THE ROLE OF DISSENT IN JURY DECISION-MAKING A CRITICAL LEGAL ANALYSIS OF 12 ANGRY MEN (1957)

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1. ABSTRACT

In the film 12 Angry Men (1957), a jury goes from being virtually unanimous to acquitting the accused due to juror number 8 dissenting using evidence. This paper will look at the reasons why dissent can be seen as valuable in legal settings. It will draw parallels between the film and the United States Supreme Court guidelines on the 'presumption of innocence' and 'proof beyond reasonable doubt'. In addition, this paper will explore the Indian Supreme Court authority surrounding the principle of proof, circumstantial evidence, witness credibility, identification, alibi, bias, legal aid and value of dissent in detail. It will also incorporate studies carried out on conformity and group thinking. The main argument is that the dissent in the film is valuable as it forces the majority to link their conclusion to admissible evidence and the level of proof they are using. However, just because there is dissent in the case, does not mean it will be accurate. There are many factors which can cause the group to become biased including speculation, personal bias, out of court investigations and pressure from the majority. Overall this paper will conclude that in order to fairly decide criminal cases you need to have systems in place to encourage rational dissent alongside ensuring that evidence is properly used, unbiased and fair.

Keywords: dissent, jury, 12 Angry Men, reasonable doubt, presumption of innocence, circumstantial evidence, witness credibility, group pressure, fair trial, Indian criminal law, Bharatiya Sakshya Adhiniyam, 2023.

2. Introduction:

Criminal trials are not based on voting. They are a structured method of determining whether the prosecution has provided sufficient evidence to prove guilt. In 12 Angry Men (1954, Sidney Lumet, 1957), Reginald Rose demonstrates the process of a trial by showing how, whilst twelve jurors vote guilty to begin with, juror number 8 is the only one who does not. He does not assert the defendant's innocence, but simply does not want to kill someone without being sure beyond reasonable doubt.

This is the central theme of the film. Juror number 8 does not present any alternative narrative to that of the prosecution, he simply wants to determine if there is no reasonable hypothesis that could be formed using the evidence provided. This mirrors the purpose of the reasonable doubt test in many Indian courts. To protect against innocent people being found guilty based on suspicion, prejudice and insufficient evidence.

This paper will argue that dissent plays a key role within criminal trials. This can be seen in the following ways:

A. Dissent breaks conformity and provides reasoning

B. Ensures that the prosecution has met their burden of proof

C. Demonstrates underlying assumptions such as prejudice

However, it can also be seen from the film that although someone alone may be correct, dissent should only be used in a structured way with evidence, legal guidelines and fairness.

3. Research Questions, Hypothesis and Methodology :

A. Research Questions

What does the film 12 Angry Men tell us about how dissent can be used to prevent group think?

What role does dissent play in relation to the legal presumption of innocence, burden of proof and standard of proof?

How does this apply to laws within the United States and India?

How should the credibility of witnesses, circumstantial evidence, identification, alibi and unconscious bias be considered in reaching a conclusion? What do Indian courts say on these issues?

When will dissent be a positive force for deliberation? When will it cause a hindrance, bias or guesswork?

B. Hypothesis

Only when dissent is evidence focused, standard focused and fairly applied will it improve the accuracy and legitimacy of criminal decision making. Otherwise it is no different to the bias it is trying to overcome.

C. Methodology

This paper will use qualitative doctrinal analysis. The film will be seen as a fictional yet informative portrayal of deliberation. This will be analyses using (i) selected United States Supreme Court cases including In re Winship and Jackson v. Virginia (ii) Indian Supreme Court case law relating to standard of proof, circumstantial evidence, credibility of witnesses, identification, alibi, bias and fair trial, and (iii) the experience of jury trial and judicial dissent in India. Empirical and social psychological research, particularly research conducted after Solomon Asch's conformity experiments will also be used to analyse the realism of the film.

D. Limitations

12 Angry Men shows a jury from mid twentieth century America who must reach a unanimous verdict. This does not accurately portray all jury systems and is not a source of binding law. India has removed jury trial for routine criminal cases therefore the Indian authorities will be used comparatively. They will help to explain the principles of evidence and fair trial but will not provide any authority on jury deliberation. The Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 have been replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) since 1st July 2024. Most of the cases referred to will have been decided under the old statues. Any relevant new provisions will be noted. All case references should be checked against official reports prior to formal submission.

4. The Film's Deliberative Structure:

A) The change from majority agreement to reasonable doubt

At the start of the film we are shown a group of jurors who are seemingly unified in their decision and have decided the defendant is guilty. They vote 11-1 with juror no.8 voting against. Even though it is only one person, he has created a reasonable doubt within the group of jurors. This leads us through a series of evidential questions:

The murder weapon (a switch blade), is considered to be not unique.

