

Guilty Until Proven Innocent? Misuse of the Presumption of Guilt in India's Legal System

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ABSTRACT The Indian Legal System is based on the foundational principle of 'Presumption of Innocence', which states that until the guilt of the accused is proven beyond a reasonable doubt, he is not convicted. To draw a balance between the rights of the accused and societal interests, certain legal provisions shift the burden of proof to the accused. This means that the accused has to prove his innocence rather than the prosecution proving his guilt. This article will first outline the concepts of presumption of innocence and guilt. Particular attention is given to the misuse of the guilt presumption under the Prevention of Money Laundering Act (PMLA), the Unlawful Activities (Prevention) Act, and the Narcotic Drugs and Psychotropic Substances Act (NDPS). This article concludes by proposing recommendations for reform, aiming to mitigate misuse, uphold fairness, and restore public trust in the justice system.

INDEX TERMS presumption of innocence, presumption of guilt, reverse burden of proof, reverse onus, Unlawful Activities Prevention Act (UAPA), Prevention of Money Laundering Act (PMLA), Narcotics Drugs and Psychotropic Substances Act (NDPS), dowry death, misuse of law, abuse of process

I. INTRODUCTION

1. Presumption of Innocence:

"That ten guilty persons should go free than that one innocent suffer" - William Blackstone

The presumption of innocence, which is the cornerstone of the Indian criminal justice jurisprudence, embodies the Blackstone ratio. This principle has been adopted as the prevailing rule in most democratic nations. The principle of the presumption of innocence is most often elucidated by the 'Golden thread' rule in *Woolmington v. DPP*. This 1935 judgment by the House of Lords establishes that the prosecution carries the burden to prove the accused's guilt beyond a reasonable doubt. It asserts that, *"Throughout the web of the English Criminal*

Law, one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner's guilt subject to the defence of insanity and subject also to any statutory exception. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, the prosecution has not made out the case and the prisoner is entitled to an acquittal." [1]

The presumption of innocence has been enshrined under International Humanitarian Law. Article 66 of the Statute of the International Criminal Court, 1998 states that everyone is to be presumed innocent until proven guilty beyond a reasonable doubt. [2] The same principle has been upheld by Article 14(2) of the International Covenant on Civil and Political Rights

[3] and Article 48 of the European Union Charter of Fundamental Rights [4].

This principle in the Indian Criminal Justice system aims to draw a balance between the forces of human rights, judicial activism, and enforcing justice [5]. In the Supreme Court judgment of Noor Aga Khan vs State of Punjab, it was stated that although it isn't outrightly mentioned in the provisions of the constitution, the principle of the presumption of innocence is pivotal for the administration of justice [6]. Under Indian Law, the presumption of innocence falls under the provisions of Articles 14 and 21 of the Indian Constitution, which guarantee the rights of liberty and a just, fair, and reasonable trial. Article 20(3) protects the accused's right to be presumed innocent by providing for the right against self-incrimination. Sections 104 and 105 of the Bharatiya Sakshya Adhiniyam, 2023 (previously Sections 101 and 102 of the Indian Evidence Act 1872) state that the burden of proof is on the party who asserts the allegation. It abides by the legal maxim, "*ei incumbit probatio qui dicit, non qui negat*," which means that "the burden of proof is on the one who declares, not on the one who denies". More recently, in the case of Chandra Babu @ Babu v. State of Kerala & Another, the Kerala High Court stated that, "The presumption of innocence is not just a legal principle but a fundamental human right" [7].

2. Presumption of Guilt:

Many renowned scholars argue that the presumption of innocence should only be assumed at trial, or should not be assumed at any stage at all. Jeremy Bentham believed that the accused is in a dubious stage, "between non-delinquency and delinquency," and that presumption of innocence would mean dropping all

charges, followed by an oppressive and unjust procedure. He stated that the accused unjustly benefits from the principle [8]. Law enforcement would only arrest a person if there's probable cause, and thus, his innocence is not being presumed by the legal system from the get-go. When an accused is denied bail, it is clear that his innocence is not being presumed by the judge [9].

