

In AIR 1996 SC 196 *Bhoop Singh's* Case it was held under Section 17(2) (vi) that where the compromise decree is *bona fide* in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration would not require registration, in a converse situation, it would require registration. If the compromise decree were to create for the first time right, title or interest in immoveable property of the value of Rs.,100/- or upwards in favour of any party to the suit, the decree or order would require registration. If the decree were not to attract any of the clauses of sub-section (1) of Section 17, it is apparent that the decree would not require registration. If the decree were not to embody the terms of compromise, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed

of because of the compromise in question. If the property dealt with by the decree be not the "subject matter of the suit or proceeding", Clause (vi) of sub-section (2) would not operate. It was held that where the compromise decree confined to subject matter of suit it doesn't require registration to confer title. If the compromise covers outside the subject matter of the suit that portion requires registration to confer title to that property since decree creates new rights for first time to the subject matter not covered by the suit. In 2001 (3) ALD 522 = 2001 (4) ALT 490 - *G. Sanjeeva Reddy v. Indukuri Lakshamma* - It was also held that if subject matter not in respect of property other than subject matter of suit, such a compromise decree is exempt from registration and is admissible in evidence without registration.

CRIMINAL JUSTICE IN INDIA - A COMBINATION OF ADVERSARIAL AND INQUISITORIAL SYSTEM

By

—DR. MOHAMMED ZAHEERUDDIN,

Assistant Professor,
Post-graduate College of Law,
Osmania University, Hyderabad

In administration of justice there are two different systems functioning in the field of criminal justice, one is 'adversarial' and another is 'inquisitorial'. Some countries have the combination of these two systems.

In adversarial system accused is presumed to be innocent throughout the trial. The guilt of the accused beyond reasonable doubt will rest on the prosecution. It means the accused need not to rebut the case made out against him until prosecution does sufficiently well to establish his guilt beyond the shadow of doubt. It is sufficient if he is able to create some sort of reasonable doubt in the mind of the Court as to his guilt. In other words it

is the duty of the prosecution to establish all the ingredients of the offence with which the accused is charged and trial must be conducted before impartial and competent Court. Right of silence is fundamental to adversarial system which stipulates that 'it is the duty of the prosecution to prove the prisoners' guilt beyond reasonable doubt'.

Opposite to 'adversarial' is the 'inquisitorial system'. In this system a person is presumed to be guilty until he proves his innocence. At the time of trial Judge must take side of the Court. When the accused brought before Court he is presumed to be guilty person. Burden of proof is on him to prove that he is innocent.

Object of this article is to examine the Indian criminal justice system and some of the legislations relating to it, because most of the new legislations relating to criminal law placing the burden of proof on the accused person, which is a main feature of inquisitorial system.

The Universal Declaration of Human Rights, 1948, guarantees that everyone is entitled in full equality to a fair and public hearing by an independent and impartial Tribunal, in the determination of his rights and obligations and of any criminal charge against him Article 10 of UDHR, 1948. It also states that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence, Article 11(1) of UDHR, 1948.

The International Covenant on Civil and Political Rights, 1966, guarantees that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life, Article 6 of I.C.C&P.Rights, 1966. This Covenant says that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law, Article 14(2) I.C.C& P.Rights, 1966. In the determination of any criminal charge against him, everyone shall be entitled to certain guarantees, in full equality; (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him (g) not to be compelled to testify against himself or to confess guilt, Article 14(3) of I.C.C.&P. Rights, 1966.

Criminal Justice in India

We have inherited an 'adversarial' system of jurisprudence from the British which requires that a person accused of a criminal offence is supposed to be innocent until the said charges are proved in a Court of law beyond the reasonable doubt. This

is a recognised basic cardinal principle in the administration of criminal justice and it is designated as 'presumption of innocence'.

The Indian Constitution promises to all citizens, 'justice, social, economic and political. The right to fair trial, legal aid and speedy trial are some of the guaranteed fundamental rights under Indian Constitution. Wherein it guarantees that 'no person shall be deprived of his life and personal liberty except according to procedure established by law, Article 21 of Indian Constitution, no person accused of an offence shall be compelled to be a witness against himself, Article 20(3) of Indian Constitution, and it also provided certain safeguards against arbitrary arrest and detention, Article 22 of Indian Constitution. These are some of the constitutional safeguards provided to a person with a view to protect his personal liberty against any unjustified assault by the State.

The basic rules relating to burden of proof states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exists, Section 101 I.E. Act, 1872. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, Section 102 of I.E. Act, 1872. The burden of proof as to any particular fact lies upon that person who wants the Court to believe in its existence, Section 103 of I.E. Act, 1872.

Though our system is called 'adversarial' certain features of inquisitorial system have been absorbed, which is evident from the following legal provisions which precisely has certain sections that shift the onus of innocence on to the accused person. It also demonstrates how the country is marching towards inquisitorial system.

