

# Guilty Until Proven Innocent? Reverse Burden of Proof in Indian Criminal Law

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## ABSTRACT

The maxim *ei incumbit probatio qui dicit, non qui negat* the burden of proof lies upon the one who affirms, not the one who denies sits at the very heart of criminal justice. Yet Indian law, both historically and in its contemporary statutory framework, has carved out a significant space for the doctrine of reverse onus, placing the burden of proof upon the accused in a wide array of legislative enactments. This article examines the doctrinal foundation of reverse burden, its constitutional legitimacy under Articles 14, 20, and 21 of the Indian Constitution, and its application across statutes such as the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prevention of Money Laundering Act, 2002, the Protection of Children from Sexual Offences Act, 2012, and the Unlawful Activities (Prevention) Act, 1967. Drawing upon landmark judicial pronouncements, comparative legal analysis, and human rights scholarship, the article argues that while reverse onus provisions may be justifiable in carefully delimited circumstances, the Indian legislative practice has expanded them beyond defensible limits, raising serious concerns about the presumption of innocence and the right to a fair trial.

**Keywords:** Reverse Burden of Proof, Presumption of Innocence, NDPS Act, PMLA, UAPA, Article 21, Fair Trial, Indian Criminal Law, Evidence Act

## I. INTRODUCTION

There is a certain moral logic to the presumption of innocence. Before the state, with its enormous prosecutorial machinery, drags a citizen into a courtroom and brands them a criminal, it should be required to prove its case. The accused should not have to disprove anything. This is not merely a procedural nicety it is a statement about the relationship between the individual and the state, and about what a just legal system looks like.<sup>1</sup>

And yet, Indian criminal law has long deviated from this ideal in a quietly systematic way. Across dozens of statutes from narcotics legislation to anti-terror laws to economic offences Parliament has inserted provisions that shift the burden of proof from the prosecution to the accused. Once the prosecution establishes certain foundational facts, the accused must prove their innocence, or at least raise a reasonable doubt in their favour. Fail to do so, and conviction follows.<sup>2</sup>

The implications of this shift are profound. The accused, often in custody, must gather evidence and construct a defence while the prosecution does comparatively little beyond making initial allegations. In a country where trials are slow, access to legal aid is uneven, and pre-trial detention is common, this

<sup>1</sup> The philosophical foundation of the presumption of innocence is explored in detail in Andrew Stumer, *The Presumption of Innocence: Evidential and Human Rights Perspectives* (Hart Publishing, 2010), ch.1.

<sup>2</sup> For a comprehensive survey, see K.D. Gaur, *Criminal Law: Cases and Materials* (8th edn, LexisNexis, 2019), ch.12.

matters enormously. The question this article poses is simple but uncomfortable: has Indian law, in its enthusiasm for reverse burden clauses, moved from presuming innocence to presuming guilt?<sup>3</sup>

## II. THE PRESUMPTION OF INNOCENCE: DOCTRINAL FOUNDATIONS

### A. Historical and Philosophical Underpinnings

The presumption of innocence is among the oldest and most universally recognised principles of criminal law. Its roots run deep into both common law and natural justice traditions. In English law, it found forceful expression in *Woolmington v Director of Public Prosecutions*<sup>4</sup> where the House of Lords declared that it was the duty of the prosecution to prove the prisoner's guilt. Viscount Sankey's famous 'golden thread' metaphor the idea that the presumption of innocence runs through the entire web of English criminal law has resonated across legal systems worldwide.<sup>5</sup>

Internationally, Article 11(1) of the Universal Declaration of Human Rights, 1948, and Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) to which India is a party both enshrine the right of every person charged with a criminal offence to be presumed innocent until proved guilty.<sup>6</sup>

### B. The Presumption of Innocence in Indian Constitutional Law

The Indian Constitution does not expressly mention the presumption of innocence, unlike some other constitutional instruments. Nevertheless, the Supreme Court of India has consistently read it into the fundamental rights framework, primarily through Article 21, which guarantees the right to life and personal liberty.<sup>7</sup>

In *Noor Aga v State of Punjab*<sup>8</sup>, a constitution bench confronted precisely this question in the context of the NDPS Act. The Court held that while the presumption of innocence is not an absolute constitutional guarantee, it forms part of the right to a fair trial under Article 21. Any legislative inroad upon it must, therefore, satisfy the test of reasonableness and proportionality under Article 14.<sup>9</sup>

This doctrinal position that the presumption of innocence is constitutionally protected but not inviolable is the contested terrain this article seeks to navigate.