Bentham believed that the presumptions offering protection to the accused were based on irrational principles. He disparagingly called them "the old woman's reason" and "the foxhunter's reason". "The old woman's reason," as Bentham believed, is an incorrect and rather sentimental notion that no pressure should be brought upon the accused to be a factor in his conviction by the court. Another cause of Bentham's criticism is "the foxhunter's reason," which asserts that the accused, like a "prey" or a "fox" upon being hunted by gentlemen, must be given an adequate and fair opportunity to escape. He was critical of Blackstone's ratio as he believed that it drew attention away from the actual utilitarian issue. Although not overlooking the chance of wrongful convictions, he believed that a sufficiently good legal system would eliminate the dangers of a bullying form of interrogation or an intimidating environment of a courtroom, all of which caused erroneous convictions [10].

While the presumption of innocence is the normative procedure for an ordinary criminal trial, certain classes of offences shift the burden from the prosecution to the accused. While the former favours the rights of the accused, the latter favours the interests of society. These reverse onus clauses disrupt the presumption of innocence, stripping it of its sacred nature [11]. The guilt presumption aims to draw a balance between the rights of the accused and of society. The Law

Commission of India in its 47th report stated that special enforcement is required for terrorism, narcotics, corruption, and food adulteration related offences as they are a threat to ‘the health and material welfare of the community as a whole’. The justification provided by the commission to deviate from the original form of criminal procedure is that certain socio-economic offences require a higher level of deterrence in society [12]. These classes of offences require the accused to prove his innocence rather than the prosecution proving the accused’s guilt beyond a reasonable doubt. The reverse onus clauses require the accused to prove their lack of *mens rea* concerning the *actus reus* of an offence.

3. A few statutory provisions employing the presumption of guilt are as follows:

Without distinguishing between prosecution and defence, Section 104 of the Bharatiya Sakshya Adhiniyam, 2023 [13] states that the burden of proof is on the party who asserts the facts.

Section 115 of the Adhiniyam states that a person found in a disturbed area where explosives and firearms were used to attack law enforcement authorities shall be presumed to have committed the offence unless stated otherwise [14].

Section 117 and 118 of the Adhiniyam deals with the ‘presumption as to abetment of suicide of a married woman’ and ‘presumption as to dowry death’ respectively. Section 117 states that if a married woman commits suicide within 7 years of marriage and it is shown that her husband or his relatives subjected her to cruelty (carrying the same definition as stated in Bharatiya Nyaya Sanhita, 2023), then it

may be presumed by the court that the suicide was abetted by them [15].

Section 118 states that if a married woman dies within 7 years of her marriage and it is shown that soon before her death she was subjected to harassment or cruelty by her husband or his relatives in relation to demanding dowry from the woman then it shall be presumed by the court that the death of the woman was caused by them [16].

Section 10B of the Food Adulteration Act, 1954 states that a person accused of food adulteration, upon seizing the adulterant, shoulders the burden to prove that it wasn’t intended for adulteration [17].

Section 123 of the Customs Act, 1962 states that if the goods seized are reasonably believed to be smuggled, then the person from whom the goods were taken away bears the burden to prove that they are not smuggled goods [18]. Section 138A states that any offense under the act requiring a “culpable mental state” will impose the burden of proof on the accused to prove that no such mental state was present [19].

Unless they can prove to the contrary, upon retrieval of illicit substances, related plants, equipment, or materials from the accused’s possession, section 54 of the Narcotics, Drugs, and Psychotropic Substances (NDPS) Act presumes the accused’s guilt [20].

Along with the above statutory provisions, the Unlawful Activities (Prevention) Act [21] and the Prevention of Money Laundering Act (PMLA) [22] presume the guilt of the accused, which will be discussed in detail later in the article.

