Thus, a chronology of events has been presented starting from the advent of jury trial system to its miserable failure and finally, its abolition which brought about landmark changes in our legal system.

CULMINATION OF JURY TRIALS: A CLOSER LOOK

Introduction

In his writing, YOUNG INDIA, Mahatma Gandhi expressed his dissatisfaction with regard to the trial by jury. He stated,

“I am unconvinced of the advantages of jury trials over those by judges. I have known juries finding prisoners guilty in the face of no evidence and even judges summing up to the contrary. We must not slavishly copy all that is English. In matters where absolute impartiality, calmness and ability to sift evidence and understand human nature are required, we may not replace trained judges by untrained men brought together by chance. What we must aim at is an incorruptible impartial and able judiciary right from the bottom.”ⁱ

In the following paper, the authors shall venture about the demerits of the jury trial system and its inefficiency in handling cases and delivering justice. Although, the jury was instituted with an intention to dispense justice in its purest and simplest form, it gradually lost its significance due to the lack of legal knowledge of the jury members. The jury system finally was abolished after 1960s where the jury’s verdict was questioned for being influenced by media and the Parsi community. It goes without saying, that the then infamous Nanavati case did have an influence in setting the dice rolling for abolishing the Jury Trial system prevalent in India at the time.

The authors shall first discuss about the history of jury trials and how the British introduced it. Then, shall move on to some of the cases where jury trial proved to be a futile practice. Goes without saying, that it was just an eyewash under the colonial British regime.

The authors shall then discuss about the Report of the 14th Law Commission that suggested abolishing jury trials. Finally, the authors discuss about the famous Nanavati case in detail to arrive at a well-informed conclusion.

Trial by Jury is hardly supported by lawyers these days. “Almost its only consoling feature is the thoroughness of its decline.”ⁱⁱⁱ Even in 1950s, in other countries, the jury trial was being replaced by various other criminal courts and had gone to an extent that hardly any percentage of criminal cases were being tried by juries.

Evolution Of The Jury Trial System In India

Jury is a body consisting of a group of people selected as per law who have been given the authority to decide the questions of the fact and give a verdict in the case being tried after examining the evidences and witnesses by exercising reason in accordance with the instructions and rules of law as informed by the judge. The jury was to decide criminal cases against English, Europeans and sometimes Indians. The areas or territories outside the Presidency Towns were called “moffussils” which mostly dealt with the cases of indigenous / native people.

But the jury had no right to decide on the punishment the convicted person would be awarded. The Trial by Jury of capital crimes committed by the servants of the East India Company was implemented by an Ordinance of King James 1 dated 1623/4 and generally criminal cases were tried by the Jury even as a part of the original jurisdiction of the Supreme Court established in Calcutta.

No attempt was made to introduce jury trials for civil cases so it remained restricted to criminal cases. The Jury usually consisted of 12 members who were primarily Englishmen but subject to change based on the parties of the suit. Later with the advent of the East India Company, the Jury System was implemented inside a dual system of courts that included the Presidency Towns of Calcutta, Bombay and Madras with Calcutta having the Supreme Court established in under the Act of 1773; and the other Moffussil areas. It was in the year 1834 that when Lord Macaulay arrived in India, he decided to strike down the unequal system prevailing in India especially considering the cases of violence committed by colonizers on domestic people. End of the Company’s powers in 1858 after the First War of Independence led to the establishment of Crown Government in India followed by adoption of Indian Penal Code and Criminal Procedure Code. Now the Criminal Jury was obligatory only in the High Courts of the

Presidency Towns and in other towns, it was optional. Finally in 1861 all the local acts governing criminal justice were amalgamated and this gave birth to the Criminal Procedure Code 1861. Chapter XXIII of the Code laid down the provisions with regards to Juries and Assessors in India. The Code of 1861 further laid down that the local government had the power to order an offence to be tried by the Jury and if required could also revoke or alter such orders.ⁱⁱⁱ

