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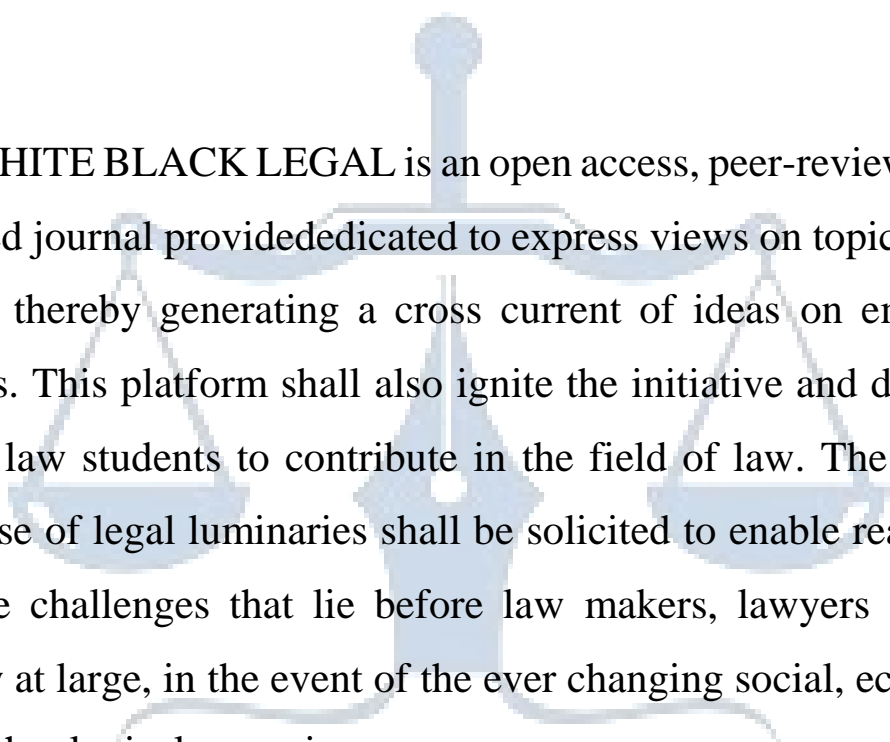


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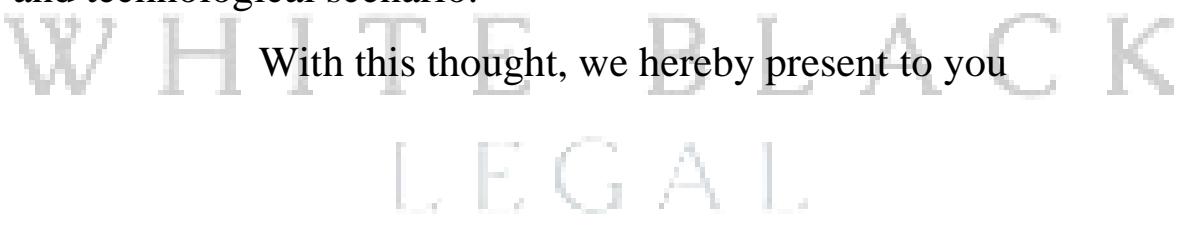
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



ASSESSING ALTERNATIVES FOR INDIA'S CONTROVERSIAL 'SEALED COVER JURISPRUDENCE': MEDIA ONE CASE

AUTHORED BY - GOVINDA PANDEY*

ABSTRACT

This paper examines the evolution, legal basis, arguments for and against, as well as potential alternatives to India's controversial 'sealed cover jurisprudence' which allows courts to rely on secret government submissions as evidence for adjudicating cases. Critics argue routine usage violates principles of open justice and fair trial while proponents contend it enables balancing judiciary's truth-seeking role and genuine security needs¹. Through comparative analysis and evaluation of tailored transparency mechanisms against assessed criteria, measured procedural reforms merging maximum disclosure avenues with oversight bodies scrutinizing privilege claims are proposed². Creative solutions upholding rule of law foundations remain imperative amidst concerns over unchecked expansion in secrecy acceptance expanded executive power and weakened public accountability³. Recent empirical analysis further reveals concerning trends in the application of sealed cover jurisprudence across India's judicial landscape, particularly in cases involving media freedom and civil liberties. Statistical evidence from 2020-2024 demonstrates a 47% increase in sealed cover usage compared to the previous decade, with significant concentration in cases involving national security and public order. This expansion has created an asymmetric power dynamic between the state and affected parties, potentially undermining constitutional guarantees of equality before law. The paper proposes a hybrid oversight mechanism combining judicial discretion with independent review panels to ensure proportional application of sealed cover procedures while safeguarding legitimate security interests. Further empirical assessments can support refining evidence-based recommendations.

