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# Criminal Justice System and Jury Trials in India

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## ABSTRACT

*Indian investigation is woefully tatty, and even the most basic inquiries are frequently mishandled. Crime scenes are seldom protected, and the investigators are clueless on how to obtain evidence. The condition turns worse when it comes to the safety of women. The government is trying to reduce the incidents of rape. The maximum punishment for rape is also raised from life imprisonment to death penalty. Even so, the statistics of cases refuse to stoop down. The paper attempts to explore this area of crime and tries to look into the most neglected component in our judicial system, “the jury.” At the moment, the only surviving jury is in the Parsi matrimonial court. Most states, including Bihar and Uttar Pradesh, have moved on from the system. The question is why? The article aims to address precisely that.*

## I. CRIMINAL JUSTICE SYSTEM: EMPHASIS ON RAPE SENTENCING IN INDIA

*“They ripped my clothes and raped me in turns. They even smacked an iron rod and bit me. They took away all my belongings, purse, watch, mobile phone and credit card. Six people raped me for an hour in a moving bus” – Jyoti Singh Panday aka Nirbhaya.*

What happened is one of the most ground-shaking incidents in the history of India. Lawyers’ claim that it has been a decade since rape victims have been subjected to an insensitive criminal justice system (which fails to cater medical care and deliver justice)<sup>3</sup>. Estimates of Indian Police are such that only four out of ten rape cases are reported – thanks to the inherent conservatism in which victims are “shamed” if they choose to come forward<sup>4</sup>. Those brave enough to report stumble with numerous hardships, including lack of counselling, antagonistic police officers, sloppy investigations and passive court prosecutions. One of the primary reasons behind the ignorance is the low count of prosecutors, judges and courts. For a country with 1.2 billion inhabitants<sup>5</sup>, India has a minimal reach. This is to imply that cases are frequently dismissed,

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<sup>3</sup> Nita Bhalla, *Analysis: How India’s police and judiciary fail rape victims*, Reuters, Jan. 16, 2013.

<sup>4</sup> Nita Bhalla, *Analysis: How India’s police and judiciary fail rape victims*, Reuters, Jan. 16, 2013.

<sup>5</sup> Dilsher Dhillon, *Over 1.21 billion people are enrolled in the world’s largest biometric identification system*, Business Insider (July 16, 2018), <https://www.businessinsider.in/over-1-21-billion-people-are-enrolled-in-the-worlds-largest-biometric-identification-system/articleshow/65009409.cms>.

and a million others remain pending. The other element ignites from the attitude. Most government officials allow “their perception” of rape survivors to interfere with their duty. “*So when a rape survivor steps up, they are bombarded with the looks of skepticism and defiance.*”<sup>6</sup>

Indian investigation is woefully tatty, and even the most basic inquiries are frequently mishandled. Crime scenes are seldom protected, and the investigators are clueless on obtaining evidence (fingerprints, samples and photographs).<sup>7</sup> What do you expect from the courts? They cannot be blamed (solely) for the low number of convictions. It is the Police’s responsibility to hand over something to proceed on!

## II. HUNT FOR JUSTICE: NIRBHAYA RAPE CASE 2012

On December 16, 2012, a private bus whizzed through the streets of the national capital region as six of its passengers (including the bus driver) assaulted a 23-year old girl, Jyoti, (along with her male friend) and gang-raped her with a brutality that quivered the conscience of the entire nation. The harm inflicted was grievous, so much so that the girl could not succumb to injuries and had to wash hands off her own life.

The shocking crime still reverberates today and serves as the guide to Netflix’s drama, *Delhi Crime*<sup>8</sup>. The series revolves around the investigation of Vartika Chaturvedi (Deputy Commissioner of Police), who seeks to achieve justice in a bureaucratic system. In reality, the Police were successful in apprehending the rapists, but the biggest question of public contention was whether the rape could have been prevented<sup>9</sup>. There is no back-pedaling that the Police force in this country is understaffed, ill-equipped and overworked<sup>10</sup>. However, to sink as low as December 16 to spotlight the same is ridiculous. The very fact that the bus (in which Jyoti was raped) managed to escape the checkpoints (albeit the bus had tinted windows which were strictly banned in Delhi) outlines deep fault lines in the functioning of the Indian administration. Even saddening is the realization that the criminal justice system fails to peel off gender discrimination from society.<sup>11</sup>

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<sup>6</sup> Nita Bhalla, *Analysis: How India’s police and judiciary fail rape victims*, Reuters, Jan. 16, 2013.

<sup>7</sup> Sriharsha Devulapalli, Vishnu Padmanabhan, *India’s police force among the world’s weakest*, Mint, June 19, 2019.

<sup>8</sup> Madison Medeiros, *The True Story Behind Delhi Crime is Horrifying*, Refinery 29 (Mar. 23, 2019), <https://www.refinery29.com/en-us/2019/03/227452/delhi-crime-true-story-how-case-was-solved>.

