6.1 Preface:

In the present research work we are discussing about the rights of accused. We have already studied in details the rights enshrined in the Constitution of India to accused. We have also studied the rights given under the Criminal Procedure Code. In the present chapter we are going to discuss in detail about the rights given under the Indian Evidence Act. In the present chapter the researcher is making a diligent effort to study about the rights under the Indian Evidence Act even if they are being observed or not.

6.2 Thought about Innocence in the Evidence Act:

Whenever an offence has been committed in our country, the same is tried according to the provisions of the Criminal Procedure Code. Whether accused is innocent or offender is decided on the basis of evidence available in the case. Accused can be convicted even if the evidence is not against him. Normally it is believed that he is innocent unless a crime is proved against a person or accused and during this process accused cannot be denied the rights of individual freedom given to him under the Constitution of India and also human rights. The Supreme Court and
different High Courts in this respect have given several decisions. The thought that accused is innocent till the offence is proved is always in the minds of the court.

6.2.1 Presumption of Innocence in the Evidence Act:

Our laws are based on the Common Law and equality of law. One of the important and well-known principles is that a person is believed to be innocent till the guilt is proved against him. This principle is called the Presumption of Innocence. In other words, accused is entitled to take advantage of reasonable doubt in respect of his crime. This principle is being seen in countries where executorial system is prevalent. In several European countries the Inquisitorial principle or the principle based on inquiry is not being followed. But contrary to Indian Law in several countries accused is considered to be an offender till he is proved to be innocent. Since India is having executorial system, the law has accepted both these principles. Under these provisions, Magistrate remains neutral and helps accused instead of the complainant. This means, even if accused is not aware of his legal rights, he gets necessary help from the court and the court ensures that accused are not denied their rights. Complainant in criminal cases is represented by the State and that helps in the process of finding out the truth. However, it is not the duty of the complainant to ensure that accused is convicted by any means. Their only duty is to divulge the true facts without bias before the Court. Their interest is to see that the truth is revealed and the culprit is
punished. On the other hand, the defendant has to look after his client’s interest and needs to do everything possible to protect accused. Besides, in our legal system provisions have been made to conduct criminal cases in open court and accused is given adequate opportunity to prove his innocence.

In the present research, researcher has found this principle in several ancient books and Fichte has stated in one of them that “It is preferable to allow 20 guilty persons to get away than to punish an innocent person.” While giving similar principle, Mathew Hill has stated that it is preferred if 5 guilty persons escape without punishment than to execute an innocent person. Then Justice Harlingen Hopson has stated that the Principle of Law of England is to let 10 guilty persons escape the punishment than to punish a single innocent person. Even though during that period, accused was seen with a doubt. Accused remain in danger during the process of Common law. Many a times accused had no knowledge about engaging a lawyer for his defence, to get case papers, that he is allowed to know about the witnesses against him and there was no criteria on the acceptance of evidence. Cases were decided in a single day. Thus the criminal law of England before 400 years was unbearable and hard for accused. It does not appear that any thought about the rights of accused or rights as a human being were given any consideration. The principle of innocence of accused is a gift of changes in the society. While giving foundation of this principle, Steven has stated that the
reason to believe innocence of accused is not that the
presumption is true but in the present era the society has
become stronger than a single person and that the society
can cause more harm to a person than the society. It is
therefore necessary that the society should become lenient.
Leniency depends on individual case and its circumstances
and continues to change. In some cases it becomes proper
to presume guilty than innocence. When the fear and
insecurity in the society is reduced and prosperity, peace and
security increases, it is appropriate to show leniency. It is
convenient to show leniency when there is active police
department, well planned criminal law, rules regarding
procedure and evidence. Following two rules can be derived
from such a leniency of law:

(1) A person who gives certain Statement, the
burden to prove that Statement lies on him;
(2) Till a case is not proved against accused, which
means until accused is proved guilty; it is to be
presumed that he is innocent.4

In the case of Shivaji Saheb Rao Bobade5 the
Supreme Court cautioned that though this doctrine is very
much useful, this golden rule has to be used with caution and
cannot be used in any type of doubt. Accused is to be given
only a reasonable benefit of doubt. As such, if the principle of
“even if a thousand people may get acquitted, one innocent
person should not be punished” is applied in all cases and is
relied upon indiscriminately, it may cause an adverse effect
on the administration of justice and the society may loose
faith in it. Besides, it is not desirable to acquit or convict accused wrongfully. Even if accused were given punishment wrongfully, this also would create an adverse effect on the society. If accused is punished without adequate evidence against him, it also would create a bad impression on the society and may have serious consequences on his family—financially and socially. Therefore the judiciary should be very much alert while convicting any one. In our country it is a well-known slogan that even if ninety-nine guilty may get away one innocent person should not be punished. This doctrine is being used extensively. In other words, we observe that our country and our judiciary take a very lenient view in this respect. On the presumption of accused being innocent, large numbers of accused get acquitted and only in a few cases the conviction is awarded. Thus, this doctrine is used extensively in our country and bad elements of the society take full advantage of this principle.

6.2.2 Exceptions in Presumption of Innocence of Accused:

As per the prevailing judicial procedure and the fundamental law of the criminal law, in most of the cases the burden of proof is normally on the complainant. When the complainant can prove the case without any doubt and is beyond a reasonable doubt, then only accused can be convicted. If the offence is not proved according to reasonable doubt, accused has to be acquitted, that means it
is presumed that accused is innocent. There are certain notable exceptions in this presumption:

(1) In many laws Mens rea or criminal mind is not there. While performing certain public welfare activities, a presumption arise that accused is guilty. Here accused has to prove that he was not guilty.

(2) In certain other crimes like keeping stolen goods, crimes related to prohibition, crimes related to moral turpitude, adulteration of foodstuff, dowry cases, terrorism crimes, crimes against drugs, etc., it is presumed that accused is guilty. An evidence of pre-mediation can be given against such accused, which means it cannot be believed that accused is innocent.

In our prevalent legal system, normally it is believed that accused is innocent but three sections of the Indian Evidence Act Section 111-A, 113-A and 113-B have been added later on. By these three sections the burden of proof has been shifted from the complainant and imposed on the accused. The provisions of these three sections are that when a person has:

(a) Committed an offence under Section 121, 121-A, 122 or 123 OR

(b) Has planned to commit a crime covered under Section 122 or 123 or encouraged to commit a crime, Section 111-A (1) of the Indian Evidence Act is applicable. Section 111-A(2) is applicable when someone has
been charged with commission or alleged to have committed any of the aforesaid offences.