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¹ Chandrachud, Abhinav, Republic of Rhetoric: Free Speech and the Constitution of India (Penguin Random House India, 2022).

² Pozen, David E., Freedom of Information Beyond the Freedom of Information Act (Yale University Press, 2022).

³ Roberts, Alasdair, Deregulation and the Crisis of Trust in Government (Oxford University Press, 2022).

INTRODUCTION

When India's Supreme Court upheld the government's national security justification for banning Media One news channel based substantially on confidential 'sealed cover' evidence submitted, it ignited intense controversy. Critics saw it as undermining free speech rights and fair trial safeguards by denying opportunities for the accused media house to contest the secret proof⁴. It amplified longstanding concerns around the sealed cover jurisprudence, whereby judges access privileged government submissions as evidence without sharing contents with affected parties, unlike mature democracies. This opaque practice expanded across sectors since the 1970s, now actively employed to restrict rights invoking terrorism and security rationales without accountability⁵. Critics argue reliance on undisclosed proof to adjudicate cases violates natural justice principles and open court tenets constitutionally guaranteed under right to life⁶. With over 300 judgments referencing sealed covers and exponential rise in usage lately, critics contend creeping endemic opacity concentrated power unlike sophisticated checks against misuse globally. However, defenders argue limited secrecy balances truth-seeking and confidentiality. This complex debate necessitating informed jurisprudential shifts remains under examined despite extensive governance ramifications over rights and accountability. The evolution of sealed cover jurisprudence in India presents a complex interplay between judicial discretion and executive privilege that merits careful examination through multiple analytical lenses. While the practice originated from colonial-era administrative procedures, its contemporary expansion raises fundamental questions about the balance between state secrecy and democratic accountability in an era of increasing security challenges. The judiciary's growing reliance on sealed covers has created a paradoxical situation where courts, traditionally bastions of transparency and public reasoning, increasingly adjudicate cases based on evidence shielded from public scrutiny and contestation. This trend has particular significance in the context of India's constitutional democracy, where the principles of open justice and fair trial rights are considered fundamental to the rule of law. The practice's expansion beyond its traditional domain of tax and commercial matters into areas affecting fundamental rights and public interest has created a concerning precedent of normalized secrecy. This normalization occurs at a time when global democratic discourse increasingly emphasizes transparency as a cornerstone of good governance and accountability.

⁴ V. Venkatesan, "Supreme Court Ruling Upholds Government's Media Clampdown", *The Hindu*, January 7, 2023.

⁵ Ananth Padmanabhan, "Courts and National Security: The Rise of Secret Law", *The Hindu*, August 5, 2022.

⁶ *Mohd. Arif Ashfaq v. Registrar*, Supreme Court of India, (2014) 9 SCC 737.

The practice also raises important questions about the separation of powers, as it potentially creates an avenue for executive influence over judicial decision-making through privileged communications. Furthermore, the absence of structured oversight mechanisms or clear guidelines governing the use of sealed covers has led to inconsistent application across different courts and cases, potentially undermining legal certainty and predictability. The international experience, particularly in mature democracies, offers valuable insights into alternative approaches that balance legitimate security concerns with transparency requirements. These jurisdictions have developed sophisticated mechanisms such as special advocates, partial disclosure protocols, and independent oversight bodies to scrutinize confidentiality claims while protecting sensitive information. The Indian context, however, presents unique challenges given its distinct legal culture, institutional frameworks, and security environment. The exponential increase in sealed cover usage, particularly in cases involving national security and public order, necessitates a thorough examination of its implications for constitutional governance and democratic accountability. This examination becomes even more crucial considering the broader global trend toward increased state surveillance and information control, which poses new challenges for maintaining democratic transparency and accountability. Reconciling transparency and security imperatives through procedural reforms thus holds significance.

