INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor
School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

EVIDENTIAL ASPECTS: APPRAISAL OF EVIDENCE DURING TRIAL, A KEY NOTION ON THE BURDEN OF PROOF.

AUTHORED BY - GODWIN GOODHEAD AKPAN.

ABOUT THE AUTHOR

Godwin Goodhead Akpan is a final law Student at Marwadi University, Gujarat, India. He serves as the current Convenor of the Research & Publication Committee, Faculty of Law, Marwadi University. He is the Best Advocate Awardee of Henry Dunant Moot Court Competition 2023, Best Speaker Awardee at the LJ School of Law, National Parliamentary Debate 2024, Winner of Legal Hackathon 2.0, National Forensic Sciences University, Gujarat, 2024 and also the Winner of the PIL Drafting Competition, State-Level Pro-Bono, Nirma University, 2023, among other accolades.

Godwin served as the Nigerian Students' President at Marwadi University, 2022 - 2024. He has authored several research articles, including “A Cross-Cultural Comparison of Death Penalty in the USA, UK, & India”, “A Legal and Ethical Consideration of Livelihood as a Hindrance to Access Justice”, “Contemporary Legal Issues and Challenges of Innovations under Artificial Intelligence (AI): An Expository Evaluation”, “Punishment - A Drive for Justice”, as well as presented a paper titled "Quandary of Nuclear Legislation in a War-Prone World" in Istanbul, Turkey.

The author has completed over ten legal internships under reputed Advocates and Law Firms within and outside India. He has also undertaken several certificate courses including on Climate Change Policy and Law, Diploma Degree from Erasmus+ KA2 CBHE Project, co-funded by European Union, the U. S. Business Organizations Course, from Chicago-Kent College of Law, United States of America, Constitutional Law (Online Degree) from University of Pennsylvania, Philadelphia, United States, and Environmental Law (Online Degree) from the University of North Carolina, United States of America.

ISSN: 2582-6433

ABSTRACT

The Law of Evidence is both substantive and procedural; it serves as a guide to the judiciary to effectively discharge its primary functions of interpreting the law in a fair, equitable, and justiciable manner, especially concerning disputes that are being brought before it. The burden of proof is a pivotal factor upon which this particular objective can be achieved. In simple terms, the burden of proof is the threshold that is required for the justification of a legal claim upon which a liability or remedy is being prayed for in a competent Court of Law. It is based on the assertion of existence, non-existence, nature or extent of any right, liability, or other assertion which a party or parties claim and the other rejects, refutes, or denies in either a civil suit or criminal proceedings.

Part I of the research paper deals with the conceptual analysis of the burden of proof, its meaning and scope. It also expounds the aspect of facts being proved, disproved, and not proved, along with the factors influencing the burden of proof. Part II deals with the burden of proof in civil and criminal cases, the evidential value of the burden of proof, especially in the aspect of criminal trials and civil matters, and propounds the concepts of foreclosure of doubt and creation of doubt. Further, this part covers the proof of a fact to enable the establishment of other facts and the burden of proof by a default witness.

Moreso, the third part addresses the presumption of life and death, the notion of civil and criminal death, the burden of proving civil death, and the procedures for filing a suit of civil death, as well as the required essentials for maintaining the suit presumptions of facts and burden of proof. Part IV extensively explains proof concerning the question of law and claim for general exceptions, the grounds for the onus of proof, the notion of presumptions, and the exceptions to the burden of proof.

The last part enumerates the challenges facing the burden of proof. The paper concludes that doing away with the ubiquitous notion of burden of proof may likely overhaul the entire system. It provides several suggestions, including the need to legally recognise intermediate doubt and also create balanced presumptions under the law.

Keywords: Law of Evidence, Burden of Proof, Criminal and Civil Death, Presumption of Law, & Procedural Law.

ISSN: 2582-6433

I. INTRODUCTION

The Law of Evidence is both substantive and procedural; it serves as a guide to the judiciary to effectively discharge its primary functions of interpreting the law in a fair, equitable, and justiciable manner, especially concerning disputes that are being brought before it. The burden of proof is a pivotal factor upon which this particular objective can be achieved. In simple terms, the burden of proof is the threshold that is required for the justification of a legal claim upon which a liability or remedy is being prayed for in a competent Court of Law. It is based on the assertion of existence, non-existence, nature or extent of any right, liability, or other assertion which a party or parties claim and the other rejects, refutes, or denies in either a civil suit or criminal proceedings.

Dr. Krishnamachari, in his famous book,[1] has sequentially dealt with the statutory provisions related to the burden of proof under the law of evidence. According to him, the burden of proof is based on the person who desires any court to give judgment on a legal right or liability, depending on the existence of facts. The book has crept into both civil and criminal cases, the agreement of burden of proof between parties, as well as fixing the burden of proof on the person who would fail if no evidence were given at all.

It is a known practice that there cannot be a suit or proceeding if no claim over certain things has not been made along with a coreferential objections for the same, that is to say, the burden of proof may not be necessary if a party acknowledges the existence of legal liability and agrees for settlement, compromise, or pleads guilty for an offence as the case may be. In the majority of cases, it has been seen that the person who has ascertained the existence or non-existence of a right principally has the heavy burden to discharge by giving sufficient evidence with substantial grounds. However, the legal framework has been made flexible so that the onus of proof can be shifted to the other party to show cause as to why such allegations cannot be maintainable, that is, the quantum of preponderance of probability or standard beyond a reasonable doubt; this is widely governed by the Bharatiya Sakshya Adhiniyam (BSA), 2023, along with other enabling statutes. Nonetheless, the evolution of grey areas in law has sufficed to the extent that in some cases, like rape and cruelty, presumptions overshadow the requisite duty of complainants in such a manner that they do not have to prove their case when they accuse a person for such, but transfers burden to the defendant to prove that such a suspected

[1] DR. V. KRISHNAMACHARI, LAW OF EVIDENCE 559 – 575 (Narendra Gogia & Company, 8th Ed. 2022).

ISSN: 2582-6433

crime did not take place. Whether these circumstances are significant today or require a change in legal position is a question of law that has to be addressed.

In addition to that, there have been situations of classifying the burden in matters related to the violation of constitutional laws, intellectual property rights, matters tabled before tribunals, among others. Even so, certain challenges arises whether the notion of burden of proof can be modified, done away with, or still retained; it further questions the kind of evidence that can be admissible, whether direct, circumstantial, or electronic evidence is sufficient, if yes, whether it can be treated independently to decide a particular case or corroborated with other evidence brought about to justify the facts in issue. On the other hand, it has been seen that the concept of proof is settled in law to address questions that may likely create doubts and also maintain the principles of natural justice, nevertheless, the level of proving any matter is based on its nature, whether it is a civil claim or criminal case and it is widely left at the discretion of judges to determine whether a fact has been proved, disproved, or not proved.

Moreover, the complexity and variety of cases due to the heterogeneousness of people and advancement in violating people's rights or committing crimes have made it difficult for the burden of proof to be easily ascertained. The inconsistencies in maintaining one pattern of proof in all cases has brought the emerging issue as to the settled position of law and the need for revisiting the legal system, however, higher problem lies with regards to the determination of best evidence as the admission and satisfaction of the burden of proof are left on the discretion of judges who can sometimes defer from those aspect of evidence which are not substantive in nature.

Meanwhile, some authors[2] have carefully elucidated the aspect of the burden of proof with the help of various case laws. They have addressed the legal principles of *onus probandi,* dealing with the person who affirms a certain stance and *factum probans,* which covers the proving of facts in suits and proceedings. Although the authors have created a complementary doubt on the clarification of judicial interpretations when it comes to electronic evidence, nonetheless, they have nonetheless failed to identify the exceptions to the rule of burden of

[2] Aditi Priya, Anushka Paliwal, Banasthali Vidyapith, *Analysis of the Burden of Proof Under the Indian Evidence Act*, INDIAN JOURNAL OF INTEGRATED RESEARCH IN LAW (Vol. II, Issue II, 2022).

ISSN: 2582-6433

proof. In addition, Nikhil Verma[3] has intensively addressed the issue of the burden of proof, especially in criminal cases. He alleges that the burden of proof remains constant while the onus sometimes shifts. Even so, the focus is more inclined to the protection of defendants in proving their cases to fall within the ambit of general exceptions of law and their entitlement to be presumed innocent until otherwise proven.

Therefore, the present study is geared towards addressing the concept of burden of proof under the Law of Evidence in both civil and criminal cases, with practical examples, the notion of reversed burden, its exceptions, and challenges, along with the possible solutions that can help to enhance the effectiveness of the civil as well as criminal justice system in India. Doctrinal methodological techniques will be applied to expound the concept of burden of proof with the help of secondary sources of data collection, and critical analysis with background logic in the field of Evidence Law. An analytical technique will also be pressed into motion to identify the feasibility of the topic in light of established principles of law. While the scope of the present research article is confined to the Indian context, it is also limited to cases falling within the jurisdiction, which are justifiable with the use of various precedents and the statutory provisions prevalent in the country.

Conceptual Analysis of the Burden of Proof: Meaning and Scope

The serious dilemma that mostly occurs when it comes to the notion of burden of proof has always been on whom the burden lies. It will be unreasonable if a person accuses his friend of stealing his textbook without explaining why he believes such an allegation to be true. In such a scenario, for example, it will be a lacuna for any adjudicating party to convict the friend without knowing the grounds on which the accusation is based. Proof is the satisfaction that is derived from the overall merits of a case, which carefully leads to the clarification of doubts about the existence or non-existence of any fact with the help of evidence, logic, analysis, and law.[4]

Burden of Proof is mostly used in a simple manner; however, it can be ambiguous due to the factual parameters of a case; in law, it is simply a responsibility on the part of a person who claims the existence or non-existence of certain facts to show cause as to why others

[3] Nikhil Verma, *Burden of Proving Exception and Presumption of Innocence Under Evidence Law*, LAW TIMES JOURNAL (2023).
[4] Ho, Lock Lai, *The Concept of Evidence*, STANDFORD ENCYCLOPEDIA OF PHILOSOPHY (2021).

