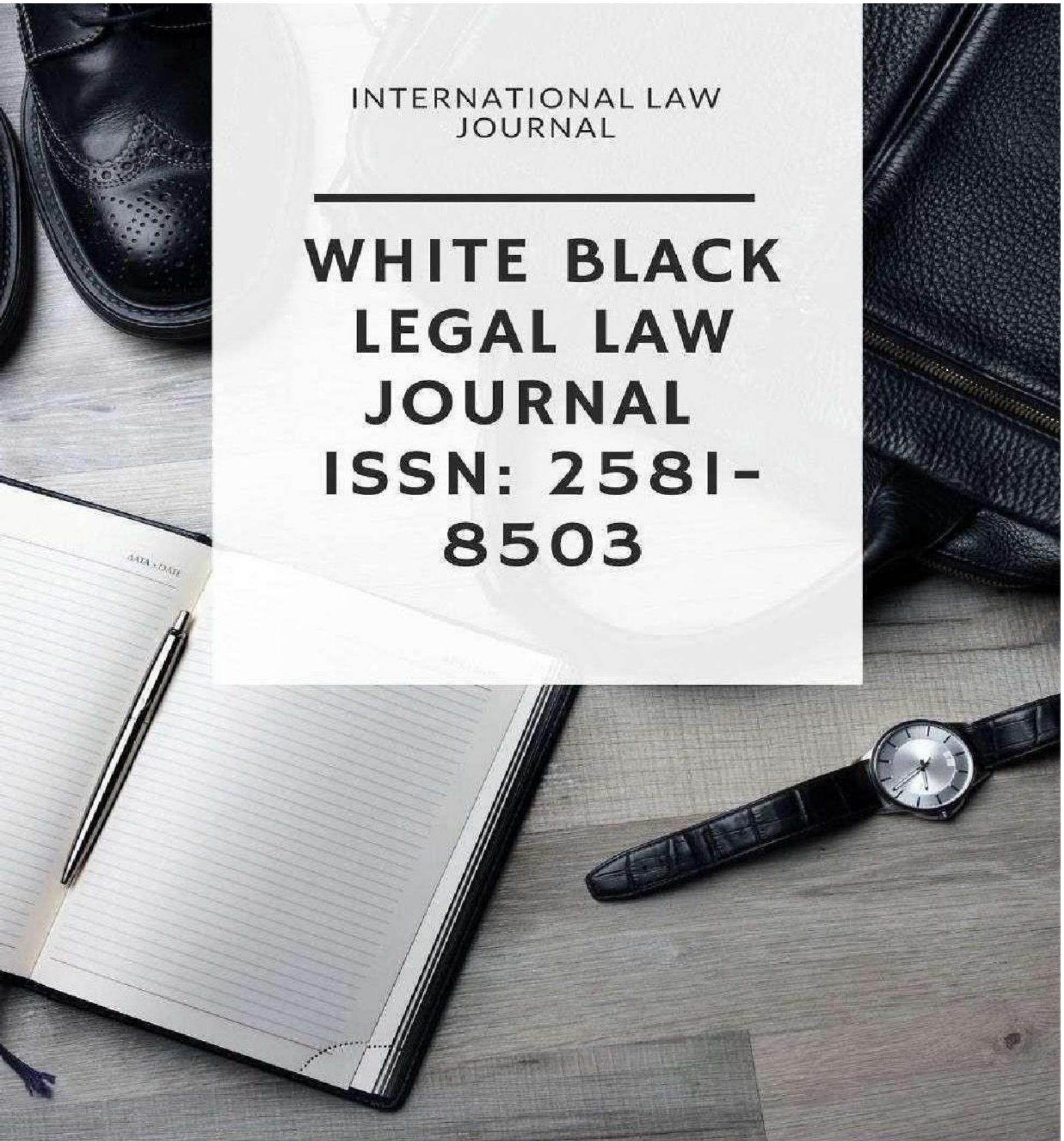




INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

PRESUMED IN HER FAVOUR: EVIDENTIARY SAFEGUARDS FOR WOMEN UNDER INDIAN CRIMINAL LAW

AUTHORED BY - MS. NAMIKA DUBEY

Research Scholar, School of Legal Studies, LNCT University Bhopal

CO-AUTHOR - DR. YOGINI UPADHYAY

Assistant Professor, School of Legal Studies, LNCT University Bhopal

ABSTRACT

Criminal evidence law in India ordinarily leaves the entire burden of proof on the prosecution, yet the legislature has carved out a narrow but consequential exception for offences committed against women. Sections 117, 118 and 120 of Bharatiya Sakshya Adhiniyam, 2023 (Sections of 113-A, 113-B and 114-A of Indian Evidence Act 1872) direct courts to draw specified inferences respectively, as to abetment of a married woman's suicide, as to causation of a dowry death, and as to absence of consent in defined categories of rape, once certain foundational facts have been proved. The rationale common to all three provisions is structural, cruelty inside a marriage, harassment over dowry, and the presence or absence of consent to a sexual act are rarely witnessed by anyone beyond the parties themselves, so that an ordinary insistence on independent corroboration would leave large swathes of these offences practically unprosecutable. This paper traces the development of the three presumptions against the backdrop of Article 15(3) of the Indian Constitution, which supplies their enabling foundation, examines their treatment in *Kaliyaperumal v. State of T.N.*, (2004) 9 SCC 157, *Pawan Kumar v. State of Haryana*, (1998) 3 SCC 309, and *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, and follows their largely unaltered transplantation into Sections 117, 118 and 120 of the Bharatiya Sakshya Adhiniyam, 2023. The central submission is that these presumptions recalibrate, rather than eliminate, the burden of proof, and that their continued utility turns on courts keeping the foundational facts the prosecution must still prove distinct from the inference the statute subsequently allows or compels.

