

A STUDY ON BURDEN OF PROOF

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ABSTRACT

Indian Evidence Act was established in the year 1872. This Act had been divided as three parts, eleven Chapters and 167 Sections. Indian Evidence Act spread all over India except Jammu and Kashmir. In 1984 pakistan repealed it as 'Quanun e Shadat'. Evidence Act - provision are kindly divided as Taking the evidence and evaluation¹. Every piece of thing is said to be evidence. Even your chewing gum is an evidence to find out where you are and health condition. Some important to be noted in evidence are - Crossing the limit under circumstance helps to clear the evidence, Convincing helps to clear the evidence, Cause must be reasonable, Belief must be reasonable, Indicating and suspicion must be real and causable, Credible evidence which is worth and belief, Substantial evidence (by referring to richardson v Perales (1971) we can understand about substantial evidence).

KEYWORDS: Indian Evidence Act, Quanun e Shadat, Taking the Evidence, Evaluation, Reasonable, Indication, Suspicion, Credible Evidence, Substantial Evidence.

AIM

To Study on the burden of proof rules and its essentials.

To Study the sections relating to Burden of Proof under IEA 1872

¹ ([Kaplow 2011](#))

HYPOTHESIS

HO - The plaintiff may omit unfavourable evidence for attempt to win the case.

HA - Any rules and exceptions of the burden of proof and lies on the part of aggrieved parties

RESEARCH METHODOLOGY

In this paper the researcher has opted for Doctrinal Research Methodology

SOURCES

Sources are collected mainly through Secondary Data.

In chapter 1 it start with small intro on Burden of Proof with example. Also Why we need Burden of Proof is also added in this chapter 1.

INTRODUCTION

For every incident there must be a thing to be proved which had already happened or may not be happened too. So proving an incident is said to be an evidence. If the evidence has not been shown or otherwise evidence is shown but not proved then the happened incident will lead to unhappened incident². For Example: 'A' is a person who is driving a car on highway from Chennai to Bangalore. He was driving his car at speed at 50. On opposite side a lorry driver 'B' had lost his control in driving the lorry due to brake failure and dashed the A's car nicely. Due to fear driver came out of the vehicle and ran away. 'A' was severely hurt and was fainted in car itself. He was taken to the nearby hospital by the public. After some days he was cured little. When he woke up he remembered last about the accident which had happened to him. Police were came in to his ward where he was admitted. He narrated the incident how it had happened. Police noted all and filed an FIR. Here how will the victim will prove the Incident that had happened. Now the only way to prove the incident is Evidence and also burden lies on the victim to prove the evidence is said to be Burden of Proof.

Why we need Burden of Proof ?

Normally Burden of Proof lies on the affected party³ i.e Appellant because evidence given by affected party is one will be most of the time are true which are believed by the court too. When

² [\(McBaine 1944\)](#)

³ [\(Picinali 2014\)](#)

accuse is asked to prove he will easily escape by making a fake evidence. So we need Burden of Proof to prove the person has done guilty⁴.

In Chapter 2 says about the rules along with examples and some case studies are attached too.

Let's move on to the Burden of Proof under Indian Evidence Act 1872.

As a legal person we must not only know about Burden of Proof, also must know about the surroundings of Burden of Proof i.e legal in Burden of Proof.

Section 101 to section 114 A under the Indian Evidence Act 1872

Sec 101– Burden of proof

Sec 102–On whom burden of proof lies

Sec 103–Burden of proof as to particular fact

Sec 104–Burden of proving fact to be proved to make evidence admissible

Sec 105–Burden of proving that case of accused comes within exceptions

Sec 106–Burden of proving fact especially within knowledge

Sec 107–Burden of proving death of person known to have been alive within thirty years

Sec 108–Burden of proving that person is alive who has not been heard of for seven years

Sec 109–Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

Sec 110–Burden of proof as to ownership

Sec 111–Proof of good faith in transactions where one party is in relation of active confidence

Sec 112–Birth during marriage, conclusive proof of legitimacy

Sec 113–Proof of cession of territory

Sec 113 A—Presumption as to abatement of suicide

Sec 113 B—Presumption as to dowry death

Sec 114–Court may presume existence of certain facts

Sec 114 A—Presumption as to absence of consent in certain prosecutions for rape

⁴ ([Hay and Spier 1997](#))

SEC 101 - BURDEN OF PROOF

In Section 101 says that if a person who makes an allegation on opposite party in front of the court, that person must prove that his allegation was true which is said to be Burden of Proof.

