

Judicial Presumption and Burden of Proof Under the Bharatiya Sakshya Adhinyam, 2023: A Critical Analysis

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Abstract: *The Bharatiya Sakshya Adhinyam, 2023 (BSA), which came into force on July 1, 2024, repealing the Indian Evidence Act, 1872, represents a watershed moment in the evolution of Indian evidence law. As a component of the three landmark legislations that overhauled India's criminal justice architecture, the BSA seeks to modernize and streamline the rules of evidence while retaining the core principles inherited from the colonial-era statute.*

Among the most foundational principles enshrined in the BSA are those governing judicial presumptions and the burden of proof — doctrines which, in theory and in practice, determine how facts are established in court proceedings. This paper undertakes a comprehensive examination of these doctrines as codified under Chapter VII (Sections 104–120) of the BSA, through the prism of legislative text, judicial interpretation, and socio-legal policy. It traces the historical evolution of the burden of proof from the Stephanian framework of 1872 to the reformed BSA regime, identifying substantive continuities and noteworthy innovations. The paper critically analyses each category of presumption — may presume, shall presume, and conclusive proof — and evaluates their interaction with the overarching principle of presumption of innocence. It further discusses the shifting of the onus of proof in special cases such as dowry death, abetment of suicide, and consent in rape prosecutions.

Through the analysis of key Supreme Court judgments, the paper assesses the judicial approach to these doctrines and highlights certain concerns regarding misuse and the constitutionality of reverse onus clauses. The article concludes by arguing that while the BSA mostly preserves the evidentiary framework of its predecessor, targeted reforms — particularly the explicit textual definition of "burden of proof" for the first time — represent a meaningful, if modest, step towards greater legal clarity.

Keywords: *Bharatiya Sakshya Adhinyam*

I. INTRODUCTION

Evidence law constitutes the backbone of any adversarial justice system. Without robust and principled rules governing the admissibility, relevance, and evaluation of proof, the administration of justice would devolve into an exercise of conjecture. At the very heart of evidence law lies the doctrine of the burden of proof — a mechanism that determines which party bears the obligation to establish the existence or non-existence of a fact in legal proceedings. The companion concept of judicial presumption further refines this obligation by permitting or mandating certain inferences of fact without direct proof in defined circumstances.

The Indian Evidence Act, 1872 (IEA), drafted by Sir James Fitzjames Stephen, governed these principles for over a century and a half. The Bharatiya Sakshya Adhinyam, 2023, enacted as Act No. 47 of 2023, represents the first comprehensive legislative overhaul of these rules in independent India. The BSA does not make radical departures in the substantive law of burden and presumptions; as one scholar has noted, "All major rules of evidence on relevancy,



presumptions, burdens of proof... remain unchanged by the BSA." Nevertheless, the BSA introduces definitional clarity, renumbers provisions to align with contemporary statutory drafting norms, and contextualizes these doctrines within an updated criminal justice framework — including cross-references to the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023.

This article proceeds in six parts. Part I introduces the subject. Part II provides a conceptual and historical overview of burden of proof and judicial presumptions. Part III analyses the general provisions on burden of proof under Sections 104 to 114 of the BSA. Part IV examines the specific presumptions in Sections 115 to 120, with particular focus on their gender-sensitive dimensions. Part V critically evaluates the doctrine of reverse onus and its constitutional implications. Part VI offers conclusions and suggestions for reform.

II. CONCEPTUAL FRAMEWORK: BURDEN OF PROOF AND JUDICIAL PRESUMPTIONS

A. Burden of Proof: The Foundational Principle

The phrase "burden of proof" — derived from the Latin maxim *onus probandi* — refers to the obligation upon a party to establish the truth of facts asserted by them in a legal proceeding. The BSA, for the first time in Indian codified evidence law, provides a statutory framework wherein this burden is more explicitly defined across Sections 104 to 114, unlike its predecessor which dealt with the concept implicitly through illustrative provisions.

Traditionally, the burden of proof has been understood as comprising two distinct components. The first is the legal burden, also referred to as the persuasive burden or the burden on the pleadings. This is the fixed and primary obligation on a party to satisfy the court of the truth of the facts asserted and does not shift throughout the trial. The second is the evidential burden, sometimes called the tactical burden, which is a secondary obligation to adduce sufficient evidence to raise an issue and may shift as evidence is adduced. Under the BSA, as under the IEA, these two aspects are recognised implicitly through the interplay of various provisions governing the allocation and shifting of proof.

