The Practice of Sealed Cover Jurisprudence

Why in news?

A Bench led by Justice D Y Chandrachud has criticised the practice of sealed cover jurisprudence as it makes the adjudication vague and opaque.

What is sealed cover jurisprudence?

- It is a practice used by the courts (Supreme Court and lower courts), of asking for or accepting information from government agencies in sealed envelopes that can only be accessed by judges.
- There is **no specific law** that defines the doctrine of sealed cover.
- The Supreme Court derives its power to use it from
    - Rule 7 of order XIII of the Supreme Court Rules - No party would be allowed to access the information that the Chief Justice of India (CJI) or court has directed to be kept under sealed cover except if the CJI himself orders to access it.
    - Section 123 of the Indian Evidence Act of 1872

Instances of usage

- ***Rule 7 of order XIII of the Supreme Court Rules*** *– The information can be kept confidential if its publication is not considered to be in the interest of the public.*
- ***Section 123 of the Indian Evidence Act of 1872*** *- Official unpublished documents relating to state affairs are protected and cannot be compelled to disclose.*
- ***Other instances*** *– When the publication of information affects an ongoing investigation or breaches the privacy of an individual, it may be sought in secrecy or confidence.*

When has it been done in the past?

- In the controversial ***Rafale fighter jet deal case***, the Supreme Court (SC) had asked the Centre to submit details related to deal's decision making and pricing in a sealed cover.
- In the matters related to ***the National Register of Citizens (NRC)*** in Assam, the coordinator of the NRC was asked by the apex court to submit period reports in sealed cover.
- In ***the 2014 BCCI reforms case***, the probe committee of the cricket body had submitted its report to the SC in a sealed envelope.
- In ***the Bhima Koregaon case***, in which activists were arrested under the Unlawful Activities Prevention Act, the SC had relied on information submitted by the

Maharashtra police in a sealed cover.
- In ***the MediaOne case*** , the court chose to accept the submission of documents by the government in a sealed cover.

What is the problem with sealed cover jurisprudence?

- **For aggrieved parties** - It prevents parties from having a full overview of the charges against them.
- It denies the aggrieved party their legal right to effectively challenge an order since the adjudication has proceeded on the basis of unshared material provided in a sealed cover.
- It may tilt the balance of power in a litigation in favour of a dominant party which has control over information.
- **For the judiciary -** It perpetuates a culture of opaqueness and secrecy.
- It leaves scope for arbitrariness in judicial decisions.
- It takes away the opportunity to analyse judicial decisions and to appreciate the rationale behind them.
- The sealed cover procedure affects the functioning of the justice delivery system both at an individual case- to case level and at an institutional level.

What about the judgments to curb this practice?

- In ***P Gopalakrishnan V. The State of Kerala, 2019,*** the Supreme Court had said that disclosure of documents to the accused is constitutionally mandated, even if the investigation is ongoing.
- In the ***INX Media case in 2019***, the Supreme Court had criticised the Delhi High Court for basing its decision to deny bail on documents submitted by the Enforcement Directorate (ED) in a sealed cover.
- In 2022, in a case involving the Bihar government, the Bench headed by Justice Ramana made it clear that it wanted all arguments to be presented in open court.
- On hearing an appeal against the Centre's ban in the ***MediaOne case***, the SC said that it is not in favour of sealed cover jurisprudence.

References

1. The Indian Express | Supreme Court flags sealed cover again
2. The Hindu | What is sealed cover jurisprudence?

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