

## SEALED COVER JURISDICTION AND ITS IMPLICATION FOR THE JUDICIAL PROCESS IN INDIA

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### *Abstract*

*This research aims to critically examine the implications of sealed cover jurisdiction on the transparency and accountability of the judicial process in India. The focal issue revolves around how the practice impacts the fundamental rights of litigants and the integrity of judicial proceedings. By investigating these concerns, the study seeks to illuminate the balance between the right to a fair trial and national security, ultimately arguing that sealed cover mechanisms, while often justified on the grounds of protecting sensitive information, may jeopardise the very foundations of justice. The scope of this research encompasses an in-depth exploration of relevant case law, legislative frameworks, and scholarly viewpoints surrounding sealed cover jurisdiction in India. Key resources include seminal texts, judicial pronouncements, and interviews, which collectively afford a multi-faceted perspective on the issue. Constraints encountered during the research process include limited accessibility to certain judicial documents subject to sealed cover, which may hinder a fully exhaustive analysis. The findings indicate that sealed cover jurisdiction poses substantive challenges to judicial transparency, raising considerable concerns about equitable access to justice for litigants and the potential erosion of public trust in the legal system. The analysis reveals that, despite its intended purpose, the practice often undermines accountability and can obfuscate judicial reasoning. These conclusions underscore the urgent need for reform in the application of sealed cover jurisdiction, advocating for mechanisms that better protect fundamental rights without compromising the integrity of judicial processes, thereby reinforcing the overarching tenets of justice in India.*

**Keywords:** Sealed Cover, Judicial Transparency, Fair Trial, National Security, Public Interest Immunity.

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## INTRODUCTION

The judiciary serves as the cornerstone of the rule of law and democracy, safeguarding individual rights and resolving disputes impartially. In India, the concept of judicial transparency and accountability is particularly significant as it resonates with the constitutional guarantees embodied in Articles 14 (the right to equality) and 21 (the right to life and personal liberty).<sup>1</sup> However, the legal landscape is increasingly marred by practices that cast shadows over these principles, one of which is the phenomenon of sealed cover jurisdiction. Originating from the need to protect sensitive information related to national security and other critical matters, the application of sealed cover practices has sparked substantial debate regarding their implications for the judicial process. This article aims to critically examine the implications of sealed cover jurisdiction on transparency and accountability in the Indian judiciary, exploring its impact on the integrity of judicial proceedings and the fundamental rights of litigants.

Sealed cover jurisdiction in India emerged in the broader context of safeguarding sensitive information, particularly in cases involving matters of national importance. Judicial processes have often necessitated the classification of certain documents or even whole cases to preserve national security interests. The historical roots of this phenomenon can be traced back to the colonial era when laws and practices were structured to suppress dissent and manage information flows. With India's independence, the legal framework evolved, but the underlying tensions between state security and individual rights persisted. This legacy endures in current legal practices, making sealed cover jurisdiction a vital area of inquiry. Moreover, the rapid expansion of digital technology and communication in contemporary society further complicates the judicial handling of sensitive information, prompting critical questions about access to justice, due process, and the extent to which individuals can challenge state mechanisms that restrict transparency.<sup>2</sup>

The research problem embedded within this inquiry focuses on a specific yet critical question: How does the practice of sealed cover jurisdiction impact the transparency and accountability of the judicial process in India? This inquiry is rooted in the observation that, while the use of sealed covers is often justified under the guise of national security, it raises pertinent concerns

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<sup>1</sup> Mitchel de S.-O.-l'E. Lasser, 'On Judicial Transparency, Control, and Accountability', *Judicial Deliberations: A Comparative Analysis of Transparency and Legitimacy*, Oxford Studies in European Law (Oxford, 2009; online Edn, Oxford Academic, 1 Jan. 2010)

<sup>2</sup> Digvijay S. Chaudhary & Afzal Mohammad, Guest Post: "For Your Eyes Only: On the Supreme Court's Sealed Cover Jurisprudence", available at: <https://indconlawphil.wordpress.com/2019/10/04/guest-post-for-your-eyes-only-on-the-supreme-courts-sealed-cover-jurisprudence/> (last visited on: September 10, 2024).

regarding the erosion of public trust in the judicial system and the potential infringement of basic rights. Moreover, scant attention has been paid to the practical ramifications of this jurisdiction, as existing literature predominantly explores its theoretical dimensions. Consequently, there exists a notable gap in understanding the lived realities of litigants and legal practitioners within this context.

