

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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The Presumption of Innocence and its Role in the Criminal Process

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ABSTRACT

Presumption of innocence is a kind of restatement of the rule that is applied in criminal matters the public prosecutor has the burden of proving guilt of the accused in accordance to be convicted of the crime of which he/she is charged. As we explained in this paper the burden of proof has two elements: the first element is evidentiary burden, i.e. producing evidence in support of one's allegation, while the second element relates to the burden of persuasion or legal burden, which is the party's obligation to convince the court on its sides and thus the evidence must prove the party's assertion of facts.

The most commonly recognized qualification of the presumption of innocence is that it serves as a safeguard against wrongful convictions. This conception majorly focuses on the dangers inherent in conviction in such situations. It is the very nature of the consequences of being found guilty of a criminal offence that is believed to necessitate the safeguarding of the defendant from wrongful convictions by, firstly, adhering to the in dubio pro reo principle and, secondly, by burdening the prosecution with proving guilt and thereby defeating the presumption of innocence.

In the common law legal doctrine the presumption of innocence is taken to be primarily a rule of evidence, setting standards for the decision on guilt. Taken in this sense, the notion dictates that the burden of proof is on the authority prosecution, and it sets a standard with regard to the threshold of required proof: the presumption of innocence must be defeated by proof of guilt beyond a reasonable doubt before guilt can be regarded as established and a conviction can be taken place.

I. INTRODUCTION

The word "Presumption" in legal studies means a process of determining few facts generally on the basis of possibility or it is the repercussion of some acts in general which will increase the possibility and when such possibility has great corroborate value substantial facts can be established. A presumption in law means inferences which are concluded by the court with

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respect to the existence of certain facts. The inferences can either be acquiescent or negative drawn from circumstance by using a process of best probable reasoning of such circumstances. The basic rule of presumption is when one fact of the case or circumstances are considered as primary facts and if they are trying to prove other facts related to it, then the facts can be presumed as if they are proved until disproved. Section 114 of Indian Evidence Act specifically deals with the concept that ‘the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of (a) natural events, (b) human conduct, and (c) public and private business, in their relation to the facts of the particular case’.

(A) Scope and Objectives

We may introduce with two types of presumptions, (1) about the presumption of innocence that are widespread and in my opinion acceptable, subject to some cautionary observations. First, it is generally assumed that the presumption of innocence is normatively significant. Virtually every contribution to contemporary debates grapples with questions of definition and application whilst presupposing that the presumption itself, however so defined or applied, is valuable. Strictly speaking, the value of the presumption must turn on what it actually means or does or signifies in theory or practice. If one reckoned the presumption of innocence ‘a worm-eaten dogma of bourgeois doctrine it would not figure in any normative ideal of criminal adjudication. Its residual importance, if any, would only be descriptively sociological.

Some laws, commonly called reverse onus provisions, shift the burden of proof to the accused or apply a presumption of fact or law operating against the accused. Under international human rights law, a reverse onus provision will not necessarily violate the presumption of innocence provided that the law is not unreasonable in the circumstances and maintains the rights of the accused. The purpose of the reverse onus provision would be important in determining its justification. Such a provision may be justified if the nature of the offence makes it very difficult for the prosecution to prove each element, or if it is clearly more practical for the accused to prove a fact than for the prosecution to disprove it.

(B) Literature Riview:

To advance a clear-headed theory of presumption, we need to sort out this issue, and that is the main aim of this paper. In it, I explain various senses in which the two might be considered similar and argue that Waltonian intuition is unsupported—the strong similarity thesis (SST) between presumptions and arguments from ignorance is untenable.^{Footnote2} However, it is important to note that the present analysis focuses exclusively on the epistemic versions of

presumptions and arguments from ignorance: the paper explores whether the “initial” dialectical presumption, understood as a material (epistemic) starting point of the dialogue, is strongly similar to a conclusion of the (epistemic) argument from ignorance. As our introductory remarks indicate, the theoretical similarity appears quite clear on the surface. For this reason, I analyze their relationship in some depth.

This paper enlighten some of the sociological points like burden proof, presumptions in criminal matters, presumptions done in specific crimes as so on.

(C) Data Finding and Discussion

The facts which are assumed to be true under the law is known as presumption. For understanding presumption more clearly we would like to give one example, suppose a criminal defendant is presumed to be innocent until the prosecuting attorney proves beyond a reasonable doubt that he/she is guilty.

Presumptions are used to relieve a party from having to actually prove the truth of the fact which is being presumed. Once a presumption is relied on by one particular party, however, another party is normally allowed to offer evidence to disprove or rebut the presumption. This presumption is known as a rebuttable or disapproved presumption. In essence, then, what a presumption really does is place the obligation of presenting evidence concerning a particular fact on a particular party The Indian Evidence Act does not make an attempt to define what a presumption is.

In our research paper we have tried to discuss some of the case studies and define some of facts related to presumption of an innocence and the burden of proof relating to some of the highlighted cases.

And in this paper we also tried to enlighten some of the general but important elements of burden of proof as we go further with the research we also tried to explain some of the issues relating to Elements Constituting the Crime and Other Facts that Need Proof.