## III. UNDERSTANDING REVERSE BURDEN: LEGAL FRAMEWORK

### A. The Evidence Act, 1872 and the General Rule

The Indian Evidence Act, 1872 provides the foundational framework for burden of proof. Section 101 states that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which they assert, must prove those facts. Section 102 further clarifies that the burden lies on the person who would fail if no evidence were given on either side.<sup>10</sup>

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<sup>3</sup> This concern has been articulated by the Law Commission of India in its 180th Report on Article 20(3) of the Constitution of India and Right to Silence (2002).

<sup>4</sup> *Woolmington v Director of Public Prosecutions* [1935] AC 462 (HL).

<sup>5</sup> The 'golden thread' metaphor is from the speech of Viscount Sankey LC in *Woolmington* [1935] AC 462, 481.

<sup>6</sup> Universal Declaration of Human Rights (adopted 10 December 1948), Art 11(1); International Covenant on Civil and Political Rights (adopted 16 December 1966), Art 14(2). India ratified the ICCPR in 1979.

<sup>7</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597.

<sup>8</sup> *Noor Aga v State of Punjab* (2008) 16 SCC 417.

<sup>9</sup> *Ibid*, para 55–60.

<sup>10</sup> Indian Evidence Act 1872, ss 101–102.

In criminal proceedings, this translates straightforwardly: the prosecution bears the burden of proving each element of the offence beyond a reasonable doubt. The accused need not prove anything. This is the general rule.<sup>11</sup>

Sections 103 and 105 of the Evidence Act create exceptions. Section 105 is particularly significant it places upon the accused the burden of proving that their case falls within an exception, proviso, or exemption recognised by criminal law. The court is to presume the absence of such circumstances. In *K.M. Nanavati v State of Maharashtra*<sup>12</sup> and later in *State of Madhya Pradesh v Ramesh*<sup>13</sup> the Supreme Court read Section 105 narrowly, holding that the accused need only raise a reasonable probability, not prove beyond a reasonable doubt.

### **B. Distinguishing Evidential from Legal Burden**

A conceptual distinction important to reverse burden analysis is that between the legal burden (the ultimate obligation to establish a fact to a requisite standard) and the evidential burden (the obligation to introduce sufficient evidence to raise an issue). Some statutes place only the evidential burden on the accused sometimes called an 'evidential reverse burden' while others impose the full legal burden. The constitutional concerns are considerably more acute in the latter case.<sup>14</sup>

## **IV. STATUTORY MANIFESTATIONS OF REVERSE BURDEN IN INDIA**

### **A. The Narcotic Drugs and Psychotropic Substances Act, 1985**

Perhaps no statute better illustrates the challenges of reverse burden than the NDPS Act. Section 35 of the Act provides that in any prosecution under the Act, the court shall presume the existence of a culpable mental state on the part of the accused, and it shall be a defence for the accused to prove the contrary beyond a reasonable doubt.<sup>15</sup>

Section 54 further provides that the fact of possession of small quantities of narcotic drugs shall be presumed to be possession for the purpose of sale. The accused must rebut this presumption. In practical terms, this means that a person found with drugs faces a presumption of both mental state and intent, and must affirmatively disprove both.<sup>16</sup>

The Supreme Court examined this scheme in *Noor Aga v State of Punjab*<sup>17</sup> and upheld it, but with significant qualifications. The Court held that: (a) the prosecution must first establish the foundational facts of possession; (b) only then does the burden shift; and (c) the reverse burden must not be so heavy as to make the defence practically impossible. The judgment attempted a proportionality analysis, acknowledging the social harm of drug trafficking while insisting on minimum safeguards for the accused.<sup>18</sup>

Scholars and practitioners have noted, however, that in the real functioning of NDPS trials, the threshold of foundational proof required from the prosecution is often low. Police testimony as to seizure is routinely

<sup>11</sup> Ratanlal & Dhirajlal, *The Law of Evidence* (28th edn, LexisNexis, 2021), commentary on ss 101–105.