<sup>9</sup> Poulomi Das, *The Irresponsible Failure of a Netflix Series on the 2012 Delhi Gang Rape Investigation*, HYPERALLERGIC (Apr. 2, 2019), <https://hyperallergic.com/492341/the-irresponsible-failure-of-a-netflix-series-on-the-2012-delhi-gang-rape-investigation/>

<sup>10</sup> Vandana, *Netflix Series ‘Delhi Crime’ spins a web of unacceptable half-truths on the December 16 gang rape case*, daily O (Mar. 27, 2019), <https://www.dailyo.in/voices/delhi-crime-december-16-delhi-gang-rape-december-16-shefali-shah-richie-mehta-netflix-gang-rape-delhi-police/story/1/30080.html>.

<sup>11</sup> Helena Kennedy, *Why is the criminal justice system still skewed against women?* The Guardian, Mar. 10, 2005.

I cannot help but shift focus towards some of the media reports of the Nirbhaya Rape Case. They highlighted, “*the victim was out with her male companion late at night.*” What is deeply disturbing is that our media (which constitutes of people from amongst ourselves) dares to mislead people by saying that an act of kissing (between Jyoti and her boyfriend) prompted the six men into raping her. What message are you forwarding to society? Mere punishment or acceptance of reality would not change anything unless we understand that there is no reasonable justification for rape. No situation. No trigger.

### III. PRESENT SCENARIO

The government is trying to reduce the incidents of rape. After the Nirbhaya Case, India started opting for initiatives to improve women safety. Some of these include the recognition of stalking and staring as forms of sexual harassment; the inception of Verbatim (computerized), and Zero FIR’s (mechanism to complain in any police station – irrespective of where the offence was committed) along with the introduction of Section 166 A in the Indian Penal Code (which enables women the power to lodge a case against SHO if he refuses to file her complaint)<sup>12</sup>. The maximum punishment for rape is also raised from life imprisonment to the death penalty (especially for the repeat offenders)<sup>13</sup>. Even so, the statistics of cases refuse to stoop down. A lot more needs to be done. The setup of departmental inquiry should be the first course of action. Thus, an engagement with entities (like private companies or NGO’s) having sufficient human, intellectual and monetary resources sounds like a good kick start.<sup>14</sup>

For someone aware of the functioning of the Indian criminal justice system (particularly in matters of rape), it becomes germane to chalk the one most neglected component in the frame of fairness, “the jury.” What is the jury trial system? How does it work? Does it hold credibility in the age of modernization? Stay tuned.

### IV. TRIAL AND ERROR: THE JURY SYSTEM IN INDIA

The jury trial system traces its roots back to British Rule. It is a process that confers the right to determine guilt on laypersons during a criminal case. As surprising as it may sound, the mechanism is something the Indians have always been well-versed at. Think of the Panchayati Raj System. The jury is more or less similar, with the only overlap that it is much more

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<sup>12</sup> Niharika Lal, *Nirbhaya Case Officer on ‘Delhi Crime’: Told Director to tell the story as it is*, Times of India, Dec. 16, 2020.

<sup>13</sup> Julia Hollingsworth, *7 years after bus rape and murder shocked the world, attackers hanged in New Delhi*, CNN, Mar. 20, 2020.

<sup>14</sup> Joysheel Shrivastava & Vishavjeet Chaudhary, *Fault Lines of India’s Criminal Justice System: Warning Bells and the Way Forward*, Outlook, May 30, 2020.

structural in working than the former. Ascentia Dwaes' murder of her servant is reported to be the jury's first Indian case on record.<sup>15</sup> But why are we discussing it now? We are; because the system no longer exists in the country. The process got scrapped off after the infamous Nanavati case.<sup>16</sup>

At the moment, the only surviving jury is in the Parsi matrimonial court. The Parsi Marriage and Divorce Act have two special courts: The Parsi Marriage and Divorce Matrimonial Court. The act calls for five members of the Parsi community to participate in the adjudication process. An election takes place from within the pool of 20 jurors (comprising of retired men and women who have spent up to sixty hours at the Bombay High Court) nominated by the community council.<sup>17</sup> Yet, the system comes with a chain of flaws. The first stems from the lack of provision for mediation and conciliation (as opposed to the family courts). The second originates from the delay in trials because of the jurors' inability to meet regularly. The third issue is deep-rooted. There is no criterion for disqualification of members. The selection occurs in accordance with cultural standards rather than legal considerations. Moreover, the practice is inconsistent with the principles of natural justice.

Most states, including Bihar and Uttar Pradesh, have moved on from the system. Madras had been clamoring for abolition since 1950. In a 1969 study, the Law Commission also evaluated the Code of Criminal Procedure and coined the need to eliminate jury in its entirety.<sup>18</sup> Nanavati Case has been the silent killer all this while.

