
TRIAL BY JURY IN INDIA: WHY IT FAILED AND ITS HISTORICAL SIGNIFICANCE

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ABSTRACT

“If it doesn’t fit, you must acquit”, a famous closing argument that was presented by defence attorney, Johnnie Cochran during the 1995 O. J. Simpson murder trial, convinced the jurors of the innocence of O. J. Simpson who was accused of the murders of Nicole Brown and Ronald Goldman. This was a landmark case in the United States of America that garnered public attention and exposed the discrepancy between the public belief and the legal verdict given by the jurors. This case represents the fracture in the justice system and is often cited for the jurors’ oversight and bias, favouring the suspect for his African American roots. The O. J. Simpson case parallels the famous K M Nanavati trial in India, that persuaded the public and the jurors to render a verdict of ‘not guilty’ despite the conclusive evidence presented by the prosecution. This disparity of law defeats the provisions that provide for an objective view based solely on facts and evidence.

This paper aims to expose the inconsistency of trial by jury and why it ultimately failed in India. It is imperative to analyse how morality and prejudices can affect verdicts and whether such preconceived notions of the jury cause injury to the judicial role. Such verdicts of the jury that obscure the lines of law and morality is a cause for study. The intent of this study is to examine the famous case of K M Nanavati vs State of Maharashtra, 1961, which depicted the inadequacy of the jury. This paper also studies the case that serves as a precedent of the Nanavati case which is Abdul Rahim vs King Emperor, 1946, where the judge overturned a misdirected verdict of the jury. This paper shall discuss the aftermath of the Nanavati case and delve into the last case of trial by jury in India, State vs Prakash Ch. De and Anr, 1976 that rightfully ended the jury system in India. This paper also discusses the influence of media on the jury with reference to the Nanavati trial and the disputed verdict given by the jury.

INTRODUCTION:

A jury is a panel, or a group of 12 people called jurors, who are summoned by the court to render an unbiased verdict or to impose a punishment or judgement¹. They are knowledgeable in legal matters and are invested with the power to render a decision after hearing pertinent facts and evidence in a case trial. The jury should be of unbiased opinions and deliver objective verdicts based on the evidence and facts presented by the prosecution or the plaintiff and by the accused and defendant. The jury system, mostly prevalent in criminal prosecutions also have ties to civil trials in cases of determining awards of damages.

The establishment of this system dates back to the twelfth century when the The Assize of Clarendon (1166) was decreed by King Henry II of England which brought the system of itinerant justices and grand juries into existence². The Assize of Clarendon was a foundational legal document that led to the development of the common law tradition and the establishment of a centralized legal system in England. The system of trial by jury evolved from trial by ordeal and trial by combat, prevalent in the Medieval Europe, which were ancient methods of proving innocence and guilt, relying on the belief that divine intervention would reveal the truth.

The concept of jury in India was a Westernised concept that was developed by the British. India had its own judicial methods and the earliest can be traced to the Panchayati Raj³, wherein a Sarpanch presided over disputes and other Panch people participated in the process of decision making. This foreign concept of jury was adapted by the Indian Constitution as it was in practice before the independence of the country.

Trial by jury of capital crimes committed by the Company's servant was enacted by an Ordinance of James I dates 1623/4 and jury trial became the rule for criminal trials on the original side by the Supreme Court of Calcutta. After the Government of India Act of 1858, the power was assumed by the British Crown, stripping away the authority of the East India Company. After this shift of administration, jury trials were standardised in the Sessions Courts under the Code of Criminal Procedure 1861. The new Code of Criminal Procedure of 1872 introduced various changes after the Code of Criminal Procedure 1861 was repealed.⁴ The first

¹ Vinamra Vichhotiya, *Origin and Growth of the Jury System in India*, Jus Corpus Law Journal, 2022

² *Overview of the judiciary*, Courts and Tribunals Judiciary

³ *Jury system of India in the Current Times: Abolished or Not?* The Amikus Qriae