Keywords: Section 113-A, Section 113-B, Section 114-A, The Indian Evidence Act, 1872

(IEA), dowry death, abetment of suicide, presumption of absence of consent, The Bharatiya Sakshya Adhiniyam 2023 (BSA), Article 15(3).

I. INTRODUCTION

As a general matter, criminal evidence law requires the prosecution to prove each ingredient of an offence to the exclusion of reasonable doubt, while the accused need does no more than cast such a doubt on the prosecution's version. Indian law makes a targeted departure from this default in offences directed at women that occur within a domestic setting or under conditions of custodial or institutional authority, precisely because the intimacy of the relationship between accused and victim leaves the ordinary burden of proof practically unworkable. Instances of matrimonial cruelty, dowry harassment, or the presence of consent to a sexual encounter unfold, as a rule, away from any witness other than the two parties concerned; a regime that made independent corroboration of each such fact a precondition for conviction would, as a practical matter, place a wide swathe of these crimes beyond the reach of successful prosecution.

Parliament's answer has taken the form of three statutory presumptions in the Sections 117, 118 and 120 of Bharatiya Sakshya Adhiniyam, 2023 (Sections of 113-A, 113-B and 114- A of Indian Evidence Act 1872) each of which moves the evidentiary burden onto the accused once the prosecution has proved a defined set of preliminary facts. What follows takes up each presumption individually, locates them within the constitutional room Article 15(3) leaves for protective legislation, follows the doctrinal gloss the Supreme Court has placed on each, and tracks their unbroken continuation in the Bharatiya Sakshya Adhiniyam, 2023. The discussion closes by asking whether these presumptions truly close the evidentiary gap they were designed for, or whether they simply move that gap to a later point in the trial.