This research project forms the essentials part of the research work as it helps to transform the collected as raw data into the meaningful and presentable form .In this project appropriate data analysis method will be selected will be selected to analyze the research data better and obtain meaningful finding that are aligned to meet the key research aim and objectives.

(D) Research Question

Q. Does the proof of these balance facts involve a burden to prove the negative facts?

(E) Research Methodology

We have used doctrinal and normative methodology in carrying out our research work. I have also referred few acts like presumption law in Evidence Act 1972, and we have also gathered information regarding our research such as allocation of burden of proof from published legal articles and generals.

(F) Hypothesis

In India, the various presumptions that can be permissibly drawn are listed in the IEA. The Act does away with the traditional distinction that existed in English Law between presumptions of law and fact and only divides presumptions into ‘may presume’, ‘shall presume’ and ‘conclusive proof’ under Section 4.

On a bare perusal of Section 4, it would appear that the difference between ‘may presume’ and ‘shall presume’ is the extent of discretion given to the courts to draw the particular presumption. In fact, in the former, the court can call for further proof before it raises the presumption.

A ‘presumption’ as defined by Thayer is “a rule of law that courts and judges shall draw a particular inference from a particular fact or from a particular piece of evidence unless and until the truth of such inference is disproved.”

The law on ‘presumptions’ has been considered to be a conundrum despite volumes of academic debate on it. Most advanced pieces of legal writing on the topic begin with a caveat, highlighting the complexity of the issue. As the operation of presumptions also affects the burden of proof on the parties both evidentiary and persuasive, it assumes greater significance in the appreciation of evidence in criminal trials in jurisdictions that follow the adversarial system. Moreover, the interpretation of presumptions could also have an effect on substantive rules of law such as the ‘presumption of innocence’ in a criminal trial. Despite this, some scholars have gone as far as to state that ‘presumptions’ is an empty concept and their conditional nature makes them no different from ‘burden of proof’.

II. THE PRESUMPTION OF INNOCENCE: QUALIFICATIONS, IMPLICATIONS, AND FUNCTION

Presumption of innocence is a restatement of the rule that in criminal matters the public prosecutor has the burden of proving guilt of the accused in order for the accused to be convicted of the crime he is charged with. Burden of proof has two elements: the first element is evidentiary burden, i.e. producing evidence in support of one's allegation, while the second element relates to the burden of persuasion (also referred to as the legal burden), which is the

obligation of the party to convince the court that the evidence tendered proves the party's assertion of facts.

(A) The Nature of Legal Presumptions

What is the place and nature of presumption in law and legal argumentation is the question which was originally raised by James Bradley Thayer, one of the masters of the Evidence Law, presumption of facts are those inference which are naturally and also logically derived on the basis of experience and observations in the course of nature or constitution of the human mind or springs out of human actions. These are also known as material or natural presumptions. These presumptions are in general rebuttable presumptions. The sections of Indian Evidence Act which deals with Discretionary Presumptions relating to documents are sections 86, 87, 88, 90 and 90-A. These are those presumptions in which the words may presume is used signifies that the courts of law have discretion to decide as to whether a presumption is allowed be raised in the court or the other way.

(B) 'Factual' and 'Legal' Guilt and Innocent

In law, you are either deemed as being factually guilty, or legally guilty depending on the circumstances surrounding your arrest and subsequent prosecution in court. One is found to be legally guilty if there exist concrete facts that may incriminate you, say some exhibit or forensics. On the other hand, one may be deemed as being factually guilty if he committed the crime.

Essentially, factual guilt refers to what the defendant did while legal guilt is what the prosecutor can prove. For example, someone can be factually guilty, but if there is no sufficient evidence, the person cannot be legally guilty.

As may already be apparent from the foregoing, the conflict between those that see prisoners maintaining innocence as victims of a 'parole deal' and those that see them as 'deniers' stems from the different spectacles worn by the opposing sides based on where they are positioned in terms of either making challenges to the criminal justice system about alleged cases of wrongful conviction and/or imprisonment or working as part of the post-conviction system. To illuminate what the opposing sides mean when they utter the key terms 'innocence' and 'guilt' it is, perhaps, instructive to consider a scenario between a fictitious life-sentenced prisoner maintaining innocence as s/he attempts to navigate her/his way through the maze of the post-conviction system that works from the premise that all prisoners are guilty.

When a life-sentenced prisoner maintaining innocence arrives at a prison s/he is informed that s/he will be expected to comply with a tailor made sentence plan and specified offending

behavioural, programmes, the successful completion of which provides the evidence by which the Parole Board will ultimately make decisions about whether to recommend progression and/or release. In response, the lifer maintaining innocence remains steadfast in asserting his/her innocence, meaning factual innocence of the crime(s) that s/he was convicted of. The response from the member of staff in the prison, whether it be a prison officer, a prison governor, or a member of staff from prison psychology or probation services, is equally unwavering in asserting that the prisoner will be considered to be guilty for the purposes of the various requirements of the prison regime.

The facts which are assumed to be true under the law is known as presumption. For understanding presumption more clearly we would like to give one example, suppose a criminal defendant is presumed to be innocent until the prosecuting attorney proves beyond a reasonable doubt that he/she is guilty.