⁴ *Jury Trial in India*, Law Notes, April 29, 2023

ever jury trial held in India, under the British rule was in the town of Madras, where a mistress, Ascentia Dawes murdered an employee slave girl in 1665. The first trial bench of the jury included six Englishmen and six Portuguese men. Mrs. Ascentia Dawes was found guilty of murder but was acquitted by the jury. This case is a landmark case that showcased the mentality of the jury especially during the period of colonisation.⁵

Another landmark case that shook India and exhibited the outright faults that lie within the system of trial by jury was, K M Nanavati vs State of Maharashtra (1961) where the jury bench declared a verdict of not guilty despite the definite evidence that proved K M Nanavati's guilt. It was due to the influence of the media that changed the opinion of the public as well as the jury. Mr. Nanavati was paraded as a patriotic war hero despite his offence of murdering his wife's lover, Prem Ahuja. This case proved the first Law Commission's fourteenth report, reform of Judicial Administration, that suggested the removal of jury trials in judicial proceedings.

There have also been cases before the Nanavati trial, such as the Abdul Rahim vs King Emperor (1946) where Aiman Bibi, Saripali Khan and Abdul Rahim were found guilty of murder by a unanimous verdict of the jury, but were, however, acquitted by the court due to insufficient evidence. This error of justice made by the jury is another example of how skewed the system of juries are.

The case that was, ultimately the last case with a jury bench, before it was abolished by the Code of Criminal Procedure 1973 was of State vs Prakash Ch. De and Anr, where the first trial held the accused guilty of murdering a political figure by the jury bench in a divided verdict. However, after a retrial by a special jury, they were held not guilty of all charges. This case highlights the complexities of a jury trial and the injury to justice caused by such verdicts declared by the jury.

The abolition of jury in India was mostly, due to the fact that, it was a foreign concept imposed by the British for unfair advantage against Indians, while also ensuring uniformity in judicial administrations in India to that of the United Kingdom. It was also due to the susceptibility to bias and the lack of legal knowledge among the jurors that it was declared inefficient and defective for the Indian legal system.

⁵ idlib

OBJECTIVES OF THE STUDY:

1. To trace the emergence and the evolvement of the jury system in England and its introduction to India.
2. To assess the factors that led to the abolishment of trial by jury in India.
3. To analyse the landmark cases of K M Nanavati vs State of Maharashtra (1961), Abdul Rahim vs King Emperor (1946) and the last jury trial, State vs Prakash Ch. De and Anr.
4. To evaluate the role of media and its influence over public belief and the perception of jury benches that lead to error in verdicts and injury to justice.

RESEARCH PROBLEM:

The jury system was established in India, by the British for increasing the participation of locals and ensuring uniformity in the judicial system, similar to that of the United Kingdom although it ignored the injuries suffered by Indians. This failure of adapting to a foreign and westernised concept that was introduced, solely for the benefit of the Britishers, raises questions. The problem lies in why this system that succeeded in England, collapsed in India.

RESEARCH QUESTIONS AND HYPOTHESIS:

RESEARCH QUESTIONS:

1. Why did the jury system collapse in India when it thrived in England?
2. How did the case of K M Nanavati affect the system of trial by jury in India?
3. To what extent did the influence of media and public sentiment affect the verdicts given by the jury?

HYPOTHESIS:

1. The jury system failed in India because it was a colonial transplant that was imposed without care for India's socio cultural conditions.
2. The jury system presented various errors in judgements and the verdicts of the jury

bench as seen in the Nanavati trial.

3. Media influence and bias of the jurors lead to injury in the judicial form of India.

RESEARCH METHODOLOGY:

The research has been carried out in a doctrinal and historical format that analyses the landmark cases and law commission reports.

The primary sources are:

Government of India acts, Code of Criminal Procedure 1973, K M Nanavati vs State of Maharashtra 1961, Abdul Rahim vs King Emperor 1946 and the last jury trial, State vs Prakash Ch. De and Anr, Reform of Judicial Administration.