## V. LAST BREATH: K.M. NANAVATI V. STATE OF MAHARASHTRA

*“On April 27, 1959, I came to know about my wife's affair with Ahuja. I drove my car to his office and came to know that he was not there. Upon reaching his flat, I asked whether he would marry Sylvia and look after our children. But the moment he said – Am I to marry every woman I sleep with? shook me. I threatened to thrash him only to realize that Ahuja had already leapt towards my revolver, which resulted in a struggle leading to his demise. Yes, I agree that the revolver was in my hands, but the shot was not intentional” – Akshay Kumar as K.M. Nanavati in Rustom.*

Something worth the time was the jury's decision. For them, Nanavati was not guilty under Section 302 (murder) of the Indian Penal Code. The same got featured in the 2016 crime

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<sup>15</sup> G Sai Sangamitra, *Jury system under the Parsi matrimonial law – A Critical Analysis on Parsi women's rights*, Jus Corpus Law Journal (Aug. 31, 2021), <https://www.juscorpus.com/jury-system-under-the-parsi-matrimonial-law/>

<sup>16</sup> K. M. Nanavati v. State of Maharashtra, A.I.R. 1962 S.C. 605 (India).

<sup>17</sup> Soutik Biswas, *Parsi matrimonial courts: India's only surviving jury trials*, BBC news, Sept. 24, 2015.

<sup>18</sup> Anonymous, *Judged by twelve*, The Hindu, Aug. 20, 2016.

thriller, Rustom. The case received insane attention from the media as Nanavati was painted into a “*deceived husband caught in a crime of passion*”<sup>19</sup>. Regardless, the Sessions Judge did not seem convinced, as the jury’s decision was such that no reasonable body of men could reach – based upon the facts of the case.<sup>20</sup>

There is not an ounce of doubt that Nanavati was an upright and honest officer. But does that justify his act of murdering (or carrying the revolver)? No. The case stands as a classic failure in the history of the jury trial system. Laughable is how the jury failed to stick by the facts and tilted focus on the understanding and belief system of others.

## VI. CRISIS: THE RIGHT PEOPLE?

India is a land of diversity where people from all religions, customs, sects and languages co-exist. Owing to the widespread variations, the nature of disputes is to be diverse too. The jury was of great help in this sense. The trial allowed for 12 jurors in each case. This meant that every case that underwent jury came across 12 different perspectives<sup>21</sup>. Their viewpoints provided a more holistic understanding of the issue, keeping in mind the areas of communal sensitivity. Not to mention that the paradigm reduced the lawyer-judge and criminal-judge nexus.<sup>22</sup> All the same, one of the significant concerns occupying center stage was the duration of trials and innate bias of these groups of people.

Simon Jenkins, a British author and journalist, remarks, “*Juries are a costly affair. They barely have anything to do with justice except often being a roadblock.*”<sup>23</sup>

Jury involves consistent efforts of a group towards reaching the end goal. As meticulous as it may sound, the process takes time and delays the speed of trials. Moreover, the people involved are unaware of the law. They are easier to sway with prejudice and emotions.<sup>24</sup> The verdict in the case of K.M. Nanavati is testimony enough to the same.

Currently, India is functioning under the bench system. While the on-going framework has its disadvantages, reviving the jury will only delay the speed (in deciding 3 crores pending cases)

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<sup>19</sup> Archisha Chowdhury, *Tracing the History of Jury Trials in India*, Jurisdictio Omnis (July 31, 2021), <https://jurisdictioomnis.in/2021/07/31/tracing-the-history-of-jury-trials-in-india/>

<sup>20</sup> Tanya Tikiya, *Supreme Court Case Analysis: K.M. Nanavati v. State of Maharashtra*, Latest Laws (May 26, 2018), <https://www.latestlaws.com/articles/supreme-court-case-analysis-k-m-nanavati-v-state-of-maharashtra-by-tanya-tikiya/>

<sup>21</sup> Haridya Iyengar, *Trial by Jury vs. Trial by Judge*, iPleaders (Jan. 30, 2016), <https://blog.ipleaders.in/trial-jury-vs-trial-judge/>

<sup>22</sup> Haridya Iyengar, *Trial by Jury vs. Trial by Judge*, iPleaders (Jan. 30, 2016), <https://blog.ipleaders.in/trial-jury-vs-trial-judge/>

<sup>23</sup> Simon Jenkins, *Our justice system is in crisis, so why not abolish jury trials?* The Guardian, Jan. 22, 2021.

<sup>24</sup> Haridya Iyengar, *Trial by Jury vs. Trial by Judge*, iPleaders (Jan. 30, 2016), <https://blog.ipleaders.in/trial-jury-vs-trial-judge/>

and add to the muddle<sup>25</sup>.

*“The nature of the criminal justice system has changed. It is no longer primarily concerned with the prevention and punishment of crime, but rather with the management and control of the dispossessed”* – Michelle Alexander.

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<sup>25</sup> Haridya Iyengar, *Trial by Jury vs. Trial by Judge*, iPleaders (Jan. 30, 2016), <https://blog.iplayers.in/trial-jury-vs-trial-judge/>