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## BURDEN OF PROOF VS. STANDARD OF PROOF: CLEARING THE CONFUSION

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### Introduction

'Burden of Proof' and 'Standard of Proof' are two extremely critical aspects in the legal world which are essential in guiding and evaluating how evidence is presented in court. These are two different legal terms which serve different purposes, yet, even those familiar with the legal system tend to sometimes get confused between the two. Briefly, burden of proof determines who is responsible for proving a fact, whereas standard of proof specifies the criteria and standard of fact that can be used convincingly as evidence. Burden of Proof and Standard of Proof play a pivotal role in ensuring that a fair outcome prevails at the end of trial. This blog aims to explore these two concepts in detail, clarifying their roles in legal context, clearing the confusion related to these two concepts and explaining how these two operate together to uphold justice in a fair manner.

### Burden of Proof

In every judicial proceeding, legal rights and responsibilities are interconnected and have to be proved before the court. The Bharatiya Sakshya Adhiniyam in Chapter VII covers the crucial concept of 'burden of proof' from section 104-120<sup>617</sup>. The burden of proof is the legal burden or obligation on the parties to a case to prove the facts of the case which guides the courts to reach a fair and accurate outcome.<sup>618</sup> If the party on whom this burden falls fails to prove the burden, it may go a long way in weakening that party's position. The principles of 'Onus Probandi' and 'Factum Probandi' are encompassed in Burden of proof. Onus Probandi means that the party making the affirmative claim must prove it and Factum Probandi means the actual evidence presented to prove the affirmative claim.

Burden of Proof is classified into distinct categories:

1. **Persuasive Burden:** This refers to the legal obligation of a party to a claim to demonstrate and substantiate their case. It relates to the responsibility placed on a party to establish elements of their argument.
2. **Evidential Burden:** It involves the obligation to produce concrete evidence to support factual claims. This principle means that evidence must be produced to substantiate the facts claimed.<sup>619</sup>

### Standard of Proof

The standard of proof is the degree and level of evidence required to substantiate a claim<sup>620</sup>. Like we already know, in criminal cases, the burden of proof is on the prosecution and in civil cases, on the

<sup>617</sup> Bharatiya Sakshya Adhiniyam, Part IV, Chapter VII.

<sup>618</sup> Bharatiya Sakshya Adhiniyam, sec 104.

<sup>619</sup> Clatalogue, "Burden of Proof Under Indian Evidence Act", <https://lawctopus.com/clatalogue/clat-pg/burden-of-proof-under-indian-evidence-act/> accessed 28 October 2024.

<sup>620</sup> Indian Lawyers Club, "Standard of proof in Civil and Criminal Cases", <https://www.lawyersclubindia.com/articles/standard-of-proof-in-civil-and-criminal-cases-14975.asp> accessed 28 October 2024.

plaintiff. But is the standard of proof required in both the same? To answer this, let us get into the types of standard of proof.

Two types of standard of proof are widely recognised:

1. **Beyond a reasonable doubt:** This is widely used criminal trials. Reasonable doubt is a mindset where the judge is not completely sure about the guilt of the accused as the evidence produced by the prosecution does not seem fully convincing.<sup>621</sup> In such cases, the judge cannot convict the accused as there still exists reasonable doubt. Therefore, to prove guilt of the accused, the prosecution has to prove their claim beyond reasonable doubt. This is the highest standard of proof.
2. **Preponderance of Evidence:** This is a lower standard of proof and is used mainly in civil cases. This requires the party's claims to more likely be true than not. Hence, in civil cases, the judge primarily rules in favour of the party that produces better evidence.

**Key Differences between Burden of Proof and Standard of Proof**

Aspect	Burden of Proof	Standard of Proof
<b>Definition</b>	Obligation to prove claims	Level of evidence required
<b>Application</b>	Varies on case-to-case basis	Varies on case-to-case basis
<b>Examples</b>	Prosecution in criminal cases; plaintiff in civil cases.	"Beyond a reasonable doubt" for criminal; "preponderance of evidence" for civil cases.

**Burden of Proof in Civil v. Criminal Proceedings**

- **Criminal Cases-** In criminal proceedings, the burden of proof primarily lies on the prosecution. In criminal cases, prosecution has the duty to prove the defendant's guilt beyond reasonable doubt which is the highest standard. It means that the evidence presented must strongly convince the judge or jury about the guilt of the defendant. There should be no doubt in their mind otherwise, the accused cannot be convicted<sup>622</sup>. This principle stems from the belief of "innocent until proven guilty". This principle is strongly followed by courts to provide safeguards to accused and protect them from the occurrence of wrongful convictions and severe punishments<sup>623</sup>. The criminal burden of proof generally does not shift to the accused. However, in certain circumstances where the accused presents affirmative defence, such as the defence of insanity or self-defence, the burden of proof is shifted to the accused to provide evidence to support the claim they are making. But even in such cases, the burden of proof that the prosecution has to prove the crime beyond a reasonable doubt still remains.
- **Civil Cases-** In civil cases, the burden is on the party bringing the suit in front of the court, that is, the plaintiff, who must establish their case by a preponderance of evidence. This standard of proof is considerably lower than that in criminal cases. This is one of the main reasons why a person sometimes escapes criminal liability for a certain set of facts, but loses the same case