The evidence provided by the old man is questioned, as it can be physically possible for him to hear the defendant and see him run away?

The testimony from the woman across the road is looked at again and the fact she was wearing glasses is examined.

The lack of detailed knowledge from the defendant about the film he said he saw is questioned.

Prejudice towards slum boys from different classes is revealed.

The change in votes creates discussion. Juror no.8 doesn't just vote against, he explains why his opinion differs. He asks each juror why they are so certain based on the evidence.

B) No claim of innocence

Juror no.8 doesn't start off by saying the defendant is innocent. He is being very specific and legally accurate by saying there is still reasonable doubt that the prosecution have not ruled out. The jury is not required to create an alternate story to convict the defendant. The jury must decide if the prosecution's case as a whole falls short of the standard. If it does then it would be legally correct to vote not guilty. Indian courts would agree with this. They would say that not guilty does not mean the defendant is innocent but that it couldn't be proven they were guilty.

5. Presumption of Innocence and Burden of Proof:

A. United States

The presumption of innocence places the risk of error. Therefore, the accused do not have to

prove their innocence and the prosecution must prove their guilt. [1]In Coffin v United States (156 U.S. 432) is shows that the presumption of innocence has been around since ancient times. It was also stated in Taylor v Kentucky (436 U.S. 478) that a presumption of innocence gives a judge the ability to ensure that verdicts are based on evidence, not just suspicion. The Court in In re Winship (397 U.S. 358) held that 'every fact necessary to constitute the crime charged must be established beyond a reasonable doubt' to ensure due process. This is described as a 'prime instrument' of minimising the risk of factual errors leading to a conviction. The Jackson v Virginia case (443 U.S. 307) goes further by establishing that 'if viewed in a light most favourable to the prosecution, could rationally support a finding of guilt beyond a reasonable doubt.

B. Indian Position

Article 21 Indian Constitution and the Law of Evidence have created the same conclusion:

Statutory provision: Section 101 of the Evidence Act states that the burden of proof lies with the person asserting the fact. This is now covered under Section 104 of the BSA. This means that if the accused claims an exception the burden of proof is only to create a reasonable doubt.

Constitutional provision In [2]Narendra Singh v State of M.P. (2004) 10 SCC 699 the Supreme Court recognized that the presumption of innocence is a human right. However, there are exceptions to this under statutes. In Noor Aga v State of Punjab (2008) 16 SCC 417 the court looked at the reverse onus provisions within the presumption of innocence. The presumption of innocence means the prosecution must prove the basic facts.

Severity of offence: The severity of the offence does not reduce the standard of proof. [3]In Sujit Biswas v State of Assam (2013) 12 SCC 406 the Court held that 'No amount of suspicion can be taken as proof.' Previous to this, in Hanumant Govind Nargundkar v State of M.P. (AIR 1952 SC 343) it was emphasized that the circumstances must be such that they cannot be explained under any other hypothesis.

May be and Must be In Shivaji Sahabrao Bobade v State of Maharashtra (1973) 2 SCC 793, which was upheld in Sharad Birdhichand Sarda v State of Maharashtra (1984) 4 SCC 116, it

[1] Coffin v. United States, 156 U.S. 432 (1895); In re Winship, 397 U.S. 358 (1970)
[2] Narendra Singh v State of M.P. (2004) 10 SCC 699
[3] Sujit Biswas v State of Assam (2013) 12 SCC 406

was emphasized that when a fact must be proven (as opposed to may be proven) there is a significant gap between the two.

C. Section 106 of the Evidence Act (now Section 109 of the BSA)

There is always a temptation for the prosecution to ask the accused 'explain'. In Shambhu Nath Mehra v State of Ajmer (AIR 1956 SC 404) the Court held that the rule that certain facts will be in the exclusive knowledge of the accused does not mean the prosecution do not have to prove the case, it only applies when the prosecution has proved the facts and the conclusion follows unless explained by the accused. This was also applied in Trimukh Maroti Kirkan v State of Maharashtra (2006) 10 SCC 681 which was a case concerning death in the home. This section was applied and as the prosecution had proved the basic facts. This is also reflected in the film. Juror No. 8 highlights that the evidence from the State should be tested. The BSA replicates the old Indian Evidence Act under Section 106, now Section 109, without any substantial changes. Therefore, the case law still applies.