(c) Section 111-A(1) of Indian Evidence Act is applicable when a person is alleged to have committed a crime in disturbed area where laws relating to public peace and tranquility and controlling the disturbance are in force and the area has been declared a disturbed area, OR

(d) Any area where there is excessive disturbance for more than a month and if accused in such cases have been shown to have attacked or used fire arms or explosives on members of armed forces performing their public duty for maintaining peace or were attacked, unless shown otherwise it would be primarily presumed that such a person has committed an offence and Section 111-A(1) would be applied against them. When a question arises if a woman has been encouraged to commit suicide by her husband or relatives or in-laws within seven years of marriage and /or if a woman has committed suicide and has been shown that any of her relatives has behaved cruelly towards her, in such cases taking all the circumstances into consideration, it would be presumed by the Court that her husband or relatives or in-laws have prompted her to commit suicide. This provision has been made in Section 113(a) of the Indian Evidence Act. When a question arises if a person has caused death of a woman for dowry and such a person had demanded and harassed her for dowry soon before the death or
behaved cruelly towards her, in such cases the court would presume that such a person has caused the dowry death. This provision has been made in Section 113(B) of the Indian Evidence Act.⁶

6.2.3 Benefit of Reasonable Doubt to Accused:

In our judicial system when the case is conducted, it is seen that there was only a doubt or a reasonable doubt. Normally when there was any sort of doubt, it cannot be said that it was a reasonable doubt. Such doubt should not have arisen due to whims, fear, weakness or immorality. The doubt, which after a peaceful observation, appears to be genuine to an intelligent person and makes him to come to a conclusion of reasonability, such doubt could be called Reasonable Doubt. Such doubts may not have been considered as doubts in civil cases but in criminal cases such doubts are treated as reasonable doubts. In creation of a reasonable doubt, the degree of probability should be higher. It is not to be treated as evidence beyond reasonable doubt, which means, evidence without a shadow of doubt. If the evidence against accused is overwhelming and if there is only a possibility of fear in his favor, in such cases the case shall be treated as being proved beyond a shadow of doubt. If there is anything less than this, it cannot apply. In short, reasonable doubt should be proper, for example

(1) If a person is rummaging some things in a bungalow, than it can be presumed that the said person has
entered the house with an intention to commit some crime, a reasonable doubt could be raised.

(2) When a student is giving his annual examination and is reading or shuffling papers other than question or answer paper, there can be a reasonable doubt that his intention is to resort to some illegal act.

(3) When a person threatens someone to kill him and is running behind him with an open sword, it can be presumed that there was a reasonable doubt to kill him.

(4) When a person, disguised in different clothes rushes with a revolver to the cashier of the Bank and demands to deliver cash, a presumption can be made that he had an intention of robbing the bank and it can be said to be a reasonable doubt.

(5) When a woman is found, except with her husband, from a guest house or any building with some other person, which makes people to believe differently, it can raise a reasonable doubt that she had gone there for adultery or immoral relationship.

(6) If someone is responsible for handling cash and even after seeking accounts for such money, does not give or avoids giving accounts, it can be presumed that there is a reasonable doubt of misappropriation or some major mistake.

(7) When a young boy and a young girl belonging to different religion are sitting together in a secluded
place it can be presumed that they are engaged in lovemaking.

(8) When a person is found at a different place than his assigned place of duty, during working hours, than it can be presumed that the person is careless or that he is going out during service hours.

Thus, from above examples, a man with common understanding can presume that whatever that person is doing is not proper. Reasonability of this can definitely be presumed. If a person lights a matchstick in the standing crop and the matchstick is extinguished due to wind then even though the fire has not taken place, it can be reasonably surmised that his intention was to destroy the crop. In this way, even though the crime has not been committed, it can be often presumed that the intention of the person was to commit a crime.

6.2.4 Burden of Evidence or Proof and Its Development:

In our country two types of court proceedings take place,

(1) Civil proceedings that are conducted according to Civil Procedure Code,

(2) Criminal proceedings conducted according to Criminal Procedure Code.

In both these proceedings evidence is taken according to Indian Evidence Act. In civil cases plaintiff has to prove his case. If he fails in this, the case is dismissed. In the same
way, in majority of criminal cases, barring some exceptional cases, the onus of proof lies with the complainant. If the complainant fails to prove the offence, accused is acquitted. In the present age, it is a golden rule of the criminal law that “the Law believes that accused is innocent”. This assumption is a part of Evidence Act. If any law does not specify that the onus of proof will lie on a particular person, but desires that existence of certain facts are to be believed by the court, the burden of proof will lie on that person. If a person has filed a complaint against the second person for theft and if the second person has confessed this fact to the third person, and if the complainant wishes the court to believe this confession, he will have to prove it. But if the second person that is charged with theft says that he was elsewhere than he will be required to prove it. This is stated in Section 103 of the Indian Evidence Act. In the case of State of Uttar Pradesh v/s Sughar Singh and others(7) the Supreme Court held that accused had an alibi about his being at other place than the place of offence and there was no probability of his being present at the place of offence. If such a defence is taken by accused, the burden to prove it lies on accused. If he fails to prove this, the complainant can prove his case and accused can be punished.

When a person is accused of some crime in a criminal case under some exceptional provisions of the Indian Penal Code, the burden to prove existence of such circumstances relating to such a crime under general exceptions lies with that person. In these types of cases, the court has to
presume that such circumstances did not exist as per the provisions of Indian Evidence Act, Sec.105. The court starts with the presumption that such circumstances did not exist and then both parties have to produce their evidences. At that time both the parties, can destroy the presumed facts and circumstances before the court with the help of evidence. As held by the Allahabad High Court in the case of Partap v/s. State of Uttar Pradesh two meanings can be derived from the word burden of proof fixed by the Supreme Court.

(1) In general sense, the burden of proof lies always on the complainant. In other words, accused has not to prove his innocence.

(2) The meaning of “special burden of evidence” is to produce certain evidence. In such cases, the onus to prove the evidence lies with accused.

