



## THE JURY SYSTEM IN INDIA AS BRITISH LEGAL TRANSPLANT: A STUDY

By Keerthi Reddy

LLM (Criminal Justice, Queen Mary  
University London) 2018-2019

Advocate, High Court of Karnataka

### INTRODUCTION

Twelve men of ordinary ability are just as capable of deciding today on the effect of evidence as they were in the infancy of the institution. Although the technicality of the law has increased, yet in no way interferes with their fitness to decide on the effect of proofs.<sup>1</sup>

In order to understand the growth of the jury system in India it is better to have a reflection of its historical roots in the United Kingdom. The jury system in India is relevant to the United Kingdom because the jury system was brought into India by the East India Company to make the administration process similar to the U.K so that the company could better govern the Indians as India was one of the most important colony during the British rule in India.

Much after India's Independence the jury system was still in practice until the 1960.

This is an interesting comparison to make not just because of the history the countries share but also because India and the United Kingdom both are common law systems, however, it is essential to note that the judicial process in both the countries are so different yet on one hand the U.K. has retained the Jury system while the other has abolished the same.

The United Kingdom has seen the trial by jury in existence since the 12<sup>th</sup> century.<sup>2</sup> It was during the reign of Henry II (1133-1189) that trial by jury was chosen over trial by ordeal. The trial by jury has been treated as the English criminal justice system's strengths.<sup>3</sup> The United Kingdom throughout the years has positively worked in the jury system and has retained the same because the trial by jury was regarded as '*the bulwark of liberty*' as stated by Lord Chief Justice Vaughan.<sup>4</sup>

The trial by jury in India was a western innovation yet was an essential aspect of the Indian judicial system primarily in the criminal cases there has been a shift from when justice was administered through the *panchayat* system to the English jury system when it was legally transplanted into India.<sup>5</sup> The jury trial became a rule in criminal cases and was first started in the then Supreme Court of Calcutta. The last jury trial in India lasted until 1960.

<sup>1</sup> J.E.R Stephens, 'The Growth of Trial by Jury in England' (1896) Vol. 10, No.3 The Harvard Law Review Association, <<https://www.jstor.org/stable/1321755>> accessed 2<sup>nd</sup> February 2019.

<sup>2</sup> Tricia Harris, 'Trial by jury: Has the lamp lost its glow?' (2010) Vol. 3 Issue 2 Diffusion: the UCL an Journal of Undergraduate Research, 2.

<sup>3</sup> *ibid* 1.

<sup>4</sup> *ibid* 2.

<sup>5</sup> A.G.P. Pullan, 'Trial by Jury in India' (1946) Vol. 28 No. 3/4 Cambridge University Press on behalf of British Institute of International and Comparative Law, <<https://www.jstor.org/stable/754658>> accessed on 27<sup>th</sup> February 2019.



The two largest democracies in the world have been considered (The United Kingdom and India) irrespective of both the countries being culturally and socially different it is worthwhile to discuss them. This paper will explore the concept of jury system, its historical context, growth in the United Kingdom and its transplantation into the Indian legal system from the English system. It will also argue how its abolition in India is the best solution for fair trial because in matters where impartiality, calmness and ability to understand human nature is required trained judges cannot be replaced with untrained jurors.

#### JURY SYSTEM IN ENGLAND: IT'S BIRTH

*The jury is a very ancient creature, almost as old as the Monarchy and as old as Parliament. -E.P. Thompson.*<sup>6</sup>

The word *jury* is derived from the Latin word *jurata* which means a sworn body.

The jury system in the United Kingdom is the important aspect of the English judicial system. Dominic Grieve MP, the then Attorney General, stated that the jury system is an integral part of the English justice system and that it is in the national DNA.<sup>7</sup>

The provenance of the English jury system had already been initiated in the tenth century through the Anglo-Saxon system under the

administration of King Ethelred II. The jury system began to grow in the twelfth century under the regime of King Henry II.<sup>8</sup>

The jury system was also mentioned under the Great Charter, Magna Carta in 1215 wherein under Article 39 it provided that every man shall be heard by the law of the land and by the judgment of his peers.<sup>9</sup> Much development of the jury system happened post the 16<sup>th</sup> century wherein the roles and duties of the jury were increased from merely being witnesses to the decision maker. One of the most historic cases in reference to this point is the R v Bushell<sup>10</sup> wherein it was established that the jury had the right to give a verdict according to what it felt was right and that it is not merely a witness to a particular case this case also brought out the modern role of the jury.

