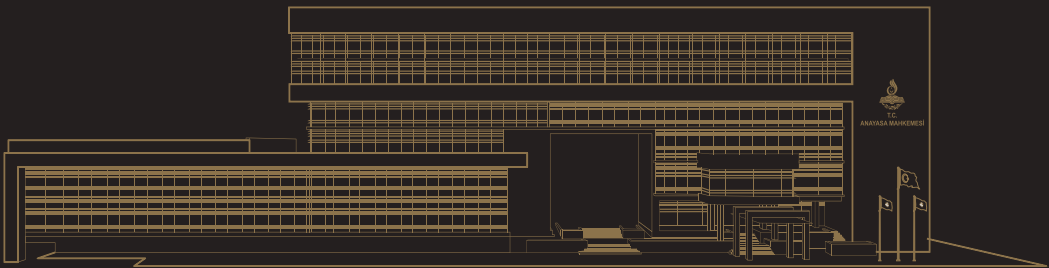




Constitutional Justice in Asia

“Presumption of Innocence”



7th Summer School of the Association of
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PRESUMPTION OF INNOCENCE

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I. INTRODUCTION

The presumption of innocence has various definitions but with a common theme, as follows:

Presume means that you take something for granted as being true depending on how certain you are. Presumption usually involves a higher level of certainty and is used in situations where someone makes an educated assessment beyond reasonable doubt, based on proof or evidence.

Presumption refers to a belief on the balance of probabilities or beyond reasonable doubt -depending on the case at hand - that a case has been proven or not.

The presumption of the innocence of the defendant in a criminal action in Anglo-Saxon jurisprudence, places upon the prosecution the burden of proof of the defendant's guilt.

The presumption of innocence is a legal principle that centres on the notion that a defendant is innocent of a crime, unless the prosecution can prove guilt. This legal principle relieves the defendant of the burden of proving his innocence.

In criminal law, the prosecutor must prove any charges made against a defendant, beyond reasonable doubt. In practice, if jurors in a trial had any reasonable doubt that the defendant committed the charge(s) against him or her, they cannot convict.

The presumption of innocence is a cardinal principle of Myanmar's justice system. It is the prosecution's burden to prove guilt beyond

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reasonable doubt. Without the presumption of innocence principle, the prosecution would not have to prove guilt, and a defendant would be denied his right to due process. Essentially, the defendant's presumption of innocence places the burden of proof on the prosecution.

II. PRACTICAL USAGE

Article 7 of the Universal Declaration of Human Rights declared as follows:

*"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."*¹

In accordance with the above-mentioned article, everyone has equal protection of the law. Thus, everyone can enjoy the benefits of the principle, the presumption of innocence.

The Constitution of the Union of Myanmar- in section 21(a)-prescribes as follows:

*"Every citizen shall enjoy the right of equality, the right of liberty, and the right of justice, as prescribed in this Constitution."*²

Myanmar recognizes the presumption of innocence. We practice that principle in the Myanmar judicial system.

In the Myanmar Evidence Act, the burden of proof is prescribed in sections 101 to 104.³ The following are important issues:

- (a) 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 exist.

Illustration: A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

- (b) The burden of proof as to any particular fact lies with the person who requests the Court believe in its existence unless, it is

1 Article 7 of the Universal Declaration of Human Rights.

2 Section 21(a) of the Constitution of the Union of Myanmar.

3 Sections 101 to 104 of the Evidence Act, 1872.



provided by any law, that the proof of that fact shall lie on any other particular person.

Illustration: A prosecutes B for theft and submits to the Court to believe that B admitted the theft to C. A must prove the admission.

In criminal cases, the following principles should be followed:

- (a) A person accused of an offence is presumed to be innocent until he is proven to be guilty.
- (b) If there is a reasonable doubt of the guilt of an accused person, he is entitled to the benefit of that doubt and cannot be convicted on that count.
- (c) 'It is better that several guilty persons should escape than that one innocent person should suffer.'

In the Myanmar judicial system, criminal cases are divided into two kinds, summons cases and warrant cases: summons cases are cases relating to an offence punishable with imprisonment for a term not exceeding six months; warrant cases include all cases other than summons cases.⁴

A summary of the procedure of the trial of summons cases is as follows:⁵

- (a) Firstly, the particulars of the offence shall be stated to the accused, and he shall be asked if he has any cause to show why he should not be convicted, but it shall not be necessary to frame a formal charge.
- (b) If the accused admits that he has committed the offence, and he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him.
- (c) If the accused does not make such admission, the Magistrate shall proceed to hear the complainant and take all evidence as may be produced in support of the prosecution.
- (d) Then the Magistrate shall proceed to hear the accused and take all such evidence as the accused produces in his defence.

