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JURY TRIAL IN INDIA - ABOLISHED OR NOT?

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ABSTRACT

A Jury trial is a trial conducted before a Jury. The very first jury trial happened in India, in the town of Madras, where a mistress had murdered her employee slave girl in 1664. A jury is a set of people, selected based on several rules and criteria, before whom a trial is conducted and they decide on the case and give a verdict. The verdict given by the Jury is analyzed by the Judge of the respective court and he accepts the jury's judgment upon being satisfied that the Jury was aware of all the details and the shreds of evidence in the case. The judge does not have an option as the jury decides whether the defendant has committed the crime or not. Trial juries consist of a minimum of 6 members and not more than 12 members. Each Juror must participate in the verdict. The court may direct one or two jurors in addition to the regular panel to be called and impaneled to sit as alternate jurors. The US has framed rules¹ for the selection and processing of the Jury Trial. Jury trial was predominant in the United States but now it has lost its importance everywhere as it became more of a biased and partial trial. The Jury trial in India is believed to have been replaced by The Code of Criminal Procedure, 1973. The Jury trial is assumed to have come to an end in India with the famous

¹ Rule 47, Casetext Search + Citator

<https://casetext.com/rule/colorado-court-rules/colorado-rules-of-civil-procedure/chapter-5-trials/rule-47-jurors>.

Nanavati case and a less famous case that happened in Kolkata, where the jury acquitted all the defendants by an eight to one towards acquittal of murder. No wonder jury trials had to be abolished for their biased verdicts clearly depicting partiality. Now it is a matter of question if the Jury trial has been abolished for good or not. There are two different views to it. There is the view that the Jury trial is completely abolished and there is another view that the Jury trial is not been completely abolished but it is being used wherever necessary but rarely. Through this article let us analyse the facts about when and how jury trial started, why was it abolished, was it completely abolished or not.

– Keywords: jury trial, abolished, jurors, delegates.

1.1 INTRODUCTION

Jury trial was considered one of the best trials in India for all criminal cases. The very first jury trial was introduced in India by the British in 1665 and existed in India until 1973 when it was completely replaced by the Code of Criminal Procedure, 1973. Though K M Nanavati Vs State of Maharashtra² was the famous case that proved the jury system to be ineffective, this was not the last case of the jury trial. The Nanavati case gained more importance because of its media coverage through Blitz newspaper. A less famous case in Kolkata in the year 1963 was also tried by a special jury. West Bengal did not easily stop Jury trials, even after Jury trials were abolished in many places all over the country. There was a special jury trial in Madras High Court that heard an appeal from a jury trial held in Karaikal (Pondicherry) as soon as the territory was incorporated into India but before the incorporation of proper court systems. It is highly important for lawyers to think and answer the question, "Is Jury Trial completely abolished in India or not?". One more important fact is that jury trials have gained less importance due to their inefficiency and corruptive verdicts, based on the Nanavati and Kolkata cases, but it is to be understood that jury trials were not abolished after the Nanavati

² *Indiankanoon.Org*, <https://indiankanoon.org/doc/1596139/>.

case. A few exceptions to date have not led to the complete abolition of Jury Trials and there is no official abolition of Jury trials by the Government or by the courts to date. In its 14th report, the Law Commission did recommend the abolition of jury trial, and in its 41st report, the Law Commission recommended the sections to be amended for the abolition of jury trial but there is no evidence to date about any legislation regarding the abolition of a jury trial.

1.2 THE BEGINNING OF THE JURY TRIAL

It is believed that the jury trial started in India at the Presidency town of Madras, in the year 1665³. The first jury trial was a mistress employee case, 6 English and 6 Portuguese were summoned by the British to form a grand jury. The trial was held in April 1669. It was held that Ascentia Dawes the mistress was guilty of murder but not in the manner and form prescribed in the indictment. So, she was held not guilty and set free. The jury trial continued thereafter until it received a thwart after the Nanavati case in 1959. Even after the famous Nanavati case that recommended the abolition of jury trials due to its biased and inefficient nature, there have been several jury trials that took place after that until 1973. After 1973, no order or amendment abolished jury trials completely, and there are still a few community-oriented cases that are adhering to jury trials.

