



ISSN: 2583-7753

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.30>

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BEYOND DOUBT, BUT NOT BEYOND REASON: REASSESSING THE PREPONDERANCE STANDARD

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I. ABSTRACT

The concept of Preponderance of Probability is a foundational standard of proof in Civil Jurisprudence. Unlike the stringent threshold of "beyond reasonable doubt" in Criminal trials, this standard emphasizes the greater likelihood of one version of events over the other. This article explores the historical emergence, doctrinal basis, statutory anchoring, and judicial interpretations of the preponderance standard in both Indian and comparative legal contexts. It discusses key elements such as the weighing of evidence, judicial discretion, and logical coherence, along with its diverse applications from Civil and Matrimonial Disputes to Departmental Enquiries, POSH cases, and exceptions within Criminal law. Through an analysis of leading case laws and statutory provisions, the article critically evaluates the strengths, criticisms, and future pathways for the doctrine. It concludes by recommending greater clarity, training, and technological integration to strengthen its utility in modern Civil litigation.

II. KEYWORDS

Preponderance of Probability; Standard of Proof; Civil Jurisprudence; Burden of Proof; Comparative Evidence Law

III. INTRODUCTION

The standard of proof refers to the degree of certainty and the quantum of evidence required to establish a claim in judicial proceedings. It determines the evidentiary threshold that a party must satisfy to obtain a favourable determination. Broadly, legal systems recognise a graded structure of standards. In criminal proceedings, the prosecution must establish guilt beyond reasonable doubt, reflecting the grave

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consequences of conviction. In civil proceedings, the applicable standard is the Preponderance of Probability, requiring proof that a claim is more likely than not.

Between these two lies an intermediate standard known as “clear and convincing evidence,” primarily developed in United States jurisprudence. The Supreme Court of the United States in *Addington v. Texas*, 441 U.S. 418 (1979), held that the clear and convincing standard constitutes the minimum constitutional threshold in civil commitment proceedings. This standard requires proof that produces a firm belief or conviction regarding the truth of the allegations, exceeding mere probability but falling short of proof beyond reasonable doubt.

The coexistence of these standards reflects a calibrated approach to risk allocation in adjudication, where the degree of evidentiary certainty corresponds to the seriousness of legal consequences. This article examines the doctrinal foundations and comparative application of the Preponderance of Probability within this broader evidentiary hierarchy.

A. Research Objectives

1. To examine the conceptual and doctrinal foundations of the Preponderance of Probability standard in Civil jurisprudence.
2. To analyse its statutory basis under Indian evidence law and procedural law.
3. To comparatively evaluate the application of this standard in India, the United Kingdom, Canada, and the United States.
4. To assess the scope of its application in quasi-criminal and exceptional criminal contexts involving reverse burdens.
5. To identify contemporary challenges in its application and propose structural reforms for consistent judicial practice.

B. Research Questions

1. What is the doctrinal basis of the Preponderance of Probability standard in Civil law?

2. How is this standard distinguished from “beyond reasonable doubt” in theory and judicial practice?
3. How have courts in India and other common law jurisdictions interpreted and applied this standard?
4. In what circumstances does the Preponderance standard operate within criminal proceedings under reverse burden provisions?
5. Does the flexibility of this standard enhance or undermine consistency and fairness in adjudication?

C. Research Hypotheses

1. The Preponderance of Probability standard operates as a pragmatic and efficient evidentiary threshold suited to Civil adjudication.
2. Despite its flexibility, the standard introduces a degree of subjectivity that may result in inconsistencies in judicial outcomes.
3. In statutory reverse-burden provisions within criminal law, the application of the Preponderance standard maintains procedural balance without diluting the prosecution’s primary burden of proof.

D. Research Methodology

This research adopts a doctrinal and comparative methodology. The doctrinal component involves a detailed analysis of statutory provisions, including the Indian Evidence Act 1872 (now *Bharatiya Sakshya Adhiniyam* 2023) and the Code of Civil Procedure 1908, along with leading judicial precedents of the Supreme Court of India and other common law courts.

The comparative component examines the articulation and application of the Preponderance of Probability standard in the United Kingdom, Canada, and the United States to identify doctrinal similarities and divergences.

The study primarily relies on primary legal sources case law and statutes supplemented by scholarly commentary in peer-reviewed legal literature.