Another significant event that took place was when the right to a jury was made a legal right for criminal cases under Bill of Rights 1689 which increased the emphasis and was made historic in the English judicial system.<sup>11</sup> The jury system in the United Kingdom was successful until the late 19<sup>th</sup> century when it started to decline because of fundamental issues such as the principle of fair trial etc., but however, the system is till date retained.

The jury system in the United Kingdom is founded on three fundamental principles which are:

<sup>6</sup> Yoshida Narutoshi, 'The case for abolishing jury trial as in the English legal system analysis of the issues and consequences' (2015) King's College London, 16.  
<sup>7</sup> *ibid.*

<sup>8</sup> Yoshida Narutoshi (n4).

<sup>9</sup> Tricia Harris (n2).

<sup>10</sup> Simon Stern, 'Between Local Knowledge and National Politics: Debating Rationales for Jury Nullification after Bushell's Case' (2002) Vol. 111, No. 7 The Yale Law Journal Company, Inc. <  
<https://www.jstor.org/stable/797537>> accessed on 25<sup>th</sup> February 2019.

<sup>11</sup> The Bill of Rights 1689, arts 8,9.



Innocent until proven guilty, Trial by an impartial and independent court, Justice should not only be done but should be manifestly and undoubtedly be seen to be done.

The jury trials in the United Kingdom have reduced up to 1% of the total criminal trials and the reason for it being that the principles that it was founded upon are not completely followed.<sup>12</sup> It is when the accused pleads not guilty the jury is summoned to try the case. The criminal trial with the jury takes place only at the crown court. Hence, the jury is sworn in at the crown court.<sup>13</sup>

The Bushell's Case: A Positive Precedent  
R v Bushell (1670)

Chief Justice John Vaughan, 1670 in the Bushell's case held that the jurors cannot be held liable or fined for going against the verdict of the judge in a criminal trial. This case is celebrated as it laid down a strong foundation for the jury trial in the United Kingdom.<sup>14</sup>

The case involved two Quakers (William Penn and William Mead) who were accused of unlawful assembly. They were charged under the *Conventicle act* which did not allow for more than five people to form assemblies before the Church of England. The jury was summoned in this case and it held that the Quakers were guilty for speaking in grace church street but did not agree with the judge to include the accusation of unlawful assembly. The judge disagreed

with the jury and fined, charged the jury stating that they shall not be dismissed until we have a verdict that the court will accept.<sup>15</sup>

The judge locked the jury up until they would change the verdict according to what the court i.e. the judge wanted it to be. After a two-day protest, the jury returned back with a verdict as the original one. The judge fined the jury and moved them to the prison.

It was *Edward Bushell*, a jury member who refused to pay the fine and stated that it violated the Magna Carta. *Justice Sir John Vaughan* in this case brought out the positive working of the role of the juries and held that the jury cannot be dictated terms and cannot be punished if their verdict is not in line as the court, but however, individual jurors could be still fined if they behaved in manner that couldn't be justified.

There have also been relatively recent case laws which show the importance of the jury system and their independence in the United Kingdom. For instance, in the case of *R v Wang*<sup>16</sup> it was held by the House of Lords that a judge cannot order the jury to reach a particular verdict. Hence, reinforcing the importance of the jury trial as the voice of the society as well as the criminal justice system.

The current existing law that is applicable to the jury in the United Kingdom is the Juries Act 1974 which specifies the guidelines of who can be part of the jury as well as bringing in provisions which can challenge the

<sup>12</sup> Michael Zander, *Cases and Materials on the English Legal System* (10th edition, Cambridge University Press 2007) 20.

<sup>13</sup> Lord Hailsham of St. Marylebone, *Halsbury's Laws of England* (Volume II, Butterworths, London

1990).

<sup>14</sup> *R v Bushell* (1670) 124 E.R. 1006.

