**BURDEN OF PROOF /ONUS PROBANDI**

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**Onus-** a burden ; a load ; a weight ; an incumbrance **.**

**Onus probandi :** Burden of proof

**Dunkley :** The term Burden of proof is derived from the latin term onus probandi .The phrase is used in two distinct meanings in the Indian vidence Act VIZ. 1. **the burden of establishing a case and 2. the burden of introducing** evidence .In a criminal trial the burden of proving everything essential to the establishment of the charge against accused lies upon the prosecution and that burden never changes.

The **onus probandi** means that if a fact has to be proved , the person whose interest to prove it , should adduce some evidence , however slight , upon which a court could find the fact .However in some cases the burden of proof shifts from the contender to the opposite party .Where there is an admission by a party the burden of proof shifts and it is for the party making the admission to explain it away.

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| **Burden of proof/burden of proof on the pleadings**  Remains on the party affirming a fact in support of his case or deniel and does not change in any aspect of cause.  It is determined by rules of substantive statutory law or by presumption of law or fact . | **Weight of evidence/Burden of adducing evidence**  It shifts from side to side in the progress of the trial according to the nature and strength of the proofs offered in support or deniel of the main facts to be established. |

**Eg.Cheque bounce** –A files criminal case against B for dishonour of cheque .The burden of proof lies upon A , that in certain connection B issued a cheque in his favour and it was bounced .Naturally B denies .Now court permits both the parties to adduce their evidence .Now at this stage the burden of proof shifts from A to B and from B to A , at different levels .After hearing the evidence the court has two sets of evidence .It is for the court to weigh the evidence of A and B .If the evidence adduced by A is true and believable , the court gives more weight to A ‘s evidence .It means B’s evidence is false and does not weigh .

**Beyond A Reasonable Doubt** :This is synonyms with term Moral Certainity .The fundamental principle is a 100 wrong doers be freed but one innocent should not be convicted .So entire burden of proof lies upon the prosecution .The prosecution must prove the guilt of accused beyond reasonable ground.A slightest defect in evidence may go in fav of the accussed and the benefit of doubt may be given to him .

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| **Judicial Notice**  That which a judge take without proof for the purpose of a case the truth of certain notorious fact .  Judicial notice cannot be rebutted .Thus if the presumption is not rebutted by the party upon whom the burden of proof lies to adduce the evidence to rebut in the opinion of the Judge such presumption remains intact as judicial notice. | **Presumption**  Presumptions is an inference drawn pertaining to one fact by the Judge by the support of another proven fact  2 kinds 1. Presumption of facts 2.Presumtion of law .  However a presumption drawn by the judge an be rebutted by the opp party by adducing a strong evidence |

Eg:Judgment debtor, judgement creditor , executing court

**Sec 101 - Burden of proof**

**Sec101 : Who ever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts , must prove that those facts exist .**

**When a person is bound to prove the existence of any fact , it is said that Burden of Proof lies on that person .**

**Illus :** A prove B committed crime , A prove B taken possession of his land .

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| **Civil cases**  In this the plaintiff files a **plaint** .In response to it the defendant files a **written statement** .The issues are framed , fixed and decided by the court .  The court following it allows the plaintiff and the defendant to adduce the **evidence** one after the another .  The **burden of proof** lies upon the party **who alleges a fact** .often the burden of proof lies from one party toanother .  **Wromg allocation : of burden of proof Lead to**  **1. defect in procedure – corrected under sec 100 cpc**  **2. material irregularity under sec 115 cpc –cant be corrected** | **Criminal cases**  In this the **police or complainant** files a petition .Naturally the **accussed** denies the allegation .  There must be effective **evidence** on the part of the prosecution .If the accussed has any evidence he is also allowed to adduce the evidence .  The entire **burden of proof** lies upn the **prosecution** to prove the guilt of the accussed beyond a reasonabale doubt .  **Exceptions**:In certain CRL cases like crl .tressass , theft , murder if accused pleas alibi , the burden of proof lies upon such accused .In case of rape , elope of minor girl the burden of proof lies upon the accused also . |

* Filing a suit & particularly fixing the issues form the **preliminary stage of the proceedings**

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| **BabuBhika Jadhav Vs ,State of Maharastra**  Held that burden f prf lies upon the prosecution and the prosecution has to prove its case beyond a reasonable doubt .While the accused has to prove his case on preponderance of probabilities |

**Actori incumbit onus probandi** –burden of proof lies on the plaintiff

**Affirmanti on negnati incumbit probatio** - burden of proof lies upon him who affirms a fact , not on who denies it

**Ei qui affirmat , non ei qui , incumbit probation** - burden of proof lies on him who affirms a fact , not on who denies it

**Proandi Necessitas inucmbit illi qui agit** – The necessity of proving lies upon who brings the charge

**Qui accussat integrae famae sit et non criminosus** –Let him who accuses be of clear fame and not criminal

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**Sec 102 – on whom Burden of proof lies**

**Sec 102: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all given on either side.**

**Illus:**

**Possession of land** – given by B’S father by will .A has to prove it or else B is entitled .Therefore burden of proof on A

**Money due on bond** – given by A toB.B has to prove the execution made by fraud .or else A is entitled & bond not disputed . Therefore burden of proof on B

1. **Ancient Rule** : the burder of proof lies heavily on the person whomakes allegation or seeks to implement his right .Thus the sec decribes the burden of proof which lies on the plaintiff to prove his case and on the defendant to prove the fact which he denies
2. **Shifting Nature**:The shifting of burden of proof is vital in the judicial proceeding and such shift occurs more than once in the course of the proceedings .Thus burden of proof is not inflexible thing .It is most flexible thus when one party reach court on acc of heating .That party must prove it as how.similar party given opportunity to denies as how he had not cheated .
3. **Importance of Burden of Proof** : When both parties have adduced evidence the question of burden of proof loses its importance .Then it is the duty of the court to weigh the evidence and decide acc to facts and circumstances of case.

Eg :**adverse possession** – the party who takes plea of adverse possession have burden of proof to prove & not other party who in actual possession.