In A. Raghavamma and another v/s. A. Chenchamma and another, to clarify the difference between two different meanings two different words were used. The court had used the word “onus” in the sense of second special meaning i.e. responsibility of the evidence. The court simply stated that the responsibility of proof shifted is from one party to the other. That means that the burden of proof does not shift from one party to the other but only the responsibility of the evidence is shifted and the responsibility of proof is of general nature.
In any criminal case, the offence against accused is required to be proved beyond reasonable doubt by the complainant. But the responsibility of proof of the defendants is not of such a nature. If the defendant accused can satisfy the court that whatever he wanted to prove is probable or possible through the evidences, it would be sufficient. When the court is satisfied that the explanation given by accused is probable and even if the court is not fully satisfied that the party is correct, the court has to acquit that accused because the complainant was not able to prove his case beyond reasonable doubt. Thus in any case accused can be convicted or punished only when the complainant has proved his case. The benefit of reasonable doubt will always be given to accused. As such the complainant should prove his case properly. This principle is applicable in all criminal cases. In the case of House of Stoggers Haligarat[10] the court while accepting this principle stated that the burden to prove the murder lies on the complainant. In this, only mental imbalance and the exceptions given in the law are excluded. So, after perusing the evidence of both the parties if there is a reasonable doubt, it is presumed that the complainant has not proved the case and accused is entitled to be acquitted. If the magistrate is satisfied with the explanation of accused and if a reasonable doubt is created, in such circumstances even if the evidence has not been accepted, accused is entitled to be acquitted. Such doubt can arise from the evidence of complainant or defendant. The doubt may have arisen from any evidence, but once the reasonable doubt
has arisen, accused has to be acquitted. Here, the complainant has to prove his guilt. Accused has not to prove his innocence. If he is able to create a doubt about his crime, it is adequate. Accused need not satisfy the judge about his innocence. Further clarification has been given by House of Lords in Malinski v/s New York11. After studying this principle, it appears that it is equally important for accused to create a doubt on his commission of alleged crime as much as to prove his innocence. If he proves this much, he can get acquittal in a criminal case.

To an extent the Principle of Wulmington is made applicable in India. In this context Nigam has tried to explain the same stating that, till 1914 12 judges of the High Courts had taken note of this case, of which nine judges had stated that this principle was in conformity with Section 105 of the Indian Evidence Act. Three judges of the Allahabad High Court have stated that this principle was not in conformity with Section 105. Three judges of the Rangoon High Court in the case of Dampalla12 had stated that this was a guiding principle in interpretation of Section 105. They had stated that this principle and this section is more or less, the Replica of each other and so as this Act may be binding in India. Thereafter Rangoon High Court in the case of Enga Thaine13 had followed this principle. Again two judges of Sindh judiciary, had opined that this principle was most appropriate for India in case of Shivram14 Allahabad High Court in the case of Prabhu v/s Emperor15 had accepted this principle by majority. It was also held that this principle was in conformity
with Section 105 of the Indian Evidence Act. Again, the Privy Council confirmed this thought in the case of Senavir Ratna\textsuperscript{16} and Mahadev\textsuperscript{17} In all these cases the decision of the Privy Council has to be taken into consideration and has to be followed. However, no such mention was given by any of these three High Courts. One of the judges had stated that he is slightly worried about the interpretation of burden of proof. Another judge had stated that when this Section 105 was formed, the laws of England were not established as present laws. The third judge had stated that the Indian law was clear section wise and Wulmington principle had no context. Nigam states that the decisions of all these judges though were erroneous were accepted in many cases of the Supreme Court. In the case of Haripada Dey v/s the State of West Bengal and another\textsuperscript{18} the Supreme Court had stated that in criminal cases accused is not required to give statement or any evidence. In this the complainant has to prove that his case was beyond any reasonable doubt. If the complainant fails to do so and accused has not stated or produced any evidence in his defence, even then he is entitled to an acquittal. Justice K. Subba Rao in the case of K.M. Nanavati v/s the State of Maharashtra\textsuperscript{19} has clarified that the laws relating to innocence were similar in India and England and while doing so he has cited several paragraphs of similarity of principle of Wulmington. He has also emphasized that the innocence of accused is presumed. The duty to prove guilt of accused lies with the complainant and only the complainant. Till the time, the complainant proves
the guilt; the accused is presumed to be innocent. The complainant is required to prove all the accusations and necessary elements. If from the evidence produced by the complainant, accused shows that there is a reasonable presumption of doubt about the commission of the crime, accused is entitled to the benefit of doubt. If accused claims that his case relates to a crime not covered by the Indian Penal Code and is covered under certain exceptions, in that he will be dealt with according to Indian Evidence Act Section 103 and the presumption would be against accused and the onus of proving his innocence lies on accused. This section does not affect all the ingredients of crime complained by the complainant and the burden of proof never shifts. In England there is no such provision but the exceptions are accepted whereas the principle of Wulmington is framed in consonance with Section 105 of the Indian Evidence Act. It is stated that in America and other developed countries similar procedure is maintained.\textsuperscript{20}

In the present research, while studying different cases it has come to light that the burden of proof rests with the complainant in any criminal case. Only when the complainant party proves its case without any reasonable doubt then only accused can be punished. The court will presume accused as innocent until he is proved guilty. When there is doubtful evidence in the case, the benefit of reasonable doubt is always given to accuse only. Generally, according to our laws, accused is not required to say or prove anything but when any evidence is produced against them and when the
court is required to convict him, it is the duty of the court to ask accused if he has anything to say in the matter, as per the provisions of Criminal Procedure Code. If accused wishes to produce any evidence and prove his innocence and if he is able to prove, he has to give such evidence before the court and in such a case, the burden to prove innocence lies with accused. Except for this exception, the burden to prove guilt lies with the complainant in any criminal case.

It is a subject matter of Section 101 to 104 of the Evidence Act to prove the burden of proof and to make the burden of proof and evidence acceptable. These four sections are inter-connected and decide the party on whom the burden of proof rests. Section 105 and 106 are its continuity. In every criminal proceeding, the burden of proof always and completely rests with the complainant but the exceptions to this law are given in section 105 and directions about presumption is also given.

Any person who wishes to prove the facts has to prove the existence of those facts and on which any court or legal authority can give its judgment and the existence of the facts have to be proved in this manner.

