

Presumptions in the Indian Evidence Act

Introduction

Presumption generally means a process of ascertaining few facts on the basis of possibility or it is the consequence of some acts in general which strengthen the possibility and when such possibility has great substantiate value then generally facts can be ascertained. A presumption in law means inferences which are concluded by the court with respect to the existence of certain facts. The inferences can either be affirmative 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 proving the 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'.

Difference between Presumption of Facts and Presumption of Law

Topic	Presumption of Facts	Presumption of Law
Definition	When presumptions are established on the basis of facts or groups of facts or from the collection of facts.	When presumptions are acknowledged without the help of proof in certain situations or circumstances where court me presumes some facts itself.
Position of Presumption	Uncertain position.	Certain and uniform position.

Performance	They are always rebuttable and can be challenged after establishing probative evidence.	They are conclusive presumption unless proven with probative evidence.
Discretionary Power of Court	Court enjoys discretionary power, either to presume any facts or not.	Court has no discretionary power, and they are bound to presume some facts as such facts are presumed itself by the law.
Source of Presumption	They are derived on the basis of natural law, customary practices, and general mankind experiences.	Judicial customs & practices, the law under the statutes are the only sources of presumption of law.
Examples	Presumption of Foreign Judicial Records, Presumptions of Abetment as to Suicide by a Married Women etc.	Presumption of Innocence, Presumption of declared death in <i>absentia</i> etc.

Difference between May Presume Shall Presume and Conclusive proof

May presume is a condition when the court enjoys its discretion power to presume any/ certain/ few facts and recognize it either proved or may ask for corroborative evidence to confirm or reconfirm the presumption set by the court in its discretion. Section 4 of the Indian Evidence Act provides that a fact or a group of facts may be regarded as proved, until and unless they are disapproved. The concept is defined under Section 4 of this act that '*May Presume*' deals with rebuttable presumption and is not a branch of jurisprudence.

Whereas, **shall presume** denotes a strong assertion or intention to determine any fact. Section 4 of Indian evidence Act explains the principle of '*Shall Presume*' that the court does not have any discretionary power in the course of presumption of '*Shall Presume*', rather the court has presumed facts or groups of facts and regard them as if they are proved until they are disproved by the other party. Section 4 of the Indian Evidence Act explains that the concept of '*Shall Presume*' may also be called '*Presumption of Law*' or '*Artificial Presumption*' or

'*Obligatory Presumption*' or '*Rebuttable Presumption of Law*' and tells that it is a branch of jurisprudence.

While, [Conclusive Presumptions/ Proofs](#), this can be considered as one of the strongest presumptions a court may assume but at the same time the presumptions are not completely based on logic rather court believes that such presumptions are for the welfare or upbringing of the society. With regards to Conclusive proofs, the law has absolute power and shall not allow any proofs contrary to the presumption which means if the facts presumed under conclusive proofs cannot be challenged even if the presumption is challenged on the basis of probative evidence. This is the strongest kind of all the existing presumptions whereas Section 41, 112 and 113 of the Evidence Act and S. 82 of the Indian Penal Code are one of the most important provisions related to the irrebuttable form of presumptions or Conclusive Presumption.

The general definition of *Conclusive Proof* is a condition when one fact is established, then the other facts or conditions become conclusive proof of another as declared by this Act. The Court in its consideration shall regard all other facts to be proved, only if one fact of the case is proven without any reasonable doubt. And if the other facts are proved on the basis of proving of one fact that the court shall not allow any evidence contrary to other facts which are presumed as conclusive proofs.

Illustration- A and B married on June 1 and the husband left home to his work for 6 months later he discovered that her wife is pregnant he divorced the wife and challenges that he is not liable for paying damages either to his wife or to his illegitimate son. And also explains that he never consumed his marriage as just after one day of marriage he left his home for his work. But in this case, the court will conclusively presumed that the son born out of his wife is legitimate because he was with his wife for at least 1 day and shall not allow any proof contrary to the conclusive proof even if he provides probative evidence.