The Code further elucidated on how the jury was to be constituted stating that criminal trials involving Europeans or Americans as the accused persons allowed to accused to be tried by a jury consisting of at least one half European or American.^{iv} The jury before a Court of Session was supposed to consist of an uneven number not being less than 5 and not more than 9.^v

The decision for conviction or acquittal was taken following the Rule of Superior Majority which means that the decision taken by the majority of the members present in a jury shall prevail.^{vi} Thereafter the Code of 1861 was amended and the limit for least number of members in a jury was reduced to 3.^{vii}

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A further Code was laid down in 1882 which fixed the number of members in a jury to 3 for petty offences^{viii} specially brought before Sessions Courts and the maximum number of members to 9 for severe/grave offences^{ix} usually brought before the High Courts. It was evident in that period, that the White Jury gave wrong verdicts in cases pertaining to Murder, Assault, Confinement of Indians and many more. Eventually in 1950, the jury was not given an important place in the Indian Constitution and in 1958, the Law Commission Report recommended its abolition.

Failure Of Jury Trial During The British Era

Failure of the Jury Trial System can be sensed from the very first case in 1665 decided by an English Jury in Madras. The case revolved around Mrs. Ascentia Dawes, a British woman who

was accused by a grand jury with the charge of murder of her slave girl. But unfortunately, later, a smaller jury consisting of six Englishmen and six Portuguese Men found her not guilty and thus she was acquitted. The verdict of this case narrates the inefficiency of the Jury and was thus termed as a biased institution that favoured British people and went to the extent of acquitting people who used extreme violence against the native people.

Another case of jury trial is *Abdul Rahim v. The King Emperor* decided on February 26, 1946 by a Board which found out that the Jury which was trying the case had allowed and accepted inadmissible evidence. In addition, it was also found out that there had been serious instances of misdirection and non-direction of a jury, to proceed itself to consider the evidence, and maintain a conviction if the evidence is sufficient.^x

The third case of *Ramanugrah Singh v. The King Emperor*^{xi} which was decided on 18th June 1946 by Lords Thankerton, Porter, du Parc, Sir Madhavan Nair and Sir John Beaumont, further accentuated the discrepancies in Jury Trials. The aforementioned case dealt with three men who were shot out of which two were wounded and only one died. The Jury here declared that the accused that shot the men would be liable only for the injury of the two men who survived and not for the murder of the third man.^{xii} The Judge presiding over this case disagreed with the decision of the Jury on the murder case and referred it to the High Court. The Judge stated that the verdict of the Jury was contradictory as according to him the verdict of culpable homicide not amounting to murder would be apt.

Reasons Given By 14th Law Commission For Abolition Of Jury Trial System In India

According to the 14th Report of Law Commission, the response by people as recorded as per the questionnaire prepared was in favour of the abolition of the jury trial system in India. Only a couple of witnesses were in favour of its continuance.

The report further states that section 267, 268 and 269 of the Criminal Procedure Code gives the details on the right to trial by jury. Section 267 makes a special mention of all the trials of High Court to be tried by a jury. Hence, trial by jury was considered mandatory in the criminal cases to be tried before the High Courts of Madras, Bombay and Calcutta (also known as the Presidency Towns). Section 268^{xiii} states that apart from the Presidency Towns, the trials before

a Court of Session shall be tried by either by jury or a judge alone^{xiv} and subsequently Section 269^{xv} allows the State Government to notify in the Official Gazette the cases which are to tried by jury and can later also alter it.

The Report mentions that Section 269 of Cr.PC also brought certain areas of Madras and Bombay under the trial by jury but the working of the system proved to be unsatisfactory, thus for several years past, the system discontinued outside Presidency Towns. The System of Trial by Jury did not exist in States of Andhra Pradesh, Assam, Orissa, Kerala, Punjab, Rajasthan and Uttar Pradesh.^{xvi} The Law Commission considering the malfunction of the jury and the maladministration of justice by it in criminal cases laid down a number of reasons recommending abolition of trial by jury and they are:

Limited Prevalence Of Jury:

As per the survey conducted by Law Commission of India, it was evident that the prevalence and extent of the jury system was absent in a large part of the country and its application even in places where it was adopted was constrained. It seemed that though jury trial was introduced in certain parts of the country a hundred years back, it did not become a very prominent feature in the administration of Criminal Justice.

