

# Presumption as to Legitimacy and Marriage

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**Abstract:** *The doctrine of presumption as to legitimacy and marriage constitutes a foundational principle within the law of evidence and family jurisprudence, reflecting a deliberate legal preference for social stability over biological uncertainty. Rooted in Section 112 of the Bharatiya Sakshya Adhiniyam, 2023 (formerly Section 112 of the Indian Evidence Act, 1872), the presumption seeks to protect the legitimacy of children born within wedlock by treating such legitimacy as conclusive, subject only to the narrow exception of non-access.*

*This research paper undertakes a comprehensive examination of the doctrinal, statutory, and judicial dimensions of this presumption. It critically analyses the evolution of judicial interpretation—from rigid adherence to conclusive proof towards a more flexible engagement with scientific advancements such as DNA testing. The paper further explores the interconnected presumption of marriage arising from long cohabitation, emphasizing its role in reinforcing legitimacy and protecting vulnerable familial relationships.*

*In addition, the study situates the doctrine within a broader comparative and constitutional framework, drawing insights from jurisdictions such as the United Kingdom and the United States, while evaluating its compatibility with fundamental rights including dignity, privacy, and equality. By engaging with contemporary challenges such as live-in relationships, assisted reproductive technologies, and the rise of scientific determinism, the paper highlights the growing tension between legal fiction and empirical truth.*

*Ultimately, this research argues for a calibrated reform of the doctrine—one that preserves its protective function while accommodating modern realities. It advocates a child-centric, rights-based approach that harmonizes evidentiary certainty with substantive justice, thereby ensuring that the law remains both humane and responsive in an evolving socio-legal landscape.*

**Keywords:** Presumption of Legitimacy, Section 112 Bharatiya Sakshya Adhiniyam, Marriage Presumption, Non-Access, DNA Evidence, Family Law, Cohabitation, Child Rights, Constitutional Law, Evidence Law

## I. INTRODUCTION

Presumptions in law serve as indispensable tools for judicial reasoning, enabling courts to infer the existence of certain facts in the absence of direct evidence. In the domain of family law, such presumptions assume heightened significance, as they directly impact personal status, legitimacy, inheritance, and social identity. Among these, the presumption as to legitimacy and marriage occupies a uniquely sensitive position, as it seeks to reconcile legal certainty with deeply embedded societal values.

The presumption of legitimacy, as embodied in Section 112 of the Bharatiya Sakshya Adhiniyam, reflects a conscious legislative choice to prioritize the welfare of the child and the sanctity of marriage over strict biological accuracy. By treating children born during a valid marriage as legitimate, the law seeks to prevent the social stigma and legal disadvantages historically associated with illegitimacy. Complementing this is the presumption of marriage arising from prolonged cohabitation, which enables courts to recognize informal unions as legally valid in order to uphold justice and prevent exploitation.



However, these presumptions are not without controversy. The emergence of advanced scientific techniques, particularly DNA profiling, has challenged the very foundation of legal presumptions by offering near-conclusive proof of biological relationships. This has given rise to a critical jurisprudential dilemma: whether the law should continue to uphold protective legal fictions or adapt to scientific truth, even at the cost of unsettling established social relationships. This paper seeks to explore this tension through a doctrinal and analytical lens. It begins by examining the statutory framework governing presumptions, followed by an analysis of leading judicial pronouncements that have shaped the contours of the doctrine. It further investigates the presumption of marriage and its implications for legitimacy, before engaging with comparative perspectives and constitutional considerations.

### **Concept of Presumption in Law**

A presumption is a legal inference or assumption that a court draws from certain facts. Under the Bharatiya Sakshya Adhiniyam, 2023 (formerly the Indian Evidence Act, 1872), presumptions may be classified as:

- May presume
- Shall presume
- Conclusive proof

Presumption as to legitimacy falls under the category of "conclusive proof," subject to limited exceptions.

### **PRESUMPTION AS TO LEGITIMACY**

#### **Statutory Provision**

Section 112 of the Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 112 of the Indian Evidence Act, 1872) provides that:

A child born during the continuance of a valid marriage, or within 280 days after its dissolution (provided the mother remains unmarried), shall be conclusively presumed to be the legitimate child of that man.