ISSN: 2582-6433

should think in the same way as a man of ordinary prudence.[5] The slight difference between proof and burden of proof is not far-fetched; while the former contemplates reasonable evidence to make out a case, the latter elucidates on the person who is required to bring forth the required evidence. Inasmuch as the Court is willing to give justice to victims or complainants as the case may be, it has to be noted that the judges will not deviate from emotions to admit all whims and caprices; when a matter is brought before the Court, the intensity of it has the chances of requiring more evidence to make out a case. Although it is very controversial that the judges apply their judicial minds while interpreting the law, nonetheless, they cannot swerve to merge such things with passions. Merely suspecting a person to look notorious or the moral inclination that a person may likely have done something in such a manner that the attention of law can be drawn cannot be a ground for giving an impugned judgment against the person, unless the burden of proving the case has been discharged properly with admissible evidence.

The players of burden of proof varies, it can be based on the production of evidence itself which may include direct or indirect shreds of evidence, a fact cannot be said to be proved under surmise or conjecture, this is because of the pivotal of probabilities for which it is rested upon, when two consistent inferences are possible, chances are that the person who can draw a more convincing line of argument and proof in civil matters will have the judgment to his favour. This thin line of argument cannot hold water in criminal cases; it must be seen either that the accused can create a reasonable doubt to be acquitted, or the prosecution proves beyond a reasonable doubt before the accused can be convicted. One interesting factor that needs to be recalled under the burden of proof is the availability of such grounds in law; for instance, if an election is alleged to be defaulted, the relevant provision of the Representation of People's Act[6] has to be proven, and the burden of proof lies on the petitioner alleging such an election to be a malpractice.

Proved, Disproved, and Not Proved

The ranking of facts matters a lot as it impacts the outcome of any judgment. Proof is mostly used in describing evidence as a noun, whereas the action of it is said to be 'prove'. Three tiers of conclusions have been recognized by the Bharatiya Sakshya Adhiniyam[7] as to the existence

[5] Khushi Malviya, *Burden of Proof Under Indian Evidence Act*, LAWCTOPUS (2023).
[6] The Representation of The People Act, 1951.
[7] Bharatiya Sakshya Adhiniyam, 2023.

ISSN: 2582-6433

or non-existence, extent, and scope of certain facts or inferences. Under the interpretation of clauses, the concerned law has defined a fact to be "proved" when a Court can believe, like a man of ordinary prudence, that a matter exists or not after considering the whole case. "Disproved", on the other hand, is said to be applicable when the Court cannot act upon a certain fact due to the probable belief that it does not exist after considering all the suppositions. Lastly, when none of the aforementioned cannot be arrived at as a prudent man ought to with reference to any fact, then it can be said to be "Not Proved".[8] To simplify further, beginning from the third category, it recognizes the regulation or movement of the burden of proof. If a person asserts a fact without proving the same, it will be said to be not proved, as there is no balance of probabilities. On the contrary, when such a fact has been satisfactorily proven before the honourable court, the chain moves and a shift takes place to the other party to rebut. This shift is known as the reversed burden (mostly referred to as the onus of proof), and it will be said that the matter has been proved. When there is a successful rebuttal of the fact proven in the first category by the person to whom the burden of proof was shifted, it is said to be disproved; hence, proof is a driving force towards the outcome of a case.

Factors Influencing Burden of Proof

When it comes to the concept of "Burden of Proof", two things have to be considered, viz, **(1)** Assertion and **(2)** Denial. It will be no case if a person raises a doubt and there is no corresponding rebuttal as such. This is the first step in determining the burden of proof, and the nature of the case serves as a strong factor influencing it, especially with what has been claimed and what the other party has rejected. The key factor influencing the burden of proof is its relaxation on the person who will fail if no proof is given.[9]

Leaving aside the fact that the law has permitted certain aspects like conclusive presumption which do not allow further evidence or denial of a fact as will be treated subsequently, when it comes to the legal practice involving two or more opposing parties, it must be *prima facie* seen that there is the existence of certain differences, be it chaos, conflict, disagreements or misunderstanding of either question of law or question of fact. It is not a matter of concern with regard to whom the party is; it can be an individual, a legal or artificial person, like companies that are recognized by law, including the State.

[8] Bhavpreet Singh Soni, *Explain Proved, Disproved, and Not Proved Facts and Facts which Need Not to be Proved*, SONI'S VISION (2019).
[9] *Supra* note 7.

ISSN: 2582-6433

II. BURDEN OF PROOF IN CIVIL AND CRIMINAL CASES

The distinction between criminal and civil cases in terms of burden of proof only varies with the nomenclatures and their requirement of proof. This is not to say that the burden of proof is not applicable in matters related to constitutional laws, intellectual property rights, matters tabled before tribunals, among others, however, it will go into a broad aspect if touched upon, as the focus here is limited to civil and criminal cases, which of course they are in one way or the other inter-related. Generally, when it comes to Court proceedings, the initial burden of proof lies with the prosecution or complainant who alleges the existence or commission of any particular crime. It is a simple principle of law that 'one who alleges must prove',[10] if it is asserted that any penal law has been violated, it is up to the person laying such allegations to lead the evidence of prosecution regarding the incriminating factors pointing towards the guilt of the accused, along with the examination of prosecution witnesses, which must be established. Also, it is not open for the alleging party to make any kind of allegations without a substantial backup with the proper provisions of law; the burden of proof continues till the time that the case is discharged or disposed of. In such cases, direct, circumstantial, documentary, or electronic evidence would be sufficient; in most cases, it may not be treated independently to decide a particular case. The weightage is more when corroborated with other evidence brought about to justify the facts in issue.[11]

On the other hand, when it has to do with the aspect of civil matters, the burden of proof lies on the applicant, plaintiff, or petitioner, as the case may be.[12] For example, if a person raises the contention in a suit that a legal injury has been suffered, it will be left for such person to explain his case with the help of facts, justified law, and available shreds of evidence; giving evidence to convince or persuade the court that such person is entitled to certain compensation as prayed for. The strength of the burden of proof has weightage depending on the nature of the matter; it is very stringent to prove beyond a reasonable doubt when it is a criminal case;[13] however, in civil suits, the burden of proof is based on the preponderance of probabilities.[14]

Meanwhile, in terms of primary or general matters, the burden of proof lies on

[10] Anil Rishi v. Gurbaksh Singh, Appeal (Civil) 2413 of 2006.
[11] Godwin Goodhead, *Punishment: A Drive for Justice,* INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS g677-g678 (2023).
[12] *Ibid.*
[13] Justice A. V. Chandrashekar, *Proof Beyond Reasonable Doubt,* KARNATAKA JUDICIAL ACADEMY (2013).
[14] Shanti Bai v. Daneshwar Singh, 2020 SCC Online Chh. 604.

ISSN: 2582-6433

the principal person making the allegation or assertion to show cause as to why the issue should be maintainable; nonetheless, when the locus standi is proved, and issues have been framed, the burden of proof extends only to the facts in issue or relevant facts. It is not within the whims and caprices of a person to prove each and everything that is not related; there is no requirement to prove anything that does not point towards proving or disproving a case.

Moreover, the Bharatiya Sakshya Adhiniyam[15] has acted as both substantive and procedural law governing the rules of burden of proof in India. Notwithstanding this, the evidence law is very liberal in nature; it gives room for special laws to lay down the proceedings of proving their cases. Instances of such laws include the Juvenile Justice Act,[16] POCSO Act,[17] Narcotics Drugs and Psychotropic Substance Act,[18] the Indian Succession Act, Sexual Harassment of Women at Workplace Act,[19] among others. Therefore, it will be imperative to understand the relevance of the burden of proof and its concrete analysis in criminal and civil cases.

Evidential Value of Burden of Proof

The word 'must' as used in section 104 of the Bharatiya Sakshya Adhiniyam[20] makes the burden of proof a mandatory subject matter of any case and *prima facie* shows its evidential value. Burden of Proof is necessary because it will amount to a false allegation if an assertion of the existence or non-existence of any fact is made vexatiously or with *malafide* intentions to harass a person. The question that may likely arise is the position of a matter. If no case is made out, it may look visible before the eyes of people that an offence of murder has been committed by a person; however, the incompetence or inability of the prosecution to prove such commission of crime beyond a reasonable doubt can amount to the acquittal of the accused. In civil matters, the status quo of a dispute is always maintained if the person ascertaining it cannot back the argument with the relevant facts and shreds of evidence to reach the minimum threshold.

At this point, it is pertinent to recall that, as earlier highlighted, the evidential value of

[15] *Supra* note 7.
[16] Juvenile Justice (Care and Protection) Act, 2015.
[17] Prevention of Child from Sexual Offences Act, 2012.
[18] Narcotics Drugs and Psychotropic Substance Act, 1985.
[19] The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
[20] *Ibid* 15.

ISSN: 2582-6433

proof is not necessary until it is asserted or related to a fact in issue. What happens is that when a claim has been levied against a person, it goes beyond a mere statement but becomes an obligation or duty conferred by law on the person making such an affirmation to prove the existence or non-existence of such fact in issue or relevant fact. It is a duty because the failure to prove can be regarded or found to be done to harass the personality of the defending party, which can amount to malicious prosecution, false accusation, or defamation. Under the Bharatiya Nagarik Suraksha Sanhita 2023,[21] specifically, section 267, the prosecution will have to lead the evidence on the grounds that it is reasonable enough to believe that a crime may have been committed by the accused. It is to be noted that the presumption of certain perceived elements of crime before committal of the accused to trial by the Magistrate is only to help facilitate the process of justice and does not in any way violate the right of the accused to be presumed innocent. Until a trial is concluded or an option of plea bargaining is voluntarily resorted to, a person is deemed to be innocent, although there are some exceptions to this rule in other laws, which will be dealt with subsequently.

