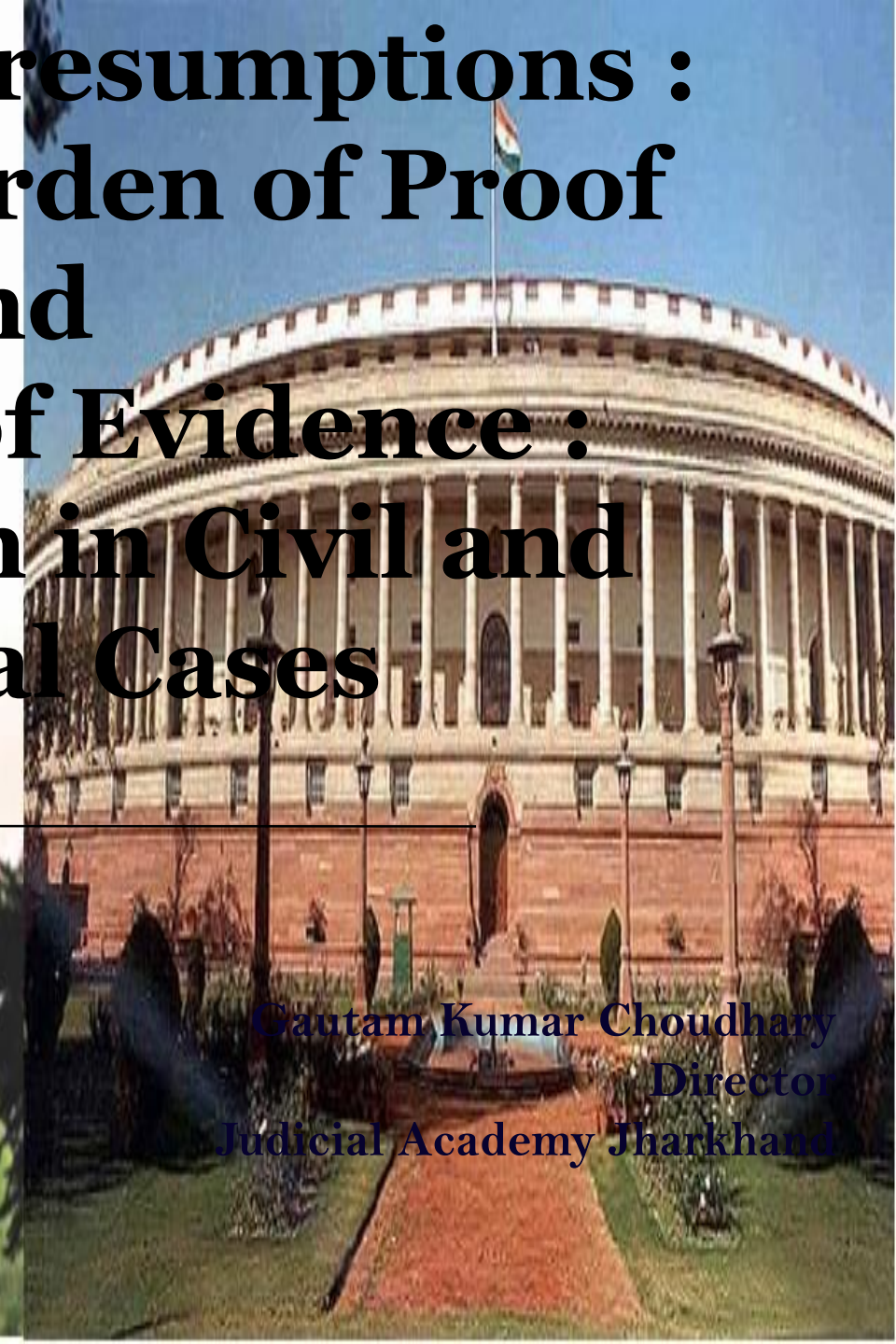