The significance of this study resonates on multiple levels, both academically and practically. Academically, this research contributes substantially to the literature on judicial processes in India, providing a critical analysis that is currently underrepresented in the discourse on sealed cover jurisdiction. Practically, the findings may provide legal practitioners, policymakers, and stakeholders with valuable insights into the consequences of sealed cover practices, thereby influencing approaches to legal reform. In an age where the legitimacy of judicial systems hinges upon their perceived transparency and accountability, this research stands to advocate for necessary reforms that protect individual rights while still addressing legitimate state concerns. This balance is crucial for maintaining public confidence in the judiciary and upholding the fundamental tenets of justice.<sup>3</sup>

## **LEGAL FRAMEWORK OF SEALED COVER JURISDICTION IN INDIA**

Sealed cover jurisdiction refers to a legal practice where courts receive and review confidential documents or evidence in sealed envelopes without disclosing the contents to the opposing parties or the public. This practice is frequently employed in cases where sensitive information related to national security, state secrets, or personal privacy is involved. In such cases, only the judges have access to the sealed material, and their decision is often influenced by the undisclosed information.<sup>4</sup>

In India, sealed cover jurisdiction has become a point of contention due to its increasing use in cases before the Supreme Court and various high courts. Although not explicitly mentioned in the Indian Constitution, the judiciary derives the authority for this practice from its powers to ensure justice under Articles 129 and 142, which give the Supreme Court the right to make decisions necessary for doing “complete justice.” Additionally, specific statutory laws like the Indian Evidence Act, 1872 (now Bharatiya Sakshya Adhiniyam, 2023) and the Official Secrets

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<sup>3</sup> S. P. Verma, *Indian Judicial System: Need and Directions of Reforms* (Kanishka Publishers Distributors, India, 2004).

<sup>4</sup> Diksha Munjal, “What is sealed cover jurisprudence and why is it being opposed?”, *available at*: <https://www.thehindu.com/news/national/explained-what-is-sealed-cover-jurisprudence-and-why-is-it-being-opposed/article65056013.ece> (last visited on: September 10, 2024).

Act, 1923, allow the government to withhold certain information by submitting it in sealed covers to the courts.<sup>5</sup>

Section 123 of the Indian Evidence Act of 1872 (now Section 129 of Bharatiya Sakshya Adhiniyam, 2023) provides that:

*“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.”*

Rule 7 of Order XIII of Supreme Court Rules, 2013, also forms a legal basis for it which provides:<sup>6</sup>

*“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 by an order specially made by the Chief Justice or by the Court.”*

Withholding a document is a significant deviation from the standard rules of evidence, justified by the principle of overriding and paramount public interest, based on the maxim “*salus populi est suprema lex*,” meaning the welfare of the people is the highest law. The term “unpublished” refers to documents not disclosed to the public except to officials handling them within the department. If someone against whom privilege is claimed has lawfully viewed the documents earlier, claiming privilege becomes ineffective.<sup>7</sup>

Confidentiality must be balanced against the public interest. In *George Mathew v. Union of India*<sup>8</sup>, the Supreme Court emphasised that privilege claims should be supported by an affidavit, and the court would then decide the nature of the document-whether it pertains to state affairs. If it does, its disclosure remains within the discretion of the head of the department.

Section 123 of the Indian Evidence Act or Section 129 of Bharatiya Sakshya Adhiniyam, 2023 does not specify who determines whether a document pertains to state affairs. However, Section

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<sup>5</sup> C. K. Takwani, *Indian Evidence Act, 1872* (Whytes & Co., 7<sup>th</sup> Ed., 2023).

<sup>6</sup> The Gazette of India, Supreme Court of Indian Notification, available at: <https://main.sci.gov.in/sites/default/files/Supreme%20Court%20Rules%2C%202013.pdf> (last visited on: September 10, 2024).

<sup>7</sup> K. A. Pandey, *V.P. Sarathi's Law of Evidence* (Eastern Book Company, 8<sup>th</sup> Ed., 2021).

<sup>8</sup> (1997) 10 SCC 537

162 of IEA, 1872 or Section 165 of BSA, 2023 mandates that a person summoned to produce a document must present it in court, regardless of objections regarding its production or admissibility.<sup>9</sup>

In *State of Punjab v. Sodhi Sukhdev*<sup>10</sup>, the Supreme Court initially took a restrictive view, holding that when privilege under Section 123 is claimed, the court cannot inspect the document before determining its privileged status. This approach was overturned in *S.P. Gupta v. Union of India*<sup>11</sup>, where the court ruled that if there is uncertainty about whether a document pertains to state affairs, the court may inspect the document to assess whether its disclosure would harm the public interest. Ultimately, the court determines the validity of the privilege claim.