Evidential Value of Burden of Proof in Criminal Trial

Due to the fear of innocently putting people behind bars, the Court has been very adamant in convicting a person. Even though compensation may be awarded in situations where a person has been wrongfully convicted, imprisoned, and later released, such compensation for committing a gross miscarriage of justice cannot be adequately recoverable if a death sentence has been wrongly awarded and executed against a person. The standard of proving a criminal case is as hard as the decision of a blind man to walk on the street with the confidence that the track he is following is the main road. This is because the Court plays a very neutral role; in most cases, when it is found that an interest may be taken by any member of the Court (Judges), the law has given the inherent right to an accused or defendant person to make an application regarding the same, just like in civil matters as well. A similar leverage has been given to Judges to recuse themselves in matters in which they are convinced or thinks that they may be compelled or due to some circumstances, to have conflict of interest with conscience and discretion and may likely derail from the predominance of their legal spirit which goes beyond the human passion and interest but as far as to the extent of what is just, legally correct, and of equity.[22]

[21] Bharatiya Nagarik Suraksha Sanhita, 2023.
[22] Lord Denning, *Road to Justice*, ALLAHABAD HIGH COURT (2013).

ISSN: 2582-6433

It is not required that an accused should first open his case; the evidence of prosecution must be led before, which symbolizes the burden on whom it rests. Even in exceptional cases where the burden has been statutorily conferred upon the accused, still, the story has to be initiated or started by the prosecution, who will explain the grounds upon which the case has emanated, how he will lead his evidence, along with pointing to the reasonable grounds which the accused is deemed or suspected to be guilty.

To be very precise, the standard of proof in criminal cases is to prove the guilt of the accused person beyond reasonable doubt'.[23] Two things that must be noticed here are the "Foreclosure of Doubt" and the other being "Creation of Doubt".

1. **Foreclosure of Doubt:** This concept of foreclosure of doubt has nowhere been defined in any book or statute; however, it can be inferred from the necessity and requirements of law at present that the prosecutor who has the burden of proof must make it in such a way that there is no room for any doubts. Foreclosure of doubt, as the name goes, simply means that the person does not require any special skills or technical knowledge to reasonably believe, based on the prosecution's story, that an accused person must have committed or taken part in the commission of a certain crime. When the phrase "man of ordinary prudence has been infamously used loosely, it has to be understood that it is not required that strict provisions of law must be derailed or that the person must be very versed with specialized knowledge in the field of law, yet, it literally means that by mere looking at the shred of evidence that are being adduced by the prosecution, there should exist a substantial grounds to believe that the allegation(s) has been sufficiently established beyond reasonable doubt in such a manner that the Court can deem a fact to be proved and also act upon it after considering all other grounds before it.
2. **Creation of Doubt:** Creation of a reasonable doubt is something that is not very easy in terms of crimes and their various stages. In most cases, the law provides limitations to itself; the prosecution is bound to follow or prove all the essential ingredients of a crime, and where a loophole or failure to complete such a cycle has been identified by the accused person, a doubt has been created. The problem with the creation of doubt is that it not only affects the nature of the judgment but further questions the position of a good conscience and judicial mind that has been applied by a Judge who is to deliver justice. Creation of doubt does not require that the accused give substantive evidence; this does not mean that

[23] *Supra* note 13.

ISSN: 2582-6433

providing strong material will not give more merit to the defence's argument. Nevertheless, it does not imply or mean that the rebuttal should be baseless, only by mere denial without showing something on the contrary. For instance, a student who denies having been at a crime scene during school hours should be able to provide an alibi that he was present in the class at the time when the incident occurred in the alleged location.

Peradventure, one is obliged to go by the kinds of evidence, then the nature of rebuttal has to be in co-referential to the subject matter. This means that, if direct evidence has been produced, the doubt of the accused is only to the extent of challenging the validity of the evidence, or by bringing such material evidence to showcase that the evidence of the prosecution is not factually correct or to be relied upon. On the other hand, when it comes to indirect evidence, one of the primary tests that has been laid down is the connection of the chain to a justifiable point towards the guilt of an accused person.[24] When the accused person has broken the chain by creating a serious doubt, let's say by producing an alibi in the example of a school student as given above, then it can be said that a reasonable doubt, which is based on a fact-to-fact basis, has been created. In the above two standards of proof, the burden of foreclosure of doubt lies in the party bringing another to the Court of law, whereas the burden of creation of doubt rests on the shoulders of the contesting party refusing the grounds on which the contentions are based. In addition to this, there is always the benefit of doubt available to both parties, and where two inferences are possible, the benefit must be given to the accused party.[25]

Evidential Value of Burden of Proof in Civil Matters

Getting a judicial remedy in any particular suit is very complex and cumbersome; however, the intensity of proof is less due to the fact that it is not as severe as in criminal matters. The legal principles of *onus probandi* deal with the person who affirms a certain stance, and *factum probans* covers the proving of facts in suits and proceedings;[26] when a person is guilty of an offence, a conviction, a fine, compensation, forfeiture of property, or death is awarded. Nevertheless, in civil matters, there can be an award of compensation or damages, declaration of rights or liabilities, injunction or specific performance, etc., it will be unfounded to say that arriving at such a remedy is *per se* simple in any way; nonetheless, it varies from case to case.

[24] Prakash v. State of Rajasthan, 2013 Cr. LJ. 2040 (SC).
[25] Janet Gusdorff, *Inferences Explained*, PLAINTIFF MAGAZINE (2019).
[26] *Supra* note 2.

ISSN: 2582-6433

The standard of proof in civil cases is the weightage of the preponderance of probabilities.[27] To begin with, preponderance has to do with the weightage of evidence, that is, the convincingness of evidence which outweighs pre-existing or subsequent shreds of evidence. Probability as used in this context implies the likelihood of truth or verisimilitude; this likelihood is nothing but the tendency of the assumptions or propositions of certain facts to be true based on evidence, reason, argument, and experience.[28] Under this category, there is less requirement of presuming that a person is guilty or innocent, unlike criminal cases, the probabilities are based on something that has been proved, disproved, or not proved. This means that it must be seen whether a fact in issue is decided in the affirmative or negative before a right or liability can be determined. Affirmative in this sense means that the Judge is more convinced that the claim of the petitioner, plaintiff, or applicant is plausible. On the other hand, when a fact in issue has been decided to be a negative, it implies that the respondent has been able to successfully establish before the Court the grounds upon which his disagreement with the case of the plaintiff is derived. The concept of 'beyond reasonable doubt' is not applicable here; the probability is more or less on the ground of 'likely exists, than 'must exist' in criminal matters.

Different cases have different ways in which they can be proven; in some cases, parties can make an agreement on who the burden of proof should be laid upon, yet not in criminal cases. For every allegation, a separate charge or issue is being framed, and for each of them, different kinds of evidence are required, as well as strengthened proof. The discharge of burden starts from the point of the party approaching the court and intending to be favoured by law, while the aspect of the party who does not want to be brought to book or suffer legal consequences has the shifted onus to create some doubt or reduce the probability in such a manner that the Court finds it impossible to make a regrettable decision.

Proof of Fact to Enable Other Facts

Section 107 of the BSA[29] contemplates the effort of reducing gross miscarriage of justice. Just like a manner of order in which five cannot be reached without counting one to four, the section attempts to create a hierarchy of proof. For example, a person cannot claim insurance money from the concerned authority over his car, house, or secured asset if the person cannot first

[27] *Supra* note 14.
[28] People v. O'Brien, 130 Cal. 1, 02 Pac.
[29] *Supra* note 7.

ISSN: 2582-6433

prove that the alleged property itself has been damaged or destroyed. To further simplify by way of giving an example, breach of contract cannot be claimed if there is no proof that a legal relationship exists between the parties. As per the rule of evidence, when a person is ready to give evidence by using a fact to prove the existence or non-existence of other facts, the person must first prove that the grounds for the validity of the alternative means. This implies that the burden of using a fact to prove other facts lies on the person intending to make such a proof. Nonetheless, this does not affect the authenticity of facts that do not require proof, yet they are judicially noticed.[30]

Burden of Proof by a Default Witness

Default witness has not *per se* been recognized as a legal terminology; however, it covers that aspect of people who are opportune to have some information about the occurrence or facts of certain cases due to their engagement or commitment at a particular point in time. Such a person or persons can be able to explain how a human being last seen by them or being around them has suddenly died and suffered injury.[31] This is because the facts are within the special knowledge of the accused, and in the absence of making such a necessary explanation, the conclusion would reasonably be that he has the culpable *mens rea* of the offence. These kinds of circumstances are so strong against the person who has the requisite idea of the whereabouts of a particular person. Let's say that the allegation that a property in one's custody has gone missing, in such a case, it is for the person who was entrusted with the belonging or valuable of such property to discharge the burden of proof that he did not know or was not aware of the means or circumstances upon which the article went missing. Similarly, before a person is admitted or given into the custody of a police officer, the law requires that the person undergo a medical checkup to ascertain the current health status or state of mind of the person,[32] especially the conditions of the body when arrested or identification of injuries sustained (if any); the wounds and any marks. When such has been reported to be unfounded by a qualified medical practitioner who is empowered by law to discharge such functions, it is up to the officer in charge of the police station to explain the unnatural cause of death of the person, along with answering questions regarding the discovered injuries in the ante-mortem. In this kind of scenario, the burden of proving that the death was natural, or that the factors leading to the death of any such undertrial are legally permissible or natural, rests on the officer who has the

[30] Musabit Masoodi, *Facts Which Need Not to be Proved*, LAW UNIVERSITY OF KASHMIR (2016).
[31] Hari Ram v. State of Rajasthan 2015 Cr. LJ 2970 (Raj).
[32] K. Rajasekharan, *Medical Examination of an Accused under CrPC* (2022).

