



Reversing the burden of proof and the presumption of innocence: A comparative study of Vietnam, India, and the Russian Federation

Nguyen Huu Lam¹, Nguyen Ngoc Kien^{2*}

¹ Faculty of Criminal Justice, University of Law, Vietnam National University, Hanoi, Vietnam

² Associate Professor, Dean Faculty of Criminal Law, University of Law, Hue University, Vietnam

DOI: <https://doi.org/10.66856/ijl.2026.12.4.12329>

Abstract

Reverse burdens of proof create one of the most difficult tensions in modern criminal procedure. They may respond to evidentiary asymmetry, concealed criminal activity, or facts peculiarly within the accused's knowledge, but they can also erode the presumption of innocence if they displace the State's responsibility to prove guilt. This article compares Vietnam, India, and the Russian Federation through doctrinal, comparative, and case-law methods. It argues that the three systems represent distinct regulatory models. Vietnam constitutionally and procedurally places responsibility for proving crime on competent procedural authorities and does not formulate a general reverse-onus doctrine. India expressly employs reverse burdens and mandatory presumptions in general evidence law and special criminal statutes, while Supreme Court jurisprudence requires the prosecution first to establish foundational facts. Russia resembles Vietnam in criminal procedure because its Constitution and Code of Criminal Procedure expressly state that the accused need not prove innocence and that the prosecution bears the burden of accusation. At the same time, Russia has developed a separate civil anti-corruption mechanism for unexplained assets in which the evidentiary burden may shift after statutory threshold facts are shown. The article concludes that Vietnam should not transplant broad criminal reverse burdens. Instead, it should clarify foundational-fact requirements, distinguish evidential from persuasive burdens, improve judicial reasoning, and consider whether narrowly designed non-criminal asset-recovery mechanisms can address specific evidentiary problems without weakening the presumption of innocence.

Keywords: Presumption of innocence, reverse burden, burden of proof, foundational facts, comparative criminal procedure, Vietnam, India, Russian Federation

Introduction

The allocation of the burden of proof is not a technical detail of criminal adjudication. It determines who must bear the risk of uncertainty when the State accuses an individual of an offence. The presumption of innocence is therefore inseparable from the architecture of proof: the prosecution must establish guilt through lawful and reliable evidence, while unresolved doubt operates in favour of the accused. The difficult question begins where legislation creates a presumption or requires the accused to explain a fact. Such rules may be defensible when evidence is structurally difficult to obtain, but they may also convert the accused from the object of an allegation into the person expected to disprove it. (ICCPR, 1966)^[1]

Vietnamese law adopts a particularly strong textual allocation of responsibility. Article 31 of the Constitution protects the presumption of innocence, while Articles 13 and 15 of the Criminal Procedure Code place responsibility for proving crime on competent procedural authorities and state that the accused has the right, but is not obliged, to prove innocence. Vietnamese scholarship has examined the implementation of this principle and its relationship with international standards, yet the specific distinction between a legal burden, an evidential burden, and a limited duty of explanation remains underdeveloped in domestic criminal-procedure analysis. (Le & Bedi, 2022; The, 2026)^[2, 3] (Vietnamese Constitution, 2013; Vietnamese Criminal Procedure Code, 2015)^[4, 5].

India provides a useful contrast. Its evidence legislation and several special statutes expressly create rebuttable

presumptions and reverse burdens. The Bharatiya Sakshya Adhiniyam 2023 (BSA), in force since 1 July 2024, preserves rules on exceptions, facts within special knowledge, and selected mandatory presumptions; the Narcotic Drugs and Psychotropic Substances Act 1985 (NDPS Act) contains especially strong presumptions concerning culpable mental state and possession. The Supreme Court of India has therefore had to articulate a control mechanism for reverse burdens. Its central proposition is that a presumption cannot be activated by suspicion alone: the prosecution must first prove the foundational facts that legally trigger the presumption. (Noor Aga v. State of Punjab, 2008)^[6] (Bharatiya Sakshya Adhiniyam, 2023; NDPS Act, 1985)^[7, 8].

The Russian Federation adds a third model that materially changes the comparative picture. Russian criminal procedure is textually closer to Vietnam than to India. Article 49 of the Constitution and Article 14 of the Code of Criminal Procedure expressly provide that an accused person is not required to prove innocence, that the burden of proving the accusation lies on the prosecution, and that unresolved doubts must be interpreted in the accused's favour. Yet Russian anti-corruption law also offers an important institutional distinction. Outside criminal adjudication, Federal Law No. 230-FZ allows prosecutors, through civil proceedings, to seek the transfer to the State of specified assets where statutory expenditure-income discrepancies exist and lawful sources are not demonstrated. The Constitutional Court has repeatedly stressed that this mechanism is a special civil anti-corruption procedure and

must not be confused with criminal liability. In 2026, the Supreme Court of the Russian Federation further clarified how the relevant threshold facts and evidentiary responsibilities operate in practice. (Supreme Court of the Russian Federation, 2026)^[9] (Constitutional Court of the Russian Federation, 2022; Constitutional Court of the Russian Federation, 2024)^[10, 11] (Federal Law No. 230-FZ, 2012)^[12] (Russian Constitution, 1993; Russian Criminal Procedure Code, 2001)^[13, 14].

