



DISSERTATION

ON

**THE BURDEN OF PROOF IN RAPE CASES: AN ANALYSIS
UNDER EVIDENCE ACT 1872**

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Declaration

Myself, **Towsif Hasan Arin**, bearing student ID: **2019-2-66-045**, declare that the work in this dissertation titled “**The Burden of Proof in Rape Cases: An Analysis Under the Evidence Act 1872**” has been carried out by me. This is my original work and information used for this research has been duly acknowledged. This work has not been published in any journal, newspaper or article.

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Abstract

The thesis titled "The Burden of Proof in Rape Cases: An Analysis Under the Evidence Act 1872" contains an analysis of the role of burden of proof provisions in establishing guilt or innocence in sexual assault cases. This dissertation looks into the complications surrounding the provisions relating to burden of proof in the Evidence Act, 1872 shedding light on its influence on the victims, defendants, and the justice system as a whole. By analyzing relevant legal provisions and case laws, the research purposes to contribute perceptions for a more nuanced understanding of the changing aspects involved in adjudicating rape cases.

Chapter 1

Introduction

1.1 Introductory Statement

The complex legal framework related to the burden of proof in rape cases is examined in this thesis, with particular focus given to the rules specified in the Evidence Act of 1872. In order to critically evaluate the difficulties and implications that both the prosecution and the defense must deal with while establishing or disputing the burden of proof in the context of sexual offenses, the article will look at the historical background and development of these legal principles. By means of an extensive investigation of relevant case law, legislative provisions, and research, this study aims to provide significant contributions to the current conversation regarding the fair and impartial resolution of rape cases within the context of the Evidence Act of 1872.

1.2 Research Question

Research questions of this papers will be of two kinds which includes main and subsidiary questions. The research questions are:

1. To what extent does the burden of proof in rape cases under Evidence Act 1872 impact the fair and adjudication of such cases?
2. How does the application of burden of proof in rape cases in Bangladesh impact the right of the accused and the victims?

1.3 Research Justification

This research aims to explore the nuances of the burden of proof in rape cases in Bangladesh under the Evidence Act of 1872. Given the sensitive nature of sexual assault cases and their significant legal implications understanding the burden of proof is crucial for ensuring a fair and just legal process. This study seeks to analyses the existing legal Framework, identify challenges in meeting the burden of proof and propose potential reforms to enhance the effectiveness of justice in rape cases. By addressing this topic this research aims to contribute valuable insight to the ongoing discourse on legal procedures related to sexual offences, promoting a more informed and equitable legal system in Bangladesh.

1.4 Research Methodology

The research will be conducted by following the qualitative research method. It will be based on various books, journals, articles on relevant provisions of Evidence law. The primary source of this dissertation is the Acts of Parliament and Judicial decisions. The secondary source is books, Commentaries, Journal Articles, Review, Theses, etc.

1.5 Literature Review

The Evidence Act, 1872 is considered the backbone of justice system because every statute is dependent on it. And burden of proof is also important for finding who the real victim is. This research is depending on several journals, articles and blogs. One of them is Md. Altaf Hossain, *The Evidence Act* (6th edition, 2009) provides the basic definition of burden of proof. Another one is "Rape and the Law: A Study in Bangladesh Perspective" by Shahnaz Huda (2003) Huda's work provides an insightful analysis of rape laws in Bangladesh, examining how the legal system handles the burden of proof.^{1 2}The book addresses cultural nuances and challenges specific to the Bangladeshi context, contributing to the broader discourse on sexual offenses within the country. Another one is *Legal Dimensions of Violence Against Women in Bangladesh*" by Ishrat Shamim (2006) Shamim's book explores various aspects of violence against women, including rape, within the legal framework of Bangladesh.³ By focusing on cases and legal precedents, the author sheds light on the complexities surrounding burden of proof and the efficacy of legal mechanisms in addressing sexual crimes. And one more *Rape: A Criminal Offense in Bangladesh*" by Syed Monowar Hossain (2012) Hossain's work delves into the legal intricacies of rape as a criminal offense in Bangladesh.⁴ By examining cases and legal provisions, the author analyzes the burden of proof and the challenges faced by the legal system in ensuring justice for survivors of sexual assault.

¹ Shahnaz Huda, *Rape and the Law: A Study in Bangladesh Perspective*, (2003)

² Md. Altaf Hossain, *The Evidence Act*, (6th edition, 2009)

³ Ishrat Shamim, *Legal Dimensions of Violence Against Women in Bangladesh*, (2006)

⁴ Syed Monowar Hossain, *Rape: A Criminal Offense in Bangladesh*, (2012)

Chapter 2

Burden of Proof: Concept, Application and Significance

2.1 Introduction

The burden of proof is a crucial aspect of legal systems, requiring parties to prove their claims in court. This concept impacts court structures and case outcomes globally. The chapter delves into the theoretical foundations and past context of the burden of proof, examining how it is divided between parties in civil and criminal cases. It highlights the balance required for a neutral and just legal system. The burden of proof also influences public opinion, shaping the perception of guilt and innocence. The chapter explores the wider implications of legal doctrine and its protection of individual and judicial rights.

2.2 The Concept of Burden of Proof

The burden of proof is a legal test that determines whether a legal claim is legitimate or invalid based on the evidence that has been produced. In most arguments, the burden of proof is usually on the individual presenting the case because they have to provide evidence to support their statements.⁵

2.2.1 Understanding When Proof is Needed

Ensuring that the legal burden of evidence required is based on real information rather than opinions based on opinions. The party initiating the lawsuit or action is required to offer a factual basis and any supporting documentation. Lawyers are often tasked with acquiring evidence and bearing the plaintiff's burden of proof. One of the three degrees of the burden of proof must be met by the required amount of evidence for a claim to be successful. Some examples of this include "beyond a reasonable doubt," "clear and convincing," and "preponderance of the evidence".