The bedrock principle underlying the burden of proof is succinctly encapsulated in the maxim: "he who asserts must prove." In criminal proceedings, this translates into the prosecution's unwavering duty to establish the guilt of the accused beyond a reasonable doubt. In civil proceedings, the standard is the preponderance of probabilities. The hallowed principle of the presumption of innocence, though not codified in the IEA or the BSA in so many words, permeates the entire framework of burden of proof in criminal law and has been repeatedly affirmed by the Supreme Court of India.

B. Judicial Presumptions: Meaning and Classification

A presumption, in legal parlance, is an inference of fact that the law directs — or permits — a court to draw from the proof of a specified basic fact or set of facts. Presumptions serve an important functional role in the law of evidence: they reduce the burden on parties to prove matters which, by reason of human experience or policy considerations, ought to be taken as established in the absence of rebuttal; they ensure efficiency in judicial proceedings; and, in certain socially sensitive contexts, they operate as instruments of protective policy.

Section 2 of the BSA classifies presumptions into three categories by defining the terms "may presume," "shall presume," and "conclusive proof." Where the statute uses the expression "may presume," the court enjoys a discretion either to regard the fact as proved unless and until it is disproved, or to call for proof of it. Where the expression "shall presume" is used, the court is under a mandatory obligation to regard the fact as proved unless and until it is disproved. Conclusive proof, on the other hand, represents the highest category of legal inference

— the court must accept the fact as conclusively established and no evidence is admissible to disprove it.

This tripartite classification mirrors the scheme under the IEA (Section 4), and its retention in the BSA signals the legislature's intention to preserve a well-settled framework of inferential reasoning. The practical significance of this classification is profound: a "shall presume" effectively shifts the evidential burden to the party seeking to rebut the



inference, while a conclusive proof extinguishes any possibility of challenge, howsoever compelling the contrary evidence might be.

III. THE GENERAL FRAMEWORK OF BURDEN OF PROOF UNDER SECTIONS 104–114

A. Section 104: The General Rule

Section 104 of the BSA codifies the fundamental proposition that whoever desires a court to give judgment as to any legal right or liability dependent on the existence of facts must prove that those facts exist. This provision is the locus classicus of the burden of proof — it crystallises the principle that it is the asserting party who must bear the burden and not the denying party. The illustrations to Section 104 are instructive: if A desires a court to punish B for a crime, A must prove that B committed the crime; if A desires judgment for certain land, A must prove the facts entitling him thereto.

The significance of this provision was deeply elucidated by the Supreme Court in the landmark case of *Kali Ram v. State of Himachal Pradesh*. In that case, Justice Hans Raj Khanna, writing for the bench, stated that the cardinal principle of criminal justice in India is that the accused is presumed to be innocent unless that presumption is rebutted by the prosecution through the production of evidence sufficient to show him guilty of the offence charged. The prosecution's failure to discharge this burden, the Court held, entitles the accused to the benefit of the doubt. The Supreme Court further stressed that a criminal trial is not a fairy tale and that the court must judge evidence by the yardstick of probabilities and intrinsic worth, always keeping in mind the primacy of the presumption of innocence.

B. Section 105: Burden in Proceedings

Section 105 provides that the burden of proof in a suit or proceeding lies on the party that would fail if no evidence were given on either side. This provision, which corresponds to Section 102 of the IEA, effectuates the "risk of non-persuasion" test for allocating the legal burden. In essence, it directs the court to identify who would fail if the proceedings were decided without any evidence at all — that party bears the legal burden. In most civil suits, this will be the plaintiff; in criminal trials, this is invariably the prosecution.

C. Section 106: Burden on Particular Facts and Section 107 and 108

Section 106 addresses the standard of proof required to establish a particular fact in issue or a relevant fact and ties back to the principle that the burden rests on the party who desire the court to believe in such fact. Section 107 creates a specific rule that where a person is proved to have been alive within thirty years, the burden of proving that such person is dead lies upon the party asserting such death. Section 108 creates the converse rule: where a person has not been heard of for seven years by those who would naturally have heard of him, the burden of proving that such person is alive is shifted to the party asserting the continued existence. Together, these provisions encapsulate the social importance attached to certainty in matters of status, life, and death.