When a person is bound to prove the existence of fact than it could be said that the said person has the burden of proof. Whenever a decision is taken on judicial proceedings then in broad words it can be said that a right or responsibility is fixed and its base is on the existence of facts. If any person i.e. complainant is proving the existence
of any fact should prove that fact. Any fact could be proved affirmatively not negatively. Some arrangement has been made. To prove that some arrangement has been made, or some incident has happened would be positive evidence. Evidence is always positive. Negative facts can never be proved and has to be proved with whatever legal aid is required. Weakness of the opposite party can help him. This provision is made in Indian Evidence Act.

In our prevailing judicial system, accused is acquitted or convicted on the basis of evidence and for this there are clear provisions in the Evidence Act. Detailed provisions have been made in Evidence Act, section 101 to 114(A), as how to produce evidence, its effect, part of the evidence and the burden to produce, etc. In case of V. Vishvabharam v/s State of Kerala\textsuperscript{22} Kerala High Court held that in any criminal case the burden of proof remains on the complainant. In this case accused has himself sustained grievous and minor injuries during the incident and no evidence was available for that as to how accused sustained injuries. It was held in this case that normally the onus of proving the facts lies with the complainant but is not a binding principle or directive provision. In some circumstances, if such a clarification has not been given even then it is applicable. In the case of Govind Kana v/s Kana Kida\textsuperscript{23} it was held by the Gujarat High Court that if any evidence is submitted in a criminal or civil case and is accepted and is numbered in the record and note has been made that there is no objection in taking such a evidence on record, then the facts of the documentary
evidence is treated to have been proved. In case of Smt. Rafiya Sultan v/s O.N.G.C.\textsuperscript{24} the Gujarat High Court held that when evidence is given in any case of accident, the onus to prove how the accident occurred rests with the opposite party and they have to prove how the accident occurred. The court further stated that in this case the principle of res hixa loki tie will come into picture and concentration should be focused on the said principle. In the case of Paramjit Singh v/s State of Punjab\textsuperscript{25} the complainant submitted the intention behind the incident, but during the judicial process the complainant failed to prove this fact. Witnesses who gave oral evidence were interested witnesses. Not only that, their evidence was against the medical opinion. In these circumstances it was held that the available evidence is not trust-worthy and certain evidence cannot be said to be evidence in legal terms and as such accused is entitled for acquittal. In case of Babu Bhika Jadhav v/s the State of Maharashtra\textsuperscript{26} it was held by the Bombay High Court that when accused has to prove any fact, only the degree of possibility has to be proved. After considering the entire evidence it held that the evidence of complainant was without doubt and trustworthy. The partial burden is on accused to prove probability and accused has failed to prove this.

In Prakashchandra Kantilal v/s Shantilal Rangildas\textsuperscript{27} the Gujarat High Court held that in the case of motor vehicle compensation, the person seeking compensation has only to prove that the accident had happened and that a particular vehicle was involved. This part of burden of proof rests with
the respondents. They have to prove as to how the accident happened from which an assumption could be made that the driver was driving vehicle carelessly. In this insurance company also has to prove that the driver had no license. The fact of having a license is not to be proved by the claimants.

6.2.5 Responsibility for Burden of Proof:

In any dispute if the burden of proof is not proved by any of the parties, the case will fail. (28) When a person has to prove the facts and on whom the burden of proof lies, is examined under this provision. When a person tries to prove any fact and the other denies then the party proving a fact has to prove that the reasons for the evidence are positive. When such a person proves or the facts are believable at the first instance, the other party has to give evidence of denial. But the responsibility of proof shifts to the person proving the fact but has no burden to prove it. When a person proving the facts is not producing any evidence, than in that case the party denying has nothing to do. In judicial process, in normal circumstances the complainant in whose favor the charge sheet has been framed has to initiate giving the evidence in the court of law. In short the person who wishes to win the case in his favor is supposed to produce the relevant evidence as mentioned in the charge sheet framed by the court.

In the case of Special Development Area, Chitrakut v/s Pooranlal 29 the Madhya Pradesh High Court stated that the

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Corporation has complained that accused has carried out construction illegally and without permission. This was a private complaint. In this case it was held that the land on which the construction was done belonged to the complainant i.e. the Corporation and accused has done construction work on it. The onus of proof lies on the complainant.

In the case of State of Rajasthan v/s Sher Singh\(^{30}\) the Rajasthan High Court held that in every criminal case the burden of proof lies on the complainant from the beginning to end. If the defence witnesses are examined first and then the complainant’s witnesses are examined the entire legal procedure is illegal as held by the Rajasthan High Court in this case. It also held that the burden of proof would come on defendant only when the complainant has stated some facts. The accused has never to give any evidence first.

In Vanitaben v/s Diwaliben\(^{31}\) the Gujarat High Court said that it was stated by the party that the transaction has been done Benami. The party, which stated that such a transaction took place, has to prove this fact. It cannot be proved by presumption and no presumption can be made. In H. M. Maharao v/s The State\(^{(32)}\) the Court said that it had been claimed that he should be given more compensation than the what is given. The person asking more compensation has the burden of proof. This can be proved by oral or written documentary evidence even though more
reliance is being placed on written documents. Thus when written evidence is strong, oral evidence has no importance.

6.2.6 Burden of Proof related to the Facts:

The burden of proof will rest on the person who states its existence in the court except when there is a provision in any law that the burden will lie on some particular person. 33

Section 101 of the Indian Evidence Act shall continue even though there is a fundamental difference. The person who advances any fact must prove it and the burden of proof will lie on that person. If some facts are put forward, the burden of proof remains as per the provision of this section. In this section it has also been stated that if a particular person has been burdened with a burden to prove the facts by the law, the said person should prove that matter. If some person wishes that the court should believe the existence of certain facts, the burden to prove those facts remain on that person. Normally, every one desires to prove facts, which are in his favor. Any person who has specific knowledge about the facts should prove the same. It does not mean that accused has to prove his innocence. The burden of proof remains on the person who is expounding the facts. This section deals with definite facts only. 34.

