

## BURDEN OF PROOF AND REVERSE BURDEN OF PROOF: A COMPARATIVE ANALYSIS WITH SPECIAL FOCUS ON DOWRY DEATH

\*APURVA MEHTA

### ABSTRACT

*Burden of Proof is an age-old doctrine and is regarded as one of the most fundamental principles of Judicial decision-making. An accused is presumed to be innocent until proven guilty and the Burden of Proof lies on the prosecution to establish the guilt of the accused. This principle has been universally recognised as a human right. The development in the Criminal Jurisprudence has construed scenarios wherein the accused is presumed to be guilty until proven otherwise. These scenarios exist wherein there is an express mention of the same in a legislative text. This new development is called Reverse Burden of Proof. The paper discusses the background, constitutional validity, recent developments and relevant provisions in regard to the concept of shifting of onus in contrast to the general rule of presumption of innocence.*

*The rationale behind this shifting of onus exists in cases wherein it becomes extremely difficult for the prosecution to prove the guilt owing to various factors involving the influence of the accused. Such an instance where the onus has been shifted on the accused to prove his innocence is in the case of dowry death as very often the victim in such a case is under the very stronghold of her husband and his relatives and is thus unable to leave any evidence behind her, and hence due to lack of evidence the accused escapes from the criminal liability. It has been concluded that as malignant diseases call for drastic remedies, to root out such an evil practice from our society, the mandatory presumption of guilt of the accused is a necessary step which has been rightly taken by the legislators.*

**Keywords:** Burden of Proof, Reverse Burden of Proof, Constitutional Validity, Advantages and Disadvantages of Reverse Burden of Proof, Dowry Death.

### I. INTRODUCTION

The burden of Proof has been derived from the Latin term '*onus probandi*' and is used in two different meanings in the Indian legal context, first, the burden of establishing a case and the

other being, the burden of introducing evidence. In a criminal trial, the burden of proving everything crucial to the foundation of the charge against the accused is vested on the prosecution and this responsibility does not shift from the accused. According to the Black's Legal Dictionary, Burden of Proof is defined as: "The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause."<sup>1217</sup>

The Burden of Proof is thus an obligation on a party to establish such facts in issue or relevant facts in a case to the required degree of certainty in order to prove its stand. For instance, for a situation of murder, the prosecution may contend that all the conditions establishing a murder are satisfied. All such conditions are facts in issue and there is a commitment to demonstrate their reality. This obligation is backed by the assumption that an accused is innocent until proven guilty.

On the other hand, Reverse Burden of Proof is an exception to the golden rule. While the presumption of innocence of the accused is an age-old doctrine, jurists have made a rebuttal to the presumption of innocence in which an accused might be assumed liable initially, and on the defence lays the burden to demonstrate that he is not guilty. Reverse burden of proof can be defined as 'one that moves the weight of verification upon the charged after the indictment demonstrates the presence of an essential actuality that leads to the shift in burden.'

Reverse Burden of Proof is thus a recent development and is a result of change in the legislative intent to protect the interest in cases where basing the burden on the prosecution decreases the chances of conviction. Normally, there are a few facts which can only be proved by the accused by adducing evidence. As these facts are of personal knowledge, the burden rests on the accused to show their existence.<sup>1218</sup> However, this shifting of burden is merely an evidential burden of proving facts, whereas Reverse burden of Proof is shifting of the substantive burden at the trial to prove guilt or innocence. Reverse burden, therefore, strikes at the very core of proving criminal liability of the accused.

## II. BACKGROUND

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\*NUSRL, Ranchi.

<sup>1217</sup> *Free Black's Legal Dictionary Online*, <http://www.freelawdictionary.org/burden-of-proof/> (last visited 29 Aug., 2020).

<sup>1218</sup> Indian Evidence Act, 1872, § 106.

The doctrine of Burden of Proof or the ‘golden rule’ of criminal jurisprudence was first discussed in the landmark English case of *Woolmington*,<sup>1219</sup> which is also known as the golden thread judgment. In this case, Viscount Sankey J. held that: “No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained . . . .”

In *V.D. Jhingan*<sup>1220</sup> it was established that this principle holds the most fundamental position in the Indian Criminal Jurisprudence. Though even before the aforementioned two cases, in the year 1917, it was held in *Ashraf Ali*<sup>1221</sup> that: “. . . in a criminal case [where] there is a conflict between the presumption of innocence and any other presumption, the presumption of innocence prevails.”