D. Section 109: Burden of Proving Exceptions

Section 109 of the BSA addresses a situation that is of immense practical importance in criminal trials: where an accused persons claims that their case falls within a General Exception in the *Bharatiya Nyaya Sanhita, 2023* or any special exception or proviso defining the offence, the burden of proving the existence of those circumstances is placed upon the accused. The court, in such cases, shall presume the absence of such circumstances. This provision operationalises the principle that the prosecution need only establish the *actus reus* and *mens rea* of the offence — the burden of invoking defences such as insanity, self-defence, or grave and sudden provocation rests upon the accused.

It must however be noted that the standard of proof upon the accused in establishing such exceptions is not as high as that required of the prosecution. The accused is only required to establish the exception to the satisfaction of the court on a preponderance of probabilities, not beyond a reasonable doubt. This was affirmed by the Supreme Court in *K.M.*



Nanavati v. State of Maharashtra. Thus the evidential burden in such cases is lighter, while the prosecution's basic burden of proving guilt beyond reasonable doubt remains intact.

E. Sections 110–114: Special Allocations of Burden

Section 110 addresses situations where a fact is especially within the knowledge of a person, in which case the burden of proving that fact rests upon that person. This provision has particular relevance in commercial disputes and regulatory matters where the defendant alone may have access to relevant information. Section 111 deals with the burden of proving good faith in transactions where one party is in a relation of active confidence— such as between a banker and customer, or attorney and client. In such cases, the person in a position of confidence bears the burden of proving good faith and absence of undue influence.

Section 112 addresses the presumption of relationships such as those of partners, landlord-tenant, and principal- agent. Where persons have habitually conducted themselves as standing in one of these legal relationships, the party asserting the cessation or non-existence of such relationship bears the burden of proof. Section 113 creates a presumption of ownership from possession: when a person is found in possession of something, he is presumed to be its owner. Section 114 addresses the burden of proving good faith in transactions involving active confidence, particularly those between a guardian and ward, solicitor and client, parent and child, or a trustee and beneficiary. In all these cases, the person in the position of active confidence must prove not only the formal regularity of the transaction but also its substantive fairness.

The doctrinal significance of Sections 112–114 was examined in *State of Maharashtra v. Narsingrao Gangaram Pimple* where the Supreme Court recognised that statutory presumptions serve as legal shortcuts that reduce unnecessary burdens on courts while maintaining a principled allocation of the obligation to prove.

IV. SPECIFIC PRESUMPTIONS UNDER SECTIONS 115–120: GENDER-SENSITIVE AND SOCIAL POLICY DIMENSIONS

A. Section 115: Presumption in Disturbed Areas

Section 115 of the BSA creates a presumption regarding the commission of certain offences — specifically those falling under Sections 147 to 150 of the Bharatiya Nyaya Sanhita, 2023, or criminal conspiracy and abetment thereof — where the offence is committed in a declared "disturbed area" and it is shown that the accused was present in that area when firearms or explosives were used against armed forces or forces charged with the maintenance of public order. This provision is an unusual departure from the general principle of the presumption of innocence and must be read narrowly and applied carefully, given the constitutional implications of any reverse onus clause.

B. Section 116: Conclusive Proof of Legitimacy

Section 116 embodies perhaps the oldest and most socially entrenched presumption in evidence law: the presumption of legitimacy. It provides that the fact of a person's birth during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution (the mother remaining unmarried), shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties had no access to each other at the relevant time. This provision is a codification of the ancient maxim *pater est quem nuptiae demonstrant* (he is the father whom marriage indicates).

The Supreme Court's landmark ruling in *Goutam Kundu v. State of West Bengal* dealt extensively with the scope and nature of this presumption (then under Section 112 of the IEA). The Court held that the presumption of legitimacy is a rebuttable presumption of law, and can only be displaced by a strong preponderance of evidence establishing non-access — the mere balance of probabilities is insufficient. The Court further held that blood group tests cannot be ordered as a matter of course in routine maintenance proceedings and should only be resorted to in exceptional circumstances where there exists a strong *prima facie* case and the interests of the child and the justice of the situation demand it.



A subsequent development came in *Sharda v. Dharmपाल* where the Supreme Court held that a matrimonial court has inherent power to direct a DNA test in appropriate circumstances, and that such an order would not violate the right to personal liberty under Article 21, provided it is exercised with caution. The more recent judgment in *Dipanwita Roy v. Ronobroto Roy* further held that DNA evidence can be used to rebut the presumption of legitimacy, marking a significant evolution in the interface between traditional legal presumptions and modern forensic science. Section 116 of the BSA, being substantively identical to Section 112 of the IEA, inherits this rich body of judicial interpretation.