1.3 THE VERDICT THAT SHOOK THE JURY SYSTEM – THE NANAVATI CASE

K.M. Nanavati Vs State of Maharashtra⁴, 1962 AIR 605 is a very landmark case that grabbed the attention of the country in 1959. K.M. Manekshaw Nanavati, an Indian Naval Officer was put on trial under Sections 302 and 304 of the Indian Penal Code⁵, 1960 for the alleged murder of his wife's amour, the deceased, Prem Bhagwandas Ahuja. Nanavati was the second in command of the Indian Naval Ship "Mysore". He married Sylvia in 1949 in Portsmouth, England. They had three children by their marriage. Due to the exigencies of Nanavati's service, they used to live in different places, Sylvia with their children and Nanavati at service and visiting home after voyages. He had shifted to Bombay, with his wife and their children, where they developed friendships with the Ahujas, Prem Ahuja, and his sister Mamie Ahuja, earlier, through their common friend Agnicks. As a Naval Officer, Nanavati had to travel frequently on his ship, leaving behind his wife and children in the city. After one such long voyage from April 6, 1959, to April 18, 1959, Nanavati returned home and found

³*Madras Musings*, We care for Madras that is Chennai
<https://madrasmusings.com/Vol%2023%20No%2021/a-mistress-maid-case-of-long-long-ago.html>.

⁴ *Indiankanoon.Org*, <https://indiankanoon.org/doc/1596139/>.

⁵ *Indian penal code § 302304 (1860)*.

that his wife was unresponsive, distant, and behaved strangely on multiple occasions. On 27 April 1959, Nanavati questioned his wife about her fidelity to which she shook her head indicating that she wasn't faithful to him. She also confessed that she had an illicit relationship with Prem Ahuja. On hearing this, he had asked his wife if she wanted to marry Ahuja and take care of their children along with him, for which she remained silent. So, he wished to settle the matter with Ahuja and shoot himself to death. So, he dropped his wife and kids at the cinema, promised to pick them back by 6 PM, and left for the ship. He represented to the authorities on the ship that he was driving to Ahmednagar alone that night, so he wanted to draw a revolver and six cartridges from the stores of the ship, though the real purpose was to shoot himself. On receiving the revolver, he put it inside a brown envelope and left for Ahuja's office. As he couldn't find him at his office, he left for Ahuja's home with the brown envelope and rang the bell. Ahuja's servant Anjani opened the door and his sister Mamie was having tea when Nanavati left for Ahuja's bedroom. Nanavati had asked Ahuja if he would marry his wife Sylvia and take care of his children for which he received a filthy reply from Ahuja. A struggle ensued between the two and during the struggle, two shots went off accidentally and hit Ahuja resulting in his death. After the shooting, Nanavati drove his car to the police station and surrendered himself. K. M. Nanavati initially was declared not guilty under Section 302 by the Jury Trial with 8:1 Verdict. The case was then referred by the Sessions Judge, Mr Ratilal Bhaichand Mehta to the Hon'ble High Court of Bombay, where the accused was declared guilty under Section 302 of IPC. An appeal was finally made to the Hon'ble Supreme Court.

It was contended that Nanavati had premeditated the murder because he got the pistol from the ship stores on pretense. Ahuja's servant Anjani who was present in the other room was a natural witness, who said that four shots were fired in rapid succession and that the whole incident occurred in less than a minute and he left Ahuja's residence without informing his sister Mamie that it was an accident. All these ruled out the options for a scuffle. Nanavati himself surrendered after the incident and admitted to shooting Ahuja. He even corrected the misspelling of his name in the police record. All these incidents are self-explanatory about Nanavati being in his normal thinking ability. Contrarily, the decision of the jury was entirely different. In September 1959, a trial court jury acquitted Nanavati. But this Verdict was held "Perverse" by the judge and was referred to the Bombay High Court. In March 1960, Bombay High Court held him guilty and sentenced him to life imprisonment. Within 4 hours of this judgment, the Governor of Bombay State issued an unprecedented order suspending