For Example

A and B are Appellant and Respondent. In court A says that B has committed a crime yesterday. Here A must prove that B has committed a crime.

In **Jarnail Case (1996)** Burden of proof lies upon the person who has raised allegation on opposite party who is said to be Accused⁵. The Person must prove that the opposite party has done guilty. If Burden of proof lacks or not proved, there are chances of dismissal of the case.

SEC 102 - ON WHOM THE BURDEN OF PROOF LIES

In Section 102 says that if a person who raised allegation has not yet submitted any Proof then there are chances of opportunity for opposite party to win the case and party who had raised allegation will therefore fails⁶.

For Example:

A and B had made an agreement that A had given Rs. 15,000 as debt B and B must pay the Debt back to A within 3 months. After 3 Months B denies and he says that this agreement is fake. Here B must prove that this is fake, If B fails to prove that this is fake then A wins.

In **Triro case (1993)** the person had delayed in filing the suit must prove for delay in filing the suit.

SEC - 103 BURDEN OF PROOF AS PARTICULAR TO FACT

In Section 103 says that when Burden of Proof lies on a particular fact which relate to that main person he must prove the fact whether it is true or not.

⁵ [\(Hay and Spier 1997; Sim 2003\)](#)

⁶ [\(Jordash and Van Tuyl 2010; Weinstein and Dewsbury 2007\)](#)

For Example:

A and B are two parties are appellant and respondent. A says 3 days before B had killed C near Public Garden at night. But B says that he was not there at particular incident and he was in Kanniyakumari not in Chennai. Here A must prove C was killed by B and B must prove that he was in Kanniyakumari not in chennai at that time of this incident.

Note: The principle of Section 103 is said to be Rule of Convenience⁷.

SEC - 104 BURDEN OF PROVING FACT TO BE PROVED TO MAKE EVIDENCE ADMISSIBLE

In Section 104 says that In Burden of Proof rises in facts then it must be proved who is related to the Fact

For Example:

A is ready to help B in recording dying declaration. A must prove B's death. In recording B says about the important file and also tells about the hidden place where he kept the Secret file. Now A must prove the file is hidden at that particular place .

SEC 105 - BURDEN OF PROVING THAT CASE OF ACCUSED COMES WITHIN EXCEPTIONS

Section 105 says that If the Burden of Proof lies on the side of Accuse and if the accuse brings to general exceptions he must mst prove it.

For Example:

A was walking on the road at night. While walking suddenly he saw an unknown man B was trying to hit him. Due to fear of life A pushed B forcely down. As A pushed B, B lost his balance and falled down and his head was hit by a stone harshly. At that moment itself B dies. Here A must prove that due to defence he pushed down B unfortunately it lead to Death⁸.

⁷ ([Jordash and Van Tuyl 2010](#))

⁸ ([Le Moli et al. 2017](#))

SEC 106 - BURDEN OF PROVING FACT ESPECIALLY WITHIN KNOWLEDGE

In Section 106 says that If the person's knowledge fact has happened then the burden of proving the fact is upon the person.

For Example:

A Person is travelling in a Bus from koyambedu to Guindy and got the ticket too but he lost the ticket. While travelling ticket checker came to check the tickets of passengers. Here the person who lost the ticket must prove that though he brought the ticket he lost it.

In **Eshwari case (1994)** A man and women was hiding under the bedroom of a person who is dead with grievous injuries. Here Burden of Proof lies on both men and women that why where they hiding under the bed and also how did that person (deceased) died with so much injuries on bed.