Sealed cover submissions are often justified on grounds of protecting confidential or sensitive information, especially in cases involving national security, defence, and law enforcement. For example, the government may invoke this practice in matters where public disclosure could compromise the integrity of ongoing investigations, endanger lives, or reveal state secrets. This practice is also used in commercial cases involving trade secrets, sensitive financial data, or intellectual property that must be shielded from public access or from competitors.<sup>12</sup>

While sealed cover jurisdiction serves to protect sensitive material, it raises significant concerns regarding transparency, accountability, and the fundamental right to a fair trial. The principle of open justice is a foundational tenet of the Indian legal system, wherein judicial proceedings are meant to be conducted publicly to ensure accountability and uphold the rule of law. Sealed cover practices, however, limit public scrutiny, and in many cases, even the litigants themselves are kept in the dark about the evidence being used against them. This erodes the adversarial nature of the judicial process and raises concerns about fairness.<sup>13</sup>

## INSTANCES OF SEALED COVER JURISDICTION IN INDIA

In recent years, the Hon'ble Supreme Court has been presented with numerous sealed cover documents in cases such as the Rafale jets procurement, the Assam National Register of Citizens, the Ayodhya land dispute, the Gujarat Police fake encounter case, the release of the Narendra Modi biopic, the sexual harassment allegations against the then Chief Justice Ranjan

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<sup>9</sup> Batuk Lal, *The Law of Evidence* (Central Law Agency, 24<sup>th</sup> ed., 2023).

<sup>10</sup> AIR 1961 SC 493

<sup>11</sup> AIR 1982 SC 149

<sup>12</sup> Samir Nimba Chavan, "Sealed Cover Jurisprudence in India" 2(2) *Vishwakarma University Law Journal* 1-7 (2022).

<sup>13</sup> Neha Rani, "What is sealed cover jurisprudence and why is it being opposed?", available at: <https://theleaflet.in/sealed-cover-jurisprudence-is-without-a-rationale/> (last visited on: September 11, 2024).

Gogoi, the electoral bonds matter, the Bhima Koregaon incident, the anticipatory bail plea of former Union Finance Minister P. Chidambaram, and the Board of Control for Cricket in India (BCCI) case.<sup>14</sup> Some of the notable instances are discussed below:

### **RAFALE DEAL CASE<sup>15</sup>**

One of the most high-profile cases involving sealed cover submissions was the Rafale fighter jet procurement case, where the Indian government was accused of irregularities in the multi-billion-dollar deal to purchase Rafale jets from France. To defend the deal and justify the pricing and decision-making process, the government submitted information in a sealed cover to the Supreme Court. This included details related to pricing and the procurement process, which were not disclosed to the petitioners or the public, citing national security concerns. The court reviewed the information and ruled in favour of the government, but the use of sealed cover raised serious questions about transparency and accountability in such a significant matter of public interest.<sup>16</sup>

### **BHIMA KOREGAON CASE<sup>17</sup>**

In the Bhima Koregaon violence case, sealed cover submissions were made by the National Investigation Agency (NIA) and the Maharashtra state government, which contained evidence used to arrest activists and intellectuals under the Unlawful Activities (Prevention) Act (UAPA). This evidence was not made available to the accused, raising concerns about whether the arrested individuals were able to mount a proper defence. The use of sealed cover, in this case, led to significant criticism from legal experts and human rights activists, who argued that it violated the principles of natural justice and the right to a fair trial.<sup>18</sup>

### **NATIONAL REGISTER OF CITIZENS (NRC) IN ASSAM**

In the case of the National Register of Citizens (NRC) in Assam, the Supreme Court relied on sealed cover submissions provided by the NRC authorities and the Indian government. These

<sup>14</sup> Arvind Narrain, *India's Undeclared Emergency: Constitutionalism and the Politics of Resistance* (Westland Publications Private Limited, 2021).

<sup>15</sup> *Manohar Lal Sharma v. Narendra Damodardas Modi*, (2019) 3 SCC 25

<sup>16</sup> *Ibid.*

<sup>17</sup> Malavika Parthasarathy, "SCO Shorts: Sealed Cover Jurisprudence" available at: <https://www.scobserver.in/journal/sco-shorts-what-is-sealed-cover-jurisprudence/> (last visited on: September 11, 2024).