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| **Special Development Area , Chitrakut Vs .Pooranlal**  The M.P.high court held when crl complaint made by complainant that unauthorized construction by accused .The burden of proof lies upon the complainant to show that land belong to himand accused made construction there on |

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**Sec 103 - Burden of proof as to particular fact**

**Sec 103 – The burden of proof as to any particular fact lies on that person who wishes the court tobelieve in his existence , unless it is provided by any law that the proof of that fact shall lie on any particular person .**

**Illus:**

A prosecutes B for **theft** and wishes court believe that B admitted theft to c .This A has to Prove .B wishes court to believe that at time of question he was else were B has to prove it (evidence of alibi)

**Principle of law :** Prosecution must clearly establish a case beyond reasonable doubt .nor can he take advantage of the weakness of defence or court constitute diff story .If a defence has no evidence to put forward he cannot be convicted .still prosecution must clearly establish its case .

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| **Amir Hossain Vs State of Tripura**  Accussed pleads the alibi,therefore the burden of proof lies on him to prove plea of alibi  **Zulekha Khatoon Vs The state and another**  Wife show she is legally wedded wife of husband by nikhanama .husband denies her as wife .therefore the husband has the burden of proof to prove she is not his legally wedded wife . |

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**Sec 104-Burden Of Proving fact To Be Proved To Make Evidence Admissible**

Sec 104 : The burden of provingany fact necessary to be proved in order toenable any person to give evidence of any other fact is on the person who wishes to give such evidence ..

**Illus:**

1. A wishes to prove dying declaration by B .A must prove B’s **death** .
2. A wishesto prove by secondary evidence the contents of a lost **document** .A must prove that document has been lost .

Eg : plaint statement /written statement –to prove and estd fact mentioned is by plaintiff & defendant .

Insanity –person who alleges it

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**Sec 105 Burden Of Proof That Case Of Accused Within Exceptions**

**Sec 105: When a person is accused of any offence , the burden of proving the existence of circumstance bringing the case**

1. **Within any general exceptions in the IPC (or)**
2. **Within any special exception or proviso contained in any other part of the same code (or)**
3. **In any law defining the offence is upon him ,**

**And the court shall presume the absence of such circumstances**

**Illus:**

1. A Murders under **unsoundmind**-burden of proof on A toprove that he didn’t know nature of act
2. A Murders out of **grave and sudden provocation** - burden of proof on A toprove
3. U/S 325 –Provides except U/S 335 for **voluntarily causing grieve hurt** all other cases subject to certain punishment

**Principle of Criminal jurisprudence**

* 1. Accused presumed to be innocent
  2. Accussed presumed tohave committed the alleged offence with mens rea
  3. Burden of proof lies upon the prosecution to prove the guilt of accussed beyond reasonable doubt .

**Test of preponderance of probabilities**

The evidence adduced by the accused must stand the test of preponderance of probabilities making his evidence acceptable .The accused in such instance must prove his right of self defence beyond reasonable doubt.

**Court consideration**

It is well settled principle that even if the accused does not plead the self defence or of the general exception , it is open to the court to consider such plea if the same arises from the material record.

**Standard of proof**

Standard of proof required to prove the general exception is not that much heavy as the burden of proof lying on the prosecution .

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| **Periasami and another Vs .State of TamilNadu**  The legal presumption under sec 106 ‘ the court shall presume the absence of such circumstances ‘ is not intended to displace the traditional burden of proof. |

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**Sec 106 Burden Of Proving Fact Especially Within Knowledge**

**Sec 106 :When any fact is especially within the knowledge of any person , the burden of proving the fact is upon him .**

**Illus:**

1. Person with an **intention** other than character & circumstances of a case .It is for him to prove his intention .
2. A charged with traveling without **railway ticket** .Its for him to prove that he has ticket if he has.

(INCOME TAX RAID)

**Especially within the knowledge**

Instead of using mens rea various terms such as dishonest , fraud , intention has been used framing the offences under separate chapter General exception .The accused is the only person who can reveal the real circumstances occurred for the offence .that is he should have special knowledge of the offence which occurred under circumstances and no one else should have knowledge about it .It cannot be invoked by accused to take plea to prove , on the event of inability of prosecution to prove .

**Exception to 101 ? -**

Sec 106 is not intended to be used to place upon the accused the burden of proving the innocence ,The object of sec 106 is that after the prosecution has discharged its initial burdenof proof , the accused takes plea depending on evidence within his special knowledge ,he must prove it .

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| **Shanmuga sundaram Vs .State**  Murder took place .accused was seen lastly entering house of deceased with him.The T.C Presumed fcats within knowledge of accused and required him to explain .The accused filed C.R.P that its against constitution trying to implicate and involvement with the case.The Madras H.c held since accused in better position to explain the cause and consequence of the incident ,as he was only person last seen with deceased . |

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**Sec 107 & sec 108 - Burden Of Proof Of Life And Death .**

**Sec 107 :burden of proving death of person known to have been alive within 30 years**

**Sec 108 :Burden of proving that person is alive who has not been heard of for 7 years**

**Sec 107 : When the question is whether a man is alive or dead , and it is shown tha he was alive within 30 yrs , the burden of proving that he is dead is on the person who affirms.**

**Sec 108 : Provided that when the question is whether a man alive or dead and it is proved that he has not been heard for 7 yrs by those who would have naturally heard of him if he had been alive , the burden of proving that he is alive is shifted to the persons who affirms it .**

**Presumption of death and not date of death –point of time calculated for the period of 7 yrs**

1. U/S 108 –Presumption arises at the end of 7 yrs
2. Practically-earliest date to which the death can be presumed can only the date when the suit is filed .
3. Presumption can also be drawn depending upon circumstances of case - even b4 7 yrs is not lapsed .

It is generally not presumed at what time within that period he died .It is duty and burden of proof lies upon the person who claims a right to the establishment of death of a particular person under this sec that death took place at any particular time with in 7 yrs.