SEC 107 - BURDEN OF PROVING DEATH OF PERSON KNOWN TO HAVE BEEN ALIVE WITHIN THIRTY YEARS⁹

In Section 107 say that A question rise whether a person who is alive or dead but if it is found that he is alive within Thirty years, burden of proof comes into form that person is dead must be proved.

For Example

A and B are Husband and wife. A use to go to work and come back home around 9:00p.m. But this time husband did not came. Wife slowly fears about the absence of her husband. She tried husband's number so many times but she did not got any response. One morning she went to the place of husband where he is working. HOD said already her husband went out at normal time. She called to husband's parents, friends and relatives. They said no her husband did not came their. She went to nearby Police station and filed a missing complaint of her husband. Twenty years passed and still B cant find her husband. She lost her hope. Here Burden of proof rises and she must prove before the court that her husband still not found and she cant predict that her husband is alive or not¹⁰.

⁹ ([Le Moli et al. 2017; Haynes 2013](#))

¹⁰ ([Taylor et al. 2011](#))

SEC 108 - BURDEN OF PROVING THAT PERSON IS ALIVE WHO HAS NOT BEEN HEARD OF FOR SEVEN YEARS

In this Section 108 it says that A person who is not been heard for seven years (i.e) no clue about that person but proving that particular person is alive, where the Burden of Proof lies for that person who says Alive.

For Example:

A is a person who is walking on the road. He sees all poster which posted on the wall. Suddenly he stops and sees a poster for two minutes. In that 2nd death anniversary was written. He runs to particular house where it belongs to the person who is said to be dead. In that house they were the parents of deceased person. A says to the deceased's family that their son is alive. Family did not believe, asked him to appear before police station and tell to the officer about their son. Here Burden of proof **lies** on A that must prove that the son is alive.

SEC 109 - BURDEN OF PROOF AS TO RELATIONSHIP IN THE CASES OF PARTNERS, LANDLORD AND TENANT, PRINCIPAL AND AGENT¹¹

In Section 109 say about that when question rise that a person as Partners/ Landlord and Tenant/ Principal and Agent as acting where the Burden of Proof does not stand.

SEC - 110 BURDEN OF PROOF AS TO OWNERSHIP

In Section 110 say about that when question rise that any person who is owner of anything , to be possession, here Burden of Proof is not the owner.

SEC 111 - PROOF OF GOOD FAITH IN TRANSACTIONS WHERE ONE PARTY IS IN RELATION OF ACTIVE CONFIDENCE¹²

In Section 111 says that when question rise that good faith of transactions between parties, One is with full confidence must Burden of Proving the good faith of any transaction.

For Example

¹¹ [\(Pignotti 2005\)](#)

¹² [\(Chambers 1953\)](#)

The good faith of a sale by client to attorney, here attorney has burden of proving the good faith of any transaction.

The good faith of a sale by son to father , here father has burden of proving the good faith of any transaction.

SEC 112 - BIRTH DURING MARRIAGE, CONCLUSIVE PROOF OF LEGITIMACY

In Section 112 says that when a married men and women gets a new born child within 280 day (during marriage) after legitimate when mother not get remarried then the child is said to be legitimate¹³.

Smt Dukhtar case (1987)

In this case the court held that husband is not the father of the child and the child is said to be illegitimate. So, husband need not give any evidence to his ex - wife.

SEC 113 - PROOF OF CESSION OF TERRITORY

For Example :

A territory given to Sri Lanka - official Gazette.

SEC 113 A - PRESUMPTION AS TO ABATEMENT OF SUICIDE

In this Section 113 A three facts are to be known for Abetment of Suicide by women.

Abetting women to commit suicide by her husband or her husband's relative.

Suicide must have happened within seven years from the date of the marriage.

Cruelty must have been present due to her husband or her husband's relative.

Above three can prove that women has been abetted to commit suicide.

Note: Cruelty can be referred from 498-A of IPC 1860.