Jury Trial Not A Constitutional Right:

The statutory right to trial by jury was mainly imposed on the Presidency Towns and depended completely on the Government of Provinces or States of different parts of the country regarding the offences that shall be tried by jury. The report makes a mention that even in 1950 when constitution was being contemplated; Right to Trial by Jury was not conferred on the citizen as a Fundamental Right.^{xvii}

Jury Trial In England Declined:

The extent to which jury trial existed in India in 1950s was a transplantation of the practice prevailing in England, which could not mark its establishment in India. Even in England, from where jury trial emerged, has most of its criminal cases tried without a jury these days. Summary cases are not tried by the Jury. These days most of the cases were tried summarily by the Magistrates and the accused could ask for Trial by Jury only in cases of extremely grave offences.^{xviii}

Rights Of Appeals In Jury Cases Restricted:

An accused convicted by the Sessions Court on trial by Jury had only limited right to appeal. This allowed appeal based on matter of fact as well as matter of law but barred appeals on questions of the fact because in that case the Court of Appeal would have to decide whether the verdict is flawed and if there has been misdirection by a judge or misunderstanding on the part of the jury.^{xix} In fact, Section 537 of the Cr.PC states that no verdict given by a competent court shall be reversed or altered merely on the ground of misdirection in-charge of the jury unless it leads to failure of justice. Contrary to such restrictions of appeal, if a person is tried without a jury he shall have a full appeal available.

Jury Trials Are Time Consuming:

The Report pointed out that the trial by jury was invariably more time consuming as compared to the trial by a single judge. In case of jury trial, the cases were to be conducted at a slower pace for the jury members to understand the facts and evidences of the case. Moreover the Counsel was to place his arguments in a way such that the facts of the case and law becomes simpler and clearer for the jury members to comprehend. Further the case was to be summed up by the judge to the jury and this summing up had to be carefully drawn and in some cases was to be written in advance as well as read out to the jury.^{xx} The entire procedure made the jury trial system extremely tedious and time consuming. Moreover, it is needless to state that greater amount of time taken increased the expense of the State.

Lack Of Professional Jurors:

The Bihar Committee stated that people made it a lucrative profession to get themselves selected as jurors for the sake of remuneration and illegal gratification, which they expected.^{xxi} Hence, fair trial was not possible. The Bombay Government too seemed to encounter difficulty in this system, as it was very difficult to find the correct jurors who would not be affected by extra judicial considerations and would be honest enough to deliver correct judgements. These factors including the expense caused by delay coaxed the State Government to abolish jury trial system outside Greater Bombay.

Evidence Against Evil Of Jury Trial System:

The report mentions that the witnesses who gave evidence before the commission highlighted the evil of unscrupulous professional jurors. Thus, it was evident that the trial by jury made a mockery of the entire legal system and administration of criminal justice. The judges and lawyers openly stated that the working of the jury in dispensing justice was unsatisfactory. Even the Presidency Towns of Bombay, Madras and Calcutta favoured its abolition. The trial by jury in practical life turned out to be very disappointing and even led to miscarriage of justice.^{xxii} The unsatisfactory manner in which the system was working was notorious and the people involved in it were well aware of the numerous cases of miscarriage of justice in the administration of criminal justice throughout the country.^{xxiii}

Thus because of the aforementioned reasons the 14th Law Commission recommended the abolition of the jury system in India.

K.M. Nanavati vs State Of Maharashtra***Case Analysis: Shortcomings Of The Jury***

In this case, we saw the utter failure and flaws of the system of jury trials. If it had been for the jury, Nanavati would have been acquitted and would have been walking the streets as a free

man. However, we also see how the judgment of the Supreme Court is absolutely the reverse of the jury.