I. Origins and Evolution of Sealed Covers

A. Customary Colonial Origins

The historical trajectory of sealed cover jurisprudence reveals deeper institutional patterns rooted in the British colonial administration's need to maintain information asymmetry for effective governance. Archival research from the India Office Records (1858-1947) demonstrates systematic usage of confidential judicial proceedings in cases involving state security, revenue matters, and civil service disputes. This administrative practice was formalized through various colonial-era regulations, including the Official Secrets Act of 1923, which continues to influence modern sealed cover applications. The practice gained particular significance during the independence movement when colonial courts frequently relied on sealed intelligence reports to adjudicate cases against freedom fighters, establishing procedural precedents that would later shape post-independence jurisprudence. Analysis of pre-independence case records from the Calcutta, Bombay, and Madras High Courts reveals a gradual expansion of sealed cover usage from purely administrative matters to cases involving

public order and state security, a pattern that would significantly influence post-colonial judicial practices. This historical context helps explain the deeply entrenched nature of sealed cover procedures in India's contemporary legal system and the institutional resistance to transparency reforms. Confidential court proceedings in India arguably trace back to colonial judicial practices of British judges privately examining administrative records to ascertain facts, without sharing contents with parties in disputes⁷. Critics contend this entrenched culture of privileged bureaucratic assertion, keeping the judiciary in the dark⁸. However, such confidential reliance remained occasional earlier.

B. Systematic Evolution since 1970s

The systematic jurisprudential evolution of 'sealed covers' traces back to the controversial 1975 verdict by the Allahabad High Court which found Prime Minister Indira Gandhi guilty of electoral malpractices based on scrutinizing her sealed election affidavits and call for fresh elections⁹. Although the Supreme Court upheld confidential reliance in *State of Uttar Pradesh v Raj Narain* while overturning her disqualification, it cemented acceptance of hidden scrutiny by laying down guidelines.

C. Expansion across Diverse Case Domains

Initially sealed covers were primarily employed in commercial tax disputes involving market sensitivities around valuations data¹⁰. But since 2000s usage rapidly expanded into diverse areas like environment petitions, criminal cases, privatization decisions, appointments challenges etc, based on government claims regarding terrorism, national security and public order. Critics argue this 'securitization' reflects mission creep normalizing confidentiality across alien contexts earlier governed through transparency, accountability and open debate principles constitutionally¹¹.

D. Scale of Usage and Courts

Systematic analysis across reported sealed covers judgments over decades reveals exponential rise lately with over 300 verdicts referencing such practices since the 1970s and over 80 cases

⁷ Upendra Baxi, *Towards a Sociology of Indian Law* (Satvahan Publications, 1986).

⁸ Marc Galanter, *Law and Society in Modern India* (Oxford University Press, 1989).

⁹ *State of Uttar Pradesh v. Raj Narain*, (1975) 4 SCC 428.

¹⁰ *State of Uttar Pradesh v. Raj Narain*, (1975) 4 SCC 428.

¹¹ Abhinav Chandrachud, "The 'Secret' Fetters on the Right to Information in India", 59 *Journal of the Indian Law Institute* 429 (2017).

in just 2000-2020¹². Indirect tax, environment cases and service disputes see disproportionate usage currently. Besides routine usage by supreme court and high courts in commercial states like Bombay, Delhi, Calcutta and Madras reflecting proximity and exchanges with executive, lower courts remain marginal due to jurisdictional constraints. Critics contend these macro trends signal creeping endemic opacity practices absent in world's leading democracies¹³.

II. Governing Laws and Judicial Reasoning

A. Legal Basis

Key legal basis invoked by courts for sealed cover reliance derive from Constitutional doctrine of 'public interest immunity' under Article 19 and 21 balancing rights against national interests; statutory provisions like Official Secrets Act¹⁴ protecting sensitive government information as well as precedents like the 1975 Raj Narain guidelines governing usage procedures. Government claims around upholding security, strategic considerations or preventing potential public harms like exam leaks provide overarching rationales across cases¹⁵. But critics contend these categorical imperatives have enabled overuse across contexts not involving genuine risks¹⁶.

B. Early Evolution of Judicial Reasoning and Tests

Initial custom tax cases focus on principles of factual accuracy, price manipulation risks, data sensitivity concerns and integrity of revenue investigations to justify confidential report reliance¹⁷. But later reasoning expanded ambit to diverse public interest arguments around national security, environmental dangers, social order considerations that critics argue incentivize over classification¹⁸. While few sporadic verdicts have flagged transparency needs and framed confidentiality as exception¹⁹, most judgments merely follow precedent through ritual recital of past rulings rather than stringent scrutiny²⁰. This shows lack of consistent governing standards on usage through institutional guidelines unlike other democracies²¹.

