### CHAPTER VII

**SOCIO ECONOMIC OFFENCES AND THE RULES OF EVIDENCE**
*(495 to 515)*

<table>
<thead>
<tr>
<th>I. The general rules of Evidence in criminal matters</th>
<th>Page No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>)</td>
<td>499</td>
</tr>
</tbody>
</table>

| II. The rule regarding burden of proof.            |         |
| a) In civil and criminal matters                  | 500      |
| b) In Social & Economic offences                  | 502      |
| c) The burden of proving the actus reus and the burden of proving the mens rea. | 503      |
| d) Desirability of changes in the law             | 504      |

| III. The rule regarding presumptions               |         |
| 1) In the Evidence act.                           | 507      |
| 1i) In the laws relating to the social & economic offences | 509      |
| 1ii) The Lacunae in the law                        | 514      |
| 1v) Recommendations of the Law Commission         | 514      |
CHAPTER-VII
SOCIO-ECONOMIC OFFENCES AND THE RULES OF EVIDENCE.

The Indian Evidence Act, 1872 is one of the major sources of the Procedural law of our country as far as rules of evidence are concerned. This Act is intended to be a complete code of the law of evidence. It extends to the whole of India except the State of Jammu & Kashmir and is applicable to Civil as well as Criminal matters.

Criminal matters in our country being under the purview of two different types of laws, the general law of crimes and the special law of crimes, the very first thing that we have to find out is whether the rules of evidence as embodied in the Evidence Act, 1872 are applicable to the Social and Economic Offences in regard to which there is a large body of special law. In order to find an answer to this question we have to look into the provisions of the Code of Criminal Procedure, the Indian Penal Code and the Evidence Act.

Clause 1 of Section 4 of the Code of Criminal Procedure says, "all offences under the Indian Penal Code shall be investigated, enquired into and tried and otherwise dealt with according to the provisions hereinafter contained".
Clause 2 of the same section says, "all offences under any other law shall be investigated, enquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigation, enquiring into, trying or otherwise dealing with such offences".

Section 5 of the Indian Penal Code 1860 provides that "nothing in the Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or army men in the service of the Government of India or the provision of any special or local law.

Section 139 of the Penal Code further makes the matters clear when it specifies the jurisdiction for the trial of certain offences which have to be dealt with under special enactment. This Section reads as under:-

"No person subject to the Army Act, the Naval Discipline Act, the Air Force Act, is subject to punishment under this Code for any of the offences defined in this Chapter".

It is obvious from the provisions quoted above that the self-contained provisions wherever found in any special or local law or any special jurisdiction shall not be affected by the provisions laid down in the general law whether it pertains to substantive matters or procedural matters.
Before proceeding further with the matter let us examine the provisions of the Indian Evidence Act to find out whether there is any reference in the provisions of the Act about their applicability to the Social and Economic offences.

Section 1 which is the main provision about the applicability of the Act says, that the Act applies to all *judicial proceedings* in or before any *court*!

If matters pertaining to social and economic offences are such as to constitute *judicial proceedings* and are determinable in or before any court then the Evidence Act applies to them too.

A judicial proceeding is defined in the Code of Criminal Procedure as including any proceeding in the course of which evidence is or may be legally taken on oath.

The social and economic offences are dealt with by the judicial institutions. Proceedings are taken before the Court against those who violate the social/economic laws, and evidence is taken on oath in all cases falling under the provisions of various laws. The Evidence Act is the most relevant statute as far as rules of evidence are concerned.
Of course certain offences like offences relating to taxation, Customs and Excise are dealt with by Tribunals. The increasing duties of a Welfare State as a result of various social and other legislations have led to the establishment of many administrative Tribunals which exercise judicial functions analogous to those of ordinary courts. While such Tribunals are not bound by all the rules of Evidence they have to conform to the cardinal rules of evidence to obviate injustice to the accused.