1. The Arms Act, 1959

In Arms Act, 1959, whenever any person has in his possession any firearms without such name, number or other identification mark on which such name,

number or other identification mark has been obliterated, removed altered or forged, *it shall be presumed* unless the contrary is proved, that he has obliterated, removed or forged that name, number or other identification mark, Section 8(3) The Arms Act, 1959. The criminal responsibility of person in occupation of premises in certain cases (where arms or ammunitions are found) *shall, unless the contrary is proved*, be liable for that offence in the same manner as if it has been or is being committed by him alone, Section 35 The Arms Act, 1959.

2. The Essential Commodities Act, 1955

The Essential Commodities Act, 1955 contains the provision of Presumption of culpable mental state. In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state and it is for the accused to disprove this presumption, Section 10 C (1) of E.C.Act, 1955. Where a person is prosecuted for contravening any order made under Section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him, Section 14 of E.C. Act, 1955.

3. The Immoral Traffic (Prevention) Act, 1956

Where any person over the age of eighteen years is proved to be living with; or to be habitually in the company of a prostitute; or to have exercising control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding; abetting or compelling her prostitution or to be acting as a tout or pimp on behalf of a prostitute, *it shall be presumed until the contrary is proved*, that such person is knowingly living on the earnings of prostitution of another person within the meaning of Section 4(1), Section 4(2) of the Immoral Traffic (Prevention) Act, 1956.

In cases of detaining a person in premises where prostitution is carried on the Act provides shall presumption provision, Section 6 of Immoral Traffic (Prevention) Act, 1956. Where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under Section 6(1), Section 6(2) of Immoral Traffic (Prevention) Act, 1956. Where a child or minor is found in a brothel, and on medical examination, that child or minor is detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes, Section 6(2-A) of Immoral Traffic (Prevention) Act, 1956.

4. The Prevention of Corruption Act, 1988

The Act contains a provision of presumption of guilt, where a public servant accepts gratification other than legal remuneration. *It shall be presumed*, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he know to be inadequate, Section 20 of Prevention of Corruption Act, 1988.

5. The Protection of Civil Rights Act, 1955

Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste the Court shall presume unless the contrary is proved, that such act was committed on the ground of "untouchability." Section 12 of The Protection of Civil Rights Act, 1955.

6. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989

In a prosecution for an offence under Chapter-II, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of,

committed of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence, Section 8 (a) of the S.C. and S.T. (Prevention of Atrocities) Act, 1989.

7. The Prevention of Terrorism Act, 2002

In a prosecution for an offence under sub-section (1) of Section 3 (punishment for terrorist act), if it is proved that the arms of explosives or any other substances specified in Section 4 (possession of certain un-authorised arms) were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature, were used in the commission of such offence; or that the fingerprints of the accused were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence, the Special Court shall draw adverse inference against the accused, Section 53(a) and (b) of The Prevention of Terrorism Act, 2002. In a prosecution for an offence under sub-section (3) of Section 3, if it is proved that the accused rendered any financial assistance to a person, having knowledge that such person is accused of, or reasonably suspected of, an offence under that section, the Special Court shall draw adverse inference against the accused, Section 53(2) of The Prevention of Terrorism Act, 2002.

8. The Andhra Pradesh Control of Organised Crimes Act, 2001

In a prosecution for an offence of organized crime punishable under Section 3 (punishment for organized crimes), if it is proved that unlawful arms and other material including documents or papers were recovered from the possession of the accused and there is reason to believe that such unlawful arms and other material including documents or papers were used in the commission of such offence; or that by the evidence of an expert, the fingerprints of the accused were found at the site of

the offence or on anything including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence, *the Special Court shall presume*, unless the contrary is proved, that the accused had committed such offence, Section 22(a) & (b) of The A.P. Organised Crimes Act, 2001. In a prosecutions for an offence of organized crime, if it is proved that the accused rendered any financial assistance to a person accused or reasonably suspected of, an offence of organized crime, *the special Court shall presume*, unless the contrary is proved, that such person has committed the offence under Section 3(2), Section 22(2) of the A.P. Organised Crimes Act, 2001.

9. The Andhra Pradesh Gaming Act, 1972

Where any instruments of gaming are found in any place entered or searched under the provisions of Section 5 (search with warrant), on or about the person found therein, *it shall be presumed* that such place is used as a common gaming house and that the persons found therein were present there for the purpose of gaming although no gaming was actually seen by the police officer or any of his assistants, Section 6 of the A.P. Gaming Act, 1972.

10. The Andhra Pradesh Excise Act, 1968

In prosecution under Section 34 (penalties for illegal imports *etc.*) *it shall be presumed, until contrary is proved*, that the accused person has committed the offence punishable under that section, Section 42 of A. P. Excise Act, 1968.

11. The Dowry Prohibition Act, 1961

Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3 (penalty for giving or taking dowry) or the demanding of dowry, the burden of proving that he had not committed an offence under these sections shall be on him, Section 8-A of Dowry Prohibition Act, 1961.

12. The Customs Act, 1962

Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized, Section 123 (1)(a) of the Customs Act, 1962.

13. The Explosive Substances Act, 1908

In Section 5, punishment for making or possessing explosives under suspicious circumstances and it places burden of proof on the accused person.

