

SEALED COVER JURISPRUDENCE IN INDIA

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ABSTRACT

The 'Sealed Cover Jurisprudence' in India is once again in discussion as it was employed by the Indian Judiciary again in the recent cases like, 'Rafale Jet Deal' Case, 'Media One Ban Case', Bhima-Koregaon Case (2018), BCCI Reforms Case, etc.

The 'Sealed Cover Jurisprudence' refers to a judicial practice where the Supreme Court or the concerned court can admit information from the government agencies and the concerned authorities in sealed envelopes as the judiciary considers it as 'confidential' related to a particular ongoing case. On the basis of such concealed evidence submitted by the government agencies in a sealed cover (envelope), the judges can make a decision and even pass a ruling without revealing the contents of the sealed envelope.

As there is no specific law governing the principle of sealed cover and no party in a case is permitted to have access to such information, the practice of sealed cover jurisprudence may hamper the principles like transparency, accountability and even fair trial and also reduces the scope of reasoning of judgments. The legislature and judiciary must consider the sealed cover jurisprudence or take necessary steps to provide specific law, guidelines or procedure to use concealed evidence.

Keywords: Sealed Cover, Judiciary, Envelope, Confidential etc.

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INTRODUCTION

The ‘Sealed Cover Jurisprudence’ is in discussion as it was employed by the Indian Judiciary in the recent cases like ‘Media One Ban Case’, ‘Rafale Jet Deal’ Case, BCCI Reforms Case, Bhima-Koregaon Case (2018) etc.¹ The ‘Sealed Cover Jurisprudence’ refers to a judicial practice where the Supreme Court or the concerned court can accept concealed information from the government agencies and the concerned authorities in sealed envelopes as the judiciary considers it as ‘confidential’ related to a particular ongoing case.² On the basis of such concealed evidence submitted by the government agencies in a sealed cover (envelope), the judges can make a decision and even pass a ruling without revealing the contents of the sealed envelope.³ There is no specific law governing the principle of sealed cover and no party in a case is permitted to have access to such information. The practice of sealed cover jurisprudence may hamper the principles like transparency, accountability and even fair trial and also reduces the scope of reasoning of judgments. The legislature and judiciary must consider the sealed cover jurisprudence or take necessary steps to provide specific law, guidelines or procedure to use concealed evidence.

LEGAL PROVISIONS OF SEALED COVER JURISPRUDENCE

The confidential information or evidence contained in such sealed envelopes can only be seen or accessed by the judges and even though there is no specific law that defines or regulates the doctrine of a sealed cover. The sealed cover jurisprudence does have a legal basis under Rule 7 of Order 13 of the Supreme Court Rules⁴ and as well as under Section 123 of the Indian Evidence

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Sealed Cover Jurisprudence

Available At: <https://www.drishtiiias.com/daily-updates/daily-news-analysis/sealed-cover-jurisprudence> visited on September 2, 2022.

² Pooja Yadav, ‘Explained: What Is Sealed Cover Jurisprudence & Why Is Judiciary Concerned About It’, Updated on May 07, 2022

Available At: <https://www.indiatimes.com/explainers/news/what-is-sealed-cover-jurisprudence-judiciary-concerns-explainer-568973.html> visited on September 2, 2022.

³ Ibid.

⁴ Rule 7 Order 13 of Supreme Court Rules : “*Notwithstanding anything contained in this order, no party or person shall be entitled as of right to receive copies of or extracts from any minutes, letter or document of any confidential nature or any paper sent, filed or produced, which the Chief Justice or the Court directs to keep in sealed cover or considers to be of confidential nature or the publication of which is considered to be not in the interest of the public, except under and in accordance with an order specially made by the Chief Justice or by the Court.*”

Act of 1872⁵. This rule provides that the Chief Justice of the Supreme Court or the judges of the concerned Court can direct certain information provided by the government agencies and authorities to be kept under a sealed cover as this information or evidence is considered to be of confidential nature. No other party involved in the case and neither the public would be allowed access to this information and only the judge himself gets to take a look at the information present in the sealed cover and if the other parties involved in the case or the public has to gain access to this, they need to seek permission from the concerned judges. The rule, also states that the information can be kept confidential if its publication in the public domain is not considered to be in the public interest. So, if the court determines that such information is not in the public interest, then the court can order the information to be kept confidential. Moreover, based on this concealed evidence provided by the government in a sealed cover, Judges can even pass rulings and judgments.

This Indian Evidence Act, 1872 provides further protection for this, as it states that the unpublished official documents relating to the state affairs are protected and a public officials or government or authority cannot be forced to disclose the contents of these documents. The government authorities can also seek secrecy or confidentiality for such evidence presented to the court if its publication is seemed to impede an ongoing investigation or it contains sensitive details of the case related to the case diary of the investigating officer or related to the privacy of an individual.

INSTANCES OF SEALED COVER JURISPRUDENCE

The practice of admitting or accepting the evidence from the government agencies in a sealed cover has been practiced by the Indian Judiciary both at the level of the Supreme Court and at the level of lower courts.

The following are few major instances in which sealed evidence was accepted by the courts based on which judgments were also passed by the Supreme Court:

Available At: <https://main.sci.gov.in/sites/default/files/Supreme%20Court%20Rules%2C%202013.pdf> visited on November 18, 2022.

⁵Section 123- Evidence as to affairs of State. —“*No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.*”

Available At: <https://indiankanoon.org/doc/208203/#:~:text=123.,permission%20as%20he%20thinks%20fit>. Visited on November 18, 2022.