2.2.2 Definition of the Burden of Proof

⁵ 'Burden of Proof: Legal Definition, Application, Legal Standards and Defences, Juristopedia' Editors, <https://juristopedia.com/burden-of-proof-legal-definition/> Accessed in 15 November 2023

The burden of proof is a legal doctrine that shows us if a legal claim is true or false based on the evidence we have. One party in a claim usually has to prove their case.⁶ Usually, the party making the claim is the one who has to show that the claim is valid and has the burden of proof. This rule about who has to prove something is meant to make sure that legal choices are based on facts, not assumptions. The person who starts a case or lawsuit must defend what they are saying with facts and proof. A plaintiff's lawyer is usually in charge of gathering evidence and setting the standard of proof.⁷

A claim of admissibility or inadmissibility is determined by legal standards like the burden of proof and the caliber of the supporting documentation. Usually, the burden of proof is on the claimant, who must provide proof of the accuracy of their statement. When making a claim, one side usually has the burden of proof.⁸ It is necessary to provide documentation and proof to back up the claims made by the party bringing the lawsuit. Collecting evidence and formulating a burden of proof on behalf of a plaintiff are common tasks assigned to attorneys.⁹

The burden of proof is divided into three stages, which specify how much proof is needed to prove a point. These are defined as "preponderance of the evidence," "clear and convincing," or "beyond a reasonable doubt."¹⁰ For example, The prosecution must prove their case in a criminal hearing. Before they can prove otherwise, the prosecutor must show that there is no reasonable doubt that the defendant is guilty. The accused person is thought to be innocent by the court. In the case of *Md. Allmuddin v. State of Assam*, it was decided that even if the defence version is false, the prosecution cannot use that against them if they do not prove the case beyond all reasonable doubt.¹¹

2.2.3 Criteria for Evidence

In the context of law, the burden of proof means having to show proof that supports up a claim or statement. Here are seven things to keep in mind about the burden of proof:¹²

⁶ Kalaskar Netra, 'The Concept of Burden of Proof', <https://www.legalserviceindia.com/legal/article-7916-the-concept-of-burden-of-proof.html> accessed in 15 November 2023

⁷ Ibid

⁸ Julia Kagan, 'Burden of Proof: Meaning, Standards and Examples', (June 30, 2023) <https://www.investopedia.com/terms/b/burden-proof.asp> Accessed in 24 November 2023

⁹ Shahnaz Huda, *Rape and the Law: A Study in Bangladesh Perspective*, (2003)

¹⁰ Syed Monowar Hossain, '*Rape: A Criminal Offense in Bangladesh*' (2012)

¹¹ The State of Assam – Respondent Criminal Appeal No. 75 of 1990. Decided on 4.2.1992.

¹² Jenica Shorey and Brittany McKenna, Burden of Proof, 'Definition, Standards and Cases', 21 November 2023 <https://study.com/academy/lesson/burden-of-proof-definition->

- **Preponderance of the evidence:** To prove something in a legal case, you usually only need to show that there is a “preponderance of the evidence,” which means that the evidence is more likely to be true than not.¹³
- **Clear and Convincing Evidence:** This standard calls for more proof than “preponderance of the evidence,” but not as much as “beyond a reasonable doubt.” This method is commonly used when there is theft or when important issues are at risk.¹⁴
- **Beyond a Reasonable Doubt:** This is the strongest level of proof and is usually used in criminal situations. It says that the evidence must be so strong that a judge or jury can’t have any doubts about whether or not the accused person is guilty. The accused can be found not guilty if the prosecution can’t show their guilt beyond a reasonable doubt. This was ruled in the 2004 case Ouseph v. State of Kerela.¹⁵
- **Probable Cause:** This standard is often used for search or arrest warrants and means that there is enough evidence to think that a crime has been committed or that evidence of a crime will be found.¹⁶
- **Prima Facie Case:** This means giving enough proof to prove a fact, unless the proof is rejected.
- **Statutory assumption:** Sometimes, the law makes a presumption that puts the burden of proof on the other side, unless they can show proof that the presumption is wrong. These standards help figure out the amount of proof needed in different legal circumstances¹⁷

The most of the evidence Plaintiffs must often persuade the court or jury in civil disputes that the defendant has a greater than 15% of the blame for their losses and suffering. Defendants are

[cases.html#:~:text=The%20burden%20of%20proof%20is%20the%20responsibility%20of%20a%20party,jury%2C%20rooted%20in%20admissible%20evidence.](#) Accessed in 26 November 2023

¹³ Ibid

¹⁴ Jenica Shorey and Brittany McKenna, Burden of Proof, ‘Definition, Standards and Cases’, 21 November 2023, <https://study.com/academy/lesson/burden-of-proof-definition-cases.html#:~:text=The%20burden%20of%20proof%20is%20the%20responsibility%20of%20a%20party,jury%2C%20rooted%20in%20admissible%20evidence> accessed in 26 November 2023

¹⁵ State of Kerala 1961 Ker LJ 769 : 1962 (2) Cri LJ 437

¹⁶ Ibid

¹⁷ Jenica Shorey and Brittany McKenna, Burden of Proof, ‘Definition, Standards and Cases’, 21 November Accessed in 26 November 2023, <https://study.com/academy/lesson/burden-of-proof-definition-cases.html#:~:text=The%20burden%20of%20proof%20is%20the%20responsibility%20of%20a%20party,jury%2C%20rooted%20in%20admissible%20evidence> Accessdd in 26 November 2023

frequently sued by plaintiffs in an effort to get monetary damages for losses like medical expenses, missed income, or property damage.¹⁸

2.3 Historical Background

The burden of proof concept has a long history in various legal systems, with its roots tracing back to Roman law and the concept of *onus probandi*, or burden of proving. This concept was further developed by legal experts like Cicero¹⁹. The Middle Ages saw the beginning of the presumption of innocence in English common law, with the prosecution bearing the burden of proving the accused person's guilt. This concept evolved into a more comprehensive understanding of the burden of proof in court proceedings. The concept of "Qat' al-Burhan" in medieval Islamic law emphasized the importance of proof and evidence in court cases. The development of the burden of proof and its acceptance as a fundamental component of modern legal systems has been influenced by historical factors and jurisprudential traditions from various cultures and legal systems.²⁰ It is an interesting journey, as many different legal systems have shaped the way the burden of proof has changed over time.²¹

"*Onus probandi*", or the burden of proof, was the foundation of the legal system in ancient Rome. Following in the footsteps of intellectuals like Cicero, Roman legal philosophy recognized the importance of offering proof for claims made. It was the burden of proof to establish the truth of a claim, a principle that shaped the Roman legal maxim "*actori incumbit probatio*" (the one who claims having the burden of proof).²² One of the foundational ideas of English common law emerged during the Middle Ages: the presumption of innocence. As per this theory, it is now the prosecution's responsibility to demonstrate the guilt of the accused. From earlier systems, where the accused often had to prove their innocence, this safeguard represented a significant improvement. Preserving individuals from baseless allegations was its aim. Eventually, the burden of proof was understood more broadly and could be applied in a range of legal contexts, replacing the presumption of innocence.²³ "Qat' al-Burhan" placed a strong emphasis on the burden of proof

¹⁸ Ishrat Shamim , '*Legal Dimensions of Violence Against Women in Bangladesh*', (2006)

¹⁹ James Cargile, '*Philosophy*' Vol. 72, No. 279 (Jan., 1997), pp. 59-83 (25 pages)Published By: Cambridge University Press