<sup>15</sup> Kevin Crosby, 'Bushell's case and Jurors soul' (2012) *Journal of Legal History*

<sup>16</sup> *R v Wang* [2005] UKHL 9.



jurors.<sup>17</sup> The Criminal Justice Act is also in place which further places limitations on the power of the jurors and in certain circumstances allows the case to be handled by the trial judge.<sup>18</sup>

With the success of the jury system in England, it was decided to take the system further to its colonies the important one being India. The jury system is one of the earliest and major British legal transplants into the Indian legal systems.

#### LEGAL TRANSPLANT THROUGH EAST INDIAN COMPANY: GROWTH OF JURY SYSTEM IN INDIA

India is one of the most affected from legal transplants from Great Britain during the *Raj* because in the British Empire the most important territory was India.<sup>19</sup> The growth of the Indo-British Jurisprudence began with the London East India Company in the year 1600.

It was with the charters that were granted by Queen Elizabeth and James I in 1600 to make any reasonable laws for the purposes of administration of the companies establishments.<sup>20</sup> It was at this time that the British decided to import the Jury system into India.

The trial by jury was imported into India by the British without much difficulty because they looked at the panchayat or panches (boards of five) who were selected on the basis of their caste, locality etc, the then system of administration in India was analogous to the English Jury.<sup>21</sup> The jury trial became a rule in criminal trials in India only in 1627 to try the capital offences committed by the company servants.<sup>22</sup> The jury system could not be successfully be introduced in India under the East India Company as Sir George Campbell said it is alien to the customs and feelings of the country that a jury is decided by the government to settle the matter between the parties and it is disliked by the parties.<sup>23</sup>

The Crown Government of India (*Raj*) adopted the Indian Code of Criminal Procedure (1861, 1872, 1882 and 1898) in 1858 after the transfer of power from the East Indian Company. The jury trials was successfully established in India tentatively in Sessions Courts under the Criminal Procedure Code of 1861 (Act XXV of 1861).<sup>24</sup>

The jury in criminal cases was made compulsory in the High courts of presidency towns. It was not of much use elsewhere.

<sup>17</sup> Juries Act 1974, s 1

<sup>18</sup> Criminal Justice Act 2003, s 47

<sup>19</sup> Jean Louis Halperin, 'Western Legal Transplants and India' (2010) Vol. 2 Issue 1 Jindal Global Law Review, < [https://hal-ens.archives-ouvertes.fr/file/index/docid/559118/filename/Western\\_Legal\\_Transplants\\_and\\_India\\_2.pdf](https://hal-ens.archives-ouvertes.fr/file/index/docid/559118/filename/Western_Legal_Transplants_and_India_2.pdf)> accessed on 27<sup>th</sup> February 2019.

<sup>20</sup> *ibid*.

<sup>21</sup> James A. Jaffe, 'Custom, Identity and The Jury in India, 1800-1832' (2014) Vol.57 Issue 1 Cambridge University Press, < <https://www.cambridge.org/core/services/aop->

[cambridge-core/content/view/A3B2EF4E4211BAF834158316956E1D41/S0018246X13000435a.pdf/custom\\_identity\\_and\\_the\\_jury\\_in\\_india\\_18001832.pdf](https://www.cambridge-core/content/view/A3B2EF4E4211BAF834158316956E1D41/S0018246X13000435a.pdf/custom_identity_and_the_jury_in_india_18001832.pdf)> accessed on 28<sup>th</sup> February 2019.

<sup>22</sup> A.G.P. Pullan, 'Trial by Jury in India' (1946) Vol. 28 No. 3/4 Cambridge University Press on behalf of British Institute of International and Comparative Law, <<https://www.jstor.org/stable/754658>>accessed on 27<sup>th</sup> February 2019.

<sup>23</sup> *ibid*, 104.

<sup>24</sup> *ibid*, 105.



According to the newly adopted Code of Criminal Procedure, the number of the jurors were changed from 3 for the cases that took place in the sessions court (smaller offences) to 9 for the cases in the High Court (severe offences).<sup>25</sup> In the light of the above discussion of how the jury system was adopted into the Indian Judicial system, it would be interesting to identify a few cases and comments looking at the jury trial during British rule in India.