RAFALE FIGHTER JET DEAL CASE⁶

In the corruption controversy, involving the Rafale fighter Deal, the government provided confidential information and evidence in a sealed cover and cited complete immunity from any public disclosure by invoking the provisions of the Official Secrets Act, 1923 and the Secrecy Clauses contained in the contract between India and France. On the basis of this confidential evidence provided by the government, the Supreme Court even delivered a judgment in the Rafael case.

NATIONAL REGISTRY OF CITIZENS (NRC) CONTROVERSY

With regard to National Registry of Citizens or NRC in Assam, which was monitored by the Supreme Court, the court had directed the NRC coordinator to submit periodic reports or the NRC exercise in a sealed cover. The contents of which was not available to the government agencies or by the petitioners or the public.

CBI OFFICIALS CORRUPTION CASE

Then in a corruption controversy involving senior officials of the CBI, the Supreme Court had asked the Central Vigilance Commissioner to submit its preliminary findings in a sealed cover and the contents of this evidence was never made public.

BCCI REFORMS CASE⁷

Even in 2014, the Board of Control of Cricket in India (BCCI) Reforms Case, following allegations of match fixing at spot fixing, the investigating committee of the BCCI submitted its report in a sealed cover to the Supreme Court and ask for confidentiality of this evidence. Citing that, the report contains the names of few cricketers who were alleged of involvement in match-fixing and spot-fixing.

⁶ WRIT PETITION (CRIMINAL) NO. 298 OF 2018

⁷ CIVIL APPEAL NO.4235 OF 2014

BHIMA KOREGAON CASE (2018)

In recent times, the Bhima Koregaon case, in which several social activists have been detained under the provisions of Unlawful Activities Prevention Act (UAPA) on the charges of terrorism. The Supreme Court had based its rulings on sealed evidence which was submitted by the Maharashtra State Police.

The practice of admitting the evidence by the Government agencies in such a sealed cover which is not accessible to anyone except for the judges is considered as normal judicial practice in the interest of confidentiality of the information, which is usually cited on the grounds of national security or to prevent impeding an ongoing investigation.

CRITICISM ON SEALED COVER JURISPRUDENCE

This practice has often been criticized by several legal experts and constitutional experts as they point out that this practice is not in favor of principles of transparency and accountability, and puts a question mark both on the India judicial system and as well as on the executive i.e. the government.

Ideally, in a democratic state where we have an independent judiciary, courts are expected to function in an open manner where their decisions and rulings are subjected to public scrutiny and debate. These principles of transparency and accountability stand violated if evidence from the government has accepted in a sealed envelope. It has also been argued that this could increase the scope for arbitrariness in court rulings and judgments because generally in an open court, the judges are supposed to explain their reasons and the logic behind their judgments while passing their decisions.

But this cannot be done when the judges are accepting evidence in a sealed envelope which provides for complete confidentiality. So, in such cases, the reasoning of the judges behind the judgment and the decision will not contain the complete picture as crucial evidence would be kept away from the public under the name of confidentiality. It has also been argued that whether the state should be provided such a privilege to submit information and evidence in secrecy and confidentiality when we already have provisions such as ‘in camera hearings’ or ‘closed hearings’ to deal with such sensitive information. Moreover, this practice could also violate the principles of

natural justice, especially for the accused parties as it obstructs their right to a fair trial and adjudication. In fact, the Supreme Court itself had ruled in the P. Gopal Krishnan v. State of Kerala⁸ case of 2019 that the disclosure of all consent documents to an accused is constitutionally mandated, it means it's that it is a constitutional right of the parties even if the investigation or inquiry is ongoing and said credentials may possibly lead to a get through in the ongoing investigation.

In the case involving one TV channel from Kerala known as Media One⁹, who's broadcasting license was suspended and revoked by the Ministry of Information and Broadcasting (IB). The Information & Broadcasting Ministry has cited National Security grounds while revoking the license. This was challenged by Media One in the Court on the ground that it violates the right of free speech and free press which is enshrined under Article 19 (1) (a) of the Constitution.

In this case, the court had accepted evidence from the government in a sealed envelope and it agreed with the government authorities that under the National Security grounds the evidence cannot be revealed to the public domain and it had sustained the revocation of license of Media One thereby upholding the stand of the government.

It is argued that the practice of sealed cover jurisprudence in these cases simply appalling in a constitution democracy because it is not only obstructing the right to a fair trial of the concerned parties but it is also violating their fundamental rights. Moreover, it is violating not just the Article 19 there is right to free speech and press but also the right to Association and article 19 itself and also the right to equality under Article 14.

CONCLUSION

Here, it is argued that the judicial practice of sealed cover jurisprudence goes against the fundamental rights and the basic feature of the Indian Constitution. The Hon. Supreme Court in the Minerva Mills Case of 1980¹⁰, which reiterated to supremacy of the fundamental rights. The concept of constitutionalism does not give a free hand to the government to pass arbitrary orders,

⁸ CrI.M.C. No.3475 of 2015

⁹ Madhyamam Broadcasting Limited Media One Headquarters V. Union Of India And Others
WP(C) NO. 3663 OF 2022

¹⁰ AIR 1980 SC 1789

which could violate these fundamental rights. So, in conclusion, it is suggested for an end to the practice of the sealed cover jurisprudence or to follow this practice with better checks and balances, because otherwise it would lead to further deterioration of principles of natural justice and could deny basic rights to the citizens.