²⁰ Ibid

²¹ Andrew Ashworth, '*A philosophy of Evidence law*' (The United States by Oxford University pres Inc, (2008)

²² Andrew Ashworth, '*A philosophy of Evidence law*' (The United States by Oxford University pres Inc, (2008)

²³ Ibid

in legal proceedings. Islamic scholars—including those from the legal tradition—emphasized the need of providing precise and compelling evidence in order to support assertions. This idea was in line with more general Islamic ideas of justice and equity in the judicial system.²⁴

The burden of proof was developed and accepted as a fundamental concept in contemporary legal systems as a result of historical influences from Roman law, English common law, and Islamic jurisprudence. These ideas were combined and modified as legal systems interacted and changed, having an impact on the creation of legal frameworks all over the world.²⁵

As a flexible and dynamic notion, the burden of proof is still an essential component of modern legal systems, guaranteeing that assertions are supported by evidence and assisting in the reasonable and equitable settlement of legal conflicts in a variety of historical and cultural contexts.²⁶

2.4 Application of Burden of proof

A legal and philosophical notion known as the burden of proof establishes which side in a disagreement is required to provide evidence to back up their assertions. It is essential to maintaining justice and fairness in court processes in legal situations. The premise is that the person asserting something has a duty to present enough proof to persuade the fact-finder (jury or judge) that their claim is true. Burden of proof in criminal trials normally rests with the prosecution, which must prove the defendant's guilt beyond a reasonable doubt. The burden of proof in civil disputes rests on the party filing the complaint; in most cases, this means proving your case by a preponderance of the evidence, which is the preponderance of the evidence supporting your claims. This idea goes beyond the field of law as well. People are supposed to persuade others during debates and conversations by providing evidence or logic to back up their claims. This idea discourages irrational claims and encourages critical thinking and reasoned conversation.²⁷

A fair and just system must be upheld in all circumstances, including judicial proceedings and ordinary encounters where the veracity of claims is in question. This requires an understanding

²⁴ Syed Monowar Hossain, 'Rape: A Criminal Offense in Bangladesh' (2012)

²⁵ James Cargile, 'Philosophy' Vol. 72, No. 279 (Jan., 1997), pp. 59-83 (25 pages)Published By: Cambridge University Press

²⁶ James Cargile, 'Philosophy' Vol. 72, No. 279 (Jan., 1997), pp. 59-83 (25 pages)Published By: Cambridge University Press

²⁷ Md. Altaf Hossain, 'The Evidence Act', (6th edition,2009)

of the burden of evidence. It acts as a basic tenet that directs the distribution of evidential duties in order to guarantee a well-reasoned and supported settlement of conflicts.²⁸

The burden of evidence principle can be used in a number of situations, such as:

1. **Criminal Cases:** Legal Proceedings: The burden of proof is with the prosecution to establish the defendant's guilt beyond a reasonable doubt. In the criminal case of State of Rajasthan vs. Sher Singh (1994), it was decided that it was against the law to look at evidence from the defence before evidence from the prosecution²⁹.
2. **Civil Cases:** The burden of proof normally rests on the party initiating the lawsuit, who must frequently establish their case by a preponderance of the evidence. In administrative or regulatory settings, parties disputing judgements may be required to provide evidence to support their claims, a process known as administrative Hearings.³⁰
3. **Debates and Discussions:** People who make statements in debates or discussions are obliged to back them up with facts or reasoned arguments.³¹
4. **Scientific Research:** In accordance with the scientific method, researchers are required by the scientific community to present facts and evidence in support of their theories and findings.³²
5. **Philosophical Arguments:** Participants in philosophical arguments are frequently required to provide persuasive reasoning or evidence to back up their opinions. This is known as the burden of proof.³³
6. **Contractual Disputes:** When interpreting contract provisions or alleging violations, parties may be required to substantiate their claims with proof in commercial or contractual disputes.³⁴
7. **Moral and Ethical Conversations:** People are frequently asked to defend their moral or ethical views using arguments or supporting data while speaking about moral or ethical stances.³⁵

²⁸ Md. Altaf Hossain, *'The Evidence Act'*, (6th edition,2009)

²⁹ Sher Singh vs The State Of Rajasthan on 4 May, 1994 (3) WLC 136, 1995 (1) WLN 549.

³⁰ Md. Altaf Hossain, *'The Evidence Act'*, (6th edition,2009)

³¹ Md. Altaf Hossain, *'The Evidence Act'*, (6th edition,2009)

³² Md. Altaf Hossain, *'The Evidence Act'*, (6th edition,2009)

³³ Md. Altaf Hossain, *'The Evidence Act'*, (6th edition,2009)

³⁴ Md. Altaf Hossain, *'The Evidence Act'*, (6th edition,2009)

³⁵ Md. Altaf Hossain, *'The Evidence Act'*, (6th edition,2009)

8. **Insurance Claims:** The policyholder typically has the burden of demonstrating the occurrence of an insured event and the accompanying damages when submitting an insurance claim.³⁶
9. **Employment Disputes:** In situations involving employment disputes, including wrongful termination, it may be the employee's responsibility to prove the employer's misconduct.³⁷
10. **Political and Public Policy Debates:** When promoting changes or reforms, policymakers and advocates are frequently obliged to back up their ideas with logic and proof.³⁸

The burden of proof is, in essence, a fundamental principle that can be applied to many different contexts where the demonstration of validity, truth, or justification is necessary for equitable and rational decisions.

2.5 Significance of Burden of Proof

The burden of proof is a crucial factor in determining the outcome of a case in the legal system. Determining who is legally obligated to provide evidence that supports or refutes a claim is necessary. It also establishes the quantity of evidence required to accomplish that objective.³⁹ In the case of *Jarnail Singh v. the State of Punjab*, it was decided that if the prosecution fails to present enough evidence to meet their burden, they cannot use the evidence provided by the accused to support their defence.⁴⁰ In the event that one party to the proceeding bears the burden of proof, he is legally obligated to present sufficient evidence to back up his assertions. The plaintiff, or the person making the claim, usually has the burden of proof. The most common types of evidence are things, records, and witness statements.⁴¹

The judge divides up the burden of proof among the parties in a trial. If the party was successful in meeting this burden, the judge and jury will determine that as well as the ramifications of success or failure. The facts of the case will determine the degree to which parties must persuade the judge and jury as well as the kind of evidence they must present. For example,

³⁶ Md. Altaf Hossain, *The Evidence Act*, (6th edition, 2009)

³⁷ Md. Altaf Hossain, *The Evidence Act*, (6th edition, 2009)

³⁸ M. Jashim Ali Chowdhury, *সাক্ষ্য আইন: সহজ পাঠ* (2nd Edition, 2017)