the sentence until Nanavati's appeal was heard at the Supreme Court. In September 1960, the Supreme Court concluded that the governor had overused his powers and stroked down the suspension of Nanavati's sentence and he was transferred from Naval Custody to a Civilian Prison. In October 1963, Nanavathi got Parole on health grounds and he was moved to a bungalow at a hill resort. In March 1964, Nanavati was pardoned by the then-governor of the new Maharashtra state, Mrs Vijayalakshmi Pandit. From the beginning, Nanavati was receiving special solicitude from the Prime Minister Mr Jawaharlal Nehru for two reasons. One was that Nanavati was known to him and the other was that a premeditated crime by a naval officer would be a threat to the security of the nation, as it would set a very bad example among the public. Blitz the newspaper was used as a tool to create sympathy among the public as well as the jury members. The Jury members were no doubt influenced by Nanavati's supporters. These are the firm and cardinal grounds that led to the vision that jury trial would not render justice and it would be influential. Jury trials were not at all preferred after this but they weren't abolished. But it took more time for the state of West Bengal to stop jury trials even when most parts of the country had already stopped.

1.4 THE LESS FAMOUS KOLAKATA CASE

The less famous case, Mannalal Khatic Vs the State⁶, trial in Kolkata also instilled a firm thought in the Judiciary system about jury trials being inefficient. In this case, the jury convicted Khatic of murder by a majority vote, and he 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. But even after this, there were several Jury trials conducted.

1.5 OTHER JURY TRIALS

Vivian Rodrick Vs State of West Bengal⁷, 1971, 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.

Panchu Gopal Das Vs the State of West Bengal⁸, In 1971, the jury delivered a unanimous verdict as guilty under Section 302 of IPC, accepting which the learned judge awarded him

⁶ *Just a moment...*, <https://indiankanoon.org/doc/1877152/>.

⁷ *Just a moment...*, <https://indiankanoon.org/doc/43718/>.

⁸ *Just a moment...*, <https://indiankanoon.org/doc/988538/>.

imprisonment for a life sentence. On appeal, the court upheld the previous conviction of Panchu Gopal Das.

State Vs Prakash Ch. De and Anr.⁹, 1976, the jury acquitted all the defendants who were charged with the murder of a congressman after the 1967 general elections. They were again retried by a special jury and the appeal was dismissed and the judgment of the lower court was upheld.

There were several other criminal cases where the Calcutta court employed juries. It was just that West Bengal continued to employ juries more than in any other part of the country. There was a special jury trial in Madras High Court that heard an appeal from a jury trial held in Karaikal (Pondicherry) as soon as the territory was incorporated into India but before the incorporation of proper court systems.

1.6 IS JURY TRIAL ABOLISHED?

Jury trial has lost its importance and has proven trivial but it has not been completely abolished by the country. There have been recommendations in the Law Commission's reports about the necessary amendments for the abolition of jury trials but there has not been any legislation to date that completely abolished jury trials. The jury system still prevails in Parsi matrimonial courts. They refer to their jurors as delegates and not a jury. They aren't randomly chosen like in a jury trial but they have a 10-year tenure and they sit and work along with the judges. Though they are commonly referred to as jurors, they have good experience and effectiveness in giving the judgment as they sit and decide the case along with the judge. The Parsi Matrimonial Courts (Ss.18-29 of the Parsi Marriage and Divorce Act,1936)¹⁰ clearly state that the Chief Justice be aided by five delegates.

CONCLUSION

It is evident that the jury system was not completely abolished but it was replaced with The Code of Criminal Procedure, 1973 by the then Prime Minister Mrs Indira Gandhi. The jury

⁹*Just a moment...*, <https://indiankanoon.org/doc/585964/>.

¹⁰ <https://thelegalquotient.com/family-laws/parsi-laws/parsi-matrimonial-courts/430/>.

trials were recommended to be abolished but no legislation did confirm the abolition. Jury trials couldn't prove effective due to the biased nature of judgment. It could be easily influenced both by emotional attachments as well as external pressure and threats or even bribes. So jury trials declined slowly in India. It is still not completely abolished. Few community courts still rely on jury trials, for example, The Parsi Matrimonial Court. So as a learned professional lawyers should have this clear insight on Jury Trials.