Not only is the Golden Rule a covenant of the criminal jurisprudence, but it has rather also been recognized as a Human Right. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 states that: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”<sup>1222</sup> Further, Article 11(1) of the Universal Declaration of Human Rights, 1948 also recognizes the golden rule, the Article reads as: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”<sup>1223</sup>

The burden of Proof thus lied on the prosecution. However, there arose instances where there existed presumption in the minds of Court as to the guilt of the accused. The legislature too recognized the fact that in some cases where the person is involved in a situation where he should not have been had it been in the normal course of circumstances, in such situation the burden must lie on the accused.

Francis Wharton in his celebrated book ‘Criminal Evidence’ highlighted the rationale behind not placing the Burden of Proof on an accused. The reason stated by him was that an accused may not have the resource to establish his innocence. He also highlighted that Burden of Proof in a particular type of crime depends on the fact that on whom the reasonable doubt

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<sup>1219</sup> *Woolmington v. Director of Public Prosecutions*, 1935 A.C. 462, at 481-82.

<sup>1220</sup> *V.D. Jhingan v. State of Uttar Pradesh*, A.I.R. 1966 S.C. 1762, ¶ 4.

<sup>1221</sup> *Ashraf Ali v. Emperor*, 43 Ind Cas 241, ¶ 14.

<sup>1222</sup> International Covenant on Civil and Political Rights, 1966, Article 14(2).

<sup>1223</sup> Universal Declaration of Human Rights, 1948, Article 11(1).

would rest in a normal circumstance. With this, he established that there are certain circumstances wherein the reasonable doubt may rest on the accused. In his words: “it is not a mere possible doubt because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt.”<sup>1224</sup>

In *Rex*<sup>1225</sup> the charge was laid under the Prevention of Corruption Act, 1916, and in respect of such a charge, Section 2 of the Prevention of Corruption Act, 1916 which is now repealed provided that a consideration will be considered to be given corruptly unless the contrary is proved. The inquiry which emerged under the steady gaze of the Court was to examine what kind of blame is needed to be proved if the benefit of the exception is to be claimed. At the trial, the judge had directed the jury that the onus of proving innocence lays on the accused and that the Burden of Proof resting on him to negative defilement was as weighty as that customarily laying on the prosecution. The Court held that:

*... where, either by statute or at Common law, some matter is presumed against an accused person 'unless the contrary is proved', the jury should be directed that the burden of proof on the accused is less than that required at the hands of the prosecution in proving the case beyond a reasonable doubt and that this burden may be discharged by evidence satisfying the jury of the probability of that which the accused is called on to establish.*

This judgment established that if there exists a statutory obligation to shift the onus on accused then it is considered to be valid, though the gravity of such will be lesser than that of the prosecution. In the light of Indian law, the *Veeraswamy's case*<sup>1226</sup> provides that:

*... a statute placing burden on the accused cannot be regarded as unreasonable, unjust or unfair. Nor it can be regarded as contrary to Article 21 of the Constitution as contended for the appellant. It may be noted that the principle reaffirmed in Woolmington case, is not a universal rule to be followed in*

<sup>1224</sup> 1 Francis Wharton, WHARTON'S CRIMINAL EVIDENCE 31-32 (1972).

<sup>1225</sup> *Rex v. Carr-Briant*, 1943 1 K.B. 607, at 612.

<sup>1226</sup> *K. Veeraswami v. Union of India*, 3 S.C.C. 655, at 714, ¶ 73 (1991).

*every case. The principle is applied only in the absence of statutory provision to the contrary.*

All the aforementioned cases established that the Golden Rule is to be applied only in cases where there existed no statutory obligation to the contrary. The case of *Mir Mohammad Omar*<sup>1227</sup> was the first to provide reasoning as to why in certain cases there exists a statutory obligation to shift the onus. The Court highlighted that:

*The pristine rule that the burden of proof is on the prosecution to prove the guilt of the accused should not be taken as a fossilized doctrine although it admits no process of intelligent reasoning. The doctrine of presumption is not alien to the above rule, nor would it impair the temper of the rule. On the other hand, if the traditional rule relating to burden of proof of the prosecution is allowed to be wrapped in pedantic coverage, the offenders in serious offences would be the major beneficiaries and society would be casualty.*

It was through this judgment it was highlighted that sticking to the Golden Rule in some cases may help the offenders and thus for the benefit of the society it is important to shift the onus and hence in those cases there exists a statutory obligation to shift the onus.