This three-country comparison produces a more precise research problem than a simple bilateral comparison of Vietnam and India. The key issue is not whether a legal system does or does not “reverse the burden” in the abstract. The more important questions are: which burden is shifted; which fact triggers the shift; whether the shift occurs inside a criminal trial or in a separate non-criminal proceeding; what standard the affected person must satisfy; and which safeguards prevent the presumption from becoming a substitute for proof. The article argues that Vietnam should preserve the State’s persuasive burden on guilt, while developing clearer rules for conditional presumptions and, where policy requires, examining institutional alternatives outside the criminal trial.

Methodologically, the article uses doctrinal analysis of current Vietnamese, Indian, and Russian legislation as of October 2026; comparative analysis focused on function rather than terminology; and case-law analysis of leading Indian and Russian decisions. The study also draws on scholarship concerning presumptions, evidentiary burdens, and procedural rights. Its principal contribution is to distinguish three regulatory strategies: a strong criminal non-shift rule (Vietnam), a statutory reverse-onus model controlled by judicial threshold requirements (India), and a dual-track model that combines a strong criminal non-shift rule with selected civil anti-corruption burden-shifting (Russia). (Hamer, 2007; Stumer, 2010; Bedi, 2021)^[15, 16, 17].

Conceptual and Methodological Framework

1. Legal burden, evidential burden, and burden of explanation

Debates about reverse burdens become confused when the phrase “burden of proof” is used as if it referred to a single obligation. At least three distinct concepts should be separated. The first is the legal or persuasive burden: the obligation to persuade the adjudicator that a material proposition is established to the governing standard. In a criminal case, the persuasive burden regarding the constituent elements of the offence ordinarily belongs to the prosecution. The second is the evidential burden: the obligation to introduce enough material to make an issue legally live. The third is a burden of explanation: a practical expectation that a person respond to circumstances that have already been proved and that are particularly connected to that person’s knowledge or control.

The distinction matters because not every request for an explanation is a reversal of the persuasive burden. If the prosecution proves lawful seizure, identity of the object, possession, knowledge-indicating circumstances, and the statutory connection between those facts and a rebuttable presumption, requiring the accused to produce contrary evidence may be characterised as a limited evidential burden. The position is different where the State has not proved possession or control and merely says that the accused must explain why contraband was found nearby. In

that second situation, the supposed “explanation” is doing the work of an element of the offence.

Theoretical literature on the presumption of innocence has long treated reverse burdens as a problem of allocating the risk of error. Hamer describes the issue as a balance between wrongful-conviction risks and enforcement needs, while Stumer situates evidentiary presumptions within broader human-rights constraints. These approaches support a functional test. A presumption is not acceptable simply because the legislature labels it rebuttable. Its practical effect must be examined: does it merely require the accused to raise a plausible alternative after the prosecution has established a robust evidentiary foundation, or does it compel the accused to establish innocence because the prosecution cannot prove a core element? (Hamer, 2007; Stumer, 2010)^[15, 16].

2. Foundational facts as the gateway to a presumption

A useful analytical device is the concept of foundational facts. A foundational fact is not the presumed conclusion itself; it is the legally relevant fact or cluster of facts that must be proved before a presumption can operate. The requirement serves two purposes. First, it preserves the prosecution’s duty to perform the investigative work necessary to connect the accused with the alleged offence. Second, it limits the presumption to a rational evidentiary relationship rather than allowing it to arise from general suspicion.

The foundational-facts idea can be expressed as a two-stage structure. At stage one, the State bears the ordinary criminal burden in relation to the facts that activate the presumption. At stage two, and only if the statute clearly authorises it, an evidential or persuasive burden may move to the accused in relation to a defined fact. The court must then determine whether the accused has rebutted the presumption according to the legally applicable standard. The two stages must remain separate. If the court uses the accused’s failure to rebut as proof that stage-one facts existed, the reasoning becomes circular.

This approach is particularly important where the evidence is physical or digital. A presumption built on possession is only as reliable as the proof of possession. A presumption built on a seized object depends on lawful recovery, identification, integrity of the exhibit, chain of custody, and forensic continuity. A presumption concerning an electronic account or digital asset requires proof connecting the account, device, credentials, or transaction to the accused. Reverse burdens cannot cure defects in the evidence that supposedly triggers them.