4. Counters to guilt presumption:

Balancing societal interests with the accused's rights especially when it comes to serious offences, and difficulty for the prosecution to procure proof of the accused's guilt beyond reasonable doubt especially when the nature of the offence is such that the accused possesses specific knowledge about his actions are common justifications for the presumption of guilt in reverse onus clauses.

The following are the counters to these justifications [11]:

1) Because the prosecution controls the case structure, determines the charges, and the evidence needed, it becomes very difficult for the accused to then prove that he did not have the *mens rea* for the crime.

2) Simply because certain facts are within the accused's own particular knowledge does not mean that they can be easily proven by the accused. Even if the accused knows that he is innocent, he may not have access to the resources and evidence to prove it on a "balance of probabilities". The accused may find it particularly difficult to prove his own *mens rea*.

In the case of *M.S. Reddy v. State Inspector of Police, A.C.B., Nellore*, the Andhra Pradesh High Court stated that the burden of proof lies with the prosecution, and allowing the accused to present evidence first would unfairly advantage the prosecution, enabling them to employ tactics to undermine the defense [23].

II. MISUSE IN SPECIFIC STATUTES

1. Unlawful Activities Prevention Act (UAPA): The stringent nature of the UAPA has been a common topic of debate and discussion over the years. The UAPA imposes a reverse burden of proof on the accused. While its purpose is to create deterrence

against terrorism related offences, certain statutory provisions create ambiguity in the interpretation of the UAPA, creating scope for its misuse.

Section 15 of the act ambiguously defines a "terrorist act" to be "*any act done with the intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country*". The phrases "*likely to threaten*" and "*likely to strike terror*" tend to remove the precondition of *mens rea* to constitute terrorism. The section also includes "*likely to cause the death of, or injuries to, any person or persons*" sufficient to constitute a "terrorist act", making no specific distinction between the right to dissent and committing violent crimes against the state. This confers the State with arbitrary powers to term acts of students' or citizens' protests as acts of terrorism, giving it the authority to place any person under detention who would question the State's policy and demand accountability. Section 43D (5) of the UAPA restricts bail for terrorism-related activities if the court believes that the accused is *prima facie* at fault based on the case report, not considering the evidence produced through the merits of the case [24]. The prolonged investigation period of 180 days leads to extended incarceration. The frequent denial of bail and extension of jail time for the accused is violative of their constitutional rights, particularly the right to liberty under Article 21 [25].

There have been several instances of misuse of the UAPA. In *Asif Iqbal Tanha vs State of Nct Of Delhi* (2021), the Delhi High Court acknowledged how stringent laws like TADA and the UAPA have been used to circumvent standard legal procedures, undermining public trust. These laws tend to be

misapplied to individuals, exaggerating accusations to suppress dissent and unjustifiably depriving them of bail.

While citing the judgment of Kartar Singh v. State of Punjab, the Delhi High Court quotes in this judgment, "352. *It is true that on many occasions, we have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA Act with an oblique motive of depriving the accused persons from getting bail and in some occasions when the courts are inclined to grant bail in cases registered under ordinary criminal law, the investigating officers in order to circumvent the authority of the courts invoke the provisions of the TADA Act. This kind of invocation of the provisions of TADA in cases, the facts of which do not warrant, is nothing but sheer misuse and abuse of the Act by the police. Unless, the public prosecutors rise to the occasion and discharge their onerous responsibilities keeping in mind that they are prosecutors on behalf of the public but not the police and unless the Presiding Officers of the Designated Courts discharge their judicial functions keeping in view the fundamental rights particularly of the personal right and liberty of every citizen as enshrined in the Constitution to which they have been assigned the role of sentinel on the qui vive, it cannot be said that the provisions of TADA Act are enforced effectively in consonance with the legislative intentment.*"[26]

After the release of Prabhir Purkayastha [27], at a discussion on "UAPA in Delhi: Punishment without Trial", senior Advocate Colin Gonsalves spoke about several instances where the accused arrested under terrorism charges were eventually released owing to a lack of substantial evidence. He asserted that these

stringent laws made it nearly impossible to obtain bail for the accused, infringing upon their constitutional rights [28].