Certain Statutes dealing with the social and economic offences specify the matters in regard to which the Evidence Act shall be applicable, and the matters in regard to which the Act shall not be applicable. For example, Section 96(2) of the Representation of People Act, 1951, says;

"The provisions of the Indian Evidence Act, 1872 shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of the Election Petition."

According to the above provision, the Evidence Act is applicable to Election petitions subject to the provisions of the Representation of People Act. This means that unless and until there is a provision contrary to the Evidence Act, the Evidence Act shall be applicable, and where a special rule is laid down the Evidence Act has to yield in favour of the Special Act.
The Prevention of Corruption Act, 1947 for instance lays down in Section 4 of the Act the rule in regard to raising of presumption when a Public Servant is charged with accepting or obtaining any gratification other than legal remuneration. A similar presumption can be raised under Sub-Section 2 of Section 4 against the accused person that he gave or offered to give gratification. These special provisions in regard to presumptions are something different from and not covered by the presumptions contemplated by Section 114 of the Indian Evidence Act.

_A fortiori_ the special law which lays down a special rule of evidence is not affected by the general rules of evidence laid down in the Evidence Act. If a special or local law lays down the rule for acceptance or rejection of evidence, or for drawing presumptions, that alone will govern the matters and the general law of evidence will to that extent have to yield in favour of the specific provisions of the special or local laws.

I. THE GENERAL RULE OF EVIDENCE IN CRIMINAL MATTERS:

While dealing with the question of guilt or innocence of the persons charged with crime, the following general rules have been laid down for the guidance of the Courts:-
1. The onus of proving everything essential to the establishment of the charge against the accused lies on the Prosecution.

2. The evidence must be such as to exclude beyond all certainty every reasonable doubt of the guilt of the accused.

3. In matters of doubt it is safer to acquit than to condemn for it is better that several guilty persons should escape than that one innocent person should suffer.

4. There must be clear and unequivocal proof of the corpus delicti.

5. Hypothesis of deliquency should be consistent with all the facts proved.

II. THE RULE REGARDING BURDEN OF PROOF:

(a) In Civil and Criminal matters:

In India, the rule of evidence in civil as well as criminal cases is that the burden of proving a fact lies on the party who asserts the existence of certain facts and not on the party who denies them. Section 101 of the Evidence Act says;

"Whoever desires any Court to give judgement as to any legal right or liability depending on the existence of facts, which he asserts, must prove that those facts exist".
Thus, in civil as well as criminal cases, the \textit{onus of proving every thing essential to the establishment of the charge against the accused lies upon the prosecution.}

This rule of evidence is based upon consideration of fairness and good sense and follows the cardinal principle that an accused is \textit{presumed to be innocent until his guilt is established}. The rule is derived from Roman Law and is supportable not only upon grounds of fairness but also upon that of the greater practical utility which is involved in proving the negative than for approving an affirmative.

The burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it, for a negative is usually incapable of proof.

Section 103 of the Indian Evidence Act simplifies the general rule regarding burden of proof. It says,

"The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the burden of that fact shall lie on any particular person".

This provision lays down the rule that if a person wishes the Court to believe in the existence of particular facts,
the onus of proving that fact is on him unless the burden to prove is cast by any law on any particular person. Thus, in a case of theft or receiving stolen property, though the main burden of proof is thrown on the prosecution, yet if the accused sets upon a case that he innocently purchased the property from the market or a particular place, he must prove it.

(b) In Social and Economic Offences:

The legislature of a State is competent to regulate the allocation or burden of proof in the courts. It is open to the legislature to impose the burden of proving one fact upon one party and of shifting the onus of subsequently proving another fact upon another party. It is incumbent on each party to discharge the burden of proof which rests upon him.