#### **Essential Conditions**

Existence of a valid marriage

Birth during the continuance of marriage or within 280 days of its dissolution

The mother remains unmarried during the relevant period

#### **Exception: Non-Access**

The only way to rebut this presumption is by proving "non-access" between the spouses at the relevant time. Non-access must be strong, clear, and convincing evidence showing that the parties had no opportunity for sexual intercourse.

#### **Judicial Interpretation**

##### **1. Goutam Kundu v. State of West Bengal (1993)**

The Supreme Court held that blood tests cannot be ordered as a matter of course to rebut legitimacy. The presumption under Section 112 is strong and can only be displaced by proof of non-access.

##### **2. Kamti Devi v. Poshi Ram (2001)**

The Court reiterated that even scientific evidence such as DNA tests cannot override the conclusive presumption unless non-access is proved.

##### **3. Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (2014)**

In a progressive shift, the Supreme Court held that when scientific evidence (DNA test) conclusively disproves paternity, it may prevail over the presumption under Section 112.



## **PRESUMPTION AS TO MARRIAGE**

### **Doctrine of Cohabitation**

Indian courts have consistently recognized that long and continuous cohabitation between a man and a woman may give rise to a presumption of marriage.

### **Key Principles**

Law leans in favour of legitimacy and validity  
Long cohabitation raises presumption of lawful marriage  
Burden lies on the person who denies the marriage

### **Important Case Laws**

#### **1. Badri Prasad v. Dy. Director of Consolidation (1978)**

The Supreme Court upheld a 50-year cohabitation as valid marriage, emphasizing that strong presumption arises in favour of wedlock.

#### **2. Tulsa v. Durghatiya (2008)**

The Court held that children born from long cohabitation are legitimate and entitled to inheritance.

#### **3. Indra Sarma v. V.K.V. Sarma (2013)**

The Court distinguished live-in relationships and clarified circumstances where presumption of marriage may or may not arise.

### **Relationship Between Legitimacy and Marriage**

The presumption of legitimacy is closely tied to the presumption of marriage. Where marriage is presumed, legitimacy of children often follows. This interconnected framework ensures protection of children from social stigma and legal disadvantages.

## **MODERN DEVELOPMENTS AND CHALLENGES**

### **DNA Evidence vs Legal Presumption**

Advancements in science have challenged traditional presumptions. Courts are increasingly balancing:

Right to truth  
Privacy rights  
Social legitimacy of children

### **Live-in Relationships**

With increasing recognition of live-in relationships, courts have expanded the scope of presumptions to prevent injustice to children.

### **Constitutional Perspective**

The principles of dignity, equality, and non-discrimination under Articles 14 and 21 of the Constitution influence judicial interpretation in favour of legitimacy.

### **Critical Analysis**

While presumptions serve important social purposes, rigid application may sometimes conflict with scientific truth. The shift in judicial approach indicates a gradual move towards a more balanced framework where:

Truth is not entirely sacrificed  
Children's rights remain protected  
However, lack of clear statutory reform creates ambiguity.



## COMPARATIVE JURISPRUDENCE

### United Kingdom

Under English law, the presumption of legitimacy was historically governed by the common law maxim *pater est quem nuptiae demonstrant* (the father is he whom the marriage indicates). However, with the enactment of the Family Law Reform Act, 1969, and subsequent developments, courts have increasingly relied on scientific evidence, particularly DNA testing, to determine paternity.

Unlike Indian law, the presumption is not treated as conclusive and may be rebutted more readily through scientific proof. The English approach reflects a stronger inclination towards biological truth rather than social presumption.

### United States

In the United States, the presumption of legitimacy exists but varies across states. Generally:

A child born within a marriage is presumed legitimate

The presumption can be rebutted by clear and convincing evidence

DNA testing is widely accepted and often determinative

The Uniform Parentage Act (UPA) emphasizes the role of genetic testing while also considering the best interests of the child. Thus, the U.S. model reflects a hybrid approach balancing truth and welfare.