E. Literature Review

Scholarly discourse on standards of proof has traditionally focused on the distinction between “beyond reasonable doubt” and the civil balance of probabilities. Early common law scholarship traced the historical emergence of evidentiary thresholds in jury trials, while modern academic writing has examined probabilistic reasoning and judicial discretion in fact-finding.

Indian legal scholarship has largely addressed the Preponderance of Probability standard within commentaries on the Indian Evidence Act, particularly in relation to Section 3 and the burden of proof provisions under Sections 101–102. Comparative scholarship from the United Kingdom, Canada, and the United States has further explored how the balance of probabilities operates in civil claims, professional misconduct proceedings, and statutory reverse-burden offences.

However, limited consolidated analysis exists that integrates doctrinal foundations, comparative jurisprudence, and contemporary applications such as POSH proceedings, disciplinary inquiries, and technological evidence assessment. This study seeks to bridge that gap.

F. Proof beyond reasonable doubt

The phrase beyond reasonable doubt denotes the highest standard of proof and is essential for securing a conviction in a Criminal trial. In such cases, the burden of proof lies entirely with the prosecution. This means the prosecution must establish a comprehensive and unbroken chain of circumstantial or direct evidence that leaves no room for reasonable doubt regarding the guilt of the accused. If the evidence presented conclusively proves the facts in question without any rational uncertainty, the accused may be convicted.

IV. PREPONDERANCE OF PROBABILITY

The Preponderance of Probability is the standard generally employed in Civil litigation. It is satisfied when the party bearing the burden of proof demonstrates that their version of facts is more likely to be true than not. Essentially, that there is a

greater than 50% chance that the claim is accurate, based on the totality of the evidence presented.

This standard does not demand absolute certainty or the elimination of every doubt. Instead, it requires a comparative assessment of both parties' evidence. The court evaluates which side offers a more credible and coherent narrative. In Civil cases, the plaintiff must establish that their account is more plausible than the defendant's. Accordingly, the court's decision leans in favour of the party whose explanation appears more probable on a balance of probabilities.

A. Key Elements

- 1. Weighing the Evidence-** The court evaluates the evidence submitted by both parties, giving greater weight to the evidence that appears more credible and convincing. This assessment is not based on a strict numerical comparison but involves judging the reliability and overall persuasiveness of the evidence.
- 2. Balance of Probabilities-** This principle requires that the disputed fact be shown to be more likely true than not. It does not demand absolute certainty; instead, the party must persuade the court that their version of events is more probable than that of the opposing side.
- 3. Nature of the Dispute-** In Civil matters, particularly those involving contracts, torts, or property rights, the burden of proof lies with the claimant. The claimant must present sufficient evidence to support their allegations. If the court finds that their account is more probable than not, the claim will succeed. This reflects the essence of the preponderance standard, which requires proving a fact to be more likely true than false, rather than establishing it beyond all reasonable doubt.
- 4. Emphasizes Logical Coherence Over Quantity-** Judges focus on the quality and consistency of evidence, rather than the amount presented. A single credible piece of evidence can outweigh several weaker ones if it offers a more convincing explanation.

- 5. Lack of Certainty-** The Preponderance of Probability does not require absolute certainty. It simply means that a fact is more likely to be true than not. The court can decide in favour of the party whose version appears more probable, even if some doubt remains. This enables Civil cases to be resolved fairly without the need of complete proof, as required in Criminal cases.
- 6. Judicial Discretion in Fact-Finding -** Judges have broad discretion to assess credibility, weigh evidence, and apply common sense. This flexibility allows them to make fair decisions even in cases where the evidence is limited or circumstantial

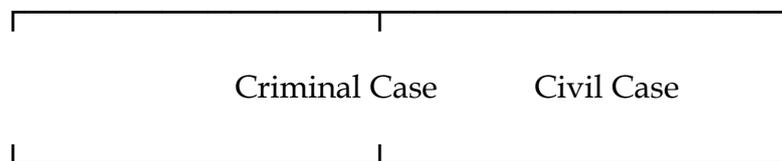
Comparison of Criminal Vs Civil Standard of Proof through a Flow Chart

START

↓

Determine Nature of Case

↓



↓

↓

Burden of Proof:

Burden of Proof:

Prosecution

Plaintiff

must prove:

must prove:

Guilt Beyond

Claim by

Reasonable Doubt

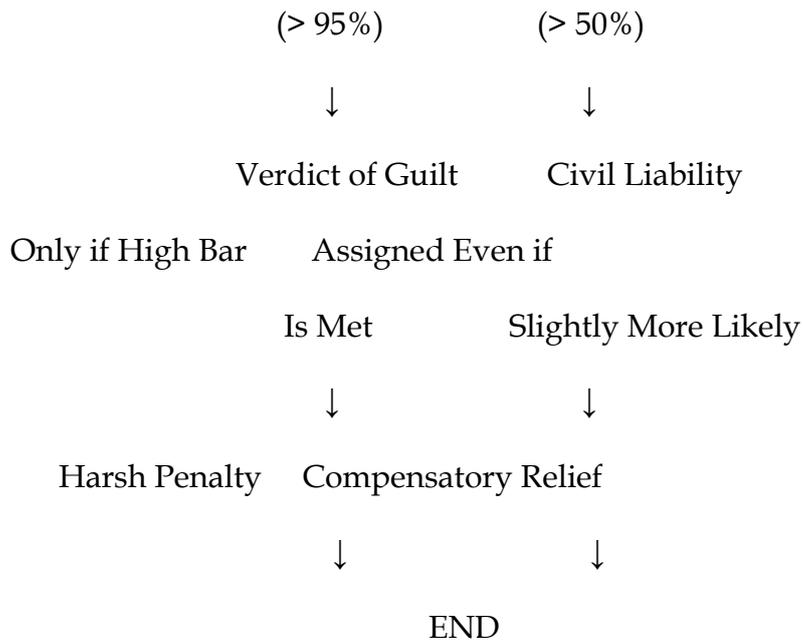
Preponderance of Probability

↓

↓

Near Certainty

Just More Likely



V. EMERGENCE OF THE PREPONDERANCE OF PROBABILITY STANDARD

The Preponderance of Probability standard gradually evolved in English common law practice during the late eighteenth century rather than emerging from a single codified formulation. Early references suggest that courts resolved civil disputes by determining which party's evidence carried greater weight.

Edward Wynne, in *Eunomus* (1768), observed that when evidence was presented by both sides, verdicts were determined according to the superior weight of evidence rather than by rigid formulae.² This articulation reflects an early recognition of comparative evidentiary assessment in civil adjudication.

Similarly, Richard Wooddeson, in his Oxford lectures later published as *Lectures on the Laws of England* (1778), noted that in matters concerning civil rights and property, the party in whose favour probability preponderated ought to prevail.³ His exposition demonstrates the doctrinal crystallisation of probabilistic reasoning in civil trials.

By the early nineteenth century, legal writers such as William David Evans further refined this understanding, emphasising that the burdened party must establish a

² Edward Wynne, *Eunomus: or Dialogues Concerning the Law and Constitution of England* (3rd edn, 1768).

³ Richard Wooddeson, *Lectures on the Laws of England* (Oxford, 1778).

decisive or clear preponderance of testimony.⁴ These formulations indicate a developing consciousness of evidentiary gradation distinct from the criminal standard.

Notably, some scholars offered nuanced views. Zephaniah Swift suggested that while the law did not always formally articulate separate standards, juries in practice demanded stronger proof in criminal prosecutions, particularly where life or severe punishment was at stake.⁵ This practical differentiation foreshadowed the formal bifurcation between civil and criminal standards of proof.

Over time, judicial practice, scholarly commentary, and the increasing contrast with the “beyond reasonable doubt” standard contributed to the consolidation of the Preponderance of Probability as the governing threshold in civil litigation across common law jurisdictions, including the United States by the early nineteenth century.

Prior to its widespread recognition, it remains unclear whether juries followed a consistent standard at all. They may have relied more on subjective judgment or even applied Civil-law-like discretion. Judges in the late 18th century often issued vague instructions, without explicitly referring to a particular burden or standard of proof. As a result, legal historians and scholars had to interpret the likely intent and impact of these rulings.

Over time, through legal practice, scholarly commentary, and increasing contrast with the “beyond reasonable doubt” standard used in Criminal law, the *Preponderance of Probability* evolved into a widely accepted measure for resolving Civil disputes, particularly in jurisdictions like the United States by the early 19th century.