General Classification of Presumption

The traditional approach of common law system has classified presumption only under two categories that are a presumption of law and presumption of facts but to avoid any ambiguity in deciding any case the Indian legal system has adopted the third classification that is mixed presumptions which includes both the aspects of facts as well as law. Hence the existing legal system has three types of presumptions which are as follows:

1) Presumption of Facts- [Presumptions of facts](#) are those inferences that are naturally and reasonably concluded on the basis of observations and

circumstances in the course of basic human conduct. These are also known as material or natural presumptions. Natural Presumptions are basically instances of circumstantial evidence as it is believed that it is very good to act in the course of reasoning where much inferences can be easily concluded from other evidence otherwise it will keep much ambiguity on the legal system because it will be much more difficult because of the legal system to prove every fact to capture the offenders or law conflicted member of the society. Natural Presumptions are generally rebuttable in nature.

There are few provisions that are directly expressing about Natural Presumptions such as Section 86- 88, Section 90, Section 113A, Section 113 B of Indian Evidence Act. Where Section 113A & 113 B are one of the most important provisions of presumptions under this Act, whereas Section [86](#) talk about certified copies of foreign judicial records, Section [87](#) expresses presumption of Books, Maps and Charts, Section [88](#) deals with presumption related to Telegraphic Messages, Section [90](#) deals with documents aged thirty years old, whereas Section 113 A deals with hardcore crime that is Presumption as to abatement of suicide by a married women and Section 113 B deals with the presumption as to dowry death. Under the Presumptions of Facts, the concept of '*shall presume*' is utilized. And by the concept, the court will presume that a fact ascertained before them are proven facts until and unless they are proven disproved by the accused. The concept of '*shall presume*' expresses that the courts are bound to maintain and recognise some facts as proven by making a mandatory presumption and the court has to consider them as completely proven until such presumption are challenged and disapproved. When these presumptions are disproved by the challenging party then the court has no discretion on maintaining such presumptions.

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1.1) Few Conditions Where Court May Use the Presumption of Facts To Ascertain Some Facts:-

Foreign Judicial Records- Section [86](#) explains the principle that the court has the discretionary power to make presumptions with respect to the originality and accuracy of the certified copies of a different foreign country's judicial records and the called document should be consistent with the local or domestic rules. The presumption explained under this Section has a very significant role, therefore, should be complied with it. It is also observed that if the court does not feel that the foreign judgments are not consistent with the local laws then these judgments lose the evidentiary values in the court.

Abetment as to Suicide by a Married Women- Section [113A](#) deals with the presumptions of abetment of suicide of a married woman either by her husband or any of his relatives. The court has mentioned few essentials to check that whether a suicide executed by married women is inconsistent with the essentials mentioned under the provision, and if they are consistent to it then the court in such cases will presume that such suicide has been abetted either by the husband or his relative. The essentials of this provision are:

- (i) The incident of suicide was committed within a period of seven years from the date of her marriage; and
- (ii) Her husband, or his relative, has subjected her to cruelty as according to the Section [498A](#) of IPC.

In *Chhagan Singh v State of Madhya Pradesh*, the victim was badly beaten by the accused at some place and for such guilty act the accused explains the reasons that the victim was stealing rice and because of it, he has beaten the victim. But just after the few days of the incident victim committed suicide. The court in this matter acquitted the accused or discharged the accused of offence mentioned under Section 113A of Indian Evidence Act as the court didn't find any evidence subject to cruelty and also mentioned that the essentials of Section 113A are not fulfilled with the facts of the cases, hence in the case of murder legal presumptions of Section 113A is not a part of it. Because the death of the person is caused due to other reasons and the legal principles of 113A cannot be just

applied blindly as one has to see the nexus of it. The advantage of the presumption of Section 113A can only be granted if either her husband or any of his relative has treated the women with cruelty in any sense.

In, *Nilakantha Pati v State of Orissa*, in this case, the accused married the victim in April 1982 and has been benefited with a dowry. But later the accused desired to purchase a house, and of the purpose, he asked the victim to get Rs 70,00 from her parents. When she could not get the amount she was tortured and in 1986 she died. The accused supported his arguments with proper reasoning and logic that the court found the presumption to be of rebuttable nature. As the arguments advanced by the accused have enough relevance, the accused was acquitted of Section 113A. The High Court said that they presumption exited here is rebuttable and such presumption can be escalated whenever the circumstances of the case match the essentials or the interpretation of the legal provisions. And here, in this case, the accused has disproved all the presumptions of the court hence, the accused was released.

