

The Indian Evidence Act does not define the term "burden of proof." However, in simple terms, the burden of proof refers to the legal requirement or responsibility of the parties to establish the facts that will assist the court in reaching a decision in their favour. Therefore, the duty to prove a fact in a lawsuit is known as the Burden of Proof. The requirements under the burden of proof are covered in Chapter VII of the Indian Evidence Act.

Under the Indian Evidence Act, 1872, sections 101 to 103 deal with the burden of proof in general, whereas sections 104 to 106 deal with the situation where the burden of proof is placed on a specific individual. The concepts of **Onus Probandi** and **Factum Probans** include the underlying principles of the burden of proof. Onus Probandi is a general rule that requires a person asserting the positive to prove it. A person who maintains an affirmative stance has the onus probandi. The onus probandi is on the party seeking to strengthen his case with a specific fact that he is said to be aware of.

## Factum Probans and Factum Probandum

Order 6, Rule 2 of the Civil Procedure Code, 1908, states that the pleading shall only contain important facts that must be shown in a concise form. Evidence is a relative term that refers to a connection between two facts: the fact in dispute (factum probandum), or statement to be proven, and the evidential fact (factum probans), or material corroborating the proposition. The former is inherently hypothetical; the latter is advanced as fact in order to persuade the court that the former is likewise true.

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

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

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

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

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

### The burden of proof is defined under Section 101 of the Indian Evidence Act:

Anyone who wants a court to rule on a legal right or responsibility based on facts he claims must first

show that such facts exist. The second Section of the statute specifies that when a person is required to show the existence of a fact, that person shall also bear the burden of proof.

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

## **Section 102 of the Indian Evidence Act:**

Who bears the burden of proof - In a suit or procedure, the person who would fail if no evidence was presented on either side has the burden of proof.

### **Section 103 of the Indian Evidence Act states:**

"The burden of proof as to any specific fact is with the person who asks the court to believe in its existence unless any law provides that the burden of proof rests with any particular individual."

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

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

## **Section 105 of the Indian Evidence Act**

When an accused is charged with criminal conduct, the burden of proof is placed on the accused to establish the circumstances that gave rise to the accusation under any general exceptions provided by the Indian Penal Code or any other particular legislation. Under this Section, the prosecution's duty is limited to establishing the accused's guilt; once that is established, the burden transfers to the accused, who has the advantage of relying on general exceptions to the IPC or Criminal Procedure Code.

This is one of the unique traits that only applies in criminal proceedings. As a result, according to Section 105 of the Act, the onus of evidence is on the accused to know about every incident that has occurred. Additionally, this is referred to as the reverse onus clause.

## **Section 106 of the Indian Evidence Act**

Section 106 advances the concept of a fair trial by making it easier to establish all conceivable facts and removing the burden of proving anything that is impossible and in the accused's favour. Additionally, it allows the accused to challenge the presumption of facts drawn from the sequence of events. However, it is observed that the prosecution exploits this clause and attempts to evade his responsibilities to establish the legal burden.

## Concept of Presumptions under the burden of proof

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

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

The presumption of innocence is a legal notion stating that everyone is presumed innocent unless proved guilty. Justice Thomas articulated the need of changing the perspective on this idea in the case of **State of West Bengal v. Mohd. Omar (2002)**. According to him, the traditional approach of constantly placing the burden of evidence on the prosecution benefits only the accused of horrific crimes and creates fatalities for society. When a prosecutor successfully establishes specific facts of the case, the court must infer their existence and rely on such circumstances. In other words, after the court is satisfied with the prosecution's case, the burden of proof shifts to the accused since only the accused is aware of every occurrence committed.

### Conclusion

As can be seen, the Evidence Act of 1872 is a well-codified statute that deals extensively with the issue of the burden of proof. The current innovations in electronic evidence and burden of proof, on the other hand, require additional clarity, particularly when it comes to judicial interpretation.

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