
LIVE STREAMING OF COURT PROCEEDINGS

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ABSTRACT

This article titled ‘live streaming of court proceedings’ is about the current scenario of live streaming of cases in high court and supreme court. Supreme court started the live streaming of cases of constitutional importance in 2022. Later on, following the supreme court many other high courts have adopted the same thing. Live streaming would ensure transparency in the legal system of our country. But like a coin everything and every circumstance have two sides; positive and negative. Many other countries have already started the live streaming of proceedings but with certain limitations. Those limitations and the ways to overcome those limitations have been discussed in this article.

INTRODUCTION

An exponential leapfrog of technological improvements caused every facet of societal involvement to be engulfed by technology. The Supreme Court (SC) agreed to live stream its sessions in significant constitution bench matters beginning on September 27, 2022 as a result of this technology. More than 8 lakh people observed the Constitution Benches' sessions, which was a positive step forward according to the statistics. On December 7, the Supreme Court released Android version 2.0 of its mobile application, giving law enforcement officials and nodal officers from other ministries access to view court proceedings in real time. On September 26, 2018, the then Chief Justice of India Deepak Mishra had delivered the landmark judgement on the live telecast or webcast of important proceedings in matters of constitutional importance, saying "sunlight is the best disinfectant".¹ Live streaming of court proceedings can be considered as right to access justice under Article 21(Right to life and personal liberty) of the constitution. In July 2021, Gujarat High Court became the first court in India to livestream court proceedings.

When Senior Advocate Indira Jaising recommended that some of the high-profile cases be broadcast live on television so that citizens across the nation could watch what was happening in court. The argument over live-streaming Supreme Court proceedings took on greater significance in 2018. Without a doubt, a public trial in open court is necessary for the effective, efficient, and impartial administration of justice. Trials that are open to the public's scrutiny naturally serve as a check on judicial notion or conception and are an effective means of winning the public's trust in the fairness, objectivity, and impartiality of the administration of justice. The country's judicial system is not new to open courts. There is an express provision in the Constitution of India that the pronouncement of judgements of Supreme Court shall be made in open court.² While developing guidelines for institutions where people are to be kept under inspection in the late eighteenth century, Jeremy Bentham proposed the idea of open justice, saying that "the doors of all public establishments ought to be, thrown wide open to the body of the curious at large-the great open committee of the tribunal of the world."³ In *Olga Telis v. Bombay Municipal Corporation*⁴, the principle that justice must also be seen to be done

¹ Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 639, 26-09-2018"

² Article 145(4) of the Constitution of India, 1950

³ Jeremy Bentham, *The Works of Jeremy Bentham*, published under the Superintendence of his Executor, John Bowring (Edinburgh: William Tait, 1838-1843). 11 volumes, volume 4, at page 46.

⁴ *Olga Telis v. Bombay Municipal Corporation* (1985), 3SCC 545

rather than just heard was reemphasized by Chief Justice Y V. Chandrachud. He said: "Whatever its outcome, such a hearing represents a valued human interaction in which the affected person experiences at least the satisfaction of participating in the decision that vitally concerns her, and perhaps the separate satisfaction of receiving an explanation of why the decision is being made in a certain manner."⁵

BACKGROUND

Only if the public has access to the proceedings as they take place before the courts, and in particular, if they have the chance to observe live proceedings with regard to matters having an impact on the public at large or on a particular group of people, will the right to access justice derived from Article 21⁶ of the Constitution have any real meaning. Because the right to know and receive information is a component of Article 19(1)(a) of the Constitution⁷, the public is entitled to view court proceedings pertaining to issues affecting the public at large or a segment of the public. Live streaming is frequently viewed as a technique that will increase judges' accountability, promote access to justice, and improve the public's opinion of the courts. It is also viewed by many legal critics as an essential step in maintaining courtroom transcript archives and supporting scholars, attorneys, and law students who study and investigate the law. In 2017, Swapnil Tripathi a law student from NLU Jodhpur filed a writ before the SC against a decision of the court which prohibited law interns from entering the apex court on Mondays and Fridays when fresh matters are heard. Through this he asked the court to make a room where interns can watch the live streaming. The bench of Chief Justice Dipak Misra, Justice AM Khanwilkar and Justice DY Chandrachud should be appreciated for a great stride in realizing the need of transparency and openness in the Indian judiciary.⁸ Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity.⁹

The Chief Justice's Constitution Bench heard the case challenging the 10% quota for economically underprivileged groups of society. The dispute about who was the "real" Shiv Sena party was heard by Justice Chandrachud's Bench between Eknath Shinde's group and the

⁵ Id.,para 47 (per. Y V Chandrachud, C.J.)