Vietnam: A Strong Rule against Shifting the Burden of Guilt

1. Constitutional and statutory structure

Vietnam’s constitutional and procedural framework gives the presumption of innocence a direct relationship with proof. Article 31(1) of the Constitution provides the constitutional basis, while Article 13 of the Criminal Procedure Code requires guilt to be proved according to law and treats unresolved evidentiary insufficiency in favour of the accused. Article 15 states that responsibility for proving crime lies with competent procedural authorities; the accused may prove innocence but is not obliged to do so. The combined effect is stronger than a general declaration that everyone is “presumed innocent.” It allocates

institutional responsibility. (Vietnamese Constitution, 2013; Vietnamese Criminal Procedure Code, 2015)^[4, 5].

This allocation should be understood to include both incriminating and exculpatory dimensions. The State cannot satisfy Article 15 merely by collecting evidence that supports the accusation while treating contrary explanations as matters for the defence to prove. The criminal process must test alternative hypotheses and evaluate exculpatory material. The accused may remain silent, give a statement, produce documents, identify witnesses, challenge expert evidence, or request further evidentiary collection. These are defence rights. They do not change the basic proposition that a conviction must be supported by evidence proving the charge.

Vietnamese doctrine has increasingly emphasised the importance of implementing the presumption consistently across a transitional criminal-procedure model. Comparative research by Le and Bedi highlights the relationship between Vietnamese law and international standards, while more recent scholarship has examined the difficulties of ensuring doctrinal consistency in practice. The remaining problem is operational: courts and investigators need a vocabulary for distinguishing a legitimate request for information from an impermissible transfer of the burden of guilt. (Le & Bedi, 2022; The, 2026)^[2, 3].

2. Areas where de facto burden-shifting may arise

The most serious risk in Vietnam is not necessarily an express statutory reverse-onus clause. It is de facto burden-shifting in evidentially difficult cases. Drug possession, corruption, economic crime, money laundering, digital offences, and cases involving assets of unclear provenance may generate a practical expectation that the accused “explain” facts that the authorities have not first proved with sufficient precision.

Consider a shared residence in which prohibited drugs are discovered. The evidentiary question is not solved by physical proximity. The prosecution must establish the accused’s connection with the location, capacity to exercise control, knowledge, and any other required subjective elements. If several people had access to the place, an inference of possession requires a factual basis specific to the accused. An explanation by the accused can be considered, but silence or an unpersuasive explanation cannot replace proof of possession.

The same logic applies to digital evidence. A transaction from an online account cannot automatically be attributed to the nominal account holder without examining authentication, device access, credentials, IP data, transaction logs, and the possibility of third-party use. As digital attribution becomes more technically complex, the temptation to infer authorship from ownership of an account becomes stronger. That temptation should be resisted because it effectively transfers the burden from “the State must prove who performed the act” to “the account holder must prove that someone else did.”

Unexplained assets raise an even sharper issue. In a criminal prosecution for corruption or money laundering, a large disparity between lawful income and property may be highly relevant evidence. But the disparity does not itself establish every element of a criminal offence. If the criminal court treats inability to document a lawful source as conclusive proof of the offence, the accused is effectively required to prove innocence. The comparative experiences

of India and Russia suggest two different ways of addressing the problem: India sometimes uses statutory criminal presumptions but subjects them to foundational-fact requirements; Russia preserves the criminal non-shift rule while using a separate civil anti-corruption mechanism for specified unexplained assets.

India: Express Reverse Burdens Subject to Judicial Gatekeeping

1. General evidence legislation after the BSA 2023

India’s BSA 2023 illustrates a system in which burden-shifting is not exceptional in the same sense as in Vietnamese criminal procedure. Section 108 places on an accused the burden of proving circumstances that bring the case within a general or special exception or proviso. Section 109 provides that where a fact is especially within a person’s knowledge, the burden of proving that fact lies on that person. Section 120 creates a mandatory presumption concerning absence of consent in specified rape prosecutions once the statutory conditions are satisfied. (Bharatiya Sakshya Adhiniyam, 2023)^[7].

These rules should not be treated as identical. Section 108 concerns affirmative exceptions. Section 109 is a rule about informational asymmetry. Section 120 is a targeted mandatory presumption linked to a defined element and category of prosecution. Their constitutional and procedural impact depends on what the prosecution must prove before the rule operates and how demanding the accused’s responsive burden becomes.

The special-knowledge rule is especially instructive for Vietnam. It reflects a practical truth: certain facts are much easier for one party to explain. Yet “special knowledge” cannot become a formula that excuses the State from proving the offence. A person’s access to information may justify asking for an explanation, but it does not logically establish the *actus reus* or *mens rea* that the prosecution has failed to prove. The evidentiary asymmetry must be real and specifically linked to a proved factual context.