6. Reasonable Doubt as the Standard of Decision:

A. Reasonable Doubt

Not just any doubt will do in order to acquit the defendant. In the case of Miller v. Minister of Pensions [1947] 2 All ER 372 Lord Denning said that the law will not permit "fancy possibilities". Indian courts have explained further:

In Dahyabhai Chhaganbhai Thakker v. State of Gujarat AIR 1964 SC 1563, it was established that whilst evidence must be proved beyond reasonable doubt, the doubt which should lead to an acquittal must be a reasonable doubt.

Further, in Shivaji Sahabrao Bobade (1973) 2 SCC 793, it was explained that the principle of reasonable doubt must not be extended to become a religion of fanciful doubts.

In State of U.P. v. Krishna Gopal (1988) 4 SCC 302, it was emphasized that a reasonable doubt is a real and material doubt.

Kali Ram v. State of H.P. (1973) 2 SCC 808 established that if there are two reasonable possibilities given the evidence, one leading to a finding that the defendant is guilty and another

that he is innocent, then it must be concluded that the defendant is innocent. It was noted that it would be better to let guilty people go free than to convict the innocent[4].

These authorities relate directly to the film. Juror No. 8 raises genuine questions at the beginning of the film. He points out facts, such as: the knife being unique, the old man's movements not being timed correctly, the angle and distance of the eyewitness and glasses. This meets the definition of a real and material doubt from Krishna Gopal. However, if the defendant had been set up by someone unknown it would constitute a fanciful doubt, as explained in Bobade.

B. Capital offence

The defendant in the film is facing the death penalty. [5]In India, death is only applied in the 'rarest of rare' cases (Bachan Singh v. State of Punjab (1980) 2 SCC 684 and Machhi Singh v. State of Punjab (1983) 3 SCC 470). A key point was made in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498 that the sentence must be personal and based on the evidence. Whilst this relates to sentencing, these cases show that the court are concerned with the evidence in the same way as the film. An irreversible punishment must be the most carefully examined due to the severity.

7. Circumstantial Evidence and the Exclusion of Innocent Hypotheses :

The prosecution's case was largely based on circumstantial evidence. This can be problematic as there may appear to be a strong inference to draw that the defendant is guilty; however there may be reasonable hypotheses that explain their innocence.

A. Five Principles

Hanumant (1952) established the principles of circumstantial evidence. These were later established by Sharad Birdhichand Sarda (1984) [4 SCC 116][6] into five principles commonly known as the panchsheel of circumstantial evidence.

- The circumstances which give rise to the inference must be proved.

[4] Kali Ram v. State of H.P. (1973) 2 SCC 808
[5] Bachan Singh v. State of Punjab (1980) 2 SCC 684
[6] Sharad Birdhichand Sarda (1984) [4 SCC 116]

- The facts must be such that they only support the hypothesis that he is guilty and could not be explained by any other hypothesis.
- The circumstances should be conclusive.
- All possible hypotheses other than that which is to be proved should be excluded.
- There must be a complete chain of evidence so that there is no reasonable basis for the conclusion that the defendant is innocent.

If these principles are satisfied then conviction can be based purely on circumstances (State of W.B. v. Mir Mohammad Omar (2000) [8 SCC 382]. Therefore this principle is not an exclusionary principle but rather a principle which establishes that the evidence should be of a high quality.

B. Cumulative Suspicion

As demonstrated in the film, the fifth principle failed. Whilst each piece of evidence may have had some evidential value the jurors ultimately decided that the circumstances did not exclude the possibility of the defendant being innocent. Even if there is strong suspicion, this does not amount to evidence (Sujit Biswas (2013)). The case itself cautions against jumping from 'may be' to 'must be'.

C. Misrepresentation

In the film the majority of people believed that the defendant's lack of specific information about the film he says he saw was evidence of him lying and therefore being guilty. However Indian law is very careful with this situation. In order for misrepresentation to be used as an extra part of the chain, the other parts must have been well established. Furthermore, the circumstances must have been completely proved and the misrepresentation conclusively shown. As the juror mentioned, the memory of a person will not always be reliable under pressure.

D. Weapon Found

The knife in the film was said to be a rare knife. However Juror No. 8 had an identical knife.

In India, if a weapon is found under the statutory provision (Pulukuri Kottaya v. Emperor AIR 1947 PC 67) then it can only be admitted to show that the information which clearly led to its discovery. Whether it carries weight will depend on whether the weapon can be linked to the crime using medical/forensic or other reliable evidence. (Section 27 of Evidence Act is now Section 23(2) of BSA)[7].

8. Witness Credibility and the Limits of Testimony :

A. Certainty vs Accuracy

Both main witnesses are very confident. This does not mean they are accurate however. Many factors mean that the witness may be genuine but inaccurate when identifying who, when and how far away something occurred. This film encourages us to look for what is genuine and what is not.