The trial by jury in India began as early as 1627. The jury was constituted for criminal trials. The cases that were tried with the help of the juries were of *mutiny, witchcraft, and murder*.

In one of the earlier cases of trial by jury for case of mutiny by soldiers, the governor instructed that a jury will be set up to punish all the notorious mutiners who have caused obstruction of justice, suppression of the mutiny and sedition. If the jury find them guilty, they will be punished according to the Article 3 of the Hon. Company law.<sup>26</sup>

Another interesting case dealing with a wizard who was convicted of both witchcraft and murder. This case involved a jury of 12 men.<sup>27</sup> The jury, in this case, held that intended to hang the wizard for the crime of murder of five men in the period of six months but however, they were advised to burn him in order to spread a greater fear in the society.

<sup>25</sup> A.G.P. Pullan (n25) 105.

<sup>26</sup> M.C. Setalvad, Padma Vibhufhan, *The Common Law in India* (Twelfth Series, Steven & Sons Limited 1960).

<sup>27</sup> Ibid 7.

Trial of Ascentia Dawes: Rex v Dawes  
First recorded jury trial in India

The first ever recorded case of an English jury case in India was in the year 1665. The nature of the case was criminal and specifically it was a murder case. This murder had taken place at the then most important presidency of the East India Company, Madras.

The accused in this case Ascentia Dawes was Luso-Indian (mix of Portuguese and Indian blood) had allegedly murdered her native slave girl(Chequa). The King's counsel set out the procedure and accordingly 24 persons were called upon to form the *Grand Jury*. It was confirmed that the charges against her were murder. It was decided that the jury would comprise of 12 men (6 English, 6 Portuguese).<sup>28</sup>

The trial was conducted in 1669. After the procedures of the trial were conducted i.e. arguments & witness statements a court was constituted wherein it was declared that the jury holds the accused Ascentia Dawes guilty of the murder committed but however it stated that they do not hold her accountable for the crime of murder '*in the form or manner described in the indictment*' due to which the jury again after a short while declared that the accused was *not guilty*.<sup>29</sup>

This was the case which highlighted for the first time that the jury system which is not native to India cannot be implanted here and

<sup>28</sup> Sriram V, 'A mistress-maid case of long, long ago' (2014) Vol. XXIII No. 21 Madras Musings, <<http://madrasmusings.com/Vol%2023%20No%2021/a-mistress-maid-case-of-long-long-ago.html>> accessed on 1<sup>st</sup> march 2019.

<sup>29</sup> Ibid 2.



that it is a failure because of its own drawbacks. It was in this case that the jury system started to receive its criticisms of how the jury cannot deliver a sound judgment because they can be influenced and swayed by public sentiment.<sup>30</sup>

THE NANVATI TRIAL:  
THE CASE THAT ABOLISHED JURY  
TRIAL IN INDIA

*“The seeds has been sown and resown, and watered and tended with care and perseverance, but the root has not struck deep in the heart of the people of India.”<sup>31</sup>*

K.M. Nanavati v. State of Maharashtra (1959)<sup>32</sup>

This case is said to be one of the landmark judgments in India. The case is important because it is said to be the last jury trial in Independent India. After this case, the jury was abolished by the government for the systems drawbacks.

K.M Nanavati was naval commander who was brought to the District and Session Court in Bombay in 1959.<sup>33</sup> The naval commander was accused of murder of his wife Sylvia’s lover (Mr. Ahuja) who is the deceased in this case. K.M Nanavati was charged with section 302 of the Indian Penal code, 1860.<sup>34</sup>

The commander was faced by a Judge as well as a *Jury* of nine men. The jury trial was conducted and after a series of hearing the trial became a media sensation which caused a lot of problem for the jury to get a clear verdict because the public opinion started affection the rationale of the jury. Irrespective of having sufficient evidence to hold commander K.M. Nanavati guilty of the murder the jury gave the verdict of innocence and held that the accused is *not guilty*.