2. The NDPS Act and the foundational-facts doctrine

The NDPS Act contains a more stringent model. Section 35 addresses culpable mental state and section 54 allows specified presumptions from possession of narcotic drugs or psychotropic substances. Because these provisions operate in a field carrying severe penalties, their use has generated sustained judicial scrutiny. (NDPS Act, 1985)^[8].

Noor Aga v. State of Punjab remains the leading authority. The Supreme Court accepted that reverse burdens and statutory presumptions are not inherently unconstitutional, but held that their triggering conditions must be strictly satisfied. The prosecution retains an initial burden and must establish the foundational facts before the legal burden can shift. The Court also distinguished the prosecution’s standard from the accused’s rebuttal burden: the prosecution must prove guilt beyond reasonable doubt, whereas the accused may rebut the statutory presumption on a preponderance of probability. Subsequent Supreme Court jurisprudence has continued to invoke Noor Aga for the proposition that reverse presumptions do not arise until the prosecution proves the factual basis that activates them. (Just Rights for Children Alliance v. S. Harish, 2024)^[18] (Noor Aga v. State of Punjab, 2008)^[6].

The practical importance of Noor Aga lies less in the abstract acceptance of reverse burdens than in the

sequencing of proof. A strict statute does not authorise evidentiary shortcuts. Search, seizure, custody, identification of the substance, possession, and statutory compliance are part of the foundation. If that foundation is unreliable, the presumption never properly arises. Thus, the reverse burden is conditional rather than self-starting. This produces a paradox of special criminal legislation. The more powerful the presumption and the more serious the penalty, the greater the need for strict scrutiny of the prosecution's threshold evidence. Reverse burdens may therefore increase, rather than reduce, the court's responsibility to examine how evidence was obtained and whether the statutory trigger has truly been established.

3. What Vietnam should and should not borrow from India

India's value for Vietnam lies in its control techniques, not in the wholesale transplantation of reverse-onus provisions. Three lessons are especially relevant. First, a presumption must be tied to a clearly defined fact and a clear statutory trigger. Second, the prosecution must prove the foundational facts independently of the accused's failure to explain. Third, the rebuttal standard imposed on the accused should be materially lower than the prosecution's standard for proving guilt.

What should not be transplanted is the assumption that investigative difficulty alone justifies shifting a persuasive burden. The Vietnamese Criminal Procedure Code makes a deliberate institutional choice in Articles 13 and 15. Any reform introducing adverse presumptions would have to be interpreted within that framework, not above it. A presumption that effectively requires an accused to disprove an element of the offence would be difficult to reconcile with the current structure unless the legislature expressly and constitutionally redesigns the relevant rule.

Russian Federation: Criminal Non-Shift and Civil Anti-Corruption Burden-Shifting

1. The criminal-procedure rule

Russian law provides a useful comparator because its criminal-procedure formula is unusually close to Vietnam's. Article 49 of the Constitution of the Russian Federation states that an accused is presumed innocent until guilt is proved in accordance with federal law and established by a final court judgment; the accused is not required to prove innocence; and unresolved doubts are interpreted in the accused's favour. Article 14 of the Code of Criminal Procedure develops the rule further: the suspect or accused does not bear the burden of proving innocence, while the prosecution bears the burden of proving the accusation and rebutting arguments raised in defence. (Russian Criminal Procedure Code, 2001)^[14] (Russian Constitution, 1993)^[13].

The Russian provision is significant for two reasons. First, it expressly allocates not only the burden of the accusation but also the burden of answering defence arguments to the prosecution. Second, it prohibits a conviction based on assumptions. The structure therefore resists the idea that silence or failure to provide an exculpatory account can itself fill a gap in the prosecution case.

Recent Russian scholarship continues to connect the presumption of innocence with the quality of proof even at the pre-trial and operational-search stages. Vagin, for example, argues that operational-search activity remains functionally linked to criminal adjudication and must be

understood in light of the constitutional presumption because its results may become the basis for criminal prosecution and proof. This is relevant to Vietnam because both systems rely heavily on pre-trial investigative institutions and must prevent pre-trial suspicion from hardening into an evidentiary presumption of guilt. (Vagin, 2024)^[19].

2. The separate regime for unexplained assets

Russia nevertheless uses a form of burden-shifting in anti-corruption asset control outside the criminal trial. Federal Law No. 230-FZ establishes expenditure-control rules for specified public officials and related persons. Under Article 17, prosecutors may bring a civil claim seeking transfer of specified property, or an equivalent monetary sum in defined circumstances, when statutory conditions are met and lawful acquisition from legitimate income is not substantiated. The law was amended through 2026 and expressly covers, among other categories, real property, vehicles, securities, digital financial assets, and digital currency. (Federal Law No. 230-FZ, 2012)^[12] (Federal Law No. 230-FZ, 2012)^[12].