<sup>18</sup> Bhima Koregaon Arrests Under UAPA, *Romila Thapar v. Union of India*, available at: <https://www.scobserver.in/cases/romila-thapar-v-union-of-india-arrested-activists-background/> (last visited on: September 12, 2024).

sealed submissions contained details about the verification process and claims regarding citizenship. The use of sealed cover in this case raised concerns about the lack of transparency in a matter that affected millions of individuals, many of whom were left stateless as a result of the NRC process.<sup>19</sup>

### **CVC REPORT ON ALOK VERMA**

The Central Vigilance Commission (CVC) submitted a report in a sealed cover to the Supreme Court regarding allegations of corruption against Alok Verma, the then Director of the Central Bureau of Investigation (CBI). Verma was temporarily removed from his position due to these allegations. The court's reliance on sealed cover submissions in this case was criticised for undermining the public's right to know the reasons for the removal of the head of a critical investigation agency.<sup>20</sup>

### **AYODHYA LAND DISPUTE CASE**

In the landmark Ayodhya Ram Janmabhoomi-Babri Masjid dispute case, the Supreme Court accepted sealed cover submissions regarding the status of the negotiations between the contending parties, the nature of the land ownership, and certain confidential documents related to the dispute. Although the court attempted to mediate and review the sensitive material in private, critics argued that the use of sealed covers diminished the transparency of the proceedings in a case that had immense national and historical significance.<sup>21</sup>

### **CENTRAL VISTA PROJECT**

In the case involving the controversial Central Vista Project, which involved the redevelopment of the government buildings and parliament complex in Delhi, sealed cover submissions were made by the government to justify the project. These submissions were not disclosed to the petitioners, who had challenged the project on environmental and procedural grounds. This led

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<sup>19</sup> Malavika Parthasarathy, "Sealed Covers: Safeguarding Secrets or Eroding Transparency?" *available at*: <https://www.scobserver.in/journal/sealed-covers-safeguarding-secrets-or-eroding-transparency/> (last visited on: September 12, 2024).

<sup>20</sup> Sushant Singh, "CVC's Alok Verma verdict: Clean chit in some, call for probe in other cases", *available at*: <https://indianexpress.com/article/india/cvcs-alok-verma-verdict-clean-chit-in-some-call-for-probe-in-other-cases-5535896/> (last visited on: September 12, 2024).

<sup>21</sup> *Mohammad Siddiq v. Mahant Suresh Das*, 2019 SCC OnLine SC 1482



to further criticism regarding the government's lack of transparency in a major public infrastructure project.<sup>22</sup>

### PEGASUS SPYWARE CASE<sup>23</sup>

The Pegasus spyware case involved allegations that the Indian government used the Israeli software Pegasus to conduct illegal surveillance on journalists, activists, and politicians. When the matter reached the Supreme Court, the government refused to provide full details of whether or not the spyware was used, citing national security concerns. Instead, the government offered to submit the information in a sealed cover. The court, however, refused the offer, stating that the public has the right to know about potential breaches of privacy and violations of law. The refusal of the court to accept a sealed cover submission in this case marked a departure from the usual practice.

### RECENT POSITION OF JUDICIARY ON THE SEALED COVER JURISPRUDENCE

In the recent case of *Indian Ex-Servicemen Movement v. Union of India*<sup>24</sup> (One Rank One Pension Scheme case), the Supreme Court declined to accept a sealed cover document. The Court remarked orally, *"I am personally averse to sealed covers. There has to be transparency in what happens in court"* and further stated, *"There cannot be secrecy in the court. The court has to be transparent. Secrecy is understandable in a case diary; the accused is not entitled to it, or it affects the source of information or somebody's life. But this is the payment of pension in pursuance of directions in our judgment. What can be great secrecy in this?"* Similarly, the Supreme Court refused to accept the government's sealed cover document in the Adani-Hindenburg case.<sup>25</sup>

The Supreme Court has also criticised various High Courts for accepting sealed cover documents without establishing a solid basis for confidentiality. For instance, in the S. N.

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<sup>22</sup> Prachi Bhardwaj, "Here's why the Supreme Court gave a go-ahead to Central Vista Project in a 2:1 verdict [Read majority opinion]", available at: <https://www.scconline.com/blog/post/2021/01/05/heres-why-the-supreme-court-gave-a-go-ahead-to-central-vista-project-in-a-21-verdict-read-majority-opinion/> (Visited on September 13, 2024).

<sup>23</sup> Jagran Josh, "What is the Pegasus case in India? Know about the pegasus project, revelations, and the History", available at: <https://www.jagranjosh.com/general-knowledge/explained-what-is-the-pegasus-case-in-india-know-about-the-pegasus-project-revelations-and-the-history-1661446834-1> (last visited on: September 13, 2024).

<sup>24</sup> 2023 LiveLaw (SC) 264

<sup>25</sup> Padmakshi Sharma, "Supreme Court's Changing Attitude Towards 'Sealed Cover' Procedure", available at: [https://www.livelaw.in/top-stories/supreme-courts-changing-attitude-towards-sealed-cover-procedure-224310\\_](https://www.livelaw.in/top-stories/supreme-courts-changing-attitude-towards-sealed-cover-procedure-224310_) (last visited on: September 13, 2024).



