



LAY PARTICIPATION IN THE BRITISH LEGAL SYSTEM

The Rule of Law is one of the basic elements of the British Constitution. The Rule of Law is based on the principles that: -

1. No-one can be punished without trial;
2. No-one is above the law. All are subject to the same justice;
3. The general principles of the Constitution (e.g. personal liberties / freedoms) result from the decisions of judges (case law), not from acts of Parliament (statute law) or executive order.

As the British Constitution has evolved the rule of law within Britain has been threatened. In recent times such threats have included the removal of the right to remain silent. Threats to citizens' rights in the legal system in future may also include the possibility of the limitation of trial by jury in criminal cases. The right to trial by your peers is often seen to be one of the fundamental rights of a citizen. Alongside this is the obligation to serve on a jury when selected.

The rights and responsibilities of citizens' involvement is a key element of the British legal system. Lay participation in the legal system may be through serving on a jury in a criminal case or through becoming and serving as a magistrate (Justice of the Peace).



Task: Using your notes and textbooks, complete the following sections. This will allow you to think clearly about the nature, strengths and weaknesses of alternative methods for dispute resolution and will also create a useful revision resource!

MAGISTRATES

Definition: -

Magistrates are lay individuals, between the age of 21 and 60, who act as part-time judges within criminal courts. They hear cases in the lower courts. This amounts to roughly 98% of all criminal trials. The other 2% of cases are passed by magistrates up to judges in higher courts.

Magistrates receive training, but are not legally qualified. Magistrates have a number of duties (hearing offences, giving arrest warrants, considering bail applications) and powers (including imprisonment; fine; discharge; curfew order)

The qualities which are usually defined as needed to become a magistrate include - good character, firm yet compassionate, sound common sense, personal integrity and the ability to weigh up evidence and reach a conclusion.

Advantages:

- Promotes local participation;
- The HRA 1998 ensures that decisions are explained;
- Relatively cheap to run;
- Relatively quick in dealing with cases;
- Decisions are informed by the support of the qualified Clerk of the Court.

Disadvantages:

- Magistrates are unrepresentative of society;
- Magistrates are sometimes perceived to be conviction-led;
- It is difficult to achieve consistency between magistrates;
- Hearings may lack the detail of higher courts.

JURIES

Definition: -

Juries are made up of ordinary members of the public (citizens). The people who sit on juries are randomly selected from the electoral register. To be on a jury a citizen must be at least 18 years old and must have lived in the UK for five years. Juries are used in more serious criminal cases. Their role is to listen to the evidence and decide on whether the defendant is guilty or non-guilty. Occasionally juries can be used in civil cases.

Some citizens are disqualified from sitting on a jury. These include police officers, those with certain mental illnesses, those who have been in prison and barristers / solicitors. Some citizens may be excused from jury service. These include Doctors, those who have served on another jury recently, MPs and members of the armed forces.

Advantages:

- Remains an example of citizens playing an active role in the justice system;
- Juries are helped to understand the legal aspects by professionals;
- A group of people may be more likely to reach a balanced decision than a single judge;
- Juries can return perverse verdicts.

Disadvantages:

- Juries are not legal experts - some cases can be very complex;
- Juries may not be representative of society;
- Verdicts do not have to be explained;
- Juries may return perverse verdicts.



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