

Reverse Onus Clause

In legal discourse, the principle of reverse burden of proof represents a significant departure from the traditional evidentiary norms where the prosecution is generally required to prove the guilt of the defendant beyond a reasonable doubt. This principle is particularly prominent in certain types of cases, such as those involving dishonour of cheques under Section 138 of the Negotiable Instruments Act, 1881 (NI Act). Here, the legislation imposes a part of the evidential burden on the defendant, altering the typical dynamics of a legal trial.

Understanding the Reverse Burden of Proof

The reverse burden of proof shifts the burden from the plaintiff or prosecutor to the defendant, requiring the latter to prove certain elements of the case. In the context of the NI Act, once the basic facts are established by the complainant—that a cheque has been presented and subsequently dishonoured due to insufficient funds or that it exceeds the amount arranged to be paid—the presumption arises that the defendant issued the cheque for the discharge of a legally enforceable debt or other liabilities.

Section 138 of the NI Act

Section 138 of the NI Act was enacted to enhance the credibility of the cheques and ensure their reliability as a financial instrument. It stipulates that the dishonour of a cheque for insufficiency of funds or the amount arranged is a punishable offence, which can lead to monetary penalties and imprisonment. The essence of this section is not just to penalise dishonour but also to foster a culture of trust and accountability in financial transactions.

Presumption Under Section 139

Under Section 139 of the NI Act, there is a presumption that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption is a legal device intended to shift the burden of proof onto the drawer of the cheque once the basic fact of issuance and dishonour is established by the complainant.

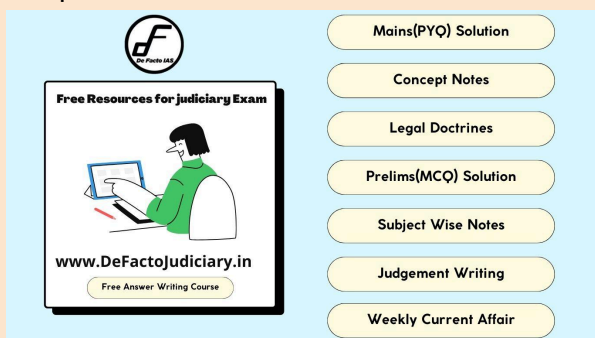
Judicial Interpretations and Application

The Indian judiciary has consistently upheld the constitutionality of the reverse burden of

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proof in cheque dishonour cases, recognizing it as a necessary modification to the general rules of criminal jurisprudence. The Supreme Court of India has iterated that the purpose of this reverse burden is to ensure that the faith in the efficacy of banking operations and credibility in transacting business through cheques is maintained.



In practical terms, once the prosecution establishes that the cheque was dishonoured, the burden shifts to the accused to prove that the cheque was not issued for discharge of a debt or liability. The accused can discharge this burden by showing, for instance, that the transaction was not

genuine, that there was a misunderstanding, or that the cheque was stolen.

Challenges in Rebutting the Presumption

Rebutting the presumption under Section 139 is a substantial challenge for the accused. The evidence presented must be sufficient to shift the balance of probabilities in favour of the accused. This might include producing evidence of a lack of consideration, coercion, or fraud in the issuance of the cheque. The courts have been clear that mere denial of liability is not sufficient to rebut the presumption.

Case Law

Various landmark judgments have elucidated the contours of this legal principle. For instance, in the case of **Rangappa vs. Sri Mohan**, the Supreme Court held that once the complainant discharges his burden of proving that the cheque was issued and that it was dishonoured, the presumption mandated by Section 139 does indeed come into play, and the burden of proof shifts to the accused.

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