C. Sections 117 and 118: Presumptions in Gender Violence Cases

Sections 117 and 118 of the BSA represent the legislature's most significant policy interventions in the realm of presumptions — directly addressing the scourge of marital cruelty, abetment of suicide, and dowry death that has plagued Indian society. Section 117 provides that where a married woman has committed suicide within seven years from the date of her marriage and her husband or his relatives had subjected her to cruelty, the court may presume that such suicide had been abetted by her husband or such relative. The expression "cruelty" carries the same meaning as assigned to it in Section 86 of the *Bharatiya Nyaya Sanhita, 2023*.

Section 118 is an even more significant provision. It creates a mandatory presumption — using the word "shall" — that where a woman has died 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 his relatives in connection with demands for dowry, the court shall presume that such person has caused the dowry death. This provision, which corresponds to Section 113B of the IEA, is intended to address the structural evidentiary disadvantage faced by the family of a deceased bride — most evidence of dowry-related cruelty is confined within the matrimonial home and is therefore inaccessible to outside parties.

The jurisprudence surrounding the precursor of Section 118 is substantial and authoritative. In *Satbir Singh v. State of Haryana* — a seminal decision of the Supreme Court — the Court comprehensively laid down the guidelines for the application of the statutory presumption in dowry death cases. The Court observed that once all the essential ingredients of the dowry death provision are satisfied by the prosecution, the presumption of causality mandatorily operates against the accused. The accused is then required to rebut this presumption, a responsibility that rests heavily upon them. The Court further clarified that the phrase "soon before" cannot be interpreted as "immediately before" and that what is required is a "proximate and live link" between the cruelty or harassment and the death of the deceased.

Notably, in *Bansi Lal v. State of Haryana* the Supreme Court had emphasised that the word "shall" in this provision makes the presumption mandatory once the foundational facts are established, and that judges must be particularly cautious when recording the statements of the accused under Section 313 of the Code of Criminal Procedure, ensuring such examination is substantive and not a mere formality. These guidelines continue to be of equal relevance under the BSA.

In an earlier landmark, *Shanti v. State of Haryana* the Supreme Court held that the provisions dealing with dowry death and cruelty are not mutually exclusive and that the prosecution must present evidence proving that the dowry demand was accompanied by acts of harassment and cruelty. The standard of proof required for invoking the presumption is thus not illusory; the foundational facts must be genuinely and adequately established before the presumption is invoked against the accused.

D. Section 119: Court's Discretionary Presumptions

Section 119 of the BSA — corresponding to Section 114 of the IEA — grants the court the widest and most flexible power: to presume the existence of any fact which it deems likely to have occurred in the common course of natural events, human conduct, and public and private business. This section is enriched by an elaborate set of illustrations that guide courts in exercising this discretion. For instance, the illustrations contemplate presumptions about documents in proper custody, the non-payment of negotiable instruments, the deliberate use of threatening language, the failure of a party to produce evidence within their possession, and the guilt of an accused who flees from justice.



Section 119 represents the common law doctrine of *res ipsa loquitur* applied to evidence, and its illustrations make clear that the discretionary power is not unlimited — it must be exercised on the basis of the particular facts of each case and the accumulated wisdom of human experience. The Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra* laid down the celebrated Panchsheel Test for the evaluation of circumstantial evidence, which governs situations where the court is invited to draw inferences from a chain of indirect facts. The five principles require that: (i) the circumstances must be fully established; (ii) they must be consistent only with the guilt of the accused; (iii) they must be conclusive in nature; (iv) they must exclude every other hypothesis; and (v) the chain of evidence must be complete, leaving no reasonable ground for a conclusion consistent with the innocence of the accused.

E. Section 120: Presumption as to Absence of Consent in Rape Prosecutions

Section 120 of the BSA introduces a provision of profound significance for the prosecution of sexual offences. It provides that in a prosecution for rape under Section 64(2) of the *Bharatiya Nyaya Sanhita, 2023*, where sexual intercourse by the accused is proved and the question is whether it was consensual, if the woman states before the court that she did not consent, the court shall presume that she did not consent. This provision — which corresponds to Section 114A of the IEA — was introduced in response to recommendations made after the Criminal Law (Amendment) Act, 2013, and represents a legislative recognition that the prevailing adversarial procedure frequently subjected survivors of sexual violence to re-traumatization through the forced defence of consent.