The secondary sources are:

Journal articles, research papers and historical texts on jury trials in India.

LITERATURE REVIEW:

1. Origin and Growth of the Jury System in India:

This research paper, authored by, Vinamra Vicchotiya, delves into the origin and development of jury system in India. The term jury has been defined as, “*A jury is a group of individuals (juror) summoned by the court to render an unbiased verdict (a factual result about a subject) or to impose a punishment or judgement.*” The paper goes onto explain the responsibilities of jurors that include unbiased opinions, clear objectives and decisions based on clear factual evidence. Their main responsibilities include, determining the innocence or guilt of the accused in criminal cases and civil cases alike. The origin of the jury system is explained by tracing its roots back to Europe. “*The system of jury originated in the United Kingdom, Athens, Egypt, Italy, and Greece.*” While the exact traces of the history of the jury system cannot be established, this paper theorises that it may have been a native of the United Kingdom or was introduced by the Norman conquistadors in 1066.

The paper further determines that, “*The East India Company Charter of 1661 provided*

for a jury trial for European colonizers, Although the universal trial of jury came in India in 1774.” The paper elucidates that the Bengal natives had already established their own system of laws and judicial methods through the creation of Zamindars, who had the power to impose punishment through beating or death and through the development of Islamic and native judicial methods. The 1774 Act limited the jury trials within Calcutta, as it was the heart of the British power until 1832, where jury trials were extended to the rest of Bengal. *“The Bengal Regulation VI issued that year by Lord Bentick, 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.”* The judge also had complete power over the process followed in each case and to dismiss a jury’s verdict at any time. After the failure to establish an appropriate jury system, *“the Legislative Council adopted a basic structure of jury trial in Sessions Courts across the Bengal in 1861..”*

The paper also mentions the type of juries that are, a civil jury and a criminal jury. The origin of the civil jury is as follows, *“....we may explore the roots of the jury in civil proceedings back to Henry’s II laws, which allowed groups of neighbours be called in to settle disputes of land ownership or occupation. The Grand Assize.... was used in matters of possession.”* The Grand Assize replaced the war trial by the year 1770 by a Council at Windsor.

The creation of a criminal jury is conceptualised as, *“..petty jury dates to the 13th and 14th centuries..... The grand jury derives from the jury of presentations scheduled for Clarendon assizes, 1166 and Northampton assizes.”* However, the Grand Jury was abolished in 1933 by the Judicial Administration Act⁶.

2. Reform of Judicial Administration:

The 14th report of the first Law Commission of India presented the ‘Reform of Judicial Administration that suggested various reforms for the betterment of the judicial system in India. It mentions, *Section 267, 268 and 269 of the Criminal Code of Procedure* that constitute the right to trial by jury in India. *Section 267 provides that all trials before a High Court shall be before a jury.* The report goes on to state how trial by jury was a

⁶ idlib

concept transplanted by British jurists and that it was not widely accepted by the whole country and that this system was predominantly used in the High courts of Madras, Calcutta and Bombay. The report discusses how the trial by jury has been discontinued outside the said Presidency towns and how it should be abolished in these High Courts too. The jurists are of the opinion that the verdicts delivered by the jury are unsatisfactory, even resulting to the miscarriage of justice. It was also stated that the position of jurors was made out to be a profession, undermining the role of jury systems. It was also a time consuming process and had limited rights to an appeal. It is elucidated that even though trial by jury has been successful in England, it has *failed to grow and take root* in India. The report, therefore concludes that the jury system has been a failure in India and that its abolishment ensures the correct delivery of justice⁷.