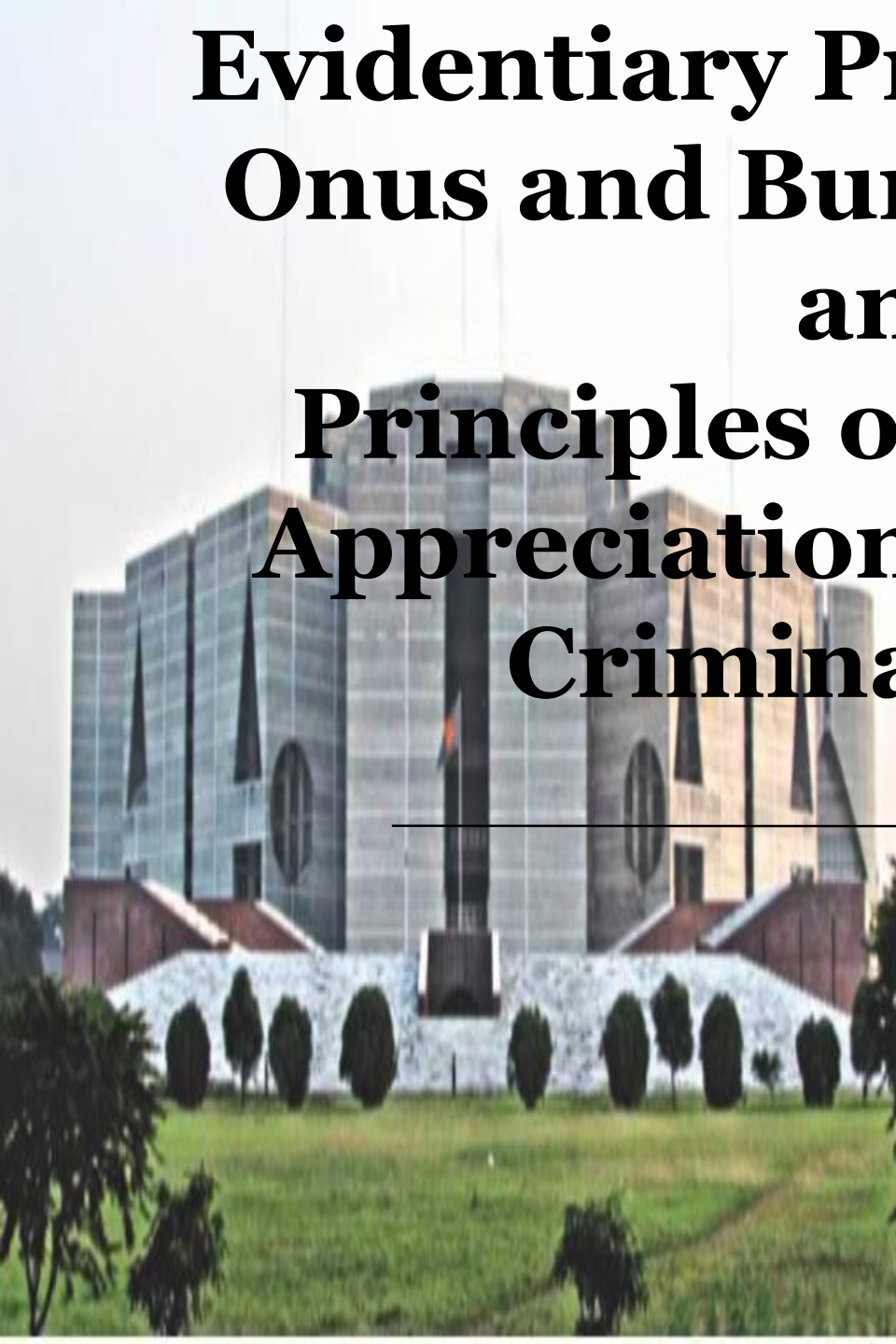