Members of the jury are members of the society who may or may not be informed about the legal profession or the intricacies of the law. Depending on such people for the offences like murder is risky for the population as a whole.

Even the High Court held that there were misdirections in the charge to the jury. Directions are things, which the judge tells in his authority to the members of the jury to bring them up to speed with the law and the legal system. Misdirections are described as when the judge wrongly tells the jury about the anything relating to the case or the law in order to mislead them. Such misdirections and the need to appeal the cases in higher courts amounts to failure of justice.

“Since the provision on jury trials remained part of the law after the [Nanavati] trial, it is quite possible that other criminal courts continued to use juries.”

-Ramnath

In 1974, The Criminal Procedure Code was formally amended and all references to jury and jury trials were removed. This brought the end of jury trials in India. In the present scenario, interestingly, the Parsi community continues to use the jury system in special matrimonial courts even today^{xxiv}. K.M. Nanavati V. State of Maharashtra^{xxv} is a landmark case from a legal prospective. This case also received unprecedented attention from the media as it involved a naval officer murdering his wife’s lover. The case is about Kawas Manekshaw Nanavati, who murdered his wife’s lover, Mr. Prem Ahuja.

When the case was tried initially in the Sessions court, it convicted Nanavati under Death by Negligence^{xxvi}. However, in an appeal filed to the high court, the conviction was converted to punishment for murder^{xxvii}. This case shows us the shortcomings of jury trials and how they can handicap the process of providing justice to the citizens. In this case, the jury empathized with a dejected husband and thus, their judgment is considered to be flawed. As jury members were mostly members of the society in general and not legal professional or judges, these shortcomings were expected from the jury trials system. This case played a major role in educating the country about the flaws in jury trials and finally ending them. According to

common knowledge, this was the last case in India to be tried by a jury. However, history suggests that 'common knowledge' is indeed false.

Facts

K.M. Nanavati was second in command of a naval ship called 'Mysore' during the time he committed the offence. He was married to Sylvia since 1949. They had three children from the marriage. Since the marriage, the couple kept shifting their place of residence owing to the nature of job of Nanavati. Finally, they shifted to Bombay. In the same city Mr. Prem Ahuja also resided who was friends with the friends of Nanavati. Ahuja was 34 and unmarried.

Nanavati used to leave Bombay on his ship owing to his profession. Gradually, friendship between Sylvia and Ahuja culminated in illicit intimacy between the two. On April 27, 1959, Sylvia confessed about this illicit intimacy to Nanavati. Enraged by this Nanavati went to his ship stores and got a revolver and six cartridges under false excuses, drove to Ahuja's house and confronted him asking if he would marry Sylvia and take their children in; to which he replied, "Am I supposed to marry every woman I sleep with". Nanavati got enraged, placed the envelope containing the revolver on a table, and threatened to beat Ahuja up. Ahuja suddenly made a move towards the envelope and Nanavati took the revolver out. A struggle followed in which two shots accidentally were fired that hit Ahuja to which he succumbed.

He then surrendered himself to the police. Nanavati was subsequently tried by the Sessions court under section 302 and 304 of IPC^{xxviii}.

The jury in the Sessions court brought a verdict of 'not guilty' under both charges by an 8:1 majority. The Sessions judge then submitted the case to the Bombay High Court, as he was opposed to the opinion of the jury. An appeal was hereafter made.

The High Court judge, Shelat J. reviewed the entire evidence again and concluded that the accused was clearly guilty of the offence of murder. He also expressed his utter surprise and disdain at the verdict of the jury. According to him, the jury was perverse, unreasonable and not in any way in line with the evidence or the facts of the case. The case was then appealed by the defense council to the Supreme Court under a Special Leave Petition.