Velumani case, the Supreme Court criticised the Madras High Court for accepting a sealed document when the state had not even claimed any specific privilege.

While there are arguments in favour of sealed cover jurisprudence under certain conditions, the Supreme Court has introduced a new standard for assessing the confidentiality of such documents. In its judgment on the Pegasus case, the Court emphasised that the government must not only submit documents in sealed cover but also demonstrate and substantiate why the information must remain confidential, particularly if disclosing it could compromise national security. Therefore, merely submitting a sealed cover document is insufficient; the government is now required to establish the grounds for its confidentiality.<sup>26</sup>

In *Cdr Amit Kumar Sharma v. Union of India*<sup>27</sup>, the Supreme Court has noted that the use of sealed cover procedures sets a “dangerous precedent” by making the adjudication process unclear and opaque. In a judgment delivered on October 20, 2022, by Justices DY Chandrachud and Hima Kohli, the Court highlighted that this approach undermines the justice delivery system and results in a serious breach of natural justice. The Court emphasised that the nondisclosure of sensitive information in rare circumstances must be proportionate to the objective it seeks to achieve, and such exceptions should not become routine practice.

This observation was made while allowing appeals against an Armed Forces Tribunal (AFT) decision that had dismissed applications challenging the denial of Permanent Commission (PC) in the Indian Navy, finding no gender bias or malice in the PC grant. The central issue in the appeal was whether the AFT had acted properly in ruling on the validity of the selection process when crucial documents (the board proceedings) were only shared with the AFT in a sealed cover.

The appellants argued that the sealed cover procedure adopted by the AFT had caused significant prejudice, while the respondents maintained that it was standard practice to present board proceedings to the AFT in a sealed cover. Referring to earlier judgments, the Court made several important points regarding sealed cover procedures:<sup>28</sup>

<sup>26</sup> Akhil Kumarks, “Sealed Cover Jurisprudence: It’s Implication For The Judicial Process In India”, *available at*: <https://www.legalserviceindia.com/legal/article-15010-sealed-cover-jurisprudence-it-s-implication-for-the-judicial-process-in-india.html> (last visited on: September 13, 2024).

<sup>27</sup> 2022 LiveLaw (SC) 951

<sup>28</sup> Ashok K. M. “Sealed Cover Procedure Sets a Dangerous Precedent: Affects Function Of Justice Delivery System: Supreme Court”, *available at*: <https://www.livelaw.in/top-stories/supreme-court-sealed-cover-procedure-dangerous->

1. *Serious Violation of Natural Justice*: The Court reaffirmed the basic legal principle that any material relied upon in a judicial proceeding must be shared with both parties. Even if the material is not central to the final decision, information relevant to the dispute that could reasonably influence the outcome must be disclosed. The unilateral submission of such material to the adjudicating authority, without the other party's knowledge, severely compromises natural justice. In this case, it caused significant harm to the careers of the officers involved.
2. *Vague and Opaque Adjudication Process*: The Court warned that providing relevant materials to the adjudicating authority in a sealed cover, without disclosing them to the affected party, creates an unclear and opaque decision-making process. This sets a dangerous precedent for future cases.
3. *Problems with the Sealed Cover Procedure*: The Court outlined two major issues with the sealed cover practice. First, it deprives the aggrieved party of the opportunity to effectively challenge the decision since key materials influencing the judgment remain undisclosed. Second, it fosters a culture of secrecy, granting unchecked power to the adjudicating authority. This often skews the balance of power in favour of the dominant party, typically the state, which controls the information. A judicial decision accompanied by reasoning is essential to uphold the rule of law, but the sealed cover practice shields the decision-making process from scrutiny.
4. *Exceptions Must Remain Exceptional*: The Court clarified that not all information must be disclosed publicly. For example, sensitive data, such as the identity of a victim in a sexual harassment case, should remain confidential. However, the restriction of information must be proportional to the purpose it serves, and exceptions should not be routinely applied.

In this case, the Court concluded that withholding relevant material had significantly harmed the appellants, illustrating the risks of relying on a sealed cover procedure. Consequently, the Court instructed the AFT to reconsider the matter in its entirety.

In the case of *Madhyamam Broadcasting Limited v. Union of India*<sup>29</sup>, the Supreme Court ruled that the sealed cover procedure violates the principles of natural justice and transparency, as it allowed the Malayalam news channel MediaOne's appeal against a telecast ban imposed by the Central

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precedent-cdr-amit-kumar-sharma-vs-union-of-india-2022-livelaw-sc-951-213944 (last visited on: September 14, 2024).