³⁹ Ben Crump, 'What Is Burden of Proof and Why Is It Important?' <https://bencrump.com/faqs/what-is-burden-of-proof-and-why-is-it-important/> Accessed in 28 November 2023

⁴⁰ *Jarnail Singh v. The State of Punjab*, AIR 1996

⁴¹ *Ibid*

in certain situations, the plaintiff needs to establish the allegations beyond a reasonable doubt, but in other situations, a lower standard of proof is sufficient.⁴²

2.6 Conclusion

The “Burden of Proof: Concept, Application, and Significance” chapter delves into the concept of the burden of proof, a fundamental principle in jurisprudence that dictates which party in a legal dispute must provide strong evidence to support their claims. This principle ensures an equitable and just legal system and is crucial in criminal and civil cases. In criminal trials, the prosecution is responsible for establishing guilt beyond a reasonable doubt, while in civil disputes, the plaintiff must prove their case by a preponderance of evidence. This application of the burden of proof promotes justice and accountability, protecting the integrity of court rulings. The chapter explores the role of the burden of proof in various contexts, including legal systems, ethics, contracts, administrative proceedings, and everyday interactions. It highlights its importance in promoting reasoned speech and critical thinking, supporting scientific knowledge with empirical data, and ensuring claims are supported by data or reasoned arguments. The chapter emphasizes the burden of proof’s role in forming rational decisions, preserving justice, encouraging intellectual rigor, and maintaining decision-making integrity.

⁴² Shahnaz Huda, *Rape and the Law: A Study in Bangladesh Perspective*, (2003)

Chapter 3

Analysis of the Provisions of Burden of Proof in Bangladesh

3.1 Introduction

This chapter examines the burden of proof in Bangladesh, a crucial aspect of jurisprudence that determines the outcome of cases. It examines the laws controlling Bangladesh's burden of proof, focusing on significant legislative and judicial decisions that define its fundamentals. The chapter aims to clarify the nuances of the burden of proof and provide insights into the rules governing evidentiary duties in different legal situations. It also compares Bangladesh's approach to international legal standards, aiming to provide insights into the country's unique characteristics and areas for improvement. This academic investigation offers legal professionals, academics, and legislators a roadmap for understanding Bangladesh's evidence laws, enhancing our understanding of the burden of proof, its impact on justice administration, and the ongoing development of legal standards within the jurisdiction.

3.2 Analysis based on the Evidence Act, 1872

The Evidence Act of 1872 addressed the burden of proof in Bangladesh from section 101 to 114. In a legal proceeding, the burden of proof designates which party bears the responsibility of producing evidence to bolster their claims. The following are some essential elements of the Evidence Act that pertain to the burden of proof –

Section 101 of the Evidence Act of 1872 in Bangladesh establishes a basic legal principle: the burden of proof lies with the party presenting an affirmative claim. Basically, it means that anyone

states a truth or makes a legal claim has to back it up with enough evidence. The foundation of evidentiary proceedings is this part, which emphasizes the need for persons making claims to provide supporting evidence in order to ensure a just and equitable legal system⁴³ Section 102 clearly assigns the prosecution the burden of proof when it comes to criminal law. This implies that the prosecution needs to prove the accused person's guilt beyond a reasonable doubt. This high bar emphasizes the seriousness of the state's role in accusing people of crimes and the need for strong evidence to back up such serious accusations, acting as a vital protection against erroneous convictions⁴⁴ The Onus of Proof for Specific Facts situations involving presumptions of facts are covered in Section 103. This provision transfers the burden of proof to the party against whom the presumption is used when the law assumes a particular truth to be true. This legal mechanism recognizes that in order to maintain the integrity of the legal process, the opposing party must present proof to refute any presumption made by the law.⁴⁵ Section 104 of the Evidence Act of 1872 in Bangladesh outlines certain facts that are presumed to be accepted in evidence, affecting the admissibility of evidence. The law sets certain realities that are assumed to be true without clear evidence to the contrary. This clause acknowledges well-known, readily provable, or logically connected facts, streamlining judicial proceedings and allowing courts to focus on more contested matters. Parties must be aware of these assumptions and raise objections if they contradict them.⁴⁶

Section 105, imposes the burden of proof on the accused when using exceptions to support their actions. The accused must prove their case fits within legally recognized exceptions, providing evidence to support their assertions. This ensures that those claiming defenses based on legal exceptions provide a solid explanation, promoting an impartial and open judicial system. The prosecution must refute exceptions, not refute them. In criminal situations when the accused employs legal defenses, explanations, or excuses to refute the charges against them, Section 105 is very important.⁴⁷ Section 106 of the Evidence Act of 1872 in Bangladesh addresses situations

⁴³ The Evidence Act, 1872 (ACT NO 1 OF 1872)

⁴⁴ The Evidence Act, 1872 (ACT NO 1 OF 1872)

⁴⁵ Jenica Shorey and Brittany McKenna, Burden of Proof, 'Definition, Standards and Cases', 21 November Accessed in 26 November 2023, <https://study.com/academy/lesson/burden-of-proof-definition-cases.html#:~:text=The%20burden%20of%20proof%20is%20the%20responsibility%20of%20a%20party,jury%2C%20rooted%20in%20admissible%20evidence> Accessed

⁴⁶ Ibid

⁴⁷ Jenica Shorey and Brittany McKenna, Burden of Proof, 'Definition, Standards and Cases', 21 November Accessed in 26 November 2023, <https://study.com/academy/lesson/burden-of-proof-definition->

where a person has knowledge of facts but fails to provide evidence. This clause allows the court to assume the existence of facts when a party knows them but fails to provide proof. This ensures that those with direct knowledge cannot withhold information without facing consequences. Section 106 promotes a thorough evaluation of available evidence and avoids deliberate omissions, improving the overall fairness and efficacy of the legal system. In such cases, the onus of establishing facts may transfer to the other side.⁴⁸

Section 107 of the Evidence Act of 1872 addresses the burden of proving the death of someone known to have lived for thirty years. This provision states that the burden of proof lies with the party asserting the death, regardless of whether the person is alive or dead. This shifts the burden of proof on the affirmative party, acknowledging the practical difficulty of proving the negative fact of death. Section 107 ensures the validity of claims regarding the death of those who have recently been alive, enhancing the dependability and precision of court decisions and preventing unfounded claims of death. Section 108 of the Evidence Act of 1872 outlines the burden of proving the vital status of an individual who has been missing for seven years or more. The party making the claim must substantiate their claim with proof, emphasizing the practical difficulties in proving the continuous existence of those who have been away for a long time. This provision encourages a careful review of facts in cases where a person has been absent for an extended period, ensuring the reliability and equity of legal determinations regarding the vital status of individuals. The burden of proof in connection to relationships in particular legal contexts—landlord and tenant, principal and agent, and partnership is addressed in Bangladesh in Section 109 of the Evidence Act of 1872. The party asserting a relationship has the duty of demonstrating its existence or lack thereof in proceedings involving these relationships such as, In the event of a disagreement about the existence of a partnership, the party asserting the partnership's existence bears the burden of proof. In situations where there is a dispute over the nature of the tenancy, the burden of proof rests with the party claiming that the relationship is specifically a lease, tenancy-at-will, or another type of arrangement. Likewise, in circumstances concerning principal-agent relationships, the burden of proof lies with the party asserting the existence of the relationship, if it is not established. In legal conflicts, Section 109 highlights the