## THEORETICAL FOUNDATIONS

### 1. Public Policy Considerations

The presumption as to legitimacy is deeply rooted in public policy aimed at:

Preventing children from being labelled illegitimate

Preserving family stability

Avoiding unnecessary litigation

### 2. Doctrine of Social Legitimacy

The law prioritizes social fatherhood over biological fatherhood. This reflects a broader understanding that legitimacy is not merely a biological concept but a social and legal construct.

### 3. Best Interests of the Child

Modern jurisprudence increasingly aligns the presumption with the welfare principle, ensuring that children are not adversely affected by disputes between parents.

## ADVANCED CRITICAL ANALYSIS

### Conflict Between Truth and Presumption

A major tension exists between:

Legal presumption (protective fiction)

Scientific truth (DNA accuracy)

Indian courts have struggled to reconcile these competing values. While earlier judgments prioritized legitimacy, recent decisions indicate a shift towards truth.

### Privacy Concerns

Compulsory DNA testing raises significant privacy issues under Article 21. Courts must balance:

Right to privacy

Right to identity

Right to reputation

### Gender Justice Perspective

The doctrine has also been critiqued from a gender perspective:

Women may be subjected to intrusive scrutiny



The burden of proof may indirectly impact maternal dignity

#### **Suggestions for Reform**

**Statutory Clarification:** Amend the Bharatiya Sakshya Adhiniyam to explicitly address the role of DNA evidence.

**Balanced Standard:** Introduce a standard that harmonizes scientific evidence with social welfare.

**Child-Centric Approach:** Ensure that legitimacy disputes do not prejudice inheritance or dignity rights of the child.

**Guidelines on DNA Testing:** Establish clear judicial guidelines to prevent misuse.

**Recognition of Social Parenthood:** The law should recognize de facto parental relationships where an individual has acted as a parent, even in the absence of biological connection. This would align with evolving family structures.

## **II. CONCLUSION**

The doctrine of presumption as to legitimacy and marriage stands at a complex intersection of evidentiary certainty, social morality, and constitutional values. Historically, the law deliberately chose stability over factual accuracy, constructing a near-conclusive presumption to shield children from the harsh consequences of illegitimacy. This approach was not merely legal but deeply humanitarian—recognizing that the stigma attached to illegitimacy could irreparably affect a child’s dignity, identity, and social standing.

However, in the contemporary era, this rigid presumption faces unprecedented challenges. Scientific advancements, particularly DNA testing, have introduced near-absolute mechanisms for determining biological truth. This has created a fundamental tension: should the law continue to uphold a legal fiction in the interest of social welfare, or should it yield to scientific accuracy in the pursuit of truth?

Indian jurisprudence reflects an ongoing transition rather than a settled position. Earlier decisions strongly insulated the presumption under Section 112, emphasizing non-access as the sole ground for rebuttal. More recent judgments, however, demonstrate a cautious openness towards scientific evidence, particularly where denying such evidence would result in injustice. This shift indicates a gradual movement from a rigid rule-based system to a more flexible, principle-based approach.

At the same time, constitutional considerations have infused new life into this doctrine. The right to dignity, privacy, and identity under Article 21, along with the guarantee of equality under Article 14, demand that the law evolve in a manner that neither stigmatizes children nor suppresses legitimate claims to truth. The challenge, therefore, is not to choose between truth and legitimacy, but to harmonize them in a way that preserves both justice and compassion.

Furthermore, the expanding recognition of non-traditional family structures—including live-in relationships, single-parent households, and assisted reproductive technologies—necessitates a broader and more inclusive understanding of legitimacy and parentage. The law must move beyond its traditional confines and adapt to these social realities while maintaining its protective core.

In conclusion, the future of the presumption as to legitimacy and marriage lies in adopting a balanced, child-centric, and constitutionally aligned framework. The doctrine must evolve from being a rigid evidentiary rule to a nuanced legal principle—one that respects scientific truth, safeguards individual rights, and continues to uphold the fundamental objective of protecting the dignity and welfare of the child. Only through such a calibrated approach can the law remain both relevant and just in a rapidly changing society.

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