### III. CONSTITUTIONAL VALIDITY

As it has already been discussed, the doctrine of Burden of Proof is recognized as a human right and the Golden Rule is considered as a basic tenet of criminal jurisprudence and an internationally applicable principle. The Constitution of India, 1950<sup>1228</sup> does not expressly mention the Burden of Proof on the prosecution, but by way of interpretation in *Maneka Gandhi*,<sup>1229</sup> the Apex Court enunciated that Article 21 imbibes in itself the 'Right to fair trial' and 'presumption of innocence' until the guilt is proved, this thus substantiates the constitutional validity of resting of Burden of Proof on the prosecution.<sup>1230</sup> Further, Article

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<sup>1227</sup> *State of West Bengal v. Mir Mohammad Omar*, 8 S.C.C. 382, at 392, ¶ 31 (2000).

<sup>1228</sup> Hereinafter, Constitution.

<sup>1229</sup> *Maneka Gandhi v. Union of India*, 1 S.C.C. 248 (1978).

<sup>1230</sup> The Constitution of India, 1950, Article 21.

20(3) of the Constitution provides that no person shall be compelled to be a witness against himself.<sup>1231</sup> In *K. Joseph Augusthi*<sup>1232</sup> the Court held that:

*The main object of Art. 20(3) is to give protection to an accused person not to be compelled to incriminate himself and that is in consonance with the basic principle of criminal law accepted in our country that an accused person is entitled to rely on the presumption of innocence in his favour and cannot be compelled to swear against himself.*

The resting of Burden of Proof on prosecution and presumption of innocence of the accused has deep roots in the Constitution, though with the introduction of laws shifting the onus on the accused, questions were raised against its constitutional validity. The first instance where the question of the validity of such provisions rose was in *V. D. Jhingan*<sup>1233</sup> where the validity of certain provisions of the Prevention of Corruption Act, 1964 was validated which shifted the onus on accused.

In the light of the recent developments, the constitutional validity of Sections 34 and 54 of the Narcotic Drugs and Psychotropic Substances Act, 1985 were challenged in *Noor Aga*,<sup>1234</sup> which reversed the onus on the accused that there shall be a presumption of guilt on the accused until proven innocent. The Court was of the opinion that shifting of burden is necessary as there is a presumption of guilt. Although the gravity of onus is not as deep as is on the prosecution's side, it is still the responsibility of the prosecution to establish the guilt. The accused only has a primary burden to persuade the Court towards his innocence. The provisions were thus held not to be *ultra vires* to the Constitution.

The constitutional validity to such provision gives validity to the legislative intent of shifting the onus on the accused where the situation is such as inviting suspicion on part of the accused. The aforementioned judgments exhibit that the extent of such provisions is however limited on constitutional grounds.

#### IV. RELEVANT PROVISIONS

<sup>1231</sup> The Constitution of India, 1950, Article 20(3).

<sup>1232</sup> *K. Joseph Augusthi v. M.A. Narayanan*, A.I.R. 1964 S.C. 1552, ¶ 8.

<sup>1233</sup> *V.D. Jhingan v. State of Uttar Pradesh*, A.I.R. 1966 S.C. 1762, ¶ 4.

<sup>1234</sup> *Noor Aga v. State of Punjab*, 16 S.C.C. 417 (2008).

The burden of Proof has been discussed in The Indian Evidence Act, 1872<sup>1235</sup> from Section 101 to Section 114. The provisions establish the general scenario of Burden of Proof which permits the legislature to shift the burden by way of a specific statute.

The burden of Proof is defined in Section 101 of the Act<sup>1236</sup> as:

*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. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

Section 102 of the Act<sup>1237</sup> describes that the Burden of Proof lies on that person who fails if no evidence is produced from either side that is if A sues B for land which is in possession of B and then if A claims that the property belongs to A by the will of C, who is a father of B, then in such a case if no evidence were given on either side, B would be entitled to retain his possession. Therefore, the burden of proof is on A.