<sup>12</sup> *K.M. Nanavati v State of Maharashtra* AIR 1962 SC 605.

<sup>13</sup> *State of Madhya Pradesh v Ramesh* (2011) 4 SCC 786.

<sup>14</sup> This distinction is drawn with precision in Ian Dennis, *The Law of Evidence* (6<sup>th</sup> edn, Sweet & Maxwell, 2017), ch.11, and adopted in the Indian context by the Supreme Court in *Noor Aga* (n 8).

<sup>15</sup> *Narcotic Drugs and Psychotropic Substances Act 1985*, ss 35, 54.

<sup>16</sup> *Ibid*, s 54.

<sup>17</sup> *Noor Aga v State of Punjab* (2008) 16 SCC 417.

<sup>18</sup> *Ibid*, para 69–74.

accepted without independent verification, and once possession is established, the accused faces a near-insurmountable burden. The conviction rate under the NDPS Act, particularly for smaller offenders, speaks to this structural imbalance.<sup>19</sup>

### **B. The Prevention of Money Laundering Act, 2002**

The PMLA, as amended in 2019, contains what are arguably the most constitutionally aggressive reverse burden provisions in any Indian statute. Section 24 of the PMLA provides that in a proceeding for money laundering, the court shall presume that proceeds of crime are involved in money laundering, and it shall be for the accused to prove the contrary.<sup>20</sup>

Compounding this, Section 45 of the PMLA (restored in its original form by the Finance Act, 2018) imposes twin conditions for bail: the prosecution must be heard, and the court must be satisfied that there are reasonable grounds for believing that the accused is not guilty and is unlikely to commit an offence while on bail. This effectively reverses the bail presumption as well the accused must demonstrate likely innocence to obtain bail.<sup>21</sup>

The Supreme Court in *Vijay Madanlal Choudhary v Union of India*<sup>22</sup> upheld the PMLA's reverse burden and bail provisions, finding them justified by the gravity and complexity of money laundering offences. However, the judgment attracted substantial academic criticism for what many considered an insufficient engagement with proportionality principles and the chilling effect on financial liberty.<sup>23</sup>

It is worth pausing on the sheer scope of the PMLA's reach. Any 'scheduled offence' a list that covers hundreds of crimes can trigger money laundering charges. The attachment of property follows virtually automatically upon arrest. By the time the accused reaches trial, they may have lost their assets, their freedom, and their ability to fund a defence. The reverse burden operates, in these circumstances, not merely as a procedural mechanism but as an instrument of financial and personal devastation.<sup>24</sup>

### **C. The Unlawful Activities (Prevention) Act, 1967**

The UAPA, substantially amended in 2008 and 2019, contains provisions that stack multiple presumptions against the accused. Section 43E provides that where arms or explosives are recovered from the accused, or where there is other evidence of preparation, it shall be presumed that the accused was a terrorist, unless the contrary is proved.<sup>25</sup>

Again, the bail provisions compound the difficulty. Under Section 43D(5), bail cannot be granted if the court, on a perusal of the case diary or the charge sheet, is of the opinion that there are reasonable grounds to believe that the accusation against the accused is prima facie true. The accused is thus presumed guilty for bail purposes based on police records alone a process in which the accused has limited participation.<sup>26</sup>

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<sup>19</sup> Amnesty International, 'Starved of Justice: Prisoners Detained Indefinitely Without Trial in India' (2012), 22–27; Prison Statistics India 2021 (National Crime Records Bureau, 2022), ch.3.

<sup>20</sup> Prevention of Money Laundering Act 2002, s 24, as amended by the Prevention of Money Laundering (Amendment) Act 2019.

