



Presumptions of guilt under Indian law and present scenario

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Abstract

The Indian Evidence Act of 1872 covers a largely unexplored area: the operation of presumptions. Nonetheless, its implementation has significant implications for how we interpret the prosecution's and defense's "burden of proof." 'Reverse onus' clauses, which place the burden of proof on the accused, have become remarkably common in recent penal legislation. Such clauses essentially raise a presumption of guilt. The issues of when and how this burden changes, as well as the applicability of such clauses, are still open.

Some understanding of how presumptions function in civil proceedings can be gained from the Thayer-Morgan presumption debate. Nevertheless, no comprehensive analysis of their potential application in criminal proceedings exists, possibly due to their non-consideration at the time. However, criminal presumptions still exist today, and a thorough examination of the Indian Evidence Act, 1872 is required due to the paucity of authoritative case law in the Indian context. There are multiple meanings associated with the term "presumption." The onus then switches to the opposing party to refute the presumption when the court finds that a particular fact has been established in favour of one party, relieving the party of this burden of proof.

In light of this background, this paper aims to revisit this intricate question and find solutions regarding the use of presumptions in criminal cases.

Keywords: Presumptions, Guilt, Burden of Proof, Transformative Indian Law

Introduction

There has been much scholarly discussion about the law on "presumptions," but it has been regarded as a puzzle. Given the complexity of the subject, the majority of sophisticated legal writing on the subject starts with a warning. Premises play a more important role in the evaluation of evidence in criminal trials in jurisdictions that use the adversarial system since they also influence the parties' burden of proof, both evidentiary and persuasive. Furthermore, the way presumptions are interpreted may also impact substantive legal rules, like the "presumption of innocence" in jail proceedings. Some academics have even gone so far as to claim that "presumptions" are a meaningless concept and that they are no more than "burden of proof" due to their conditional nature.

Professors James B. Thayer and Edmund M. Morgan have written two of the most thorough yet conflicting expositions yet on this intricate subject. The outcome of their discussion were the so-called Thayer and Morgan presumptions, which later served as the foundation for the Federal Rules of Evidence in the US. Nonetheless, a review of the Indian Evidence Act, 1872 [the "IEA"] would show that James Stephen's draughting of the law predates the discussions surrounding presumptions. The nature and functioning of presumptions in India have not been further examined or clarified by any later legislation. As a result, there isn't much in-depth discourse about how assumptions work in India.

A disagreement over instructions on presumptions to the jury led to the argument between Thayer and Morgan. However, given that India has since abolished the jury system, this aspect of the debate is not very relevant to the matter at hand. However, an analysis of the IEA indicates that Morgan's method is supported by the statute's wording and interpretation. As a result, the party that the presumption is applied against has the burden of proving

otherwise. It will also be argued that, regardless of the proceedings' nature, Indian courts have shifted to the standard of proof of "preponderance of probabilities" once the burden of proof shifts, as evidenced by the scant comprehensive case law addressing this topic.

Presumption

"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" is how Thayer defines a "presumption." Certain laws or clauses, such as the Indian Evidence Act of 1872, may also allow the court to make a deduction based on a specific fact or piece of evidence. Presumptions frequently have an evidential effect that is greater than the basic fact's actual probative value because they lead to an inference being made from it, giving it a "preternatural weight." These inference-drawing presumptions need to be distinguished from other types of presumptions, such as the presumption of innocence or the presumption of sanity, which function to distribute the burden of proof in a criminal trial. In the latter case, there is no distinction between the inference (presumed fact) and the specific fact or piece of evidence that serves as the basis for the inference (basic fact).

Different types of presumptions, including rebuttable and conclusive presumptions, as well as presumptions of law and fact, have been recognised by common law. The ambiguity surrounding presumptions resulted from divergent opinions regarding who should make the presumption—the jury or the judge. The debate over when and how a presumption works and how the burden of dispelling it should change arose from the ambiguity between the judge's and the jury's roles. Only when certain fundamental facts are proven does a rebuttable presumption emerge, which the opposing party must then refute by presenting opposing evidence.