# **Evidentiary Presumptions : Onus and Burden of Proof and Principles of Evidence : Appreciation in Civil and Criminal Cases**



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# What is the stage when the appreciation of evidence is to be made?

## • Structure of the Evidence Act

–Part I – Relevancy of Facts (Sections 5 – 55[Chapter 2])

–Part II – On Proof (Sections 56 – 100)

- Chapter 3 – Facts which need not be proved (Sections 56 – 58)

- Chapter 4 – Oral Evidence (Sections 59-60)

- Chapter 5 – Documentary Evidence (Sections 61 – 90A)

- Chapter 6 – Of the exclusion of oral by documentary evidence (Sections 91 – 100)

–Part III – Production and Effect of Evidence – Chapter 7 – Burden of Proof (Sections 101 – 114A)

# While appreciating evidence, what do we understand by proof?

- Definitions under Section 3
- Why the word “evidence” has not been used?
- Facts and “Facts in Issue”
  - Facts connected with Facts in Issue (Sections 6-16)
  - Statements of Parties (Section 17-31)
  - Statements of Others
    - Who cannot be called as witnesses (Sections 32-33)
    - Entries made in books of account etc. (Sections 34-39)
    - Judgments (Sections 40-44)
    - Opinion of third Persons (Section 45-51)
- What is “prudent man’s test”?

- What is the difference between “matter” and “evidence”?
- The matters would include
  - Affidavits, admissions, confessions
  - Adverse Inferences against a Party in the light of Section 114 (g) and (h)
  - Demeanour of witnesses (Section 280, CrPC/ Order XVIII Rule 12)
    - Ram Nath Mahto v. State of Bihar*, (1996) 8 SCC 630
  - Section 313, CrPC
  - “Judicial decisions must proceed upon imperfect materials, and must be at the risk of errors.”*
    - Sir James Stephen

# Questions

- **What is Evidence?**
- **What will be the effect on the evidentiary value of an evidence illegally or irregularly obtained?**

•The admissibility of evidence in Courts in India is dependent on its relevancy and its illegality or impropriety in obtaining the evidence will not affect its admissibility

–*Kuruma v. The Queen*, (1955) AC 197

–*Puran Mal v. Director of Inspection*, AIR 1974 SC 348

–*Pushpa Devi M. Jatiya v. M.L. Wadhawan*, (1987) 3 SCC 36

# Burden of Proof

## (Sections 101 – 114A)

- Who should prove the case?
- Who should lead the evidence?
- When there is no requirement to prove a fact by the party asserting it?
- What is the effect of presumptions?

- **Section 101 (Burden of Proof)**
- **Section 102 (Onus of Proof)**
- **Exception to the general rule :**
  - Section 106
  - Presumptions of Law
  - Presumptions of Fact
- **Reverse Burdens**
  - Sections 35 and 54 of the NDPS Act
  - Sections 118 and 139 of the NI Act
  - Section 20 of the PC Act
  - Section 24 of PML Act



# Presumptions

- A presumption is not evidence but it operates as substitute for evidence.
- Presumptions has not been defined but it is a legally permissible inference that a fact exists based on the proven existence of some other facts.
- Presume means to take as “proved” until evidence is introduced tending to rebut the presumed fact (Section 4)
- Presumption, thus, affects and alters the onus of proof

- **Sections 107 – Presumption of continuation of life of a person, shown alive within 30 years**
  - Onus of proof – on the person asserting death
- **Section 108 – Presumption of death of a person not heard of for 7 years**
  - Onus of proof – on the person asserting him to be alive
- **Presumption is a principle of law directing that if a party proves certain fact, called the basic, foundational or underlying facts, it must also accept an additional fact as proven unless it is rebutted.**

- **May presume – Discretionary presumption**
  - Sections 113A, 114, Sections 86-90A
- **Shall presume – Mandatory Presumptions**
  - Sections 105, 111A, 113, 113B, 114A
  - **Presumptions as to Documents**
    - Sections 79 (*Certified Copies*), 80 (*Record of Evidence*), 81, 81A (*Gazettes*), 83 (*Maps*), 85A-C (*Electronic Agreements, Signatures and Certificates*), 89 (*Due Execution of Documents*)
- **Conclusive Proof**
  - **Mandatory and Irrebuttable**
  - Sections 41 (*Judgments*), 112 (*Legitimacy*), 113 (*Cessation of Territories*)