<sup>21</sup> Prevention of Money Laundering Act 2002, s 45, as amended by the Finance Act 2018.

<sup>22</sup> *Vijay Madanlal Choudhary v Union of India* (2022) 8 SCC 1.

<sup>23</sup> See Abhinav Chandrachud, 'The Vijay Madanlal Choudhary Judgment: A Critical Analysis' (2023) 58 *Economic and Political Weekly* 34; Mihir Desai and Meera Pillai, 'Money Laundering Law and the Erosion of Fair Trial Rights' (2022) 2 *Indian Law Review* 45.

<sup>24</sup> See the analysis in N.S. Nappinai, *Cybercrime and Technology Law* (Thomson Reuters, 2020), and the PMLA's Schedule, which lists over 150 predicate offences.

<sup>25</sup> Unlawful Activities (Prevention) Act 1967, s 43E, inserted by the Unlawful Activities (Prevention) Amendment Act 2008.

<sup>26</sup> *Ibid*, s 43D(5).

The Supreme Court in *National Investigation Agency v Zahoor Ahmad Shah Watali*<sup>27</sup> confirmed this restrictive bail standard, which has resulted in accused persons spending years in custody under UAPA before their trials even begin. The combination of reverse burden and denial of bail creates a de facto punishment that precedes any conviction.<sup>28</sup>

#### **D. The Protection of Children from Sexual Offences Act, 2012**

The POCSO Act contains reverse burden provisions in Sections 29 and 30. Section 29 provides that where a person is prosecuted for certain offences under the Act, the court shall presume that the accused committed the offence until the contrary is proved. Section 30 creates a presumption of culpable mental state.<sup>29</sup>

The legislature's intent here is readily understandable. Child sexual abuse is a heinous crime; victims are often unable to provide detailed corroborative evidence; and the power asymmetry between accused and victim is significant. The reverse burden is, in this context, arguably a policy choice that reasonable people might defend.<sup>30</sup>

Nevertheless, courts have had to grapple with false complaints and misuse of POCSO provisions, and the reverse burden can make defending against such complaints extremely difficult. A calibrated approach requiring the prosecution to establish at least a credible foundational case before shifting the burden seems more defensible than an automatic presumption of guilt.<sup>31</sup>

### **V. CONSTITUTIONAL VALIDITY: THE PROPORTIONALITY FRAMEWORK**

#### **A. The Article 21 Guarantee and Its Qualified Nature**

The central constitutional question is: when, if ever, can Parliament constitutionally enact reverse burden provisions? The answer, as the Supreme Court has developed it, rests on a proportionality framework derived from Articles 14 and 21.<sup>32</sup>

In *Maneka Gandhi v Union of India*<sup>33</sup> the Supreme Court established that any law restricting personal liberty must satisfy the requirements of being just, fair, and reasonable. This expanded reading of Article 21 means that procedural safeguards in criminal trials including the presumption of innocence receive constitutional protection.<sup>34</sup>

The Court in *State of Maharashtra v Bharat Shanti Lal Shah*<sup>35</sup> articulated a four-part test for reverse burden provisions: (1) the provision must serve a legitimate legislative aim; (2) the foundational facts to be proved by the prosecution must be significant enough to justify the shift; (3) the burden shifted to the accused must not be impossible or unduly onerous to discharge; and (4) there must be a rational connection between the foundational facts and the presumed fact.<sup>36</sup>

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<sup>27</sup> *National Investigation Agency v Zahoor Ahmad Shah Watali* (2019) 5 SCC 1.

<sup>28</sup> *Ibid*; see also Vrinda Grover, 'Bail Jurisprudence Under UAPA' (2020) 55 *Economic and Political Weekly* 12.

<sup>29</sup> *Protection of Children from Sexual Offences Act 2012*, ss 29–30.

<sup>30</sup> Law Commission of India, 172nd Report on Review of Rape Laws (2000), 23–24.

<sup>31</sup> Swagata Raha and Maharukh Adenwalla, 'False Complaints and the POCSO Act: Need for a Measured Response' (2019) 54 *Economic and Political Weekly* 25.