<sup>29</sup> 2023 SCC OnLine SC 366

government. The channel had been unaware of the reasons for the denial of security clearance, as these reasons were presented to the High Court by the Ministry of Home Affairs in a sealed cover. The Supreme Court criticized the High Court's reliance on this procedure, stating it rendered the channel's ability to seek redress ineffective.

A bench comprising Chief Justice DY Chandrachud and Justice Hima Kohli ruled that the State cannot avoid its obligation to act fairly by merely invoking national security. The Court held that it is the judiciary's role to scrutinize whether the claim for non-disclosure has a valid and proportionate connection to national security concerns. The Court further explained that when the sealed cover procedure is used, two harms occur: the affected party is deprived of access to the documents, while the opposite party, often the State, uses these documents during arguments, leading to judicial findings based on undisclosed material. Such practices promote "a culture of secrecy and opaqueness" and prevent meaningful challenges to judgments, placing them beyond scrutiny.<sup>30</sup>

## **PUBLIC INTEREST IMMUNITY CLAIM**

Even in cases where withholding information for national security reasons is justified, the Court emphasized the need to adopt less restrictive alternatives. The judgment introduced a "public interest immunity claim procedure" as a more transparent approach. The Court suggested that if public interest immunity claims or other less intrusive means could achieve the same purpose, the sealed cover procedure should be avoided. The judgment cited examples from foreign jurisdictions, such as the "Totten claim" in the U.S., where cases involving state secrets are barred from adjudication, and the "closed material procedure" in the UK, used in terrorism cases. The "public interest immunity claims" allow the State to remove sensitive materials from a case if disclosing them would harm public interest, making the document inadmissible in court. The key difference between a closed material procedure and a public interest immunity claim is that, under the latter, the document is removed from evidence, while in the former, it is used but not disclosed to the other party.<sup>31</sup>

<sup>30</sup> Manu Sebastian, "Sealed Cover Procedure Infringes Open Justice: Supreme Court Devises Public Interest Immunity Claim Procedure as Alternative", *available at*: <https://www.livelaw.in/top-stories/supreme-court-sealed-cover-procedure-public-interest-immunity-procedure-225548> (last visited on: September 14, 2024).

<sup>31</sup> Parliament of Australia, "Public Interest Immunity", *available at*: [https://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/Practice\\_7/HTML/Chapter17/Public\\_interest\\_immunity](https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice_7/HTML/Chapter17/Public_interest_immunity) (last visited on: September 14, 2024).

*“The courts could adopt the course of action of redacting the confidential portions of the document and providing a summary of the contents of the document instead of opting for the sealed cover procedure to fairly exclude the document from the proceedings on a successful public interest immunity claim. Both the parties can then only be permitted to refer to the redacted version of the document or the summary in the proceeding”, the judgment opined.*

## SAFEGUARDS AND PROCEDURES

The Court introduced additional safeguards for the public interest immunity claim procedure:

1. Courts may appoint an amicus curia to assess the State’s claim of immunity from disclosure.
2. The amicus curiae will have access to the withheld materials.
3. The amicus curiae will consult with the applicant and their counsel before proceedings to help make informed submissions regarding the need for disclosure. However, the amicus curiae cannot interact with the applicant after accessing the confidential material.
4. The amicus curiae will represent the applicant’s interests and is bound by an oath not to disclose the material.
5. The public interest immunity proceedings will take place in a closed setting.
6. The Court must issue a reasoned order regarding the immunity claim in open court, explaining the principles applied, even if sensitive material is redacted.
7. Redacted material will be preserved in the court’s records and can be accessed by future courts if necessary.<sup>32</sup>

The Court also warned that national security claims cannot be made without sufficient supporting facts. It emphasized that if less restrictive measures are available, sealed cover procedures should not be used. Courts must ensure that the dilution of procedural safeguards is carefully weighed against the public interest. In this case, the Court found no valid reason for withholding the reasons for the ban from the channel.

## COMPARISON WITH INTERNATIONAL PRACTICES AND STANDARDS

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<sup>32</sup> Prachi Bhardwaj, “Sealed Covers violate natural and open justice: The Why-What-How of ‘Public Interest Immunity proceedings’, the ‘fairer’ alternative suggested by Supreme Court”, *available at*: <https://www.sconline.com/blog/post/2023/04/06/sealed-cover-public-interest-immunity-natural-justice-non-disclosure-of-material-fairer-alternative-open-justice-supreme-court-cji-chandrachud-hima-kohli-legal-updates-national-security-research-news/> (last visited on: September 14, 2024).

