

Unveiling The Legal Enigma: Understanding Sealed Cover Jurisprudence

Dr Deo Narayan Singh¹, Prasun Ojha² and Khagesh Singh³

¹Assistant Professor of Law, Dept. of Law and Governance, Central University of South Bihar, Gaya

^{2,3} 4th year Law student, Department of Law and Governance, Central University of South Bihar, Gaya

“Secrecy being an instrument of conspiracy, ought never to be the system of a regular government.”

....*Jeremy Bentham*

Abstract:“What lies beneath the seal?” This central inquiry captures the essence of sealed cover jurisprudence, a growing practice shaping legal systems globally. This article sets out to explore the complexities, ramifications, and controversies surrounding this phenomenon, aiming to illuminate its mysterious nature. Sealed cover jurisprudence involves submitting sensitive information or evidence to a court under seal, shielding it from public view and accessible only to the judge or a select few. However, the rationale behind this veil of secrecy is questioned. Proponents argue that sealed cover proceedings are necessary to protect national security, ensure fair trials, and safeguard confidential information. Nevertheless, critics express concerns about the potential erosion of transparency, accountability, and the right to a public trial.

This article embarks on an exploration of the layers of sealed cover jurisprudence, tracing its evolution from its utilitarian origins to its various applications in contemporary legal systems. Using a comparative approach, it scrutinizes the criteria for initiating sealed cover proceedings, the procedural safeguards for handling sealed evidence, and the standards for judicial review and supervision.

Moreover, the broader significance of sealed cover legal principles reaches beyond the confines of the courtroom, touching upon broader discussions concerning democracy, governance, and the rule of law. It manages the intricate equilibrium between national security necessities and safeguarding civil liberties, scrutinizing the judiciary’s responsibility as a guardian of openness and answerability amidst encroachments by the executive branch.

Additionally, this article delves into the ethical and normative dimensions of sealed cover jurisprudence, examining its compatibility with democratic principles and the foundational values of the rule of law. It grapples with the ethical dilemmas presented by secrecy in the

pursuit of justice, addressing questions of legitimacy, trust, and the public interest.

In pursuit of clarity and accountability, this article concludes by advocating for increased transparency, procedural equity, and judicial oversight in sealed cover proceedings. It calls for a nuanced approach that reconciles the imperative of confidentiality with the principles of open justice, safeguarding fundamental rights and democratic norms in an ever-evolving legal landscape.

Key words:- Confidential, Sealed cover, Documents, National interest, Equilibrium.

I. INTRODUCTION

Is justice truly blind, or does it peek from behind sealed covers? In the labyrinth of legal proceedings, the doctrine of sealed cover jurisprudence emerges as both a shield and a shroud, veiling critical information from the public eye. Within this enigmatic realm, the scales of justice tip delicately, guided by ancient maxims that navigate the murky waters of confidentiality and transparency.

In the annals of legal history, the maxim "In camera" echoes through the chambers of courts, invoking the power to conduct proceedings in private. Derived from Latin, it translates to “in chambers” or “in the room.” This principle forms the cornerstone of sealed cover jurisprudence, allowing courts to deliberate on sensitive matters shielded from the public gaze. As the doors close and the proceedings commence behind a veil of secrecy, the balance between the right to know and the imperative of confidentiality hangs in precarious equilibrium.

Adhering to the axiom “Salus populi suprema lex esto,” courts grapple with the paramount consideration of public welfare. Embedded within this maxim lies the inherent tension between public’s entitlement to public documents and state’s obligation to safeguard

national interests. When faced with matters of national security, economic stability, or diplomatic relations, the judiciary wades into uncharted waters, weighing the necessity of secrecy against the principles of accountability and transparency.

However, even within the sanctum of sealed covers, the maxim “Audi alteram partem” resonates, reminding us of the fundamental right to be heard. While the veils of confidentiality may obscure the proceedings from public scrutiny, the voices of the affected parties demand to be heard, their rights safeguarded, and their interests considered. Thus, the judiciary treads cautiously, balancing the imperatives of confidentiality with the principles of natural justice. Delving deeper into the jurisprudential tapestry, the maxim “Fiat justitia ruat caelum” emerges as a guiding light, illuminating the path toward justice, even in the shadow of secrecy. This maxim, translating to “Let justice be done though the heavens fall,” underscores the judiciary’s commitment to uphold the rule of law, even amidst upheaval. In the realm of sealed cover jurisprudence, where the boundaries of disclosure are blurred, this maxim serves as a beacon of integrity, guiding courts through the moral quagmire of confidentiality.