<sup>32</sup> *Indra Sarma v V.K.V. Sarma* (2013) 15 SCC 755; *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

<sup>33</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597.

<sup>34</sup> *Ibid*; further developed in *Francis Coralie Mullin v Administrator, Union Territory of Delhi* AIR 1981 SC 746.

<sup>35</sup> *State of Maharashtra v Bharat Shanti Lal Shah* (2008) 13 SCC 5.

<sup>36</sup> *Ibid*, para 48–52.

## B. The Problem of Excessive Reach

A critical examination of the Indian legislative landscape reveals that many reverse burden statutes struggle to satisfy even this permissive framework. Consider the PMLA: the 'scheduled offences' list is so broad that a person accused of tax evasion or violation of intellectual property law can face money laundering charges with full reverse burden consequences. The foundational connection between such offences and organised criminality the traditional justification for reverse burden in financial crime legislation is tenuous at best.<sup>37</sup>

Similarly, the UAPA's application to an increasingly wide category of dissidents and activists, rather than just armed militants, raises grave concerns about the legitimacy of applying reverse burden and quasi-custodial bail conditions to persons who may not be violent offenders at all. The European Court of Human Rights, in interpreting comparable provisions under the European Convention, has insisted on a strict proportionality analysis that Indian courts have not consistently applied.<sup>38</sup>

## C. Comparative Perspectives

The United Kingdom's Human Rights Act 1998 and its Strasbourg jurisprudence offer a useful comparative lens. In *R v Lambert*<sup>39</sup> the House of Lords read down the Misuse of Drugs Act's reverse burden provision, converting the legal burden on the accused to a mere evidential burden, to comply with Article 6(2) of the European Convention on Human Rights. This approach reading down rather than striking down preserves legislative intent while protecting the accused's rights.<sup>40</sup>

The South African Constitutional Court, in *S v Zuma*<sup>41</sup> struck down a reverse burden provision in the Internal Security Act as incompatible with the constitutional right to be presumed innocent. The Court held that imposing a legal (rather than evidential) burden on the accused was a disproportionate infringement of the right.<sup>42</sup>

Indian courts have the tools to perform this kind of analysis. Article 13 allows for reading down legislation to bring it within constitutional bounds. The Supreme Court has, on occasion, exercised this power in the context of reverse burden but not consistently or comprehensively.<sup>43</sup>

## VI. THE HUMAN RIGHTS DIMENSION

Beyond doctrine, there is a human story to reverse burden provisions that legal analysis alone cannot fully capture. Consider the profile of the typical accused under India's NDPS Act: often poor, often a first-time or small-time offender, often from a marginalised community. Facing a legal presumption of guilt and a costly, complex burden of disproof, the overwhelming rational response is to plead guilty regardless of actual innocence, simply to obtain a lighter sentence and quicker release.<sup>44</sup>

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<sup>37</sup> Prevention of Money Laundering Act 2002, Schedule. For criticism, see Arghya Sengupta, *Independence and Accountability of the Election Commission of India* (CUP India, 2019), where similar over-breadth arguments are developed.

<sup>38</sup> *Salabiaku v France* (1989) 13 EHRR 379 (ECtHR); *Sheldrake v Director of Public Prosecutions* [2005] 1 AC 264 (HL).

<sup>39</sup> *R v Lambert* [2002] 2 AC 545 (HL).

<sup>40</sup> *Ibid*; discussed in Stumer (n 1), 138–142.

<sup>41</sup> *S v Zuma* 1995 (2) SA 642 (CC).

<sup>42</sup> *Ibid*, para 36–42.

<sup>43</sup> The reading-down technique in India is analysed in Seervai H.M., *Constitutional Law of India* (4th edn, N.M. Tripathi, 1999), vol 1, 114–118.

<sup>44</sup> Heta Bhatt, 'Coerced Guilty Pleas in the Indian Criminal Process' (2021) 3 NUJS Law Review 11.