In, *Mangal Ram & Anor v State of Madhya Pradesh*, in this case, the wife of the accused was living with her parents for many years and has no visited her matrimonial home for a long time. But within one month of returning to her matrimonial home, she committed suicide. Therefore the court presumed the circumstance that the accused is responsible for the death of the lady and the case comes under Section 113B of Indian Evidence Act. But the husband and her in-laws proved that the death was not caused because of the reasons subjected to cruelty. The court in that matter said that the presumption was of rebuttable nature and the presumption can't be sustained anymore, hence the accused acquitted.

1. **Abetment of Suicide to married Women for the purpose of Dowry-** Section [114B of Indian Evidence Act](#) deals with the principles of presumption related to abetment of suicide to married women for the purpose of dowry. This Section empowers the court to presume that the husband and his relative are the abettors of suicide and the wife was subjected to cruelty or any torture related to demand of dowry. While explaining the concept of Section 113B the court explains certain essentials which are to be fulfilled for raising any presumption related to abetment of dowry death. The essentials of Section 113B are completely the same as of essentials of Section 113A of Indian Evidence Act.

But a thin line difference between Section 113A & 114B is that the presumption of Section 114B only comes to the picture if the prosecution has certain proofs that the cause of death was cruelty or maltreatment or harassment for dowry demand. Hence, under this Section, the presumption is carried only when the prosecution proves the case.

In, [*Hem Chand v State of Haryana*](#) [1] the couple married on 24 May of 1962. The wife left her husband's home just after 2 months of her marriage and explained the reason to her parents that her husband is demanding for a TV and a refrigerator. After listening to such demands her father out of his hard money gave her around Rs. 6,000 and she left for her matrimonial home. But the husband's desire was not finishing and he again asked her to get twenty-five thousand rupees from her home as he is willing to buy some real estate property. Thereafter the accused took his wife to her parents' home and said that he'll take back her only if he will be paid Rs. 25,000. One year after she came back to her matrimonial home with Rs. 15,000 and promised the balance amount will be paid soon. But on the same day, she died of strangulation in her husband's home. The trial court and both Supreme Court found accused to be guilty and convicted on carrying the presumptions that her husband has performed cruelty against her and the reason for her death could be the husband's cruelty for the purpose of dowry.

In [*Shanti v State of Haryana*](#) [2], The Supreme Court held that the victim's death should be soon after the victim was subjected to cruelty or harassment for the purpose of dowry. But in this matter, the wife was taken back to her home as the dispute was solved by the local panchayat and this incident happened before 10-15 days of her death. However, the facts seem to be so clear but the presumption cannot be made as there was no evidence which indicates that she was treated with cruelty for the purpose of raising dowry when she was taken back to her matrimonial home. Hence in these circumstances, the presumption for dowry death cannot be raised and Section 113B of the Indian Evidence Act cannot be brought into action.

In, [*Bajinath & Others v. State of Madhya Pradesh*](#) [3], Supreme Court expounded that, "One of the essential ingredients of dowry death under Section [304B of the Penal Code](#) is that the women must have subjected to cruelty either by the husband or his relatives for the purpose of dowry soon before her death and bring it as an essential ingredient of Section 304B of IPC the prosecution has to prove the connection of the victim's death with the act of cruelty by the husband or by his relative for the purpose of demanding dowry and the connection must be proved beyond reasonable doubt then only the court will put the case into the window of Section 113B of Indian Evidence Act.

May Presume- Section 114 of the Indian Evidence Act deals with the concept 'presumption of certain facts by the court'. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations-

- Every negotiable instrument is presumed that it is drawn for the purpose of good consideration.
- There shall be continuity of things unless proven contrary like if a property is considered to be an ancestral property, it shall be presumed that it is so until it is proven contrary to the presumption ([Chito Mahtoo v Lila Mahto](#)).
- If a person refuses to answer a question, which is not compelled by the law to answer, the court may presume that if he answers the question then the answer would be unfavourable to him.
- That if a man possesses some stolen goods soon after the theft then it is believed that he is either the thief or has received the goods knowing the nature of the goods unless he can account for his possession.

2) Presumption of Law-

Presumptions of law are such inferences and beliefs which are established or assumed by the law itself. It can further be divided into rebuttable presumptions of law and irrebuttable presumptions of law.