3. Jury Trial in India: Abolished or Not:

This research paper delves deep into the origin of the jury system in India, mentioning the first case of Mrs. Ascentia Dawes who killed her Indian slave girl and was still acquitted by the jury due to bias and contempt towards Indians. This paper predominantly explains the K M Nanavati trial and how it affected the jury system in India. K M Nanavati was a naval officer who murdered his wife's lover and was declared not guilty by the jurors due to the influence of media that changed the perceptions of the public and the jurors. This paper mentions *Blitz*, a newspaper company that spread image of Mr. Nanavati as a patriot as he was a naval officer and to create sympathy among the public as well as the jury members. This paper concludes this trial as, *"These are the firm and cardinal grounds that led to the vision that jury trial would not render justice, and it would be influential."*

The paper also discusses a case of Kolkata, Mannanlal Khatic vs State of Kolkata that instilled a firm thought on the inadequacy of the jury system. *"In this case, the jury convicted Khatic of murder by majority vote, and her was sentenced to rigorous life imprisonment but this was set aside on appeal and the prisoner was released. This depicted that the Jury's sentence was trivial."* This case showcases the complexities of the jury and its inefficiency.

⁷ Law Commission of India, *Reform of Judicial Administration*, 14th report, Vol 2, 1958

The paper also discusses the cases of Vivian Rodrick vs State of West Bengal, 1971, where *“the accused was committed to trial in 1963. He was convicted and sentenced to death by a jury in 1964. This was then reduced to life imprisonment on account of inordinate delay in executing the death penalty.”* This case depicts the errors in the verdicts of the jury.⁸

DISCUSSION AND ANALYSIS:

The jury system was transplanted by the British for their convenience, at the cost of injustices suffered by Indians. In theory, it was supposed to improve the local involvement and participation, but the jury bench predominantly constituted Englishmen and Portuguese men, although the inclusion of Indians came at a later time. This system of jury was opposed to the methods followed in India before colonisation, the Panchayati Raj, that consisted of a Sarpanch, the head and other Panch people that participated in decision making. The British looked down on these traditional methods followed in India and sought to transition them into the judicial administration that mirrored the United Kingdom's. Due to these factors, the system of jury trials succeeded in England but failed in India. There are various cases that showcase the errors in verdicts given by the jury that result in the miscarriage of justice.

1. Abdul Rahim vs King Emperor, 1946⁹:

Abdul Rahim, Aiman Blbi and Saripali Khan were found guilty of criminal conspiracy to commit murder u/s 302 read with Section 120B, however, Abdul Rahim was acquitted because of insufficient evidence against him in an appeal.

The appellant, Abdul Rahim, was convicted on charge of murder and sentenced to death after a trial before the Sessions Judge of Ambala sitting with a jury of seven. The jury returned a verdict of guilty by majority of four to three. After reviewing the evidence and the summing up of the Sessions Judge to the jury they came to the conclusion that certain material evidence had been improperly admitted at the trial and that the Judge has seriously misdirected the jury.

Chapter XXXIII of the Code of Criminal Procedure 1872 applies to this case in hand

⁸ Divya Shanjeev, *Jury Trial in India: Abolished or Not?* Vol 10, The Lawway With Lawyers Journal, 2024

⁹ (1946) 48 BOMLR 473

as it provides for special provisions relating to cases in which European and Indian British subject are concerned and in relation to jury trials provides in Section 449(1). There were many provisions of the Code of Criminal Procedure that clearly established the power of jury and the power of the judges where the judges had the discretion to overrule or request for a retrial when the jury had made a grave error in delivering justice. This case is a prime example of the disparity of laws in India and England in relation to the treatment of juries in criminal cases. The judgement states that the verdict of the jury is not to be reversed unless it is “*erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury of the law as laid down by him.*” This goes to show that there are limitations on the verdicts delivered by jury and is inefficient because of a judge’s misdirection or misunderstanding on part of the jury as the jurors are not legal professionals.