II. THE CONSTITUTIONAL FOUNDATION: ARTICLE 15(3)

Article 15(3) supplies the constitutional room within which protective evidentiary presumptions for women can operate, allowing the State to legislate specially for women and children even though Article 15(1) otherwise forbids discrimination.¹ Read against its drafting history, the clause was conceived as a deliberate carve-out rather than a restatement of formal

¹ The Constitution of India, art. 15(3), carves out an exception to the general equality guarantee, leaving the State free to enact measures aimed exclusively at women and children.

equality, a device to permit legislation responsive to women's disadvantaged position, rather than a demand for identical treatment irrespective of that position.² Viewed in that light, Sections 117, 118 and 120 of Bharatiya Sakshya Adhiniyam, 2023 (Sections of 113-A, 113-B and 114- A of Indian Evidence Act 1872) are best understood as this constitutional latitude applied to the law of evidence: each singles out a class of offence where the standard distribution of the burden of proof works against women, and each resets that distribution once defined facts are shown, without dispensing with proof of guilt as such.

III. THE STATUTORY ARCHITECTURE

A. Section 117 of BSA (Section 113-A of IEA): Presumption as to Abetment of Suicide

Introduced in 1983 in response to increasing concerns over suicides linked to severe cruelty suffered by young married women. This section allows a court to infer, but does not compel, that a husband or his relative abetted a woman's suicide, it is provided it is shown that the death occurred within seven years of marriage and that the woman was subjected to cruelty by the accused.³ The use of the term “may presume” instead of “shall presume” is deliberate, as the connection between cruelty and suicide involves an inferential jump that Parliament was not willing to make automatically. The Supreme Court has consistently showed caution in this regard. In *Naresh Kumar v. State of Haryana*, it held that proving a suicide within the seven-year period is not enough on its own to trigger the presumption. The prosecution must first establish cruelty or harassment before the court can make a discretionary inference.⁴ Section 117, therefore, is different from Sections 118 and 120. It broadens the range of inferences a court can make based on proved facts, rather than converting those facts directly into a legal conclusion.

B. Section 118 of BSA (Section 113-B of IEA): Presumption as to Dowry Death

Section 118 of Bharatiya Sakshya Adhiniyam, 2023 (Section 113-B of The Indian Evidence

² The clause traces to the Constituent Assembly's debate on Draft Article 9 on 29 November 1948; the discussion on record treats it as authorising ameliorative legislation for women rather than as a mere formal restatement of the equality principle in what became arts. 15(1)–(2).

³ Indian Evidence Act, 1872, s. 113-A, inserted by the Criminal Law (Second) Amendment Act, 1983 (w.e.f. 26 December 1983). The provision allows — without compelling — an inference that a husband or his relative abetted a married woman's suicide, provided the death occurred within seven years of the marriage and the accused is shown to have subjected her to cruelty within the meaning given to that term by s. 498-A IPC.

⁴ *Naresh Kumar v. State of Haryana*, 2024 SCC OnLine SC 202 (decided 22 February 2024). The Bench declined to treat proof of suicide within the statutory seven-year window as, by itself, sufficient to activate the s. 113-A inference, insisting instead on cogent proof of cruelty or harassment reasonably close in time to the death; the same reading of s. 113-A recurs in *Pawan Kumar v. State of Haryana*, (1998) 3 SCC 309, and in *Smt. Shanti v. State of Haryana*, 1991 (1) SCC 371.

Act 1872), enacted in 1986 alongside Section 304-B of the Indian Penal Code, 1860 (Section 80 of Bharatiya Nyaya Sanhita, 2023) operates on firmer footing: once the prosecution shows that a woman who later died had, shortly before her death, been subjected to cruelty or harassment connected with a dowry demand, the court is required, not merely entitled, to presume that the accused caused her death.⁵ In *Kaliyaperumal v. State of T.N.*, the Supreme Court broke this presumption down into three cumulative requirements: death within seven years of marriage; death by burns, bodily injury, or otherwise than in the normal course; and the element central to this discussion cruelty or dowry-related harassment shortly before the death.⁶ Only once all three are established does the presumption of causation take hold as a matter of law rather than of judicial caution, shifting the onus onto the accused to displace it.⁷ Considerable judicial attention has gone into the meaning of ‘shortly before her death’, since a rigid reading confined to the days immediately preceding death would frustrate the provision in cases of prolonged, low-grade harassment that never crystallises into a single triggering event. In *Pawan Kumar v. State of Haryana*, the Court accepted that demands for ordinary household goods, a scooter and a refrigerator, on the facts of that case, made in connection with the marriage amount to dowry within the statute, and that sustained harassment on that account can satisfy the temporal requirement even where no discrete demand is traceable to the days just before death.⁸⁹ This approach keeps the presumption meaningful in exactly the situations it was meant to reach: chronic domestic harassment seldom announces itself through one isolated incident immediately before death, and a court wedded to a narrow temporal reading would systematically fail to apply the provision to the very pattern of conduct Parliament had in view.