Section 14 of the Essential Commodities Act, 1955 which is one of the most important Statutes, on social and economic offences lays down the rule of burden of proof as follows:-

"Where a person is prosecuted for contravening any order made under Section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit licence or other document the burden of proving that he has such authority, permit, licence or other documents, shall be on him."
Where a person is prosecuted for contravening any order made under Section 3 of the Essential Commodities Act, which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other documents, the burden of proving that he had such authority, permit or licence or other documents, shall be on him. But the Section does not shift the total burden of proof from the prosecution to the accused. The section only throws the burden of proving the facts stated therein on the accused. Therefore, when a person is prosecuted for contravening Clause 4 of the Iron and Steel (Control) Order, 1956, Section 14 of the Essential Commodities Act casts the burden of proving only the third ingredient, i.e., possessing a lawful authority, permit or licence to acquire, and the burden of proving the first two ingredients, namely, (1) the doing of the prohibited act of acquiring, and (2) acquiring from any of the three specified sources, remains on the prosecution. Unless these two ingredients are established by the prosecution, Section 14 would not shift the burden of proof on the accused.

(c) **The burden of proving the actus reus and the burden of proving the mens rea:**

The traditional Criminal Jurisprudence requires that before criminal liability is imposed a certain mental element of the offender must be proved. The most familiar name used
to denote this mental element in crimes is 'mens rea'.
According to this doctrine a person ought not to be punished
for an act in the absence of a culpable state of mind with
reference to the act.

It is well established in the traditional jurisprudence
that the burden of proving the required mental element is on
the prosecution which in accordance with the general rule
applicable to criminal proceedings is required to prove its
case beyond reasonable doubt.

(d) Desirability of changes in the law:

The modern criminal law has witnessed the emergence
of a new category of offence called "public welfare offences".
In this category of offences the element of mens rea has
undergone a modification and has in certain cases suffered
elimination. Authorities have taken the view that there is
no need for dealing with economic offences in a manner
different from traditional crimes. The practical aspect
which has weighed with the authorities is that although the
actual facts of a particular case relating to economic offences
may appear to possess only a minor significance, there is
behind the curtain a ring of associates engaged in committing
the crime. These crimes it is difficult to prove before
the Court in conformity with the traditional standard of proof.
The moral conviction of enforcement officers is difficult to be translated into the legal conviction of the minds of the judicial agency operating in the traditional manner. The mental element undoubtedly exists but it is difficult to prove it. The act that has caused damage is and can be unreal but the mind behind it remains unproved. Such a situation the authorities say, is productive of great harm. It is for this reason that the authorities have thought of a solution which, while preserving the requirement of mens rea, throws the burden of proving it on the accused.

(e) **Recommendation of the Indian Law Commission.**

The Law Commission of India in its "47th Report on the Trial and Punishment of Social and Economic Offences" suggested a solution to this problem, which while preserving the requirement of mens rea, throws the burden of proof on that the accused. The Law Commission has suggested/such a special rule of evidence is not necessary in the case of petty offences which cause minor injury, but it is desirable in the case of major offences which cause substantial damage to the society.

The Law Commission has relied on the following observation of Justice Cardozo of the American Supreme Court in *Morison vs. California*, (1933-291-US-82) which was a
case of constitutional validity of presumption in criminal cases, in which, he said:--

"The decisions are manifold that within the limits of reason and fairness the burden of proof may be lifted from the State in criminal prosecution and cast on the Defendant".

The Law Commission has also referred in its Report the recent English provision "Section 28(2) of the Misuse of Drugs Act, 1971", which is of some interest which reads as follows:--

"(2) subject to sub-Section 3 below, in any proceedings for an offence to which this Section applies it shall be a defence for the accused to prove that he neither knew of nor suspected, nor had he reason to suspect the existence of some facts alleged by the prosecution, which it is necessary for the prosecution to prove if he is to be convicted of the offence charged".

The effect of this provision is that in the specified offences the prosecution is required to prove that the accused committed the actus reus of the particular offence. It is then for the accused to prove that he committed the actus reus innocently.