VI. JUDICIAL PRECEDENTS

The principle of Preponderance of Probability refers to the degree of persuasiveness or cogency required to discharge the burden of proof in Civil cases. This standard has been judicially recognised and consistently applied across common law jurisdictions.

⁴ William David Evans, *A Treatise on the Law of Evidence* (1806).

⁵ Zephaniah Swift, *A System of the Laws of the State of Connecticut* (1795–1796).

One of the earliest authoritative explanations comes from the judgment of Denning J in *Miller v Minister of Pensions*,⁶ where he clarified that in civil cases the burden is discharged if the tribunal considers the claim “more probable than not,” and that equality of probabilities results in failure of proof.

A similar position was reiterated by the Supreme Court of India in *Narayan Ganesh Dastane v Sucheta Narayan Dastane*,⁷ where the Court interpreted section 3 of the Indian Evidence Act 1872 to mean that a fact is proved when its existence appears more probable than not to a prudent person.

The Supreme Court further distinguished civil and criminal standards in *Gurbachan Singh v Satpal Singh*,⁸ emphasising that while civil cases may be established by a preponderance of evidence, criminal guilt must be proved beyond reasonable doubt.

Comparative clarity is also found in Canadian jurisprudence. In *McIver v Power*,⁹ the Prince Edward Island Supreme Court articulated the “tipping the scale” analogy, explaining that civil liability arises when the plaintiff establishes even a marginal probability in their favour.

This analogy of “tipping the scale” effectively captures the essence of Civil proof. It is not about certainty, but about demonstrating that one side's version is just slightly more believable than the other.

VII. STATUTORY AND DOCTRINAL BASIS IN INDIAN LAW

The statutory foundation of the Preponderance of Probability standard in India historically derives from the Indian Evidence Act 1872 and continues under its successor legislation, the Bharatiya Sakshya Adhiniyam 2023 (BSA), which came into force in December 2023.

Under section 3 of the Indian Evidence Act 1872,¹⁰ a fact was said to be “proved” when the court either believed it to exist or considered its existence so probable that a

⁶ *Miller v Minister of Pensions* [1947] 2 All ER 372 (KBD).

⁷ *Narayan Ganesh Dastane v Sucheta Narayan Dastane* AIR 1975 SC 1534 (SC).

⁸ *Gurbachan Singh v Satpal Singh* AIR 1990 SC 209 (SC).

⁹ *McIver v Power* [1998] PEIJ No 4 (PEI SC (TD)).

¹⁰ Indian Evidence Act 1872 (India), s 3.

prudent person would act upon that supposition. This formulation doctrinally anchored the civil standard in probabilistic reasoning rather than certainty. Sections 101 and 102 of the Act¹¹ clarified that the burden of proof lies upon the party who would fail if no evidence were adduced, thereby operationalising the preponderance principle in civil trials.

The Bharatiya Sakshya Adhiniyam 2023 substantially re-codifies the law of evidence but retains, in substance, the probabilistic definition of proof. Section 2(1)(r) of the BSA¹² defines a fact as “proved” when the court believes it to exist or considers its existence so probable that a prudent person ought to act upon it. A comparative reading reveals that the legislative language remains materially consistent with section 3 of the 1872 Act. Accordingly, the BSA does not modify the preponderance threshold in civil cases; rather, it affirms and consolidates the established probabilistic framework while modernising evidentiary provisions, particularly concerning electronic and digital evidence. The continuity in definitional structure reflects legislative intent to preserve the doctrinal foundation of civil proof despite statutory reform.

VIII. ROLE OF THE CODE OF CIVIL PROCEDURE, 1908

The Code of Civil Procedure 1908 (CPC) complements the evidentiary framework by structuring how issues of probability are adjudicated at trial.¹³ While the CPC does not explicitly define standards of proof, its procedural architecture presupposes the civil standard of preponderance.

Order XIV mandates the framing of issues, which crystallises the factual propositions requiring proof. Order XVIII governs the hearing of the suit and examination of witnesses, providing the procedural mechanism through which parties discharge their evidentiary burdens. The adjudicatory exercise culminates in findings on each issue, which the court resolves by evaluating whether the party bearing the burden has established its case on a balance of probabilities. Thus, while the Evidence Act

¹¹ Indian Evidence Act 1872 (India), ss 101–102.

¹² Bharatiya Sakshya Adhiniyam 2023 (India), s 2(1)(r).