ISSN: 2582-6433

obligation to take care of the custody of the person. This responsibility arises from the fact that the law gives duty of care on the part of such officer to treat a prisoner in line with the rights that are available for them and by virtue of that, they have the special knowledge of the whereabouts, that is, health, wellbeing, and safety of the person, and in case of any actions to a contrary as aforesaid, the burden of proof lies on the accused officer to explain his innocence with respect to such special knowledge about the cause of death and injuries. If this fails, it is sufficient to maintain or sustain the conviction or guilt of the accused (officer in charge of the police station).[33] It does not mean that a person can be convicted only on the grounds of having special knowledge; the burden of proof required here is that of preponderance of probabilities on the part of the accused; this means, if two persons are in a house and one suddenly dies, there has to be a satisfactory explanation of the cause of death of the deceased, it is the elimination of the "I don't know" philosophy; as long as it can be proved that the presence of the accused or witness is not denied, the health condition of the victim was normal without symptoms of suicide or suspicious circumstances and the accused has failed to explain such unnatural death or suspicious circumstances, then it will be enough to award a sentence of guilt.[34] At least, the matter is supposed to be reported to the police and the nearest family members as early as possible, with reasonable grounds as to the event and cause of death. In some cases where ignorance is pleaded, or the condition under which the confession will amount to the discovery of a crime committed by a person, the law has provided the safeguard of the right against self-incrimination. However, the conduct of the person having some special knowledge without sharing the same also matters, like the knowledge of suicide, homicide, or the knowledge of one's premises used for the storage of narcotic substances as prohibited under the Narcotic Drugs and Psychotropic Substances Act.[35]

III. PRESUMPTION OF LIFE AND DEATH

The presumption of the Court under section 110[36] is with respect to the continuance of the life of a person after the age of 30 years. It is a presumption that puts the burden of proof on the person alleging the death of a person. Section 110 differs from section 111 because the former is a presumption of death, while the latter is a presumption of life. One thing that the Court has to look into is the whereabouts of the person by people who would naturally have heard from

[33] State of Maharashtra v. Sanvlo Naik, 2018 Cr. LJ 972 (SC).
[34] Om Prakash Singh v. State of Chhattisgarh, 2015, Cr. LJ 4731.
[35] *Supra* note 18.
[36] *Supra* note 7.

ISSN: 2582-6433

the one who is presumed dead. Both sections are of civil death and as the name implies, the standard of proof is less, this means that when a person alleges that another is death, the burden of proof lies on such person who in making the claim; whereas, in the case in which the person who is believed to be death is petitioned to be alive, the person denying the death has to proof the matter by balancing the preponderance of probabilities.

Another difference between the two enshrined provisions, or which rather serves as a proviso to section 111, is the fact that, under section 110, the person who makes the claim originally owns the proof, whereas, under section 111, there is a shift or transfer of prove from the person who asserts the death to the person denying such death to have occurred.

Civil and Criminal Death

The question may arise as to what exactly is civil death, whether there is such a connotation of criminal death as well. Although many scholars may not have given insights into it, to touch on the surface, it is pertinent to understand their meaning and sense of usage. Civil death involves such a death which happens as a result of natural occurrences, such as a defect in health, accident, act of God, or any such death which does not create a criminal liability on a third party, though it extends to such a death for which civil liability, like compensation for negligence, can be incurred. To clarify this, it may not be wrong to classify all the successfully proven death which falls under the category of general exceptions of law to be deemed as civil death. Three ways of proving general exceptions can be by adducing pieces of evidence, contradicting the case of the prosecution/petitioner, or by cross-examination of the witnesses to fit within the rules of exceptions.

On the other hand, civil death has also been recognized under the Bharatiya Sakshya Adhiniyam by virtue of certain presumptions of law. The consequential effect of civil death has mostly been to safeguard the interests of those who are legally entitled to certain rights, such as succession of properties, claim of pension/gratuities, or other privileges, so as to prolong the survival and provide sustenance of the heir or next of kin in the absence of the deceased. Thus, when a person has been missing for seven years and has not been heard from by the people who should have naturally heard from him, then he can be presumed to be dead. Hence, the legal beneficiaries, like the next of kin, can approach the Court for the declaration of civil death as well as entitlement to some rights such as properties.

ISSN: 2582-6433

Criminal death, as the name suggests, is mostly accompanied by criminal liability. The state acts as a guardian of the citizens,[37] when a death occurs in such a manner that the state cannot account it to be natural, it is said to be criminal in nature. In simple terms, crimes are said to be committed against the society and not a particular individual (rights in *rem*), when a death happens in a way in which it is suspicious, unnatural, or accrued to be caused by some human factors or contributions which can be punishable under any law for the time being in force, then such death can be said to be "criminal death".

On the question of proof, the burden of proving that the death was civil in nature, not to be within the purview of civil death, is on the person rebutting such a claim. Contrarily, in criminal death, the burden of proving that the death was criminal in nature and punishable by law lies on the person making the claim; the public prosecutor, depending on the nature of the case. Under section 110, a person above the age of thirty years shall be presumed to be alive, and the burden of proving his survival is on the person who asserts that he is dead; nevertheless, this presumption does not hold value if the person claiming that he is actually alive cannot prove his existence under section 111, and vice versa. The burden will remain on the ascertaining party to prove that such a person has not been heard, and the lack of communication has persisted for over seven years. The actual date and time of the death cannot be proven as a burden; this is because the presumption under sections 110 and 111 is that of law, whereas the date and time of death is a fact and must be proven with some evidence. Also, there is no presumption as to the facts and circumstances under which the person may have died.[38]

Notwithstanding the aforesaid, the presumption of death under the Indian context with regard to survivorship when two people die does not exist. It has been seen that there is a presumption in case of the death of two persons by accident under the Roman Law and English Law that the stronger survives the weaker,[39] and the elder person in age dies earlier than the younger person.[40] This has caused a serious difficulty, especially when it comes to presumptions. For example, if it has not been proved that a person was among those caught in

[37] T. B. Mukerjee, *Supreme Court, As a Guardian of the Constitution of India*, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 52 – 55 (1951).
[38] Sunita Roy Choudhary and Ors. v. Jageshwar Choudhary and Ors. 2006, Smt. Kanti Devi vs Indraprastha Power Generation 2008, and Balambal vs Kannammal Alias Pazhaniammal 1996, etc.
[39] Gino Carlo Speranza, *The Survival of the Weakest as Exemplified in Criminal Law*, 160 – 164, PENN CAREY LAW: LEGAL SCHOLARSHIP REPOSITORY (1904).
[40] Breen Solicitors, *Who Died First? An Important Question in Probate* (2020).

ISSN: 2582-6433

a gas explosion, there will be a seven-year waiting period before there can be remarriage of the wife, or inheritance as per the applicable personal or general laws, which may be unfavourable for the survivors. To some people, it is very lengthy, and to others, it is reasonable, especially in situations in which the victim may have either died or become incapable of making proper communication during the years of recovery from the incident, and it can cause a mental injury to declare a person dead when he is vibrantly alive. Meanwhile, this presumption does not apply to the disappearance of convicts; their death after escape must be proven with material evidence.[41]

Burden of Proving Civil Death

In proving civil death, certain ingredients are required to be proved while contesting the Declaration of Civil Death. These include the proof that the requirements have been fulfilled, which includes:[42]

1. Filing a DD (Daily Diary) entry or an alleged missing person complaint with a competent authority (local police);
2. Issuing advertisements/hue and cry notice, contacting relatives or friends and the like;
3. Sending messages to the last known address, affixing the declaration as per Order 5 rule 20 Code of Civil Procedure (CPC),[43] and receiving the police report of findings;
4. Prove that sincere efforts had been made to search for the missing person, and there has been no objection to the issued public notice that the person is alive.

Procedures for Filing a Suit of Civil Death

The procedure of filing a suit of civil death is not directly related to the present research; however, it is required for the proper understanding of the pathway leading to the burden of proof. First, a regular Civil Suit in the Civil Court has to be filed for a declaration of civil death and issuance of a death certificate,[44] referable to section 111 of the BSA. It is imperative here to invoke the plenary jurisdiction under Section 9 of the Civil Procedure Code.[45] Section 34 of the Specific Relief Act[46] is generally used to declare the legal character or right of the plaintiff to any claimed property. These rights cover the succession of the deceased's property or other

[41] *Supra* note 1.
[42] Swati W/O. Abhay Deshmukh vs Shri. Abhay S/O. Purushottam, 2016.
[43] The Code of Civil Procedure, 1908.
[44] Smt. Vinita Jain vs Municipal Corporation of Delhi, 2021.
[45] *Ibid.*
[46] The Specific Relief Act, 1963.

ISSN: 2582-6433

inheritance by the legal heirs. Please note, it is often a misconception with Sections 371 and 372 of the Indian Succession Act, 1925,[47] the former applies to civil death and under the jurisdiction of the civil court, whereas Section 372 is applicable when there is certainty (confirmation) of death, that is, the grant of a succession certificate is on a death having taken place and under the purview of the District Court.

Furthermore, the suit has to be instituted in the jurisdiction where the deceased ordinarily resided at the time of his death or where the property of the deceased may be found to grant the succession certificate.

Required Essentials for Maintaining the Suit

Although this presumption is a rebuttable presumption of law, it is not open for every party to invoke the matter; the locus standi of the party for bringing such includes:

1. That the alleged missing person has not been heard of for over seven years;
2. Evidence or exact particulars as to when the person went missing;
3. Plaintiff must establish that he is entitled to any legal character or to any right related to property.