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**Sec 109 Burden Of Proving Relationship In Cases Of Partners , Landlord And Tenant , Principal And Agent**

**Sec 109 :When the question is whether persons are Partners , Landlord And Tenant , Principal And Agent , and it has been shown that they have been acting as such , the burden of proving that they do not stand , or ceased to stand , to each other in those relationships respectively is on the persons who affirms it .**

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**Sec 110 Burden Of Proof As To Ownership**

**Sec 110 : When a question is whether any person is owner of anything of which he is shown to be in possession , the burden of proving that he is not owner is on the person who affirms that he is not the owner .**

**Sec 111 Proof Of Good Faith In Transactions Where One Party Is In Relation Of Active Confidence**

**Sec 111: Where there is question as to the good faith of a transaction between the parties , one of whom stands to the other in position of active confidence ,the burden of proving the good faith of the transaction is on the party who is in position of active confidence.**

**Illus:**

**Good faith of sale –** by client to attorney (suit by client ); by son to father (suit by son).The burden of proving good faith of transaction is on attorney and father

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**Sec 111-A .- Presumption As To certain Offences**

**Sec 111-A .-Where a person is accused of having commited any offence specified in sub sec (2)**

**A. Offence in –**

1. **any area declared to be disturbed areas under any enactment , for the time being in force , making provision for the suppression of disorder and restoration and maintainence of public order.**
2. **Any area in which there has been over a period of more than one month , extensive disturbance of the public peace .**
3. **And (1). it has been shown that such person had been at a place insuch area at a atime when firearms or explosives were used at or from that place (2.) To attack or resist the members of any armed forces charged with maintainence of public order acting in the discharge of their duties .**

**B.offences referred to in sub sec(1) are the following**

1. **An offence under sec 121 , sec 121 –A, sec 122 or sec 123 of IPC**
2. **criminal conspiracy or attempt to commit , or abetment of , an offence under sec 122 or sec 123 of IPC**

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**sec 112 -Presumption Of Legitimacy**

**(Birth during marriage , conclusive proof of legitimacy )**

**Sec112:**

1. **The fact that any person was born during the continuance of a valid marriage between his mother and any man (or)**
2. **within 280 days after its dissolution , the mother remaining unmarried**

**This shall be the conclusiove proof that he is the legitimate son of that man**

**Unless it is shown that parties to the marriage has no access to each other at any time when he could have begotten.**

**2 presumption**

1. **Rebuttable-**it is presumed that the husband had intercourse with wife at the time child must have been conceived .appropriate evidence must be adduced to show that there was no access between them and no sexual intercourse
2. **Irrebuttable-**Basing upon the sexual intercourse between wife and husband the law will not allow any enquiry whether the husband or some other man was more likely to be father of the child .Thus presumption here becomes irrebuttable and conclusive.
   * **Application to disputes pertaining to paternity**
   * **continuance of a valid marriage**- This is an essential ingredient to presume legitimacy of child.
   * **within 280 days after its dissolution-**Acc to law 280 days **.**if doctors certify days exceeding 280 it is accepted explaining reasons
   * **point of birth of child and not time of conception**
   * **access to each other-actual sexual intercourse :** even child born to the wife illicit connection with other man during continuance of marriage is treated as child of husband. Even the husband suffering from any other serious disease except eunuch . it does not affect presumption under this sec.

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| **AIR 1930 Lah 97**  A child born **after 9 months** after the death of his father was held to be legitimate son  **AIR 1956 Bom 129**  1-1-2002 , child birth -20-10-2002 is 292 days after divorce .if born before 8-10-2002 it legitimate  **Johnstone .J.Mt.Rahim Bibi Vs.Chiragh Din and other**  A son was born to Mohammedan wife **after 419 days** after the death of husband and court held that period of gestation is extra ordinarily usual and prove contrary to the mother’s chasity and held it as not legitimate .  **M.Kanniappan Vs.Kullammal ; R.S..Sarkarria &V.D.Tulzapurkar ,J.J.Baldev Raj Miglani Vs.Smt Urmila Kumari**  Aman induced to marry a woman who was already pregnant at the time of marriage .He drove her out on ground of concealed pregnancy .the wife takes presumption under this sec.the court held presumption cannot be extended .As the marriage itself induced one and no continuance of valid marriage.  **Ram kishan singh Vs Savitri Devi**  Quarrel between husband and wife .desretion for period of 2 yrs .Wife gave birth to child during that period .The husband pleaded no access .He went to her parent house only once during that 2 yrs that too for talks and was beaten by his brother –in –laws.The ocurt held ther is no presumption of legitimacy . |

**Still now the court in India adopts the 280 days test and donot ten to accept the blood test / DNA test .SC has stated the reasons below**

1. **Status and psychology of child**
2. **Personal liberty**
3. **Access and Non –access** –access / non access cant be proved by blood test
4. **Consent of parties** –**Sajeera Vs.P.K.Salim** –SC held that determination of paternity of child , the blood test can be conducted only with the consent of the person and court cannot compel .

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**Sec 113-A - Presumption As To The Abetment Of Suicide By A Married Woman**

**Sec 113B- Presumption As To Dowry Death**

**Sec 113 –A : -procedural law and does not create any substantiative right .**

1. **When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband (and )**
2. **It has been shown that she had committed suicide within such period of seven yrs from date of marriage (and)**
3. **That her husband or such relative had subjected her to cruelty**

**The court may presume having regard to all the other circumstances of the case–that such suicide had been abetted by her hus / rel of her hus**

**‘Cruelty’ shall have the same meaning as in sec 498-A of the IPC .**

**Sec 113 –A shall be read Combinedly with sec 498-A of IPC .**

**Rebuttable Presumption :** When a married woman commit suicide within 7 years of marriage the law dircts that court may presume that she had committed suicie due to husband or her relative .the hus /relative can adduce sufficient evidence to prove that they haven’t abetted .

**SEC 498 IPC –CRUELTY MEANS - substantiative offence . 3yrs +5n**

1. **Any wilful conduct which is of such a nature as likely to drive the woman to commit suicide or to cause grave injury or danger to life , limb or health of the woman (mental / physical ).**
2. **Harassment of the woman where such harassment is with view to coercing her or any person related to her to meet any unlawful demand for any property or valuble security or is on account of failure by her or any person related to her to meet such demand.**

**Sec 306 IPC-provides for the abetment of suicide –appliable to all suicide & it’s a substantiative offence .**

**If any person commits suicide , whoever abets the commission of such suicide , shall be punished with imprisonment of either description for a term which may extend to 10 yrs +5n .**

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| **Dhobilal Vs. State Of M.P**  The case where the woman committed suicide within 5 yrs of marriage .she remained in her parents house for 2-3 yr.she expressed unwillingness to go matrimonial home .under influence she sent to matrimonial home .within 1 mon she committed suicide.The M.P.High Court aquitted the accussed opining that the presumption under sec 113-A cannot be drawn against them . |

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| **STD OF PROOF OF CRUELTY -CIVIL CASES** | **STD OF PROOF OF CRUELTY -CRIMINAL CASES** |
| * Std of proof of Cruelty is lighter * Mens rea is not essential ingredient * It immaterial of the unwanted indifference attributable such as selfishness , laziness . * Cruelty proved by preponderance of probabilities | * Std of proof of cruelty is higher * Mens rea is essential ingredient * It is very much essential ingredient * In criminal trial it has to be proved beyond reasonable doubt. |

