



## FACULTY OF JURIDICAL SCIENCES

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# Lecture-31



## **PUBLIC DOCUMENT AND PRIVATE DOCUMENT**

Evidence provided in the written form are called documentary evidence under section 3 of the Indian evidence Act. Such documents are divided into Public documents and Private documents. Section 74 enumerates what are public documents and section 75 tells about what are private documents. The classification is essential in determining the method of proving such documents. Whereas the public documents are those which includes the interest of the public at large the private documents is confined to the interests of the concerned persons only.

Section 76 to 78 deals with points of public documents an section 79 to 91 deals with genuineness of certain kind of documents.

### **Definition and meaning of public document.**

Section 74 defines public documents as under,

They are documents forming the acts, or records of the acts,

1. Of the sovereign authority
2. Of official bodies and tribunals and
  - Of public officers, legislative, judicial and executives of any part of India or of the Commonwealths of a foreign country
  - Public records kept in any state of private documents

A public document is one prepared by the public servant in exercise of his duty. For example census report, electoral report. Even the order sheet prepared in the official files is public record.

### **Some of the examples of the public documents are as under.**

- Electoral roll
- Census report

- Town planning reports
- Village records
- Public records which kept by any state of private documents
- Records of the National banks.
- Birth and death register.

The following are not public records.

- The panchanama prepared by the police officer could not be said to be prepared in the course of public duty and hence not public record ( *Hardayal Aram sing AIR. MP2003* )
- Some time what is in nature a private record turns out to be public record when the public interest is evolved and that is prepared by the public servant.

For example the allotment of share certificate to the member of housing society of Adarsh housing society, Mumbai was a private document between the society and the members. But when the entire society was involved in fraudulent act of taking the government defense land such record becomes record of public interest and they are accessible by public.

### **Between private document and public document the later is to be relied**

A question arose between the public document and the private document which should be relied more. In the case of *Sate Of Maharashtra v.Md.sajid Hussein AIR 2008( SC 155)* the SC had held when a public document in the form of birth certificate is produced by the prosecution showing the age of the victim below 16yrs, it should prevail over the date given in the FIR and also supplemented by the affidavit. In this case the accused victim for forced to flesh trade by accused persons. In the FIR and supplementary affidavit the age was given as 18 yrs. On the basis of radiological test the age was determined to be 14 to 16. However the prosecution produced the birth certificate from municipality which showed the date of birth as 16.

In another case the police arrested a person, did not accept the age shown in birth certificate which if considered would have found him as juvenile. Instead they sent him to forensic test to determine the age. On the basis of the test he was declared major. The court too accepted that. However on appeal it was held that when the birth certificate showed the age minor the accused

should not have been sent for determination of test to find out his age. The court held on the basis of the birth certificate that the accused is juvenile.

Similar the decision of custom authority in the case of Philip india was called for in RTI application. The authorities held that the third party has no interest in this and hence cannot be given. However the court held it is public document

A question in the case of *Shahnaas vs. state of UP.*( *SCjudgement dated 5<sup>th</sup> August 2011.*)

In this case shanawas was arrested on the basis of FIR lodged by one Katizan, the wife of one Mr Nawab/ In that FIR she alledged that Shanawaz murdered her husband Mr. Nawab. On his arrest Shanawas's mother filed an application stating that his date of birth was 18.06.1989 and on the date of crime i.e. on 4.06.2007, he was minor under juvenile Act. The juvenile board after examination of the date of birth contained in marksheet as 18.6.1989 and other witness held that Shanawas was minor and therefore juvenile act is applicable to him. The victims wife preferred an appeal ( state did not file appeal) against the boards decision before the additonal session judge. The additional session judge set aside the order of the Board and held that the accused was major. Against this order the victims wife went in appeal before High Court. The High court dismissed the order of the Additional Session judge and restored the order of juvenile board holding that Shanwaz was minor. The High Court relied on the report of Juvenile Board which took in to consideration the date of birth as shown in the mark sheet as 18.07.2009. However on various consideration the High court reversed the decision of lower court. On appeal before the SC by the appellant , the Supreme court held that the accused was juvenile. The supreme court came to this conclusion on the following evidences..

- The date of birth is given in the mark sheet is 18.6.1989.
- In the school leaving certificate also the date of birth is given as 18.6.1986
- The witnesses examined such as the clerk of the school have also corroborated the facts

The landmark judgment of the Delhi High Court in the matter of *The CPIO, Supreme Court of India v Subhash Chandra Agarwal, W.P. (C) 288/2009* arose out of an

application made by a citizen seeking to know whether judges of the Supreme Court and the High Courts were filing their assets declarations in accordance with the 1997 Full Court resolution of the Supreme Court. This decision clarifies several issues and expands the understanding of the citizen's right to information. The court has held that All information available with the public authority is covered by the RTI act being public documents.

### **Method of proof of public documents.**

Public documents are proved by the following methods.

- The are proved by obtaining certified copy as provided in section 76 and this is regarded as original. In the case of Rammapa vs. Bajjappa (AIR 1963 SC the court held that a certified copy of public document can be received in evidence and without proof.
- Section 78 enumerates the manner in which different public documents could be proved. They are as under.

Nature of public document	How it is proved
Acts orders or notification of the central government or state government	By the certified records certified by the heads of the department
The proceeding of the legislature	By proceedings published by government
Proclamation of government, queen, crown	By gazette notification
Acts of executives or the proceedings of the legislature of a foreign country	By official journals published by authority
Proceedings of municipal body in	By the certified copy of the legal keeper thereof or by the

a state	printed published book of the authority.
Public documents of any other class in a foreign country	By original  By certified copy of the legal keeper of record  With the duly certified by notary public or of an Indian council or diplomatic agent certifying that the copy is duly certified by the officer having legal custody as per the law of that country.

The evidence act also enumerates in section 79 to 91 as to the presumptions as to the genuineness of a certain kinds of the documents.

**Conclusion:**

Public documents are those which is made by the public servant during the course of performing his duty and these documents are also documents published by the sovereign authority and the legislature. They are public in the sense there are kept in the custody of public offices and a certified copy obtained and signed by the respective legal keeper or authority themselves is a proof and they are regarded as primary evidence. They are presumed to be genuine unless otherwise their legal veracity is questioned.