[cases.html#:~:text=The%20burden%20of%20proof%20is%20the%20responsibility%20of%20a%20party,jury%2C%20rooted%20in%20admissible%20evidence](#) accessed in 26 November 2023

⁴⁸ Ibid

significance of presenting unambiguous and well-supported evidence when proving or disproving certain particular ties. The clause guarantees a just and well-supported assessment of the nature of these ties in the eyes of the law by laying the burden of proof on the party asserting the relationship.⁴⁹

Section 110 outlines the burden of proof in property ownership disputes. It requires parties to provide sufficient and persuasive evidence to support their claims. This provision is crucial in property-related disputes, as it ensures that parties must present compelling arguments supported by records, deeds, or other accepted forms of proof. The Act also controls the burden of proof in legal proceedings, promoting a just and equitable legal system. Sections 101, 102, 103, 104, 105, 106, 107, 107, 108, and 109 ensure the validity of claims regarding vital status, enhancing the dependability and precision of court decisions. Section 110 is particularly important in property-related disputes, as it ensures that parties asserting ownership must make a compelling argument backed up by records, deeds, or other accepted forms of proof. This provision helps to ensure a fair and just resolution of disputes over property rights.⁵⁰

3.3 Other Special Laws and Burden of Proof

1. **The Foreigners Act, 1946 (Section 9):** According to this section, in cases involving foreigners or specific class or description, the person is responsible for proving they are not a foreigner, despite the Evidence Act, 1872, unless it falls under section 8.⁵¹
2. **The Foreign Exchange Regulation Act, 1947 (Section 24):** The burden of proof in violating Act provisions or regulations for authorization lies with the accused. If proving complicity with an outsider is necessary, the accused must prove sufficient circumstances to establish the offense. It will be presumed that there was complicity in this case.⁵²
3. **The Railway Act, 1890 (Section 76):** The burden of proof in lawsuits associated with the loss of property or animals-

⁴⁹ The Evidence Act, 1872 (Bangladesh)
(ACT NO. I OF 1872)

⁵⁰ The Foreigners Act, 1946 (ACT NO. XXXI OF 1946)

⁵¹ Ibid

⁵² The Foreign Exchange Regulation Act, 1947 (ACT NO. XXXI OF 1946)

4. It shall not be necessary for the plaintiff to prove the cause of any loss, destruction, or deterioration in any suit brought against the railway administration for compensation for animals or goods delivered to the railway administration for carriage by the railway.⁵³
5. **The Railway Act, 1890:** If an individual travels fraudulently without a valid pass or ticket, violating section 68, or using a single pass or ticket used on a prior trip, they may face up to three months in prison or a fine of up to one hundred Taka, plus the cost of the single trip. The accused must prove no intent to defraud.⁵⁴
6. **The Customs Act, 1969:** In this act provision 187 deals with the event that someone is accused of violating this Act and it is unclear whether they acted lawfully, were in possession of something, or were in compliance with a permit, license, or other document that was issued by or under an existing law, it will be their responsibility to demonstrate their legal authority.⁵⁵
7. **The Securities and Exchange Ordinance, 1969 (25A):** In the event that an individual is charged with violating any of the provisions of this ordinance or any subordinate orders that forbid them from acting without authority approval, it will be their responsibility to demonstrate that they did not violate the provision or, if applicable, the order.⁵⁶

The Foreigners Act, 1946, Foreign Exchange Regulation Act, 1947, and Railway Act, 1890 all impose specific burdens on individuals in various cases. The Foreigners Act, 1946 requires proof of identity as a foreigner, while the Railway Act, 1890, imposes proof in property or animal loss lawsuits and fraudulent travel without valid passes. The Customs Act, 1969, requires proof of legal authority in unclear cases, and the Securities and Exchange Ordinance, 1969, imposes proof in violations of authority orders.

3.4 Conclusion

Bangladesh's burden of proof rules are very important for handling evidence and making sure that the court system is fair and well-rounded. Knowing these laws helps make the court system fair by explaining what strong proof is needed and keeping judges from making arbitrary decisions. They also give lawmakers, academics, and lawyers a way to improve the judicial system. Looking

⁵³ The Railways Act, 1890 (ACT NO. IX OF 1890)

⁵⁴ The Railways Act, 1890 (ACT NO. IX OF 1890)

⁵⁵ The Customs Act, 1969 (ACT NO. IV OF 1969)

⁵⁶ The Securities and Exchange Ordinance, 1969 (Ordinance NO. XVII OF 1969)

at Bangladesh's burden of proof laws shows that the country's lawmakers want to make sure that the court system is fair and open to everyone, that people are held accountable, that people believe the courts, and that the rule of law is protected.

Chapter 4

Burden of Proof and Its Applications in Rape Cases and Other Sexual Offences

4.1 Introduction

This chapter examines the complicated concept of the burden of proof and how it applies to situations involving rape and other sexual assaults. We discover how the burden of proof profoundly affects the standards for evidence and how judicial processes are deeply shaped as we negotiate the legal complexities. Understanding how the legal system handles the complexity of sexual offenses and strikes a careful balance between the pursuit of justice and the accused's protection is made possible only via this examination. The chapter strives to offer a thorough understanding of the delicate balance between justice and fairness in such sensitive topics by shedding light on the difficulties, ramifications, and changing landscape of legal processes by exploring this burden within the particular context of sexual offenses.

