
ANALYSIS OF THE BURDEN OF PROOF UNDER THE INDIAN EVIDENCE ACT

Aditi Priya & Anushka Paliwal, Banasthali Vidyapith

Introduction

The requirements under the burden of proof are covered in Chapter VII of the Indian Evidence Act. The Indian Evidence Act does not define the term "burden of proof." The duty to prove a fact in a lawsuit is known as the burden of evidence.¹

Sections 101 to 103 deal with the burden of proof in general, whereas sections 104 to 114 deal with the situation where the burden of proof is placed on a specific individual.

Principles governing the burden of proof -

The concepts of *onus probandi* and *Factum probans* include the underlying principles of the burden of proof.

A person who asserts an affirmative stance has the *onus probandi* (burden of proof).

Factum probans (proving of facts): Order 6, Rule 2 of the Cpc states that the pleading shall only contain important facts that must be shown.

The accused should be deemed innocent unless proven guilty beyond a reasonable doubt, according to the fundamental premise of criminal law. In a criminal proceeding, the prosecution has the first burden of proving that the accused has committed a crime.

In the case of *State of Rajasthan vs. Sher Singh, 1994*,² it was held that in criminal proceedings, it was unlawful to examine defence evidence before prosecution evidence.

¹ LegalCloudsPointers - Indian Evidence Act- Part 1 www.legalclouds.in/post/pointers-indian-evidence-actpart-1

² *Kallu Khan Vs. State of Rajasthan* (Criminal Appeal No. 1605 Of 2021)
<https://www.advocatekhaj.com/library/judgments/announcement.php?WID=14377>

In criminal trials, the prosecution bears the burden of proof.³ The prosecution must show beyond a reasonable doubt that the defendant is guilty. Until the prosecution proves otherwise, the court assumes the accused is innocent. It was held in the case of *Md. Allmuddin v. State of Assam*, 1992, that the defence version may even be false, nevertheless, the prosecution cannot derive any advantage from the falsity or other infirmities of the defence version, so long as it does not discharge its initial burden of proving the case beyond all reasonable doubt.⁴

In *Jarnail Singh v. State of Punjab*, AIR 1996,⁵ it was established that if the prosecution fails to produce sufficient evidence to meet their burden, they cannot rely on the evidence presented by the accused in support of their defence.⁶

If the prosecution fails to prove the accused's guilt beyond a reasonable doubt, the accused is entitled to an acquittal. This was determined in the case of *Ouseph v. State of Kerala*, which was decided in 2004. In criminal trials, the prosecution bears the duty of establishing the defendant's guilt, and they must do it beyond a reasonable doubt. The plaintiff has the burden of proving his case by a majority of the evidence in civil cases.⁶

Burden of proof is defined under Section 101 of the Indian Evidence Act.

Anyone who wants a court to rule on a legal right or responsibility based on the existence of facts he claims, must first show that such facts exist. The second section of the statute specifies that when a person is required to show the existence of a fact, that person bears the burden of proof.

As a result, a person seeking a favourable decision from the court must provide evidence in support of his case, according to this clause. The usual rule is that the party that asserts a truth bears the burden of proof, not the side who denies it.

³ A common law principle | ALRC. <https://www.alrc.gov.au/publication/traditional-rights-and-freedomsencroachments-by-commonwealth-laws-alrc-interim-report-127/11-burden-of-proof/a-common-law-principle-7/>

⁴ Burden of Proof - Law Times Journal. <https://lawtimesjournal.in/burden-of-proof/>

⁵ A Brief Analysis Of Test Identification Parade Article
<http://www.legalservicesindia.com/law/article/2233/5/A-Brief-Analysis-Of-Test-Identification-Parade> ⁶ Burden Of Proof: A Duty To Get Justice. <https://www.lawyersclubindia.com/articles/burden-of-proof-a-dutyto-get-justice-14357.asp>

⁶ Burden of Proof | Wex | US Law | LII / Legal Information ...https://www.law.cornell.edu/wex/burden_of_proof

Section 102 of the Indian Evidence Act: Who bears the burden of proof — In a suit or procedure, the person who would lose if no evidence was presented on either side has the burden of proof.

Section 103 of the Indian Evidence Act states: "The burden of proof as to any specific fact is with the person who asks the court to believe in its existence, unless any law provides that the burden of proof rests with any particular individual."

Section 104 of the Indian Evidence Act states that the burden of proof is on the person giving the evidence to prove the facts that must be shown in order for the evidence to be admissible.

When it comes to establishing facts in order to make evidence of another fact acceptable, the burden of proof falls on the individual who wishes to offer the evidence.

Sections 101 to 103 deal with the burden of proof in general, whereas sections 104 to 114 deal with the situation where the burden of proof is placed on a specific individual.

Concept of Presumptions under burden of proof

Presumptions are legal conclusions made by the court about the presence of particular facts. When certain facts are believed to exist, the party in whose favour they are presumed to exist is relieved of the burden of proof in that regard. Presumptions are an exception to the usual rule that the party that asserts the existence of particular facts has the first burden of proof, but they eliminate this necessity.

Presumptions may be divided into three types: factual presumptions, legal presumptions, and mixed presumptions. Documentary Evidence is subject to several presumptions. When a certified copy of an original document is presented to the court, the law presumes that the copy is a genuine copy of the original evidence, according to Section 79 of the Act. The court shall infer that a power of attorney issued before the court is by a real authorised person, according to Section 85 of the Act.

Conclusion

As can be seen, the Evidence Act of 1872 is a well-codified statute that deals extensively with the issue of burden of proof. The current innovations in electronic evidence and burden of

proof, on the other hand, require additional clarity, particularly when it comes to judicial interpretation.

Many cases in our criminal justice system have not resulted in a successful conviction. The conventional approach of courts on the notion of presumption of innocence and the obligation to show mental aspect, according to experts, is to blame. As a result, it was determined that trends that are not in violation of any regulation must be reversed. However, it is critical to guarantee that these developments do not jeopardise the Judges' integrity and reputation as unbiased officials.