2. Misuse in marriages - Cruelty and Dowry Death:

The guilt presumption imposes a heavy burden on the accused to prove his innocence. The misuse of these provisions could lead to fatal consequences and a gross miscarriage of justice. In December 2024, the suicide of Bengaluru techie Atul Subhash, who was caught up as an accused under 498A of IPC [29], made headlines (more commonly trending as the Subhash Case). The Supreme Court, in its judgment, stated that the cruelty provisions are being misused to avenge personal vendettas in marriages, to coerce the husband into complying with unreasonable demands made by the wife. In the judgment, the Supreme court explicitly states that, "*in recent years, as there have been a notable rise in matrimonial disputes across the country, accompanied by growing discord and tension within the institution of marriage, consequently, there has been a growing tendency to misuse provisions like Section 498A of the IPC as a tool for unleashing personal vendetta against the husband and his family by a wife. Making vague and generalised allegations during matrimonial conflicts, if not scrutinized, will lead to the misuse of legal processes and an encouragement for use of arm-twisting tactics by a wife and/or her family*"[30]. The court relied on cases like G.V. Rao v. L.H.V. Prasad (2000) [31] and Preeti Gupta v. State of Jharkhand (2010) [32], where it had previously cautioned against the misuse of Section 498A of IPC.

3. Misuse of the Narcotics Drugs and Psychotropic Substances Act (NDPS):

The Narcotics Drug and Psychotropic Substances Act too has been subjected to misuse, abusing the process of law. In the case of *Sunita Shukla v. the State of West Bengal and Ors.*, the Calcutta High Court directed the State to pay compensation to the petitioner for the false implication of her son by abuse of power. Charged under 21(c) of the NDPS Act, it was alleged by the petitioner that her son was illegally detained and subjected to atrocities by the police. Having hand in glove with the ruling party, her son was arrested and falsely implicated in a criminal case, causing reputational damage to her family. The sequence of events and the evidence indicated that the police did not discharge their duty in accordance with the law, and the court awarded a compensation amount of Rs. 2 lakhs to the petitioner to remedy the injustice caused [33].

There have been several instances of misuse of investigative powers by the police, which is a cause of concern as they violate several provisions of the NDPS Act. The misuse has been displayed through illegal searches, fabrication of evidence, coerced confessions, arbitrary arrests lacking substance, and so on [34].

In addition to corruption, the abuse of process has been orchestrated by systemic inefficiencies and prolonged detentions. In the case of *Mohd. Muslim v. State (NCT Of Delhi)*, the accused was arrested via a raid conducted based on secret information received by the police. The accused was held in custody for over seven years, while the trial's progression was slow, and thirty-four witnesses were yet to be questioned. The accused applied for bail, which the Additional Solicitor General opposed on the grounds of public interest and Section 37 of the NDPS Act (Refer [20]). Recognising the need for bail in cases of pre-trial detention, the court said that, *"Before parting, it would be important to reflect that laws which impose*

stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling." The judgment also took heed of the ill effects of prolonged detention, such as the risk of "prisonisation," which was explained to be *"a radical transformation whereby the prisoner:*

"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."[35]

4. Arbitrary Nature of the Prevention of Money Laundering Act (PMLA):

The PMLA came into force with the original intent of combating money laundering crimes serious in nature. Post the 2012 amendment, the PMLA has transitioned from being a special law to a more general "Jack of all trades". Critics say that this amendment has created more scope for arbitrariness in the system. Its Schedule had a two-tiered system separating minor crimes from major crimes. Minor crimes had a monetary threshold of 30 lakhs, and major crimes had no threshold. It has been argued by critics that the PMLA has been used as a tool for harassment against political opponents. The amendment made it more difficult to obtain bail regardless of the severity of the offence. The example of Rana Kapoor, who spent more than half the prescribed punishment for the offence he was charged under PMLA *before his trial had even begun*, is relevant to the rampant misuse of this Act. The Enforcement Directorate, too, tends to

function arbitrarily, choosing cases to investigate as per its whims [36].