The other side may need to prove their case or provide evidence in order to override such a presumption. When a persuasive burden is shifted, the presumption can only be refuted by satisfying the relevant standard of proof. However, a change in the evidentiary burden (or the creation of a tactical burden) might call for the party against whom the presumption operates to present opposing evidence that is sufficient to raise a reasonable doubt. Nevertheless, no precise formula regarding the acceptable level of proof needed to meet an evidentiary burden has been developed.

While American scholars maintained that there is a universal principle that applies to all presumptions, English scholars contended that the standard of proof would vary based on the type of presumption. The fundamental questions of which burden would shift and which standard of proof would be adequate to override a presumption were the points of contention between American scholars Professor Thayer and Professor Morgan.

Burdens of proof and presumptions in transformative indian law

The system of varnas, or castes, into which Indian society was theoretically divided under traditional Hindu law is the source of the institution of untouchability, which has its roots in Hindu culture and religion.¹⁷ The highest ritual standing is held by the Brahmin, Kshatriya, and Vaishya varnas, three of the four. Because they were invested with the "sacred thread," members of these three varnas were considered "twice born." Compared to the other three varnas, the Shudra, the fourth, was viewed as socially inferior. Those who did not belong to these four groups, or in some areas, those who belonged to the lower echelons of the Shudra caste, were viewed as ritually impure and faced significant social and political discrimination. Those who fit into these groups and received this treatment became known as "Untouchables."

Exclusion from large classes of employment and educational opportunities; segregation into the most menial, dirty occupations; residential segregation; denial of access to private shops and services; denial of access to public facilities like wells, bathing facilities, schools, roads, post offices, and courts; and denial of access to temples and other sacred places, including places of religious learning, were among the most common disabilities imposed on so-called Untouchables, though the exact makeup of the groups on which they were imposed varied by region.

Though the establishment of a colonial legal order that failed to institutionalise caste distinctions inevitably destabilised them to some extent, the British made no active efforts to abolish the caste system during the period of colonial rule. Private actors routinely used self-help in the form of boycotts and retaliation to enforce traditional caste disabilities in the absence of official government action to do so.

During the Indian Independence Movement, untouchability was the target of fierce indigenous criticism. Mohandas Gandhi vehemently condemned the injustice perpetrated by the Untouchables' system and demanded a purified varnashrama dharma, wherein the Untouchables would once again be assimilated into the Shudra. The creator of the Indian Constitution and an Untouchable himself, Bimrao Amedkar, argued for the complete elimination of the varna system. The Indian Constitution of 1950 officially abolished

the practice of untouchability following independence. Despite the fact that many provisions are implicated in its disestablishment, Article 17 is the one that applies most directly. It states:

All forms of untouchability are prohibited, and the practice is outlawed. Enforcing any disability resulting from "untouchability" is a crime that carries legal penalties.

Like other anti-discrimination clauses in the Indian Constitution, this one forbids both the state and private parties from enforcing civil disabilities.

The 1955 Untouchability (Offences) Act (UOA) quickly strengthened this constitutional ban. In its original form, the Act forbade the imposition of disabilities based on Untouchability in the following areas: access to public accommodations, water, resources, charitable benefits, hospital or other health services, educational opportunities, housing, places of worship, or the ability to practice a particular trade or occupation or use particular utensils. In 1976, an amendment was made that made discrimination in the workplace illegal. Although the term "untouchability" is not explicitly defined in the Act, it is commonly understood to refer to belonging to a Scheduled Caste, as that term is defined in Clause 24 of Article 366 of the Indian Constitution, or to any other group that is considered untouchable by local custom or usage.

The 1976 amendments changed the Untouchability (Offences) Act to the Protection of Civil Rights Act, which is a criminal law. Penalties for violating it include a one- to six-month jail sentence, fines ranging from one hundred to five hundred rupees, the suspension or cancellation of trade or professional licenses, and/or the suspension or revocation of government funding grants.

Section 12 of the Act contains the provision that is most pertinent to our current investigation.

Presumptions made by courts in specific situations: - If an act that qualifies as an offence under this Act is committed against a member of a Scheduled Caste as defined in clause (24) of article 366 of the Constitution, the court will presume unless proven otherwise that the act was committed on the basis of "untouchability."