Rebuttable Presumptions (*praesumptio iuris tantum*): Rebuttable Presumptions are certain presumption which is regarded as evidence of good quality and does not lose their quality until proven contrary to the presumption. Although it does not easily measure the extent of such presumption as their validity only exists until they are not proven wrong. The basic example of rebuttable presumptions can be- if a person who is in possession of some stolen property than it is quite obvious that he can either be a thief or a receiver.

Matrimonial offences are one of the best examples to explain any presumption because in such offence the possibility of getting evidence is nearly low as these offences that take place within the closed area of matrimonial house. Hence the presumption is very important in such cases/offences. There are broadly three important provisions regarding the presumption in matrimonial offences which are:

- Presumption as to abetment of suicide by a married woman within seven years of marriage covered under Section 113A of Indian Evidence Act.
- Presumption as to dowry death within seven years of marriage covered under Section 113B of Indian Evidence Act.
- Birth during the marriage is the conclusive proof of legitimacy covered under Section 112 of the Indian Evidence Act.

In, [*Shantiv. State of Haryana*](#) [4], the in-laws of the bride did not allow her to visit her maternal house to meet her parents, and when the bride's parents came to meet her they were not permitted to enter the house and complained to them about the amount of dowry that the demand of scooter & TV was not fulfilled. Soon after the incident, the wife of the accused suffered an unnatural death. The Supreme Court allowed the presumption stated under Section 113B of Indian Evidence Act as the death was caused within seven years of marriage and that too just after such incident prohibited under this Act, and on the basis of applications of this Section one of the in-laws was convicted for causing dowry death.

In *State of M.P. v. Sk. Lallu* [5], a newly wedded wife was facing severe beating regularly by her in-laws from the very first day of her marriage, and at last, she ends up dying with 100% of burn injuries. The Court executed the application of presumption stated under Section [113A](#) and explained that such presumption can be invoked to punish the accused.

Ir-rebuttable Presumption (*praesumptio iuris et de iure*)- Such presumptions cannot be ruled out by any additional probative evidence or argument. Therefore the presumption explained comes under the roof of conclusive presumption which cannot be proven contrary. Eg. A child under the age of seven years is presumed that he is not capable of committing any crime.

2.1) Few Conditions Where Court May Use the Presumption of Law To Ascertain Some Facts:

Presumption of Innocence (*ei incumbit probatio qui dicit, non qui negat*)- According to this legal maxim, the burden of proof is with the person who declares the facts, not the person who denies the fact. The presumption of innocence is the legal principle which means every person should be considered as an innocent person unless it is proven guilty or until court believes that the person is in charge of acts prohibited under law.

In, *Chandra Shekhar v. State of Himachal Pradesh* the High Court made great observations and mentioned that freedom of any individual is the prime objective of the constitution and such right cannot be dissolved by any means unless provided by the law itself. It is concluded that unless the person is proved guilty he must be presumed as innocent.

In, *Dataram Singh v. State of Uttar Pradesh & anr.*, the Supreme Court said that a person should be presumed and believed to be innocent unless proven guilty.

Birth During Marriage- The Latin maxim '*pater est quem muptice demonstrat*', explains a basic assumption that the person who marries women is the father of son/ daughter out of wife. Section [112 of the Indian Evidence Act](#) deals with the legitimacy of a child born during the marriage. The Section implies that if a child is born during the continuance of a valid marriage between the couple then it is conclusive proof of that the child is legitimate and the only ground which is available to either of the parties to prove the illegitimacy is to prove any access to each other in such a way that their marriage was not consumed. The main objective of the lawmaker institute is to provide legitimacy to the child born during a valid marriage and the legislature also explains that such presumption is not only limited to provide legitimacy to the child but also it is to maintain the public morality so that the legitimacy of the child cannot be questioned.

It must be noted that the application used under the Section 112 derives from Section 4 of the same Act and must be read together to understand the general applicability Section 4 which expresses that wherever there is a doubt of the legitimacy of children born during a valid marriage the court will presume, fact that the person whom the mother married the father of that child. Hence to achieve the objective of the legislature the court must assume it to be a case of 'conclusive proof'. Just like all laws, no law is absolute therefore the legitimacy of such a child can only be rebutted the party proves no non-access to each other or if no marriage was consumed. Which means even the DNA test other such tests are not capable of disproving the presumption.