⁴ Section 4 (1) (v) and (w) of the Code of Criminal Procedure.

⁵ Section 242 to 246 of the Code of Criminal Procedure.



- (e) If the Magistrate finds the accused not guilty, he shall record an order of acquittal.
- (f) The Magistrate may convict the accused of any offence which, from the facts admitted or proved, he appears to have committed.

The following procedure shall be observed by Magistrates in the trial of warrant cases:⁶

- (a) When the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the complainant and take all evidence as may be produced in support of the prosecution, and the accused shall have the right to cross-examine the complainant and the witnesses produced.
- (b) If, upon taking all the evidence of the prosecution, he finds that no case against the accused has been made out of which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.
- (c) The Magistrate may discharge the accused at any previous stage of the case, if he considers the charge is groundless.
- (d) If, when the evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence which the Magistrate is competent to try and could be adequately punished by him, he shall frame in writing a charge against the accused.
- (e) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty and whether he has any defence to make.
- (f) If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.
- (g) If the accused refuses to plead, or does not plead or demands to be tried, he shall be required to state forthwith whether he wishes to cross-examine any witness for the prosecution, whose evidence has been taken. If he says that he does so wish, the witnesses named by him shall be called and be cross-examined.

⁶ Section 252 to 258 of the Code of Criminal Procedure.



- (h) The accused shall then be called upon to enter his defence. If he enters any written statement, it shall be filed with the record. The accused shall be asked whether he desires to give evidence on his own behalf. If the accused decides to give evidence, his evidence shall next be taken and after his cross-examination and re-examination (if any), the evidence of witnesses for the defence (if any) shall be taken. If the accused declines to give evidence, he shall be examined by the Court before the evidence of the witnesses for the defence is taken. If examined so, cross examination of him will not be allowed.
- (i) In any case in which a charge has been framed, if the Magistrate finds the accused not guilty, he shall record an order of acquittal.
- (j) If the Magistrate finds the accused guilty, he shall pass sentence upon him according to law or send the case to higher court according to law.

In all cases of summons and warrant, the accused is presumed to be innocent at any and every stage of the case before he is convicted. It is presumed that even though he is formally charged, the presumption of innocence principle is to be followed.

III. CASE STUDIES

In *SeinHlav. Union of Myanmar*⁷, it was asserted as follows:

“No burden of proof lies upon the accused to prove that he is not guilty. The complainant must prove obviously that the accused committed the crime beyond a reasonable doubt.”

In *MaungKyimaung v. Union of Myanmar*⁸, it was decided that:

“The burden can not be changed to the accused to defend himself, if there is an accusation by the complainant only. The burden of proof lies upon the complainant to investigate completely and to prove validity. If this were not the case, malicious persons could easily accuse others and innocent persons will be tired of explaining themselves.”

⁷ 1951, B.L.R (H.C) 289.

⁸ 1968, B.L.R (S.C.A) 52.



In *MaungAungShwe v. Union of Myanmar*⁹, the Court concluded:

Although the related facts are against the accused, it is rare to decide definitely that the killer must only be the accused, not another one. It is true that the accused cannot give satisfactory evidence where he was, when the crime occurred. But the burden of proof does not lie upon the accused to prove that he is not guilty. It is the responsibility of the complainant to prove beyond reasonable doubt that he is guilty. It would support and strengthen the argument for the prosecution side, if a blood-strained sword or other thing relevant to the case was found in the possession of the accused. No such thing nor any money were found when searching the accused. The accused did not try to abscond after the crime occurred. It is not reasonable to conclude that the accused killed the dead person although there are witnesses who saw the accused following the dead person.

IV. UTILITY IN OTHER FIELD

The principle of presumption of innocence can be of use in fields other than in criminal cases. For example, suppose we have to settle problems of our staff at work. If a member of staff infringes the discipline required of his position, he will be punished on the basis of his fault. He should be presumed to be innocent until valid proof is found that he committed the fault in question.

In Myanmar, the principle of the presumption of innocence is the concern of the Constitutional Tribunal's jurisdiction. All Constitutional matters arising in the Constitutional Tribunal shall be considered and be decided in conformity with the Constitution or not.

If a Court in Myanmar has conferred on it the power to settle the individual rights of citizens, the principle of the presumption of innocence will be applied. The Court will consider the matter submitted by the applicant and should pass orders which favour the applicant, only when the facts submitted to the Court are proved that the right of applicant is infringed.

9. 1965, B.L.R (H.C) 953.



V. CONCLUSION

The presumption of innocence principle provides and requires a process for the accused. Most all countries in the world accept that principle in the interests of justice and fairness. It is a just and equal principle not only for administering justice in the courts but also for everyone in everyday life.