

## SC AVERSE TO 'SEALED COVER JURISPRUDENCE'

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Two separate Benches of the Supreme Court on Tuesday tore into the “sealed cover jurisprudence” practised by the government in courts.

The court was critical about how the government and its agencies file reports in sealed envelopes directly in court without sharing the contents with the opposite party. This is usually done on the ground that the contents are highly sensitive in nature, and may injure even national security or “public order”. Another reason given by state agencies, mostly in money laundering cases, is that the disclosure would affect ongoing investigation.

Being kept in the dark about the material contained in a sealed cover report, the petitioners are crippled in mounting a defence, not knowing what they are supposed to defend against. At times, their cases, mostly involving fundamental rights such as personal liberty, are dismissed on the basis of the secret contents ensconced in the sealed covers.

“Please do not give sealed cover reports in this court. We will not accept it,” Chief Justice of India (CJI) N.V. Ramana admonished a counsel in a criminal appeal filed by a man against the Bihar government.

The CJI’s remarks were recounted by senior advocate Dushyant Dave to a Bench led by Justice D.Y. Chandrachud later in the day as soon as the hearing began on the government ban of Media One channel.

“I am very averse to what is called the ‘sealed cover jurisprudence’,” Justice Chandrachud reacted.

The Centre, in the Media One case, had come with its files to hand over to the court in a sealed cover. The court asked why the government could not disclose the files to the channel. It kept the issue open for examination.

Justice Chandrachud said the court would like to examine the larger issue of ‘sealed cover jurisprudence’, especially in the background of bans on media houses such as Media One, and asked senior lawyers like Rakesh Dwivedi and Additional-Solicitor Generals S.V. Raju and K.M. Nataraj to assist it in the endeavour.

### **‘Small exception’**

Justice Chandrachud said there were only a “small exception” of cases in which the court, for the benefit of the parties, do not want them to see the government files.

“Like in a case of child sexual abuse,” Justice Chandrachud pointed out. He narrated how, some time ago, Attorney-General K.K. Venugopal dealt with sensitive government records concerning cross-border national security in a case before the Supreme Court.

Instead of putting them in a sealed cover, Mr. Venugopal had sent his junior with the records to the office of the opposite counsel, for him to go through them so that the latter could better assist the court. “The Attorney made it clear that he did not like the files to be made available in the public realm, but he said there is nothing secret from the petitioner’s counsel, who could see the

records for himself and assist the court,” Justice Chandrachud narrated.

Senior advocate Huzefa Ahmadi referred to the top court’s judgment in the *Anuradha Bhasin* case that dealt with security measures in Jammu and Kashmir following the revocation of its special status under Article 370.

“The court said that any portion perceived sensitive could be redacted but the substance of what is against you, be it a question of national security or not, should be disclosed to the opposite party so that they can get an opportunity to defend,” Mr. Ahmadi submitted.

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