This was however challenged on an appeal in the Bombay High Court wherein the court reversed the judgment and held the commander guilty of murder. The accused in this case was sentenced for Imprisonment for life. This was the last jury trial India witnessed as the government abolished the jury system keeping the Parsi community as an exception.<sup>35</sup>

It was by an act of omission rather than the act of commission in the year 1973 the jury was finally ended in the session courts. It was when the Code of Criminal Procedure (Crpc) was passed that the jury was omitted out the law. It stated, “After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.”<sup>36</sup>

It was also recommended by the *Fourteenth Report of the Law Commission on Reform of Judicial Administration (1958)* that trial by

<sup>30</sup> Ashirbad Nayak, ‘Rights of women: A critical study of the jury system in the Parsi matrimonial law’ (2018) Law School Policy Review, <<https://lawschoolpolicyreview.com/2018/11/27/rights-of-women-a-critical-study-of-the-jury-system-in-parsi-matrimonial-law/>> accessed on 1<sup>st</sup> march 2019.

<sup>31</sup> A.G.P. Pullan (n16).

<sup>32</sup> (1961) 1 SCR 497.

<sup>33</sup> James Jaffe, ‘After Nanavati: The last Jury trial in India?’ (2017) Vol. LII No. 32 Economic & Political

weekly, <<https://www.epw.in/node/149308/pdf>> accessed on 2<sup>nd</sup> March 2019.

<sup>34</sup> The Indian Penal Code 1860, s 302.

<sup>35</sup> Soutik Biswas, Parsi matrimonial courts: India's only surviving jury trials’ (BBC, 24<sup>th</sup> September 2015) <<https://www.bbc.co.uk/news/world-asia-india-34322117>> accessed on 2<sup>nd</sup> March 2019.

<sup>36</sup> The Code of Criminal Procedure 1973, s 235.



jury must be abolished. In this report, the reasons stated were not concerned with caste or religion but were focused upon finding the right type of jurors.<sup>37</sup> The law commission pointed out “It was found difficult to find jurors of the right type even in the advanced districts and such jurors as were available were shown to be easily approachable and moved by extra-judicial considerations.”<sup>38</sup> One agrees that jurors could easily be approached in short the threat of jury tampering was high as seen in the K.M. Nanavati case wherein the jury was influenced by the tabloid.

#### Parsi Community & Jury Trial in India: An Exception

*“The government of India evinced a wise and benign consideration for the special position of the Parsee Community in India in approving the creation of the Parsi Matrimonial courts.”*

*-Sir Jamsetjee Jeejeebhoy<sup>39</sup>*

#### The Parsis

The Parsi jury was an *anomaly*. There was no other community in South Asia that were allowed to have a right to trial by jury not even the Europeans living in British India.<sup>40</sup> The parsis hailed from the ‘Pers’ in Iran. They later settled in India in 600 AD. The Parsis are a closed community who practice their own practices which is reflected well in their marriage and divorce procedures.<sup>41</sup>

It is important to note that the Parsi community survived the jury system while the Government of India abolished it for the rest of India. This was because the Parsi community always considered themselves different from the Indians even in British India.

The British also helped the community retain its jury system because the Parsi community’s loyalty was reflected for the British rule. While the British disempowered the jury system in the southern part the Parsi community stood out because of their *Ottoman style* millet system for just the Parsi community.<sup>42</sup>

In 1865 the Parsi Marriage and Divorce Act was introduced it was at this time that the Parsi Matrimonial jury was fully taken up to its potential. The cases in the Parsi community is presided by a judge who sits over the trials and a 5 member jury is formed who are called the delegates who have the final say in the matrimonial cases.

The delegates are appointed by the Chief Justice of the Bombay, Calcutta & Madras high court for a period of 10 years.<sup>43</sup>

#### Naomi Sam Irani v Union of India: Recent Trends

In 2017 a Writ Petition was filed before the Honourable Supreme court of India by a Parsi

<sup>37</sup> *Reform of Judicial Administration (Law Com No 14, 1958)*

<sup>38</sup> *ibid.*

<sup>39</sup> Mitra Sharafi, *Law and Identity in Colonial South Asia Parsi Legal Culture, 1772-1947* (Cambridge University Press 2014).

<sup>40</sup> *ibid* 193.

<sup>41</sup> Ashirbad Nayak, ‘Rights of women: A critical study of the jury system in the Parsi matrimonial law’ (Law School Policy Review 2018) <<https://lawschoolpolicyreview.com/2018/11/27/rights-of-women-a-critical-study-of-the-jury-system-in-parsi-matrimonial-law/>> accessed on 5<sup>th</sup> March 2019.

