THOUGH the desire to work on the present subject had kindled in my heart long back, it took quite sometime for me to come out of the hesitation in taking some practical and positive steps to go ahead with the job. During the participation in the field of law for over two decades in different capacities, I began to sense a little difference between the assessment of evidence at the hands of the experienced Judges, who seemed to have always preferred to have broader and more liberal a view while appreciating evidence placed before them that of a common man responding to that very evidence.

Gradually I began to realise that those Judges were under the influence of some of the well established principles or doctrines of Anglo-American Law leading particularly to the acquittals of the accused in criminal cases despite there being proof to the satisfaction of a common man exposed to the particular situation in that case.

At times their judgments of acquittals bore reference to the doctrine of BENEFIT OF REASONABLE DOUBT, mostly expressed as "BENEFIT OF DOUBT". Thus, the anxiety to know as to how and why the Judges and Magistrates
deployed this technique began to grow and became more and more intense in my mind and that made me rather an addict of reading each and every paper bearing a reference to the phrase BENEFIT OF DOUBT, as it was usually expressed and referred to.

Opportunity came my way during my stay in Pune and I soon joined the Jayker Library located in the premises of Pune University to quench my thirst. But I was not allowed to take up the research project, unless I did my Masters and that made me complete my terms for the LL.M. course. Soon after finishing this Post Graduate exercise in law, I had the golden opportunity to pay a visit to the United States of America and Canada, which I availed of to some extent in collecting materials for my research work. The experience gained and information collected by visiting quite a few Universities and Courts in the United States and Canada, infused some confidence in me to go ahead with this project, though many a times I felt like swimming against the currents or attempting to climb a highly inclined steep.

While I had done substantial reading of the American cases during my stay there, I could collect material on English cases from Pune and the High Court library at Hyderabad, thus equipping myself adequately with the Western, or say Anglo-American cases and the views expressed by the Court of Criminal Appeal and the House
of Lords and some American Courts. I made a deep probe into the Indian case law, particularly from 1912 onwards, for which period the case law was available. The text books and also the reference books dealing with the subject both English and Indian were found to be based mostly on the cases decided by the Courts at various levels and sometimes the important views of the commentators found place in the case law itself. For example, the reference to the work of Sir Michael Foster, which influenced the English Judges for a considerable period of time, can be found in the famous case of Woolmington v. Director of Public Prosecutions (1935) A.C. 462.

Realising that the theory of standards of proof has mostly emerged out of the cases decided by the Courts, I have tried to concentrate on analysing the ratios of these decided cases within our country and abroad and that has placed me in a proper stead to view the growth and development of different standards of proof nurturing the principle which ultimately shaped itself into the doctrine, named BENEFIT OF REASONABLE DOUBT.

I tried to gather information from the ancient Hindu Law and also the law that was applied by the Muslim Rulers in the later period in India, mostly by the Kings, in giving judicial verdicts. Hardly was there any
reference to the standard or degree of proof, though in
the Hindu judicial system particularly, a lot has been
said about the number and qualities of a witness to be
placed reliance upon. In both these systems initially some
importance was given to the number of witnesses, traces
of which can be found even in the present law. Beyond that,
there appears no systematic thought given to the subject
and since degree or strength in the evidence led before
the Court did not have any direct proportion with the
quantum or quality only of the evidence, it was not
possible to gather something substantial from these
references.

I had the good fortune of having a discourse
with some of the living historians to enlighten myself as
to whether there was any occasion to criticise any of the
systems of justice prevailing in the ancient and remote
past under the Hindu and Muslim systems in respect of the
standard of proof. Dr. Khare of the Institute of History -
ITIHAS SANSHODHAN MANDAL, Shri Setu Madhavrao Pagdi, Shri
G.N. Dandekar and Shri Babasaheb Purandare, are some of the
doyens from whom I could confirm the fact that despite a
speedy trial and quick decision before the King, there
was no example of injustice being meted out to some
innocent person, recorded in the long history of our country.
The fear of innocent having been executed or held guilty
did never prevail. The trials in the open Darbar, that is,
the Courts involved all from the victim, witnesses and the accused with their active participation and constructive anxiety to place the truth before the King. I do not wish to include and therefore comment upon the ancient technique of determining the truth through devine methods like ordeals, which were given up in due course.

One thing that has prominently emerged out of the probe and a reasonably deep analysis of the literature available reflecting upon the ancient law, or say the indigenous law and procedure adopted and applied in India in different periods of history, is that before the advent of the British rule in India there was no bifurcation and thus a classification of different standards or degrees of proof. There is a lone reference to the subject in APASTHAMBHA SUTRA referred to by the Hindu Law scholar Dr. Kane in his great work HISTORY OF DHARMASHASTRA Vol. III page 360. But then there is no elaboration on the method of application of the rule. All the same there was only one standard of proof with no distinction between civil and criminal cases in the matter of application of such a standard.

I, for the purpose of the present work, have chosen some authorities prominent amongst the decided cases, Indian and foreign, which happen to be representativ in nature, after sorting the same from the plethora of cases having a bearing direct or indirect on the subject.
Each and every such case was thoroughly examined and chosen for reference. The material not taken up for analysis, however, did not bear precise reference to the doctrine of BENEFIT OF REASONABLE DOUBT though it dealt with general appreciation of evidence. During and after the studies, I repeatedly felt that a perfect dissection and complete analysis of the authority in Woolmington's case alone could pave the way for proceeding further with the hypothesis. Therefore, attempts have been made at various stages in the course of this study to examine the different shades of interpretation of facts and law emitted by this authority. The effort may not be deemed unjustifiable since this case alone has laid a foundation for the survival of the principle of the BENEFIT OF REASONABLE DOUBT, in some form or the other today, apparent from the fact that in the recent case of Supreme Court reported in A.I.R. 1990 Supreme Court, 1459, Vijayee Singh and others v. State of U.P. also, it finds a reference.

The ultimate aim has, however, been to see whether the codified Law of Evidence in India can accommodate this principle of extending the BENEFIT OF REASONABLE DOUBT to an accused person in a criminal case; and if it does not technically and even otherwise do so, we may be in a position to make a statement that this doctrine laying a higher standard of proof, which originated
in and through a peculiar set of circumstances in England, has no application here in India.

The examination of the doctrine and its application to the Indian conditions also becomes necessary as to admit or rule out the possibility of some error likely to be committed at the hands of the Judges presiding over criminal trials in India, since even an improper or imperfect interpretation of the principle might cause more harm than to serve the cause of justice. The positive reason, however, is that the provisions of Section 3 of the Indian Evidence Act sufficiently safeguard the interest of the accused and the victim both in a criminal case by setting a proper standard of proof suitable to the legal atmosphere in India.

This humble attempt is, therefore, to re-examine the doctrine of BENEFIT OF REASONABLE DOUBT as to its application in India, in a rational way without having that serious a thought of propounding a theory as to counter the Western trend of recognising standards of proof more than one and the faith reposed in this doctrine.