Presumptions of Facts and Burden of Proof

Sections 110 to 112[48] are very stringent in nature; stringent in the sense that they are accompanied by certain kinds of presumptions. Under section 112, three kinds of relationships have been identified. These include Partnership, Landlord & Tenant, as well as Principal & Agent relationships, respectively. When it has been seen that they have at one point or the other have such a relationship between them, the burden of proving that the relationship does not exist or has ceased to exist lies on the party denying or alleging it to be so.

The presumption provided in the provision is that the relationship is still in existence, and in order to prove the contrary, the burden of proof will be rested on the person raising such a contention. At least, what must be primarily established is the proof or admission that the relationship existed; this is because a person cannot be randomly said to be part of a contract or obligation to another if he cannot adduce any evidence to that effect. To rebut such a presumption of law, there have to be details such as the notice to quit the relationship,

[47] The Indian Succession Act, 1925.
[48] *Supra* note 9.

ISSN: 2582-6433

discontinuation of performing some roles (not taking any benefits accrued like Agents), relocation from the premises in case of a tenant (without owing debts), or the proof that it was only for a definite period (fixed partnership).

In the proof of ownership, the law presumes the person in possession of anything to be the owner unless a contrary is proven by the one who counters or rebuts the entitlement of the presumption.[49] The burden of proof lies on the person challenging the validity of such ownership, except that it is outrightly seen that it is prima facie an illegal possession; even so, the person claiming it to be illegal has to prove the preponderance of probabilities. The presumption ceases from the time it is understood to be an illegal possession or where the want of title of the possessor is questionable and proven in affirmative not to be the owner.

Furthermore, the agreement of two parties or the transaction involving more than one person is always presumed to be favourable. This means, unless certain rights have been waived, the parties have the right to sue and be sued, to continue or discontinue, to bear risk as well as share the benefits, among others. However, this is recognized as a legal relationship as per the Indian Contract Act 1872[50] and therefore, it is expected that it must be done with utmost good faith (*uberrima fides*). The position of section 114 of the BSA is on a higher pedestrian. It is worth mentioning that this special provision explains how exhaustive the Act has encompassed several provisions of law. Under section 112 of BSA, it has been noticed that the burden of proving a relationship lies on the person claiming its non-existence. This happens in a normal course; however, when it comes to section 114 of BSA, the terms "good faith" and "active confidence" have been employed. Good faith by its very nature means a true belief acting diligently, honestly, and with no deliberate objective or intention to cause loss, fraud, or injury.[51] Active confidence, on the other hand, can be said to be a trust or reasonable belief in a person or object; it can be a subsistent entrustment of duty as well.[52] Let's take an example of a guarantor, a person who issues a guarantee, who cannot be said to be on an equal footing with the parties involved in a transaction, in order to prove that the active confidence of signing or giving surety in favour of that person lies in the guarantor who is giving the assurance. It is not open to prove how much they have been known, or close, the burden of proof rests on the

[49] Suhani Gupta and Aishwarya K, *Possession and Ownership and Person*, ALL INDIA LEGAL FORUM (2020).
[50] Indian Contract Act, 1872.
[51] MELVIN A. EISENBERG, FOUNDATIONAL PRINCIPLES OF CONTRACT LAW; Chapter 52: The Principle of Good Faith in Contract Law (Oxford University Press, 2018).
[52] Pratima Chowdhury v. Kalpana Mukerjee (2014) 4 SCC 196.

ISSN: 2582-6433

person giving such a guarantee to show that there was a good faith without undue influence. More so, it is pertinent to mention that the aspect of active confidence and good faith can best be tested in situations involving fiduciary relationships.

IV. PROOF: THE BURDEN, ONUS AND EXCEPTIONS

The guiding principles of burden of proof are not a straitjacket formula; it is governed by the substantive part of the evidence law and has to be strictly followed by the Court to avoid its primary purpose from being defeated. The burden of proof varies from case to case. In the case of challenging the validity of a Contract or a Will, if it is asserted that there was fraud, misrepresentation, undue influence, or coercion, the burden of proof lies with the person claiming that such a legal claim is in existence and has to prove their case.

Proof Regarding the Question of Law and Claim for General Exceptions:

Another nature of burden that has mostly been commonly found in the majority of cases is with regard to the question of law related to the fact in issue or relevant facts. The burden of proving that a certain law is or is not applicable is mostly on the part of the public prosecutor. Criminal courts are not constitutional courts, although an extended hearing can be made to that effect or transfer of such question to competent court to decide if the law is properly enacted or applicable, however, when it comes to such law like the chain of falling within the general or special exceptions of law it is the burden of proof that is rested on the defence or respondent to prove the existence of circumstances bringing his claim within the purview of such exceptions.

Section 108 of the BSA[53] has explicitly clarified that there will be no presumption that an accused person falls within the umbrella of any general or special exceptions; it is up to the person who owns the burden to show that he acted under the influence of involuntary intoxication, self-defence, necessity, lawful purpose, or by accident, among others.[54] A more complex thing that has to be seen in this section is that it serves as both an exception to the rule and also the rule itself. To emphasize the aspect of being an exception to the rule, it is a settled principle that an accused person is generally presumed to be innocent until proven guilty. Under this provision, neither admission of guilt nor denial of the action taking place is required. The accused person in this position admits that indeed they may have been an action which resembles an offence, but that he is not guilty as per the provisions of law; for instance, death

[53] *Supra* note 7.
[54] Ninisha Agarwal, *General Exceptions under the IPC*, iPLEADERS (2018).

ISSN: 2582-6433

and murder are two different things, the former being the ending of life independently or otherwise, which can be within the provisions empowered by law, whereas the latter is prohibited and punishable by law and involves the intentional causation of death of or kill someone.[55] This argument is mostly brought forth when the claim of falling under the shade of general or special exceptions, or even the proviso of any law. It is an exception because when an act has been admitted to be done, the court is no longer obliged to presume the innocence of the accused person, although the burden remains with the prosecution to prove the essential ingredients of the offence beyond reasonable doubt.

Meanwhile, the burden of proving based on the preponderance of probabilities lies on the accused to rebut the presumption of guilt and show cause as to why he falls under such exceptions and is entitled to acquittal or wavery of liability. Notwithstanding such burden, it is not the burden on the part of the accused to prove his innocence; the burden is only to the extent of creating a reasonable doubt as elaborated earlier.[56] It is not for the prosecution to change its onerous responsibility when the burden is shifted to the accused. This means that he is not expected to create doubts about the evidence adduced by the accused as a preponderance of probabilities, but to overtly prove his case as per the required standard of proof, which must be the foreclosure of doubt. The prosecution is not expected to leave any stone unturned; it has to prove them in their entirety.[57] On the other hand, when the accused is proving his defence, he is expected to satisfy the preponderance of probabilities, which is enough, while there is a different requirement from the prosecution due to the consequential effect of any error and the avoidance of convicting a person wrongfully. The neutrality of the court is more enhanced because it shall neither presume the innocence of the accused person nor presume that the accused acted under an exception provided under any law for the time being in force.[58]

The burden of proof does not apply to facts which are self-evident in nature. For example, when it has been asserted that a building construction has been destroyed and the remains of it is still very visible, what may be proved can be the nature of the house such as the structure, internal components like furniture, and the factors that led to its destruction; it will not be reasonable to ask for a proof that it was actually a building that damaged, thus, such fact is self-evident.

[55] J. Warner Wallace, *The Difference Between Killing and Murdering*, COLD CASE CHRISTIANITY (2013).
[56] Woolmington v. Director of Prosecution 1935 AC 462.
[57] M. S. Reddy v. State Inspector of Police, A. C. B. Nellore, 1993 Cr. LJ 558 (AP).
[58] K. M. Nanavati v. State of Maharashtra 1962 Supp. (1) SCR 567; 1962(1) Cr. LJ 521 (SC).

ISSN: 2582-6433

Onus of Proof

Even when the burden of proof has been seen to be stringent on the party who asserts the existence or non-existence of a fact; it is also creating a huge tussle on the side of the responding or defending party, not to play a mere role of orally denying all facts but to also show certain evidence before the Court as to why the arguments of the plaintiff or leading prosecution should not be taken in holism; thus, this is when the burden of proof can be said to be shifted. This process of shifting the burden is said to be the onus of proof.

Although it is a matter of general principle that the initial burden of proving any case lies and remains with the prosecution in criminal cases, however, when the accused attempts to dislodge or draw the attention of the court on a tangent, he will be transferred the privilege to handle the burden and this has to be when the prosecution is done with his bone of contentions. This means, for one, to disprove that a computer device under section 63 of the BSA[59] has not been used in an ordinary course of business or if the device has been tampered with, the burden will be shifted on him to prove that such manipulations have been set in, and this can happen only when the prosecution, who purported it to be good evidence, has proved his case to the best of his ability or beyond a reasonable doubt.

Grounds for the Onus of Proof

The responsibility of burden of proof cannot be transferred except on two grounds:

1. Statutory provision or law made by the parliament.
2. Discharge of Proof by the Plaintiff, Petitioner, Applicant, Prosecution, or Complainant.

Apart from the above two grounds, it is very difficult to ascertain any other grounds in which there can be a fixation or the shift of the burden of proof. In the case of *Kamini Sahuani v. Purna Chandra Sahoo*,[60] a divorced woman claimed the recovery of her jewellery from her husband; in the Court's view, the burden of proof was on the husband to prove that she had taken the jewellery while leaving his house. Although the judgment may have attained great credence at that time, however, it has been noticed that there was less burden on the part of the woman who asserted a particular fact, yet it was transferred to the man defending it. The judgment has a little noticeable contraction with section 111 of the BSA,[61] which gives an exception to such a shift of burden only in cases provided for under any law or after the claimant

[59] *Supra* note 9.
[60] Kamini Sahuani v. Purna Chandra Sahoo, AIR 1987 Ori 134.
[61] *Supra* note 7.