**Sec 113–B :**

* 1. **When the question is whether a person has committed the dowry death of a woman (and)**
  2. **It is shown that soon before her death such woman has been subjected by such person to cruelty or harassment or in connection with any demand for dowry .**

**The court shall presume that such person has caused the dowry death .**

**‘Dowry death’ shall have the same meaning as in sec 304 -B of the IPC .**

**Sec 113 –B shall be read Combinedly with sec 304-B of IPC .**

**Rebuttable Presumption :** The court shall presume that before the death of the married woman her husband and her relatives subjected her to cruelty and demanded dowry .It is irrebuttable presumption

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| **Ajay Singh Vs .State**  Death of wife occurred within 2 yrs of marriage .J&K High Court held that the statutory presumption under sec 113-B cab be drawn against the accussed in such case. |

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| **Sec 113 –A**  **Presumption:** The court may presume having regard to all the other circumstances of the case–that such suicide had been abetted by her hus / rel of her hus.  Inc suicide abetted by rel+husband  Sec 113 –A shall be **read Combinedly** with sec 498-A of IPC  Reduce suicides **–object**  **Punishment :**SEC 498 IPC=3yrs +5n  **Inserted** by evidence act amendment no :46/1983 | **Sec 113–B :**  **Presumption:** The court shall presume that by such person woman has been subjected to cruelty or harassment or in connection with any demand for dowry has caused the dowry death .  Inc.natural death due to dowry +harassment  Sec 113 –B shall be **read Combinedly** with sec 304-B of IPC **.**  Reduce dowry death **–object**  **Punishment :** sec 304-B of IPC .=7yrs +5n  **Inserted** by evidence act amendment no :43/1986 |

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**Sec 114 Court May presume Existence Of Certain Facts**

**Sec 114 :The court may presume the existence of any fact which it thinks likely to have happened , regard being had to the common course of natural events , human conduct and public &private business , in their relation to the facts of the particular case .**

**Illus :**

**A Presumption As To Stolen Goods -1.Possesion of goods 2. account for the possession**

**.**a man possession of **stolen goods** after theft –either thief or received good knowing then to be stolen –unless he accounts for his possession ------shopkeeper has in his till markd rupee after stolen cant account , but is continually receiving rupees in course of business

**B. Presumption As To Approver – 1. witness testimony 2.other material facts corroboration with his evidence**

An **accomplice** unworthy of credit unless he is corroborated with material particulars---- --carelessness of a man with highcharacter in aranging machinery caused death of other person .Person equally good who tookpart in arrangement admits and explain what was precisely dn.

3 peron arrested on spot for a crime .3 of them kept separately and each gives account of D implicating and accounts corroborate and render previous concert highly improbable.

**C**.**Presumption As To Bill Of Exchange-Similar To Presumption U/S 118 OF N.I.Act .But here its discretion of court there mandatory .**

a **bill of exchange** accepted / endorsed , was accepted or endorsed for good consideration----- Drawer business man who is in a position to fraud or influence and B was acceptor young and ignorant completely under A’S influence.

**D**.That a thing or **state of things** which have been shwn to be **in existence**; with in shorter period than that within which such things or state of things usually cease to exist , is still in existence -------5 yr before river ran its certain course ,coz of flood it might change its course .

**E**.**Presumption As To The Judicial And Official Acts** –for public purpose

**judicial and official** acts have been regularly performed –------acts regularity of which have been in question performed under exceptional circumstances.Burden of proof lies upon a person who challenges presumption .

**F**. **Presumption As To The Common Course Of Business**

**Common course of Business** have been followed in particular cases --------Question is whether letter is posted. letter shwn to have been posted but interrupted by disturbances : .When notice not returned it deemed to have been posted and received by addressee.The court presume to have received the notice but not the content of notice .even an empty envelope might have been sent to them .If the addressee appear before the court and deposes that he didn’t receive letter and sign on acknowledgement card is not his sign .Then its for plaintiff to prove by oral or documentary evidence to prove the service of such letter on addressee .

**G**.**Presumption As To Adverse Inference**

The **evidence** which **could be and is not produced** would , if produced be unfavourable to the persons who withholds it -------Refuses to produce doc of small importance but which injure feeling and reputation of his family.The adverse inference drawn by the court is optional and one of facts depending upon the whole set of facts .

For the court **before** drawing adverse inference it has to follow procedure .1.notice under **order 10 cpc** to produce or 2.to summon document under **order 16 cpc** . The condition and requirement is that document is in existence and in custody of the party against whom adverse inference is sought to be drawn .

**H. Presumption As To Refusal To Answer**

A man **refuses to answer a question** which he isnot compelled to answer by law , the answer , if given , would be unfavourable to him.

The court draw adverse inference under this circumstances .Adverse inference can also be drawn under sec 342 Cr.P.C.Court assume that suggestion made in question is true.

**I. Presumption As To Discharge Of Obligation**

When a **doc creating an obligation** is in the hands of the obligor , the obligation has been discharged **------**A bond is in possession of the obligor , but the circumstances of the case are such that he mayhave stolen it .It it for the person to prove who alleges against another of stolen .