⁶ Article 21 of the Constitution of India,1950

⁷ Article 19 of the Constitution of India,1950

⁸ Swapnil Tripathi v. Supreme Court of India, (2018) 10 SCC 639, 26-09-2018"

⁹ Scott v. Scott [(1911) All. E.R. 1,30]

Uddhav Thackeray camp in Maharashtra. The All India Bar Examination, a post-enrollment exam for lawyers, was challenged, and Justice Kaul's Constitution Bench first heard that argument. All of these matters were considered by the Supreme Court on September 27, 2022, through live broadcast.¹⁰

FORMATION OF E-COMMITTEE

Whereas it is practical to set up the infrastructure and framework to permit live streaming and recording of proceedings in order to create more transparency, inclusivity, and access to justice. These regulations were created by the High Court of Judicature in accordance with the authority granted by Article 225 of the Indian Constitution or, where applicable, Article 227. Live streaming refers to and includes any arrangement that allows anybody to observe the proceedings as allowed by these regulations, whether it be a live television link, webcast, audio-video broadcasts by electronic means, or another type of arrangement.¹¹ On 7th June 2021, the e-Committee of the Supreme Court announced Draft Rules on Live-Streaming and Recording of Court Proceedings for High Courts. In order to ensure consistency when livestreaming throughout High Courts, several guidelines have been implemented. All matters will be live streamed except conjugal disputes, sexual offences, matters involving POCSO Act, 2012 and JJ Act, 2015, in camera proceedings, where bench thinks enmity may be provoked, recording of evidence and any privileged communications. When issuing an order, the bench may also decide to suspend live streaming. The Bench's choice to webcast or not will not be justiciable. But it should adhere to the idea of a fair and transparent judicial system. The livestream will be delayed by 10 minutes. But even events that aren't live broadcast will be recorded and kept on record for at least six months. Later, they might be uploaded. The High Courts will have designated areas where viewers can watch the live streams. The disabled will be accommodated by this. Researchers, employees, litigants, professors, and media who have permission may attend. The regulations also include clauses allowing for streaming on the website and other streaming services.¹²

RECOMMENDATIONS BY ATTORNEY GENERAL

- Attorney General emphasised the need to only use live streaming for Constitution

¹⁰ <https://www.thehindu.com/news/national/supreme-court-live-streams-constitution-bench-proceedings/article65940871.ece>

¹¹ <https://doj.gov.in/live-streaming/>

¹² <https://www.scobserver.in/journal/e-committee-releases-draft-model-rules-for-livestreaming-hc-proceedings/>

Bench proceedings in Court No. 1, the CJI's court, as a pilot project. Whether live streaming should be allowed in India's Supreme Court and other courts will depend on how well this endeavour turns out.

- To guarantee that everyone, including litigants, journalists, interns, visitors, and lawyers, is able to view the live streaming of the proceedings, a media room with the necessary infrastructure facilities should be assigned on the court's grounds. Additionally, this will guarantee that courts are not crowded. Additionally, provisions may be established to benefit those with disabilities.
- The court must not permit live streaming in cases such as:
 - a. Marital disputes
 - b. Issues regarding juveniles' interests or the preservation of young offenders' privacy,
 - c. National security matters
 - d. Issues related to sexual offences and rape
 - e. Matters where publicity would affect administration of justice,
 - f. Cases which can arouse passion and provoke enmity among communities.
- The Indian Copyright Act, 1957, the Information Technology Act, 2000, and any other applicable laws shall be applied to punish any unlawful use of the live streaming and/or webcasts. Such processes ought to be subject to the law of contempt. There may be provisions for prohibitions, fees, and penalties.