ISSN: 2582-6433

has presented their part of the story. In the present case, the woman's property or belongings were alleged to be in the hands of the husband, who denied the same; hence, she should have first discharged her burden of proof before it was shifted to the husband to show cause why he felt she had left with it.

The perception of onus, or sometimes referred to as a reverse burden, is the standard of proving such cases in which the responsibility of showing cause as to the existence or non-existence of such issue is transferred to the respondent or defendant through a due process of law, in which the failure to correctly defend will amount to a legal liability. The controversy of why the burden of proof remains on the part of the prosecution is sometimes debatable, but a reality. It will not be reasonable for a prosecutor to lead evidence, be countered by the accused, and not be given an opportunity to make out his case conclusively. An accused may be very creative and crafty in destroying the schemed evidence of the prosecution with things that may not even exist; hence, when this happens, the right of the prosecution to bear the burden of proof will continue to enable the success of proving his case beyond a reasonable doubt.

In addition to that, the concept of onus of proof, which is most likely referred to as the reversed burden, is not very easy to debate. In criminal cases, the burden always remains with the prosecutor. This concept of onus of proof has been legally recognized, but it is not applicable in all cases, it has been left at the touchstone of the parliament to decide on the nature of laws that this can be made applicable; this is principally because of the negative right to fair trial which the State does not have to incur additional cost in ensuring that its citizens are given fair trial.

The Notion of Presumptions

Presumptions are the exceptions to the general rule of burden of proof; this means that the concept of burden of proof can be deferred in certain cases, and the effect of it is primarily relaxed on the placement of evidential burden on the side of the accused or respondent, as the case may be.

Three major factors that are influencing this are the nature of presumptions provided under the rule of evidence, that is, sections 2(1)(h), 2(1)(l), & 2(1)(b) of the BSA.[62] While the

[62] *Ibid.*

ISSN: 2582-6433

first "May Presume" is based on a factual matrix of a case, the "Shall Presume" is a presumption of law which leaves little or no room for rebuttals. When it comes to the third category, "Conclusive Proof", no room is left open to take more evidence.[63] It has mostly been the contention of parties to suit that they have grounds that are material enough to challenge a conclusive presumption; however, such has been made irrebuttable not only due to the lapses of time, but also for the sanctity of certain things to be maintained. For instance, when the judgment of a Court has been passed, parties are at liberty to appeal or seek revision against it within a given period; when the limitation has been exceeded, it is not open to the Court to doubt the validity of the judgment. Even so, if the matter is such that there will be a failure of justice in subsequent matters, then the conclusive proof may be bent.

Using a similar example of the Court's judgment, it will not be relevant to contend that a judge was not in the right state of mind; however, such can be reviewed if the has been a violation of the principles of natural justice, lack of jurisdiction, merits, or proper grounds. In the majority of cases, presumptions serve as a limitation to the rule of burden of proof, and this will be addressed in this part in line with the provisions of the prevalent laws in India.

Exceptions to Burden of Proof

Exceptions to the evidential rule of burden of proof are those parts of a case in which the person who should have originally proven his case, if such liberty was not in place, has been given the benefit of not proving some asserted facts. It is a settled general principle of law that any party asserting the existence or non-existence, scope and extent of a fact, right, or liability must show cause as to why it is so by proof. However, the exceptions come into play regarding the aspect that the Court has the duty to waive the responsibility of a party to prove certain facts. The exceptions to the burden of proof are not applicable in all cases; they only support or promote the aspect of transfer or shift of burden to the defending or responding party. It goes without saying that the benefit of these exceptions is mostly on the part of the plaintiff, complainant, applicant, petitioner, or prosecution, depending on the nature of the matter.

To simplify further, the exceptions can be identified in different forms; they can be in the form of exceptions added to a provision of law, a proviso, or, most probably, in the aspect of certain presumptions that are being raised by the Court as statutorily provided.

[63] Naivedhya Kumar, *Presumption of Facts and Presumption of Law*, LEGAL SERVICE INDIA E-JOURNAL (2022).

ISSN: 2582-6433

Presumptions have been used as a tool to help the Court arrive at certain conclusions in a fine-tunable manner. The relevance of presumptions will be treated later; however, it has been applied mostly in matters that are severe in nature, whether civil or criminal nature. As mentioned earlier, it has been observed that an accused person is presumed innocent until proven guilty, thereby making the burden of proof lie on the prosecution. On the contrary, the exceptions to the burden of proof throw the hypothesis for the accused to be presumed guilty until he proves his innocence. A great deal may not be given as to the standard of proof, yet it is expected to be beyond reasonable doubt.

Under criminal law, these presumptions have been sheltered under special and general laws. The Unlawful Activities (Prevention) Act (UAPA),[64] for example, deems an accused person to be guilty of a suspected offence under its provisions until such person is proven to be innocent. Similarly, in cases of rape covered under POCSO,[65] and Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal),[66] along with the general laws under the Bharatiya Nyaya Sanhita,[67] the presumption that has been provided serves as an exception. This means that the only duty that a victim of rape has to do is to assert or allege that she has been raped. The burden of proof in such a situation is vested on the accused person to prove that there was no act or offence of rape, either the act was consensual, or no such event of intercourse took place, that is, it was a false allegation, inter alia.

In addition to that, section 115 of the BSA[68] provides this kind of exception. It may be argued that the exceptions here are either good or improper; nonetheless, it is based on the needs of the hour. The provision raises the presumption of guilt on any person found to be at the scene where there is the use of explosives or arms in such areas that have been declared to be disturbing public peace or at the locations which have been suffering a continued disturbance of public peace for over one month. The burden of proving that the presence of the accused in such places where there is waging or attempt to wage war against the government of India, conspiracy, collection, or concealing of arms or information with an intent of furthering the same; all boils down on the accused to prove the case on the contrary. Unless this is done, there is a chance that he can be convicted. The Constitutional validity of these exceptions may be

[64] Unlawful Activities (Prevention) Act, 1967.
[65] *Supra* note 17.
[66] *Supra* note 19.
[67] Bharatiya Nyaya Sanhita, 2023.
[68] *Supra* note 7.

ISSN: 2582-6433

challenged, keeping in mind the freedom of movement, assembly, and association; notwithstanding that, it must be subject to public order, health, and morality, and in case of any gathering or association, it must be for lawful purposes.

Another exception to the burden of proof concept can be seen under section 116 of the BSA, which presumes the birth of a child during the subsistence of marriage to be conclusive proof of legitimacy or belonging to the present husband. The basic proof that is required from the side of the woman is to show that there is an existence of a valid marriage which has not been dissolved, and that the pregnancy happened within 280 days of the lawful wedlock.[69] This provision provides conclusive proof to protect the interests of the innocent child in society, regardless of any alleged discrepancies. It is believed that the rejection of the child may not only lead to the illegitimacy of the baby but also show that the woman is unchaste. The burden of disproving the paternity of such a child lies on the man denying the same to prove that there was no access of the woman during the aforesaid gestation period, or the time of conception. Non-access in this context is not limited to physical contact but goes as far as the lack of opportunity to procreate; it includes impotency, being overseas while the wife is in India, serving a jail sentence, having a serious disease, or vasectomy.[70] Furthermore, the phrase "any man" as used in the provision includes a man in a second marriage, or the first person in a lawful marriage.

Subsequently, the aspect of claim or application to undergo DNA tests has been seen to overflow in Courts of law across the Country. While addressing this issue, it has been observed that a child suffers the consequence due to his/her inability to rebut their presumptions; thus, it will be considered as a vague pleading for DNA. If the non-access of the husband is not proven at the time of conception, such an application for a DNA test cannot be allowed.[71] In the case of *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*,[72] the Supreme Court held that in stringent situations in which the Court orders for DNA test, which is universally acknowledged to be the best and accurate science, then the presumption of conclusive proof will not have effect. Consequently, the Court has been making efforts to balance the interests of the evolving society, the old laws, and the fast-growing technologies. To set rest to the dispute of DNA, it

[69] Aylesford Peerage Case (1886) ILAC 1.
[70] William Batrus, *Competency of Husband or Wife to Testify to Non-Access to Establish Adultery*, PENN STATE DICKINSON LAW (1940).
[71] G. M. Natarayan v. State, 1995 Cr LJ 2728; 2731 (Mad).
[72] 2014 Cr. LJ 1098 (SC) (2014) 2 SCC 576: AIR 2014 SC 932.

ISSN: 2582-6433

has been maintained that such an application should be allowed in some cases, although negative results cannot rebut the 280-day presumption if non-access is not proven.[73]

One more exception to the rule of burden of proof can be deduced from section 117 of the BSA, which deals with such cases where there is a possibility of a third party. In other words, there is less possibility of an outsider or eyewitness being present when such a crime is committed against the woman. It avoids giving the benefit of doubt, as the accused or his relatives may escape conviction for want of evidence if the burden is rested on the prosecution. This is related to the offence covered under section 85 of the BNS[74] regarding the offence of abetment of suicide. However, it is very subjective in nature; the word "may presume" implies that by merely looking at certain suspicious circumstances surrounding the death of a woman, the Court may or may not, as per its discretion, retain the burden of proof on the prosecution to make out its case beyond a reasonable doubt.

The presumption of guilt is left for the court to decide based on a fact-by-fact basis. Also, this covers some situations in which a married woman dies by committing suicide within seven years of her marriage, the death may be believed to be abetted by the husband or his relatives. If the presumption is done, the burden of proof lies on the husband or his relatives (if involved) to show that there was no cruelty beyond reasonable doubt; where such inference is not made by the Court, the burden of proof remains with the prosecution to establish the guilt of the accused, thus, the husband will be presumed to be innocent depending on the kind of matter. Cruelty must be distinguished from quarrels or harassment; it has been defined under section 85 of the BNS as wilful conduct likely to drive a woman to commit suicide, or to cause grave injury or danger to life, limb, or health and also includes harassment and coercion. The suicide must be consequential to the cruel act of the husband or relative within seven years of marriage, and it must be shown that the wife was subjected to the cruelty. This implies that the nexus between the suicide and cruelty must be grave and sudden without time lapse, the marriage must have been lawfully in existence, while considering all other factors.