## • Presumptions of Law

- Derive force from law
- Apply to a class

## • Presumptions of Fact

- Derive force from logic
- Apply to individual cases
- Common course of natural events
- Public and private business

- Possession of stolen goods soon after theft
- Accomplice is unworthy of credit
- The bill of exchange was accepted for good consideration
- Continuation of a thing or a state of thing
- Judicial and official acts
- Common course of business has been followed in particular cases
- Evidence which could be produced, if not produced, would be unfavourable to him
- When documents in the hand of obligor, the obligation has been discharged

# Documentary Evidence

## (Sections 61 – 90A)

- **Proof of Contents of Documents (Section 61)**
- **Primary Evidence (Section 62)**
- **Secondary Evidence (Section 63)**
- **Cases in which secondary evidence related to documents may be given (Section 65)**
- **Rules as to Notice (Section 66)**
- **Public Documents (Sections 74 – 78)**

# Presumptions as to Documents

- Sections 79 – 90A
- The formal proof of document as required under Section 67 is dispensed with and by mere filing of the document, an inference as to proof thereof can be drawn in case of documents referred to in Sections 79-90A
- Section 79 – Presumption as to genuineness of certified copies
- Section 80 – Presumption as to documents produced as records of evidence

- Sections 85A, 85B, 85C – Presumptions as to electronic agreements, electronic records, electronic signatures and electronic signature certificates
- Sections 88, 88A – Presumptions as to telegraphic messages and electronic messages
- Section 89 – Presumption as to due execution etc. of documents not produced after notice under Section 66
- Sections 90, 90A – Presumptions as to a 30 year old document and 5 year old electronic records

# Appreciation of Documentary Evidence

(Sections 61 – 100)

- It involves three questions
  - How the contents of the document are to be proved? (Sections 59, 61-66 and Section 22)
  - How the document is to be proved as genuine?
  - How far and in what cases oral evidence is excluded by documentary evidence? (Sections 91-92)



# Four Ways to Test the Credibility of a Witness

- The witness's statement is inherently improbable or contrary to the course of nature
- The witness's deposition contains mutually contradictory or inconsistent passages
- The enmity of the witness with the opposite party
- Demeanour of the witness

# Appreciation of Oral Evidence

- Sections 59 and 60
- Sections 118 – 134
- Section 145, Section 155, Evidence Act
- When omission amounts to contradiction
- Inconsistencies and discrepancies
- *Falsus in uno falsus in omnibus*
- Section 162 CrPC
- Section 157, Evidence Act

# Standard of Proof in Civil and Criminal Cases

- There is no difference between the rules of evidence of civil and criminal courts
- The rules of admissibility are the same but certain rules of evidence are applicable to criminal cases only. Eg:– Confessions – Sections 24-30, Dying declarations, Character (Sections 53, 54) of the Accused
- Special provision relating to Civil : Admissions (Sections 18-20), Character affecting damages (Section 55), Estoppel (Section 115), documents assume greater significance

- Preponderance of probabilities in Civil cases
- Proof beyond reasonable doubt in Criminal Cases

–Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes.

- Justice V. Krishna Iyer

*Inder Singh & Anr. v. The State (Delhi Admn.)*  
1978 (1) SCC (1)

# General Principles of Appreciation

- Whether the evidence in totality appears to have a ring of truth?
- When the eye witness is examined at length, discrepancies are normal
- Witnesses cannot be expected to possess a photographic memory
- The power of observation, recollection and reproduction differ from person to person
- Regarding time of incident, the testimony of witness depends on his time sense
- Minor discrepancies not touching the core of the case

- Independent/Interested Witness

- Police Witness

  - Pramod Kumar v. State (NCT of Delhi)*, AIR 2013 SC 3344

  - NCT of Delhi v. Sunil*, (2001) 1 SCC 652

- Injured Witnesses

  - Abdul Sayyed v. State of M.P.*, (2010) 4 EastCriCase 150

    - The testimony of an injured witness is generally considered to be very reliable