The burden of proof is neither permanent nor steady. Responsibility of evidence goes on shifting from one party to the other. Even though the language of complaint, is negative, the burden of proof does not become lighter. The burden of proof can be decided in totality keeping in mind the
complaint made, rights sought or the responsibilities fixed. Who should give evidence is laid down in section 102. When one party gives evidence and proves the facts and prima facie the facts are proved, the other party has to give evidence to refute such evidence. The responsibility of proof or the responsibility of producing proof shifts from party to party but the burden of proof remains steady and it is necessary to understand this fact. In Amir Hossain v/s State of Tripura Gauhati High Court said that the burden of proving the guilt rests with the complainant party. The defendant party was stating that at the time of incident accused was not present. For this the burden of proof remains on accused. The evidence given by accused in this case was contradictory and it did not get logically believable consent. The High Court held that rejection of the plea that accused was not present at the place of incident by the Lower court was appropriate.

➢ Facts to be proved to make the Evidence Acceptable:

The person who can give evidence for any facts, the burden to prove such facts is on the person giving such facts. Such person wishing to give such facts has to prove those facts as per the clear provisions in the Indian Evidence Act. The party on whom the burden of proof lies is bound to prove the facts. If some one is a complainant in a criminal case, the burden of proof lies on him. If he fails to prove such facts, accused gets acquitted automatically. In each case the onus to produce evidence gets shifted from party to party
during the proceedings. The party having burden to prove facts, proves acceptance of such evidence or prompts the court to presume will lessen his responsibility.

Sections 101 to 104 of the Indian Evidence Act are inter-connected and general rules for the burden of proof have been given. In all these four sections, general rules are similar. The trend of proof should be positive. When existence of certain fact is to be proved it is difficult to prove such facts by negative behavior. Any person who wishes to establish some right or duty is required to prove such matter. On the basis of this important principle, the general principle of burden of proof is created. Certain facts will have to be proved to make it capable of acceptance in the evidence e.g. in a case of dying declaration, first of all it is necessary to prove that a particular person is entitled to prove the fact that a person has died and then only the dying declaration can become capable of acceptance as an evidence. Thus any person, who is depending on something to establish his case, has to first of all, prove his capability to depose as such.

6.2.6.1 Absence of accused at the time of Commission of Crime:

Absence at the time of commission of crime is termed as Alibi in legal terms. The provision in this respect has been done in Section 11 of the Evidence Act. A difficult situation arises when a person has committed a crime, there are eyewitnesses and if a point is raised by accused that he was
not present at the place of crime. A person was present or was not present are two contradictory things, which can be termed as inconsistent in legal terminology. According to this section 11, a person can give evidence that he was not present at the time of offence because that is contradictory to the case of the complainant. Evidence of contradictory matters could be termed contradictory because two inconsistent facts cannot have an existence at the same time, which the rule of production of evidence. When personal presence is necessary to prove the guilt and if it is established that the presence was elsewhere, this is a complete defence and this is considered a complete reply to the charge leveled against an accused. This defence is being taken constantly. There are guiding rules to evaluate this defence yet there are no legal provisions.

The responsibility and the burden of proof remain as it is on the complainant. However, it is seen that if accused takes such a defence as early as possible, it would be more effective. In criminal proceedings, an accused can take this or any other defence at any stage. A case cannot be treated as proved against accused when he takes a plea that he was not present at the place of offence and was elsewhere and he fails to prove it. Even after this defence, the onus of the complainant remains intact to prove his case and the complainant party will have to, without doubt, prove his case. It is adequate to create a doubt by taking a plea of absence. If accused fails to prove his absence, negative approach to accept the case of complainant cannot be taken. It however
gives credence to the case of the complainant that accused was present there.

Thus it is not enough to state that accused was not present at the place of incidence but accused has to prove that he was at another place doing a particular work to satisfy the court. Accused has to prove this type of evidence. Simply taking an objection for the sake of taking cannot prove the case. Therefore, if accused takes a stand that he was not present at the place of happening, it becomes necessary to prove such a fact otherwise the defence taken by accused fails. Even on failure of accused to prove this fact, the complainant cannot escape from his responsibilities of proving that accused was present there. Thus after considering all the aspects the court will take a decision.

6.2.6.2 In Adultery:

In a criminal case if the issue is of adultery, facts of adultery has to be proved without any doubt. In this connection in England Learned Justice D. N. Mac Cormik in 1948 held that when an issue of adultery is raised the court should expect strong evidence even in civil cases. After this issue there were differences and discussions on this point. In case of adultery civil and criminal differences of evidence should be maintained 37

In Dr. N.G. Dastane v/s Mrs. S. Dastane 38 the question of adultery came before the Supreme Court. The Court held that when the issue of adultery is under criminal proceedings it has to be proved without any doubt. In civil proceedings, if
the issue of adultery has been raised to get divorce or any other purpose, it is not necessary to prove the issue without any doubt, but on the basis of evidence of both the parties the court can decide if the facts of adultery is proved or not. The Supreme Court held that it would be against the general law of evidence to expect definite proof as in criminal cases while deciding the civil matters and a possibility in civil cases could be considered enough to fix the issue of adultery. In short, the issues of adultery in civil and criminal matters are different. In criminal proceedings it is essential to prove this issue conclusively.

6.2.6.3 In Crimes Related to Elections:

In our country in all the departments dishonesty is being practiced. Even in election process dishonest system is being observed. When an allegation is raised in any election of having used dishonest means the election is cancelled. While delivering the judgment in case of Hem Raj v/s Ramji Lal the Supreme Court held that on establishing that dishonest means were used in the election, the election can be cancelled and this allegation is of very serious nature. In addition to cancellation of the election other restrictions are also placed when the allegation of dishonesty is proved. Besides cancellation of election, fundamental right to contest election for some period is also curtailed. In several decisions it has been held that when an allegation of having used dishonest procedure is alleged, it has to be proved conclusively. When other types of allegations are raised, the
decisive question would be the effect on elections. If the results are affected due to any system adopted, only then the election petitions become successful. When a person states that due to certain reasons the person contesting elections is ineligible, he needs to prove it. It is not enough to put allegations but has to be proved to the satisfaction of the court.

**IMPORTANT DECISIONS**

The Supreme Court held in A. Raghavamma and another v/s A. Chenchamma and another case that there is a difference between the burden of proof and responsibility and in more than one instance different High Courts and Supreme Court has discussed about this issue, the summary of which is that the burden of proof never shifts, but the responsibility of proof continues to shift. Thus because of the presumption, the responsibility of proof making presumption lighter depends on the evidence.