Yet, amidst the intricate interplay of legal principles, the maxim “Res judicata pro veritate accipitur” reverberates, underscoring the finality of judicial decisions. Once the seals are broken, and the covers unveiled, the judgments rendered within the confines of confidentiality attain the imprimatur of truth. As the echoes of litigation fade into the annals of legal history, the legacy of sealed cover jurisprudence endures, leaving an indelible mark on the fabric of justice.

The concept of sealed cover jurisprudence highlights the intricacies of contemporary legal frameworks. By drawing on age-old wisdom, courts maneuver through the balance between secrecy and openness, aiming to ensure fairness while protecting both governmental and individual concerns. As the scales of justice sway,

guided by the timeless principles of law, the enigma of sealed covers continues to captivate and confound, reminding us that in the pursuit of justice, some truths are best kept veiled.

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.¹ 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 cover². Since the beginning of the judicial system, the practice of submitting documents in sealed cover has been common. Be that as it may, the beyond couple of years have seen an extreme expansion in this practice at the Supreme Court. 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.³

II. ORIGIN OF SEALED COVER PROCEDURE

Administrative or service cases are where sealed cover jurisprudence first emerged. To protect officer’s reputations, individual personnel’s promotion evaluations and official service records were sent under sealed cover procedure. Confidential papers related to sexual assault cases are nevertheless sent to the court in order to preserve the identify of survivors. But in recent years, the government has produced a plethora of documents, from status reports to ‘notes,’ which are purportedly evidence gathered during investigations into instances of terrorism and money laundering cases. Reports from committees formed by the court have also been received under sealed covers, as in the BCCI case. *Sealed cover documents have been received by the apex court in cases such as the*

¹ 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-concernsexplainer-568973>. (Last visited on February 20, 2024).

² Ibid.

³ Sealed Cover Jurisprudence, *available at*: <https://www.drishtiiias.com/daily-updates/daily-news-analysis/sealed-cover-jurisprudence> (Last visited on February 20, 2024).

*Rafale jet's purchase deal, Assam National Register of Citizens case, Ayodhya title dispute, Gujarat Police 'fake' encounter case, Narendra Modi biopic release case, in the sexual harassment case concerning then Chief Justice Ranjan Gogoi, the electoral bonds case, Bhima Koregaon case.*⁴

The Apex Court infers its power of practicing of the act of sealed cover documents from Order XIII Rule 7 of the Supreme Court Rules⁵ which states :

*"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 a 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"*⁶.

Order XIII Rule 7⁷ states that the Chief Justice or the Court may, in their discretion, avoid letters or documents which are confidential in nature from the public scrutiny that are not in the public interest. The rules & regulations, however, do not specify any circumstances under which a document may be withheld; instead, the Court retains discretion over whether or not a particular document is deemed to be in the public interest. As a result, there are no set guidelines and it all relies on the judge's discretion. Furthermore, the practice of sealing covered papers has greatly increased in recent years, and judges have admitted this sealed cover practice into routine processes without providing a sufficient justification.

⁴ Krishnadas Rajagopal, 'On sealed cover Jurisprudence', updated on February 19, 2023, available at: <https://www.thehindu.com/news/national/on-sealed-cover-jurisprudence/article66529943.ece> (Last visited on February 20, 2024).

In addition, Section 327 of the Code of Criminal Procedure⁸ grants the authority to withhold certain documents. But it provides a list of circumstances under which the document can be withheld. Section 327 :-

- *The proceedings of the court are to be held in the open, provided that the Judge may think it fit to have the same in-camera.*
- *The proceedings in nature of trial under section 376, 376A, 376B, 376C and 376 D shall be held in camera.*
- *No person shall be allowed to publish or print any information in relation to the in-camera proceedings except with the previous permission of the court.*

In certain circumstances, it is permissible to retain a document. In-camera sessions, as previously explained, are specifically for cases involving offenses against women or sensitive matters, with the aim of safeguarding the identities of both the victim and accused while preserving vital evidence. These measures are implemented by courts to uphold confidentiality and maintain the integrity of the legal process. Although the mentioned exceptions are viewed as reasonable, there are instances where sealed cover documents are submitted for cases not covered by these exceptions.

