

Burden of Proof/Asr

BURDEN OF PROOF/ASR

- The expression "Burden of Proof" means the burden of adducing evidence. **This indicates the obligation to lead evidence . It signifies an obligation imposed on a party to prove a fact.**

General rule -He who asserts, must prove

The general rule with regard to the burden of proving the facts is that "**He who asserts, must prove**". The reason behind this rule is that, **he who drags another to the court must take the burden of proving the facts which he asserts. Further, it is easy to prove the affirmation than to prove the denial.**

Fundamental principles of criminal trial

There are five fundamental principles of criminal trial:

- a. The accused is presumed to be innocent till the conclusion of trial;
- b. The charge against the accused must be established beyond reasonable shadow of doubt.
- c. The benefit of reasonable doubt about the guilt will always go in favour of the accused. The natural corollary is that let 99 guilt go unpunished than punishing an innocent;
- d. If two views of one fact are possible, the court will accept the view which is favourable to the accused; and
- e. "Crime" must be clearly established in a criminal trial.

Burden of Proof in Civil & Criminal cases

1. In criminal cases, the burden of proof is on the prosecution. In civil cases it is on both the parties.
2. In criminal cases, the guilt must be proved beyond reasonable doubt. In civil cases proof is enough.
3. In civil cases, the matter is decided by preponderance of probabilities. But in criminal cases proof beyond reasonable doubt is required whenever the burden is on prosecution/ but burden on accused=proof

Legal rules relating to Burden of Proof

1.He who pleads must prove (Sec.101)

The Burden of proof is on the party who desires the court to give judgement or decide a legal right or liability in his favour.

Illustrations :

- a) A desires a court to give judgement that B shall be punished for a crime which A says B has committed. In this case, 'A' must prove that 'B' has committed the crime.
- b) A desires a court to give judgement that he is entitled to a certain land in the possession of B. A must prove the existence of those facts.

2. He who fails must prove (Sec.102)

The burden of adducing evidence is on the person who would fail if no evidence is offered from either side from that point of time.

Illustration

- (a) A sues B for claiming ownership on a piece of land of which B is in possession, which B denies. If no evidence were given on either side, B could be entitled to retain the possession. Therefore, the burden of leading evidence is on A.

3. He who wishes the court to believe a particular fact must prove (Sec.103)

The principle under this section is that whenever a party wishes the court to believe and to act upon the existence of a fact, the burden lies upon him to prove that fact.

Illustrations:

- 'A' prosecutes 'B' for theft and wishes the court to believe that 'B' confessed to 'C'. A must prove the confession.
- b) 'B' wishes the court to believe that, at the time in question he was elsewhere. B must prove the fact that he was elsewhere.

4. He who wishes to prove the dependent fact must prove the main fact (Sec. 104)

If the existence of a fact is dependent on the existence of another fact, that another fact must also be proved by the person who wishes to give such evidence.

Illustrations:

- a) `A' wishes to prove a dying declaration by B, A must prove B's death.
- b) A wishes to prove, by secondary evidence, the contents of a document which is lost. A must first prove that the document has been lost.

5. He who claims exception has to prove (Sec.105)

When an accused claims that his case comes within an exception like insanity, intoxication, private defence etc., the burden of proving such exception is on the accused.

Illustration :

(a) A, accused of murder, alleges that by reason of unsoundness of mind, he did not know the nature of the Act. The burden of proving his unsoundness at that time is on A.

6.He who has special knowledge of a fact must prove: (Sec.106):

Section 106 deals with the burden of proving a fact within the special knowledge of a particular person. It says that when any fact is specially within the knowledge of a person then the burden of proving that fact is upon him.

Illustration :

- (a) A is charged with travelling on a train without a ticket. The burden of proving that he had a ticket lies upon A for it is a matter within A's special knowledge.

EXCEPTION TO GENERAL RULE OF BURDEN OF PROOF IN A CRIMINAL TRIAL

- There are exceptions to the general rule that the burden of proof lies on the prosecution in a criminal trial. Under the exclusionary rules, the burden of proof under certain circumstances will lie on the accused or defence.
- *When the burden is on the accused in a criminal case, the standard of proof is preponderance of probabilities but not proof beyond reasonable doubt*

Case under the general exceptions

- Facts to prove the **case under the general exceptions** of IPC: The accused must prove the facts and circumstances for bringing the case u/s.76 to 106 of IPC. e.g. if the accused takes plea of private defence or insanity during the commission of crime, the burden of proof lies on the accused. (Sec.105 of I.E. Act).

Alibi

- Alibi taken by the accused to be proved by the accused. It is well-settled that the accused need not prove his innocence in a criminal trial, but the alibi taken by the accused must be established by proving the facts constituting the alibi. e.g. A is accused of committing murder of B in Calcutta on 2.1.2009. A takes the alibi that he was in Bombay on 2.1.2009. The burden of proof is on A to establish that he was in Bombay on 2.1.2009. (Sec.103 of I.E. Act).