**Pro.note in hand of person whotook loan .this show he had paid his loan and so has received the pronote back.**

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| **H.R.Khanna ,A.A.Lagiri swamy &R.S.Sarkarria , Virumal mulchand &another Vs .State of Gujarat**  Presumption as to stolen goods .  **Ram kumar Vs .State Of haryana**  All witnesses who witnessed the assault examined .But the witnesses who reached the spot after the incident were not examined .At this stage Supreme court refused to draw adverse inference **.**  **Bihari Prasad Vs.State Of Bihar**  The case wherein the accussed fired .the person were injured and some died .they were his relatives .The FIR was lodged by the injured witnesses within half an hr .The defence pleaded adverse inference against prosecution for non –detailing of the incident .The SC held no adverse inference can be drawn as they were in shock of incident being relatives **.**  **Prakash Dattu Kamble Vs.State of Maharastra**  In a murder case the prosecution not bound to explain the superficial injuries found on accused body and it is left to the accused to explain if he wants to take self defence.  **Arun Gulab Gawli Vs State of Maharastra**  It was held that court could convict an accused based upon the presumption , inferences coupled with corroborative evidence .Conviction merely based on presumption & inference cannot be made.  **Shivaji Ganu Naik Vs State of Maharastra**  The accused received injuries .He was not medically examined for 3 days .Prosecution also didn’t submit ainjury report of the accused .It could not be inferred that injuries were manufactured.  **Kunju Vishwanathan Vs .RamaKrishnan Surendran**  Kerala High court held that proper service of notice can be presumed under sec114 of Evidence Act and sec 32 of General Clauses Act .service of notice shall be deemed from date of refusal and not from the date of dispatch of notice.  **State of Orissa Vs.Jagdish Chandra Jena**  Mens rea or guilty intention can be presumed as an essential ingredient of an offence .But where legislature interprets a law creating offence of strict liability mens rea is not essential .  **State of Rajasthan Vs Satyanarayan &ors**  Where accused didn’t claim the recovered articles and also didn’t give explanation of it in his possession .In such case adverse inference can be drawn against him .  **Ranganathan &ors Vs.State**  1.General diary of police showed he was in station when the FIR was lodged .But defence evidence adduced by accused showed the travel allowance bill that police officer was out of police station.The madras High Court held that it would tatatamount to give benefit to prosecution than defence.  2. In same case it was alleged that FIR was fwd to magistrate but not produced before court .The carbon copy didn’t bear magistrate initial ,seal of court showing date of receipt was also not affixed No tapal register serial number was available .In such case it could be presumed that Fir was not received by magistrate |

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**Sec114 –A: Presumption As To The Absence Of Consent In Certain Prosecution For Rape**

**Sec 114 A** :**In certain prosecution for rape under clause (a) or (b) or (c) or (d) or (e) or (g) of subsec (2) of sec 376 of the IPC where a sexual intercourse by the accussed was proved and question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she didn’t consent , the court shall presume that she didn’t consent .**

**Sec114-A was inserted by the Amendment act 1983 (43/1983)known as antirape amendment act afte the sensational case Tukaram Vs.State of Maharastra known as madhura case .**

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| **State of Maharastra Vs Madhukar N.Mardikar**  Police inspector on raid a brothel house.arrested prostitutes .Forced one of them for sex without consent .The prostitute made complaint  The TC convicted him .On appeal H.C.reversed the judgement .The Supreme Court upheld the conviction of TC that she is equally entitled to the protection of law . |

**Chapter VIII**

**Estoppel**

**(Allegans Contraria Non ESt audiendus )**

**Sec 115 -117**

**Sec 115 –Estoppel**

**Sec 116 Estoppel Of Tenant And Of Licensee Of Person In Possession**

**Sec 117 -Estoppel Of Acceptor Of Bill Of Exchange , Bailee Or Licensee**

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The word estoppel came from French word **estope** which means in English as **‘stopped’**.This term was used by the English jurist toshutting the mouth of person who alleged or pleaded or spoken or acted upon truth in one previous occasion and tries to evade his own allegation or pleading or speech or action with malafide / ill intention .

**An estoppel is a rule of evidence by which a party is precluded from denying the existence of state of thing which he had previously asserted to exist**

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| **Gibson Vs Gibson**  An estoppel is a restraint or impediment imposed by the policy of the law to preclude a party from avering truth .  **Graham Vs Asbury**  Estoppel means that party is presented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly . |

**Principle**

The rule of estoppel is based on the maxim **Allegans Contraria Non ESt audiendus** –A person alleging contradictory facts should not be heard .It is well established proposition of law that if a man conducts himself in such a way that a reasonable manwould take his representation to be true and acts upon it, then the party making representation shall not be allowed to contest the truth .

**Sec 115 : When one person by declaration , act or omission , intentionally caused or permitted another person to believe a thing to be true and to act upon such belief , neither he nor his representatives shall be allowed , in any suit or proceeding between himself and such other person or his representative , to deny the truth of that thing**

**Illus:**

Sale of a land .Latter alleges that he didn’t had title at time of sale and to setaside the sale

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| **Estoppel**   1. **Part of law of evidence** –sec 115to 117 2. **Object** –person alleging contradictory fact shall not be heard 3. **Prohibits** – from contradicting previous declaration /acts to prejudice of party who relying upon them , altred his position 4. It shuts the mouth of a party | **Res judicata**   1. **It belongs to CPC** –SEC 11 2. **Object –**to put anend tolitigation 3. **Prohibits** court from enquiring into matter already adjudicated 4. Resjudicata ousts the jurisdiction of the court . |

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| **Estoppel**   1. It is personal disqualification laid upon peculiar circumstances from proving particular facts 2. 3 kinds    1. By Matter of record    2. By Deed    3. In pais 3. It is one of facts | **Presumption**   1. It is a rule that particular inference shall be drawn from particular facts whoever proves them 2. 3 kinds    1. Of facts    2. Of law       1. Rebuttable       2. Irrebuttable 3. It may be fact /law |

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| **Estoppel**   1. It is a rule of evidence which precludes a party to contradict his previous representation or conduct 2. An action cannot be founded on estoppel 3. An estoppel bind only parties and privies .strangers cannot take advantage of estoppel 4. It is conclusive 5. It applies only in civil proceeding 6. It doent operate against a person who was non existent at the time when transaction took place . 7. Every estoppel is statement of admission at its formation | **Admission**   1. It is a statement which suggests an inference as to any facts in issue or relevant fact 2. It forms the basis of judicial pronouncement 3. It is taken as advantage by the parties and even by the strangers 4. It can be rebutted against their makers and those claiming under them 5. The doctrine of admission is applicable to both civil and criminal proceedings 6. Thje rule of admission operates against a person who was non existent at the time when transaction took place 7. Every admission need not be estoppel . |

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| **Estoppel**   1. It is a rule of evidence which precludes a party to contradict his previous representation or conduct 2. It is not a ause of action 3. Under this principle of agency not applicable 4. When the aggrieved party proves estoppel he obtains substantiative right . | **Waiver**   1. It means intentional relinquishment of a right ; voluntary relinquishment; abandonment of known existing legal right 2. It constitutes a cause of action 3. Under waiver an agent can agree to waive his principal’s rights 4. Person who waives his right intentionally he looses his substantiative right |