Presumptions are used to relieve a party from having to actually prove the truth of the fact which is being presumed. Once a presumption is relied on by one particular party, however, another party is normally allowed to offer evidence to disprove or rebut the presumption. This presumption is known as a rebuttable or disapproved presumption. In essence, then, what a presumption really does is place the obligation of presenting evidence concerning a particular fact on a particular party. The Indian Evidence Act does not make an attempt to define what a presumption is.

In our research paper we have tried to discuss some of the case studies and define some of facts related to presumption of an innocence and the burden of proof relating to some of the highlighted cases.

And in this paper we also tried to enlighten some of the general but important elements of burden of proof as we go further with the research we also tried to explain some of the issues relating to Elements Constituting the Crime and Other Facts that Need Proof.

III. APPLICATION OF BURDEN OF PROOF IN INDIA

In India burden of proof is embedded in chapter VI of the INDIAN EVIDENCE ACT as already discussed sec 4 of the Act defines the phrase shall presume states that whenever is it directed by the Act the court shall regard such fact as proved unless and until it is disproved , sec 3 of the act defines the words proved and not proved it relies upon the prudent man hindsight to weight the probalities of the existence or non existence of a fact .If on weighing the probalities one acts upon the supposition that a fact exists or does not exist then the fact is said to be proved or disproved respectively .Therefore on a literal reading of the relevant section of the Act, it is

clear that in cases concerning general exception the accused has to prove his case on a preponderance of probabilities

(A) Judicial Interpretation

The judiciary strictly has not adhered to the provisions of the Act. Rights from the age old decision of the Allahabad high court in the *Parbhoo vs the SC in Vayae singh a state of U.P* the judiciary has in numerous cases followed consistent principle. The following principles may be derived from the said decision

- a) The prosecution must prove beyond reasonable doubt that the accused has committed the offence
- b) The accused may after making his plea prove his case beyond reasonable doubt
- c) The accused is entitled to a benefit if he managed to create a reasonable doubt as to the ingredients of the offence even if he fails to prove his case under general exceptions

Practically therefore the burden of proof on the accused in case of general exceptions is lighter than that prescribed by the Act. While the Act requires the accused to prove his plea on a preponderance of probabilities the judiciary has diluted it and allows the accused to benefit from the general exception if he merely creates a reasonable doubt as to ingredients of the offence itself.

The Indian judiciary followed of the principles of a common law namely the accused is presumed to be innocent until proved guilty the prosecution has to prove the guilty of the accused beyond reasonable doubt "the accused is entitled to benefit even if there is a doubt as to the ingredients of the offence" has led to the dilution of the principles enshrined in the Act. These principles which are laid down by the judiciary can be traced back to the English cases especially *Woolmington vs D.P.P.9* In that case, the court laid down that the burden of proof is on the prosecution to prove beyond reasonable doubt that the offence was committed and the accused need not prove his innocence. In the same case Viscount Sankey, L.C observed When death or malice has been given the prisoner is entitled to show by evidence or by examinations of the circumstances adduced by the crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or upon a review of all the evidence are left in a reasonable doubt whether he committed the offence even if his explanation be not accepted the prisoner is entitled to be acquitted

This principle was followed in *Parbhoo vs stae by .the Allahabad high court* to interpret sec 105 of the act. The judiciary time and again recognized reiterated and followed the principle

of *WOOLMINGTON CASE* so much so that it become the law governing the burden of proof in relation to general exceptions ,For applying the principles used in *woolmington* case the INDIAN judiciary is opined at committing a blunder resulting in disastrous consequences for the prosecution .A perusal of the *woolmington* ratio and section 105 of the Act show that they operate at two different level sec 105 deals with burden of proof on the accused to prove that his action of committing the offence falls within general exceptions while the woolmington ratio deals with the benefits that an accused can avail when the prosecution has failed to prove the case against the accused combining the two different levels sec105 deals with burden of proof on the accused to prove that his action of committing the offence falls within general exceptions while the woolmington ratio deals with the benefits that an accused can avail when the prosecution failed to prove the case against accused .Combining the two has led to various unwarranted consequence some of them are

- a) Section 105 of the Act has become redundant
- b) There is a mix up of two distinct stage in a trail one is the prosecution proving the offence and the accused proving general exception and more importantly it has resulted in an undue burden on the prosecution the prosecution now have to not only prove that the act resulting in the offence beyond reasonable doubt but also have to prove that the act resulting in the offence does not fall within the general exception .The latter also has to the commission of the offence .On the other hand the accused merely has to raise the plea of general exceptions and if necessary has to highlight the drawbacks in the prosecution's case to show that there is a reasonable doubt as to the offence itself

All these above said consequences were highlighted by the case **J.D Vanubhai vs state in 1952** in that case the court warned about following the woolmington ratio to interpret 105 of the Act .This approach was followed by a few high court initially and indirectly by they have not been sufficient to stop the total sellout to the woolmington ratio

The burden on the prosecution is onerous in a criminal trail. It has to prove the case beyond reasonable doubt. But due to the judicial interpretation given to sec 105 it now has also got to prove that general exception exceptions are not attracted by the facts of the case

IV. BURDEN OF PROOF IN GENERAL

According to section 101 of burden of proof in evidence act 1872, from the point of view of burden of proof, facts can be placed in two categories: those which affirms a fact and those which deny it. Though the party who arrests the affirmative of an issue, to make the court give a judgment on the basis of those facts, carries the burden of proof to prove them; it is easier to

prove the affirmative than the negative in issue should not be in form or grammar but in substance.