This mechanism is analytically important because it separates two questions that are often conflated in debates about unexplained wealth. The first is whether a person is criminally guilty of corruption. The second is whether particular property may be retained when expenditure-control legislation establishes a substantial statutory mismatch and the person cannot demonstrate a lawful source. Russian law does not simply insert the second question into the criminal trial as a presumption of guilt. It places the asset claim in a distinct civil procedural framework.

The Constitutional Court has emphasised this separation. In Judgment No. 27-P of 4 July 2022, it characterised the transfer of property to the State under Article 17 and the Civil Code as a special civil claim procedure directed at anti-corruption objectives, materially different from criminal, administrative-delict, and ordinary damages proceedings. The Court warned against conflating different forms of legal responsibility because doing so may undermine fairness, proportionality, and legal certainty. (Constitutional Court of the Russian Federation, 2022)^[10].

The distinction became even clearer in Judgment No. 49-P of 31 October 2024. The Constitutional Court explained that where the statutory expenditure-income discrepancy is established, the anti-corruption scheme may presume unlawful origin for the relevant assets and place on the affected person the burden of demonstrating lawful acquisition. At the same time, the Court stressed that the defendant must have a broad opportunity to present admissible evidence and that, where the prosecutor's case goes beyond a quantitative mismatch and alleges specific corrupt conduct, the prosecutor must prove those acts, their causal connection to the asset increase, and any subsequent transformation of the property. (Constitutional Court of the Russian Federation, 2024)^[11].

3. The 2026 Supreme Court review: threshold proof still matters

The Supreme Court's Thematic Review No. 14/2026 is particularly useful because it synthesises practice from 2020 to 2026 and shows that a civil burden shift does not mean that the State may proceed without proof. In one example,

the courts rejected a claim where the prosecutor had not sufficiently proved that the defendant actually incurred the alleged expenditures, owned the disputed property, acquired it in the reporting period, or had expenditure exceeding the relevant income threshold. Those are threshold facts that must be established before the defendant's burden concerning lawful origin becomes decisive. (Constitutional Court of the Russian Federation, 2024) ^[11] (Supreme Court of the Russian Federation, 2026) ^[9].

The Review also states that a court may transfer the property or equivalent value to the State when the person subject to expenditure control fails to prove the lawful origin of the funds used to acquire it. Yet the defendant may rely on evidence of lawful sources, including sources outside the immediately preceding three-year period, and the court must evaluate whether asserted loans or other transactions were genuine. The structure is therefore conditional and adversarial: the State must establish the statutory gateway; the defendant then bears a responsive evidentiary burden on lawful origin; and the court must examine the evidence rather than treat non-disclosure as automatic guilt. (Supreme Court of the Russian Federation, 2026) ^[9].

4. Comparative significance of the Russian model

The Russian approach offers a distinctive lesson for Vietnam. It shows that a legal system can maintain an uncompromising criminal presumption of innocence while placing a limited burden on an individual in a separate civil anti-corruption proceeding, provided the legislature defines the threshold facts, the scope of assets, the competent claimant, the evidentiary rights of the respondent, and judicial review. This institutional separation reduces the risk that an unexplained-wealth presumption becomes evidence of criminal guilt.

That lesson is more nuanced than a simple argument for or against non-conviction-based confiscation. It concerns procedural location. If the policy objective is to prevent officials from retaining assets that cannot be reconciled with lawful income, the legislature must decide whether that objective should be pursued through the criminal process, a civil forfeiture mechanism, an administrative process, or a hybrid model. Each choice carries a different burden-of-proof structure and different constitutional risks.

For Vietnam, the Russian example suggests that the question “must the accused explain unexplained assets?” is too broad. In a criminal trial, Articles 13 and 15 of the Criminal Procedure Code strongly militate against using the failure to explain as a substitute for proof of corruption or money laundering. In a separately designed asset-recovery proceeding, however, the legislature could consider whether a defined discrepancy, proved by the State under transparent statutory criteria, should trigger a limited obligation to substantiate lawful origin. Such a mechanism would require independent procedural guarantees and should not be used to establish criminal guilt indirectly.

Comparative Synthesis: Three Models and a Common Control Logic

1. Location of the burden shift

The most important difference among the three systems is institutional location. Vietnam places the criminal burden on procedural authorities and contains no general statutory architecture of reverse burdens comparable to India. India

permits reverse burdens inside criminal or quasi-criminal adjudication where legislation expressly provides them. Russia, by contrast, combines a strong criminal non-shift rule with a separate civil anti-corruption mechanism that can redistribute evidentiary burdens concerning property.