4.2 Rape and other sexual offences in the laws of Bangladesh

Bangladesh's legal framework focuses on sexual offenses, including rape, with a focus on safeguarding accused parties' rights and victims. The criminal code outlines the offense's

components, making rape a crime, and includes clauses for harassment and molestation. Understanding these laws is crucial for comprehending Bangladesh's response to and pursuit of justice in cases of sexual assaults and rape.⁵⁷

In Bangladesh including The Penal Code of 1860 and other relevant legislation contain important parts related to sexual offenses, including rape, within Bangladesh's legal system.⁵⁸ There are several sections contained in the Penal Code which deals with Rape as well as the penalty of this crime. These following sections of the Penal Code of Bangladesh discusses about the term "Rape"

1. **Section 375:** A man is considered to have committed rape if he engages in sexual relations with a woman in five situations: against her wishes, without her permission, with her consent, with her consent, even if she doesn't consider him her husband, or when she is under fourteen. Penetration is enough for the offense, except when a man has sexual relations with his wife.
2. **Section 376:** This section deals with Punishment for rape, Rape victims, unless their spouse is under twelve, face imprisonment for up to two years, fines, or both, with life or ten years or more in prison.⁵⁹
3. **Section 377:** This section particularly discusses about the Unnatural crimes. As per section engaging in voluntary, against-nature sexual relations with a person, woman, or animal can result in a life sentence or up to ten years in imprisonment, along with fines.⁶⁰
4. **Section 509:** Individuals who intend to degrade a woman's modesty, such as speaking, gesturing, or displaying objects, face up to one year in simple imprisonment, a fine, or both.

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The Women and Children Repression Prevention Act of 2000, also known as Nari-O-Shishu Nirjatan Daman Ain, addresses a variety of violent crimes against women and children, including sexual offenses. **Section 2(e)** defines rape as defined by Section 375 of the Penal Code 1860 (Act XLV of 1860), and subject to Section 9 of this Act, rape is defined as follows.⁶² According to

⁵⁷ Alexander Lee, Bangladesh Rape Laws, (6 January, 2021)

<https://www.durhamasianlawjournal.com/post/bangladesh-rape-laws> Accessed in 28 December 2023

⁵⁸ The Penal Code 1860(ACT NO. XLV OF 1860)

⁵⁹ Ibid

⁶⁰ The Penal Code 1860(ACT NO. XLV OF 1860)

⁶¹ The Penal Code 1860 (ACT NO. XLV OF 1860)

⁶² The Women and Child Repression Prevention Act,2000

Section 9 of this Act, a person is considered to have committed rape if they have sexual relations without a valid marriage with a woman who is not younger than sixteen years old, either against her will or with her consent obtained, by coercion or fraud, or with a woman who is older than sixteen years old, either with or without her consent.⁶³ The punishment for rape or death due to rape varies depending on the crime. If a person rapes a woman or child, they face death or a severe life sentence. If a man dies later, they face death or a hard life sentence in jail and a fine. If multiple men rape a woman or child, each member faces death or a severe life sentence. If someone tries to harm or kill a woman or child, they face imprisonment for up to ten years, plus five years of hard labor.⁶⁴ Furthermore, in section 9A of the act Inducing suicide involves stealing a woman's reputation or character without her consent, leading to suicide. Penalties include imprisonment, a maximum sentence of ten years, five years of hard labor, and a fine. Sexual assault involves touching a woman's or child's sexual organ for sexual gratification, with a maximum sentence of 10 years and three years of labor.⁶⁵

4.3 Case Analysis

In this chapter we are going to analyze the cases regarding rape and burden of proof. We discovered that in order for a rape to be committed, it must be carried out against the victim's will and without her agreement at the time of the incident by examining sections 375 of the penal code and 9 of Nari O Shishu Nirjatan Daman Ain. As we now know after the rape, we must adhere to the protocol in order to establish a case of rape in court. Under the Evidence Act of 1872, the prosecutor must present evidence to support her case. As section 101 of the Evidence Act of 1872 states, the burden of proof in criminal matters is with the prosecutor. This means that the prosecution must establish beyond a reasonable doubt that the accused committed each and every element of the offense in question in order to find them guilty of a crime. A court must find the prisoner not guilty if the prosecution is unable to show even one element of the crime throughout the trial. It is also a well-established principle that, in the case of Roni Ahmed **Liton v. The State**⁶⁶, it was decided that, as the prosecution has not proven its case beyond a reasonable doubt, the accused is entitled to the benefit of the doubt—not as a matter of grace.

⁶³ Ibid

⁶⁴ The Women and Child Repression Prevention Act,2000

⁶⁵ The Women and Child Repression Prevention Act,2000

⁶⁶ 29 BLD (HCD) 386

To prove a rape case, though, is a big obstacle. The Evidence Act of 1872 has a provision in Section 155(4) that authorizes the use of character evidence in rape proceedings. "It may be demonstrated that the defend was of generally immoral character when a man is prosecuted for rape or an attempt to ravish," the statement reads. Immoral character refers to a woman's propensity of engaging in sexual activity. The prosecutor in that case faces additional challenges, including the fact that it bears the first burden of proof and that section 155(4) makes it more difficult to prove the case. In Bangladesh, it has long been customary for prosecutors to establish their own moral character before bringing up any allegations of rape in court. This is because the law allows for the victim's character to be questioned. The prosecutor must overcome this challenge in order to establish the case beyond a reasonable doubt. It was noted that the appellant in **Abdul Kalam Azad alias Ripon v. State** received a death sentence for torturing and killing her wife **Mahmuda Sultan Mammi** on the basis of demanding a dowry. The trial court noted after reading the diary's contents in its entirety that "it cannot be said that the fact of torturing the victim for not meeting the demand of dowry was totally absent," even though there is no explicit mention of the dowry demand in Material exhibit 1(c). This was the basis for the judgement. And so, the prosecution witnesses' oral testimony clearly showed both the demand for a dowry and the use of torture. The appeal was therefore denied.⁶⁷ It was noted in the case of **Abdul Mannan**, also known as **Mona Miah, v. State**.⁶⁸ (At present Section 155(6) has been deleted)

According to S. 10(1) of the Nari O Shishu Nirjaton Daman Act, proof that the death took place on by the failure to pay the dowry is required for a finding of guilt. The death that results from a demand being denied and the demand itself coming from the same act. Even if proven, an earlier demand isn't considered to have any connection to the offence. The prosecution in this case has completely failed to connect the guilty prisoner to the dowry demand, and since there are no elements required by S. 10(1) of the Act of 1995, we conclude that the entire trial lacks jurisdiction, rendering the conviction and sentence under S. 10(1) of the Act, 1995 void as well. The impugned judgement, order of conviction, and sentence are set aside, the death reference is denied, criminal Appeal No. 152 of 1995 is accepted, the imprisoned person is judged not guilty of the allegations brought against him, and he is cleared of all charges.⁶⁹ In the Indian case of **Jarnail Sen v. State**

⁶⁷ Abul Kalam Azad alias Ripon (Md) Vs. State, 2006, 35 CLC (AD)

⁶⁸ Mona Mia Vs State 1989, 18 CLC (HCD)