Importance of burden of proof: the question of H'nour or burden of prove at the end of the case when both the parties have reduced their evidence is not of very great importance and the court has to come to a decision on a consideration of all materials. Burden of proof as determining the factor of the whole cases can only arise if the traveller finds the evidence Pro and con so evenly balance that it can come to no conclusion. Then the owners will determine the matter and the person on whom the burden of proof lies will lose. What is the tribunal after hearing and weighing the evidence comes to a determinate conclusion the owner has nothing to do with it and need not be further considered. The case is to be decided on merit without taking into consideration as to on which of the party the burden of proof lay.

The following was observed by the Supreme Court *in State of Maharashtra vs. Vasudeo Ramchandra Kaidalwar (1981 3 SCC 199)*: The expression 'burden of proof' has no meanings, legal burden and evidential burden. In criminal trial, the accused is considered to be innocent until proven guilty and the prosecution carries the burden of prove his guilty. This burden to prove anything essential against the accused is the legal burden and it never shifts.

(A) Elements of Burden of Proof

When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

The question is which out of the two parties has to prove the fact. The answer to this question decides the question as to burden of proof. The burden of proof means the obligation to prove a fact. Every party has to establish facts which go in his favour or against his opponent. And this is the burden of proof. The act lays down some elements of general nature.

Section 101 – Burden of proof

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Burden and onus

The illustration applied to the section source that the provision is intended to apply to Civil as well as criminal cases Onus is always on a person who asserts a proposition a fact which is not self-evident. To assert that a man who is alive was born requires no proof. The owners are not on the person making the assertion because it is self-evident that he had been born. But to I

assert that he was born on a certain date if the date is material requires proof: the onus is on the person making the ascertain. Now in conducting any enquiry, the determining Tribunal will of 10 find that owners are sometimes on the side of the contending that in certain circumstances onus shifts.

THE EXPRESSION BURDEN OF PROOF HAS TWO DISTINCT MEANING:

The legal burden

The evidential burden

In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the persecution in the case of certain offences the burden of proving a particular fact in issue may be late by law on the accused. The burden resting on the accused in such cases is however not so onerous as that which lies on the prosecution and is discharged by proof of balance of probabilities. Under the scheme of the prevention of corruption, act burden lies upon the accused to account for his possession.

If the prosecution evidence as a whole is unreliable and cannot be accepted as correct for specific reason The Silence of the accused can be of no avail to the prosecution for search conduct of silence can never be permitted to become a substitute for the proof by the prosecution.

W.R. Colliery v. Bihar state co-operative Marketing Union A.I.R. 1978 Pat. 57

Where in a contract for the sale of coal the talented a list that the price was to be calculated according to weight and the defendant that it was to be by measurement no satisfactory evidence having been reduced by either party it was held that it was for the plaintiff to prove his case.

Section 102 – On whom burden of proof lies

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Kishan Chand v. Bacardi Das A.I.R. 1990 P&H 160.

Where a landlord a list that there was a subletting by the tenant and he was able to prove that possession and occupation was with person other than the tenant it was held that this had the effect of shifting the onus of proof to the tenant to show that was the nature of the agreement between the tenant and the person occupying the premises.

S.104.The burden of proving the fact to be proved to make evidence admissible

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

S.105.The burden of proving that the case of accused comes within exceptions

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstance.

Babu Lal v. State A.I.R. 1960 All.223

It was held that it is not necessary for the accused to plead the existence of circumstances bringing is within an exception. An accused is clearly entitled to claim and acquittal is on the evidence for the prosecution it is shown that he has committed no offence. The section does not say that the accused must lead evidence. The circumstances to be proved me otherwise appear from the record. Where the prosecution case itself indicates that an exception is applicable in favour of the accused in the circumstances of the case the accused cannot be denied the benefit of the exception whether he pleads it or not.

S.106.The burden of proving fact specially within knowledge.

When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

State of Bihar v. Kumar P.N.Singh (1997)5 SCC 298.

Where is fat is especially within the knowledge of a party the burden of proving that fact lies upon him. This is the principle of section 106. Where a man and a woman were found hiding under a bed in the bedroom of the person who was lying date of injuries it was held that the burden placed upon them to explain their presence and also the circumstances in which the deceased met his death. Failure on the part of the state to produce the merit list is. Supreme Court direction created the presumption that no merit list was prepared. The fact of the existence or otherwise of the merit list was especially within the knowledge of the state.

S.107.The burden of proving the death of person known to have been alive within thirty years.

When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

This presumption is however not a very strong one. It may not only be rebutted by a shred of slight evidence to the contrary for example 7 years absence but the court may not act upon it until positive proof of his being alive is offered.