In [Revanasiddappa v. Mallikarjun](#) [6] the Supreme Court opined that: the objective of the Constitution is broadly expressed in the Preamble of our Constitution which focuses on equality, equity, equal opportunity and separate individual's dignity. The Court while adjudicating such cases must remember the objectives of the constitution that everybody has separate and individual dignity of his own, therefore the court has to look into the matter that illegal or immoral or illegitimate relationships of parent do not hinder the dignity of the child born out of such relationships. As a child born out of such a relationship is innocent and has all the rights empowered to him under the Constitution and the status of the child must be as equal to as of child born out of valid marriage.

In *Shanta Ram v. Smt. Dargubai*, the Bombay High Court expressed its view that the child born out of void marriages would be deemed to be legitimate child irrespective of any nullity, although such child would not acquire the same right of succession as the original successor will enjoy.

[Gautam Kundu v. State of West Bengal](#) [7] the Supreme Court in its observations expresses that-

- Courts have no authority to direct blood test to challenge the legitimacy of the child.
- The husband has only one possibility to get rid of such presumption and for that, he must satisfy the court by proving no- access to consume the marriage.
- The Court should carefully examine the fact that what will be the consequences if the blood test comes in favour of a husband who is challenging the legitimacy of the child. And what if the further consequence has a serious impact on the child's legitimacy or makes the mother as an impure/ unchaste woman.

1. **Presumption of Death-** The presumption of death is explained under Section 107 and 108 of Indian Evidence Act which refers to a situation when a person has disappeared for many years, and after such situations the law presumes him to be dead. Section 108 of this Act describes the amount or the tenure i.e. 7 years, where, there should be no proof of the existence of the person in the society.

In [*Balambal v. Kannammal*](#) [8], the court held that the presumption of death could only be invoked if the death or inexistence of that person is proved when the presumption is raised in the court and no person can utilise such presumption for generating any type of death record of the called person.

In *T.K Rathnam v. K. Varadarajulu* [9], the dissenting opinion of the learned judge explains in his judgment that the presumption of the existence of the person or death of the person is always rebuttable. He also observed that the accurate timing of death is not a matter of presumption rather it is a matter of evidence.

1. **Presumption of Sanity-** It refers to the mental state of a person facing a criminal trial. Specifically, the court assumes that every person is sane and is fit to his mental capacity until someone proves contrary to the assumptions of the court.
2. **Presumption of Constitutionality-** The presumption of constitutionality refers to a concept that all statutes, bills, policies, guidelines etc., drafted by different levels of governments are consistent with the constitutional requirements. The court generally presumes that the statutes are meeting the constitutional requirements' and are helping in achieving the constitutional objective. But the person, who interprets these statutes in such a manner which makes such statutes contrary to constitutional requirements, then has to prove the same.
3. **Presumption of Possession-** Section 110 deals with such presumption and explains it as when a person who is enjoying the possession of anything and he claims himself as the owner then the court inferences

that he is the real owner. These are generally rebuttable presumptions and do not lose their substantiality until they are proven contrary by the affecting party.

3) Mixed Presumptions (Presumption of Fact and law both):

Mixed presumptions is a blend of different concepts explained above in this article. When the court in its inferences uses such blend consists of different classification of presumption i.e., Presumption of Facts and Presumption of Law then the presumption is considered to be a *Mixed Presumption*. The principles of such presumptions are only reflected in the English which specifically deals with statute of real property. But in the Indian legal system, the principles of presumptions are expressed specifically and The Indian Evidence Act deals with such principles. The Indian Evidence Act has mentioned few provisions both for the presumption of law and for presumptions of facts. The scope of this statute just does not end here rather it also has different provisions which deal with the discretionary power of Indian Court in raising presumption such as- Principles of *May Presume*, *Shall Presume* and *Conclusive Proof*.

Conclusion

In [Tukaram v State of Maharashtra \[10\]](#), This case was decided on considering the facts of Mathura Rape Case and while adjudicating the case the Court justified the need and necessities of such presumptions. The Court also explained that Presumptions has a wider scope as they don't only help the victim in the fast trial but it also helps in giving direction to the case. Therefore such presumption can effectively help the judiciary in providing quick and complete justice to the society. According to Stephen presumption is mandatory, not permissive presumption and especially permissive is dealt in Section 90 of the evidence act. Permissive presumption means it is on the court discretion whether to believe or not to believe.