C. Section 120 of BSA (Section 114-A): Presumption as to Absence of Consent

Section 114-A of Indian Evidence Act, 1872 (Section 120 of Bharatiya Sakshya Adhiniyam, 2023) meets a different evidentiary problem. In prosecutions for rape falling within specified

⁵ Indian Evidence Act, 1872, s. 113-B, inserted by the Dowry Prohibition (Amendment) Act, 1986 (w.e.f. 19 November 1986). Unlike s. 113-A, the provision is couched in mandatory terms: once cruelty or dowry-related harassment shortly preceding the death is shown, the court is bound, not merely permitted, to presume that the accused caused the dowry death.

⁶ *Kaliyaperumal v. State of T.N.*, (2004) 9 SCC 157 (also reported at AIR 2003 SC 3828), para. 4.

⁷ *Ibid.*

⁸ *Pawan Kumar v. State of Haryana*, (1998) 3 SCC 309 (also reported at AIR 1998 SC 958).

⁹ *Ibid.* The Bench treated a request for ordinary household items — there, a scooter and a refrigerator — tied to the marriage as falling within the statutory meaning of dowry under s. 2 of the Dowry Prohibition Act, 1961, and accepted that sustained, unresolved harassment of that kind meets the temporal requirement even absent a discrete demand made in the immediate run-up to the death.

sub-categories of Section 376(2) of the Indian Penal Code (Section 64(2) of Bharatiya Nyaya Sanhita, 2023), once intercourse is established and the complainant testifies that she did not consent, the court must presume the absence of consent.¹⁰ The categories singled out for this treatment are far from arbitrary — they capture custodial and institutional forms of rape: by police officers, public servants, or armed-forces personnel over a woman in their custody, by a person occupying a position of trust or authority, of a woman known to be pregnant or below a specified age, and gang rape.¹¹ Parliament's judgment in each of these settings was that the power imbalance between accused and complainant is pronounced enough that requiring proof of non-consent beyond reasonable doubt, from a witness typically without corroborating evidence, would be an unfair demand on the prosecution. The nature of presumption is narrow because it applies only when parties hold evidentiary disadvantage for the prosecution.

IV. JUDICIAL REINFORCEMENT: THE EVIDENTIARY WEIGHT OF THE PROSECUTRIX'S TESTIMONY

Beyond the statutory presumptions, the Supreme Court has built a related but freestanding safeguard applicable across sexual-offence trials generally: a complainant's testimony, standing alone, can sustain a conviction if the court finds it credible, without any further corroboration. *State of Punjab v. Gurmit Singh* treated the demand for corroboration as a matter of prudence to be exercised according to the facts of each case rather than as a fixed rule of law, and warned against approaching a complainant's evidence with the same suspicion reserved for an accomplice, given that she is the victim of the offence and not a party to it.¹²¹³ *State of Maharashtra v. Chandraprakash Kewalchand Jain* went further, holding that treating corroboration as invariably necessary has no legal basis, and that a complainant's testimony can, by itself, support a conviction once the court is satisfied it is truthful.¹⁴

¹⁰ Indian Evidence Act, 1872, s. 114-A, introduced by the Criminal Law (Amendment) Act, 1983 and subsequently widened by the Criminal Law (Amendment) Act, 2013. For prosecutions falling within the enumerated categories of s. 376(2) IPC, proof of intercourse coupled with the complainant's testimony denying consent obliges the court to presume that consent was absent.