Submit Kaur v. Jujhar Singh A.I.R. 1980 P&H. 275

Where a person was known to be alive up to 1960 the Punjab and Haryana high court held that it must be presumed that he would be alive up to 30 years from that date. If he is why I wanted to remarry she must prove that he is no longer alive or has remained unheard for 7 years. All that she was able to do so that two of their relatives knew that he had gone to Indonesia and more than 7 years had passed and he has neither written any letter nor otherwise heard of by anybody since then. This was held to be not sufficient to create the presumption of death. Her marriage was declared to be void.

S.108. The burden of proving that person is alive who has not been heard of for seven years.

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Section 108 materially qualifies the operation and effect of the provisions and raised by section 107. The essence of the section is that if a person is not heard of for 7 years as the presumption is that he has died and if anybody alleges that he is still alive he must prove that fact. Thus 7 years absence creates a rebuttable presumption of death.

S.109. The burden of proof as to relationship in the case of partners, landlord and tenant, principal and agent

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it.

S.110. The burden of proof as to ownership

When the question is, whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Chuharmal v. C.I.T. A.I.R. 1988 SC 1384

Where a corporation had exercised exclusively the right of pasturages over certain Lands for a long period of time and when ultimately the question arises whether the right was exclusively

or in common with other it was held that the long exclusive enjoyment was evidence of exclusive ownership of the right although in the relevant document the right was described to be a common right.

S.111.Proof of good faith in transactions where one party is in the relation of active confidence. Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Daya Shankar v. Bachi A.I.R. 1997

A decision of the Allahabad High Court provides a suitable example. The plaintiff's uncle being childless used to treat the talented as his own son since his childhood and had a great affection for him. He was eighty years old. He fell ill. The plaintiff secured his admission into a Railway Hospital. Within 8 days thereafter the accused a gift deed of his certain houses in favour of the plaintiff. About a month thereafter his other heirs obtained from him another gift deed favouring them. He died about six months later. The court laid down that the deed in favour of the plaintiff was executed in abnormal circumstances. The burden of proving good faith was cast upon him which he did not discharge. The deed was liable to be set aside. The court stated that ordinarily a person who challenges the validity of a transaction on the ground of abuse of trust has to prove that fact. But where the relation of active confidence subsists there the burden of proving the bona fide of a transaction is shifted to the person who relies on it. The court further pointed out that the variety of fiduciary relation is not exhausted by the few well-known patterns. Any relationship in which one party enjoys the active confidence of the other who has to lean on him and repose confidence in him is enough to attract the provision of section 111. A woman who was not merely a housewife but also an actress was not permitted to take the advantage of the section by alleging that she transferred the property in favour of her husband who is under the husband's influence. She was neither illiterate nor incapable of understanding the nature of the transaction. She was talking of the fraud by the husband and his influence.

(B) Allocation of Burden of Proof

To determine the optimal allocation of the burden of proof, the court must sort out the rule's which effect on the parties' decisions in the three stages of the model. Let us consider them in reverse order. At the litigation stage, the parties decide what to invest in gathering and presenting evidence. By determining who is responsible for presenting evidence, the burden of proof allocation will affect both the expected costs of litigation and the likelihood of an

erroneous outcome in the case. At the negotiation stage, the parties bargain over settlement terms. By affecting the parties' expected costs of litigation, the burden of proof rule affects the size of the "pot"-the potential gains from trade- that the parties will bargain over. It thus affects the negotiating costs the parties are willing to incur. In addition, by affecting the settlement amount, it affects the likelihood that a party may settle for too little or too' much. At the filing stage, the plaintiff decides whether to file a claim; recall that we construe this broadly to encompass any form of making a demand against the defendant. The costs of the succeeding stages-litigation and negotiation-are only incurred if the plaintiff decides to file suit. Her decision will be influenced by what she expects to get in the succeeding stages; these will be a function of the burden allocation. By influencing the plaintiff's decision to file, the burden allocation further affects the process costs generated by successive stages, and also affects once again the likelihood of an erroneous outcome. The court's problem, therefore, is to predict the parties' equilibrium decisions under a given allocation, and to assess the costs generated by those decisions. In what follows we analyze this problem.

V. PRESUMPTION OF INNOCENT AND BURDEN OF PROOF IN CRIMINAL MATTERS

Presumption of innocence is not an ordinary presumption wherein the basic facts are proved and the presumed facts are taken as proved .Presumption of innocence is a restatement of the rule that the public prosecutor has the obligation to prove each elements that constitutes the crime beyond a reasonable doubt right to silence came to be included in the Universal Declaration of Human Rights, 1948 article 11.1 Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” The International Covenant on Civil and Political Rights, 1966 to which India is a party states in Art 9.1 that none shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law; Art 9.2 states that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. The right to silence has various facets. One is that the burden is on the State or rather the prosecution to prove that the accused is guilty. Another is that an accused is presumed to be innocent till he is proved to be guilty. A third is the right of the accused against self- incrimination, namely, the right to be silent and that he cannot be compelled to incriminate himself. There are also exceptions to the rule. An accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily material used for DNA testing etc . the right against self -incrimination is incorporated in clause (3) of Art. 20 and after *Maneka Gandhi's case: (1978 (1) SCC 248)*, Art. 21 requires a fair, just and

equitable procedure to be followed in criminal cases. It is initially necessary to bear in mind the difference between burden of proving an issue (known as the legal or persuasive burden of proof), a burden which never shifts and the burden of adducing credible evidence (known as evidential burden), which can go on shifting during the trial. Several modern statutes, while maintaining the burden of proving a pleading or charge, alter the evidential burden. For example, in a civil case, a plaintiff may have to prove that the defendant, having borrowed money, is indebted to him but under Sec. 118 of the Negotiable Instruments Act, the initial evidential burden is shifted to the defendant if he had executed a negotiable instrument in favour of the plaintiff. This method of shifting evidential burden has been resorted to in criminal cases too particularly where an accused is found in possession of certain property which the law declares it illegal to possess, such as drugs or stolen property etc. It is perfectly open to a legislature to shift the evidential burden.