B. Indian Approach to Credible Witnesses

In Vadivelu Thevar v. State of Madras [AIR 1957 SC 614] the court divided evidence into three categories: completely credible, completely incredible, or partially credible. Convictions can rely on completely credible evidence. Partially credible evidence usually requires corroboration.

In State of U.P. v. M.K. Anthony [(1985) 1 SCC 505] the evidence must be considered as a whole. It should have ‘a ring of truth’. Minor inconsistencies will not make the witness incredible but major issues may.

In Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [(1983) 3 SCC 217] any inconsistencies within the evidence must be considered and distinguished between those caused by normal human error (such as forgotten memories, and mistakes in observation) and major inconsistencies.

Rai Sandeep alias Deepu v. State (NCT of Delhi) [(2012) 8 SCC 21] states that a 'sterling witness' will give evidence so high quality that it can be taken as truth. Their evidence will be consistent throughout and not shaken in cross examination.

[7] The BSA, No. 47 of 2023, § 23(2) (India).

The jurors in this film act as the court and consider the credibility of the witnesses. They do not dismiss them due to them not being perfect but ask if there were any major issues with their evidence. The old man cannot really walk across the room in a few seconds and the woman could not really see due to not having her glasses on. These are major issues.

C. Identification

Identification is approached cautiously by Indian courts. In Kanta Prashad v. Delhi Administration [AIR 1958 SC 350] and Matru v. State of U.P. [(1971) 2 SCC 75] it states that a test identification parade is used to test the memory of someone who has not previously met the accused. This is a precautionary measure however not a strict rule. If someone has not previously met the accused then their identification from the dock months later will have little evidential value. In this film the woman across the road had poor conditions in which to identify the accused. This included poor lighting, distance, viewing through a window and poor eyesight. From research in the social sciences into eyewitness error and DNA exoneration it is clear that misidentification is a leading cause of wrongful convictions. This is why the film highlights that identification should be questioned.

D. Eyewitness vs Medical Evidence

This film brings up an issue which is commonly faced by Indian courts. The angle of the knife wound was mentioned. Usually eyewitness evidence takes precedence over medical evidence (Solanki Chimanbhai Ukabhai v. State of Gujarat [1983] 2 SCC 174). However if the medical evidence shows that the assault could not have happened in the way the eyewitness stated it casts doubt on the eyewitness. If during trial a juror points out that it would be unlikely for someone shorter to stab downwards they are carrying out their duty as a juror.

E. Alibi

The defendant claims an alibi that he was at the cinema. Indian courts take the view that the burden of proof will never move however the alibi must be proven to a certain extent so that it is impossible for the defendant to have been there (Binay Kumar Singh v. State of Bihar [(1997) 1 SCC 283]. Shaikh Sattar v. State of Maharashtra [(2010) 8 SCC 430]. The film shows us that if an alibi fails this does not automatically prove the defendant guilty. The prosecution must have enough evidence to prove their case. Indian courts take the same approach and state that

a failed alibi can only be a circumstance that can help strengthen a complete chain of evidence.

9.The Film's Legal Limits and the Indian Jury Experience:

This situation is an idealistic hypothetical scenario. It is not a guide.

A. What a real court would not allow.

If this were a real trial, there would be several issues with this situation. Firstly, the purchase of an identical knife and presenting it to the jury by juror number 8 causes serious issues with extrinsic material and inappropriate jury conduct. Commentators have also highlighted that this and other assumptions made could cause a mistrial. Finally, the jury were shown to debate their decision in one continuous sequence. In reality their debate would be much more broken up and they would receive instructions on how to consider the evidence.

The equivalent issue in India is the judge's conduct. Whilst it is permissible for the trial judge to ask questions to witnesses to ensure the truth is uncovered it is not for the judge to investigate the case further. It is only to clarify the issues raised. This was discussed in Ram Chander v. State of Haryana, (1981) 3 SCC 191 whereby it was explained that whilst the judge must be active in the trial, they must not become advocates for either party. Therefore, similar to the knife situation in the film, whilst it is permissible for decision makers to investigate the evidence, they must not introduce it.

B. The Indian jury, Nanavati, and why the system changed

The Indian jury has not been used for ordinary criminal trials for decades. [8]This is commonly attributed to the case of K.M. Nanavati v. State of Maharashtra [AIR 1962 SC 605]. In this case a naval officer was found not guilty of murder by a majority verdict of 8-1. However, the Sessions Judge did not agree with the jury decision so under s. 307 of the Code of Criminal Procedure 1898 the case was referred to the Bombay High Court. The High Court overturned the verdict and found the defendant guilty. The case was later heard by the Supreme Court due to an appeal.