Section 105 of the Act<sup>1238</sup> puts the Burden of Proof on the accused if he/she is taking a plea of General Exception under the Indian Penal Code, 1860. Section 106 of the Act<sup>1239</sup> also puts the Burden of Proof on the accused in cases where knowledge pertaining to the case especially rests with him, for example, if A is accused of travelling on a train without having a ticket, then the burden of proving that he had a ticket is on him.

Section 114A was also introduced in the Act<sup>1240</sup> which reads as:

*In a prosecution for rape under [clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of] section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her*

<sup>1235</sup> Hereinafter, the Act.

<sup>1236</sup> Indian Evidence Act, 1872, § 101.

<sup>1237</sup> Indian Evidence Act, 1872, § 102.

<sup>1238</sup> Indian Evidence Act, 1872, § 105.

<sup>1239</sup> Indian Evidence Act, 1872, § 106.

<sup>1240</sup> Indian Evidence Act, 1872, § 114A.

*evidence before the court that she did not consent, the court shall presume that she did not consent.*

This section is a special legislation shifting the onus on the accused who is an alleged rapist. Such legislation increases the chance of conviction.

The Benefits of implementing such provisions are:

a) Deterrence Effect

The provisions create deterrence in the minds of masses since the cases where these provisions are introduced are of the likes of rape, dowry death, rioting, these are the gravest of all offences, hence, the fear should also be in proportion to the graveness. With the introduction of these provisions, a potential offender develops fear as chances of his conviction are high and there is no chance of him being acquitted on the grounds of lack of evidence.

b) Less Burden on the Prosecution

With the premise that the major objective of the judicial structure is to do justice, the incorporation of these provisions makes it easier for the prosecution to convict an accused and reduces the burden of the prosecution to prove the guilt beyond a reasonable doubt.

The Disadvantages of implementing such provisions are:

a) Potential Abuse

With the presumption of guilt on part of the accused, it gives power to the aggrieved party to abuse these provisions and harass innocent individuals. For example, in 2015 itself out of the 46,217 cases filed under Section 304B of Indian Penal Code, 1860, in 39,658 cases the accused was acquitted and 10,318 cases were withdrawn, which means the conviction rate was of a mere 14%.<sup>1241</sup>

b) Inclusion of Unconstitutional Provisions

The power to shift the onus on the accused can result in an inclusion of unconstitutional provisions which can be misused by political parties to achieve political gains. A classic example of such a scenario is *Sheikh Zahid Mukhtar*,<sup>1242</sup> where the constitutional validity of newly included Section 9B of the Maharashtra Animal Preservation (Amendment) Act, 2015 was questioned. The section reads as:<sup>1243</sup>

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<sup>1241</sup> National Crime Record Bureau, *Crime against Women*, <https://ncrb.gov.in/en/snapshots-2001> (last visited 27 Aug., 2020).

<sup>1242</sup> *Sheikh Zahid Mukhtar v. State of Maharashtra*, S.C.C. OnLine Bom 2600 (2016).

<sup>1243</sup> Maharashtra Animal Preservation (Amendment) Act, 2015, § 9B.



*In any trial for an offence punishable under sections 9 or 9A for contravention of the provisions of this Act, the burden of proving that the slaughter, transport, export outside the State, sale, purchase or possession of flesh of cow, bull or bullock was not in contravention of the provisions of this Act, shall be on the accused.*

The provision was struck down by the Bombay High Court as being *ultra vires* to the Constitution. From the simple reading of the text itself, it is apparent that the amendment was politically motivated. All the more, the provision is unreasonable and not required for.

## V. DOWRY DEATHS IN INDIA

Dowry is a social evil but for many people across India, it is often considered as a social necessity. Article 23 of the Constitution<sup>1244</sup> prohibits human trafficking and thus upheld the dignity of an individual, but even then a bridegroom has to be purchased by paying a hefty amount which is often beyond the economic capacity of the bride's family.<sup>1245</sup> Notwithstanding having laws precluding the giving or taking of dowry in any manner in the Dowry Prohibition Act, 1961<sup>1246</sup> the evil practice prospers among all areas of the society regardless of caste or class of an individual. The legislators tried to control the ill-treatment of women by their husband or in-laws by inserting Section 498A in the Indian Penal Code, 1860 in the year 1983 but statistics revealed shocking growth in the number of doubtful deaths of women in the marital home, persuading the legislators to enter two more provisions, Section 304B in the Indian Penal Code, 1860 and Section 113B in the Act in the year 1986. This was done to put an end the mounting incidences of dowry deaths by making special provisions for prosecuting the accused

Dowry is defined in Section 2 of the 1961 Act as:<sup>1247</sup>

*In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly: (a) by one party to a marriage to the other party to a marriage; or (b)*

<sup>1244</sup> The Constitution of India, 1950, Article 23.