Accordingly, under Section 12, the court must presume until the defendant proves otherwise that an act was committed on the basis of untouchability if the prosecution is successful in demonstrating that, under the requisite culpable intent, it would be illegal if committed in relation to a member of a scheduled caste.

The definition of the term "shall presume" in Section 4 of the Indian Evidence Act and the Indian Supreme Court's interpretation of it make it evident that the phrase indicates a shift in the burden of proof on the issue of "grounds" to the defendant rather than just the burden of presenting evidence. In pertinent part, Section 4 of the Indian Evidence Act stipulates:

Section 4 "May Presume": When this [Act] gives the Court the authority to presume a fact, it can either call for proof of the fact or consider it proven until proven false.

"Shall Presume" means that if this [Act] directs the Court to presume a fact, it will consider it proven until and unless it is proven false.

First-type assumptions are called "presumptions of fact," while second-type assumptions are called "presumptions of law".

These two categories of presumptions have quite different outcomes under Indian law. In *Syad Akbar v. State of*

Karnataka, the Indian Supreme Court stated that "presumptions of fact merely affect the burden of going forward with the evidence." However, legal presumptions go so far as to transfer the burden of proof so that a verdict must be rendered in the absence of sufficient evidence to refute it on the balance of probabilities.

According to Federal Rule of Evidence 301, the Indian presumption of fact operates similarly to a Thayer "bursting bubble" presumption in the context of American evidence law. Similar to a Rule 301 presumption, a presumption of fact only transfers the burden of proof to the party it is made against. The party who was initially presented with the issue still bears the final burden of persuasion, assuming that evidence is presented. However, an Indian presumption of law works more like the "Morgan presumption" in the United States, shifting the burden of proof to the party against whom the presumption has been raised, as well as the burden of persuasion on the relevant element of liability. Therefore, in a case under the Protection of Civil Rights Act, the burden of proof shifts to the defendant to show, by a preponderance of the evidence, that the conduct was not taken on the grounds of untouchability once the prosecution has shown that the complainant is a member of a Scheduled Caste and that the conduct specified in the Act was directed at such a member of a Scheduled Caste.

Concept of Presumptions under burden of proof

A court's legal conclusions regarding the existence of specific facts are known as assumptions. When certain facts are assumed to be true, the burden of proof is removed from the party whose facts are assumed to be true. Although they remove this requirement, assumptions are an exception to the general rule that the party claiming the existence of specific facts bears the burden of proof initially.

Legal presumptions, mixed presumptions, and factual presumptions are the three categories of assumptions. There are various presumptions that apply to documentary evidence. According to Section 79 of the Act, the law assumes that a certified copy of an original document is a true copy of the original evidence when it is presented to the court. According to Section 85 of the Act, the court will assume that a power of attorney granted in court is from a legitimate authorised individual.

Presumption in the Bharatiya Sakshya Adhinyam, 2023

The Bharatiya Sakshya Adhinyam, 2023 (BSA), which received approval from the Lok Sabha and Rajya Sabha on December 20 and 21, 2023, respectively, and was subsequently signed into law by the president on December 25, 2023, replaced the Indian Evidence Act of 1872 (IEA).

The major objectives of BSA are to modernise, simplify, and expedite the presentation and interpretation of evidence in the courts. With these modern features, the legal system will become more efficient, technologically sophisticated, and equitable. Compared to the Indian Evidence Act, BSA is simpler, easier to comprehend, and more explicitly addresses issues like cybercrime and vulnerable groups. The centuries-old Indian Evidence Act of 1872 was replaced by the Bharatiya Sakshya Adhinyam, a modernised, streamlined, and simplified version of the evidence rules. Many of the IEA's provisions are still included in the BSA, despite its modernisation and updates. In order to improve system transparency and facilitate judicial trials, BSA also added a few new points.

The NEWLY BSA, 2023 was created by amending 23 sections, repealing five, and adding one new section.