SCENARIO IN OTHER COUNTRIES

Many countries have adopted the process related to live streaming of court proceedings. The most effective way to connect audiences from different geographical locations is through live streaming. Such telecasts can be accessed through any gadgets with real time interface.

- **United States of America:** Supreme court of US has allowed the broadcasting of audio recording and transcript of oral arguments in 1955. The OJ Simpson trial, which took place between 1994 and 1995 and saw an American football player being tried for the murder of his wife, caught the attention of the media and became a source of "obsession" for the entire country. Critics claim that because participants were "sucked into the media vortex," everyone was conscious of the camera, including witnesses, jurors, and judges.¹³

¹³ George Anastaplo, The O.J. Simpson Case Revisited, 28 Loy. U. Chi. L. J. 461 (1997). Available at: <http://lawcommons.luc.edu/lucj/vol28/iss3/3>

- **Australia:** Although it is legal to broadcast live or after a delay, each court has its own procedures and policies. The High Court of Australia has made audio-visual recordings of all full-court proceedings held in Canberra available on its internet since 1 October 2013.¹⁴
- **United Kingdom:** The Supreme Court's hearings can now be live streamed according to the Constitutional Reforms Act, 2005.¹⁵ On the court's website since 2005, sessions are streamed live with a one-minute delay; however, in delicate appeals, the broadcast may be withdrawn.
- **South Africa:** Live streaming and television of court sessions are permitted at the judges' discretion.¹⁶ The right to freedom of expression allows for the broadcast of court hearings in criminal cases, and the Supreme Court of South Africa has since 2017 approved this practice.

In addition, international bodies like the European Court of Human Rights follow a process in which all hearings are filmed and broadcast the following day, unless morality, public order, national security, the interests of children, or the protection of the parties' private lives conflict with this.¹⁷ More and more countries are coming forward and appreciating the process of streaming the court proceedings so that justice can be easily accessed by the masses.

SIGNIFICANCE OF LIVE STREAMING OF COURT PROCEEDINGS

- a. The technology of live-streaming encourages thorough rapidity in legal processes. Within seconds of a hearing taking place, it becomes global. It allows viewers to virtually observe courtroom events as they take place.
- b. Live-streaming courtroom proceedings will reduce the public's reliance on second-hand narratives to learn about important court decisions and the judicial hearing process. The public will have direct access to court hearings and be able to form informed comments about how the courts operate. This will lessen misinformation and ambiguity about the legal system.

¹⁴ Media Release: Audio-Video Recordings of Full Court proceedings

http://www.hcourt.gov.au/index.php?option=com_acymailing&ctrl=archive&task=view&listid=6-judgment-deliverynotification&mailid=28-media-release

¹⁵ 13 UK Supreme Court Website, <https://www.supremecourt.uk/live/court-01.html>

¹⁶ <http://www.justice.gov.za/sca/>

¹⁷ European Court of Human Rights Website, <https://www.echr.coe.int/Pages/home.aspx?p=home>

- c. Live streaming of court proceedings will also help in educational purpose. Law students will be able to understand and gain knowledge from the conversations between the Bar and the Bench through this. The reach of the courts will also be maximised via live streaming and broadcasting because it can reach every region of the country. The live streaming of cases with significant constitutional or societal implications is quite effective. Numerous aspects of people's lives are impacted by such occurrences. Therefore, the nation's ability to participate in this interaction by watching these proceedings will not just boost legal literacy but substantially enhance the nation's ongoing engagement with the Constitution and laws.
- d. Live-streaming will abolish physical constraints to viewing court proceedings by allowing the public to view proceedings from outside federal building. This will also lessen the crowding which is presently plaguing courtrooms. It will also lessen the travel time and cost of transportation.
- e. It will bring decorum and upgrade how judges and lawyers conduct the proceedings, as they are conscious that the nation is watching. The public will benefit from knowing the reasons why hearings are postponed and the reasons for adjournments, thanks to live streaming of court proceedings.
- f. Live-streaming as an elongation of the principle of open courts will ensure that the link between a court hearing with virtual reality will promote in the propagation of information in the widest possible sense, imparting transparency and accountability to the judicial procedure.