2. **K M Nanavati vs State of Maharashtra 1961¹⁰:**

Kawas Manekshaw Nanavati, a naval officer who was the second in command of the Indian Naval ship ‘Mysore’. He married Sylvia in 1949 in Portsmouth, England. They had three children by marriage and shifted homes due to Nanavati’s profession. They moved to Bombay where they became friends with their neighbours, the Ahujas, Prem Ahuja and his sister. Nanavati had to frequently voyage in his ship, leaving behind his wife and children and after one such voyage in April 1959, he came home and found that his wife was unresponsive, distant and behaved strangely at certain occasions. On 27 April, Nanavati questioned his wife, when she confessed to him that she had an illicit relationship with Prem Ahuja. On hearing this, he asked his wife whether she wanted to marry Prem Ahuja, to which she remained silent. After a few hours, he dropped his children and wife to the cinema and went to his ship, where he represented to the authorities that he was driving to Ahmednagar alone that night and withdrew a revolver with six cartridges and left for Prem Ahuja’s office, where the latter was not found. Upon finding Prem Ahuja in his residence, Nanavati encountered him in Ahuja’s room. He asked him if he would marry his wife Sylvia and take care of his children, for which he received a foul reply from Ahuja. They got into an altercation, which resulted in two shots being fired from Nanavati’s revolver, that caused the death of Prem Ahuja.

¹⁰ 1964 BOM LR 488

Nanavati then drove himself to the police station and surrendered himself.

Nanavati was declared not guilty by a jury verdict of 8:1, when the case was referred by the Sessions Judge to the High Court of Bombay, where the accused was declared guilty under Section 302 of IPC. An appeal was made to the Supreme Court where Nanavati was held guilty and was ordered to be transferred from the Naval custody to the Civilian prison.

It was contended that Nanavati had premeditated the murder, because he got the revolver from his ship on pretence and the maid of Ahuja's residence, a witness, testified that four shots were fired in rapid succession within a minute. Nanavati was of sound mind, when he surrendered himself to the police and even corrected a misspelling of his name. It is however, claimed by Nanavati, that the revolver was meant to be used to killing himself and not Prem Ahuja.

This case was then popularised by the Blitz newspaper, that garnered the sympathy of the public and jurors. The newspaper portrayed Nanavati as a patriot and Prem Ahuja as a villain for his philandering behaviour, which resulted in massive support towards Nanavati. The jury members were influenced by Nanavati's supporters and therefore chose to declare him not guilty. This case is a famous example of how jury is not a good fit for the Indian judicial system as the members of the jury as susceptible to bias and can be influenced from the media and the public sentiment. This trial led to the exposition of the errors in the verdicts delivered by the jury.

3. State vs Prakash Ch. De and Anr 1967¹¹:

Prakash Chandra De and Ranbindranath Chandra De were tried for murder under Section 302 and the verdict of the jury was not guilty. The Sessions Judge expressed serious concerns about the jury's verdict and the inconsistencies in their reasoning. The verdict of the trial was acquittal despite the clear evidence that exposed their guilt. This was the last jury trial of India that reinforced the abolition of the jury system and exposed the unfairness of appeals in cases of jury trials where there was no provision for appeal unless there was a serious misdirection of the law by the presiding judge.

¹¹ 1977 CRILJ 863

CONCLUSION:

The system of jury that was established in India by the British as a foreign transplant benefitted the colonial rule. This system flourished in the United Kingdom but ultimately failed in India as it was designed to aid the British and not for correcting judicial injuries. India's socio cultural background, deep seated social hierarchies and susceptibility to media and political influence rendered the existence of juries, which ought to have highlighted an objective view of the citizens ineffective and inadequate. This was displayed in the cases of *Abdul Rahim vs King Emperor*, *State vs Prakash Ch De and Anr* and most notably in the famous case, *K M Nanavati vs State of Maharashtra*. The overturned verdicts of the jury proved the oversight and inadequacies of this system and was eventually abolished in the *Code of Criminal Procedure 1973* as suggested by the first *Law Commission of India*, in its fourteenth report, *the Reform of Judicial Administration*.