In criminal cases, the principle remains constant that the initial burden is on the prosecution to establish that the accused has committed a crime. If the prosecution fails to establish beyond reasonable doubt that the accused is guilty, the accused is entitled to an acquittal. If burden of proof is put on the shoulders of the wrong party, the Supreme Court states that this would vitiate the entire judicial system. Wherein, a landlord seeks eviction of the tenants on the grounds of bona fide personal need, the onus to establish the same is on him[v]. In the case of **Banwari Lal v. Road transport**, where goods were lost by the carrier, the burden lies upon him to establish that there was no negligence on his part. 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.[vii] In the case of *Triro v. Dev Raj*,[viii] there was a delay in filing the case going beyond the limitation period, the onus to justify the delay was on the prosecution.

In matrimonial cases, the principle of burden of proof relating to civil cases is applicable. A party seeking divorce will have to prove the grounds for divorce such as desertion, cruelty or infidelity.

(A) Elements Constituting the Crime and Other Facts that need Proof

Proof and the substantive criminal law are connected by the latter's identification of the elements constituting the crime. A crime is an action (or omission) that is contrary to law and is deemed to be completed and punishable where "all its legal, material and moral ingredients are present" and "where the Court has found the crime proved and deserving of punishment" The legal element refers to the provisions of the criminal law that define whether a given

action/omission is a crime. Such provisions state what facts constitute a crime the presence of which need to be proved. The identification of the elements constituting the crime is sometimes difficult and becomes a subject of heated argument in the court because all of those elements may not be provided for in the law (the relevant legal provision) that defines the crime. Thus, identification of the elements in such circumstances may require the judge (or the parties) to go beyond the statutory definition. The public prosecutor should also prove other facts that may not necessarily constitute the crime. Thus, apart from what the Criminal Code provides for Once FIR has been registered by the police authorities, the evidence is mainly into 3 parts:

- Recording of Statements u/s 161 of Cr.P.C
- Collecting of Evidence in form of Documents and others
- Recording of confessions or statements u/s 164 Cr.P.C before the Magistrate.

(B) Standards of Proof of Facts Constituting the Crime

Facts exist or do not exist; they do not exist in probabilities. Proof of facts is assessed in terms of conviction; convictions are expressed in term of degrees which is determined based on the quantum of evidence for the determination of the ultimate fact. Thus, proof of facts is assessed in terms of probabilities, e.g., the occurrence of a given fact is more or less probable than its non-occurrence where the standard of proof is by preponderance of the evidence. The “highest degree of probability” is what is called “truth” There is always a degree of doubt/uncertainty that is tolerated in proof because it cannot be avoided, although the degree of doubt that is tolerated in civil matters is much higher than that is tolerated in criminal matters. Therefore, it is commonly stated hat the prosecution has to prove its case beyond a reasonable doubt in order for the defendant to be convicted. The standard of proof required in criminal matters is different from that required in civil matters. All the elements constituting the offence have to be proved beyond a reasonable doubt in order to find the defendant guilty. Proof beyond a reasonable doubt is a common law concept The concept of ‘a reasonable doubt’ is nowhere intelligibly defined thus leaving the concept vague. The standard of proof in criminal matters is not established in our laws nor is it stated in the Federal Supreme Court Cassation Division decisions that are binding interpretation of the law. However, there are indications that the standard of proof in criminal matters is much higher than in civil matters. The courts in Ethiopia were applying the “beyond a reasonable doubt” standard of proof in criminal matters which was presumably introduced by British judges and government advisors. It appears that the proof beyond a reasonable doubt principle has been taken to heart, and our judges were consistently using the words when they enter judgment whether it is acquittal or conviction of

defendant.

VI. THE RIGHT FOR THE ACCUSED TO BE TREATED AS INNOCENT

A person under the custody of the police or under-trial possess does not lose his fundamental rights and human rights merely because of incarceration. This is based on the principle that “hundreds of guilty persons may get scot-free but one innocent should not be punished There are various provisions enshrined under CrPC which should be kept in mind by police officials while having custody of the accused or suspected person. The power to arrest any person is given under Section 41 of the Code. This section clearly states that a police officer has the power to arrest any person to investigate the case further, but has no power to use unnecessary force to extract the information from that person. Also, the power given to the police officer is discretionary as the word “may” is used in the section. So, it is his duty to arrest a person according to the facts and circumstances of the case and not otherwise.