In examining sealed cover jurisdiction and its implications for the judicial process in India, it is crucial to draw comparisons with international practices and standards, particularly in jurisdictions that grapple with similar tensions between national security and judicial transparency. One notable instance is found in the United States, where classified information is often shielded from public disclosure through mechanisms like the state secrets privilege. This doctrine, established in the mid-20th century, allows the executive branch to prevent the disclosure of information that may compromise national security in the context of litigation. While this privilege aims to balance governmental interests with judicial proceedings, it has also generated considerable criticism for potentially undermining judicial accountability and the right to a fair trial. Critics argue that its application can lead to unjust outcomes, particularly for litigants deprived of their ability to fully understand or contest the evidence against them, bearing parallels to the sealed cover practices observed in India.<sup>33</sup>

Similarly, the European Court of Human Rights (ECHR) addresses the delicate balancing act between state secrets and fair trial rights, as seen in cases involving intelligence services and terrorism-related prosecutions. Under Article 6 of the European Convention on Human Rights, the court emphasises the necessity of ensuring that the accused have access to information vital for their defence, reflecting a commitment to safeguarding individual rights against the backdrop of national security threats.

Moreover, the United Kingdom has faced similar dilemmas, particularly in the realm of public interest immunity, where the government can refuse to disclose documents deemed detrimental to national security or sensitive state interests. This practice, while intended to protect state secrets and preserve the integrity of national security, also invites concerns regarding the predictability and consistency of judicial outcomes. The interaction between security interests and judicial processes raises significant questions about how justice is rendered under such conditions; ultimately, the implications of public interest immunity might create a similar atmosphere of uncertainty and concern as those prevailing in sealed cover jurisdictions. This impasse prompts a critical examination of how these international standards echo within the Indian context, where sealed cover jurisdiction is increasingly deployed, perhaps with less judicial oversight than seen in some western democracies.<sup>34</sup>

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<sup>33</sup> Ishika Kedwal, "Whether the Doctrine of Sealed Cover Jurisprudence followed in India as an Antithesis of the Principle of Natural Justice?", *available at*: <http://dx.doi.org/10.2139/ssrn.4818490>

<sup>34</sup> Public Interest Immunity, *available at*: <https://www.lexisnexis.co.uk/legal/guidance/public-interest-immunity> (last visited on: September 14, 2024).

Although the Indian judiciary has incorporated procedural safeguards to counter potential abuses, such as requiring judicial approval for the application of sealed covers, the opacity surrounding their usage can lead to situations where litigants find themselves at a distinct disadvantage, mirroring challenges faced in other democratic contexts. The authoritative character of judicial rulings that arise from processes shrouded in secrecy may erode public trust in the legal system, ultimately jeopardising the legitimacy of judicial authority itself.<sup>35</sup>

Furthermore, the burgeoning discourse around international human rights norms increasingly questions the effectiveness of sealed cover practices, as they may contravene principles of transparency and accountability intrinsic to the right to a fair trial. As legal frameworks evolve globally, various human rights instruments call for restrictions on rights to be minimal and only justified where absolutely necessary. For instance, the adoption of the principles outlined in the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR advocates that any restrictions on rights must, notably, be subject to strict tests of necessity and proportionality.<sup>36</sup>

In this regard, the Indian judiciary must grapple with not only domestic imperatives but also the expectations set forth by these international frameworks. As such, this comparison reveals a significant global dialogue surrounding the necessity of transparency and the legitimacy of sealing documents in judicial processes, and how such issues resonate across borders. The potential for significant abuses and miscarriages of justice necessitates a re-evaluation of how sealed cover practices are administered in India, particularly in light of the overarching principles of justice upheld by various international legal frameworks; this renders the discussion not just a theoretical exercise but a practical imperative for enhancing the judicial landscape.<sup>37</sup>

Additionally, emerging socio-legal studies indicate that the trend toward sealed cover jurisdiction can reflect broader patterns of governance and its relationship with civil society. For instance, Juliet Lodge's exploration of bioethics and security practices raises pertinent questions about the

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<sup>35</sup> Gautam Bhatia, "A petty autocracy: The Supreme Court's evolving jurisprudence of the sealed cover" *available at*: <https://indconlawphil.wordpress.com/2018/11/17/a-petty-autocracy-the-supreme-courts-evolving-jurisprudence-of-the-sealed-cover/> (last visited on: September 15, 2024).

<sup>36</sup> Peter Kovacs, "Developments and Limits in International Jurisprudence", 31(3) *Denv. J. Int'l L. & Pol'y* 461 (2003) *available at*: <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1363&context=djilp> (last visited on: September 15, 2024).

