

‘REDACT SENSITIVE PORTION’: SC GIVES A WAY OUT OF SEALED COVER AFFIDAVITS

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

The Supreme Court has suggested a way out of routinely filing documents in sealed covers, especially in cases touching on national security. The court said the government could redact the sensitive portions and show the rest to the petitioners. This would address both the state's concerns about "national security" and the "right to know" of petitioners.

In cases where the government insists on keeping materials confidential from petitioners in public interest, it ought to claim "specific privilege" in an affidavit and impress upon the court that the contents should remain confidential. The suggestion came from a Bench of Justices D.Y. Chandrachud and Hima Kohli, which said the government has to present "extenuating circumstances" before confidentially passing materials to the court without disclosing them to the petitioners.

The observations came during a hearing on the challenge to the telecast ban on the Kerala-based Media One TV channel. The government wanted to pass on its internal files in a sealed cover. It did not want to share the contents with the media company whose security clearance was revoked in January on the grounds of "national security and public order" without specifying any further details.

The media company argued that passing on materials in a sealed cover to the court would compel the judges to accept the state's version, that too, in cases in which the government's narrative is under challenge and the fundamental rights of the petitioners are at stake.

"What is so great that you cannot share even the redacted files with them? You have to impress upon us what would be in the files, the disclosure of which to the other party would affect national security," Justice Chandrachud orally addressed and reserved the case for judgment on November 3.

The question heralds a turn in the tide in a court which has in the past entertained sealed covers even while efforts were on to embrace the concept of 'open court' through live-streaming proceedings.

However, a counter-thought against the routine passing on of sealed covers in violation of natural justice has persisted in the Supreme Court as is evident through a small clutch of judgments. These verdicts highlight the right to information as an important facet of the right to freedom of speech and expression. They said that a democracy sworn to transparency and accountability should necessarily respect the right of an individual to know. The State cannot "take away these rights in an implied fashion or in casual and cavalier manner".

The most recent one was in the *S.P. Velumani* case verdict of May 2022 in which the Supreme Court criticised the Madras High Court's decision to permit a report to remain "shrouded in sealed cover" when the State had not even claimed any specific privilege.

In *Anuradha Bhasin*, the court said sensitive portions in government records "can be redacted or such material can be claimed as privileged, if the state justifies such redaction on the grounds, as allowed under the law".

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