The considerations which have found favour with the Law Commission are that stringent provisions are necessary to
deal effectively with the economic offences at the present
time. The Law Commission has in its 47th Report repeatedly
emphasised the practical importance of the matter. It is
said that "although the actual facts of a particular case
relating to economic offences may appear to possess only
minor significance, there is behind the curtain a ring of
associates engaged in committing the number of crimes.
These crimes, it is difficult to prove before the Courts in
conformity with the traditional standards of proof. The
moral conviction of responsible officers is difficult to be
translated into legal conviction of the minds of the judicial
agencies operating in the traditional manner. The mental
elements undoubtedly exists but it is difficult to prove it.

caused the

The fact that the accused/damage may be unreal but the mind
behind it remains unproved. Such a situation we think is
productive of great harm".1

III. THE RULE REGARDING PRESUMPTIONS:

(i) In the Evidence Act.

The subject of presumption constitutes a very intricate
branch of the law of evidence. The following is a tabular

1. Para 7.8 of Chapter VII of the 47th Report of the
   Law Commission of India on the Punishment and Trial
classification of presumptions based upon the system adopted in the Indian Evidence Act, 1872:

\[
\begin{array}{cccc}
\text{PRESUMPTIONS} \\
\hline
\text{\textbullet} & \text{\textbullet} & \text{\textbullet} & \text{\textbullet} \\
\text{PRESUMPTIONS OF FACT} & \text{PRESUMPTIONS OF LAW} \\
\text{or} & \text{or} \\
\text{Natural Presumptions.} & \text{Artificial Presumptions.} \\
\end{array}
\]

A. Presumptions of facts or natural presumptions:

In the Indian Law of Evidence these presumptions are always permissive, rebuttable and do not constitute a branch of jurisprudence. They are enacted in the Evidence Act, by the expression "may presume", for example, Sections 86 to 88 and Section 114.

B. Presumptions of Law.

a) Rebuttable presumptions of law.

These presumptions are enacted in the Indian Evidence Act by the expression "shall presume" for example, Sections 79-85, Section 89 and Section 105 of the Evidence Act.

b) Irrebuttable presumptions.

These presumptions are enacted in the Act by the expression 'conclusive proof' for example, Section 41,
Section 112 and Section 113 of the Indian Evidence Act.

Presumptions of Law are arbitrary inferences which the law expressly directs the Court to draw from particular facts. These presumptions are nothing but deductions from human experience and observation and expressed in the form of an artificial rule of law. Unlike presumptions of facts, they are always obligatory being expressed in the form of an imperative rule of law. They may, however, be rebuttable or irrebuttable. When rebuttable, they are called "rebuttable presumptions of law" and are enacted in the Act by the expression 'conclusive proof'.

(ii) In the laws relating to the Social and Economic Offences:

(a) Section 13 of the Essential Commodities Act, 1955 contemplates a presumption of law. It provides for a presumption of evidence as to an order purported to have been made or signed by an authority in exercise of any power conferred by or under the Act and lays down that the Court shall presume that such order was made by an authority within the meaning of Evidence Act, 1872. The section reads as under:

"13. Presumption as to order:

Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a Court shall presume
that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872".

(b) In Indian Criminal Law, an accused person is entitled to be presumed innocent till there is evidence of his guilt. It may be right to have regard to the position in life of the accused in considering whether any presumption can be raised about his innocence or guilt, but a person cannot merely on account of his/her position or age be deemed to be immune from the consequences of his acts, if in fact they are criminal.

Section 4(2) of the Suppression of Immoral Traffic Act takes into account the activities, the movement etc., of a person and raises a presumption that he is guilty of involving himself in immoral traffic offences. The provision says, where any person is proved to be living with or to be habitually in the company of a prostitute, or to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling her to prostitution or to be acting as a tout or pimp on behalf of a prostitute, it shall be presumed that until the contrary is proved that such person is knowingly living on the earning of prostitution of another person.
Provided that no such presumption shall be drawn in the case of a son or a daughter of a prostitute if the son or daughter is below the age of 18 years.

Section (4) of the Prevention of Corruption Act, 1947 contains the following rule with regard to presumptions:

"Where in any trial of an offence punishable under Section 161, it is proved that the accused person has accepted any gratifications other than legal remuneration from any person, it shall be presumed unless the contrary is proved that he accepted that gratification as a motive or reward, such as is mentioned in Section 161".

