

CHARGE SHEET SCRUTINY IS NOT A CASE OF PRYING EYES

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February 04, 2023 12:08 am | Updated 01:49 am IST

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The Supreme Court of India building | Photo Credit: AFP

The highest court of India reached the almost last frontier of transparency in its [agreeing to the live telecast of some of its hearings](#) — a move warmly welcomed by activists clamouring for more openness in judicial proceedings. The Chief Justice of India's statement, that [Supreme Court of India judgments will now be translated](#) in four languages (Hindi, Gujarati, Odia and Tamil, as "the English language in its 'legal avatar' is not comprehensible to 99.9% of the citizens") is another step towards making judicial processes more accessible.

Against this backdrop, a [Supreme Court pronouncement on charge sheets](#) appears to be retrograde. Here, the Court ruled that a charge sheet filed against an accused in a criminal case is not a 'public document' within the meaning of the Right to Information Act 2005 or the Indian Evidence Act — therefore, the demand that a charge sheet in a criminal case should be uploaded on to a public website as soon as it is filed in court was untenable. The order was passed while disposing of a petition filed by a public interest litigant activist and journalist.

It is a step that may be viewed as a setback for those pushing for greater transparency in the criminal justice administration as this has several implications as far as investigating officials and victims of crime are concerned.

On the face of it, the judgment seems to contradict an order passed by the Court where, in [Youth Bar Association of India vs Union of India](#) (2016), it directed that the First Information Report (FIR) in any case should be on the relevant investigating agency's website within 24 hours of its registration. This was for public perusal and appropriate action. But in the Court's view now, the charge sheet (i.e., the Final Report specified by the Code of Criminal Procedure 1973) is on a footing different from the FIR, and hence cannot be shared with anyone other than the accused and the victim. This was presumably because a charge sheet was a comprehensive account of the crime in question and had vital information such as a list of prosecution witnesses and documents in support of the investigating officer's conclusions.

Though such material would become public knowledge during the trial, in the top court's view, any action to part with details contained in these documents even before a trial begins would be detrimental to the accused and the victim. The Court has observed that open publicity to what is

contained in the final report is not within the scheme contemplated by the Code of Criminal Procedure.

We are now a long way from the early days of the Constitution, when confidentiality was the mantra in every aspect of judicial activity. Courts then were a sacrosanct institution, where none of their actions was open to criticism or any kind of scrutiny. The slightest criticism of judicial decisions stood a fair chance of inviting contempt and punishment. We now have a situation where judges are often criticised in the media for their judicial decisions that are unconventional and not in line with popular expectations. We have even seen a judge's personal life being subjected to public debate. It is against this backdrop that the Supreme Court's decision to keep charge sheets away from public knowledge could be disapproved by those who are constantly pushing to expand the frontiers of judicial reticence.

In my view, sharing a charge sheet with the public on demand is very much in order. While it need not necessarily be posted on the website of the court concerned, public interest dictates a positive response to a request to peruse its contents. It is true that vested interests in league with the accused might engage in finding loopholes in the charge sheet with a view to undermining the prosecution case. But this is no reason to prevent members of the public from wanting to have a look at the charge sheet before commencement of the trial and be denied an opportunity to evaluate the quality of an investigation. Instead, the prospect of critical analysis by a rank outsider has the potential to enhance the soundness of an investigation and prevent tendentious prosecution against innocent individuals not based on facts. We now know how some investigations are malicious and prejudiced due to extraneous considerations. A trial court will actually benefit from outsider scrutiny of the prosecution case if a charge sheet is made available to the lay public.

The Supreme Court's order is a wake-up call to all investigating agencies, including the Central Bureau of Investigation, which have often been assailed by courts for delays in filing a charge sheet or for the poor quality of investigation. Court scrutiny is a good feature in India's criminal justice system that reasonably ensures that false prosecution of an innocent individual is only an aberration and not a rule. A chance for well-meaning members of the public to study a charge sheet, at least in important cases before a trial begins, will only ensure that prospects of loosely framed charge sheets will be fewer in number.

R.K. Raghavan, who is former Director of the Central Bureau of Investigation, teaches criminal justice and policing at the Jindal Global University, Sonapat, Haryana

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