**Condition For estoppel**

* 1. **Primarily rule of evidence** It is a rule of evidence under sec 115 of the evidence act
  2. **Substantiative right** : Primarily the estoppel is a rule of evidence .However when it is proved by the affected party it becomes substantiative right of them
  3. **Representation :** 
     1. there must be **some representation**
     2. Representation must be **one of fact and not of law alone**
     3. Represenation must be **clear and un ambiguous**
     4. Parties must **know the facts of representation** .
     5. Represenation must bemade with **intention to be acted upon** .In order to operate as an estoppel it must be established that person had by his act or omission intentionally caused or submitted another to behave a thing to be true .
     6. Represenation must have **been aced upon** i.e the other person should come forward .It is necessary for the other person to show that he was not aware of the facts and real state of affairs , the doctrine of estoppel does not arise.
  4. **Estoppel**

1. Rule rest on **equity and good conscience**
2. Question of estoppel is **mixed question of fact and law** and without definite allegation in pleadings party is not allowed to plead estoppel
3. **Burden of proof** is on person who pleads estoppel

**Etoppel –When applied**

1. Tenant sublease under easement .Later the said property purchased by tenent .

**Doctrine Of Estoppel - when not applied**

* 1. **Only in civil proceedings**-not apply to crl proceedings
  2. **Stranger** – cant take advantage of estoppel
  3. **There must be some duty** –no duty no estoppel
  4. **Incompetent persons -** does not apply against incompetent persons
  5. The provision of estoppel **cannot** be invoked **against the provision osf a statute or law .**
  6. **Innocent Mistake –** must have acted on the belief induced by the other party and not on innocent mistake .
  7. **Person Non existent -** doesnt operate against a person who was non existent at the time when transaction took place
  8. **Illegal and void –**Does not apply , but if extended it becomes against public policy .
  9. **Detection of bonafide mistake –** where both parties under common misapprehension , rule estoppel doesn’t arise
  10. **Against State –** it does not apply against governmental , public or sovereign capacity
  11. **Special circumstances –** It cannot be available to release a part from the obligation to obey law in force .

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| **D.S.Sinha an Da.n.Gupta , J.J ,Tilak Chitra Mnadir and others Vs.State of U.P**  G.O to grant in aid to newly constructed cinema theatres in specified areas of of the state .Conditions imposed to construct the theatre within a stipulated period .A got the contract but not complete the construction within specified time .A claim for grant in aid under promissory estoppel .It was held he is not entitled and doc of estoppel does not help him . |

**Kind of Estoppel -3 kinds**

* 1. **Estoppel By Matter of record** - judicial / legislative record
  2. **Estoppel By Deed** – written contract
  3. **Estoppel In pais** - found on misrepresentation express or implied : it is called equitable estoppel not because their recognition is peculiar to equitable tribunals , but because they arise upon facts which render their application in the protection of rights equitable and just .

**Quasi –Estoppel** is a term applied to certain rules of law which are analogous to and yet differ from the principle founding estoppel in pais ; certain legal bars which have the same effect as an estoppel and yet are not strictly such .

**Types of Estoppel**

1. **Estoppel by Acquiescence**
2. **Estoppel by Judgement**
3. **Estoppel by Laches**
4. **Estoppel by Negligence**
5. **Estoppel by Silence**
6. **Estoppel by Warranty**
7. **Estoppel by Waiver**
8. **Estoppel by Election**
9. **Title/Right of estoppel**
10. **Technical Estoppel**
11. **Promissory Estoppel**
12. **Issue by Estoppel**
13. **Equitable Estoppel**

**Estoppel By Deed**

* 1. Binds the parties to instrument and those claiming through them to its statement .
  2. Upon recital or description which are immaterial or not intended to bind
  3. Deed taking effect by interest , deed obtained by fraud –rule of estoppel does not apply .

Agreement specifying **arbitration clause** – objection raised , cant succeed being estopped by the estoppel by deed .

**Compromise decree** – later cant raise objection with respect to that .

**Estoppel By Matter of record(sec 11-14 CPC ; SEC 40-44 OF Evidence Act )**

A judgement not only creates a right .it works as an estoppel .It deals with the effects of judgement and their admissibility in evidence

The principles of this estoppel is that the judgement of the court must be honoured .The judgement debtor must obey the order of judgement , until he can getaside by the competent court .A consent decree also weigh the same value .

**Ansan Hussain Abdul Ali bohari , proprietor abidi shop Vs Maina wife of Nathu Telanga &ors**

When there is charge on the land .During the derivative of title of the land from one party who was party to the suit by the decree in which the land was charged ,the cage is effective against the bonafide purchaser of the land without notice by reason of estoppel by record.

Eg**:**

**estoppel arise –yes**

Land acquired by govt and landlosers satisfaction to compensation &no appeal is estoppel by matter of record.

Affidavits submitted before authorities /court -estoppel by record , cant be changed

**Record not operate as estoppel by matter of record –No**

* Correction of revenue records-change , mutate , correct rev.rec
* Flats and apartment law – builder when sold flats and cellar to diff house owner under took from flat owner that they hav no objection to lease out cellar and utilize money for builder .The bulder claimed estoppel by record but they challenged act of builder as its not legally valid as per flat and apartment law
* Income tax and sales tax cases –demand of tax by authorities .when payment made cant estoppel by record coz for any further refund it necessary to contact them .
* Pleadings –Plaint and written statement once made cannot be allowed to seek the doc of estoppel by record .amendement of plaint with pray to the court can be made where court allows to amend plaint paying cost to defendant .therafter defendentcant pray
* Maintainence petition – can file maintainenece petition again 2nd time when 1st was withdrawn .

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| **Advocate General of Andrapradesh Vs Chennasetty Chakrapani , C.I.Of police CCS Guntur &another**  The H.C held that contempt proceedings can be initiated by h.c on the basis of report of magistrate and the doctrine of estoppel and resjudicata does not apply to the accused . |

**Estoppel In pais**

**Estoppel In pais – Includes all forms of estoppel not arising from a record , from a deed or from a written contract**

**Arises in 2 circumstances**

1.from agreement

2. from act or conduct of misrepresentation.

**Estoppel:**

If a man by word or by conduct has intimated that he consented to an act which has been done andthat he will offer no opposition to it, although it could not have been lawfully done without his consent and he there by induces others to do that which they otherwise might have abstained from . he cannot question the legality of the act he had so sanctioned to the prejudice ofthose who have so given faith to his words or to the fair inference to be drawn from his conduct.

**Burder of proof :**

Before estoppel can be invoked against a person the party invoking must prove that a person has so conducted himself as to induce him a belief in the existence of some fact and believe.**changed his position.**

**Eg**

1. 1st consent &pa**r**ticipate **arbitration proceeding** bt later protest that its w/o jurisdiction –he cant do he is estopped .