It's crucial to emphasize that this section does not infringe upon the accused's right to review the evidence presented during an in-camera session. Whether physically present or represented by legal counsel, the accused can still participate in cross-examination, ensuring fairness and transparency.

Conversely, under section 327, placing evidence in a sealed cover presents a different scenario. This not only prevents cross-examination but also completely conceals the document's contents from the accused, undermining due process and impeding their defense. While the outlined conditions permit document withholding and in-camera proceedings to protect sensitive information and ensure legal process efficiency, submitting sealed cover documents,

⁵ The Supreme Court Rules, 2013 Order XII Rule 7.

⁶ Supra note 7

⁷ Supra note 5

⁸ The Code of Criminal Procedure, 1973 Section 327

particularly outside specified exceptions, raises concerns regarding transparency and fair trial rights. Upholding the right to cross-examine evidence is essential for maintaining the integrity and fairness of legal proceedings, distinguishing them from cases where evidence is withheld, thereby limiting the accused's ability to mount an effective defence.

III. STRIKING THE BALANCE: TRANSPARENCY AND NATIONAL SECURITY IN SEALED COVER JURISPRUDENCE

The concept of "Sealed Cover jurisprudence" involves presenting sensitive or classified information to a court in a sealed envelope or cover, shielding it from public view. This practice is often employed in cases where national security concerns intersect with the public's right to information. Striking a balance between transparency in the public interest and safeguarding national security is crucial in such instances.

Transparency is fundamental to a democratic society, ensuring accountability and trust in government actions. However, national security concerns require certain information to remain confidential to protect citizens from potential harm. Achieving a balance between these two principles requires careful consideration and adherence to legal and ethical standards.

Firstly, it's essential to establish clear criteria for determining what information warrants sealing and under what circumstances. This involves weighing the potential risks to national security against the public's right to access information. Courts must carefully evaluate the necessity of sealing certain documents and ensure that it is justified by compelling reasons.

Secondly, procedural safeguards should be in place to prevent abuse of the sealed cover mechanism. This includes providing opportunities for affected parties to challenge the sealing of information and ensuring independent judicial oversight of the process. Transparency in the decision-making process is crucial to maintaining public confidence in the judiciary's handling of sensitive information.

Additionally, there should be mechanisms for limited disclosure of sealed information to authorized

individuals or entities with a legitimate need-to-know. This may involve redacting sensitive details while still providing relevant information to those involved in the case or oversight bodies responsible for monitoring government actions.

Furthermore, regular review of sealed information is necessary to reassess the need for continued confidentiality. As circumstances change over time, what was once deemed sensitive may no longer pose a threat to national security, warranting greater transparency.

Moreover, efforts should be made to increase public understanding of the reasons behind sealing certain information and the broader implications for national security. This may involve education campaigns, public hearings (where feasible), and engagement with civil society organizations to foster dialogue and transparency around these issues.

Ultimately, achieving a balance between transparency and national security in sealed cover jurisprudence requires a nuanced approach that considers the specific circumstances of each case while upholding democratic principles and the rule of law. By implementing clear guidelines, procedural safeguards, mechanisms for limited disclosure, regular review, and public engagement, it is possible to strike an appropriate balance that safeguards both national security and the public's right to information.

The Apex Court of India, in the case of *Secretary, Ministry of Defence v. Veer Pal Singh*⁹ emphasized the importance of balancing the right to information with national security concerns. The court laid down principles to guide the sealing of sensitive information, emphasizing the need for proportionality and the preservation of national security interests.

In *State (NCT of Delhi) v. Navjot Sandhu*¹⁰ commonly known as the "Parliament Attack case," the Supreme Court upheld the sealing of certain documents related to national security. However, the court also stressed the importance of judicial review to prevent abuse of the sealing process and ensure transparency.

In *R. Rajagopal v. State of Tamil Nadu*¹¹ the Supreme Court recognized the importance of balancing the right to privacy with the public's right to information. Redacted versions of documents or access under strict conditions can safeguard sensitive information while

⁹ Civil Appeal No. 5922 of 2012, Supreme Court

¹⁰ (2005) 11 SCC 600

¹¹ (1994) 6 SCC 632

still promoting transparency. Providing clear justifications for sealing decisions and engaging with the public increase understanding of the delicate balance between transparency and national security.