14. The Negotiable Instruments Act, 1881

Law raises presumption in favour of holder of a cheque. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 (dishonour of cheque for insufficiency of funds *etc.*) for the discharge, in whole or in part, of any debt or other liability, Section 139 of the Negotiable Instruments Act, 1881.

15. The Narcotic Drugs and Psychotropic Substances Act, 1985

Section 35 of the Act contains presumption of culpable mental state. It states that in any prosecution for an offence under this Act which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

16. The Indian Evidence Act, 1872

(a) presumption provision as to abetment of suicide by a married woman. The Court may raise a presumption when a married woman commits suicide and cruelty of husband or relatives towards her is proved, Section 113-A of I.E.A. (inserted by 1983 Amendment).

(b) Presumption as to dowry death: When the question is whether a person has committed the dowry death of a woman

and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death, Section 113-B of I.E. Act, 1872, (inserted by 1986 Amendment).

(c) In certain prosecutions for rape, Section 376 (2) (a), (b),(c),(d) (e),(g) of I.P.C. where sexual intercourse by the accused is proved and the question is whether it was with or without the consent of the woman alleged to have been raped and if she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent, Section 114-A of IE Act.

17. Information Technology Act, 2000

By this Act presumption provisions have been inserted in Sections 81-A, 85-A, 85-B, 85-C, 88-A and 90-A of Indian Evidence Act, 1872, Section 81-A (presumption as to Gazettes in electronic forms), Section 85-A (presumption as to electronic agreements), Section 85-B (presumption as to electronic records and digital signature), 85-C (as to digital signature certificates), 88-A (as to electronic messages), 90-A (as to electronic records of five years old) of Indian Evidence Act, 1882.

Committee of Reforms of Criminal Justice System

Government of India has appointed a Committee of Reforms of Criminal Justice System and it headed by former Karnataka High Court Chief Justice Dr. V.S. Malimath. The committee is suggesting following changes in criminal justice system, India Today, September 23, 2002.

1. Shift from present Adversarial system to Inquisitorial criminal justice system.

2. Take away the 'presumption of innocence' so far available to the accused person at the time of trial.

3. Introduction of plea bargaining system. It is a pre trial negotiation in which the accused agrees to plead guilty on certain counts to gain concession on other grounds.

4. Make the statements recorded by the police admissible as evidence in Courts.

Conclusion

The presumption of innocence ensures a fair trial which is a valuable right of an accused against State's enormous power and resources. It may be noted from the above discussion that the concept of the presumption of innocence is whittled down ultimately shifting the burden of proof on the accused persons in the various socio

economic and other legislations with a safeguard of *prima facie* placing the burden of proof on prosecution.

From the above study it is evident that the criminal justice system in India is basically an adversarial system but it has adopted certain features of inquisitorial system and at present it is combination of both the adversarial and inquisitorial system. If the trend of having these features is allowed to further grow then our system will become adversarial with inquisitorial bias.

THE CONCEPT OF SOCIAL SECURITY AND INDIAN LAW

By

—DR. MOHAMMED ZAHEERUDDIN,

Assistant Professor, Post-graduate College of Law,
Osmania University, Hyderabad

According to International Labour Organisation only one in five people in the world has adequate social security coverage. The other four need it too, but somehow must manage without. In the life of a man there are two stages of dependency, childhood and old age and in the intervening years of adult life there are likely to occur spells during which he cannot earn livelihood. The social security is the system aims to help individuals in such times of dependency. These are incidents of life occurring right from childhood unto old age and death and include mainly; sickness, maternity, invalidity, accident and industrial disease, unemployment, old age, death of the bread winner and other such emergencies.

Social security is such an important aspect, extent of its prevalence is a measure of the progress made by a country. The object of this article is to analyse the concept and definition of social security and to examine the legislations and schemes in India to implement it. Reference is also made to the ideals and standards of United Nations Declaration of Human Rights, International Labour Organisation and to social security in U.K. and U.S.A..

I. Concept and Definition of Social Security

Social Security is a dynamic concept. Being a dynamic subject no rigid limit can

be laid down for all time to come. It varies from time to time and country to country, Srivastava S.C. : Social Security and Labour Laws, p.5, Eastern Book Company, Allahabad, 1985). At all times and in every society, at every stage of development there have been sick people requiring medical aid and care, handicapped and old people unable to work for a living, Government of India, Report of Committee on Labour Welfare, 1969, p.255. In early days when human needs are limited and livelihood was based primarily on agriculture, joint families, craft guilds, churches, charitable, philanthropic and other religious institutions provided these securities.

There are different definitions have been given to the term social security, as it changes from time to time and country to country. According to Prof. B.P. Adarkar, social security is that security that society furnishes through appropriate organization against certain risks to which its members are exposed. These risks are essentially contingencies of life which the individual of small means cannot effectively provide by his own ability or foresight alone or even in private combination with his fellows. Sir William Beveridge in his report defined that Social Security is an income to take the place of earnings when they are interrupted by unemployment, sickness or accident, to