<sup>621</sup> Right to Remain, "What are the different standards and burdens of proof in legal cases?", <https://righttoremain.org.uk/what-are-the-different-standards-and-burdens-of-proof-in-legal-cases/>

<sup>622</sup> Cornell Law School, "burden of proof", [https://www.law.cornell.edu/wex/burden\\_of\\_proof](https://www.law.cornell.edu/wex/burden_of_proof)

<sup>623</sup> M. Libraries, "The Burden of Proof", <https://open.lib.umn.edu/criminallaw/chapter/2-4-the-burden-of-proof/>

when a civil suit is brought due to the lower standard of proof required to prove guilt in civil cases. Just like how in criminal cases, the burden of proof can be shifted to the accused in circumstances of affirmative defence, similar is the case in civil suits where if the defendant makes an affirmative defence, it is upon him to support the claim he is making.<sup>624</sup>

### **Shifting the Burden of Proof**

The burden of proof is shifted from one party to another based on different mechanisms. These mechanisms include **Presumption in Law**, that is the principle of innocent until proven guilty. This principle shifts the entire burden on the prosecution to produce evidence to prove the guilt of the accused. If the prosecution fails to prove beyond reasonable doubt, the defendant gets acquitted.

In cases where the defendant/accused gives any **Affirmative Defence** like insanity or self-defence or general exceptions under IPC, there is a shift by which the defendant has to prove his affirmative claim by producing sufficient evidence. This shift acknowledges the defendant's innocence until proven otherwise, whilst also giving the defendant a chance to absolve from any liability.

### **Changing Trends of the Supreme Court of India**

Generally, it is best assumed that the one who brings the case is the person who can provide the best evidence related to it. Hence, this is why the burden usually lies on the prosecution or the plaintiff. But there are some exceptions to it such as in cases of heinous crimes such as rape, murder, etc., the burden lies upon the accused to prove his innocence.<sup>625</sup> India being a common law country, there have been different principles followed in similar situations, in some the court having shifted the burden upon the accused. This has created a wrong impression of India of being inconsistent in following common law principles. Therefore, it is necessary to understand the reasons behind these changing trends:

- *Kali Ram v. State of Himachal Pradesh*<sup>626</sup>: In this case, the Supreme Court was of the view that any person is innocent until proven guilty. The accused is presumed to be innocent until that presumption is rebutted by the prosecution by producing evidence to prove the guilt. Hence, no court can find the accused guilty unless proven so by the prosecution. The court also formed another opinion that in case there are two views, the view favouring the accused shall prevail because, if there are two views, one in favour and the other not so much, then there exists reasonable doubt. Therefore, for this reason, the accused cannot be found guilty by the court.
- *K.M. Nanavati Case (1962)*<sup>627</sup>: In this case, Nanavati was charged with murder of Prem. Nanavati took the defence of grave and sudden provocation. As per the general rule, a presumption of innocence prevails until the prosecution proves the guilt of the accused. But, when the accused claims the general defence under IPC, Section 105 of the Indian Evidence Act comes into picture, and the burden is upon accused to rebut the presumption.
- *V. Kalyanaswamy v. L. Bakthavatsalam*<sup>628</sup>: In this case, the court clarified that while dealing with a will, the burden to prove its validity lies with the person presenting the will. But, if the will is claimed to be result of coercion, the party claiming this coercion will bear the burden to prove it.

<sup>624</sup> Brown & Charbonneau, LLP, "Legal Blogs", <https://bc-llp.com/what-is-the-burden-of-proof-in-a-civil-case/>

<sup>625</sup> iPleaders, "The burden of proof in criminal cases and changing trends of the Supreme Court of India", <https://blog.iplayers.in/burden-proof-criminal-cases-changing-trends-supreme-court-india/>

<sup>626</sup> *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808.

<sup>627</sup> *K.M. Nanavati v. State of Maharashtra*, 1962 AIR 605.

