The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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PROVING YOU WEREN'T THERE: COMPARING THE PLEA OF ALIBI ACROSS TRIALS IN INDIA AND THE UNITED STATES OF AMERICA

~ Rishav Das

EVIDENTIARY PREMISE OF INDIAN PERSPECTIVE

Such is the raging importance of 'alibi', that despite lacking a definition in both the Indian Penal Code, 1860 and the Bharatiya Sakshya Adhiniyam, 2023, courts across common-law systems have been compelled to treat it as an instrumentality, scrutinizing the Prosecution's narrative. Being impliedly legalized under section 9 of the Bharatiya Sakshya Adhiniyam, it simply means "elsewhere". The plea of absence of a person, charged with an offence, from the place of occurrence at the time of the commission of the offence is called plea of alibi.[1] Commentators note that this codification refrains from amending the conceptual core of the defence, rather modernises its vocabulary to expressly house electronic records, especially needed in an age of CCTV networks and mobile location data[2]. For arriving at such a juncture, it would be wrong to assume that the defence evidence withholds greater power, as what may appear on examination of the defence evidence alone to be proved may turn out not to be so, viewed in the light of the evidence to the contrary adduced by the prosecution.[3]

Now, the question which arises is that what are the elements of a valid plea? To this, we find four requisites which recur across prominent judicial pronouncements.[4] Leading every other factor, comes the identification of the precise time and location at which the alleged commission of an offence took place, by the principal accused, since an inherent ambiguity in

[1] BATUK LAL, THE BHARATIYA SAKSHYA ADHINIYAM, 2023 148 (25 ed. Central Law Agency 2026).
[2] Nusrat Ali Rizvi, *Legal Dynamics of the Plea of Alibi Under the Bharatiya Sakshya Adhiniyam 2023*, 5 Indian Journal of Legal Review 836, 836 (2025).
[3] Batuk Lal, *supra* note 1, at 148.
[4] Vaibhav Sharma & Ruchika Chaurasia, *Plea of Alibi and its Relevance in Criminal Trials,* 1 LawFoyer International Journal of Doctrinal Legal Research 64, 68 (2023).

the prosecution's proposed timeline only worsens such claim. Following it, comes an affirmative establishment of the accused's presence at a significantly far away and distinct location during that exact window. In Munshi Prasad & Ors v. State of Bihar[5], the presence of the accused at a distance of 400 to 500 yards between the place of occurrence could not be said to be 'presence elsewhere'. Third, though Indian Law does not provide a mandate for formal corroboration, courts do routinely treat a plethora of documentary materials such as call-detail records, etc, as conclusive on the occasion of a sceptical bench being unsatisfied by mere oral depositions. Last, but not the least, punctuality in raising the plea of alibi must be strictly maintained as its subsequent pleading entices judicial suspicion as to afterthoughts.

An interesting observation can be made regarding the concept of 'burden of proof' in cases concerning alibi. It is utterly wrong to assume that the burden on the prosecution would lessen by the mere fact of adoption of such a plea by the accused. It is only subsequent to the prosecution discharging its burden of establishing the accused's presence at the scene of crime that the onus probandi (burden of adducing evidence) shifts towards the accused and it becomes incumbent on such person pleading for alibi to necessarily prove it, thereby turning the tables of trial.

PROCEDURAL PREMISE OF AMERICAN PERSPECTIVE

American jurisdictions view the concept of alibi through a procedural lense, premised on the two pillars of 'disclosure rules' and 'timing rules', rendering it devoid of an affirmative evidentiary nature, followed by a notice regime, obliterating "trial by ambush"; quite opposite to the Indian version of the defendant bearing the substantive burden.

The alibi notice regime marked its birth in the 1920s, further strengthened by the commentator's views on it being one of the broadest avenues of escape of the guilty. Yet, the rule demanded decades to be formalised at the federal level, ultimately being christened as Federal Rule of Criminal Procedure 12.1, exactly in 1975[6], mandating the states to an early disclosure of a potential intent to raise an alibi, which was often argued against as being violative of the Fifth Amendment privilege against self-incrimination. Interestingly, this argument found no shelter within the intellect of the Supreme Court, which held that 'notice-of-alibi statutes' are not objectivised to compel testimony in violation of the said amendment,

[5] Munshi Prasad & Ors v. State of Bihar, AIR 2001 SC 3031.
[6] Kay L. Levine & Colin Miller, *The Strategic Use of Alibi Defenses in Alibis and Corroborators: Psychological, Criminological, and Legal Perspectives,* 1, 9-10 (2021).

rather they accelerate the timing of the same disclosure which the defendant would have voluntarily made during trial.[7] Nevertheless, having validated it, it is important to emphasize that contrary to the Indian setting, the burden runs both ways[8] as a state statute forcing pre-trial alibi revelation without equally imposing a parallel burden on the prosecution to disclose 'rebuttal witnesses' blatantly violates the Due Process of Law[9]. Coupled with this, the Supreme Court also answered the question as to the 'risk of a changing story', by stating that "evidence of a withdrawn alibi-notice is inadmissible against the person who gave it"[10]

Comparatively, it appears that American law does not ask the niche jury question of whether alibi is credible as a threshold matter, rather it sheds more emphatic light on the 'when' and 'how' questions pertaining to the same; thereby assuming a posture of a rigorous scrutiny of its credibility. Whatever be the differences, it has to be indubitably accepted that it still remains an indispensable safeguard against wrongful convictions.

[7] *Williams v. Florida*, 399 U. S. 78, 82-86 (1970).
[8] *Wardius v. Oregon,* 412 U. S. 470, 472 (1973).
[9] *United States ex rel. Veal v. DeRobertis*, 693 F. 2d 642, 647 (7th Cir. 1982).
[10] Federal Rule of Criminal Procedure 12.1 (f)