¹³ Code of Civil Procedure 1908 (India).

(and now the BSA) defines “proof,” the CPC operationalises the process through which such proof is tested and assessed.

Together, the BSA 2023 and the CPC 1908 create a cohesive doctrinal and procedural structure: the former defines the evidentiary threshold, and the latter regulates its judicial application.

IX. APPLICATION OF THE STANDARD OF PREPONDERANCE OF PROBABILITY IN CRIMINAL LAW: EXCEPTIONS TO THE RULE OF PROOF BEYOND REASONABLE DOUBT

Ordinarily, Criminal cases are governed by the strict standard of *proof beyond reasonable doubt*. This high threshold reflects the gravity of Criminal liability, where the liberty or life of an individual is at stake. However, there are specific exceptions to this rule, particularly when the burden of proof shifts to the accused under certain statutory provisions. In such circumstances, the accused is not required to prove their defence beyond a reasonable doubt; instead, the standard of Preponderance of Probability applies.

This distinction was clearly laid down by the Supreme Court in the landmark case of *Harbhajan Singh v. State of Punjab*, (AIR 1966 SC 97), where the Court stated:

“Where the burden of an issue lies upon the accused, he is not required to discharge that burden by leading evidence to prove his case beyond a reasonable doubt. That, no doubt, is the test prescribed while deciding whether the prosecution has discharged its onus to prove the guilt of the accused; but that is not a test which can be applied to an accused person who seeks to prove substantially his claim that his case falls under an Exception. Where an accused person is called upon to prove that his case falls under an Exception, law treats the onus as discharged if the accused person succeeds 'in proving a Preponderance of Probability.'”

The same principle was reaffirmed in *V.D. Jhingan v. State of U.P.*, (AIR 1966 SC 1762). The Court clarified:

“It is sufficient if the accused person succeeds in proving a Preponderance of Probability in favour of his case. It is not necessary for the accused person to prove his case beyond a

reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a Preponderance of Probability."

A compelling example of this principle in action is found in *State of Maharashtra v. Wasudeo Ramchandra Kaidalwar*, (AIR 1981 SC 1186). In this case, the accused, a Range Forest Officer, faced charges of holding disproportionate assets under Section 5(1)(e) of the Prevention of Corruption Act, 1947. He contended that the assets in question were inherited from his deceased father-in-law, Hanumanthu, who had been closely associated with a zamindar and was financially well-off.

While the prosecution successfully established that the assets were disproportionate to the accused's known income, the Supreme Court held that the accused was only required to offer a reasonably probable explanation, not absolute proof, to rebut the presumption of illegality. The defence presented credible witness testimonies and documents supporting the claim of inheritance. The Court accepted this defence and upheld the acquittal, concluding that:

The burden on the accused was not to disprove the prosecution's case beyond a reasonable doubt, but merely to establish a plausible alternative explanation on the balance of probabilities.

This case is particularly significant because it reinforces the legal position that when the burden shifts to the accused especially in statutory offences like corruption trials where the standard required is that of Preponderance of Probability, not certainty. A convincing and lawful explanation can suffice to tip the balance in the accused's favour, even in the face of strong prosecutorial evidence.

The Supreme Court in *Ouseph alias Thankachan v State of Kerala*¹⁴ examined the operation of statutory presumptions under the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act). The Court observed that while the prosecution must first establish foundational facts beyond reasonable doubt, the burden that shifts to the accused under reverse onus provisions may be discharged on a preponderance of probabilities. Thus, the accused is not required to rebut the statutory presumption

¹⁴ *Ouseph alias Thankachan v State of Kerala* (2004) 4 SCC 446 (SC).

with proof beyond reasonable doubt, but only by presenting a reasonably probable explanation consistent with innocence.

However, the precedential authority of *Ouseph* has been treated with caution in subsequent jurisprudence. In *Hira Singh v Union of India*,¹⁵ a Constitution Bench clarified and recalibrated certain aspects of NDPS interpretation, and later decisions have distinguished earlier rulings that appeared to dilute the rigour of statutory presumptions. Accordingly, while *Ouseph* remains relevant for articulating the standard applicable to rebuttal burdens, its ratio must be read subject to later authoritative pronouncements of larger Benches.

