

NOTES

Burden of Proof under the Bharatiya Sakshya Adhiniyam, 2023

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Introduction

In every case, courts must find and decide which facts are true before it and then decide who wins and who loses. A court cannot simply believe a person who says a contract was signed, money was lent, or an accused person committed a crime without any evidence. The rule in the burden of proof is as to who has to prove a fact.

For example, if A says that B took Rs. 1 lakh from him and did not return it, A will need to prove the loan and the default. If B admits the loan but says it has been repaid, B has to prove repayment. The rules related to burden of proof are given in **Chapter VII, Sections 104 to 120** of the **Bharatiya Sakshya Adhiniyam, 2023 (BSA)**. It supersedes **Indian Evidence Act, 1872** from 1 July 2024 but retains most of its principles. This article discusses burden, onus, presumptions, civil trials and criminal trials.

Burden of Proof and Onus of Proof

The burden of proof is the legal duty to establish the facts necessary for a claim or defence.

Section 104 BSA states that a person who wants the court to give judgment about a legal right or liability based on facts asserted by that person must prove those facts.

Section 105 provides the practical test i.e. The burden lies on the person who would fail if neither side produced any evidence. A sues B for land under a will. Since B is in possession, A would fail on an empty record; therefore, A carries the initial burden. If A sues on a bond whose execution B admits, but B alleges fraud, B carries the burden of proving fraud.

The BSA does not define or expressly use **onus of proof** in **Chapter VII**. The distinction comes from judicial interpretation. Burden is the basic responsibility fixed at the beginning and normally does not shift. The onus is the evidentiary burden of answering the case, and may shift as evidence is adduced. In *Addagada Raghavamma v. Addagada Chenchamma (1964)* the Supreme Court held that the burden is on the person who is required to prove a fact and never shifts whereas the onus shifts from one to another at every stage of appreciation of evidence. It is important to remember that the burden is fixed but the onus may shift.

What is decided before evidence begins?

The pleadings determine the starting burden. The court identifies the facts in issue and asks who would lose if no evidence were led. Sections 104 and 105 allocate this initial responsibility before witnesses are examined.

Section 106 then places the burden of proving a particular fact on the person who wants the court to believe it, unless another law provides otherwise. For example, if the prosecution says that the accused made an admission, the prosecution must prove the admission. If the accused says that he was elsewhere at the relevant time, the accused must ordinarily produce evidence supporting that specific plea.

Section 107 deals with a foundational fact. A party seeking to prove a dying declaration must first establish the declarant's death. A party relying on secondary evidence of a lost document must first prove its loss.

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1. BASIC RULE | SECTIONS 104–105



- The person who asserts a fact must prove it.
- The burden lies on the person who would fail if neither side produced evidence.

2. BURDEN vs ONUS



- **Burden:** fixed legal responsibility; normally does not shift.
- **Onus:** evidentiary responsibility; may shift as evidence is produced.

3. PARTICULAR FACTS | SECTIONS 106–107



- The person asking the court to believe a particular fact must prove it.
- A foundational fact must be proved first, such as death for a dying declaration or loss before secondary evidence.

4. PRESUMPTIONS | SECTIONS 110–114



- Presumptions may shift the evidentiary onus.
- 30 years: person asserting death must prove it.
- 7 years without news: burden of proving life shifts.
- Possession may place the burden on the challenger.

5. CIVIL CASES



- Standard: preponderance of probabilities.
- The more probable version is accepted.
- Plaintiff proves the claim; defendant proves affirmative defences.

6. CRIMINAL CASES | SECTIONS 108–109



- Prosecution must prove every offence ingredient beyond reasonable doubt.
- An accused relying on an exception must prove it, usually on preponderance of probabilities.
- Special knowledge does not make the accused prove general innocence.

How the Onus Shifts During the Trial

The party carrying the initial burden must first produce evidence that makes its version reasonably probable. The onus cannot be shifted by a mere suspicion or a mere allegation. When a party establishes a fact, or makes a strong prima facie case, the other party must respond.

In a loan lawsuit the lender can prove the agreement and signature. The onus may then move to the borrower to show repayment. If a receipt is produced, the lender may have to explain it. The onus may move several times, but the original burden matters if the evidence is finally balanced.

In *Raghavamma*, the Court also observed that once evidence is led by both parties, the burden may lose practical importance. At that stage, the court assesses the entire record. However, if reasonable doubt remains at the end, the party carrying the legal burden bears the adverse result.