The Supreme Court and various High Courts of the country have taken a substantial step which will undoubtedly maintain public's confidence in our judicial process in the words of Justice J.C. Shah: "Hearing in open court of causes is of the utmost importance for maintaining confidence of the public in the impartial administration of justice: it operates as a wholesome check upon judicial behaviour as well as upon the conduct of the contending parties and their witnesses."¹⁸

ISSUES RELATED TO LIVE STREAMING OF COURT PROCEEDINGS

- a. **Pandering to public** – There are some issues about how live streaming will pose a threat to the conduct of bar and bench. The cameras inside the courts have made the environment of the court a bit consequential and have put judges under stress. Now the

¹⁸ Naresh Shridhar Mirajkar and Ors v State of Maharashtra and Anr 1967 AIR, 1 1966 SCR (3) 744

judges are continuously under pressure if something is said in lighter vein, it might be interpreted otherwise. According to a statement made by Allahabad high court chief justice Govind Mathur: Live streaming may occasionally be beneficial, but other times judges may feel under pressure and be unable to express themselves freely during a hearing. This would be contrary to the ideal function of judges in a democracy. The judiciary has a responsibility to remain impartial and not be influenced by politics or popular culture.

- b. Media sensationalising** – Another concern is that short a contextual snippets taking internet by storm giving the netizens a wrong sense of how the courtroom works. Clips of the judicial proceedings once available on a social platform can be used for sensationalism and misinformation. Some of the high court such as Gujarat, Karnataka and Patna have made their videos of live streaming available. They are seeing spliced clips of their proceedings running over YouTube. Videos are shared through social media platforms like Instagram, Facebook and WhatsApp which takes a clip of few seconds from a question/ perception by a judge or advocate and makes propaganda videos, often criticising the professional.
- c. Individual exposure** - Studies conducted on Live streaming of court of judicial procedure across the world have shown that justices behave like politicians and act to maximize their individual exposure. The desire to gain publicity can affect the efficiency of Supreme Court proceedings and waste valuable judicial time and resources.
- d. Technical issues** – Watching live streaming of court proceedings may consume large amount of data and need other technical inputs. Therefore, it is mandatory to have proper resources to make full use of such streaming. Also, the court staff are not equipped with technical aspects involving live streaming of cases. There are possibilities of personal information being leaked if court staff is not careful.
- e. Not widely accepted** – In the United States, the supreme court does not broadcast live proceedings but allows audio recordings and oral transcripts to be broadcasted. Similarly, UK promotes one-minute delay in broadcasting.

RECENT VERDICT

In her plea, senior attorney Indira Jaising asked the Supreme Court to broadcast important cases of national significance, not simply constitutional bench cases. Ms. Jaising claims in the Petition that live television coverage of these cases will improve access to the courts and

"negate the likelihood of any misreporting, inaccuracies, or second-hand information."¹⁹ On January 16, 2023, a Supreme Court panel led by Chief Justice DY Chandrachud and composed of Justice PS Narasimha, Justice JB Pardiwala, and Senior Advocate Indira Jaising announced that the court would take into account the comments Indira Jaising made for live streaming of court hearings. Senior attorney Jaising received assurances from CJI DY Chandrachud after the delivery of the order that the supreme court would take the following comments into account:

1. The link for live streaming of hearing may be made available on the cause list to facilitate access;
2. Apart from Constitution Bench hearings, which are presently livestreamed, a provision may be made for live streaming of other proceedings involving matters of importance; and
3. An audio transcript, which would be a more affordable option as compared to regular transcripts, of submissions before the Court may be prepared.²⁰

DOES IT DO MORE HARM THAN GOOD?