This doctrinal position reflects a calibrated approach: the prosecution must prove guilt beyond reasonable doubt, but where a statutory exception or presumption operates, the accused discharges the evidentiary burden by establishing a balance of probabilities.

A. Application in Different Contexts

- 1. Civil Proceedings-** In the case of *Govt. of Goa Tr. Chief Sec. vs Maria Julieta Dsouza (D)*, decided on 31 January 2024, the court observed that the sufficiency of evidence in Civil cases must be judged in light of the standard of proof, which is based on the Preponderance of Probability. Similarly, in *M Siddiq (D) Thr Lrs vs Mahant Suresh Das & Ors*, (2020) 1 SCC 1, the Supreme Court highlighted that Civil trials are governed by this standard, which allows the court to evaluate the evidence in a balanced manner, without requiring absolute certainty.
- 2. POSH Cases (Sexual Harassment at the Workplace)-** In Civil and quasi-judicial proceedings, the burden of proof differs significantly from that in Criminal cases. Rather than requiring proof beyond a reasonable doubt, these cases are decided based on the Preponderance of Probability, where the most convincing evidence prevails, even if it does not eliminate all doubt. This approach is particularly relevant in workplace sexual harassment cases, as it provides a fairer and more practical standard in often

¹⁵ *Hira Singh v Union of India* (2020) 20 SCC 272 (SC).

complex and sensitive situations. Proceedings under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (POSH Act) are civil in nature and governed by the standard of preponderance of probabilities. Section 13 of the Act¹⁶ mandates that upon completion of the inquiry, the Internal Committee shall provide a reasoned report determining whether the allegation has been proved. Although the statute does not expressly articulate the phrase “preponderance of probability,” judicial interpretation and service jurisprudence consistently recognise that the inquiry is not governed by the criminal standard of proof. The Supreme Court in *Medha Kotwal Lele v Union of India*¹⁷ clarified that disciplinary and sexual harassment inquiries require adherence to principles of natural justice and are to be assessed on a balance of probabilities, not beyond reasonable doubt. This statutory and judicial framework ensures a fair yet practical evidentiary threshold in workplace harassment cases, where direct evidence may often be unavailable, thereby ensuring that justice is served in sensitive cases such as sexual harassment. In *Medha Kotwal Lele & Ors. v. Union of India and Others* (2012), (AIR ONLINE 2012 SC 632), the court clearly stated: “The standard of proof is Preponderance of Probability and there is no need to establish the charge of sexual harassment beyond reasonable doubt as in a Criminal proceeding. All that is necessary is that the inquiry must be conducted in a fair and transparent manner and in due compliance of the principles of natural justice, after giving full opportunity to the delinquent to defend his case.”

3. **Departmental Proceedings-** In disciplinary or departmental inquiries, the courts have reiterated that the burden on the department is to prove its case by the standard of preponderance of probabilities. In *Airport Authority of India vs Pradip Kumar Banerjee* [2025] 2 S.C.R. 404, the Supreme Court

¹⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (India), s 13.

¹⁷ *Medha Kotwal Lele v Union of India* (2013) 1 SCC 297 (SC).

confirmed this approach. Further, in *M.V. Bijlani v Union of India*,¹⁸ the Supreme Court held that although disciplinary proceedings are quasi-criminal in nature, the standard of proof is not that of “beyond reasonable doubt.” The charges must be established on the basis of preponderance of probabilities, though findings must be supported by legally admissible evidence and cannot rest on mere suspicion. The charges must be substantiated only on the balance of probabilities.

4. **Negligence Claims-** Negligence, in Civil law, is assessed using the Preponderance of Probability standard, which does not require the same level of proof as Criminal liability. In *Syad Akbar v. State of Karnataka [AIR 1979 SC 1848]*, the Supreme Court drew a clear line between negligence in Civil and Criminal cases. It observed: “There is a marked difference as to the effect of evidence, namely, the proof, in Civil and Criminal proceedings. In Civil proceedings, a mere Preponderance of Probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in Criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt.”
5. **Negotiable Instruments Act-** Under Section 139 of the Negotiable Instruments Act, 1881, a presumption of liability exists against the accused, unless they can prove otherwise. In *Rangappa v. Sri Mohan*, (2010) 11 SCC 441, the Supreme Court held that this provision includes a reverse onus clause, and clarified: “The standard of proof required for rebutting that presumption is ‘preponderance of probabilities’.” This principle was reaffirmed in *Anss Rajashekar v. Augustus Jeba Ananth*, AIR 2019 SC 942.
6. **Matrimonial Disputes-** In Civil matters such as matrimonial cases, especially those involving sensitive issues like adultery, the courts rely on the Preponderance of Probability to establish facts. In *P. Mohandas Panicker*