The following words or terms can be regarded as follows for comprehension:

Bharatiya = India/Indian

Sakshya = Evidence

Adhinyam = Act

Sanhita = Code

The following provisions from IEA have been deleted from BSA:

- Section 3 (j): India
- Section 82: Presumption as to document admissible in England without proof of seal or signature
- Section 88: Presumption as to telegraphic messages
- Section 113: Proof of cession of territory
- Section 166: Power of jury or assessors to put questions

The Changes made and inserted in the new act are:

Territorial Application of the BSA: Section 1 of the Indian Evidence Act (IEA) described how the act would be implemented across the country. However, Section 1 of the Bharatiya Suraksha Adhinyam (BSA) does not contain this clause. This omission is most likely intended to increase the admissibility of digital evidence from locations outside of India.

Document- Section 2(d), BSA (Section 3(e) IEA): Any substance that uses letters, figures, marks, or any combination of these methods, or more than one of them, to express, describe, or otherwise record a matter and that is meant to be used—or may be used—for the purpose of recording that matter is called a "document." Digital and electronic records are included in this.

The new definition included-

Inclusion of Electronic and Digital Records: Digital and electronic records are explicitly included in the definition of a document in the more recent definition. As a result, a document is any information that is expressed, described, or recorded electronically for instance, through computers, smartphones, or other digital devices.

Expansion of Means of Recording: The more recent definition describes how information can be recorded in a way that goes beyond just using letters, numbers, or marks. This covers any type of recording, including audio and video recordings as well as any other type of data collection.

Clarification of Intended Use: Both definitions make reference to the document's intended use for information recording. However, the more recent definition ensures that digital and electronic formats are not overlooked because they are not physical by explicitly stating that they may be included in the intended use.

Inclusion of "Otherwise Recorded": The more recent definition adds the phrase "otherwise recorded," which emphasises the broad definition of what constitutes a document. This phrase acknowledges that there are alternative ways to record information in addition to making sure that such unconventional methods are covered in the definition.

Evidence- Section 2(e), BSA (Sec 3(f) IEA): The following are examples of "evidence": (i) any statements, including electronic statements, that the court permits or requires witnesses to make in front of it concerning factual matters that are being investigated; (ii) any documents, including digital or electronic records, that are produced for the court's consideration; these are referred to as documentary evidence;

The more recent definition of "evidence" expands its meaning to include statements made electronically in addition to traditional oral testimony. Its explicit inclusion of digital and electronic records under the heading of documentary evidence reflects the realities of modern information storage and communication. This update improves clarity and adaptability to technological advancements, ensuring that legal frameworks handle modern forms of evidence effectively. However, because it focusses primarily on oral testimony and documents without specifically mentioning electronic records, the older definition might not be as relevant in the current digital era.

Section 4, BSA (Section 6, IEA): Included is the phrase "or a relevant fact". This addition broadens the scope of related facts that are considered significant. While the earlier section only mentioned facts related to a fact in the issue, the more recent section includes facts related to both a fact in the issue and any relevant fact. This change makes it possible to examine related facts more thoroughly in court, ensuring that all relevant information is considered, even if it has nothing to do with the specific issue at hand.

Section 6, BSA (Section 8, IEA): In contrast, "previous or subsequent conduct" is not mentioned in the updated version. Moreover, the phrase "Admiration of Poison" is not used in the new section as it was in the previous one. While both versions emphasise the significance of motive, preparation, and conduct in court proceedings, the new section is more clearly organised with numbered subsections than the old one.

Section 22, BSA (Section 24, 28-89, IEA): In the new Section 22 of the Bhartiya Sakshya Adhiniyam (BSA), the provisions concerning confessions in criminal proceedings from the earlier Sections 24, 28, and 29 of the Indian Evidence Act are combined and enhanced. Sections 24, 28, and 29 of the IEA were separate provisions that addressed different aspects of confessions, but Section 22 (BSA) unifies these provisions into a single section, simplifying the law.

The Inclusion of "Coercion": While the Old Sections only mentioned "inducement, threat, or promise" as factors affecting the relevance of a confession, the New Section 22 (BSA) explicitly adds "coercion" as a factor, broadening the scope and providing more comprehensive coverage.