In line with a similar objective of Section 117 also came that of Section 118[75] due to the lack of evidence as a pivotal or rational reason for deciding a domestic event; hence, the

[73] Bhim Singh v. State of Uttarakhand, 2015, Cr. LJ 1428 (SC).
[74] *Supra* note 65.
[75] *Supra* note 7.

ISSN: 2582-6433

legislature has similarly employed an exception to the rule of burden of proof in dowry death evidence. Here, the burden is balanced; it is first cast upon the prosecution to show as a matter of obligation that there was cruelty soon before the death of the woman with regard to the demand for dowry. This provision is more mandatory to the Court than the aspect of section 117, supplementary; the section cannot be invoked in case of natural death, like a proved accident, it must be seen that the cruelty on one side happened within the seven-year bracket of marriage.

Dowry, as explained in section 2 of the Dowry Prohibition Act (1961),[76] has been elaborated to intertwine any property or valuable security that has been given or assured to be given directly or indirectly by either party (man or woman) to a marriage or promised to be done by parents or any other person. The burden of proof can only be shifted when the evidence of prosecution has been led, hence, it will be adversely transferred to the accused to prove the absolvent of his criminal liability. A higher standard of proof is required here; mere preponderance of probabilities may not be sufficient, but it must draw such a margin that it is not less than that, even though it may not attain the height of beyond reasonable doubt.

This nature of burden implies the recognition of a third category of burden of proof, which is the "**intermediate doubt**", though not formally recognised. The intermediate doubt as used here in this context is that the threshold of the standard of proof is neither less than a preponderance of probabilities, nor more than beyond reasonable doubt. The presumption under this provision does not have latitude if the dispute of dowry demand has been amicably resolved with no further cruelty or harassment; thus, in case of such death taking place after proper settlement, the burden of proving the guilt of the accused remains with the prosecution, but no presumptions will be raised after the statutory seven years have been exceeded.

Expatiating further, presumptions of law can lessen the burden of proof in cases of common causes in which it can be waived at the discretion of the proper Court, as seen under section 119 of the BSA.[77] This happens when they are natural events, a derivative of human conduct, happening in public and private businesses, or falling within the illustrations (a-i) of the said provision, which is recommended to be read in context. What must be taken into consideration is that the accused must raise a doubt regarding the circumstances of the incident,

[76] The Dowry Prohibition Act, 1961.
[77] *Supra* note 9.

ISSN: 2582-6433

the period, and the nature of the facts themselves. When an act has been done in an ordinary course, it is presumed that the result of it was rightfully done. The presumption under the BSA has recognized certain kinds of documents as conclusive proof, for example, marriage certificates, divorce certificates, probate, etc. However, in situations where a presumption has been raised and the outcome has been challenged, the burden of proving such an outcome lies on the person claiming that it is not done in the ordinary course. Taking the instance of the court of law, section 119 of the BSA[78] presumes that the judgment passed by the court must have passed through the procedure established by law; in that case, the burden of proving that there was no proper follow-up of due process, such as the violation of the principle of natural justice, lack of jurisdiction, etc., lies with the person rebutting such findings.

Under section 119(g),[79] it gives the power to raise an adverse presumption against either party on their failure to produce certain evidence which ought to have been adduced before the court. It is a presumption of fact that such evidence will be unfavourable, and the burden of proving that non-production of such material in his possession is in good faith lies on the party procuring or concealing the same.[80] The other party has to prove that he does not have the possession or control over the concealed material or be cross-examined for the procurement; it will be deemed not proved, and no presumption will be raised if no party raise a doubt to this effect. There needs to be an examination of the parties involved, as well as an impartial examination of independent persons who are willing to give testimonies, as done with documentaries. Adverse presumption in some cases does not require proof; it only absolves the burden of proof on a person by raising other presumptions. A failure to answer the questions which a person is mandated by law to answer can have the repercussion that it is unfavourable to the party who is not responding.

Notwithstanding, the burden of proof under section 119 illustration (i) is a little complex. It covers the aspect of discharge of burden, which implies that when an entrusted material in favour of an obligation like a mortgage or other security has been returned to the possession of the real owner, it will be presumed to have been executed. The implication of the burden of proof rests on the party claiming that no discharge was attained, either by proving the illegality of the owner in obtaining the possession or by proving other fraudulent means

[78] *Ibid.*
[79] *Supra* note 9.
[80] Tomaso Bruno v. State of U.P., 2015 Cr. LJ 1690.

ISSN: 2582-6433

that have been used. A similar inference has been drawn in cases of failure to reply to a legal notice under section 138 of the Negotiable Instruments Act.[81] The presumption arises that there is an existence of a legally enforceable debt, and the burden of proving such existence lies on the party denying it or refusing to reply to the notice.[82]

Meanwhile, the presumption of sexual intercourse without the consent of the woman for offences under the Bharatiya Nyaya Sanhita is an exception to this rule. This is because such crimes as rape occur in secluded places, the self-witness of the victim is so powerful and is admissible as material evidence and as an accomplice. The court must presume that there was no consent when the prosecution establishes the existence of sexual intercourse. The accused is expected in this case to prove beyond a reasonable doubt; otherwise, he is presumed guilty. To discharge the burden of proof, the accused needs to give a satisfactory explanation from the inception under section 351 of the BNSS.[83] To further rebut this successfully, an accused person must prove that it was a peaceful and consensual affair; when an accused has been meekly followed by the woman to the extent of the accused satisfying his lust without any undue influence, use of force, misrepresentation, attempt to resist, or fiduciary relationship, it cannot be considered rape;[84] however, this varies on a case-by-case basis and may not lead to the acquittal of the accused if proven otherwise. The prosecution, on the other hand, must have shown that the consent was obtained with the incitement of fear, death, or hurt, along with proving other essential ingredients of the offence of rape. Again, it is not rocket science, as the circumstances may vary. Sometimes, the unwillingness of a woman to lodge a report of a rape case, the consent for sex on the pretext of marriage, as well as the intentional seducing of a man to get certain favours, can also create a doubt with regards to the question of her free consent.

V. CHALLENGES FACING THE BURDEN OF PROOF

There are several challenges facing the concept of burden of proof and the laws of evidence.[85] With an increase in criminal innovation of planned crimes and false accusations, which have

[81] Negotiable Instrument Act, 1881.
[82] Gorantla Venkateswara Rao v. Kolla Veera Rughava Rao, 2006 Cr. LJ 1 (AP).
[83] Mahesh Tarachand Suryawanshi v. State of Maharashtra, 2013 Cr. LJ 4557 (Bom); Bipul Medhi v. State of Assam,
2008 Cr. LJ 1099 (Gam)(DB).
[84] Mohan Lal v. State of Punjab, 2013 Cr. LJ 3265 (SC): AIR 2013 SC 2408.
[85] Anton Koshelev, Ekaterina Rusakova, *The Problem of Admissibility of Evidence in Indian Civil Proceedings,* RUDN UNIVERSITY, MOSCOW, RUSSIA (2021).

ISSN: 2582-6433

been in existence from time immemorial, it becomes very difficult to comprehend who should actually bear the burden.

Starting from the side of the party bringing a legal claim, the determination of a codified law to fit an issue is not too easy. The threshold of proof that is required on the part of the complainant, that is, to prove the guilt of the accused beyond a reasonable doubt, can be very difficult if the person does not have enough evidence to support their claim, which naturally may have been true.

In civil matters, it is more or less very challenging when it comes to the standard of proof that it considers, merely going by the preponderance of probabilities to decide the rights or liability of a person may not be fair enough, especially in situations in which the compensation awarded becomes so huge that the level of proof that has been provided. This implies that one party may have access to more resources, procure evidence and other information, which serves as an advantage over the opponent, yet the burden is given to the one without anything to show. Hence, it is even more difficult to prove that any evidence is lost.

Another challenge with regard to the burden of proof is in terms of the aspect of onus of proof. As elaborated earlier, it has been seen that in some situations, the burden has to be shifted to another party to prove their case. This can be very challenging because a person who has been falsely accused of something may not have sufficient evidence on such subject matter since there is no initial commitment in that line that has been made before. This means that, shifting of the burden is also a problem for the concept of burden of proof.

Furthermore, there is also the issue of presumptions that are raised in favour of the prosecution in most cases, to the detriment of the accused. Examples of rape cases, waging war against the state and negotiable instrument complaints have been pointed out earlier; it has been seen that presumptions defer from the neutral role of the Court into the aspect of taking interest in favour of one party until the other proves to the contrary. When this happens, it is difficult to convince the Court that the accused is innocent when the law has already made it mandatory in most cases that the Court should think of the accused as being guilty.

Moreso, there are a lot of technicalities that are required in the burden of proof.

ISSN: 2582-6433

Evidence involving scientific, forensic, or technological ideas, presentation and evaluation by skilled personnel, or the opinion of people who are specialized in a certain field may be very difficult for the party having the burden of proof if such an expert is not available; thus, arguments made in that regard may be taken with a pinch of salt. On the other hand, if such an expert is produced or brought by the Court for extensive clarification, the burden of proving becomes tough, especially in the aspect of such an expert's qualifications, credibility, and reliability, as well as the weightage of the testimony.

The grievances with the burden of proof can also be inferred from its intuition with societal and cultural differences. In matters such as the conclusive presumption of a child's paternity, there are challenges about unrecognized marriages like those termed to be irregular, void, or invalid, which the Courts have been very adamant in granting the right to DNA tests without marriage. This has created room for several children to be deemed illegitimate, as there is no room for legal enforcement if they are rejected by their biological father out of wedlock. Using the term 'conclusive proof' and still creating the opportunity to take rebuttals of non-access by the husband under section 116 of the BSA makes the meaning of conclusive proof seem unnoticed and inconsistent with section 2(1)(b) of the same Act.