⁶⁹ Abdul Mannan alias Mona Miah Vs. State, 2002, 31 CLC (HCD)

of Punjab⁷⁰, it was recorded that the prosecution could not rely on the evidence presented by the accused to support their case if they failed to provide enough evidence to fulfil their burden of proof. In criminal proceedings, the standard is still the same: the prosecution has the burden of proof to establish the accused's guilt. The accused is entitled to an acquittal if they don't follow through on this. According to the Supreme Court, the court may suffer if the wrong individual carries the burden of proof. The supreme court deems the conviction and sentence of imprisoned Individuals justified when the victim was placed under police custody and found dead with injuries. The defense's argument is deemed unacceptable, as there is no evidence to support such an outrageous claim. The standard conclusion is that the girl was raped and killed while in the accused's possession. The court dismissed petitions, as there was no illegality in the high court division of the granted judgement and order.⁷¹

It was decided in the case of **State of Himachal Pradesh v. Shree Kant Shekari**⁷² that rape violates the basic right to life provided by article 21 of the Indian Constitution. This clause can be compared to **Article 32 of the Constitution of Bangladesh**. Both clauses defend freedom of choice as well as the right to life. The crime of rape is the most serious assault on an individual's right to personal liberty. The same court ruled that sexual assault "is an unlawful intrusion on the right of privacy." Both Bangladesh (2018) and India (2013) have ruled that the 'two-finger test' is unlawful due to the violation on women's right to privacy, physically and mental honesty, and dignity. Furthermore, an unpleasant test like this cannot be used to presume consent. It was noted in the **Zitu Ahsan Alias Apon v. State**⁷³ case that not the examination nor the cross-examination mentioned any objections or sexual activity. The doctor's certificate and the unambiguous statements of all the witnesses indicate that there is no indication of violence, and the victim girl and the appellant were married. As long as there is no fraud or threat, the sexual activity has been done with her permission. As a result, it does not draw any elements that would constitute an infraction under S. 9(1) of the Nari o Shishu Nirjaton Damon Ain. The court below could not have justified its decision to convict and sentence the appellant in this instance because there was very little evidence of practicing fraud against her or having sex with her without her consent. Since the

⁷⁰ Jarnail Singh & Ors. Etc vs State Of Punjab & Ors on 7 May, 1986

⁷¹ Jarnail Singh & Ors. Etc vs State Of Punjab & Ors on 7 May, 1986

⁷² State of Himachal Pradesh Vs Shree Kant Shekari Appeal (crl.) 589 of 1999

⁷³ Zitu Ahsan alias Apon Vs. State, 2007, 36 CLC (HCD)

court completely ignored the fact that this was not a rape case in its ruling and order, it could be rejected.

Section 24 of the Evidence Act's confessional evidence made by a co-accused was the justifiable matter in the **State v. Mozammel**⁷⁴ and others case. In this case, Justices SK Sinha and MM Rahman Bhuiyan noted that there is no question that the victim was not sexually assaulted by the accused before to her death based on the medical evidence, Modi's medical jurisprudence, and toxicology. Two accused individuals made confessional admissions under torture, which were not genuine nor voluntary. As a result, neither confession may be utilized as grounds for conviction; additionally, both confessions are exculpatory in character, supporting each other. A co-defendant's confession is extremely weak proof. The Evidence Definitions Act is not included with it. Therefore, it is illegal for a co-accused's confession to be used as evidence against another co-accused in order to convict that other co-accused. The confessional statements given by Mohammad Ali and Royal Ali, which are not supported by the law, led to the conviction of accused Monsur, Mozam, Faruque, and Monta in the Bisheash Adalat. Consequently, the court granted the jail appeal while dismissing the death reference. The lower court's ruling and order are reversed. Additionally, Monta and the other defendants have been cleared of all allegations brought against them.⁷⁵The significant Dinajpur Yasmin Murder case is the basis of the discharge petition in **Md. Moynul Hoque and Md. Abdus Satter v. State**⁷⁶ The following part is the subject of the judgement given by Justice Syed J.R. Mudassir Hussain, Justice Mohammad Fazlul Karim, and Justice Amirul Kabir Chowdhury.⁷⁷

It was decided in **Joynal Abedin v. State**⁷⁸ that the accused might provide evidence of the complainant's dishonesty. If he can demonstrate this even once, any allegations of rape will be mocked at. Without a doubt, this is the victim-prejudicial act. Because the primary objective of a rape victim's case should solely be on section 375 of the penal code to establish a rape case, they did not receive the required justice. In many cases, the application of Section 155(4) suggests that a woman who lacks character, is remarried, a prostitute, has a sexual habit, is divorced, has easy

⁷⁴ The State vs Mozammel and Others 4 SCOB [2015] AD. 4 SCOB [2015] HCD. Supreme Court of Bangladesh

⁷⁵The State vs Mozammel and Others 4 SCOB [2015] AD. 4 SCOB [2015] HCD. Supreme Court of Bangladesh

⁷⁶ Md. Moinul Hoque & Md. Abdus Satter VS. The State B.L.D (AD) 228

⁷⁷ Md. Moinul Hoque & Md. Abdus Satter VS. The State B.L.D (AD) 228

⁷⁸ 3 BLD 1983 108

virtue, or is unclean cannot be honoured. It was further held that one cannot infer that sexual activity with a woman was carried out without her consent, despite medical evidence demonstrating that someone had engaged in unconventional sexual relations with her. This is a discriminatory and unlawful act that has been committed against them. Furthermore, there is a misconception in the community that only virgin women are capable of being raped. Even throughout the court proceedings, the victim must demonstrate her single status, education, chastity, and higher sense of dignity in order to support her allegations of rape.

In **Samundar Khan v. The State**,⁷⁹ it was decided that significant evidence was required to establish rape because the complainant was also a professional prostitute. In that instance, it was untrustworthy that they had sex without her permission. Some victims may succeed in the trial process despite having to overcome the obstacle of section 155(4) in order to establish their rape. Despite her education, she is unmarried, wealthy, and from a well-known family.

In the case of **Fatema Begum, daughter of Azizer Rahman, v. Aminur Rahman, son Afser Ali, and others**⁸⁰, an action was brought in 2005 under section 9(3), 30 of Nari OShishu Nirjaton Daman Ain, 2000 against Afser Ali and others for gang rape of an unmarried college student. Outside of her home, Afser Ali and companions abducted the girl and sexually assaulted her. It was decided that the victim had filed a statement with the tribunal detailing the rape occurrence in which she was victimized and named the perpetrators. The victim is a single college student from a well-to-do background. She testified before the tribunal, defending her own dignity and modesty, which are the most important things to an unmarried female. We see no reason not to accept this victim's account. The greatest advantage for an unmarried female is her modesty and honour.