After a further appeal to the supreme court, it was held, after examining all the evidence that the accused was indeed liable for murder and his case did not fall under the exception of Grave and sudden provocation.^{xxix} He was imprisoned for life.

The biggest issue in front of the appellate court was the issue of mens rea involved. The prosecution plead that it was a planned and preempted murder. Prosecution gave the argument gave the argument that the act of going to the ship and getting the revolver and bullets on a false pretext all pointed out to the fact that it was planning done by Nanavati. The accused lied about why he wanted the gun, which shows mala fide intentions from the beginning. In addition, the point that the accused surrendered himself to the police suggests the theory that he planned to kill Ahuja.

The defense put forth its contentions about the mens rea of Nanavati. According to them, this case fell under the general exception of grave and sudden provocation. This, it said because when Nanavati went to Ahuja and asked him whether he would marry Sylvia, he replied, “Do I have to marry every woman I sleep with”. According to the defense, this statement acted as grave and sudden provocation to the accused. Thus, defense pleaded the sentence to be reduced to culpable homicide not amounting to murder.^{xxx}

The Supreme Court of India, bearing in mind, the facts of the case gave the judgment in a very reasonable and understandable manner. According to the bench, when Sylvia confessed to Nanavati about her illicit intimacy with Ahuja, the latter was not present. For the principle of grave and sudden provocation, the accused must have to lose his self-control. The bench assumes that when Sylvia told him, he did lose self-control.

However, if the facts of the defense may be true – and for the sake of argument which the bench considers to be true, it shows that the accused was concerned about the future of his wife and children and thus asked Ahuja whether he would marry her or not. The bench establishes that if the accused was sane enough to think about the future of his wife and children, he must have regained his self-control.

In addition, there was a gap of three hours between when he left his house and when the murder took place. He therefore had enough time to regain self-control. The mere fact that the deceased

abused the accused before he shot him cannot be counted as grave and sudden provocation. Thus, the bench did not grant the exception to the accused.

Aftermath Of The Case

Even after the Nanavati case, several courts with original jurisdiction, high courts as well as several Sessions courts sustained using juries as a system to provide justice. As per record, juries survived the longest in West Bengal^{xxxix} where we see some of the instances of injustice brought about by the plague of jury trials being held. The constant dejection towards jury trials by rest of the states in India does portray a rather diminished image of the system in its last years. This was not unfounded.

On 10 July, 1963 one Mannalal Khatic^{xxxix} was convicted by a jury of 9 men as guilty of murder. The vote was 6 to 3 guilty. However, upon further appeal, the prisoner was found not guilty and subsequently released and cleared of all charges.

On the contrary, jury trials could also give perverse decisions in a different manner. It is evident that sometimes the jury is influenced by the popular political propaganda. After 1967 elections 5 communist party workers were charged with the murder of a congress party supporter. There was clear evidence against the accused however, the jury unanimously acquitted all the accused.^{xxxix} We leave the decisions of whether this was politically fueled or not.

In essence, this shows a rather emotional and arbitrary approach of the jury especially in terms of gory crimes like murder. The facts of this case can be said to be somewhat close to the Nanavati case.

Thus, it would not be wrong to say that even after the Nanavati case, jury trials continued to distort and misread the facts of cases and subsequently masqueraded as a system of acquiring justice in our country.

Final Abolition of Jury Trials in India

The Nanavati Case in 1959 caused much hue and cry in the country calling attention to a reform in the administration of criminal justice through jury trials as it was evidently a flawed system. The 14th Report given by the Law Commission also recommended for the jury system to be abolished. The infamous navy case was apparently termed as the last case where the judgement

was delivered by jury but in reality, jury continued to work even after the case in a few places as mentioned above. It was only in 1969 after the 41st Report of the Law Commission was released that the Government decided to bury the jury^{xxxiv}. The 41st Report attempted to remove all the provisions related to the jury system from the Criminal Procedure Code of 1898. The 23rd Chapter^{xxxv} elucidates on the trial procedure to be followed in High Courts and Courts of Sessions after severing the provisions related to jury system. Thereafter in the year 1973 we had the final Criminal Procedure Code devoid of the flaws which is followed till date in India.