¹⁸ *M.V. Bijlani v Union of India* (2006) 5 SCC 88 (SC), Civil Appeal No 8267 of 2004, decided on 5 April 2006.

v K.K. Dakshayani,¹⁹ the Kerala High Court reiterated that matrimonial disputes are governed by the civil standard of proof, and allegations such as cruelty or adultery must be assessed on a balance of probabilities rather than beyond reasonable doubt. The three-judge bench in *Jayachandra v. Aneel Kaur* [AIR 2005 SC 534] elaborated on the applicable standard as follows: "The concept of proof beyond the shadow of doubt can be applied only to Criminal trial. It cannot be applied to Civil disputes and certainly not to matrimonial disputes concerning delicate personal relationship between husband and wife."

7. **Income Tax Cases-** In *Sumati Dayal v Commissioner of Income Tax, Bangalore*,²⁰ the Supreme Court held that taxing authorities are entitled to apply the "test of human probabilities" in determining the genuineness of transactions. The Court observed that the apparent must be considered real until it is shown that there are reasons to believe otherwise, and surrounding circumstances may be examined to ascertain reality.

X. CHALLENGES AND CRITICISM

1. **Subjectivity in Decision-Making** - The Preponderance of Probability standard necessarily involves judicial evaluation of credibility, coherence, and plausibility. While this flexibility enables contextual justice, it also introduces a degree of subjectivity in evidentiary assessment. The Supreme Court has recognised that fact-finding inherently involves judicial discretion and evaluative judgment. In *Suchita Srivastava v Chandigarh Administration*,²¹ the Court acknowledged the interpretive and discretionary dimensions inherent in adjudicatory reasoning, particularly in matters involving competing rights and evidentiary evaluation. Although the case arose in a constitutional context, it reflects the broader judicial understanding that legal determinations often depend upon structured yet discretionary assessment rather than mechanical

¹⁹ P. Mohandas Panicker v K.K. Dakshayani AIR 1970 Ker 153 (Ker HC).

²⁰ *Sumati Dayal v Commissioner of Income Tax, Bangalore* (1995) Supp (2) SCC 453 (SC); AIR 1995 SC 2109, decided on 28 March 1995.

²¹ *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1 (SC).

application. This evaluative latitude, while essential, may result in inconsistent outcomes where similar evidentiary matrices are weighed differently by different courts.

2. **Potential for Unfair Results in Serious Matters-** In high-stakes cases such as those involving fraud or defamation, the “more likely than not” threshold may not provide sufficient safeguards. Decisions based on subjective evaluations, without stringent proof, have the potential to cause significant reputational or financial harm.
3. **Dependence on Circumstantial Evidence-** The preponderance standard often permits decisions to be made based on circumstantial or inferential evidence. While practical in many Civil disputes, this can heighten the risk of erroneous judgments, particularly when the available evidence is weak but marginally favours one party.
4. **Complexity in Multi-Party Litigation-** Applying the standard consistently becomes increasingly difficult in cases involving numerous parties or intertwined legal issues. Overlapping evidence or conflicting testimonies may lead to unintended bias, where the court favours one narrative over another without a clear evidentiary basis.
5. **Disadvantage for Resource-Limited Litigants-** Because the preponderance standard turns on which party’s narrative appears more probable, litigants with greater financial and institutional resources may possess a structural advantage in presenting documentary evidence, expert testimony, or sustained litigation strategy. The Supreme Court has repeatedly emphasised that access to justice and procedural fairness form part of constitutional guarantees under Articles 14 and 21.²² In civil adjudication, disparities in representation or evidentiary capacity may affect the practical ability of a party to discharge the burden of proof, even where the underlying claim is meritorious. Thus, while the standard itself is neutral, its application within unequal litigation

²² Maneka Gandhi v Union of India (1978) 1 SCC 248 (SC)

environments may produce asymmetrical outcomes unless courts exercise heightened vigilance in evaluating evidentiary sufficiency.