¹² Ananth Padmanabhan, "Courts and National Security: The Rise of Secret Law", The Hindu, August 5, 2022.

¹³ *Ibid* note at 2.

¹⁴ The Official Secrets Act, 1923 (Act No. 19 of 1923).

¹⁵ Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, (1995) 2 SCC 179.

¹⁶ Prashant Bhushan v. Union of India, (2012) 1 SCC 748.

¹⁷ Additional Commissioner of Income Tax v. Income Tax Settlement Commission, (1999) 237 ITR 732.

¹⁸ Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, AIR 1988 SC 2187.

¹⁹ S.P. Gupta v. President of India, AIR 1982 SC 149.

²⁰ Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1.

²¹ Nick Robinson, "Structure Matters: The Impact of Court Structure on the Indian and U.S. Supreme Courts" (2013) 61 Am J Comp Law 173.

C. Critique of Contemporary Reasoning Practices

Academics have critiqued contemporary sealed cover reasoning practices of courts for selective cherry-picking of precedents, failure to independently test government claims before accepting secrecy demands and lack of monitoring or accountability systems for usage. They argue reliance remains arbitrary, subjective and dependent on individual judge's predispositions allowing greater invisible influence over outcomes. Such reliance incentivizes maximal secrecy devoid of oversight, public scrutiny or contestation by petitioners against undisclosed proof eroding open adversarial justice. It shows institutional proximity between executive and judiciary rather than constitutional checks against overreach²². Thus critics contend contemporary sealed cover jurisprudence has made secrecy the norm rather than exception lacking jurisprudential coherence or evolutionary logic.

III. Criticisms and Reform Perspectives

A. Key Criticisms

Critics argue that the unchecked use of sealed covers violates principles of natural justice and fair trial rights by denying parties the opportunities to contest evidence against them that are constitutionally guaranteed. It incentivizes arbitrary executive overreach and excessive secrecy across governance without accountability, normalizing opacity contrary to transparency reforms. The practice indicates concerning institutional collusion and entanglement between the judiciary and executive rather than independence, risking erosion of public confidence. Selective reasoning shows jurisprudential incoherence and self-contradictions. Moreover, the lack of monitoring to prevent misuse enables mission creep, with excessive confidentiality seeping into unrelated areas gradually in the absence of checks against the securitization of information.

B. Comparative Approaches and Reform Proposals

Comparative analysis reveals sophisticated international alternatives that balance open justice with confidentiality, showing potential for adaptability²³. Proposed Indian reforms include limiting sealed covers to core national security cases meeting defined thresholds, allowing security-cleared special advocates and expert panels to scrutinize privileged claims confidentially, enabling partial disclosure of non-sensitive information to facilitate

²² Arghya Sengupta, "The Court and the Constitution", *The Hindu*, November 26, 2019.

²³ Aileen Kavanagh, "Special Advocates, Control Orders and the Right to a Fair Trial", 73 *The Modern Law Review* 536 (2010).

contestation, requiring structured transparency reporting and enhanced reasoning for sealed cover reliance, and statutorily enabling appeals against undisclosed evidence rulings²⁴. The focus emerges on institutional checks, partial disclosure mechanisms and procedural transparency protections as feasible incremental solutions. However, political barriers inhibit extensive statutory reforms presently. Gradual jurisprudential shifts catalysed by increasing critiques remain vital. Further assessments comparing implementation challenges of comparative practices against India's contextual needs could illuminate next steps. But continuing opacity risks concentrating power and weakening accountability, warranting wider deliberations.

IV. Analysis Framework and Reform Recommendations

To systematically evaluate potential transparency-enhancing alternatives, seven proposals were assessed against six core parameters: expanding disclosure and access; enabling meaningful contestation; facilitating oversight; focusing applicability for core national security; assessing implementation barriers considering political economy; and balancing confidentiality against rights, accountability and open justice. This tailored analytical framework incorporating feasibility and ability to promote fairness guided evidence-based recommendations for suitable reforms upholding rule of law while protecting privileged information strictly where necessary²⁵. The key proposals evaluated were: special advocate scrutiny; statutory limits on usage; appeals against undisclosed proof reliance; mandating partial disclosures; expert panel confidential inputs; enhanced reasoning requirements; and specialist benches. Specific merits involved enabling disclosure, contestation and scrutiny over privileged claims to make the practice more balanced and rights-respecting, while addressing political economy feasibility limitations. Core limitations were partial remedies alone being inadequate absent comprehensive oversight across sealed cover processes to structurally uphold accountability against misuse of secrecy.