<sup>1245</sup> R. Deb, *Dowry Deaths: Burden Of Proof*, 37(4) J. IND. LAW INST. 519, 519 (1995), [https://www.jstor.org/stable/43953251?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/43953251?seq=1#metadata_info_tab_contents) (last visited 30 Aug., 2020).

<sup>1246</sup> Hereinafter, 1961 Act.

<sup>1247</sup> Dowry Prohibition Act, 1961, § 2.

*by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other persons; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies.*

In *Arjun Dhondiba Kamble*,<sup>1248</sup> the Court has further elaborated the definition of dowry as:

*Dowry in the sense of that expression contemplated by Act 28 of 1961 is a demand for property or valuable security having an inextricable nexus with the marriage. In other words, it is a consideration from the side of the bride's parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride-to-be.*

In various cases, the dowry system results in crime against women, ranging from emotional abuse and injury to even deaths.<sup>1249</sup> There is a firm predilection for male kids, which has been blamed for years of female feticide. This has left India with a lopsided sex proportion. According to the 2011 census, there are 940 women for every 1,000 men.

NCRB has recorded 4668 dowry deaths in the year 1995. The numbers rose to 6787 in the year 2005 and further to 7634 in 2015. Studies uncover that out of the total number of complaints lodged, charge-sheet was made against 93% of the accused, but only one-third were convicted. This is despite having special provisions against the crime of dowry deaths.<sup>1250</sup>

## VI. BURDEN OF PROOF IN DOWRY DEATHS

The conventional notion of Burden of Proof states that the accused is contemplated to be innocent until his guilt is proved by the prosecution beyond reasonable doubt and this initial burden never changes, nor can the accused be convicted on mere suspicion. However, in the

<sup>1248</sup> *Arjun Dhondiba Kamble v. State of Maharashtra*, 1995 A.I.H.C. 273, ¶ 6.

<sup>1249</sup> Anita Rao & Svetlana Sandra Correya, LEADING CASES ON DOWRY (2011), [https://books.google.co.in/books?id=DS5OyWb0SogC&printsec=frontcover&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.co.in/books?id=DS5OyWb0SogC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false) (last visited 16 Aug., 2020).

<sup>1250</sup> Chayyanika Nigam, *21 Lives Lost to Dowry Every Day Across India; Conviction Rate Less than 35 Per Cent*, INDIA TODAY (22 Apr., 2017), <https://www.indiatoday.in/mail-today/story/dowry-deaths-national-crime-records-bureau-conviction-rate-972874-2017-04-22> (last visited 24 Aug., 2020).

case of dowry death, the burden of proof is shifted to the accused to prove his innocence. This paper has tried to analyse how the burden of proof in case of dowry deaths shifts to the accused to prove that he is not guilty.

The presumptive character of Section 113B of the Act makes it easier for the prosecution to secure a conviction under Section 304B of the Indian Penal Code, 1860 which deals with the offence of dowry death which provides that:<sup>1251</sup>

*(1) When the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry; such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.*

*Explanation: - For the purpose of this sub-section “dowry” shall have the same meaning as in S.2 of the Dowry Prohibition Act, 1961.*

*(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.*

Similarly, Section 113B of the Act creates presumption. It reads as:<sup>1252</sup>

*When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry, the court shall presume that such person has caused the dowry death.*

*Explanation: - For the purpose of this section “dowry death” shall have the same meaning as in S.304 B of the Indian Penal Code.*

<sup>1251</sup> Indian Penal Code, 1860, § 304B.

<sup>1252</sup> Indian Evidence Act, 1872, § 113B.