¹¹ The enumerated categories under s. 376(2) IPC to which s. 114-A is confined include, among others, custodial rape by police officers, public servants or armed-forces personnel, rape by persons occupying a position of trust or authority over the complainant, rape of a woman known to be pregnant, rape of a minor below a specified age, and gang rape — circumstances Parliament regarded as marked by such a pronounced power imbalance that the ordinary burden of proving absence of consent would fall unfairly on the prosecution.

¹² *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

¹³ *Ibid.* The Bench treated the search for corroboration in sexual-offence trials as a matter of judicial caution rather than a binding evidentiary rule, and cautioned against approaching a complainant's account with the wariness reserved for an accomplice, given that she is the victim rather than a party to the crime.

¹⁴ *State of Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550. The Bench rejected corroboration as an invariable precondition for conviction, holding that a complainant is not to be equated with

This general evidentiary principle works in tandem with, rather than in place of, the specific presumption in Section 114-A. Within the enumerated categories of Section 376(2), a complainant's denial of consent activates the mandatory presumption; outside them, her testimony can still, under ordinary rules of appreciation of evidence, be enough to convict without corroboration. Together, the statutory presumption and the general doctrine ensure a complainant's account is neither dismissed for lack of corroboration nor viewed with suspicion simply because she is the only witness to what was done to her.

V. CONTINUITY UNDER THE BHARATIYA SAKSHYA **ADHINIYAM, 2023**

The Bharatiya Sakshya Adhiniyam, 2023, in force from 1 July 2024 as the successor to the Indian Evidence Act, 1872, carries all three presumptions forward without substantive change, now numbered as Sections 117 (abetment of suicide),¹⁵ 118 (dowry death),¹⁶ and 120 (absence of consent in specified rape prosecutions) the last of these now tied to the aggravated categories listed in Section 64(2) of the Bharatiya Nyaya Sanhita, 2023.¹⁷ The underlying offences have likewise been renumbered without redesign: dowry death now falls under Section 80 of the Bharatiya Nyaya Sanhita,¹⁸ and cruelty by a husband or his relatives under Section 85,¹⁹ tracking Sections 304-B and 498-A of the Penal Code respectively. A savings clause in the new Act keeps the 1872 Act operative for offences and pending trials predating the transition, so the old and new numbering will run in parallel in trial courts for some time, tied to the date of the offence rather than the date of trial.²⁰

What emerges from this renumbering is continuity rather than reform: the text of Sections 117, 118 and 120 mirrors that of Sections 113-A, 113-B and 114-A almost word for word, and the

an accomplice and that her uncorroborated account may, where the court finds it credible, suffice on its own.

¹⁵ The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 117 (presumption as to abetment of a married woman's suicide).

¹⁶ The Bharatiya Sakshya Adhiniyam, 2023, s. 118 (presumption as to dowry death).

¹⁷ The Bharatiya Sakshya Adhiniyam, 2023, s. 120 (presumption as to absence of consent in specified rape prosecutions), which now maps onto the aggravated categories listed in s. 64(2) of the Bharatiya Nyaya Sanhita, 2023. Gang rape, previously one such category under clause (g) of s. 376(2) IPC, has since been hived off into a standalone offence under s. 70 of the 2023 Sanhita, and the cross-reference in s. 120 BSA is to be read with that shift in mind.

¹⁸ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 80 (dowry death), the successor to s. 304-B of the Indian Penal Code, 1860.

¹⁹ The Bharatiya Nyaya Sanhita, 2023, s. 85 (cruelty by a husband or his relatives), the successor to s. 498-A of the Indian Penal Code, 1860.

²⁰ The Bharatiya Sakshya Adhiniyam, 2023, s. 170 read with the First Schedule (repeal and savings) keeps the 1872 Act alive for offences committed, and trials pending, before the 2023 Act's general commencement on 1 July 2024.