This distinction reveals why the phrase “reverse burden” can be misleading. A burden placed on an accused regarding an exception to criminal liability is not the same as a burden placed on a civil defendant to establish lawful acquisition of property after a statutory expenditure discrepancy is proved. Both affect proof, but they operate within different proceedings, pursue different legal consequences, and require different safeguards.

2. Threshold facts and rational connection

Despite their differences, India and Russia converge on one important idea: a burden shift requires a proved gateway. In India, Noor Aga requires foundational facts before presumptions under the NDPS Act may arise. In Russia, the 2026 Supreme Court Review demonstrates that prosecutors must establish the facts bringing the property within the statutory anti-corruption regime before failure to prove lawful origin becomes decisive. Vietnam can adopt this common control logic without importing the substantive reverse-burden rules themselves.

The gateway requirement also protects rationality. A presumption should arise only where the proved fact has a sufficiently close relationship with the presumed fact. Possession may justify a limited inference only if possession itself is reliably established. A substantial, legally defined expenditure-income mismatch may justify a request for proof of lawful source only if ownership, timing, value, and the relevant income baseline are established. Vague suspicion cannot perform this function.

3. The standard and object of the responsive burden

A second point of comparison concerns what the affected person must actually prove. Indian law, as interpreted in Noor Aga, permits rebuttal on a preponderance of probability once the prosecution has satisfied its initial burden. Russian anti-corruption civil proceedings focus on proof of lawful origin rather than proof of innocence, and the Constitutional Court has required meaningful opportunity to submit admissible evidence. Vietnam currently avoids the issue at the level of general criminal procedure because the accused is not obliged to prove innocence.

For reform purposes, the object of any responsive burden must be narrowly defined. The accused should never be required to prove the global proposition “I am innocent.” At most, legislation may require evidence relating to a specific exception, a specific fact peculiarly within the person's knowledge, or, in a separate non-criminal procedure, a specific lawful source of specified property after the State proves the statutory trigger.

4. Rights safeguards and judicial reasoning

The third common theme is the need for judicial explanation. A court applying a presumption should identify: the statutory source of the presumption; the foundational facts; the evidence establishing them; the precise fact presumed; the nature and standard of the responsive burden; the evidence offered in rebuttal; and the reasons why the burden was or was not discharged. This

sequence transforms the presumption from an intuitive shortcut into a reviewable legal method.

The requirement is especially important where the underlying evidence is technical. Chain-of-custody gaps, ambiguous financial records, digital attribution problems, or contested ownership cannot be hidden behind a presumption. The stronger the legal consequence, the more explicit the court should be about the evidentiary route leading to it.

Implications and Reform Options for Vietnam

1. Preserve the State's persuasive burden on criminal guilt

The first recommendation is negative but fundamental: Vietnam should not introduce a general rule requiring accused persons to prove innocence, explain all incriminating circumstances, or justify assets as a condition of avoiding conviction. Articles 13 and 15 already embody a coherent allocation of criminal proof. A general reverse-onus doctrine would create conflict with that structure and could weaken the right to silence and the defence function.

Where a special statute is thought to require a presumption, the legislature should identify the exact element or subsidiary fact affected and explain why the presumption is necessary. The prosecution's burden to establish the act, the accused's connection with the act, and the statutory foundational facts should remain express. The law should also state the rebuttal standard and confirm that silence alone cannot establish guilt.

2. Introduce an explicit foundational-facts test for adverse presumptions

Vietnam can borrow the most useful feature of Indian jurisprudence without borrowing India's wider reverse-onus architecture. Judicial guidance could require that any adverse statutory presumption be preceded by proof of specified foundational facts. A resolution of the Judicial Council of the Supreme People's Court, or future legislative amendment, could state that the court must identify those facts expressly in its reasoning.

For possession-based offences, foundational facts could include lawful recovery, identity and integrity of the exhibit, factual control, and a sufficient connection between the accused and the object. For digital evidence, they could include reliable attribution, integrity of data collection, and exclusion of plausible third-party access where relevant. For financial presumptions, they could include ownership, timing, value, transaction path, and legally relevant income information. The categories would vary, but the procedural sequence should be constant.

3. Distinguish criminal proof from unexplained-asset recovery

The Russian model provides a new comparative option for Vietnamese debate on unexplained wealth and corruption-related asset recovery. Rather than solving evidentiary difficulty by shifting the burden of criminal guilt, the legislature could study a separate proceeding directed at the status of property. Any such mechanism would have to be designed cautiously and should not be presented as a shortcut to criminal conviction.