By the conventional standard of Burden of Proof, this raising of a mandatory presumption against the accused in a dowry death case may appear to be too harsh and somewhat unfair, for it virtually amounts to convicting him on grounds of suspicion. However, considering the ever-expanding number of dowry deaths and to uncover such evil from our society and for sparing many honest young ladies from being killed, there was no other elective left except for to opt for the recourse of such a drastic step.

Very often the victim in such a case is not only in a situation unable to speak but being in the very stronghold of her torturer, it cannot be expected to leave fool-proof positive evidence behind to tell her pathetic story after her death. It was once observed by the Hon'ble Supreme Court, though in the context of preventive detention that "malignant diseases call for drastic remedies".<sup>1253</sup> Thus, the Indian Parliament too was not left with any other alternative but to go in for such a drastic presumption against the accused so that this inhuman practice of executing guiltless young ladies for sheer greed is destroyed from our society. Certainly, the good of society as a whole is of far greater importance than the need to protect an individual innocent against a possible unjust conviction in a rare case. In the famous *Woolmington's* case,<sup>1254</sup> even Lord Sankey has conceded the right of the legislature to throw the onus on the accused in social interest, that it was the obligation of the prosecution to prove the guilt of the accused, subject to the ground of insanity exception under the statute.

If in a given case, there is direct evidence of cruelty in the form of causing mental and physical torture, no problem would arise in drawing a presumption therefrom under section 304B of Indian Penal Code, 1860 and section 113B of the Act. But such direct proof, more often than not, would be unavailable as the girl whose death is caused might have been living in a completely incommunicado situation. In *Ashok Kumar*<sup>1255</sup> a girl named Kiran Bala committed suicide within a few months of her marriage. There was a claim that the husband and her in-laws were disappointed with the dowry received earlier and they again made demands for more dowries. But the police statements did not show any allegation regarding any demand or torture by the accused. A vital letter concerning the demand of a scooter written by the mother of the deceased to her father was withheld from the court. It was held on the facts and circumstances of the case that the prosecution had failed to establish that the

<sup>1253</sup> *Fagu Shaw v. State of West Bengal*, 4 S.C.C. 152, at 162-63, ¶ 19 (1974).

<sup>1254</sup> *Woolmington v. Director of Public Prosecutions*, 1935 A.C. 462.

<sup>1255</sup> *Ashok Kumar v. State of Punjab*, 1 S.C.C. 746, at 748, ¶ 4 (1977).

husband was guilty. The given case illustrates the importance of the presumption of guilt of the accused.

Moreover, the husband and his relatives would take good care to see that they do not practise cruelty in presence of witnesses. They can also be expected not to be so foolish as to create any documentary evidence against themselves. On the off chance that guilt of the accused is not presumed due to lack of evidence of cruelty, then notwithstanding the enactment of Section 304B of Indian Penal Code, 1860 the position would stay, pretty much, as before and these greedy murderers would still remain at a safe distance from the law.

## VII. CONCLUSION

The burden of Proof and Reverse Burden of Proof are both established part of the Indian Legal System, on one hand, the Burden of Proof rests on the prosecution and is a traditional concept backed by International Conventions and Constitutional principles, finding its root in The Evidence Act, 1872 whereas Reverse Burden of Proof is relatively a newer concept developed by recent legislations keeping in mind the need of the hour. Shifting from the traditional position and going towards the other side, the Reverse Burden of Proof has both pros and cons. With the introduction of more and more provisions where the presumption is not of innocence, judicial discretion comes into the picture as it is now upon to the Court to control such misuse.

It can be hoped that by the Burden of Proof resting on the accused to prove his innocence in cases of dowry deaths, the dowry greedy beasts would soon learn to restrain themselves from indulging in bride burning or committing dowry deaths. The payment of dowry has been forbidden under Indian laws including the Dowry Prohibition Act, 1961 and also by Sections 304B and 498A of the Indian Penal Code but the ground reality looks to be far different. Cultural practices such as dowry system have assigned a secondary status to women leading to further ills such as female feticide and infanticide.

The custom of dowry deaths and murders keeps on taking place unchecked in various parts of India and this has further added to the concerns of enforcement. Hence by enacting Section 113B of The Evidence Act, 1872, a rule of mandatory presumption against the accused in dowry death cases, the Indian Parliament has rather belatedly tried to plug a loophole through which accused were hitherto escaping the law and this has helped the innocent women to get justice.