Enhanced Relevance Scenarios: Section 29 enumerated situations in which a confession is still applicable regardless of how it was made. More information about these situations can be found in Section 22 (BSA), which deals with confessions made in response to questions that don't need an answer, after deception, while intoxicated, or under a promise of confidentiality. It continues by stating that the confession is still admissible despite the absence of warning.

Section 24, BSA (Section 30, IEA): The wording in the BSA, 2023 section appears to be a bit clearer and more succinct than that of the Indian Evidence Act. However, the primary concepts and importance of both sections are nearly identical.

In order for a joint trial to be considered under this section, it is necessary to include "Explanation II—A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 82 of the Bharatiya Nagarik Suraksha Sanhita, 2023."

The new Section 32 of the BSA, 2023: The new Section 32 of the BSA, 2023, improves and reorganises Section 26 of the Indian Evidence Act, 1872. Because the cases are grouped into numbered subsections (1 to 8), BSA, 2023 offers a more organised and understandable framework. Certain categories are made more specific by BSA, 2023. For example, subsection (2) defines the kinds of business-related documents, and subsections (5) and (6) describe particular relationships. However, the provision relating to documents mentioned in section 11(a) of the Indian Evidence Act is not included in BSA, 2023. Despite these changes, the primary concept and the content of the clauses are nearly identical in both versions.

Section 31, BSA (Section 37, IEA): The new section acknowledges digital formats and focusses on Indian Central and State Acts to reflect India's modern legal sovereignty and stay up to date with technological advancements. However, because it contains UK Acts and lacks digital acknowledgement, the old section has roots in the colonial era. The new section removes all references to colonialism in accordance with India's independence. All things considered, the changes show a move towards a legal system that is post-colonial, locally relevant, and inclusive of digital technology.

Section 32 BSA (Section 38) Inclusion of Digital and Electronic Formats: Books published in digital and physical formats may contain statements about foreign law, as stated in Section 32. This implies a modern approach that takes into account the evolving legal publishing landscape and the increasing reliance on digital resources. On the other hand, although Section 38 refers to laws found in books, it does not expressly recognise electronic or digital forms. This implies that the section, which primarily focusses on printed materials, existed before digital media became widely used. Both sections require that the books be printed or published with approval from the government of the country whose laws are being discussed in order to guarantee the credibility of the source.

As technology advances and more legal documents become available in digital formats, the BSA section ensures that the law stays up to date.

Section 35 (Section 41, IEA): The sections pertaining to the conclusive proof and applicability of final judgements, orders, or decrees from competent courts exercising probate, matrimonial, admiralty, or insolvency jurisdiction are primarily updated to reflect minor changes in phraseology and document formatting.

Section 39, BSA (Section 45, IEA): The usefulness of expert testimony in court cases involving specific areas of specialised knowledge, such as foreign law, the arts, sciences, and fingerprint or handwriting recognition, is covered in both sections.

Section 52, BSA (Section 57, IEA): Even though the sections' historical backgrounds and the specificity with which they address modern legal frameworks vary, they ensure that courts operate effectively by accepting generally accepted facts without supporting evidence. Section 52 appears to be more appropriate for modern legal contexts, even though Section 57 provides a more thorough historical scope that considers colonial influences and the evolution of legal recognitions over time. This demonstrates the dynamic nature of legal texts as they adapt to changing governmental and social structures.

Section 55, BSA (Section 60, IEA): Both sections address the requirements for oral testimony in court proceedings, emphasising the importance of direct witness testimony regarding their personal experiences with sensory perceptions or opinions. The change focusses on contextual applications or nuanced legal distinctions rather than the fundamental legal requirements listed in these sections.

Section 57, BSA (Section 62, IEA)

- **Digital and Electronic Records:** offers comprehensive explanations of why digital or electronic records should be considered primary evidence. Video recordings that are simultaneously stored and transmitted, as well as electronic files that are stored in multiple locations or formats, are examples of scenarios that mirror modern digital realities.
- **Comprehensiveness of Explanations and Examples:** offers more in-depth explanations in addition to additional examples that are relevant to modern technology, like electronic and video recordings.