In the case of Lachman Singh v/s State of West Bengal the Calcutta High Court said that the complainant party should prove the case against accused beyond all doubts. If the defence taken by accused and the defence witnesses are examined and if they are not trustworthy they can be ignored but sometimes due to witnesses of the defence also the case of complainant becomes believable. In case S.D. Soni v/s the State of Gujarat the Supreme Court held that in serious cases like murder the case of the
complainant should rest on the credibility of its evidence. The case of complainant does not become strong due to any lacuna in the defence taken by the defence.

The Court in State of Assam v/s Manohar Ali\(^43\) said that it is a fundamental principle of criminal proceedings to presume that accused is innocent and till that presumption is demolished beyond doubt that person cannot be believed to be guilty. Another important rule is that when in any case two facts are in two different shapes or there are two facts in such a case; the court should accept the facts concerning the innocence of accused. It is a common law to accept the presumption that accused is innocent.

In the case of Food Inspector, Tellicherry Municipality v/s T. V. Usman and another\(^44\) the Kerala High Court said that the Food Inspector has given evidence under the Food Adulteration Act and has stated in his statement that all the formalities as per law and which are to be observed strictly have been complied with. The Court saw the facts on records and observed that if such matter is on record arguments cannot be made that certain formalities have not been complied with. The court will not presume any such thing without proper reasons that such formalities have not been complied with. But the responsibility of proof shifts. In cross-examination it may be asked if a particular proof has been fulfilled and if not should be asked to prove it. The procedure according to the legal provisions should not be taken lightly but should be scrupulously observed and in any
case the procedure should be done accurately so that accused can get benefit.

In the case of the State of Gujarat v/s. Kalidas,\textsuperscript{45} the Gujarat High Court discussed about the circumstantial evidence in detail. It stated that normally the defence, whose truthfulness is to be examined, raises an issue. But if it is a matter of circumstantial evidence, in some instances the wrong defence may go against him. The person in possession of drugs will have to prove certain facts. According to the Narcotics Act, when someone is found with drugs it is presumed that he has committed an offence and he is guilty. The defence will have to prove that he was legally entitled to keep the drugs or he had a license for the same. Because of the presumption and on proving the possession it would be presumed that accused is guilty. Thereafter the onus of proof will lie on accused. Accused should prove that he was legally entitled to keep the drugs. In case of N. Sundaram Reddy v/s State\textsuperscript{46} the Court said that a person who is giving evidence about some facts has to prove the facts as per Section 101 of the Evidence Act and this is a well-established rule. Positive evidence is not a language of grammar but legal terminology. Any person who frames the words in negative form does not mean that the burden of proof shifts from him and opinion of the parties can be established by their statement as to what fact is to be proved by which party. The court ruled that it couldn't be decided by negative language. In the case of Abdul Swami v/s Noor Mohammed \textsuperscript{47} the Court said that if important
witnesses are not examined it would be presumed that the complainant is hiding something, unless some explanation has been given for not examining the witnesses. It is for the court to decide on which party the burden of proof rests and the evidence is given accordingly. If the Court gives decision based on the evidences given by a party on whom the burden of proof does not lie that decision would be erroneous and against the rule of evidence and the same being against the provisions of proof, is liable to be nullified. In this research it is clear that the responsibility of acceptable proof rests on the complainant. In exceptional cases like drugs, it is the responsibility of accused to prove if he was legally entitled to keep it, otherwise the responsibility rests on the complainant.

In short cross-examination itself is the right of accused. If the cross-examination is not performed there is no importance of examination-in-chief. It is the principle of Natural Justice which should be observed scrupulously. By performing the cross-examination we are giving the sufficient opportunity and sufficient time to defend accused in the interest of just and fair justice.

6.2.7 Burden to prove that the Case of accused is an Exception:

When a person is an accused in some offence, it is his responsibility to prove that his case falls under any general exceptions under Indian Penal Code or any part of the law or exceptions under any other law which gives the definition of
the crime and the circumstances under which the said act falls under such exceptions.\textsuperscript{48}

According to the provisions of the Indian Evidence Act, it is a general rule that the party, which gives the evidence, has to prove that fact. In the provisions of law it is a presumption that unless the accusation against him is proved without doubt, he is innocent. Accused may take a plea that he has not committed the crime. This defence could be of any type. But when a particular defence is taken, it would be on accused to prove it. When this defence is about the exception, a question arises whether the burden of proof can legally be placed on accused. But due to this rule, the burden to prove the offence does not reduce on the part of complainant. Just by citing the possibility of exceptional circumstances would not be considered negative evidence.\textsuperscript{49}

The rule of the Evidence Act is that the complainant has to prove the case against accused without any doubt while accused is not required to prove anything. The burden of proof completely and always, from the beginning to end, remains on the complainant. This section of the Evidence Act lays down two facts:

(1) The rule of burden of proof states that when accused takes a defence that his act falls under a particular exception and there was an existence of the circumstances of such exception, it would be the responsibility of accused to prove it. It is a fact that the case has to be proved by the complainant without any doubt. Responsibilities of proof of the complainant
party can become lighter but not the burden of proof. This section also states that the court will presume the circumstances of exceptions. As for an example, the case falls under the exceptions from sections 76 to 106 of Indian Penal Code. This presumption is a legal and a directive provision and as such the court is bound to presume or in case of exceptions the proportion of proof should have been fixed and to what extent the burden of proof is on accused depends on the circumstances of the case. Unless the burden of proof has been placed on other party and if a person wishes that the Court accept the facts and the burden to prove has been placed on that particular person, the provision of section 103 continues. In this law there is a special direction that unless the guilt of accused is proved it is presumed that he is innocent. Accused can take any defence and can take contradictory defence also. Accused can take a defence that his act was under exception, Thus till proved against accused, it is presumed that accused is innocent. 