In the case of *State of Andhra Pradesh v. Venugopal and Ors (1963)*., the court held that torture in the custody of the police is a serious crime and punished the perpetrators of the crime with rigorous imprisonment of 5 years. Section 161 of the Code provides for the statement to be recorded with all the facts and circumstances of the case by the police officer. This statement must be distinguished from the information which starts the investigation. Section 161 (2) provides that a person accused must not be bound to answer those questions which would tend to expose him to a criminal charge. Also, Section 164 of the Code provides for the confessional statement. It is observed in this case that a magistrate must take to see the requirements under section 164 are fully satisfied.

Further, certain provisions of the Indian Penal Code also provides for the protection of the accused under the custody of the police. Section 330 and 331 of the Code provides for the protection of the accused from unnecessary harassment in custody as well as to extort information without his will. Also, the code provides that a police officer is liable to be punished if he exercises or abuses his power without any necessity. The accused is also protected under the provisions of the Indian Evidence Act. Section 25 of the Act provides that a confession made to the police cannot be admitted in court. Also, Section 26 of the Act provides that a confession made to the police by the person cannot be proved against such person unless it is made before the magistrate. The constitution of India provides legal protection to the accused person to uphold the fundamental rights of an individual so that procedure laid down under criminal law should *e ‘right, just and fair’* and not in any oppressive and arbitrary manner. It is necessary to provide legal protection to the accused person during

the trial to grant him free and fair trial without misuse of powers by the government authorities. In the case of *Kishore Singh Ravinder Dev v. State of Rajasthan (1981)*, the court held that the Indian constitution, evidentiary and procedural laws have consist of elaborate provisions regarding the legal protection of the rights of an accused person during the trial and to protect his human dignity and providing him benefits of a just, fair and impartial trial by the court of law.

VII. BURDEN OF PROOF BORNE BY THE DEFENDANT:

(A) Affirmative Defence

The initial burden of proof that the state bears to prove all the ingredients of a crime beyond reasonable doubt (in order for defendant to be convicted) may appear to be shifted to the defendant only in two circumstances. They are where the defendant raises affirmative defences and where the law allows an ingredient of a crime to be proved by presumptions. Although the main focus of this article is presumptions, a few words may be appropriate about affirmative defences, a tool by which the burden of proof is said to be shifted to the defendant. In the General Part of the Criminal Code, there are justifications and excuses which may fully or partly exempt defendant from criminal liability. When a defendant raises any of these affirmative defences, he is not denying the facts; the defendant rather affirms the action or omission asserted by the prosecution but invokes justifications or excuses against criminal liability. This involves alleging the presence of other facts that do not form part of the prosecution's assertions. In affirmative defences, because the defendant is asserting new facts, the burden of proving those new facts is on him. This is perfectly in line with the principles discussed above for allocation of the burden of proof as between the litigants.¹³⁶ A defendant, however, by his affirmation of the facts alleged by the public prosecutor, waives the burden of proof borne by the public prosecutor regarding the facts constituting the crime. Affirmative defences do not actually shift the burden of proof because they do not constitute exceptions to the prosecutor's duty to prove guilt beyond a reasonable doubt. Some legal systems have the rule that defendants have to prove justifications or excuses by the preponderance of the evidence while the public prosecutor may disprove such justification or excuse beyond reasonable doubt.¹³⁸ This is not, however, compatible with Ethiopia's laws. Nevertheless, as guilt (as discussed in the preceding section) must be proved by the public prosecutor beyond a reasonable doubt for a criminal conviction, it is sufficient for defendant to create a reasonable doubt on the prosecution's case.

(B) Presumption

Presumptions are not rules of evidence; they are procedural rules that define the relationship between two facts - the basic facts and the presumed fact. The relationship is that, a presumed fact is deemed proved until proven otherwise by the other party if the party in whose favour the presumption operates proves the basic facts by a required degree. The degree of this relationship between those facts differs in different circumstances. The minimum requirement is that there has to be a rational/logical relationship between the basic facts and the presumed facts. For instance, where there is a house rental agreement in which "A" pays a sum of money to "B" on a monthly basis, a receipt issued by "B" for the month of September leads to the presumption that the payments for the prior months are paid. There is certainly a rational connection between the receipt for the month of September and the issue of payment for the previous months because they are similar transactions emanating from the same legal obligation. There are two types of presumptions: rebuttable and irrebuttable presumptions. In rebuttable presumptions, once the party in whose favour the presumption operates proves the basic facts, the other party may produce evidence in order to disprove such presumption. The effect of (rebuttable) presumption is that, it shifts the burden of proof to the other party against whom such presumption operates. However, it is only the burden of production that is shifted. In the common law system, where evidence on the issue has not been produced, such non-production of evidence generally exposes a party to an adverse result or a directed verdict. The burden of persuasion remains with the party on whom it is originally cast. In irrebuttable presumption, once the presumption is established the other party is precluded from disproving such presumption. Such rules are not in the realm of evidence law; they are rules of substantive law. There are social policy justifications for the application of presumptions, both rebuttable and irrebuttable, in civil matters. There appears to be limited application of rebuttable presumptions in criminal matters; however, to the knowledge of this author, there is no irrebuttable presumption that operates in criminal matters in any other legal system.