Supreme Court's reading of the earlier provisions the three-part test from *Kaliyaperumal*, the broader temporal reading in *Pawan Kumar*, and the narrow categorical reach of the consent presumption should carry over to the new sections without requiring fresh litigation of questions already settled. Trial courts handling offences that straddle the transition date should still take care to invoke the presumption under whichever enactment was in force on the date of the offence, since the two sets of provisions, though substantively identical, remain formally separate enactments.

VI. CRITICAL APPRAISAL: BRIDGING THE GAP, OR RELOCATING IT?

The framework discussed addresses a real imbalance in the way the burden of proof is handled, but a trial court's perspective advises against exaggerating its scope. None of the three presumptions removes the need to prove the underlying facts: the prosecution must still establish the marriage, the death within the statutory window, the fact and timing of cruelty or harassment, or the fact of intercourse, to the criminal standard, depending on which provision is in play. What changes is only the inference drawn once those facts are proved causation in the case of Section 113-B, absence of consent in the case of Section 114-A and even that inference remains open to rebuttal rather than final.²¹ The gap these provisions address is not as wide as the phrase 'presumption in favor of women' might suggest. The prosecution is only relieved of proving the final causal or mental element, not the surrounding details from which that element is inferred. The accused must provide enough evidence to cast doubt on the presumption. The prosecution still has the overall responsibility of proving guilt.

The corresponding burden on the accused is evidential rather than persuasive: it calls for evidence sufficient to unsettle the presumption on a balance of probability, not proof of innocence beyond reasonable doubt, and the prosecution never loses its overall burden of establishing guilt.²² Where a trial court treats the presumption as a way of bypassing the foundational facts, convicting on the strength of the presumption's applicability without first testing, rigorously, whether cruelty, dowry harassment, temporal proximity, or absence of consent has actually been made out. It risks turning a deliberately narrow evidentiary

²¹ *Kaliyaperumal*, (2004) 9 SCC 157, para. 4, recording that once the three foundational facts are in place, the presumption remains open to displacement by the husband or relative through defence evidence.

²² The evidentiary burden imposed by ss. 113-A and 114-A is likewise not a burden to prove innocence: it is discharged on a balance of probability, and the prosecution never surrenders its own duty to prove the underlying facts — marriage, cruelty, timing, or intercourse, depending on the provision — to the criminal standard.

correction into an effective reversal of the burden of proof for the offence as a whole. The check against this lies in the fact-by-fact discipline *Kaliyaperumal* prescribes: a court ought to satisfy itself of each foundational fact in turn before treating the statutory inference as available, rather than moving straight from the character of the accusation to a finding of guilt.

VII. CONCLUSION

Sections 113-A, 113-B and 114-A of the Evidence Act, carried forward as Sections 117, 118 and 120 of the Bharatiya Sakshya Adhiniyam, 2023, reflect a deliberate legislative judgment anchored in Article 15(3) of the Constitution and shaped by sustained judicial interpretation that the ordinary burden of proof falls unevenly on women in a defined set of offences arising within the domestic sphere or under conditions of custodial or institutional power. *Kaliyaperumal* supplies the dowry death presumption with a structured three-part test; *Pawan Kumar* ensures that test reaches sustained harassment and not only conduct immediately preceding death; and *Gurmit Singh* provides a general evidentiary safeguard for a sole complainant's credibility that operates alongside, and independently of, the statutory presumption in specified rape prosecutions. The move to the Bharatiya Sakshya Adhiniyam, 2023 leaves this architecture intact. What the doctrine as a whole warns against and what matters most from a trial court's vantage is treating the presumption as a substitute for rigorous proof of its foundational facts: the evidentiary gap these provisions close is real, but narrower than a loose reading of 'presumption in favour of women' would imply, and the care with which foundational facts are tested remains as central to a fair trial as the presumption itself.

WHITE BLACK
LEGAL