IV. TRACES OF SEALED COVER PROCEDURE UNDER INDIAN CONSTITUTION

Legal and constitutional experts frequently criticize the practice of accepting evidence in sealed envelopes, contending that it undermines transparency and accountability principles. This practice raises doubts about both the integrity of the Indian judicial system and the government. In a democratic society with an independent judiciary, courts are expected to operate openly, subject to public scrutiny and debate. However, accepting evidence in sealed envelopes violates these principles, potentially leading to arbitrary court rulings lacking transparent reasoning, as judges typically elucidate their decisions in open court proceedings.

However, this becomes impossible when judges accept evidence in sealed envelopes, ensuring complete confidentiality. Consequently, the judges' reasoning behind their judgment and decision will lack crucial details, as vital evidence remains hidden from the public in the name of confidentiality. Some argue whether the state should be granted the privilege of submitting information and evidence in secrecy when existing provisions like 'in camera hearings' or 'closed hearings' already address sensitive information. Furthermore, this practice may contravene the principles of natural justice, particularly impeding the accused parties' right to a fair trial and adjudication. In fact, the Supreme Court itself had ruled in the *P. Gopal Krishnan v. State of Kerala*¹² 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 One*¹³ 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 instance, the court received evidence from the government in a sealed envelope and concurred with the government's argument that, due to National Security concerns, the evidence couldn't be disclosed to the public. Consequently, the court upheld the government's decision to revoke Media One's license.

The use of sealed cover jurisprudence in cases within a constitutional democracy is fiercely criticized for its adverse effects on both the right to a fair trial and fundamental rights of the involved parties. This practice is deemed appalling as it not only obstructs fair trial rights but also violates fundamental rights guaranteed by the constitution. By concealing evidence and decisions within sealed envelopes, the judicial process becomes shrouded in secrecy, impeding the transparency necessary for a fair trial. This lack of transparency undermines the foundational principles of justice and accountability in a democratic society.

Furthermore, the utilization of sealed cover jurisprudence infringes upon various constitutional rights, notably those enshrined in Article 19, which guarantees freedom of speech and expression, including press freedom. By withholding information crucial to public discourse and debate, this practice restricts the flow of information and stifles democratic participation. The inability to access evidence and reasoning behind court judgments limits the public's ability to hold authorities accountable, undermining the very essence of democracy.

Beyond Article 19, sealed cover jurisprudence also encroaches upon the right to association, a fundamental aspect of democratic societies. By restricting access to information and decisions that may impact individuals associations and activities, this practice curtails the exercise of this constitutional right. Additionally, by impeding the right to a fair trial and violating the principles of transparency and accountability, sealed cover jurisprudence undermines Article 19 itself, which is meant to safeguard these fundamental freedoms.

¹² AIR 2020 SC 1

¹³ Civil Appeal no. 8130 of 2022, Supreme Court

Moreover, the use of sealed cover jurisprudence runs afoul of the right to equality guaranteed by Article 14 of the constitution. By allowing certain information to be hidden from public scrutiny under the guise of confidentiality, this practice creates an imbalance in access to justice and information. Individuals or entities with access to sealed evidence may gain an unfair advantage, while those without such access are left at a disadvantage, thus perpetuating inequality before the law.

In essence, sealed cover jurisprudence represents a significant challenge to the core principles of democracy and justice. By obstructing transparency, impeding fair trials, and violating fundamental rights, this practice undermines the constitutional framework designed to protect individual liberties and ensure the accountability of government institutions. As such, there is a pressing need for judicial reform to address and mitigate the negative implications of sealed cover jurisprudence on democratic governance and the rule of law.

V. PRESERVING JUDICIAL INTEGRITY: CHALLENGES AND SOLUTIONS IN THE USE OF SEALED COVER DOCUMENTS

Sealed cover documents typically encompass materials of a sensitive nature capable of jeopardizing public safety and harmony, thereby necessitating exemption from public scrutiny and submission to the court under seal. Following submission, such documents undergo judicial scrutiny, and the disclosure of their contents hinges upon the court's discretion. While the court retains the authority to disclose the contents publicly, it may opt to maintain confidentiality if deemed necessary.

However, recent years have witnessed a marked surge in the practice of submitting documents under seal, leading to instances of abuse and significant challenges. Such documents may prejudice the interests of the opposing party, as they are intended solely for the judge's perusal, thus depriving the opposing party of the opportunity to counter implicating evidence. This practice infringes upon individual freedoms and, at times, undermines the integrity of the entire trial process.