At minimum, a separate asset-recovery mechanism would need: clearly defined persons and assets within scope; an objective threshold for initiating proceedings; an obligation

on the State to establish ownership, relevant time period, value, and the statutory income-expenditure discrepancy; a genuine opportunity for the respondent and third parties to present evidence; protection for bona fide third parties; judicial determination; appellate review; and a rule preventing the civil finding from automatically establishing criminal guilt. The Russian Constitutional Court's insistence on the distinction between the special civil measure and criminal liability is especially relevant here. (Constitutional Court of the Russian Federation, 2022; Constitutional Court of the Russian Federation, 2024)^[10, 11].

Such reform would also require careful compatibility analysis with Vietnam's Constitution, property rights, the presumption of innocence, and existing anti-corruption and civil-procedure legislation. The comparative lesson is therefore not "Vietnam should copy Russia," but that procedural separation can sometimes reconcile asset-recovery objectives with a strong criminal presumption of innocence more effectively than importing a broad reverse burden into the criminal trial.

4. Clarify the terminology of burdens in legislation and judicial education

A second practical reform is terminological. Vietnamese legal writing and training should consistently distinguish the persuasive burden, evidential burden, and the accused's voluntary exercise of defence rights. Without that distinction, two opposite errors arise. Investigators may assume that a person who fails to explain has failed to "discharge a burden," while defence lawyers may argue that every request for information violates the presumption of innocence.

Clear terminology helps locate the actual problem. The State may ask questions, test explanations, and invite production of documents, subject to procedural rights. What it may not do is treat the absence of an answer as proof of an element that it bears the legal responsibility to establish. Likewise, where legislation validly creates a limited presumption, the court must distinguish the accused's responsive burden from the State's continuing responsibility for the offence as a whole.

5. Strengthen evidence quality so presumptions remain exceptional

The best long-term response to evidentiary difficulty is usually better evidence, not broader presumptions. Vietnam should continue improving chain-of-custody systems, electronic-evidence acquisition, digital forensics, financial investigation, access to banking and beneficial-ownership information within lawful procedures, expert independence, and defence access to material necessary for meaningful challenge.

This is particularly important in transnational drug, corruption, money-laundering, and cyber cases. Investigative sophistication reduces the perceived need to shift burdens. It also improves the legitimacy of any limited presumption that does exist because the foundational facts can be established through verifiable records rather than inference from silence.

6. Require structured judicial reasoning whenever a presumption is used

Finally, Vietnamese courts should be encouraged to use a structured reasoning template whenever an adverse

inference or presumption affects the decision. The judgment should identify the legal rule, the facts triggering it, the evidence supporting those facts, the defence response, and the final assessment of the case as a whole. If the prosecution case remains insufficient after the presumption is correctly applied and rebuttal evidence is considered, Article 13 requires the doubt to operate in favour of the accused.

This recommendation reflects the strongest shared insight from India and Russia. Judicial control is not satisfied by stating that a burden has shifted. The court must explain why it shifted, what exactly shifted, and whether the State first performed the evidentiary work required by law.

Conclusion

The presumption of innocence and reverse burdens should not be treated as mutually exclusive concepts, but neither can they be reconciled through abstract statements alone. Their compatibility depends on institutional design. The central questions are the object of the burden, the facts that trigger it, the proceeding in which it operates, the applicable standard, and the safeguards available to the person affected.

Vietnam, India, and the Russian Federation demonstrate three different approaches. Vietnam strongly assigns criminal proof to competent procedural authorities and gives the accused a right, not an obligation, to prove innocence. India expressly authorises reverse burdens in selected fields and relies on judicial doctrine - most importantly the requirement of foundational facts - to prevent the presumption from operating automatically. Russia shares Vietnam's strong criminal non-shift rule but separately permits burden-shifting in a civil anti-corruption regime concerning unexplained assets, while its Constitutional Court and Supreme Court insist on threshold proof, procedural separation, and an opportunity to establish lawful origin.

The comparison supports four conclusions for Vietnam. First, the persuasive burden of proving criminal guilt should remain with the State. Second, any adverse presumption should be activated only by clearly identified foundational facts. Third, evidentiary difficulty concerning unexplained assets should prompt consideration of carefully designed procedural alternatives rather than an automatic shift of criminal guilt. Fourth, courts should make the operation of every presumption transparent in their reasoning. These measures would allow Vietnamese law to respond to complex crime without transforming investigative difficulty into a duty on the accused to prove innocence.