2. With respect to **notice** remained silent , but when order passed imposing tax liability challenged validi ty –cant do as he was silent to notice.

3.**election nomination** due date extended , 1 nominee didn’t object ; but when he failed to succeed &other person who filed nomination on extended due date won he object to the extention of nomination due date-cant do he should have objected at the initial point.

4. **removal from service** decided by board mgmt .He too participated &submitted his defence.He cannot later challege that board was not duly constituted

**When Conduct does not amount to estoppel –in pais**

**In compensation cases –** with lesser amount .therefore cant appeal.

**Legitimacy** – alleged family accepted person as legitimate son but plaintiff who raised ques of legitimacy didt accept

**Estoppel by Acquiescence**

To accept /consent to something without protest-Acquiescence implies that a person who is said to have acquiesced did so with knowledge of his rights and other person acted in the bonafide belief that he was acting within his rights.This belong to estoppel in **pais**

**2 facors**

There is a full **knowledge of one’s right** , the manner acquiesced and its effect over the property /right .

That other is **encroaching one’s right** and must have spent some money or must have done some act on the faith of mistaken belief.

**Estoppel by Judgement**

This belongs to estoppel by record .It is nothing but resjudicata , a bar which precludes the parties to an action to relitigate after final judgement , the same cause of action or ground of defence , or any fact determined by the judgement .

**Estoppel by Laches**

**Lach**-unreasonable delay in making an assertion or claim , which may result in refusal .

This belong to estoppel in **pais**.A neglect to do something which one should do or seek to enforce a right at a proper time has been termed with questionable propriety called estoppel by laches

A party to contract delays in performing contract this causes loss to the other and is said to be lach on the party delaying .It will disentitle him to claim his right under contract (sec 55 of contract act impose laches on parties to contract )

**Estoppel by Negligence**

This belong to estoppel in **pais.**Estoppel by negligence is where a man is estopped by anothers’s misrepresentation , if in breachof some duty to the person is deceived , he has supplied the person making the representation with that which was necessary to make it credible.

**Estoppel by Silence**

This belong to estoppel in **pais.**This type of estoppel arises where a person who is under a duty to speak truth to another person , but refrains from doing so , and thereby leads the other to believe in the existence of state of facts in reliance upon which he acts to his prejudice .

**Fraud –sec17 of contract Act** – mere silence as to facts affect willingness of a person to enter into contract is not fraud –but if circumstances of the case is such that regard has been made to them .AT that time it is duty of person to speak /his silence equivalent to speech .

Eg.Sale of unsound horse .

**Estoppel by Warranty**

This belong to estoppel by **deed** .It is based on the principle of giving effect to te manifest intention of the grantor appearing on the deed , as to the land or estate to be conveyed , and of preventing the grantor from derogating or destroying his own grant by any subsequent act .

**Estoppel by Waiver**

This belong to estoppel in **pais.**Where a party intentionally or under an agreement or under a settelemnt waives his right in fav of another party , he is said to have waived his right .However once waived right in contract or property , he cannot claim later .If he claims again , the estoppel by waiver comes into operation.

**Estoppel by Election**

This belong to estoppel by **deed.**Where a party has 2 options in a given circumstances , but not to choose both of them and chooses one of them , thereafter he is precluded to claim the other option or both the options .He is thus precluded by estoppel by election **.**

**P.J.Kurien Vs.Renjitha**

The kerala High Court held that the principle of estoppel by election can be applied to both civil and criminal proceedings .

**Technical Estoppel**

This belong to estoppel by **deed .**Technical estoppel are those which arises from the matter of record or the deed of the party estopped ; estoppel arising from strict or technical constrction of rules of law

**Title/Right of estoppel**

This belong to estoppel by **deed.** where a person w/o having conveyed with warranty ,subsequently acquires the title , it inures to the benefits of the grantee , who is said to acquire the title of estoppel .

Right of estoppel is said to arise where one person makes to another a statement which is afterwards acted upon , since in any action brought afterwards upon the faith of that statement by the person to whom it was made , the person making it is not allowed to deny that the facts were what he represented them to be , although in truth they were different .according to this estoppel a tenent cant dispute his landlord totitle.

**Promissory Estoppel**

**Promissory Estoppel:**

The promissory estoppel arises when there is a promise whicha promisor should reasonable expect to induce action or forbearance of a definite and substantial charater on art of the promise and which does induce such action or forbearance and such promise is binding if injustice can be avoided only by enforcement of promise.

**Object** ; to preclude perpetration of fraud or causing injury .In such cae party making the promise is precluded from asserting want of consideration therefor.

**Essential : Before invoking Doctrine of Promissory Estoppel it must be proved**

1. There was a representation or promise in regard to something to be done in future.
2. Such representation affect the legal relation of the parties and to be acted upon accordingly.
3. The other side has acted to is prejudice.

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| **Hughes Vs .Metropolitan Railway Co**.  Land lord gave 6 mon notice since tenant failed to repair the house .After one mon notice LL had negotiation with tenant to sell leased premises .The said six mon elapsed and LL asked to vacate the premises .Tenant contend 6 mon is from date of failure of negotiation of sale .Court admitted argument of tenant and held that by implied promise LL has agreed to suspend the notice and therefore tenent nt carried out repairs.  **M/s .Motilal Padampat Sugar Mills Co.Ltd Vs. State Of U.P**  Definition –This is irrespective of the whether there is any per-existing relationship between the parties or not  **N.C.Singhal Vs.Union Of India**  On application by Sardar vallabhai patel memorialsociety the govt handed over the shahi baugh palace for maintainence .For the maintainence society began collecting donation .the govt revoked previous orders of allotment .The socirty challenged govt order under promissory estoppel .The SC accepted and quashed the said govt order .  **Boda subramaniam and Co & ors Vs state of A.P**  The representation be it of promise or intention or future conduct , on which this doctrine of promissory estoppel is founded is susceptible of generating enforceable promises and binding contractual obligations even when there is noconsideration , such as common law would have supported the promise and obligation .In the event othe doctrine clothes the representee with the needed interest to maintain application under article 226 of the constitution.  **Gujarat state financial corpn Vs .Lotus Hotels Pvt Ltd.**  Agreement to build hotel by petitioner with corpn.huge amount incurred by the petitioner .later corpn denied .the sc gave in fav of petitioner and held promissory estoppel would estop corpn from backing out of obligation  **C.V.Enterprises VsM/S Braithwaite & Co Ltd and others**  When there is a concluded contract principle of promissory estoppel does not apply .the contract law comes with in common law courts and promissory estoppel comes with in court of equity .does not apply in case were promise made on some mistake as to an essential materialfact .  **Miss Reeta Vs.Berhampur University and another**  Forged B.A certificate.got M.A seat .Passed M.A in 1st class .Got lecturer post .Received complaint against himand thereupon his M.A cancelled.Took plea of promissory estoppel . cant succeed as he acted against rules and cheated university .  **Dr.Ashutush Biswas Vs.tate of Orissa &ors**  Medical entrance written and passed got admission.He resigned the govt job .Later he was rufused from giving seat on some reason not stated earlier.The High Court held University estopped from doing so .  **AIR 1930 Del 27**  Candidate M.A.student admitted based on B.Acertificate and mark .Later university cancelled her admission and not allow to write her exam .The High court gav in fav of student .  **Balkrishna Tiwari Vs.Registron Of Awadhesh Pratap Singh University and others**  University is estopped from cancelling admission and issue of hall ticket if he hadappeared in one of exam ad admission has been issued to candidate. |