<sup>37</sup> Diksha Singh & Prateek Sharma, "The Practice of Sealed Cover An Interplay of Judicial Discretion and the Rights of the Accused" 3(2) *Int'l J. Law M & H* 461 (2020), *available at*: <https://www.ijlmh.com/wp-content/uploads/2020/05/The-Practice-of-Sealed-Cover-An-interplay-of-judicial-discretion-and-the-rights-of-the-accused..pdf> (last visited on: September 16, 2024).

privatisation of security mechanisms and how these intersect with democratic principles, particularly regarding accountability and oversight. As states navigate the complexities of information management amidst globalised security threats, it becomes essential to revisit how sealed cover protocols align—or clash—with established norms of judicial accountability and public oversight. These dynamics highlight the necessity of scrutinising state actions in the context of civil liberties and the public’s right to know.

Ultimately, the convergence of these international practices provides a rich backdrop against which India’s sealed cover jurisdiction can be critically evaluated, highlighting the potential need for reform that not only embraces the security concerns at hand but also fortifies the foundational principles of an open and fair judicial system. In recognising the significant implications of international standards on domestic practices, it becomes increasingly clear that aligning Indian practices with these global benchmarks can bolster the judiciary’s credibility while reinforcing the very tenets of justice that underpin democratic governance. Such alignment not only enhances legal protections and transparency but also affirms India’s commitment to upholding the rule of law in a manner that is consistently equitable and just across all strata of society.<sup>38</sup>

## CONCLUSION

The use of sealed cover proceedings in the Indian judicial system has been a subject of controversy for over a decade. Many judges and legal scholars have criticized the practice for its lack of transparency and rigidity. While sealed cover jurisprudence is often justified on the grounds of protecting the confidentiality of government documents, critics argue that its frequent use is problematic, particularly when it is invoked in cases involving the government. Prominent figures such as Chief Justice D.Y. Chandrachud and former Chief Justice N.V. Ramana have expressed concerns, warning that if the practice is overused, it could become a tool for the government to unfairly gain an advantage in legal proceedings.<sup>39</sup>

Chief Justice Chandrachud, for example, has pointed out that sealed cover proceedings lack transparency and undermine the fairness of the judicial process. When one party is not allowed

<sup>38</sup> Shreya Atrey & Gautam Bhatia, “New Beginnings: Indian Rights Jurisprudence After Puttaswamy”, *available at*: <https://ohrh.law.ox.ac.uk/wp-content/uploads/2021/04/U-of-OxHRH-J-New-Beginnings-2-1.pdf> (last visited on: September 16, 2024).

<sup>39</sup> Komal Ahuja, “Sealed Cover Jurisdiction and its Implications for the Judicial Process in India”, *available at*: <https://bhattachandjoshiassociates.com/sealed-cover-jurisdiction-and-its-implications-for-the-judicial-process-in-india/> (last visited on: September 16, 2024).



to access the evidence presented against them, it becomes impossible for them to defend themselves adequately, thereby violating the principles of natural justice. This stands in direct opposition to the open court system, where both parties are fully aware of the arguments and evidence presented. Withholding critical information from the opposing party significantly hampers their ability to mount a defence, while simultaneously giving the government, which often provides these sealed documents, an undue advantage.<sup>40</sup>

To ensure fairness, both parties should be treated equally before the court. No side should receive special treatment, except in cases where national security, foreign policy, or defence interests are at stake. In the Pegasus spyware case, the court required the government to demonstrate why the information submitted in a sealed cover should remain confidential, marking an effort to limit the practice's unchecked use. This approach aims to curb the over-reliance on sealed cover submissions, ensuring that they are only employed when absolutely necessary.

The Supreme Court has also suggested the use of Public Interest Immunity proceedings as a more flexible and less restrictive alternative to sealed cover proceedings. However, it has acknowledged that Public Interest Immunity is not a complete substitute. The sealed cover process remains an important tool in certain cases, particularly when dealing with sensitive information. The core issue lies in the frequent and sometimes unnecessary invocation of this method, which can be misused to gain an unfair advantage rather than for its intended purpose of safeguarding legitimate confidential material.

In conclusion, while sealed cover proceedings serve a purpose in protecting sensitive information, their misuse risks compromising the fairness of the judicial process. It is crucial to limit their application to cases where confidentiality is truly warranted, rather than allowing them to be a default tool that tilts the scales of justice in favour of one party.

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<sup>40</sup> Gautam Bhatia, "Proportionality, Sealed Covers and the Supreme Court's Media One Judgment", *available at*: <https://thewire.in/law/supreme-court-media-one-sealed-cover-analysis> (last visited on: September 16, 2024).