XI. SUGGESTIONS AND RECOMMENDATIONS

1. Adaptability in Modern Litigation- Despite its limitations, the Preponderance of Probability remains well-suited to the demands of modern litigation due to its flexibility and practicality.

- **Commercial Litigation:** In cases involving complex financial or corporate issues, where direct evidence may be scarce or confidential, deciding based on the most plausible narrative ensures judicial efficiency.
- **Technology-Based Evidence:** As courts increasingly adjudicate disputes involving digital contracts, electronic communications, and algorithm-generated data, the preponderance standard provides a flexible framework for evaluating such material without insisting on unattainable certainty. The admissibility and evidentiary treatment of electronic records are governed by statutory provisions such as section 65B of the Indian Evidence Act 1872,²³ now reflected in the Bharatiya Sakshya Adhiniyam 2023. Judicial interpretation has clarified that compliance with certification requirements is mandatory for admissibility of electronic evidence. In *Anvar P.V. v P.K. Basheer*,²⁴ the Supreme Court held that electronic records are admissible only if accompanied by a certificate under section 65B, thereby underscoring the procedural safeguards attached to digital evidence. This position was reaffirmed and clarified by a larger Bench in *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal*,²⁵ which emphasised the mandatory nature of certification while recognising limited procedural flexibility. Within this statutory framework, the application of the preponderance standard allows courts to assess the credibility, reliability, and probative value of electronic evidence once admissibility thresholds are satisfied.

²³ Indian Evidence Act 1872 (India), s 65B; see also Bharatiya Sakshya Adhiniyam 2023 (India).

²⁴ *Anvar PV v PK Basheer* (2014) 10 SCC 473 (SC).

²⁵ *Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal* (2020) 7 SCC 1 (SC).

2. **Judicial Training-** Regular training programmes for judges on assessing probabilities, circumstantial reasoning, and logical inference would help mitigate inconsistencies. This would improve the uniform application of the standard across different types of cases.
3. **Improving Legal Literacy Among Practitioners-** It is essential for lawyers and legal professionals to have a clear understanding of the distinctions between different standards of proof. Greater awareness will prevent confusion and ensure that appropriate arguments are made based on the correct threshold especially in cases where different standards (like clear and convincing evidence or beyond reasonable doubt) may appear.
4. **Clear Guidelines for evaluating evidence-** Encourage courts to adopt clear guidelines for evaluating evidence under the preponderance standard. Promote the use of expert testimony and documentary evidence to reduce reliance on witness credibility alone.
5. **Leveraging AI and Data Analytics in Adjudication:** The increasing use of AI-assisted tools in document review, forensic accounting, and predictive analytics has implications for civil fact-finding. While Indian courts have not formally adopted AI as a determinative adjudicatory mechanism, judicial observations and policy discussions reflect growing institutional engagement with technological integration. The probabilistic nature of the preponderance standard is conceptually compatible with structured data analysis tools, provided that such tools remain assistive rather than determinative. The integration of technology must remain subject to principles of natural justice, transparency, and judicial oversight to prevent algorithmic opacity from undermining fairness.

XII. CONCLUSION

The Preponderance of Probability standard plays a crucial role in delivering fair, efficient, and accessible justice, especially in Civil and quasi-judicial matters. It takes a practical approach to dispute resolution, one that does not require eliminating every doubt but simply proving that a claim is more likely to be true than false. By allowing

courts to consider circumstantial, inferential, and logically sound evidence, this standard helps ensure justice even when direct evidence is missing, which is common in Civil cases.

However, because these standard offers flexibility, it can also lead to inconsistent decisions, unintentional bias, and difficulties for less-resourced parties. These concerns become more serious as legal cases grow more complex, particularly those involving technology, digital evidence, or sensitive issues like workplace harassment.

To maintain fairness and consistency, this standard must be applied with care. Clear guidelines, regular judicial training, and greater awareness among legal professionals are essential. When used thoughtfully, the Preponderance of Probability strikes the right balance between certainty and practicality, making it not just a legal rule but a foundation for fair decision-making in Civil law. The author gratefully acknowledges the insights and encouragement received from Ashok Pritamdas Shahani, Advocate, Supreme Court of India, and Adv. Prof. Narayan Kumar, both are based out of Mumbai. Both are law teachers. Their guidance and support were instrumental in shaping this article.

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