**Issue by Estoppel**

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| **Mazud Khan Vs.State of U.P**  When a issue of fact has been tried by a competent court on a former occasion and finding has been reached in fav of accused .It act as estoppel /res judicata against the prosecution . but not as a bar to the trial and conviction of the accused based on diff findings and distinct offence .Thus it precludes the reception of evidence on that particular finding. |

1. Principles of resjudicata applies
2. Parties in both proceedings is same ; facts in issur proved / disproved in earlier proceeding identical in subsequent trial
3. It is identical with double jeopardy

**Equitable Estoppel**

**The principle that where a party with full knowledge or with sufficient notice or means of knowledge of his rights and all material facts**

1. **Remains inactive for a considerable time (or)**
2. **Abstains from impeaching transaction (or)**
3. **freely does what amounts to recognition(or)**
4. **acts in amanner inconsistent with repudiation**

**so as to affect the situation of the party so that the other party is induced to suppose that it is recognized**

**This amounts to acquiescence and the transaction although originally impeachable becomes unimpeachable.**

**Equitable principle of estoppel against public bodies** noted in interest of justice , morality and common fairness but it is not applied to the extent of impairing sovereign powers of the state.

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| **Union Of India Vs.M/S Indo –Afghan Agencies Ltd**  Supreme court held in this case that govt is not exempted from liability to carry out the representation made by it as to the future conduct .Where govt under im and ex act 1947 issued ex and im order 1955with respect to grant of import and export licences .In 1962 it made export promotion scheme to provide incentive to exporter . Clause 10of scheme provided that import certificate could be provived by textile commissr.if declared value grater than real value.with respect to ageny above the imprt certificate was not given to full F.O.B .te gancy nmoved High court which directed govt to issue full F.O.B a import certificate .The govt resisted that its admin fin and mere instruction to textile commissr and create no enforceable right in exporter or no obligation upon govt .SC and HC rejected appeal of such contention and fav agency .  **Collector Of Bombay Vs.Municipal Corpn Of Bombay**  It was held that party who has acted on a representation made by the govt to claim that the govt shall be bound to carry out the promise made by it even though the promise is not recorded in the form of formal contract as required by the constitution .  **Robertson Vs .Mminister Of Pensions**  In case of a serving army officer who wrote letter to war office regarding his disability and received reply that his disability attributable to the war service e.later it was decide by the ministry of pension that its not attributable .The court held that assurance would be enforceable becoz its intended to be binding and it could be acted upon .cant revoke.  **Century Spinning Nd Manufacturing Co .Ltd Vs.Ulhasnagar Municipal Council**  In case where company set up in industrial area within municipal jurisdiction f district municipality .Where a representation was made to govt of maharastra which agreed to exempt payment of octroi for 7 yrs period In 1965 the legislature of state of maharastra constituted the former district municipality into ulhasnagar municipality .The latter sought to levy octroi .The high court declined to interfere under A 226 but supreme court remanded the case back to high court that law is not powerless to raise in appropriate cases an equity to compel performance of the obligation arising out of the representation .Thus estoppel may be invoked against the exercise of power by state govt agaist injustice &wrg |

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**Sec 116 Estoppel Of Tenant And Of Licensee Of Person In Possession**

**Sec 116 :No tenant of immovable property or person claiming through tenant , during the continuance of the tenancy , be permitted to deny that landlord of such tenant had , at the beginning of the tenancy , a title to such immovable property ; and no person who came upon any immovable property by the licence of the person in possession thereof , shall be permitted to deny that such person had a title to such possession at the time when such licence was given.**

The tenant can set up his own title against any other person and not the landlord and he / licencee cannot claim ownership of property

This does not create , extend or extinguish the tenancy .It only safeguard the title of the owner .The estoppel under this sec continues so long as the tenant does not surrender possession to the landlord .

**Application**

1. Under rent control law –issues recipt for rent received ; receives even after the tenancy period
2. Benamidar landlord
3. Sublease
4. Licencee

**At the beginning of the tenency**

1. Tenancy beginning by granting of lease by landlord - here estoppel is complete
2. Tenancy beginning by tenant attorning to new land lord – here tenant can plead misrepresentation , coercion etc

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| **Bishnupada Mondal and another Vs.Dwijiabar Mondal and another**  In oder to invoke the principle of estoppel embodied the question is not whether tenant has been let into possession by landlord but whether there is a valid tenancy . apart from tenancy acquired through coercion or misrepresentation , the execution of vertical agreement to hold as a tenant would constitute a valid tenancy and living in estoppel .  **Lawang Chand Sah &ors Vs.Kedar Ram &ors**  In this case the defendant had not put up any title of their own and did nt calim to betheir right .In such case the principle of estoppel is attracted where tenant who has not got his possession taking undue advantage for the contract which admit tenancy right and put landlord in inequitable situation . |

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**Sec 117 -Estoppel Of Acceptor Of Bill Of Exchange , Bailee Or Licensee**

**Sec 117 : No acceptor of bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it ;**

**Nor shall any bailee or licensee be permitted to deny that his bailor or licensor had “at the time when bailment or licence commenced” authority make such bailment or grant such licence .**

**Expl 1:**  The acceptor of bill of exchange ma deny that the bill was really drawn by the person by whom it purports to have been drawn

**EXPL2 :** If a bailee delivers the goods bailed to a person other than the bailor hemay prove that such person had right to them as aginst the bailor