Presumptions: When the law shifts the Starting Point

A presumption is an inference that the law permits or requires the court to draw from an established fact. It can shift the evidentiary onus without the other party first 'earning' the shift through evidence.

Under **Section 110**, if a person was alive within thirty years, the person asserting death must prove it. Under **Section 111**, after seven years without news from those who would naturally hear from the person, the burden of proving life shifts to the person asserting it. **Sections 112** and **113** deal with relationships and ownership based on possession. **Section 114** places proof of good faith on a person in a position of active confidence.

These presumptions are usually rebuttable. The opposing party can produce evidence to displace them. Students should distinguish a may presume situation, where the court has discretion, from a shall presume situation, where the court must draw the presumption unless rebutted. A conclusive proof provision leaves little or no room for rebuttal.

Burden at Judgment in a Civil Trial: Section 105

Civil cases generally use preponderance of probabilities. A party must show that its version is more probable than the competing version, not prove it beyond every possible doubt.

Section 105's "empty record" test is especially useful in civil litigation. The plaintiff must prove the facts that create the right to relief. The defendant carries the burden for an affirmative defence such as fraud, payment, limitation, discharge, coercion or estoppel when the defendant relies on that defence.

Under [Section 113](#), possession places the burden on the challenger. Under [section 114](#), the burden is on a fiduciary who benefits from a transaction to show good faith. In [***Rangammal v. Kuppuswami \(2011\)***](#) the Supreme Court has pointed out that the first burden lies on the party asserting and cannot be discharged simply on denial.

Burden of Proof in a Criminal Trial: Sections 108 and 109

The burden of proving beyond reasonable doubt each ingredient of the offense usually lies with the prosecution. This is an insurance of the presumption of innocence. In [***Kali Ram v. State of Himachal Pradesh \(1973\)***](#), the Supreme Court held that if two reasonable views are possible, the one favourable to the accused should ordinarily be adopted.

[Section 108](#) BSA creates a limited reverse burden. If an accused relies on a general exception under the Bharatiya Nyaya Sanhita, a special exception or a proviso defining the offence, the accused must prove the circumstances bringing the case within that exception. For example, an accused who claims unsoundness of mind or grave and sudden provocation must support that plea. The court presumes the absence of the exception unless the accused establishes it.

This does not release the prosecution from proving the offence, identity and required mental element. [Section 108](#) concerns the additional defence. In [***Dahyabhai Chhaganbhai Thakkar v. State of Gujarat \(1964\)***](#), the Supreme Court held that the accused's burden regarding an exception is lighter and may be discharged on a preponderance of probabilities, including from the prosecution's evidence.

[Section 109](#) applies when a fact is especially within a person's knowledge. For example, an accused charged with travelling without a ticket may be expected to prove possession of a valid ticket. However, this section cannot be used to make the accused prove innocence generally. The prosecution must first establish the basic circumstances of the offence. In [***Shambhu Nath Mehra v. State of Ajmer \(1956\)***](#), the Supreme Court warned that the special-knowledge rule is not intended to relieve the prosecution of its normal burden.

Statutory Presumptions in Criminal Cases

The later provisions of Chapter VII contain specific presumptions. [Section 115](#) concerns certain offences in disturbed areas. [Section 116](#) deals with legitimacy of a child born during a valid marriage, subject to the statutory exception. [Section 117](#) permits a presumption of abetment of suicide by a married woman where the required facts, including cruelty within seven years of marriage, are shown. Other provisions address dowry death, absence of consent in certain rape prosecutions and facts concerning abetment of suicide.

These provisions do not automatically prove guilt. The facts giving rise to the statutory presumption must first be proved by the prosecution. The accused may then rebut it in terms of the language of the provision and constitutional safeguards. The presumption of innocence and the right to a fair trial under [Article 21](#) mean that reverse burdens are strictly interpreted by the courts.

Conclusion

The BSA preserves a simple but powerful structure. [Section 104](#) places the duty on the person who asserts a fact. [Section 105](#) asks who would lose if no evidence were given. [Sections 106](#) and [107](#) allocate responsibility for particular facts and foundational facts. [Sections 108](#) and [109](#) address exceptions and facts especially within knowledge. Sections 110 to 120 create carefully defined presumptions.

Remember the key difference burden of proof is the static legal liability, onus of proof is the dynamic obligation to counter evidence. Statutory presumptions may alter the burden, but the prosecution must establish the elements of a criminal offense beyond reasonable doubt. In civil cases, the final test is usually the balance of probabilities. These rules prevent unsupported claims, protect the accused from unfair conviction and help the court decide which party must bear the uncertainty when the evidence remains evenly balanced.