

Discuss the drawback
of the jury system as
it is implemented in
the uk



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Introduction

A jury in the UK generally consists of 12 randomly selected lay people that have been sworn to conduct an impartial verdict as to whether a defendant is guilty or not guilty in a criminal trial. The objective of the jury system is to provide a just and fair outcome that could not otherwise be achieved by judges alone. It is believed that if judges acted alone, the decision would be prejudicial, which would create unfairness. The human rights of the individual concerned would also be violated (Human Rights Act 1998, giving effect to the European Convention on Human Rights 1951). The most important concept of having a juror give a verdict is that juries may acquit a defendant in situations where a guilty verdict is demanded by the law. An example of this can be seen in the case of *R v Wang* [2005] UKHL 9 where it was made clear by the House of Lords that a judge can never instruct a jury to convict a defendant.

The jury system is therefore considered an important part of the confidence society has in the criminal justice system. The Juries Act 1974 is the main governing legislation that regulates the jury system by signifying what persons are eligible for jury service as well as making provision for the right to challenge jurors. The Criminal Justice Act (CJA) 2003 is also capable of restricting the role of the jury by imposing further limitations on the eligibility criteria and by allowing trial by judge alone in certain circumstances.

Whether these limitations are necessary is arguable, but it has been said that the jury is an outmoded institution that needs to be reformed. In light of this, the drawbacks to the jury system in the UK will be discussed in this study.

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Trial by Jury

The jury system in the UK is highly controversial because, on the one hand, juries are considered to provide important protection for citizens, whilst on the other, they are considered to be costly, time-consuming and unable to deal effectively with complex cases. In addition, it has also been said that the jury system in the UK is outmoded and ineffective and that it should be abolished. Essentially, because juries are not being used as frequently as they once were, it is questionable whether they are in fact still needed. In the majority of instances, a jury is not needed as a defendant will have submitted a guilty plea, yet in those instances where a not guilty plea has been entered, it has been said that juries are essential in ensuring that a fair trial is provided to the defendant under Article 6 of the ECHR and in the interests of justice.

This was recognised by Thomas and Balmer when it was pointed out that; “there is an ancient right for an accused to be tried only by the lawful judgement of his equals or by the law of the land and even though there is no modern constitutional right to trial by jury in England and Wales, governments have found the public extremely unwilling to sanction further restrictions to jury trials” (2007: 1). This highlights the significance of jury trials and whilst there are many drawbacks, it is widely accepted that juries help to maintain justice. Conversely, it is believed by some that jury trials should be eradicated on the basis that they are largely ineffective on the basis that judges have a strong influence over the outcome of the trial (Stone and Dennis, 2003: 2).

This was identified by Sanders and Young when it was evidenced that even though it is left to the jury to decide, beyond a reasonable doubt, whether or not a defendant is guilty, “ judges often exert a strong influence on the outcome and are far from being the passive impartial referee as depicted in adversarial theory”(2006; 496). Because of the influence judges exert over juries, it seems as though the jury system is a waste of time and expense.

Furthermore, because juries do not have to give a reason for their decision, it is difficult to tell whether a just decision has been provided anyway as the decision may not be based upon their own findings and may instead be based on the judge's influence. In view of this, the Auld Report found that; “ many contributors have suggested that the system may not, as a matter of English law, withstand a challenge, that the unreasoned jury verdict violates article 6.” It is questionable whether this does violate article 6, yet it was made clear in *Condron v UK* (2000) 31 EHRR 1 that it is not. Therefore, even though jurors do not have to provide a reason for decisions reached, it is said that a fair trial is still being provided. This does not seem fair since a violation of Article 6 would be found if a judge failed to provide a reason, yet this is not the case for jurors. As stressed by Doran; “ trial by jury occupies a pivotal yet paradoxical position at the centre of the English criminal justice system”. Arguably, it is clear from this that many do actually favour jury trials and are of the view that an effective justice system is being attained.

However, because jury trials are not used in serious and complex fraud trials, it is arguable whether jurors are well equipped to deal with all other trials.

The inability of jurors to deal with such cases was introduced by the CJA

2003 and emerged from the *Jubilee Line Jurors* [2007] Crim LR 255 case.
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Here. jurors suffered serious personal difficulties because of the complexity of the issues at hand. In cases such as this, it is more desirable for a judge-only trial to be conducted, yet it could be said that this should apply to all trials and not just those that have a complex nature. Moreover, the fact that trial by jury has been abandoned in other jurisdictions seems to demonstrate that the jury service is unworkable and ineffective.

This has exemplified by Laville (2010: 1) who put forward that; “ in the last 400 years, trials without juries have taken place in Northern Ireland, where the Diplock courts were set up to provide justice in the intimidating atmosphere of the Troubles.” Consequently, it could be said that Northern Ireland is aware of the difficulties and uncertainties of jury trials and have therefore made the decision to abandon them. Juries were also discarded in Germany on the 4th January 1924 when it became apparent that injustice frequently occurred as a result of jury trials. This was identified by Herzog when it was noted that; “ since 1924 jury trials have been abolished in Germany and there are no signs of a renaissance of lay participation and jury trial in the German criminal justice system” (2012: 1). It is arguable whether this demonstrates the ineffectiveness of jury systems but it is evident that the Germans do not agree with them.

Jury trials were also abandoned in India following the case of *K. M. Nanavati v State of Maharashtra* [1962] Suppl 1 SCR 567 where it became clear that juror’s decisions were capable of being influenced by the media and the public. As put by Debroy; “ the Nanavati case was responsible for the abolition of jury trials in India and it was the last trial by jury”. It was also identified by Debroy that there is a correlation in India between the <https://assignbuster.com/discuss-the-drawback-of-the-jury-system-as-it-is-implemented-in-the-uk/>

abolishment of jury trials and the prolonging of cases. In view of this, it cannot be said that jury trials should be completely abolished in the UK as cases may actually be prolonged as a result and there are various safeguards that have been implemented so as to ensure juries are not being influenced by the media and the public (Rackstraw, 2008: 726). Therefore, whilst jury systems do create difficulties, it cannot be said that they should be completely discarded as a result as they are still considered a vital part of the justice system. Furthermore, if jury trials were abolished it is likely that this would result in prolonged trials as is the case in India.

Furthermore, judges would also be capable of producing prejudicial decisions, which would ultimately contravene Article 6 of the ECHR which provides for a defendant's rights to a fair trial. In a study that was conducted by Sturcke, it was found that; two in three jurors did not fully understand the legal directions and that more than one in 10 jurors carried out their own investigations online about a case. This study was based on 69,000 cases over a two-year period, which highlights the injustices that can actually be caused by a jury trial. This seems to provide a strong argument as to why jury trials should be abolished, however, problems will still be caused by judge alone trials. In effect, it appears as though there ought to be a balance so that juries do remain, yet where cases are likely to be prejudiced a judge-alone trial should be conducted. Essentially, this is what seems to be happening at present as jury trials are being discarded in serious and complex fraud cases, yet whether this scope should be broadened to allow for their elimination in other cases is likely. This will ensure that juries are maintained, on the one hand, whilst also enabling them to be discarded in

cases which would be difficult for them to cope with. Whether this means that there will be an effective jury system in place, is however arguable.

Conclusion

Overall, there are many underlying difficulties which emerge from a trial by jury, yet it cannot be said that they should be completely eradicated. This is because judge alone trials will also have many drawbacks, which demonstrates the need for the jury system to be maintained. In order to prevent unfair outcomes from being produced, it is, therefore, necessary that a balance is attained which could be achieved by removing juries from serious and complex cases and those which would have a damaging effect on their ability to cope.

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