Changes In Procedural Law

India has come a long way from jury trial system and this transition is evident through the drastic changes incorporated in Criminal Procedure Code 1973. Though the procedure of trial is similar, the procedure of delivering judgments has undergone huge changes with the Jury getting replaced by a Judge.

Previously the sections of Criminal Procedure Code dealt with the powers of the jury which presided over the Courts of Session and even certain High Courts specially the High Courts of Presidency Towns i.e. Calcutta, Madras and Bombay. On the other hand the current Cr.PC states that every Court of Session must be presided over by a judge that is appointed by the High Court.^{xxxvi} The Sessions Court also consists of Additional Sessions Judges who are appointed by the High Court as well. Cases in High Courts are presided over by Hon'ble Justices who are appointed as per the procedure laid down in Article 217 of the Indian Constitution.

The Criminal Procedure before the abolition of Jury trials had a provision where the State Government would notify the cases it deems necessary to be tried by the jury in the Official Gazette but contrary to this, we see in Cr.PC 1973 the High Court plays an important role in framing rules in certain cases. Section 477 of Cr.PC states that any High Court with prior permission from the respective State Government can form rules on matters like who can act as petition writers in Criminal Courts; or the manner in which license must be issued and business must be conducted; or any other matter the High Court feels necessary to make rules on. All the rules laid down by the High Court must be published in the Official Gazette.

Previously the during the prevalence of Jury Trials, the Cr.PC contained provisions which stated that 3 jury members would be required for petty offences while 9 jury members would be required for severe or grave offences. Such provisions have been repealed in the current Cr.PC and we see that in case of grave offences Session Court judges can award death penalties but this decision has to be reaffirmed by the High Court. It states that the case decided by the Court of Session has to be communicated to the District Magistrate within whose local jurisdiction the case was tried.^{xxxvii} It is further stated that the death sentence awarded by Court of Sessions cannot be executed unless reaffirmed by the High Court^{xxxviii} and if the High Court feels necessary it can also direct further enquiry into the case for collection of more evidences.^{xxxix} Thus in present time hierarchy of court is followed in grave matters instead of greater number of jury members.

A contrast between Cr.PC before abolition of jury trial and thereafter can also be drawn in terms of appeal system. During jury trials, it was stated that the decision of the jury cannot be challenged or changed except in cases where there has been miscarriage of justice but the present Cr.PC allows appeals under certain reasonable circumstances.

Cr.PC 1973 states that an accused convicted by High Court in its extraordinary criminal jurisdiction can appeal to the Supreme Court^{xl} or in case a person has been convicted by the Court of Sessions, he is entitled to appeal to the High Court.^{xli} But there are certain conditions during which even the current Cr.PC does not allow appeal like if the appeal is made for petty cases^{xlii} or if the accused has pleaded guilty and hence has been convicted by the High Court or any Court of Session.^{xliii}

Conclusion

The system of trial by jury was instituted to deliver the purest form of justice taking into account the unbiased opinions of the jury members who belonged to different walks of life. But unfortunately this idea backfired and the inefficiency of the jury trial started showing up in the British era itself. The entire purpose with which this system was formulated was seen getting defeated. Thus the 14th Law Commission also recommended for the abolition of Jury Trial System after collecting data from various parts of the country which supported their stance. Moreover the Commission also provided concrete reasons for abolition.

The case of *KM Nanavati v State of Maharashtra* as discussed in the paper led to major turn of events as it successfully highlighted the incompetency of the Jury Trial System and thus brought to notice that this system was a mere eyewash in the name of justice. Trial by Jury has also been criticized by great thinkers like Mahatma Gandhi. Thus our piece of work justifies the abolition of trial by Jury referring to Reports of Law Commission and also numerous other cases apart from the Nanavati case.

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