- Chance Witness

  - Justice Mahajan in *Puran v. State of Punjab*, AIR 1953 SC 459

  - Bahal Singh v. State of Haryana*, AIR 1976 SC 2032

    - Cannot be rejected but requires cautious and close scrutiny

• *Lallu Manjhi v. State of Jharkhand*, (2003) 2 SCC 401

–Wholly reliable

–Wholly unreliable

–Neither wholly reliable nor wholly unreliable

• *State of U.P. v. Anil Singh*, 1988 (Supp) SCC 686

–Where a witness has not been specifically cross-examined on a particular question, the Court cannot presume something adverse to the witness in relation to that question unless his attention is specifically drawn

- **Identification of accused**
  - *Nathuni Yadav v. State of Bihar*, (1998) 9 SCC 238
  - Can accused claim identification by TIP?
    - *Motilal Yadav v. State of Bihar*, (2015) 1 JL JR 152 SC
- **Effect of absconding of an accused (Section 8)**
  - *Shyamal Ghosh v. State of West Bengal*, (2012) 3 JL JR 328 SC
- **Effect of non-examination of IO and Informant**
  - (1994) Supp 3 SCC 729 – *Rakesh Kumar v. State*
  - (2002) 1 SCC 81 – *Krishna Mochi v. State of Bihar*
    - If FIR is not proved , it would not be a ground for acquittal, but the case would depend upon the evidence led by the prosecution
    - Prejudice Test
- **Res Gestae (Section 6)**



# Appreciation in cases of Circumstantial Evidence

• *Sharad Birdichand Sharda v. State of Maharashtra*, (1984) 4 SCC 116

## –Five Golden Principles of Proof

- Circumstances from which the conclusion of guilt is to be drawn should be fully established
- The facts so established should be consistent only with the hypothesis of guilt
- The circumstances should be of a conclusive nature and tendency
- They should exclude every possible hypothesis except the one to be proved
- There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused

## •Use of Section 27 of the Evidence Act

–*Ronny v. State of Maharashtra*, (1998) 3 SCC 625

–*State of Maharashtra v. Suresh*, (2000) 1 SCC 471

### •Three possibilities

–1- He himself concealed it

–2- He would have seen someone else concealing it

–3- Someone else told him about it

### •The accused needs to explain

–*Swapan Kumar Jha v. State of Jharkhand*, (2019) 1 JL  
JR 68 SC

•Evidence of CDR regarding ransom calls and disclosure statement leading to recovery of dead body and “last seen” prove the case under Section 364A, 302 IPC

–*Anter Singh v. State of Rajasthan*, (2004) 1 East Cri  
Case 244 SC

•Effect of *panch* witnesses turning hostile

- **Use of Section 313, CrPC**

- *Joseph v. State of Kerala*, (2000) 5 SCC 197

- *Siddharth Vashishth v. State (Jessica Lal Case)*, AIR 2010 SC 2352

- An adverse inference can be drawn against an accused where he furnishes a false answer

- **Motive**

- *R. Shahji v. State of Kerala*, (2013) 1 JL JR 501 SC

- In case of circumstantial evidence, motive may be considered as a circumstance

## •Use of Section 106

–*Swami Shradhhanand v. State of Karnataka*, (2007) 12 SCC 288

–*Babu v. Babu*, (2003) 7 SCC 37

- Murder of wife on the next night of her marriage

–“Last seen” theory

- Bodhraj v. State of J&K*, (2002) 8 SCC 45

- Kirti Pal v. State of West Bengal*, (2015) 11 SCC 178

## •Section 10

–*Keher Singh and Others v. State*, AIR 1988 SC 1883

- Conspiracy can be proved by circumstances and other materials

–*Mohammad Khalid v. State*, (2002) 7 SCC 334

•The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community.

-Justice V. Krishna Iyer

*Shivaji Sahebrao Bobade & Anr v. State Of Maharashtra*

**AIR 1973 SC 2622**