4.4 Challenges

Legal experts face numerous challenges in determining the burden of proof in rape trials and other sexual offenses. The sensitive nature of these cases makes determining the burden of proof particularly difficult. The main challenge lies in the issue of approval, which is often difficult due to confidentiality and lack of witnesses. Stereotypes and misconceptions about sexual assault in society can also affect the validity of proof and impair judgement. Delayed reporting, often due to trauma, humiliation, or fear, can also hinder the burden of proof. Physical evidence can be

⁷⁹ Samundar Khan v. The State, 15 DLR (WP) 115

⁸⁰ 25 BLD (2005) 342

weakened over time, making it harder to prove a case beyond a reasonable doubt.⁸¹ Trustworthiness of the parties involved in sexual offenses also affects the burden of proof. Cultural prejudices, victim blame, and presumptions about victim behavior can affect the credibility of the parties involved. Advances in technology also pose challenges. While forensic tools can provide important evidence, misuse or incorrect interpretation of technology can compromise the burden of proof. Forensic errors in DNA analysis or improper management of electronic evidence can result in incorrect findings or acquittals.⁸²

In summary, the burden of proof in sexual offences and rape trials is a complex problem that includes concerns about consent, delayed reporting, believability, and technological difficulties. A fair and just legal process must be ensured while legal professionals carefully manage these difficulties and take into account the specific problems of sexual assault cases.⁸³

4.6 Conclusion

In conclusion, it might be difficult to determine who has the burden of proof in situations involving sexual offences. We've had difficulties ensuring prejudice are not affecting the results, obtaining consent, and handling late reporting. It is essential that everyone engaged in the judicial system receive sensitive handling training in order to make improvements. We also require procedures that address prejudices and take into account the effects of trauma. Fairness in the judicial system can also be increased by using expert opinions, amending laws, and keeping an eye on technological advancements.

⁸¹ Fahad Imtiaz Rahman, The growing rape incidences seems an epidemic turn of sexual violence in Bangladesh: A letter to the editor (November 29, 2021) <https://journals.sagepub.com/doi/full/10.1177/17455065211063285> Accessed in 28 December 2023

⁸² Mohosina Akter Dristy, Challenges of ensuring justice for rape victims, (October 6, 2020) <https://www.thedailystar.net/law-our-rights/news/challenges-ensuring-justice-rape-victims-197338> accessed in 28 December 2023

⁸³ Ibid

Chapter 5

Findings and Recommendations

5.1 Findings

- **Complex Legal System:** This thesis talks about how hard it is to show rape in Bangladesh's legal system. There are a lot of parts and rules that lawyers might find hard to understand and follow. Things could take longer to get right here.
- **A Lot of Work:** Section 101 of the Evidence Act says that in rape cases, the prosecutor has to show guilt beyond a reasonable doubt. This is a lot of work. People tend to blame the target, have biases, and make assumptions, which can make this load extra heavy to carry.
- **Difficulties in Proving consent:** The thesis says it can be hard to show that someone did not agree to being raped, especially when there are issues like late reports or cultural biases. Some harmful stereotypes may live on because people who are victims think they need to protect their modesty and respect.
- **Problems with technology:** It can be good or bad for forensic technology to get better. Forensic tools can be useful evidence, but if they are used or understood wrong, they could lead to false conclusions, which would change who has to prove everything.
- **Stigmas in society:** The fact that people have bad ideas about rape victims, like whether or not they are married, how much education they have, and how they act, makes things even harder. Some judges might not believe victims as much as they should, which makes it harder for them to show they are not guilty.
- There are issues with claims made in confessions. When confessions are used as proof in court, especially when they were forced, as was seen in the State v. Mozammel case, there are questions about their reliability and fairness.⁸⁴
- **Legal defences that aren't strong enough:** The research shows that legal defenses might not be enough to ensure a fair and just legal process, especially when it comes to the use of character evidence and the workload of the prosecutor.

5.2 Recommendations

⁸⁴ The State vs Mozammel and Others 4 SCOB [2015] AD. 4 SCOB [2015] HCD. Supreme Court of Bangladesh

- **Educate on Consent:** Ensure that individuals understand the significance of clear and positive consent in private situations. Also examine the effects of social and cultural factors on the burden of proof in rape trials and examine how gender, race, and social status are intertwined.
- **Reformulation of the Burden of Proof requirements:** We ought to promote a move toward a victim-centric approach in our reevaluation of the Evidence Act of 1972's burden of proof requirements in rape cases. We can review the State of Maharashtra v. Madhkar Narayan Mardikar (1991) case to learn more about the standard of proof in cases involving sexual assault. This decision clarified the needs for evidence and helped create rules for the burden of proof in these situations.⁸⁵
- **Enhance Forensic Capabilities:** Distribute assets towards the purchase of developed forensic tools to enhance the collection and analysis of evidence, thereby diminishing the only dependence on victim testimony.
- **Legal Reforms:** To decrease the burden on survivors, we should recommend specific legal reforms that might include changes to the evidential rules, such as admitting evidence kinds that are currently prohibited. In the case Tukaram v. State of Maharashtra (1979) Contributed to the understanding of how the courts interpret the Evidence Act in the context of rape cases, offering valuable perspectives on the legal nuances and considerations when dealing with evidence related to sexual offenses.⁸⁶
- **Victim Support Services :**Recognize the need for strong victim support services to help people get through the legal system, take care of their mental health needs, and lower the risk of retaliation. Stress how important it is for individuals to have a wide range of support services while their case is being processed.
- **Judicial Precedents and Interpretations:** Review significant rulings from courts concerning the burden of proof in rape proceedings and analyze how the legal system is shaped by court interpretations.

⁸⁵ State Of Maharashtra And Another vs Madhukar Narayan Mardikar on 23, AIR 1991 SC 207, 1991 (61) FLR 688,

⁸⁶ Tukaram and others Vs. State of Maharashtra ; Citation: AIR 1979 SC 185 ; Court: Supreme Court of India

- **Awareness:** Establish community awareness efforts intended at removing misunderstandings about rape, challenging presumptions, and promoting active support for survivors while avoiding victim-blaming.

The goal of these suggestions is to make the law in Bangladesh more victim-centered, well-informed, and successful when it comes to rape cases.

5.3 Concluding Remarks

This concept sets the standards for figuring out guilt or responsibility, which makes sure that the legal system is fair and just. In civil cases, the plaintiff has to prove their case, while in criminal cases, the prosecutor has to prove their case. The burden of proof is also used in everyday life, in contracts, in administrative processes, and in discussions about ethics and philosophy. Bangladesh's rules on the burden of proof are very important for making sure that the court handles evidence fairly and carefully. To promote a fair legal system, protect the purity of the law, and build trust in the court system, it is important to understand the burden of proof. When sexual offenses happen, it is very important to deal with bias, get permission, and handle late reporting. Expert opinions, changing rules, and keeping an eye on technological progress can all help make the justice system fairer.

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