Traditionally, sealed cover documents were employed primarily for safeguarding evidence at risk of tampering. However, over the period of time, this

practice has developed to fringe a broader array of documents, including evidence, status reports, and counter-affidavits filed by investigating institutions and legal counsels. Unfortunately, instances abound where documents are needlessly submitted under seal, straying from the original intent of the practice.

Despite the existence of regulations governing the use of sealed cover submissions, these regulations often lack the specificity required to effectively regulate their application. Consequently, there exists a gap between the intended purpose of sealed cover submissions and their actual implementation, resulting in misuse and exploitation.

Efforts to address these issues must prioritize enhancing the clarity and specificity of regulations governing the use of sealed cover submissions. This entails establishing clear criteria for determining the appropriateness of submitting documents under seal, as well as outlining procedures for judicial review and oversight. Furthermore, mechanisms should be put in place to monitor and enforce compliance with these regulations, thereby mitigating the risk of abuse and ensuring the integrity of the judicial process.

So, while sealed cover submissions serve a legitimate purpose in safeguarding sensitive information, their indiscriminate use poses significant challenges to the fairness and transparency of the legal process. Accommodating these challenges requires a collective effort to strengthen regulatory frameworks and enhance oversight mechanisms, thereby upholding the principles of justice and accountability in legal proceedings.

VI. CONCLUSION

As the doctrine of sealed cover jurisprudence stands as a quintessential embodiment of the delicate equipoise between the imperatives of transparency and the exigencies of confidentiality within the annals of legal discourse. Imbued with the fundamental precepts of equity, neutrality, and the preservation of sensitive information, this jurisprudential construct has undergone a nuanced evolution to accommodate the multifaceted intricacies inherent in contemporary legal adjudications.

By affording judicial cognizance of select information under seal, magistrates are endowed with the prerogative to render informed determinations whilst concurrently safeguarding the rights and interests of

all litigants. Particularly salient in matters implicating national security, proprietary trade secrets, or individual privacy concerns, the invocation of sealed covers bespeaks a judicious exercise of judicial discretion. Yet, it behooves the bench to exercise such prerogatives judiciously, ensuring that the sealing of information is predicated upon cogent rationale that demonstrably outweighs the imperatives of transparency and public scrutiny.

The utilization of sealed cover jurisprudence augurs a judicious expediency in the conduct of legal proceedings, facilitating expeditious adjudication whilst mitigating the deleterious effects of undue disclosure. Nevertheless, attendant concerns regarding accountability, procedural regularity, and the specter of potential abuse loom large. Thus, it is imperative that courts remain vigilant, comporting their actions within the confines of statutory authority and judicial precedence, so as to uphold the bedrock principles of due process and procedural fairness.

Moreover, the deployment of sealed covers must be concomitant with the implementation of robust procedural safeguards, serving as bulwarks against the encroachments of arbitrariness and the erosion of judicial integrity. To this end, delineated guidelines governing the submission, review, and ultimate disposition of sealed information are imperative, buttressed by mechanisms of oversight and accountability. Additionally, avenues for the disclosure of sealed materials to relevant stakeholders under circumscribed circumstances ought to be delineated, ensuring that the imperatives of justice and national security remain harmonized.

Furthermore, the judicature ought to endeavor toward an equipoise between the imperatives of confidentiality and the exigencies of transparency, effectuating a nuanced dialectic that reconciles competing interests without sacrificing the sanctity of the legal process. Such equilibrium may be achieved through modalities such as redaction, partial disclosure, or the recourse to summary adjudication, which enable the courts to impart requisite information whilst insulating sensitive details from public purview. In denouement, sealed cover jurisprudence epitomizes a vital instrumentality in the dispensation of justice, furnishing the judiciary with the requisite flexibility to navigate labyrinthine legal conundrums whilst safeguarding the sanctity of confidential information. Nonetheless, its invocation necessitates

circumspection and judicious restraint, so as to preserve the inviolable principles of transparency, accountability, and procedural regularity that constitute the bedrock of the legal edifice. By adhering to these cardinal principles, the judiciary can ensure that the utilization of sealed covers redounds to the greater good of justice and public welfare, without derogating from the hallowed traditions of legal rectitude and constitutional propriety.