(d) Section 21 of the Untouchability (Offences) Act, 1955 lays down a rule of presumption. It says,

"Where any act constituting an offence under this Act is committed in relation to a member of a scheduled caste as defined in clause (24) of Article 366 of the Constitution, the Court shall presume unless the contrary is proved that such act was committed on the ground of untouchability".

(e) A similar rule of presumption is found in the Public Gambling Act, 1867. Section 4 of the Act says:

"Any person found in any common gaming house or in gaming or playing therein shall be presumed until the contrary be proved to have been there for the purpose of gaming."
Section 24A of the Foreign Exchange Regulation Act, 1947 contains the rule of presumption as to documents in certain cases. It reads thus:

"24A: Presumption as to documents in certain cases:

Where any document is furnished by any person under sub-Section (2) of Section 19, Section 19E, or Section 19F or has been seized under Section 19A or Section 19C or Section 19D from the custody or control of any person and such documents is tendered by the prosecution in evidence against him, the Court or the Officer adjudicating under Clause (a) of sub-Section (2) of Section 23 shall unless the contrary is proved by any such person, shall presume—

(a) the truth of the contents of such document;

(b) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court or the officer adjudicating under Clause (a) of sub-Section (1) of Section 23 may reasonably assume to have been signed by, or to be in the handwriting of any particular person, is in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested".

A similar rule of presumption is found in the Customs Act, 1962 in regard to documents seized from the custody of a person. Section 139 of the Act reads as follows:-
"139. **Presumption as to documents in certain cases:**

Where any document:--

(i) is produced by any person or has been seized from
the custody or control of any person, in either case,
under this Act or under any other law, or

(ii) has been received from any place outside India in
the course of investigation of any offence alleged
to have been committed by any person under this Act,
and such document is tendered by the prosecution in
evidence against him or against any other person
who is tried jointly with him, the court shall--

(a) presume, unless the contrary is proved, that
the signature and every other part of such
document which purports to be in the handwriting
of any particular person or which the court may
reasonably assume to have been signed by, or to
be in the handwriting of any particular person,
is in that person's handwriting, and in the
case of a document executed or attested, that
it was executed or attested by the person by
whom it purports to have been so executed or
attested:

(b) admit the document in evidence, notwithstanding
that it is not duly stamped, if such document
is otherwise admissible in evidence;

(c) in a case falling under clause (i) also
presume, unless the contrary is proved, the
truth of the contents of such document".
(iii) **The lacunae in the law.**

While the provisions of the Foreign Exchange Act and the Customs Act referred to above allow presumptions to be raised with regard to the genuineness of the documents, these presumptions are good for the purposes of prosecution under the same Acts. These presumptions cannot be availed, if the prosecution is under some other Act. Nor can the presumption made against one person be used against another person. Nor can the presumption be applied to document received from a place outside India. These lacunae have been noticed and various authorities have suggested changes to be made in the law, so that prosecution may not find any difficulty in availing the presumptions under various Statutes and against several persons.

(iv) **Recommendations of the Law Commission:**

In its 47th Report the Law Commission of India has made the following recommendations with regard to the scope of presumptions and suggested certain changes in the relevant provisions of the Acts. In Chapter XII of its Report (Para 12.1 to 12.4, page 96 of the Report), the Commission has said:
"Both Sections 24A of the Foreign Exchange Regulations Act and Section 139 of the Indian Customs Act, enacted a provision as to the genuineness of the documents seized from the custody or control of a person. But the presumption in respect of documents seized under one Act cannot be availed of when the prosecution is under the other Act. Since in practice the need for such use often arises, we think that this gap should be removed. A presumption could be made available to seize under any other law."

Both in the Foreign Exchange Act and in the Customs Act it is also desirable that the presumptions should be applicable also where the documents are seized from a person other than the accused. We accordingly recommend the amendment to widen the scope of the relevant Sections in both the Acts in this regard.

We are also of the view that these presumptions should apply also to documents received from places outside India."