References

1. International Covenant on Civil and Political Rights art. 14(2), Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.
2. Le DHT, Bedi S. Presumption of Innocence: Comparing Vietnamese Law with Established International Jurisprudence. *Criminal Law Forum*, 2022;33(4):359-408. doi:10.1007/s10609-022-09443-7
3. The HD. Ensuring the Consistency of the Presumption of Innocence in a Transitional Criminal Procedure Model—The Case of Vietnam. *Cogent Social Sciences*, 2026;12(1):2665011. doi:10.1080/23311886.2026.2665011
4. Hiến pháp nước Cộng hòa xã hội chủ nghĩa Việt Nam [Constitution of the Socialist Republic of Vietnam] art. 31(1) (2013), consolidated in 52/VBHN-VPQH (July 21, 2025), <https://congbao.chinhphu.vn/van-ban/van-ban-hop-nhat-so-52-vbhn-vpqh-45714.htm>.
5. Bộ luật Tố tụng hình sự [Criminal Procedure Code] arts. 13, 15, consolidated in 17/VBHN-VPQH (Feb. 12, 2026), <https://congbao.chinhphu.vn/van-ban/van-ban-hop-nhat-so-17-vbhn-vpqh-468961.htm>.
6. Noor Aga v. State of Punjab, (2008) 16 S.C.C. 417, 438–45 (India), <https://indiankanoon.org/doc/1584447/>.
7. The Bharatiya Sakshya Adhiniyam, No. 47 of 2023, §§ 108–109, 120, India Code (2023), https://www.mha.gov.in/sites/default/files/250882_engl_ish_01042024.pdf.
8. Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, §§ 35, 54, India Code (1985), <https://dor.gov.in/narcotic-drugs-and-psychotropic-substances-act-1985>.
9. Verkhovnyi Sud Rossiiskoi Federatsii [Supreme Court of the Russian Federation], Tematicheskii obzor No. 14/2026 [Thematic Review No. 14/2026], approved by Presidium Resolution No. 17A/2026 (July 1, 2026) (Russ.), https://www.vsrfr.ru/en/about/anti_corruption/document/s/reviews_judicial_practice.
10. Konstitutsionnyi Sud Rossiiskoi Federatsii [Constitutional Court of the Russian Federation], Postanovlenie [Judgment] No. 27-P (July 4, 2022) (Russ.), https://www.consultant.ru/document/cons_doc_LAW_421104/.
11. Konstitutsionnyi Sud Rossiiskoi Federatsii [Constitutional Court of the Russian Federation], Postanovlenie [Judgment] No. 49-P (Oct. 31, 2024) (Russ.), https://www.consultant.ru/document/cons_doc_LAW_489414/.
12. Federal'nyi zakon ot 3 dekabria 2012 g. No. 230-FZ, O kontrole za sootvetstviem raskhodov lits, zameshchaiushchikh gosudarstvennye dolzhnosti, i inykh lits ikh dokhodam [Federal Law No. 230-FZ on Control over the Correspondence of Expenditures of Public Officials and Other Persons to Their Income], art. 17, as amended Apr. 25, 2026 (Russ.), https://www.consultant.ru/document/cons_doc_LAW_138550/67a734729a346abd9190584551ccc79bc84a74c7/.
13. Konstitutsiia Rossiiskoi Federatsii [KONST. RF] [Constitution] art. 49 (Russ.), <https://publication.pravo.gov.ru/Document/View/0001202007040001>.
14. Ugolovno-protsessual'nyi kodeks Rossiiskoi Federatsii [UPK RF] [Criminal Procedure Code] art. 14 (Russ.), https://www.consultant.ru/document/cons_doc_LAW_34481/50cc4ba5b9174a79ff3a7c8fe091aed08316c8f9/.
15. Hamer D. The Presumption of Innocence and Reverse Burdens: A Balancing Act. *The Cambridge Law Journal*, 2007;66(1):142-171. doi:10.1017/S0008197307000062
16. Stumer A. *The Presumption of Innocence: Evidential and Human Rights Perspectives*. Hart Publishing, 2010.

17. Bedi S. Presumption of Innocence and Reverse Onus Clauses: The State of Criminal and Constitutional Jurisprudence in India. In: Biddulph S, et al., eds. The Presumption of Innocence. Hong Duc Publishing House, 2021.
https://law.unimelb.edu.au/_data/assets/pdf_file/0004/3614566/Presumption-of-Innocence-Proceedings-Book_FINAL-compressed.pdf
18. Just Rights for Children Alliance v. S. Harish, 2024 INSC 716, ¶¶ 158–66, 191 (India),
https://api.sci.gov.in/supremecourt/2024/8562/8562_2024_1_1501_56073_Judgement_23-Sep-2024.pdf.
19. Vagin OA. Operativno-rozysknaia deiatel'nost' i printsip prezumpstsii nevinovnosti (pamiati Vladimira Andreevicha Lukashova) [Operative and Search Work and the Presumption of Innocence Principle (in Memoriam Vladimir A. Lukashov)]. Nauchnyi portal MVD Rossii, 2024;1(65):127-135.
<https://sci.ru/articles/24388>