<sup>42</sup> Mitra Sharafi (n39) 195.

<sup>43</sup> The Parsi Marriage and Divorce Act 1936, s 19.



woman, Mrs. Naomi Sam Irani, who was aggrieved by the failures of the system.<sup>44</sup> In her petition before the Supreme court she argued that she had filed the case two years ago but the jury was still not set up which is causing delays in the proceedings.

The petition challenged the Sections 18, 19, 20, 24, 30, 46 and 50 of the PMDA (which deal with the jurisdiction, constitution and appointment of the jurors) as being violative of Art 14 and 21 of the Constitution.<sup>45</sup> She argued that the PMDA had deprived her of the specialised jurisdiction of normal family courts, and subjected her to mental agony.<sup>46</sup>

She also argues that the Act does not prescribe for a proper qualification of the jury member which is problematic because they are decided on the yardstick of societal norms, and moral values instead of legal knowledge.

The case is still pending before the Supreme Court of India. The apex court has asked for the Central governments validity of the jury system of divorce for Parsis.<sup>47</sup>

**Weaknesses in the Jury System: Arguments for Abolition**

In serious cases, for instance, in the case of terrorism, the juries can go very wrong. Because the juries have supremacy in the criminal trials the role of the court of appeal is also very limited which is problematic

because due to the power the jury hold they give no reasons for their judgements. Such precedents can be observed in the case of *R v. McIlkenny*, *Hunter*, *Walker*, *Callaghan*, *Hill*, and *Power* also called the Birmingham Six.

The jury is considered time consuming, and free speech is at the mercy of the jury which is a threat to democracy.<sup>48</sup>

There are several loopholes identified to the jury system few of them will be discussed below:

**Jury nullification: a problem:** The main role of the jury in a criminal case is to find the fact. They have no right to apply the law. The application of the law is duty of the judge. The judge will explain to the jurors the laws applicable to the case accordingly to which the jury has to decide a particular case.

The problem is when the jury does not abide by the laws or ignores any law advised by the judge. This is the problem of nullification wherein the jurors will disobey or ignore the law. Jury nullification acts as a weakness because jury nullification is the 'right' of jurors to ignore the law by their consciences. It is also called 'jury equity'.<sup>49</sup> The first case to approve the right to nullification was in the case of *R v. Bushell*, and the recent case was the *R v. Wang* in 2005.

**Lack of legal knowledge:** The most serious criticism to the jury system is that the jurors

<sup>44</sup> Ashirbad Nayak (n41).

<sup>45</sup> Constitution of India, Article 14, 21.

<sup>46</sup> Naomi Sam Irani v Union of India [2017] SC.

<sup>47</sup> Priyanka Mittal, 'SC seeks centre's response on validity of jury system of divorce for Parsis' (Livemint, 25<sup>th</sup> November 2017) <<https://www.livemint.com/Politics/9m7FhvXpNE18iQ9RueDqJJ/SC-seeks-centres-response-on-validity-of-jury-system-of-div.html>> accessed on 6<sup>th</sup> March 2019.

of-jury-system-of-div.html> accessed on 6<sup>th</sup> March 2019.

<sup>48</sup> Geoffrey Robertson, 'Magna Carta and jury trial' (2015) British Library, <<https://www.bl.uk/magna-carta/articles/magna-carta-and-jury-trial>> accessed on 24<sup>th</sup> February 2019.

<sup>49</sup> Yoshida Narutoshi (n4) 53.



cannot be decided on a particular case, i.e. whether a person is guilty or innocent based on the evidence provided to them impartially. This is because the jury system is composed of people who have no legal knowledge and have not obtained legal training.

This poses a serious threat because the jury decides on an individual's life and liberty and such judgments cannot be unfair and impartial.<sup>50</sup>

This was also highlighted by India's father, Mahatma Gandhi who in the year 1931 opined that he was not convinced that jurors who are not trained or who don't have legal knowledge will be looking into cases for the people of India. He trusted only well-trained judges to handle the cases for the future independent India free from all bias.<sup>51</sup> The problem was that the jury had the power to give the final judgment it means that jury did not have to disclose its reasons for the particular decision.