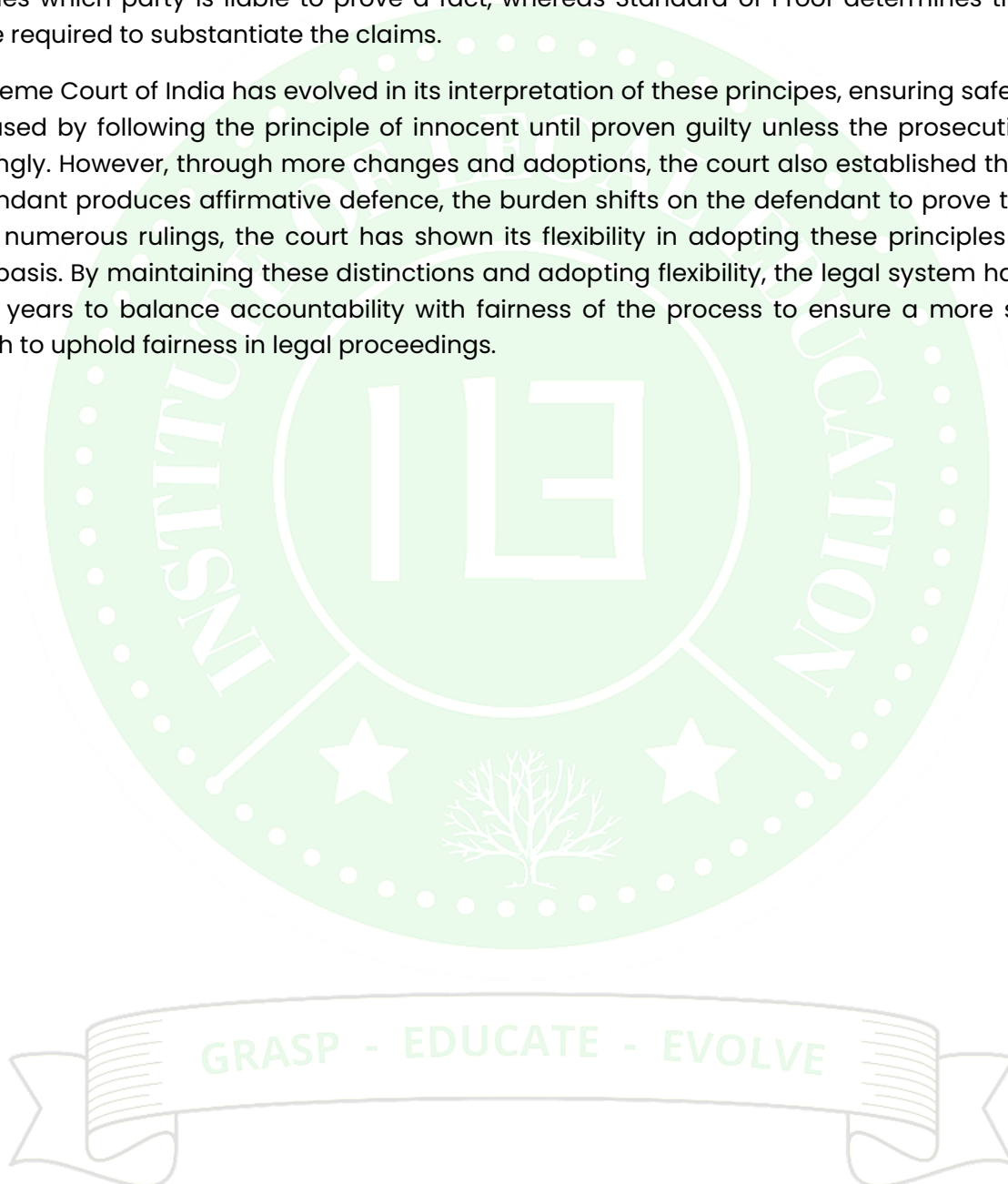
<sup>628</sup> *V. Kalyanaswamy v. L. Bakthavatsalam*, Civil Appeal Nos.1021-1026 of 2013.

- Arjun Panditrao v. Kailash<sup>629</sup>: In this case, electronic evidence was introduced. Court was of the opinion that the party bringing electronic evidence on record should bear the burden to prove the authenticity of the evidence.

### **Conclusion**

In conclusion, burden of proof and standard of proof are two distinct legal entities having different meanings, yet both work hand-in-hand to ensure fair and just outcomes during trial. Both these concepts relate to evidentiary requirement, but they serve separate functions. Burden of Proof establishes which party is liable to prove a fact, whereas Standard of Proof determines the level of evidence required to substantiate the claims.

The Supreme Court of India has evolved in its interpretation of these principles, ensuring safeguards to the accused by following the principle of innocent until proven guilty unless the prosecution rebuts convincingly. However, through more changes and adoptions, the court also established that in case the defendant produces affirmative defence, the burden shifts on the defendant to prove that claim. Through numerous rulings, the court has shown its flexibility in adopting these principles on case-specific basis. By maintaining these distinctions and adopting flexibility, the legal system has evolved over the years to balance accountability with fairness of the process to ensure a more structured approach to uphold fairness in legal proceedings.



<sup>629</sup> Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and ors, AIR 2020 SC 4908.