The rationale behind this presumption is rooted in a broader understanding of the systemic barriers that prevent survivors from successfully prosecuting sexual offences. Given the inherently private nature of such crimes, the traditional requirement of proving absence of consent beyond a reasonable doubt placed an almost insurmountable burden upon the prosecution. Section 120 — and its precursor Section 114A — represents a recalibration of this burden. Once intercourse is proved and the woman testifies to non-consent, the burden shifts to the accused to rebut the presumption.

V. REVERSE ONUS CLAUSES AND CONSTITUTIONAL DIMENSIONS

A. The Doctrine of Reverse Onus

The concept of reverse onus refers to statutory provisions that shift the burden of proof from the prosecution to the accused, requiring the latter to disprove an element of the offence or establish a defence. While the general principle in Indian criminal jurisprudence is that the prosecution must prove every element of the offence beyond a reasonable doubt, several provisions of the BSA — and the broader criminal statutes — contemplate situations where the accused must prove or disprove certain facts. Such provisions are invariably challenged on the grounds that they violate the presumption of innocence and the right to a fair trial guaranteed by Article 21 of the Constitution.

The three-fold classification of presumptions under the BSA — "may presume," "shall presume," and "conclusive proof" — directly bears on the question of reverse onus. Provisions creating "shall presume" effectively operate as presumptions of guilt and transfer the burden to the accused to disprove the inferred fact. As the Supreme Court has acknowledged, the standard of proof required of the accused in discharging this burden is not as high as that required of the prosecution; the accused must meet the balance-of-probability standard.

B. Legislative History and Reform Considerations

The Law Commission of India, in its Report No. 185 reviewing the Indian Evidence Act, had addressed the question of reverse onus clauses and their compatibility with constitutional principles. The Commission expressed caution about the proliferation of reverse onus provisions, noting that while they may be justified in specific contexts — such as offences involving firearms, explosives, or narcotics — they must be narrowly drawn and must not effectively presume guilt. The Standing Committee on Home Affairs, in its Report No. 248 on the *Bharatiya Sakshya Bill, 2023* similarly noted that Law Commission recommendations for a presumption in favour of the prosecution in cases of custodial injuries had not been incorporated, indicating a measured approach to the expansion of reverse onus provisions.



Scholars have also noted that the BSA's retention of the pre-existing framework for dowry death and rape presumptions is, from a feminist jurisprudential perspective, a double-edged development. On the one hand, these provisions represent a progressive policy choice to protect vulnerable women from the structural disadvantages of the adversarial system. On the other hand, critics have warned that the inflexible operation of the presumption in cases like Section 118 — mandatory once foundational facts are proved — may on occasion lead to convictions based on presumption rather than proof, particularly in cases where the evidence of cruelty or harassment is itself weak or circumstantial.

C. Standards of Proof and Burden Shifting in Practice

The distinction between legal burden and evidential burden is particularly important in the context of reverse onus provisions. In *Kamesh Panjiyar v. State of Bihar* the Supreme Court held that in dowry death cases, the proximity test plays a crucial role — the prosecution must show a "close and live link" between the cruelty and the death, failing which the foundational facts for invoking the presumption would not be established. The court, in its judgment, laid down five essential ingredients to be proved before a conviction for dowry death can be sustained — that the death must be caused by burns or bodily injury or otherwise than under normal circumstances, that it must have occurred within seven years of marriage, that the deceased must have been subjected to cruelty or harassment by the accused, that such cruelty must be in connection with dowry demands, and that it must have been inflicted soon before the death. These elements represent the prosecution's foundational burden and illustrate the two-stage structure of reverse onus provisions: first the prosecution must establish the basic facts to the required standard; only then does the presumption operate to shift the evidential burden to the accused. The BSA, by retaining these provisions and their cross-references to the BNS, 2023, carries forward this two-stage structure. This is consistent with the observation in *M. Monir's* treatise that presumptions are not substitutes for proof but rather legal mechanisms that, once triggered, transfer the risk of non-proof to the other party.

VI. CRITICAL EVALUATION AND COMPARATIVE OBSERVATIONS

A. Continuity vs. Reform: A Balanced Assessment

The *Bharatiya Sakshya Adhiniyam, 2023* have been subjected to both praise and criticism in equal measure. Proponents argue that the Act introduces much-needed clarity, especially in the domain of electronic evidence, and that its provisions on burden of proof and presumptions continue a well-settled jurisprudential tradition.

Critics, however, have been more guarded — one notable commentary observes that the BSA "makes only a few substantive changes in improvement to the IEA" and that most changes pertain to renumbering and deletion of obsolete colonial references. From a purely technical standpoint, this assessment is largely accurate insofar as the provisions of Sections 104–120 are concerned.

