



Sealed Cover Jurisprudence

For Prelims: Supreme Court, Chief Justice of India (CJI), Sealed Cover Jurisprudence.

For Mains: Judiciary, Indian Constitution, Fundamental Rights, Issue of Sealed Cover Jurisprudence, Fundamental Rights.

Why in News?

Recently, while hearing a criminal appeal against the Bihar Government, [Chief Justice of India \(CJI\)](#) admonished a counsel for submitting a **'sealed cover report' to the court**.

- Sealed cover jurisprudence has been frequently employed by courts in the recent past for example [Rafale Fighter Jet Deal 2018, 2014, BCCI Reforms Case, Bhima Koregaon case 2018](#) etc.

What is Sealed Cover Jurisprudence?

- It is a practice used by the [Supreme Court](#) and sometimes lower courts, of **asking for or accepting information from government agencies in sealed envelopes** that can only be accessed by judges.
- While a specific law **does not define the doctrine of sealed cover**, the Supreme Court derives its power to use it from **Rule 7 of order XIII of the Supreme Court Rules** and **Section 123 of the Indian Evidence Act of 1872**.
 - **Rule 7 of order XIII of the Supreme Court Rules:**
 - According to the rule, if the **Chief Justice or court directs certain information to be kept under sealed cover or considers** it of confidential nature, **no party would be allowed access to the contents of such information**, except if the Chief Justice himself orders that the opposite party be allowed to access it.
 - It also mentions that **information can be kept confidential if its publication is not considered** to be in the interest of the public.
 - **Section 123 of the Indian Evidence Act of 1872:**
 - Under this act, **official unpublished documents relating to state affairs are protected** and a public officer cannot be compelled to disclose such documents.
 - Other instances where information may be sought in secrecy or confidence are **when its publication impedes an ongoing investigation**, such as details which are part of a police case diary.

What are the issues with the Sealed Cover Jurisprudence?

- **Against the Principles of Transparency and Accountability:**
 - It is **not favourable to the principles of transparency and accountability of the Indian justice system**, as it stands **against the idea of an open court**, where decisions can be subjected to public scrutiny.
 - In any process of adjudication, especially one that **involves fundamental rights, evidence "must be shared with both parties to the dispute"**.

- **Reduce the Scope of Reasoning:**
 - To **enlarge the scope for arbitrariness in court decisions**, as judges are supposed to lay down reasoning for their decisions, but this cannot be done when they are based upon **information submitted confidentially**.
 - What is further contested is whether the **state should be granted such a privilege to submit information in secrecy**, when existing provisions like in-camera hearings already provide sufficient protection to sensitive information.
- **Obstruction to Fair Trial and Adjudication:**
 - It is also **argued that not providing access to such documents** to the accused parties **obstructs their passage to a fair trial and adjudication**.
- **Arbitrary in Nature:**
 - Sealed covers are **dependent on individual judges** looking to substantiate a point in a particular case rather than common practice. **This makes the practice ad-hoc and arbitrary**.

What is the Supreme Court's View on Sealed Cover Jurisprudence?

- In ***Modern Dental College vs State of Madhya Pradesh (2016)***, the apex court adopted the **proportionality test proposed by Aharon Barak, the former Chief Justice, Supreme Court of Israel**, "a limitation of a constitutional right will be constitutionally permissible if:
 - It is **designated for a proper purpose**.
 - The measures undertaken to effectuate such a limitation are **rationally connected to the fulfilment of that purpose**.
 - The **measures undertaken are necessary** in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation.
 - There **needs to be a proper relation** ('proportionality stricto sensu' or 'balancing') between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right.
- This was reiterated in **[K.S. Puttaswamy vs Union of India \(2017\)](#)**.
- In the 2019 judgement in the case of ***P. Gopalakrishnan vs The State of Kerala***, the Supreme Court had said that **disclosure of documents to the accused is constitutionally mandated**, even if the investigation is ongoing and documents may lead to a breakthrough in the investigation.
- In the ***INX Media case in 2019***, the Supreme Court had **criticised the Delhi High Court for basing its decision to deny bail** to the former union minister on documents submitted by the **[Enforcement Directorate \(ED\)](#)** in a sealed cover.

Way Forward

- The process of **judicial review** is significant since it holds the executive accountable.
- The executive **must cogently answer its actions** – especially when **fundamental rights such as free speech are curtailed**. India's Constitution **does not give a free hand to the executive** to pass arbitrary orders violating such rights.
- A court that **sits as a mute spectator** to any executive action is a **crude manifestation of democratic decay**.
- When an action is alleged to have curtailed fundamental rights, the **court is bound to examine the legality of the action** through the lens of proportionality.

[Source: TH](#)