Like a coin, everyone, everything and every circumstance has two sides; positive and negative. To decipher the conundrum related to live streaming of court proceedings it is necessary to circumspect every aspect related to it. Live streaming of court proceedings will be a move in towards empowerment of the masses and help usher certain transparency in the judicial system. Since 2004, live broadcasting of both Lok Sabha and Rajya Sabha proceedings has been allowed to increase transparency. At a similar vein, videotaping in various international courts, such as the International Court of Justice, as well as the top courts in Canada and Australia demonstrates that this process is neither novel nor particularly challenging. Strong arguments in favour of enabling live streaming of court sessions include the right to information, access to justice, the need to create the correct perception, as well as the necessity to enlighten the general public about how the judicial system operates. You have a strong case for enabling live streaming and recording of videos when you combine this with the requirement to prevent numerous versions of the same thing or inaccurate fact projections, the threat of fake news, or poor reporting. Public knowledge as is common knowledge, not all advocates would have the

¹⁹ <https://www.livelaw.in/top-stories/live-streaming-supreme-court-agrees-to-consider-suggestions-made-by-senior-advocate-indira-jaising-219085#>

²⁰ Indira Jaising v. Secy General and Ors. MA 2058/2020 in WP(C) No. 66/2018

same privileges, and certain senior advocates might receive patient hearings from the judges. This is what is generally referred to as an advocate's "face value," which such advocates cash in on by demanding high professional fees. Noteworthy is the distinction between charging a high fee based on professional skill and charging a high fee based on "face value." The ability to view court proceedings live may inspire the attorneys, especially the senior ones, to try to make a stronger case for their clients. Naturally, it will also result in more responsible behaviour of advocates and judges towards clients. On the other hand, in its daily hearings, the Supreme Court hears all types of cases, from public to private, sensitive to insensitive, and criminal to civil. Therefore, live broadcasting is not allowed in all of these situations. Personal, private things should only be spoken inside of four walls. There is a risk for widespread violence, intergroup conflict, and social disorder when it comes to delicate issues involving culture, religion, and ritual. Judges run the risk of being harmed by the parties in question. It undoubtedly offers the opposition parties an advantage over the ruling party when trying to win over voters. Live streaming might not be possible at all times. The judiciary's function is distinct from that of the legislative and executive branches of government. The accountability benefits of broadcasting legislative proceedings may outweigh the disadvantages when it comes to the judiciary. It's easy to understand why in a democracy, the people have sovereign rights and elect their representatives. The public, however, cannot evaluate the judges. Judges are not subject to either public or sovereign accountability. They only have to answer to the law, the Constitution, and the rule of law. Live streaming could potentially result in practical issues. There is a larger chance that attorneys may try to promote themselves in their presentations to the Bench. To help the court reach a just and logical decision, advocates argue based on the premises of the law and logic. With live streaming, there is a good chance that attorneys will speak to both the judges and the general audience. Their objectivity will only be hampered by this.

CONCLUSION

Bringing technology in courtroom is only a much anticipated step that will open the doors of the hall of justice for citizens to see and pass their opinion. Regarding viability, claiming that the SC has the necessary infrastructure to undertake live broadcasting is astonishing given that Indian IT specialists effectively control Silicon Valley in the United States. As advocated by the Attorney General of India, it shouldn't be too difficult to establish a channel along the lines of the Lok Sabha or Rajya Sabha. Allowing recording will guarantee that, regardless of the outcome of the case, the proceedings will be preserved in the institutional memory of the SC

and made later accessible to all. Given that the Supreme Court is the highest court in the land, it is only right that this movement towards transparency and openness starts with live broadcasts of its cases before spreading to the other high courts and subordinate courts. The transmission of information about judicial procedures and providing the litigant with unrestricted access to justice depend heavily on live-streaming of events. Without the litigant's ability to directly observe, hear, and comprehend the course of proceedings, access to justice cannot be fully achieved. A responsive judiciary, which recognises and acknowledges that it is answerable to the concerns of those who seek justice, is another aspect that live broadcasting is a crucial component of. A key tool for establishing the accountability of other justice system participants, such as the Bar, is live broadcasting. In addition, the government must assume responsibility for the effectiveness of the legal system as the main litigant. Live-streaming of court proceedings allows for the complete distribution of knowledge and information, which furthers the many interests of participants and society in the just administration of justice.