The most noteworthy innovation, however, may be more subtle: the explicit textual definition of key terms such as "shall presume," "may presume," and "conclusive proof" in Section 2(1)(j), (k), and (l) of the BSA — though functionally identical to Section 4 of the IEA — now appear prominently in the definitional section, rendering the classificatory scheme more accessible to practitioners and laypersons alike. Similarly, the renumbering of provisions (e.g., Section 112 IEA now appears as Section 116 BSA) creates an internal logical sequence that aligns with the chapter structure of the Act.

B. Omissions and Missed Opportunities

Perhaps the most glaring omission in the BSA — particularly relevant to the provisions on burden of proof — is the failure to incorporate the Law Commission's recommendation for a presumption that injuries on an accused person in police custody were caused by the police officer in charge. This recommendation, aimed at addressing the structural power imbalance in custodial interrogation and the pervasive problem of custodial violence in India, was not incorporated into the BSA. Its absence is particularly striking given the Indian legal system's longstanding concern with custodial torture and the evidentiary difficulties faced by complainants in such cases.



Furthermore, the BSA does not explicitly codify the standard of proof required to rebut presumptions — whether balance of probabilities or some higher standard — leaving this entirely to judicial determination. Greater statutory clarity on this point would have been desirable, specially given that in practice courts have applied different standards depending on the context and the nature of the presumption involved.

C. The Panchsheel Test and its Continued Relevance

The five golden principles laid down in *Sharad Birdhichand Sarda v. State of Maharashtra* for the appreciation of circumstantial evidence — which interacts directly with the standard of proof required under Section 104 — remain as relevant under the BSA regime as they were under the IEA. The BSA's Section 119, which grants courts discretionary power to presume facts, must be exercised consistently with these principles to ensure that judicial presumptions do not serve as convenient substitutes for rigorous proof.

The genius of the Panchsheel Test lies in its insistence that circumstantial evidence must form a complete chain which admits of no hypothesis other than the guilt of the accused. The Supreme Court in that judgment unequivocally stated that the mental distance between "may be" and "must be" is long and separates vague conjecture from sure conclusion. This standard applies with full force under the BSA, and courts must guard against the temptation to bridge evidentiary gaps through resort to presumptions rather than through the careful and rigorous evaluation of direct and circumstantial evidence.

VII. CONCLUSION

The *Bharatiya Sakshya Adhinyam, 2023* represents both continuity and incremental reform in the field of Indian evidence law. The provisions governing judicial presumptions and the burden of proof — codified under Chapter VII, Sections 104 to 120 — preserve the essential architecture of the IEA while modernising the language, restructuring the provisions, and updating cross-references to align with the new criminal law statutes. The fundamental principles are intact: the prosecution in criminal trials bears the primary burden of proving guilt beyond a reasonable doubt; the accused benefits from the presumption of innocence; specific presumptions triggered by the establishment of foundational facts shift the evidential burden to the party against whom the presumption operates; and courts enjoy a guided discretion to presume facts based on the common course of events and human conduct.

The gender-sensitive presumptions in Sections 117, 118, and 120 — dealing with abetment of suicide, dowry death, and consent in rape cases — represent a thoughtful legislative response to structural inequalities in the criminal justice system and must be applied with equal measures of care and compassion. Judicial guidance, particularly through decisions such as *Satbir Singh v. State of Haryana* and *Kali Ram v. State of Himachal Pradesh*, provides the necessary interpretive guardrails to ensure that these presumptions serve their intended policy objectives without degenerating into instruments of unfair conviction.

It is, however, submitted that the BSA represents an opportunity — not entirely seized — for deeper and more transformative reform of evidence law in India. The failure to incorporate the presumption regarding custodial injuries, the absence of explicit provisions on the standard of proof for rebutting presumptions, and the essentially cosmetic nature of most changes leave several structural concerns unaddressed. Future legislative or judicial intervention should give serious consideration to these lacunae, with the ultimate objective of building an evidentiary regime that is truly accessible, fair, and responsive to the complex realities of contemporary Indian society.

In sum, the *Bharatiya Sakshya Adhinyam, 2023* is a significant but imperfect step in the right direction. Scholars, practitioners, and policymakers must engage critically with its provisions, particularly in the domain of presumptions and burden of proof, to ensure that the new legislation lives up to its ambitious promise of providing a principled, modern, and just framework for the administration of evidence in Indian courts.