This coercive dynamic what criminologist's call 'coerced compliance' corrupts the truth-seeking function of the trial. Innocent people plead guilty; guilty people who can afford good lawyers go free. The reverse burden, in practice, often becomes an instrument of class-based justice rather than equal justice.<sup>45</sup>

The National Crime Records Bureau data consistently shows high rates of acquittal in NDPS and UAPA cases at the stage where charges are eventually framed or appeals decided yet by that point, accused persons have often served years in prison.<sup>46</sup> The reverse burden, combined with slow trials and restrictive bail conditions, thus operates as a system of extra-judicial punishment for a substantial number of persons who are eventually found not guilty.

## VII. JUDICIAL TRENDS AND CRITICAL ANALYSIS

The Supreme Court of India has oscillated between permissive and cautious positions on reverse burden. In *P.N. Krishna Lal v Government of Kerala*<sup>47</sup> the Court upheld Section 105 of the Evidence Act as constitutional. In *Sanjay Dutt v State through CBI Bombay*<sup>48</sup> the Court grappled with reverse burden under TADA, taking a nuanced view that required the prosecution to establish firm foundational facts.<sup>49</sup>

More recently, the Court's approach in PMLA and UAPA cases has been markedly deferential to the legislature, with the majority in *Vijay Madanlal Choudhary* and *Watali* accepting at face value the state's assertions about the severity of the crimes in question without critically examining whether the reverse burden mechanism was genuinely necessary and proportionate.<sup>50</sup>

This deference is not without critics on the Court itself. Dissenting opinions in several cases have emphasised that grave and complex crime does not, by itself, justify abandoning fundamental procedural safeguards. The gravity of an offence is, if anything, a reason to be more careful not less about the reliability of convictions.<sup>51</sup>

Academic scholarship in India has been broadly critical of the expansion of reverse burden. Writers like Upendra Baxi and V.R. Krishna Iyer (the latter a former Supreme Court judge) have consistently argued that the Indian legislature's tendency to address complex social problems through criminal law, and to reinforce those laws with reverse burden clauses, reflects a deeper authoritarian tendency in Indian governance.<sup>52</sup>

## VIII. CONCLUSION

The headline of this article asks a provocative question: is the Indian criminal accused guilty until proven innocent? The honest answer is: in many statutory contexts, yes. The cumulative effect of reverse burden

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<sup>45</sup> William Stuntz, *The Collapse of American Criminal Justice* (Harvard University Press, 2011), chs 7–8 (developing similar arguments in the US context, with Indian parallels drawn by commentators).

<sup>46</sup> National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs, 2023), Table 7A.1 (acquittal rates under special acts).

<sup>47</sup> *P.N. Krishna Lal v Government of Kerala* (1995) Supp (2) SCC 187.

<sup>48</sup> *Sanjay Dutt v State through CBI Bombay* (1994) 5 SCC 410.

<sup>49</sup> *Ibid*, para 62–67.

<sup>50</sup> *Vijay Madanlal Choudhary* (n 22); *Watali* (n 27).

<sup>51</sup> The dissent of Justice D.Y. Chandrachud in *Republic of India (as he then was) in various constitutional bench judgments on personal liberty*; and Justice R.F. Nariman's minority view in *State (NCT of Delhi) v Bhushan Kumar* (2012) 5 SCC 424.

<sup>52</sup> V.R. Krishna Iyer, 'Criminal Law and the Constitution' in Upendra Baxi (ed), *Law and Poverty: Critical Essays* (N.M. Tripathi, 1988), 179–195.

provisions, restrictive bail conditions, slow trials, and under-resourced legal aid has created a system that, for significant categories of accused persons, presumes guilt and requires innocence to be proved.

This is not inevitable. The tools of constitutional law proportionality analysis, the reading-down technique, robust application of Article 21 are available to the courts. The courts have used these tools sporadically and with insufficient consistency. A principled revival of the presumption of innocence as a living constitutional doctrine not merely a rhetorical flourish would do much to restore the balance between effective prosecution and individual liberty.

In the end, the question of reverse burden is a question about the kind of democracy India wants to be. A state that routinely demands its citizens prove their innocence is a state that does not fully trust its citizens and a state in which citizens have reason not to fully trust the law.

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