(C) Presumption in Criminal Matters:

It is an essential manifestation of the principle of presumption of innocence that the state has to prove all the elements constituting the offense beyond a reasonable doubt in order for defendant to be convicted. In several legal systems, there is no exception to this principle. Arguably, Presumption and Suspicion are contradictory to each other, and there is no law to raise a suspicion of a guilt. There is no authority or citation proposing *ratio decido* show a man to have be convicted or sentenced for suspicion of committing on offence Indian law favoured presumption of innocence of accused unless proven guilty in Criminal trial. Exceptionally,

presumption, though treated as a legal right and as a golden rule favouring a person accused of guilt, is a rule of evidence, to presume the commission of offences too. In the Indian Evidence Act, if Section 101 and Section 102 statute the Burden of proof and on whom the Burden of proof lies, it does envisage Section 105 as the Burden of proof on the accused .A discreet reading would show :It is embodied In, Section 105 “When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case, within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any part of the same code, or in any law defining the offence, is upon him (the accused) and the court shall presume, the absence of such circumstances”. If Section 105 was that, then once again, a compelled reading of Section 4 of the Indian Evidence Act is a nuance.

VIII. BURDEN OF PROOF IN ALLEGED COERCION DURING POLICE INTERROGATION

Section 25 – confession to police officer not to be proved.

No confession made to a police officer shall be proved as against a person accused of any offence. Reasons for exclusion of confession to police- another variety of confessions that are under the evidence act regarded as involuntary are those made to a personnel. Section 25 expressly declares that such confessions shall not be proved.

If confessions to police were allowed to be proved in evidence, the police would torture the accused and thus force him to confess to a crime which he might not have committed. A confession so obtained would naturally be unreliable. It would not be voluntary. Such a confession will be irrelevant whatever may be its form, direct, express, implied or inferred from conduct. The reasons for which this policy was adopted when the act was passed in 1872 are probably still valid.

In Dagdu v. State of Maharashtra, A.I.R. 1977 S.C. 1579, Supreme Court noted:

The archaic attempt to secure confessions by hook or by crook seems to be the be-all and end-all of the police investigation. The police should remember that confession may not always be a short-cut to solution. Instead of trying to “start” from a confession they should strive to “arrive” at it. Else, when they are busy on their short-route to success, good evidence may disappear due to inattention to real clues. Once a confession is obtained, there is often flagging of zeal for a full and through investigation with a view to establish the case de hors the confession, later, being inadmissible for one reason or other, the case fundles in the court.

In R v. Murugan Ramasay, (1964) 64 C.N.L.R. 265 (P.C.) at 268

Police authority itself, however, carefully controlled, carries a menace to those brought suddenly under its shadow and the law recognises and provides against the danger of such persons making incriminating confessions with the intention of placating authority and without regard to the truth of what they are saying. Confession Of An Accused In Polilice Custody To Any One Else-

Section 26 provides that a confession which is made in custody of a police officer cannot be proved against him. Unless it is made before a magistrate.

In Kishore Chand v. State of Himachal Pradesh, the extra judicial confession was made to Pradhan who was accompanied by Police (enquiry) Officer. The only interference which could be drawn from the circumstance of the case, is that the confession was made at the time when the accused was in the custody of police and it could not be proved against the accused. It could not be believed that, when a police officer has seen the accused with deceased at last occasion, he will not take the accused in the custody.

In the case it is evident that the Police Officer has created a scene and to avoid Section 25 and 26, the Police Officer has left the accused in the custody of village head man (pradhan).

The Police Officer in this case has no difficulty to take the accused to the Judicial Magistrate and to take extra-judicial confession under section 164 of Cr.P.C which has got more probable value and it gives an opportunity to make the required warning, that this confession will be used against the accused and after this warning he records the confession. Under section 26, no confession made by an accused to any person while in custody of a police officer shall be proved against him.

IX. CONCLUSION

There are several manifestations of the rights of a person to be presumed innocent until proven guilty. One such manifestation is the duty of the public prosecutor to prove all the elements constituting the crime beyond a reasonable doubt. The defendant on the other hand, does not have to participate in the proof against him. There are, however, several ways by which the principle of presumption of innocence is violated in our criminal justice administration. First, there are provisions in the Criminal Code that establish the existence of an element of the crime, including intention/ knowledge by presumption. When such presumption is rebuttable presumption, both the evidential and the legal burdens are shifted to the defendant in violation of the constitutional principle of the presumption of innocence and the notion of fundamental

fairness in the administration of the criminal justice. And where the presumption is irrebuttable, it entirely nullifies the constitutional right of the accused to present evidence in his defence. Fundamental as well as the human right of the accused to be protected against the illegal actions of the state. The Code of criminal procedure, the Indian Evidence Act and the constitution of India provides the legal protection to the accused person during the trial proceedings before the court of law nowadays, it has been observed that there is a significant increase in the death and violence of an accused person in the police lock-ups. Many deaths have taken place in the custody of police but no attention has been paid to it by the administration. Custodial deaths are unacceptable in a democratic country like India where each and every citizen of the country has the right to life and personal liberty enshrined under Article 21 of the Constitution of India. Fundamental principles of criminal jurisprudence also provide for the fair and reasonable investigation of the accused. It is the duty of the state to preserve the constitution of India and make certain amendments to the law which are prima facie in violation of rule of law.