Right of accused for Self defence:

Section 76 to 106 of the Indian Penal Code gives right of self-defence. Right of self-defence could be physical or for property. It is natural to help oneself and to protect self and own property which is self-defence in the criminal law and has been accepted as defence around the world. A desire to live prompts a person to fight for protection.
because it has a question of personal existence of a person. The right of self-defence is a social necessity. Any truth may be dormant and true however there are some bad elements, like fear or police or law cannot stop and such bad elements are a challenge to the society and if law becomes a hindrance in stopping such elements, they will get a free hand. Self-defence has been accepted as a legal defence and is a social necessity. Legal provisions are against the fearful society. There are certain limitations for self-defence. Provision of section 99 of the Indian Penal Code lays down certain perceptible and reasonable limitations so that under the guise of self-defence, the right to self-defence is not misused. Self-defence cannot be used to attack, to take revenge or to cause harm to someone. Self-defence is applicable to own property and self, property of others and their selves. There are no fixed rules for the type of arms to be used and how to use it. This section can be applied when harm caused is within reasonable limit when a crime has been committed and accused has used his right. The complainant party has to prove the case against accused doubtlessly. On the other hand the defence has simply to show the circumstances. This defence cannot be available where there is no possibility of fear. Accused shall have to show the fact and circumstances under which there was an immediate danger of life and death. After the commission of an act, the right to self-defence cannot be availed because it would amount to return attack. In respect of property rights, self-defence can be availed to maintain the rights, which
have been received and were being enjoyed. However, the excuse of self-respect cannot be availed for possession and to establish ownership. This right can be established through process of law. Every person has a right to protect him and others or right to protect property. The law does not expect any one to be coward while protecting the property. Moreover, the defence of self-defence cannot be given for any attack on others. The right of self-defence is not the reason or instrument but a protection for defence. The right of self-defence is a right given to every person and if he uses at the appropriate time the law does not take any action against him

6.2.7.1. Mental Imbalance of accused:

It is a belief in our law that every person is presumed to be judicious. When a plea is taken that the crime was committed due to mental imbalance, the first thing that is to be done is to refute the presumption that the person committing the crime was not mentally stable. Accused can take a defence plea that the crime has been committed due to unstable mind and further state that he did not possess common understanding. This exception is given in Section 84 of the Indian Penal Code. This has to be proved first. Accused has to prove that his mental imbalance was in existence at the time of offence, which means at the time of commission of offence his mind was not stable. Accused has also to prove that he was unable to understand the consequences of his act or that he was unable to understand
that he was doing something wrong or was doing some act against the law. The reason of inability to know is Imbalance of Mind and the court should take points into consideration while convicting. To establish this inability the court will have to consider following points.

1. The act of accused falls under the category of a crime and when the crime was committed accused had an intention to commit the crime which fact has to be proved by the complainant without any doubt. The burden of proof of the complainant party never lessens.

2. The court can presume that every person has common understanding and that under this act there were no circumstances for an exception.

3. This presumption has to be disproved by accused. Accused has not to give decisive evidence but has to prove the possibility, which would be adequate.

4. Even if accused has not taken the defence of mental imbalance but on the basis of circumstances, evidence and facts if the court feels that at the time of commission of offence accused was mentally imbalance, the court can give benefit of this exception.

When a mentally imbalanced person commits some act, the behavior of the person prior to commission of crime, during commission and after commission of crime is taken into consideration and the behavior of such person differs from any normal person than the court can clearly presume that accused was mentally imbalanced. In such a case the benefit is given to accused. 51
6.2.7.2. Serious and Sudden outburst of accused:

In our law of evidence serious and sudden outburst of accused is not considered criminal mentality. This exception is given in Indian Penal Code section 300. Because of sudden and serious outburst, if accused has lost balance of his mind and causes death of a person due to such outburst, is not called cold-blooded murder. This provision has been made in this section. While taking defence of serious mental outburst the burden of proof rests on accused. When a person looses control over him, the power of understanding is blunted or the person becomes senseless. In this connection the Supreme Court in K. M. Nanawati v/s the State of Maharashtra\(^{52}\) said that when a sensible man looses control of his mind, whether the reasons for that is given or not has been discussed in detail. Any person can have serious outburst on someone’s speech, signs or behavior e.g. if someone behaves vulgarly towards a person’s wife or sister due to which a man looses his mental balance and commits some act it can be presumed that this amounts to an act of serious and sudden outburst. The incident itself shows that even if he is a police officer, advocate, teacher or even a judge may act similarly and forget his own existence and can commit the act. By proving this, accused can get acquittal.

6.2.7.3 Burden of proof on accused:

Normally the burden of proof is on the complainant but in the provisions of this section the burden lies on accused.
In an important case of Dahyabhai Chhaganbhai v/s the State of Gujarat the Supreme Court held that accused took shelter of mental imbalance and in this respect the Supreme Court was to decide the degree of burden of proof on accused. In this case accused was charged with murdering his wife. He had defended that at the time of commission of offence he was mentally imbalanced and was unable to know the gravity of the offence. In this case the Supreme Court said that the burden of proof to prove any case is on the complainant. Besides this, the special burden also rests on accused to prove this exception and in this judgment Supreme Court also gave some important conclusions.

1. The charge is required to be proved without doubt by the complainant.

2. It is also for the complainant to prove that accused had wicked mentality.

3. In every case the burden of proof rests with the complainant from the beginning to the end.

4. It is for the court to presume that there is no existence of exceptional circumstances.

5. It is for accused to prove whether his case falls under general exceptions or special exceptions and there was existence of such circumstances in which his case rests.

6. Accused can submit evidence in defence or can defend himself from the circumstances and the evidence given by the complainant.
(7) The burden of proof under this section rests on accused.

In evidence the matters relating to burden and burden of proof are very important. In any definition of crime if the mental condition has been shown, it is the responsibility of the complainant to prove that the mentality of accused was such. In the definition of crime if words like fraudulently, dishonestly or willingly are used by the complainant, then the complainant should prove that accused was in that mental state. In short, when an accused takes defence that he was under serious mental excitement, he has to prove this fact. In case of Abdul Majid v/s State of Madhya Pradesh Madhya Pradesh High Court said that the act took place due to serious and sudden outburst. If such a defence is taken, accused has to prove that he had lost balance of mind due to serious and sudden excitement and had done this act in this condition to the satisfaction of the court.