¹³ [\(Chambers 1953; Nandrajog 2014\)](#)

SEC 113 B - PRESUMPTION AS TO DOWRY DEATH¹⁴

In Section 113 B say that A person who has committed Dowry death to women by cruelty or torture or harassment for getting dowry. Most of the time in Dowry death Husband or his relatives involve.

Note : Dowry Death are referred in detail from Section 304-B of IPC 1860.

SEC 114 - COURT MAY PRESUME EXISTENCE OF CERTAIN FACTS¹⁵

In Section 114 says that the court will presume the facts of happening of the event due to natural cause or human conduct or public business or private business, here it must be similar to particular facts.

For Example:

On Rainy season there was a huge flood were small children found to be dead.

SEC 114 A - PRESUMPTION AS TO ABSENCE OF CONSENT IN CERTAIN PROSECUTIONS FOR RAPE

In Section 114A says that without consent of women and with force a person having sexual intercourse with her is said to rape. Here court takes the point 'without consent'.

Note : Rape and its punishments are studied from Section 375 and Section 376 of IPC 1860.

Nawab Khan 1990

In this case without consent of women accused had sexual intercourse with that women and committed Rape but Accused raises that with consent only he had sexual intercourse with that women. Court said that the Accused must prove that he had sexual intercourse with consent¹⁶.

CHAPTER 3

In this chapter we are going to have a difference on Burden of Proof and Onus of Proof. Normally we use to get confusion on Burden of Proof and Onus of proof. For clearing your confusion here is the difference of Burden of Proof and Onus of Proof along with example and a case.

¹⁴ [\(Chambers 1953; Nandrajog 2014; Dare and Kingsbury 2008\)](#)

¹⁵ [\(Wiley: The Human Cause of Climate Cha...\)](#)

¹⁶ [\(Tikriti \)](#)

DIFFERENCE BETWEEN BURDEN AND ONUS OF PROOF

BURDEN OF PROOF¹⁷	ONUS OF PROOF
<p>A Person who raises allegations have burden to prove.</p> <p>If the person not produces proper evidence then there are chances of dismissal or victory goes to defendant.</p> <p>Chance given mostly to the person who had raised allegations.</p> <p>For Example A says B has committed crime yesterday. Here A must prove that B has committed crime.</p>	<p>Proving evidence may vary to either side of the parties.</p> <p>If the person not produces proper evidence then the chance will go to opposite party to prove.</p> <p>Chance given to either party what court feels.</p> <p>For Example A say he heard gunshot yesterday near Garden. C say he did not hear gunshot. As court has not satisfied it asks them to produce evidence. After referring to evidence to A then the court refer evidence of C.</p> <p>In this example we can understand were both parties given a chance to produce an evidence.</p>

Addagada Ragavamma & Anr case (1963)

It is a Supreme Court case and court held that Distinction between burden and onus of proof where burden is a person alone proves otherside onus is either side of the party given chance to produce the evidence¹⁸.

¹⁷ [\(Mohamed Naim et al. 2016\)](#)

¹⁸ [\(Zirkel \)](#)

Lets have some recap on Burden of Proof . They are - Meaning , why we need, rules to be followed, difference between burden of proof and onus of proof. Now continue this last chapter by conclusion and suggestion.

CONCLUSION AND SUGGESTION¹⁹

Atlast we come to end of research on Burden of Proof. From this we can understand how evidence is so much important for a case. Finding out the hidden answers is hectic for judge, lawyers and officers. Offenders will always have a plan to escape after committing a crime but evidence is the only trap for capturing the offender. My suggestion is that though evidence has too helpful evidence must be developed well more. This generation itself we can find how evidence are created fraudly for escaping from the crime. Need more technology for evidence is must so Evil guys won't escape from truth and Justice. Sometimes plaintiff otherwise as Appellant when he feels he is going to lose he too find way to escape to win the case. Though we referred to rules and exceptions still need more upadation for evidence. As new crimes enters we too need to find new to type of evidence to make hold of the evil guy. Without evidence there are no chance to find out the criminal. Each an every part of a thing is an evidence to find out the criminal²⁰.

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