Facts within special knowledge

- Facts within special knowledge of the accused to be proved by the accused. e.g. the accused, a public servant, is prosecuted u/s.420 IPC read with Sec.5(2) of Prevention of Corruption Act. The allegation of the prosecution is that the accused claimed T.A under 2 Tier AC while he virtually traveled in a government vehicle. The fact that the accused traveled by train in 2 Tier AC is within the special knowledge of the accused himself, so the burden of proof lies on the accused to establish that he traveled by 2 Tier AC in the train. (Sec.106 of I.E. Act).

Facts for mitigating the sentence

- Facts for mitigating the sentence to be proved by the accused. The facts which may mitigate the sentence must be proved by the accused. e.g. A, the accused is charged for causing grievous hurt on B voluntarily. He is charged for committing offence u/s.325 IPC for which maximum sentence is seven years imprisonment. Here, if A wants to mitigate the sentence to bring the case u/s.335 IPC for which maximum sentence is only four years imprisonment, the accused A must prove that grievous hurt was caused on B on grave and sudden provocation of B, and not voluntarily. (Sec.101 of I.E. Act)

Burden of proof of ownership of property

- Possession is prima facie evidence of ownership of property. A person in possession of the property is presumed to be the owner and the person, who asserts that he is not the owner, must prove it. So, when the question is whether any person is the owner of the property possessed by him, the burden of proving that he is not owner, is on the person, who claims not to be the owner. (Sec.110 of I.E. Act)

PRESUMPTIONS

- Presumptions of fact = May Presume
- Presumptions of Law:-
 - (a) Rebuttable presumptions of law = Shall Presume
 - (b) Irrebuttable presumptions of law = Conclusive proof

May

Presume

- Discretion to presume or not to presume
- Discretion to presume in favour of this party or that party

**Shall Presume/
Conclusive Proof**

- Obligated to presume
- No discretion but to presume in the way directed by law

May

Presume/Shall

Presume

**Rebuttable=
Disprovable
(Presumption
drawn can be
disproved)**

Conclusive

Proof

**Irrebuttable=
Cannot be
disproved**

May Presume

- Whenever it is provided by the Evidence Act that the Court may presume a fact, it has *discretionary power either to presume* that fact and regard it as 'proved' until it is disproved *or refuse to presume that fact and call for the proof of it.*
- *May Presume or Presumption of fact = Exists a discretion to presume or not to presume*
- *Shall Presume/Conclusive proof=No discretion but to presume*

May Presume

- For example, under Sec.114 (illustration A) the court may presume that a man who is found in possession of stolen goods soon after the theft is either a thief or has received such goods with the knowledge that they are stolen. Here the court has discretionary power either to presume that the possessor is a thief or has received the goods with the knowledge that they are stolen or may refuse to presume the guilt of the accused and ask the prosecution to prove the guilt of the accused.

Shall Presume

- Section 4 =the Court has no discretionary power in drawing a presumption; on the other hand there is an express direction which is mandatory on the Court.

Mental Healthcare Act, 2017 /Sec. 115

(Presumption of severe stress in case of attempt to commit suicide/Shall presume)

Hunger strike=Prevented from committing suicide/The presumption does not work

Shall presume -Examples

- Presumption as to Gazettes (S.81)
- Presumption as to maps or plans made by authority of government (S.83)
- Presumption as to collection of laws and reports of decisions printed or published under the authority of government (S.84)
- Under the provisions of Section 88A, it is presumed that an *electronic message forwarded by a sender through an electronic mail server to an addressee corresponds with the message fed into the sender's computer for transmission.* However, there is *no presumption regarding the person who sent the message.*

Presumption as to legitimacy

- W married HB on 2-3-2018. HB is a businessman, and his business does not allow him to leave their place, Hyderabad and his wife has been with him all the time except for a few days occasionally. On 2-2-2021, W gives birth to a child, who does not resemble HB, but resembles his neighbor. **HB does not want to be treated as a father of the child and wishes to challenge paternity** of the child by adducing evidence that he is not the true father. **Is HB permitted to adduce evidence that he is not the true father?**

Conclusive Proof

- The definition of the expression 'conclusive proof' as given in Section 4 says that when one fact is declared by the Evidence Act to be the conclusive proof of another, the Court on the proof of that one fact must regard the other having been proved and it shall not permit any kind of evidence for the purpose of rebutting or disproving that fact.
- Example :- Birth during marriage, conclusive proof of legitimacy U/Sec. 112 Evidence Act.**(Paternity is a presumption)**

Conclusive Proof

- Under Section 41 of the Evidence Act, judgments *in rem* of Courts in the exercise of Probate, Matrimonial, and Admiralty and Insolvency jurisdiction are conclusive proof of the matters contained in such judgments. For example, where the question is whether *A* and *B* are husband and wife and when a divorce decree is produced the Court shall conclusively presume that they are no longer husband and wife from the date of divorce decree. The divorce decree is regarded as conclusive proof of the fact that marital tie between them is snapped.

Civil Cases

- Acknowledgement of total claim of the other party=**ADMISSION**
- Acknowledgement of a fact alleged by the other party=**ADMISSION**

Criminal Cases

- Acknowledgement of total guilt=**CONFESSION**
- Acknowledgement of a fact alleged by the other party=**ADMISSION**

- A from Surat brings an action against B of Hyderabad , that on 22-2-2019 purchased cloth worth 465000 on credit and has not returned the money.
- PURCHASE
- CREDIT
- NO RETURN