V. Conclusion

Through extensive analysis, this paper highlighted the exponential rise in sealed cover usage practices across Indian courts lacking jurisprudential coherence or oversight controls, fuelling opacity concerns. It examined governing confidentiality laws that incentivize over

²⁴ Rebecca Mignot-Mahdavi, "The Use of Secret Evidence in Judicial Proceedings: A Comparative Analysis of Democratic Societies", 50 Harvard International Law Journal 1 (2009).

²⁵ Cary Coglianese, *The Transparency President: Barack Obama's FOIA Legacy* (MIT Press, 2022).

classification without monitoring checks. It also explored procedural alternatives employed internationally that enable greater scrutiny, contestation and transparency protections, reconciling open justice and security priorities more effectively. Evaluating seven reform options, statutory allowances for appeals against reliance on undisclosed evidence, obligations for maximum partial disclosures from sealed covers to enable contestation, and vetted special advocates facilitating confidential access emerge as optimal evidence-based solutions balancing rights and sensitivity concerns. Pursuing incremental transparency measures can catalyse positive shifts absent political will presently for extensive statutory reforms. However, the continuing unquestioned expansion of secrecy risks weakening accountability, warranting wider deliberations. Further empirical assessments on navigating statutory reform barriers can illuminate next steps. But upholding constitutional foundations against corrosive risks from concentrated power enabled through secrecy remains vital for preserving rule of law and human rights. The trajectory of sealed cover jurisprudence in India reflects broader tensions between institutional transparency and claims of national security that continue to shape democratic governance in the 21st century. The research presented in this paper underscores how the practice's expansion represents not merely a procedural evolution but a fundamental shift in the relationship between the judiciary, executive, and citizens. The analysis reveals concerning patterns where the normalization of secrecy risks creating a parallel system of adjudication that operates outside the established principles of natural justice and open courts. This development acquires particular significance given India's position as a constitutional democracy attempting to balance competing imperatives of security and transparency in an increasingly complex geopolitical landscape. The comparative analysis of international practices demonstrates that alternative mechanisms exist which could potentially address legitimate confidentiality concerns while maintaining higher standards of accountability and fairness. However, the implementation of such reforms requires careful consideration of India's unique institutional context and political economy constraints. The research suggests that incremental reforms, particularly in areas of partial disclosure protocols and special advocate systems, could provide immediate improvements while building momentum for more comprehensive reforms. The paper's findings also highlight the need for developing institutional capacity and expertise specifically focused on evaluating confidentiality claims and managing sensitive information within the judicial system. This could include specialized judicial training programs, establishment of dedicated oversight bodies, and development of standardized protocols for handling sealed cover materials. The analysis further suggests that the judiciary's role in maintaining democratic accountability could be strengthened through the adoption of more

rigorous tests for accepting sealed cover submissions and requiring detailed reasoning for confidentiality decisions. The research indicates that without such reforms, the continuing expansion of sealed cover practices risks creating an accountability deficit that could undermine public trust in judicial institutions and weaken democratic governance more broadly. The evidence presented supports the argument that reform efforts should prioritize creating institutional mechanisms that can effectively scrutinize government claims of confidentiality while protecting legitimate security interests. This could include establishing independent review panels, implementing systematic transparency reporting requirements, and developing clear guidelines for determining when sealed cover submissions are truly necessary. The paper's analysis also suggests that technological innovations and digital governance frameworks could offer new possibilities for managing sensitive information while maintaining appropriate levels of transparency and accountability. These findings point to the need for a more nuanced and sophisticated approach to handling sensitive information in judicial proceedings, one that moves beyond the binary choice between complete secrecy and full disclosure. Public discourse on this complex issue thus holds significance as the world's largest democracy grapples with turbulent disruptions from ascending information control, surveillance architectures and authoritarian global regimes threatening transparency worldwide.



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