Prolonged detention, once again, emerges as a matter of urgency, as it undermines the agency of law. The court, while considering the conditions of bail under the PMLA, has said in the case of *Vijay Madanlal Chaudhary v. Union of India*, “*If the Parliament/Legislature provides for stringent provision of no bail, unless the stringent conditions are fulfilled, it is the bounden duty of the State to ensure that such trials get precedence and are concluded within a reasonable time, at least before the accused undergoes detention for a period extending up to one-half of the maximum period of imprisonment specified for the concerned offence by law.*” The court has thus emphasized the duty of the state to ensure that the trials aren’t unreasonably delayed and justice is served in a timely, fair, and effective manner, upholding the rights of the accused as well as the integrity of the judicial process [37].

III. SUGGESTIONS AND CONCLUSION

There’s plenty of literature challenging the constitutionality of reverse onus clauses, but that is not what this article aims to explore. Based on the critique of reverse onus statutory provisions, two main problems are identified, and they both are related to systemic flaws: 1) Prolonged pendency of cases in the court, and 2) Corruption within the system.

These systemic shortcomings not only delay justice to the victim, but also to the accused. Pendency of cases leads to prolonged pre-trial detention, which is more common in reverse onus offenses, as the accused is presumed guilty even before the trial, making it more difficult to obtain bail. Injustice is perpetuated even further when the person has been falsely accused or arbitrarily arrested, and the delays in the system leave

him helpless without recourse to any remedy. Not only is justice delayed, but it also causes reputational and psychological damage to the accused and his family.

In 2022, the report by the Commonwealth Human Rights Initiative (CHRI) titled ‘Guilty Until Proven Innocent?’ highlighted that 76.1% of prisoners in India are pre-trial detainees, making it the second highest among the Commonwealth nations, only falling behind Bangladesh, whose pre-trial detainees constitute 80% of its prison population. The report makes the following suggestions, aiming at combating the pressing issues of systemic delays and internal corruption:

- 1) Pre-trial arrests to be regularly reviewed.
- 2) The grounds for arrest for all offences, including serious crimes, are to be “narrow, defined in law, and are subject to review by authorities senior to officers making such arrests”. Additionally, remedies are to be made available to the accused to combat unlawful detention.
- 3) The government must commit to providing fair trials, upholding the constitutional rights of the accused, and providing free legal aid.
- 4) Alternative measures should be adopted, having pre-trial detention as a last resort measure, in exceptional circumstances.
- 5) There needs to be more transparency regarding government data records of detainees. This will help in maintaining checks and balances on the system.
- 6) Incarceration and penal reforms should be prioritised for future discussions and as topics of research. [38]

The issues causing delays in the implementation of justice must be identified and remedied at the ground level. Some causes identified are: several vacancies in judicial posts leading to an overburdened judiciary,

complex and outdated procedures, overused adjournments, poor infrastructure, insufficient use of technology/ lack of digitalisation in the legal system, frivolous cases, and abuse of the appeal process as a means to merely gain more time. [39]

The battle is not regarding the constitutionality of the provisions but the capacity of the system to implement them. Unless the system is capable of fairly executing its vision, there must be a flexible case-based approach to be decided by the courts and not a pre-decided presumption of guilt when it comes to serious offences, pointing fingers at the accused. Effective implementation of the suggestions of the CHRI, especially consistent transparency and accountability, would aid in combating systemic flaws, including internal corrupt practices.

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