6.3 Right of accused to Examine Witnesses:

If accused wishes the court to believe certain facts, it has to be proved by him. This provision has been made in section 103 of the Act. The party, which examines the witness, is called examination-in-chief. If the witness is called again for examination it is called cross-examination. The provisions for this are given in section-137 of the Evidence Act. Witnesses are examined first for the examination-in-chief and if the other party desires they are cross-examined. It is the prerogative of the opposition to either cross-examine
or not. This is given in section 138 of the Act. During cross-examination when the leading questions can be asked and when can not be asked is mentioned in section 143. The party, which has called the witness, can be permitted to ask questions with the wisdom of the court and such questions are such which are asked in cross-examination by the opposite party as per Section 154. After the preliminary hearing if the court had added further charges, Government pleader and other party also have right to call the witnesses again as per provisions of Criminal Procedure Code Section 217. Accused has a right to examine his own witnesses as per these provisions. He can also cross-examine the witnesses of the complainant party. Within the provisions of this Act, he can enjoy all the rights.

6.4 Rights of accused related to Confession of a Crime:

In any case if accused has confessed his guilt on his own accord truthfully, it can be treated as an effective evidence of his guilt. If such a confession has been done completely and if it is truthful and believable it is acceptable in evidence. This has been provided in Section (2) of this law. If the confession of the guilt by accused is found to have been done on some temptation, threat or promise given by somebody; such confession becomes irrelevant in criminal proceedings. Of course, the person giving such temptation, threat or promise must have some status in the case. There are reasons to believe that such accused may have given such confession in proceedings against him to avoid some
temporal evil or get some benefit. Section 14 says that such temptation, threat or promise should have been given by some person against whom the court has opined. When this section is applied certain facts have to be proved:

(1) Such statement should be a confession of guilt.
(2) Such statement should have been made by accused.
(3) It must have been given before the authorized person.
(4) Such confession should not have been made due to temptation, threat or promise given by some person in power.
(5) Such temptation, threat or promise should be in relation to the charge framed against accused.
(6) Court should have formed an opinion that accused has reason to believe that he would be benefited in proceedings against him to avoid evils by such temptation, threat or promise.

This was held by Supreme Court in case Vohra Ibrahim v/s the State of Maharashtra \(^{55}\) and stated that if the confession of the guilt is not on his own desire and has been given under some threat, temptation or promise then such evidence is not acceptable. If it is not so, the court can proceed on the first confession. As such, such confession first of all should be true and on own desire and while doing confession on temptation, threat or promise the effect on the mind of accused has to be considered.

As such considering this angle Section 24 of the law would be applicable or not has to be decided. Section 28 of
the Act lays down that if such confession is made after the effect of such temptation, threat or promise is over, than in the opinion of the court, it would be considered proper. According to section 25 any confession given before the police officer cannot be proved against such accused. Similarly, when a person is in custody of some police officer and has not made a confession in the presence of a magistrate, such confession cannot be accepted as proof against accused as per section 25.

In relation to Section 24 of the Evidence Act certain provisions have been made under section 153, 154, 281 and 463 of the Criminal Procedure Code. It is the duty of the Court to ensure that all these rights are available to accused.

Though we are discussing the provisions given in the Indian Evidence Act regarding the confessional statement and its validity, it is very much necessary to compare the provisions of confessional statements formulated in other special Act. As a researcher unless and until the details are not compared we can not come to know the facts. How the constitutional rights are being exercised by accused cannot be understood. Recently the POTA (The Prevention of Terrorism Act, 2002) was enacted by the Union Government. Here also under section 32 of POTA 2002, the provisions of certain confessions made to police officers to be taken into consideration has been formulated. But the police officer who is recording the confessional statement is supposed to observe all kind of formalities which are being followed by the court of law. In addition to that a special provision for the
safety of accused has been made and that a person from whom a confession has been recorded shall be produced before the court of Chief Metropolitan Magistrate or the court of the Chief Judicial Magistrate along with the original Statement of confession, written or recorded on mechanical or electronic device within forty eight hours and he should be sent to judicial custody directly. Recently in the Parliament assault case it is held by the Supreme Court that though all the formalities given under section 164 and under section 32 shall be followed by the officer recording the Statement, the concerned officer should ask accused for legal aid if he requires the same and it should be mentioned and documented while recording the confessional statement under section 32 of POTA. The Supreme Court in my opinion must have realized that POTA may be misused by the police officer concerned and that is why for the benefit of accused and preservation of its fundamental rights, the provision of giving the legal aid should be incorporated in the judgment.

6.5 Rights of accused for Information:

Law provides privacy to the communication between certain people keeping in view the relationship between the people. Those persons who are married cannot be forced to divulge the communication between them. Such persons are not allowed to divulge the dealings. There are two exceptions in this provision.
(1) If the person or his representative gives consent to divulge the information, who had dealt in such communication of information.

(2) In cases where married couples file cases against the other partner for any offence, such information of dealings can be brought out. This has been stated in section 122 of the law. When it is felt to the public officer that publishing such dealings is likely to cause injury to public well being, in such cases he cannot be forced to declare such information which are in his possession on account of the trust placed on him. They cannot declare any documents. This restrictions have three exceptions:

(a) If their client or accused consents to release the information.

(b) If such dealing has been done to fulfill some illegal activity.

(c) After beginning of business relationship some crime had been committed or trust has been violated and it has come to the knowledge of some barrister, advocate or attorney. In such cases the protection of restriction to declare does not apply, as stated in Sec.126 of the Evidence Act. In the same way, any person can not be compelled to reveal confidential dealings between a person and his legal advisor but when a person accepts to be a witness, he can be
compelled to reveal such information as per Section-129.56

(d) In Official Secret Act also the details of trial cannot be divulged in the public.

(e) A special provision of In Camera trial is made for conducting the trial for the victim of Rape cases or any other cases which are sensitive according to the Judge. If the names of victims are disclosed in rape cases than it will be amounting to Contempt of Supreme Court and the offence can be registered against the contemnor under section 228-A, 188 of Indian Penal Code. This is the special privilege given to the victim of Rape cases and Suppression of Immoral Traffic Act.

(f) It is very much necessary to show the details of rape cases and other cases in which the women are victimized.

Thus the researcher has during her research found wide rights to accused in Evidence Act also. The responsibility to prove the guilt in all cases of complaints against accused rests with the complainant according to the law. In certain exceptional circumstances, the onus to prove rests on accused but mainly this responsibility is on the complainant. If a complainant can prove the allegations, than and than only accused will be punished otherwise he will get an acquittal. The benefit of doubt is always available to accused.
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