**Misconduct of the jurors:** When a juror's misconduct is identified the jury panel is either discharged, or a new trial will be conducted. The juror's misconduct is dealt under the *Halsbury's Laws of England*, as making telephone calls after retirement,<sup>52</sup> have lunch with the barrister not concerned with the proceedings.<sup>53</sup>

**Time and money consuming:** One of the major loopholes of the jury system is that it

involves a lot of money and time. It is also suggested that a crown court trial costs more to the taxpayer as opposed to trial by magistrates because the jury needs more resources whether it human or money.<sup>54</sup>

For instance, the law commission (consultation report No. 209) stated that when a trial is conducted by a judge, it is concluded much faster as opposed to trial by jury.<sup>55</sup>

## CONCLUSION

*"Constitutional democracy in India cannot conceive of legislation which is arbitrary."*  
Justice K. J. Joseph<sup>56</sup>

As opined by Sir George Campbell in 1852 that the jury system is alien to the feelings and customs of the country and it's much disliked by the natives. One believes with this view that the jury system was never fully accepted by the people of India. The trial by jury was regarded as *un-Indian*.<sup>57</sup> The abolition of jury trial in India was very essential because firstly, it was an alien system to the country. Secondly, it disregarded human rights and natural justice principles because the jurors who would try the cases would lack legal knowledge which would lead to unfair and impartial decisions.

Additionally, it can be seen that the growth of the jury system in India was condemned for issuing unjustified acquittals like seen the

<sup>50</sup> Christy A. Visher, 'Juror Decision Making: The Importance of Evidence' (1987) Vol.11, No. 1 Springer, < <https://www.jstor.org/stable/1393525>> accessed on 25<sup>th</sup> February 2019.

<sup>51</sup> Jean-louis Halperin, 'Lay Justice in India' (2011), < [https://www.droit.ens.fr/IMG/pdf/Lay\\_Justice\\_in\\_India\\_1.pdf](https://www.droit.ens.fr/IMG/pdf/Lay_Justice_in_India_1.pdf)> accessed on 1<sup>st</sup> march 2019.

<sup>52</sup> R v McCluskey [1993] Crim LR 976

<sup>53</sup> *Halsbury's Laws of England* (5th edition, LexisNexis, 2010)

<sup>54</sup> Yoshida Narutoshi (n4) 66.

<sup>55</sup> *Contempt of court: A Consultation Paper (Law Commission No 209, 2012)*.

<sup>56</sup> Shayara Bano v Union of India [2017] SCC online SC 963.

<sup>57</sup> James Jaffe (n33) 20.



*Ascentia Dawes* case which was the first recorded jury trial in British India. Another reason for the end of the jury trial was the concern of *fair trial* because the jurors were incompetent and couldn't provide an impartial decision.

From the above analysis of the paper it can be concluded that the history of jury and the results of the jury system in both the United Kingdom and India are very opposite. In the United Kingdom the jury system has worked efficiently and abided by the natural justice principles. However, the cases in India do not reflect the same because in the U.K steps have been taken to prevent any mishaps such as the Halsbury's Laws of England which prevent the jury from giving out wrong decisions. As suggested by Setalvad the jury system was not successful in the sub-continent because the Indians did not have the same temperament as the English men. The issues in India were much more complex like issues of *religion, caste, class* which created a hurdle to even create a jury to try the cases.

Accordingly, the framers of the Indian Constitution did not find it in the best interest of the country to continue with the jury system. Through the analysis it can be seen that the Indian legal system does not find place for jury because they provide decisions on merits and not law. Another important problem that was identified by the Constitutional fathers was that the decision of the jury was final and the decision could not on appeal which was problematic because it's been seen how terribly juries can go wrong. The jury in India also has history of delivering wrong judgments because they are affected by the public sentiment, media and

also violates fundamental rights like right to fair trial and right to life.

The abolition of jury in India is a progressive step. Be that as it may when the decision of the government to abolish the jury is looked that in India it in no aspect is doubted or stands vindicated. In India today, well-trained judges provide for legally backed decisions which are not violative of any fundamental rights. The decision process is faster and cost-effective as compared to the jury would have been.

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