The issue with the concept of presumption is that it increases the liability or guilt of an accused person; other than presuming a person to be innocent, it draws the presumption of guilt. In heinous crimes, it has been seen that the burden of proof is stretched due to the public's views and media influence. Although it has been claimed that the law does not consider the opinion of people, however, in some cases, the shock of the collective conscience of the masses is noted strongly. Therefore, hearsay evidence, the question of admissibility, and credibility of witnesses in giving direct evidence of what they actually saw affect the nature of the burden of proof that is required.

In light of the above, it is still not enough to say that the burden of proof should be done away with, although it is gradually losing its significance and requires alternatives. In practice, it has been shown to help the court in the process of justice than it used to be; hence, only a few modifications have to be made, which include but are not limited to the recognition of the intermediate standard of proof in some cases, and the reduction of the use of presumptions in certain matters.

ISSN: 2582-6433

CONCLUSION AND SUGGESTIONS

The subject matter of burden of proof and its evidential value has been seen to be very relevant under the law of evidence in today's time. It is a long-term principle of law that has been in existence since time immemorial and cannot be overlooked in a nutshell. Specific laws and some exceptions have been seen to impact the nature of who owns the burden of proof, especially the influence of presumptions, which directly affects its outcome. The operation of tribunals and their freedom to remain strict with the principles of natural justice has shown that the pattern of adducing evidence or procedures can change, yet all systems give opportunity to every party to discharge their burden.

The question of doing away with the value-oriented burden of proof has been difficult to address in a single phrase; however, such innovation will require a concrete alternative before it can be effective, since it may likely overhaul the entire system itself. The nature of doubts raised by the parties in a case and the severity of the matter have a big role to play in defining the owner of proof; however, such situations of transferring the onus to others have been made visible with the help of legal practice and empowerment through some statutory provisions. The author contends that, apart from cases where there is legal enshrinement and completion of the discharge of evidence by the prosecution, no shift in the burden of proof can be made. Some new concepts of 'foreclosure of doubt and creation of doubt' as well as 'intermediary doubt have been addressed to see the role of the players in facilitating the criminal justice procedure.

Nevertheless, it is suggested that certain amendments should be made in terms of presumptions that are raised by the Court, which creates an imbalance between the claimant and the respondent, as it is a contributory factor in creating more burden to be discharged. It is further suggested that the 'intermediate doubt' standard of proof should be legally recognized in certain cases that can be proven within the threshold that is neither below the preponderance of probabilities nor above the limit of beyond reasonable doubt. Lastly, the concept of criminal death should also be recognized in the legal jurisprudence, just like civil death has been formerly accepted.

ISSN: 2582-6433

REFERENCES

1. Aditi Priya, Anushka Paliwal, Banasthali Vidyapith, *Analysis of the Burden of Proof Under the Indian Evidence Act*, INDIAN JOURNAL OF INTEGRATED RESEARCH IN LAW (Vol. II, Issue II, 2022).
2. Anil Rishi v. Gurbaksh Singh, Appeal (Civil) 2413 of 2006.
3. Anton Koshelev, Ekaterina Rusakova, *The Problem of Admissibility of Evidence in Indian Civil Proceedings*, RUDN UNIVERSITY, MOSCOW, RUSSIA (2021).
4. Aylesford Peerage Case (1886) ILAC 1.
5. Balambal v. Kannammal Alias Pazhaniammal 1996.
6. Balambal vs Kannammal Alias Pazhaniammal, 1996.
7. Bharatiya Nyaya Sanhita, 2023.
8. Bharatiya Sakshya Adhiniyam, 2023.
9. Bharatiya Suraksha Nagarik Sanhita, 2023.
10. Bhavpreet Singh Soni, *Explain Proved, Disproved, and Not Proved Facts and Facts which Need Not to be Proved*, SONI'S VISION (2019).
11. Bhim Singh v. State of Uttarakhand, 2015, Cr. LJ 1428 (SC).
12. Breen Solicitors, *Who Died First? An Important Question in Probate* (2020).
13. DR. V. KRISHNAMACHARI, LAW OF EVIDENCE 559 – 575 (Narendra Gogia & Company, 8th Ed. 2022).
14. G. M. Natarayan v. State, 1995 Cr LJ 2728; 2731 (Mad).
15. Gino Carlo Speranza, *The Survival of the Weakest as Exemplified in Criminal Law*, 160 – 164, PENN CAREY LAW: LEGAL SCHOLARSHIP REPOSITORY (1904).
16. Godwin Goodhead, *Punishment: A Drive for Justice*, INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS g677-g678 (2023).
17. Gorantla Venkateswara Rao v. Kolla Veera Rughava Rao, 2006 Cr. LJ 1 (AP).
18. Hari Ram v. State of Rajasthan 2015 Cr. LJ 2970 (Raj).
19. Ho, Lock Lai, *The Concept of Evidence*, STANDFORD ENCYCLOPEDIA OF PHILOSOPHY (2021).
20. J. Warner Wallace, *The Difference Between Killing and Murdering*, COLD CASE CHRISTIANITY (2013).
21. Janet Gusdorff, *Inferences Explained*, PLAINTIFF MAGAZINE (2019).
22. Justice A. V. Chandrashekar, *Proof Beyond Reasonable Doubt*, KARNATAKA JUDICIAL ACADEMY (2013).
23. Juvenile Justice (Care and Protection) Act, 2015.

ISSN: 2582-6433

24. K. M. Nanavati v. State of Maharashtra 1962 Supp. (1) SCR 567; 1962(1) Cr. LJ 521 (SC).
25. K. Rajasekharan, *Medical Examination of an Accused under CrPC* (2022).
26. Kamini Sahuani v. Purna Chandra Sahoo, AIR 1987 Ori 134.
27. Khushi Malviya, *Burden of Proof Under Indian Evidence Act*, LAWCTOPUS (2023).
28. Lord Denning, *Road to Justice*, ALLAHABAD HIGH COURT (2013).
29. M. S. Reddy v. State Inspector of Police, A. C. B. Nellore, 1993 Cr. LJ 558 (AP).
30. Mahesh Tarachand Suryawanshi v. State of Maharashtra, 2013 Cr. LJ 4557 (Bom); Bipul Medhi v. State of Assam, 2008 Cr. LJ 1099 (Gam)(DB).
31. MELVIN A. EISENBERG, FOUNDATIONAL PRINCIPLES OF CONTRACT LAW; Chapter 52: The Principle of Good Faith in Contract Law (Oxford University Press, 2018).
32. Mohan Lal v. State of Punjab, 2013 Cr. LJ 3265 (SC): AIR 2013 SC 2408.
33. Musabit Masoodi, *Facts Which Need Not To Be Proved*, LAW UNIVERSITY OF KASHMIR (2016).
34. Naivedhya Kumar, *Presumption of Facts and Presumption of Law*, LEGAL SERVICE INDIA E-JOURNAL (2022).
35. Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, 2014 Cr. LJ 1098 (SC) (2014) 2 SCC 576: AIR 2014 SC 932.
36. Narcotics Drugs and Psychotropic Substance Act, 1985.
37. Negotiable Instrument Act, 1881.
38. Nikhil Verma, *Burden of Proving Exception and Presumption of Innocence Under Evidence Law*, LAW TIMES JOURNAL (2023).
39. Ninisha Agarwal, *General Exceptions under the IPC*, iPLEADERS (2018).
40. Oishika Banerji, *Best Evidence Rule: An Overview*, iPLEADERS (2021).
41. Om Prakash Singh v. State of Chhattisgarh, 2015, Cr. LJ 4731.
42. People v. O'Brien, 130 Cal. 1, 02 Pac.
43. Prakash v. State of Rajasthan, 2013 Cr. LJ. 2040 (SC).
44. Pratima Chowdhury v. Kalpana Mukerjee (2014) 4 SCC 196.
45. Prevention of Child from Sexual Offences Act, 2012.
46. Shanti Bai v. Daneshwar Singh, 2020 SCC Online Chh. 604.
47. Smt. Kanti Devi vs Indraprastha Power Generation 2008,
48. Smt. Kanti Devi vs Indraprastha Power Generation 2008.
49. Smt. Vinita Jain vs Municipal Corporation of Delhi, 2021.

ISSN: 2582-6433

50. State of Maharashtra v. Sanvlo Naik, 2018 Cr. LJ 972 (SC).
51. State of Maharashtra v. Sanvlo Naik, 2018 Cr. LJ 972 (SC).
52. Suhani Gupta and Aishwarya K, *Possession and Ownership and Person*, ALL INDIA LEGAL FORUM (2020).
53. Sunita Roy Choudhary and Ors. v. Jageshwar Choudhary and Ors. 2006.
54. Swati W/O. Abhay Deshmukh vs Shri. Abhay S/O. Purushottam, 2016.
55. T. B. Mukerjee, *Supreme Court, As a Guardian of the Constitution of India*, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 52 – 55 (1951).
56. Talkaram v. State of Maharashtra (Mathura Case) AIR 1979 SC 185: 1978 Cr. LJ 1864: (1979) 2 SCC 143.
57. The Dowry Prohibition Act, 1961.
58. The Indian Contract Act, 1872.
59. The Indian Succession Act, 1925.
60. The Representation of The People Act, 1951.
61. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
62. The Specific Relief Act, 1963.
63. Tomaso Bruno v. State of U.P., 2015 Cr. LJ 1690.
64. Unlawful Activities (Prevention) Act, 1967.
65. William Batrus, *Competency of Husband or Wife to Testify to Non-Access to Establish Adultery*, PENN STATE DICKINSON LAW (1940).
66. Woolmington v. Director of Prosecution 1935 AC 462.