

Burden of Proof

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Introduction

- Chapter VII, S.101 to S.114 of Indian Evidence Act deals with the provisions of "burden of Proof".
- The word 'burden of proof' has not been defined in Evidence Act. It is a fundamental principle of criminal jurisprudence that guilt of accused is to be proved by the prosecution, and an accused should be presumed to be innocent
- Certain facts require no proof. All other facts must be proved by evidence, that is by the statement of the witnesses, admission or confession of the parties and production of document

Meaning

- Burden of Proof means the obligation to prove a fact.
- The strict meaning of the term is that if no evidence is given by the party on whom the burden is passed the issue must be found against him
- Burden of Proof means two different things
- 1. sometimes that the party is required to prove an allegation before judgement is given in its favour;
- 2. it also means that on a contested issue one of the two contending parties has to introduce evidence.

PRINCIPLES OF BURDEN OF PROOF

- IN Simple term burden of proof means
- Responsibility to prove the fact in a case
- The principles of the Burden of Proof are contained in the concept of
- **A) Onus Probandi**
- **B) Factum Probandi**
- Onus probandi means the burden of proof.
- Generally, a party who alleges an affirmative position has to prove it.
- 'Factum probandi' is Proving the fact Thus together how to prove facts and who shall prove and to what extent?
- Sections 101, 102 and 103 of the Indian Evidence Act provides the standard laws that govern the Burden of Proof.

Sec-101

- Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence to facts which he asserts, must prove that those facts exist.
- Illustration
- (a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.
- Therefore the burden of lies on the party who substantially asserts the affirmative of the issue and not upon the party who denies it.

Exception

- The general rule that a party who desires to move the court must prove all the facts necessary for that purpose (sec-101 to 105) is subject to two exceptions:-
 - 1. He will not be required to prove such facts as are especially within the knowledge of the other party.[sec-106]
 - 2. He will not be required to prove so much his obligation in respect of which there is any presumption of law [sec-107 to 113] or some cases of fact [sec-114] on his favour.

Section 102 - On whom burden of proof lies

- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
- Illustrations
- (a) A sues B for the land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.
- If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A.

Distinction between the burden of proof and onus of proof?

- The burden of proof has two meaning
 - 1. Burden of proof to establish a case &
 - 2. Burden to adduced evidence
 - The burden of adducing evidence is also known as onus of proof. These types of burden of proof is
 - always unstable and constantly shifts from one party to another. The burden of proof of second sense
 - has been provided u/s 102.
 - For example:- In a criminal trial the burden of proof of the accused (that accused committed the offence)
- is always on the prosecution. This burden of proof is fixed and can not shift. This is what sec-101 says. Once the prosecution established the guilty of the accused, the accused if he wants can bring his case within any of the general exceptions of IPC.

103. Burden of proof as to particular fact. –

- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
- Illustration
- (a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.
- (b) B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

- It differs from s. 101. By s.101 the party has to prove the whole of the facts which he alleges to entitle him
- to judgment when the burden of proof on him.
- This section provides for the proof of someone particular fact. If the accused wishes to prove a particular
- fact, his alibi for instance, he must prove it.

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

- The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.
- Illustrations
- A wishes to prove a dying declaration by B. A must prove B's death.
- 2. B wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.

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

- When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.
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- Illustrations
- (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 proof is on A.
- (b) A, accused of murder, alleges, that by grave and sudden provocation, he was deprived of the power of self-control.
- The burden of proof is on A.

- The general principles relating to burden of proof are:
 - i. the accused is always presumed to be innocent, and
 - ii. it is prosecution to prove the guilt of the accused. It is only after the prosecution to discharge
- Under section 105 the burden lies on the accused. Once the prosecution has been successful to prove the guilt beyond reasonable doubt that the accused had committed offence. It is immediately shifted to the accused who, if he so desires, may set up a defense of bringing his case within general exceptions of I.P.C. or within special exception or proviso contained in any part of the same code or any other law. Where the accused has led no evidence in defence to support the plea of legal insanity,

106. Burden of proving fact especially within knowledge –

- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.
- Illustrations
- (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
- (b) A is charged with traveling on a railway without a ticket. The burden of proving that he had ticket is on him.

107. Burden of proving death of person known to have been alive within thirty years. —

- When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

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

- Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