Section 58, BSA (Section 63, IEA): Both sections provide definitions and explanations of secondary evidence in relation to legal proceedings. Secondary evidence is essentially any proof that provides trustworthy information about an artefact or document but is not the original. The New Act covers additional categories not explicitly covered by section 63 of the IEA, such as oral and written admissions and testimony from people who are qualified to review complex documents, like financial records.

This expansion reflects a broader definition of secondary evidence under the BSA, potentially permitting a greater variety of evidence types in court proceedings. It provides a more comprehensive list of what qualifies as secondary evidence as well as the situations in which specific types of evidence are appropriate.

Section 59, BSA (section 64, IEA): Except in the circumstances specified below, documents must be backed up by primary evidence in accordance with Section 59. It still calls for the use of primary evidence to support documents, even though it places a strong emphasis on the method of proof ("Proof of documents by primary evidence").

It appears that the section is more directive because the phrase "shall be proved" implies a required action.

Section 63, BSA (Section 65B, IEA): Section 63 provides a thorough explanation of the scenarios and addresses the potential for multiple computers or devices to collaborate via a network. It clarifies how these should be treated as a single source of evidence if they were used interchangeably or in an order that complies with accepted business practices. More attention is paid to how data processed in various ways directly, via intermediaries, or across various systems or networks is handled.

Section 73, BSA (Section 73A, IEA)

- Section 73 specifically addresses the verification of digital signatures. This requires the production of a Digital Signature Certificate and the use of the public key specified therein to verify the authenticity of the digital signature, as opposed to 73A, which deals with conventional signatures, writings, or seals. It explains how to verify these items' authenticity by contrasting them with others that have been recognised or validated.
- As a reflection of its adaptation to digital communication and authentication technologies, Section 73A uses a more traditional approach by directly comparing the questioned signature, writing, or seal with known samples that the court has approved. In contrast, Section 73 involves a technical procedure that requires specific digital tools and certificates. This section also allows for real-time demonstration by directing someone to produce new writing or signatures in court for comparison
- Compared to BSA 73, Section 73A covers a greater variety of evidence types because it is applicable to physical documents and can be applied in a variety of ways, including impressions with the proper adjustments. Because of the growth of digital communications, Section 73 is especially tailored to the world of electronic documents and transactions, which are increasingly important in modern legal contexts.

Section 74, BSA (Section 74-75, IEA): Section 74 of the BSA distinguishes between public and private documents. The BSA's strategy of combining the classification may expedite legal procedures by putting all relevant information in one place, whereas the IEA's division into two sections may help to highlight the legal distinctions and implications of each category. This classification affects everything from the admissibility of evidence to public access and legal document handling procedures.

Section 112, BSA (Section 116, IEA): The burden of proof for the existence or termination of particular relationships, such as principal and agent, landlord and tenant, and partners, is covered in Section 112 of the BSA. The specific subjects of IEA section 116, which places the burden of proof on the person who denies the existence of these relationships after they have started acting as such, are estoppel in landlord-tenant relationships and the licence of an individual in possession of immovable property. During the duration of the tenancy, it is unlawful for tenants or those submitting claims on their behalf to challenge the landlord's title. Similarly, when a licence is issued, it prohibits anyone who enters a property with permission from contesting the owner's ownership.

Conclusion

The burden of proof continues to be a cornerstone of India's legal system under the Bharatiya Sakshya Adhiniyam, 2023, guaranteeing a methodical approach to justice. It establishes unambiguous duties for each party involved in a case, encouraging responsibility and maintaining the fairness of the legal system. The principles of justice and equity at the heart of the Indian legal system are strengthened by this statutory framework, which strikes a careful balance between evidentiary obligations.

A sophisticated grasp of the burden of proof is essential for solicitors. It influences case outcomes, directs the presentation of evidence, and forms litigation strategies. Understanding this idea enables attorneys to handle challenging legal situations while defending their clients' rights and successfully pursuing justice in the courtroom.

The burden of proof is a cornerstone of public trust in the judiciary outside of the legal community. It guarantees that justice is not only administered but also regarded as unbiased and reliable by placing a strong emphasis on fairness and openness in adjudication. As a result, people feel more secure and have more faith in the rule of law, which increases public trust in the legal system.

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