This case is often said to be the last trial by jury in India and ultimately led to the abandonment

[8] K.M. Nanavati v. State of Maharashtra [AIR 1962 SC 605]

of juries in the country. However, this is overstated as there were still jury trials being held in some areas for several years. There are many reasons why the Indian jury was removed, including concerns about the effects of the media and the quality of decisions made by juries. Nanavati is commonly used as the classic example in India of a jury coming to a decision which appears to have nothing to do with the evidence.

This makes it a good example to contrast with the film. Whilst 12 Angry Men illustrates a jury using rationality to reach a safer conclusion, Nanavati shows how juries can be accused of coming to a decision which cannot be accepted by the legal system. The difference between the two examples is based on whether the deliberation remained focussed on the evidence. The Indian response to this was to make the finding of facts by a professional judge who must provide written reasoning. This will now be discussed.

10. Dissent in the Indian Judicial Process:

Whilst there isn't an eleven member panel of judges like in the film, there are four main areas within the Indian judicial system that have the strictness shown in the film.

A. Trial Judge

The trial judge acts alone, like juror no. 8. All material inferences must be scrutinized, based on the facts and the conditions in Sarda. The reasons for your judgment must be given, so that there's an opportunity to challenge any unsafe inferences if there was an appeal. The judgment is the Indian version of the jury room and will set out the doubt and answer or accept it.

B. Appeal

The appeal allows for the consideration of whether the evidence supported the verdict. If the defendant has been convicted, the court will reconsider the evidence to see if under the Sarda test it does. If the defendant has been acquitted, whilst the court can fully reconsider the evidence it must have regard to the double presumption of innocence (Chandrappa v. State of Karnataka, (2007) 4 SCC 415 and Babu v. State of Kerala, (2010) 9 SCC 189). The court shouldn't overturn an acquittal if there are two reasonable views. This means that if there was a doubt which was already accepted by the court it will be protected. This mirrors the idea from the film of getting eleven jurors to back up the conviction.

C. Split Bench

The most overt form of reasoned minority judgments in India are through dissenting opinions.

ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521 - Justice H.R. Khanna. The four judges held that the right to approach the courts for enforcement of liberty was suspended during the emergency. Only Justice Khanna disagreed and held the petition to be maintainable. It is widely reported that this caused him to lose out on becoming Chief Justices as he was superseded by a junior. However, the majority decision was later rejected by the supreme court in K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1. They found that ADM Jabalpur was incorrectly decided. This mirrors the films thesis as the minority opinion can act as a safeguard[9].

Bachan Singh v. State of Punjab, (1982) 3 SCC 24- Justice P.N. Bhagwati. Justice Bhagwati gave a separate dissenting opinion arguing that the death penalty was unconstitutional. This was particularly notable as it was a life or death case.

However, we shouldn't assume that dissent is usually correct. In ADM Jabalpur it took forty years for the decision to be overturned. It is important to have dissenting opinions as it will help keep the opposing reasoning in the record.

D. Advantage of Doubt

If there is a split in opinion on a criminal appeal with two judges, the code of criminal procedure provides that there should be a third judge. This paper can make a small inference. If there really was a split in opinion between competent judges, it shows that there is more than one reasonable view of the evidence. This means that Kali Ram will favour the view that is in favour of the accused. However, this doesn't mean that it will decide the case as the third judge will apply the standard of proof.

11. Conclusion:

Dissent is the protection we have against the most dangerous group thinking, which is absolute certainty. Juror No. 8 is not insisting on innocence, instead he is emphasising that to find

[9] ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521

someone guilty there must be proof according to the law. This creates a thoughtful atmosphere to highlight any issues in the evidence, perception and bias.

This can be seen in Indian case law. Kali Ram and Bobade explain what reasonable doubt is. Hanumant and Sarda explain why reasonable doubt must be there. Vadivelu Thevar, M.K. Anthony and Malkhan Singh explain how the evidence should be assessed. Ashish Batham explains why the seriousness of the crime does not affect the standard. Chandrappa shows that an acquittal means there is a protected presumption. Khanna J's dissent in ADM Jabalpur shows how minority opinions can be valuable.

Ultimately this film shows us that we need courage and rationality to ensure justice. We need to think about everything in order to ensure a fair verdict. This isn't achieved by having everyone agree, or being a contrarian. Instead we need to make a collective decision where everything can be tested to see if the inferences made are valid using evidence, law and the presumption of innocence. This applies to Indian judges who do not use juries. They have to write reasons for their decisions, they can be appealed and they must include a dissenting opinion.

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